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Australian Rail Track Corporation Limited and

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Transport for NSW

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# Gateway Project – Project Works Deed

FOR THE DESIGN AND CONSTRUCTION OF THE SYDNEY GATEWAY ROAD  
PROJECT BETWEEN 12.380KM AND 14.740KM ON THE BOTANY LINE

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## GATEWAY PROJECT – PROJECT WORKS DEED

**BETWEEN:** **AUSTRALIAN RAIL TRACK CORPORATION LIMITED** (ABN 75 081 455 754) of Ground Floor, ARTC Building, Sir Donald Bradman Drive, Mile End SA 5031 (“**ARTC**”)

**AND:** **TRANSPORT FOR NSW** (ABN 18 804 239 602) a NSW Government agency constituted by section 3C of the *Transport Administration Act 1998* (NSW) of Level 6, 18 Lee Street, Chippendale NSW 2008 (“**TfNSW**”)

## BACKGROUND

- A TfNSW wishes to carry out the Project Works on the Railway Corridor.
- B ARTC has the care, control and management of the Railway Corridor pursuant to the MFN Lease.
- C ARTC has statutory obligations to safely and efficiently operate and maintain Rail Facilities and to operate a Railway on the Railway Corridor without interruption.
- D The parties agree that:
  - (a) TfNSW will finance and procure the design and construction of the Project Works;
  - (b) the carrying out of the Project Works will impact parts of infrastructure operated by ARTC and ARTC’s operations; and
  - (c) that TfNSW will assume all obligations in relation to the maintenance of the TfNSW Project Works.
- E The parties have agreed to manage these impacts and detail the rights and obligations of the parties in accordance with this Deed.

## OPERATIVE CONDITIONS

### 1 INTERPRETATION AND GENERAL MATTERS

#### 1.1 Definitions

In this Deed, these terms have the following meanings:

**Access Agreement** means an agreement for the provision of access to transport rail freight on the Railway Corridor.



<b>Accreditation</b>	means Accreditation under Division 4 of Part 3 of the Rail Safety National Law.
<b>Accredited Site Auditor</b>	means the person or persons (as the case may be) accredited as a site auditor under Part 4 of the <i>Contaminated Land Management Act 1997</i> (NSW).
<b>Additional Track Possession</b>	means those Track Possessions that are not specified in the Track Possessions Schedule but which TfNSW considers necessary to carry out the Project Works.
<b>Adjoining Site</b>	any property adjoining the Railway Corridor or near the Railway Corridor;
<b>Agreed Hand Back Time</b>	means a date and time by when the Railway Corridor the subject of an agreed Track Possession is required to be handed back to ARTC: <ul style="list-style-type: none"> <li>(a) as specified in the Track Possessions Program; or</li> <li>(b) as otherwise agreed in writing between TfNSW and ARTC pursuant to this Deed.</li> </ul>
<b>Alert Event</b>	has the meaning given to that term in <b>clause 7.3</b> .
<b>Approval</b>	means any consent, approval, authorisation, licence, registration, order, permission or concurrence required by Law (including by any ARTC condition or approval, including those under this Deed), required for the carrying out of the Project Works.
<b>Approved for Construction or AFC</b>	means Approved for Construction referred to in the ARTC Requirements.
<b>ARTC Additional Requirements</b>	means the requirements set out in <b>Schedule 2</b> .
<b>ARTC Associates</b>	means each of the following persons when acting in connection with the Project Works: <ul style="list-style-type: none"> <li>(a) any Associate of ARTC ;</li> <li>(b) the ARTC Project Manager; and</li> <li>(c) any other person to whom ARTC delegates a right, power, function or duty under this Deed.</li> </ul>
<b>ARTC Competencies</b>	means the minimum skills required by ARTC to undertake design, construction and commissioning works, as outlined at <a href="http://www.artc.com.au">www.artc.com.au</a>
<b>ARTC Configuration Control Board or ARTC CCB</b>	means a forum to be established by ARTC to review, assess and approve Design Documentation through a series of Configuration Control Gates.

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<b>ARTC EPL</b>	means Environmental Protection Licence 3142, as amended from time to time.
<b>ARTC Invitees</b>	means ARTC Associates and customers and clients of ARTC who are invited or who have a right to enter into the Railway Corridor.
<b>ARTC Material</b>	means any information or data in respect of the Railway Corridor, the Rail Facilities or the Project Works supplied or made available by, ARTC or the ARTC Project Manager to TfNSW in any form from time to time including any reports relating to, or opinions in respect of any such information or data but excluding Approvals contemplated by this Deed, given by ARTC or the ARTC Project Manager to TfNSW.
<b>ARTC Network Control</b>	means the Network Controller Sydney 1 Network Control Centre South (NCCS) that can be reached at the following phone numbers: Phone: [REDACTED] Train Transit Manager: [REDACTED] Emergency: [REDACTED]
<b>ARTC Project Manager</b>	is the person named at <a href="#">Item 1</a> of <b>Schedule 1</b> , or any replacement appointed under <b>clause 2.3</b> .
<b>ARTC Requirements</b>	means the: <ul style="list-style-type: none"> <li>(a) ARTC Standards and Procedures; and</li> <li>(b) ARTC Additional Requirements.</li> </ul>
<b>ARTC Standards and Procedures</b>	means the ARTC standards and procedures referred to in <b>section R2.3</b> of the ARTC Additional Requirements.
<b>As Built Drawings</b>	means drawings which will accurately reflect the dimensions, geometry, and location of all elements of the Project Works including any changes made during construction.
<b>Associate</b>	means, in relation to a person, any officer, agent, representative, adviser, invitee, consultant, contractor, subcontractor or employee of that person acting in that capacity.
<b>Business Day</b>	means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday.
<b>Claims</b>	means any claim, action, demand, suit or proceeding (including by way of counterclaim, contribution or indemnity) made under this Deed or otherwise at Law arising out of or in connection with this Deed, including for specific performance, restitution, payment of money

(including damages), an extension of time or any other form of relief or remedy.

**Completion**

means that stage of the Project Works when:

- (a) the ARTC Project Manager is satisfied, in its absolute discretion, that:
    - (i) those Defects and omissions do not prevent the Project Works from being used for their intended purposes;
    - (ii) TfNSW has reasonable grounds for not promptly rectifying those Defects and omissions; and
    - (iii) rectification of those Defects and omissions will not prejudice the safe and convenient use of the Project Works for their intended purposes;
  - (b) all certification and testing required by this Deed to be done and passed, has been done and passed;
  - (c) all information required to be provided under this Deed by TfNSW to ARTC has been provided, including:
    - (i) a Final Dilapidation Survey;
    - (ii) Final Detailed Site Survey;
    - (iii) all As Built Drawings for the Project Works (including all signalling drawings and construction drawings as set out in the ARTC Requirements) in a form acceptable to ARTC;
    - (iv) all quality documents as set out in the ARTC Requirements;
  - (d) TfNSW or a TfNSW Associate who carried out design as part of the Project Works has provided a certificate stating that the relevant part of the Project Works has been satisfactorily completed, except for minor defects;
  - (e) any other certificate or Approval, which must be issued or given by a Relevant Authority for the Project Works, has been issued or given by that Relevant Authority and provided to the ARTC Project Manager;
  - (f) TfNSW has:
-



	<ul style="list-style-type: none"> <li>(i) removed all Temporary Equipment, plant, equipment, machinery, facilities and vehicles (except to the extent they form part of Rail Facilities) from the Railway Corridor;</li> <li>(ii) removed from the relevant Worksite, Railway Corridor and the surrounding area, all waste, debris and surplus material arising from the performance of the Project Works, so as to leave the Site and the surrounding area in a clean and tidy condition; and</li> <li>(iii) except to the extent necessary to comply with its obligations under this Deed, make good all damage caused by TfNSW's use and occupation of the Railway Corridor;</li> </ul>
	(g) a Project Verifier has provided its written confirmation that it is satisfied that the Project Works have achieved Completion as contemplated by paragraphs (a) to (f) above; and
	(h) the parties have entered into a Rail Safety Interface Agreement in respect of the Project Works.
<b>Concept Design</b>	has the meaning given to that term in <b>clause 13.1</b> .
<b>Configuration Change Request</b>	means the Configuration Change Request referred to in the ARTC Additional Requirements.
<b>Configuration Control Gate</b>	means the Configuration Control Gate referred to in the ARTC Additional Requirements.
<b>Consents</b>	means all permits, authorisations, Approvals, licences, exemptions, clearances, consents, notifications, applications, filings, registrations, lodgements, deeds, certificates, directions, declarations or similar decisions of any kind which are required pursuant to applicable Laws from, by or with any Relevant Authority in relation to the Project Works or any part of them, including any modification to a Consent.
<b>Construction Documentation</b>	means documentation required to be submitted to ARTC prior to commencement of construction as outlined in <b>section R8.1</b> of the ARTC Additional Requirements and <b>clause 14</b> .
<b>Construction Work</b>	has the meaning given to that term in the WHS Regulation.
<b>Contaminate (or Contaminated or Contamination)</b>	means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under

(respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment as determined in accordance with the *Contaminated Land Management Act 1997 (NSW)*.

**Cure Plan**

means a proposal that TfNSW submits to the ARTC Project Manager which details the steps to be taken and the dates by which those steps must be satisfactorily performed in order to rectify any event of default under **clause 30.1(a)**.

**Danger Zone**

means:

- (a) everywhere within 3 metres horizontally from the nearest rail, and any distance above or below this 3 metres, unless a Safe Place exists or has been created; or
- (b) as otherwise defined in ARTC's Network Rules.

**Date of Completion**

means the date identified as the date of completion on a Notice of Completion.

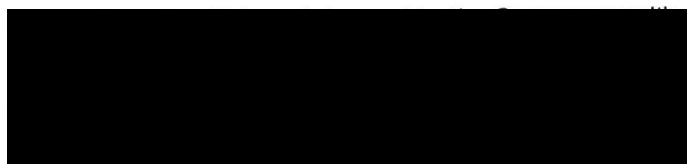
(a)

(b)

**Deed**

means this deed and any schedules, exhibits, attachments and annexures to it.

**Default Rate**

 and in the absence of any replacement, such rate of interest as ARTC reasonably determines as at the date for payment of any money.

**Defect**

means:

- (a) any defect or deficiency in design, materials or workmanship;
- (b) any defect, shrinkage or fault in the work which is or may be required to be carried out under this Deed in respect of any Project Works;
- (c) any omission in any work which is or may be required to be carried out under this Deed in respect of any Project Works;



- (d) any aspect of any work which is or may be required to be carried out under this Deed in respect of any Project Works or any part thereof, resulting from any such defect, deficiency, shrinkage, fault, omission or non-compliance; and
- (e) any physical damage to any work which is or may be required to be carried out under this Deed in respect of any Project Works, or any part thereof, resulting from any such defect, deficiency, shrinkage, fault, omission or non-compliance; and
- (f) any other condition or event stated in this Deed to constitute a defect.

**Defects Direction** has the meaning given to that term in **clause 16.1(b)**.

**Defects Liability Period** means the period stated in **Item 4** of **Schedule 1**.

**Delay Costs** means:

- (a) any costs and loss of revenue incurred by ARTC arising by reason of the unavailability of the Railway Corridor to operate the Railway; and
- (b) without limiting paragraph (a), any costs and loss of revenue incurred by a Third Party Operator arising by reason of the unavailability of the Railway Corridor to operate the Railway (but only to the extent that ARTC is under a contractual obligation to that Third Party Operator to indemnify it in respect of those costs and losses).

**Design Documentation** means the documentation to be submitted to ARTC for each Design Stage referred to in **sections R6.21, R6.22 and R6.23** of the ARTC Additional Requirements.

**Design Management Plan** means the Design Management Plan referred to in **section R6.14** of the ARTC Additional Requirements.

**Design Obligations** means all tasks necessary to design and specify the Project Works, including preparation and certification of the Design Documentation and any other requirements set out in the ARTC Requirements.

**Design Stage** means the relevant design stage in preparation of the Design Documentation set out in **section R6.15** of the ARTC Additional Requirements namely:

- (a) Functional Design Stage 1, being a 30% design;
- (b) Detailed Design Stage 2, being a 70% design;

- (c) Final Detailed Design Stage 3, being a 100% design; and,
- (d) Issued For Construction being an approved design which has both a Project Verifier Design Certificate and ARTC CCB approval.

**Design Statement** means a document generated by the Project Verifier on completion of the review of the Functional Design Stage 1 and Detailed Design Stage 2 which includes as a minimum, the following:

- (a) a list of the Design Documentation and revisions included as part of the review undertaken by Project Verifier;
- (b) details of any non-conformances against the Project Works Deed or Operational Requirements identified as part of the review;
- (c) details of any matters to be resolved in the Design Documentation before the submission of the next Design Stage; and
- (d) an up to date and version-controlled comments register.

**Detailed Site Survey** means the process of acquiring field data and the preparation of plans, cross sections and long sections of underground and above ground services (both rail and external) within the ARTC freight network and includes the requirements set out in **section R10.1** of the ARTC Additional Requirements.

**Dilapidation Survey** means a written and photographic report which includes a record of the condition of all Rail Facilities, access roads, drainage and vegetated areas, ARTC boundary fences and gates, third party infrastructure and services inside the Railway Corridor and third party infrastructure and services outside the Railway Corridor that may be affected by the Project Works.

**Direction** means any direction or instruction given by ARTC, a Possession Protection Officer, Protection Officer or any other relevant safety personnel of ARTC.

**Early Access Areas** means the aggregate of:

- (a) that part of the Lot 9 Interface Area (as defined in clause 9.2A of this deed) west of the Interface Line (as defined in clause 9.2A of this deed); and

	(b) the areas shaded in pink and denoted as "LAND TO BE ACQUIRED PERMANENTLY FOR ROAD PURPOSES" on the drawings "SKETCH SR5384-AGR" set out in Part 1 of Schedule 6.
<b>Environment</b>	has the same meaning as is given to that term in the <i>Contaminated Land Management Act 1997</i> (NSW).
<b>EP&amp;A Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>EPA Guidelines</b>	means guidelines made or approved by the Environment Protection Authority under section 105 of the <i>Contaminated Land Management Act 1997</i> (NSW) from time to time.
<b>Excavation Permit Process</b>	means the excavation permit process set out in the ARTC Requirements.
<b>Executive Forum</b>	means the: <ul style="list-style-type: none"> <li>a) Chief Development Officer of TfNSW, and</li> <li>b) Group Executive Interstate Network of ARTC.</li> </ul>
<b>Final Detailed Site Survey</b>	means the final Detailed Site Survey described in <b>section R10.3</b> of the ARTC Additional Requirements which includes details on all new and relocated Utilities.
<b>Final Dilapidation Survey</b>	means the Dilapidation Survey submitted as a condition of Completion in accordance with <b>clause 21.2</b> .
<b>GIPA Act</b>	means the <i>Government Information (Public Access) Act 2009</i> (NSW).
<b>GST</b>	means goods and services tax as imposed by <i>A New Tax System (Goods and Services Tax) Act 1999</i> and associated legislation, regulations, rulings and determinations.
<b>GST Amount</b>	has the meaning given to that term in <b>clause 26.2(a)</b> .
<b>GST Law</b>	has the meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
<b>Handover Documentation</b>	means the Handover Documentation referred to in <b>section R9.6</b> of the ARTC Additional Requirements.
<b>Hold Points</b>	means the Hold Points referred to in <b>section R11.4</b> of the ARTC Additional Requirements.
<b>Incident &amp; Emergency Management Plan</b>	means the Incident & Emergency Management Plan referred to in <b>section R12.1</b> of the ARTC Additional Requirements.



<b>Indirect or Consequential Loss</b>	means: (a) any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings; or (b) fines and penalties payable under agreements other than this Deed.
<b>Initial Dilapidation Survey</b>	means the Dilapidation Survey prepared and submitted before the commencement of Construction Work as part of the Project Works in accordance with <b>clause 21.1(a)</b> .
<b>Inspection and Test Plan or ITP</b>	means the Inspection and Test Plan referred to in <b>section R11.3</b> of the ARTC Additional Requirements.
<b>Insurance(s)</b>	means all of the insurances required to be effected and maintained in accordance with this Deed.
<b>Insurance Schedule</b>	means <b>Schedule 5</b> .
<b>Interface Working Group or IWG</b>	means the interface working group referred to in <b>clause 5.3(a)</b> .
<b>Issues Log</b>	has the meaning given to that term in clause 5.2(l).
<b>Key Associate</b>	means TfNSW Associates identified in accordance with <b>clause 2.2</b> .
<b>Late Hand Back Amount</b>	means the amount set out in <b>Item 5</b> of <b>Schedule 1</b> .
<b>Laws</b>	means: (a) Legislative Requirements; and (b) common law and principles of equity.
<b>Legislative Requirements</b>	includes: (a) the provisions of any statute, rule, regulation, proclamation, ordinance by-law, order, award, present or future, whether local, state, federal or otherwise; (b) any relevant industry code or Australian Standard; (c) requirements, Approvals and Consents of Relevant Authorities (including conditions in respect of those Consents); and (d) any requirement to pay fees and charged in connection with <b>paragraphs (a) to (c)</b> .
<b>Liability</b>	means any debt, obligation, claim, action, cost (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation,

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charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether:

- (c) under this Deed; or
- (d) arising at Law.

**Licence**

has the meaning given to that term in **clause 9.2(a)**.

**Licence for Infrastructure and Maintenance Agreement**

has the meaning given in **section R6.33**.

**Management Plans**

means:

- (a) the Project Safety Management Plan;
- (b) the Project Environmental Management Plan;
- (c) the Incident & Emergency Management Plan;
- (d) the Project Quality Management Plan;
- (e) the Design Management Plan;
- (f) the Inspection and Test Plan;
- (g) the Excavation Permit Process; and
- (h) any other management plan identified in the ARTC Additional Requirements.

**MFN Lease**

means the Metropolitan Freight Network Deed of Lease and Licence dated 3 August 2012 between TAHE and ARTC pursuant to which ARTC is granted care, control and management of the Railway Corridor by TAHE, as amended from time to time.

**Moral Rights**

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

**National Remediation Framework**

means the National Remediation Framework developed by CRC Care (refer to: <https://www.crccare.com/knowledge-sharing/national-remediation-framework>)

**Network Procedures**

means the network procedures or any updated or replacement procedures as issued by ARTC from time to time.

**Network Rules**

means the rules, systems and procedures relating to Railway Operations established or adopted by a Rail



	Infrastructure Manager to ensure the safety of the Rail Infrastructure Manager's Railway Operations for the purposes of section 52(3)(c) and 52(4)(c) of the Rail Safety National Law or any updated or replacement network rules as issued by ARTC from time to time.
<b>Notice of Anticipated Completion</b>	has the meaning given to that term in <b>clause 15.1</b> .
<b>Notice of Completion</b>	means a certificate completed, dated and signed by the ARTC Project Manager which states: <ul style="list-style-type: none"> <li>(a) the Project Works and are complete in accordance with this Deed;</li> <li>(b) the Project Works meet ARTC's procedures and standards as confirmed by a Project Verifier; and</li> <li>(c) the date on which Completion was achieved.</li> </ul>
<b>Operations Standards Manager</b>	is responsible for maintaining the registration records of track maintenance vehicles, maintaining the PlantGUARD application and authorising registrations of new or modified track maintenance vehicles.
<b>Other Insurance</b>	has the meaning given to that term in <b>clause 27.2(e)(iii)(A)</b> .
<b>Possession Protection Officer</b>	means a worker with appropriate qualifications as required by ARTC who is responsible for co-ordinating safe working protection at the Railway Corridor during a Track Possession.
<b>Preferred Remediation Option</b>	has the meaning assigned to that term in clause 12.3(e)(ii)(A).
<b>Principal Contractor</b>	has the same meaning assigned to that term in the WHS Regulation.
<b>Project</b>	means the design and construction of the Sydney Gateway Road Project between 12.380km and 14.740km on the Botany line.
<b>Project Environmental Management Plan</b>	means the Project Environmental Management Plan referred to in <b>section R5.4.1</b> of the ARTC Additional Requirements.
<b>Project Program</b>	means the Project Program referred to in <b>section R4.1(a)</b> of the ARTC Additional Requirements.

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<b>Project Quality Management Plan</b>	means the Project Quality Management Plan referred to in <b>section R11.2</b> of the ARTC Additional Requirements.
<b>Project Risk Report</b>	has the meaning given in <b>section R5.1</b> .
<b>Project Safety Management Plan</b>	means a safety plan developed by TfNSW and approved by the ARTC Project Manager in accordance with <b>section R5.3</b> of the ARTC Additional Requirements.
<b>Project Specific Safeworking Process</b>	means the Project Specific Safeworking Process referred to in <b>section R5.7</b> of the ARTC Additional Requirements.
<b>Project Verifier</b>	means an independent verifier engaged in accordance with <b>clause 13.4</b> and a reference in this Deed to a Project Verifier is a reference to: <ul style="list-style-type: none"> <li>(a) any Project Verifier; or</li> <li>(b) the relevant Project Verifier,</li> </ul> as the context requires.
<b>Project Works</b>	means all works (including temporary and third party works) to be undertaken by TfNSW or by TfNSW Associates in relation to the design and construction of the Sydney Gateway Road Project under this Deed which are: <ul style="list-style-type: none"> <li>(a) Rail Corridor Works; and</li> <li>(b) Works Affecting ARTC Railway Operations.</li> </ul>
<b>Project Works Packages</b>	has the meaning given in <b>clause 4.3(b)</b> .
<b>Project Works Structure</b>	means a breakdown of the overall structure of the Project Works into Project Works Packages (including the integration of these packages) to enable delivery of the Project Works and provision of documentation relating to the Project Works.
<b>Protection Officer</b>	means a worker with appropriate qualifications as required by ARTC who is responsible for safe working protection upon the Railway Corridor.
<b>Rail Corridor Works</b>	means works undertaken within the Railway Corridor.
<b>Rail Facilities</b>	means all facilities, assets or other things owned, leased, licensed or used by ARTC on, or in relation to, or in any way connected to, the Railway Corridor including railway track, tunnels, rolling stock control systems, electrical power supply, electric traction systems, civil works, associated track structures, over track structures, signalling systems, train control systems, communication

	systems, power and communication cables and associated plant, machinery, equipment, nodes, conduits, ducting, cable, cable support structures, buildings, workshops, depots, yards, notices and signs.
<b>Rail Infrastructure Facilities</b>	has the same meaning as in section 3 of the TA Act and includes “rail infrastructure” as that term is defined in the Rail Safety National Law.
<b>Rail Infrastructure Manager</b>	has the meaning given to that term in the Rail Safety National Law.
<b>Rail Laws</b>	means the TA Act and the Rail Safety National Law.
<b>Rail Rules</b>	means all rules, procedures, standards, protocols and manuals relating to rail safety from time to time, including: <ul style="list-style-type: none"> <li>(a) the Safety Protocol;</li> <li>(b) the Network Rules;</li> <li>(c) the Network Procedures;</li> <li>(d) the ARTC Engineering Webpage to capture current Procedures, Works Instructions, Forms and Guidelines (refer to ARTC website (<a href="https://www.artc.com.au">https://www.artc.com.au</a>) for all Engineering information);</li> <li>(e) Australian Standards; and</li> <li>(f) any rules in respect of Rail Safety Training, competencies and or certification.</li> </ul>
<b>Rail Safety Legislation</b>	means the Rail Safety National Law and the Rail Safety Regulations.
<b>Rail Safety National Law</b>	means the <i>Rail Safety National Law 2012</i> (NSW).
<b>Rail Safety Regulations</b>	means the <i>Rail Safety National Law National Regulations 2012</i> (NSW).
<b>Rail Safety Representative</b>	has the meaning given in <b>clause 8.5(c)</b> .
<b>Rail Safety Training</b>	means training in respect of rail safety conducted by a registered training organisation and in accordance with the safe working training standards developed under the Rail Rules.
<b>Rail Transport Operator</b>	has the meaning given in the Rail Safety National Law.

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**Railway** means the guided system for transportation of freight (whether or not freight is being transported) on a railway track within the Railway Corridor.

**Railway Corridor** means the:

- (a) railway corridor shaded in blue on the drawings set out in Schedule 3; and
- (b) such additional areas made available by ARTC to TfNSW as agreed by the parties in writing,

excluding the Early Access Areas.

**Railway Corridor and Rail Facilities Conditions** means any physical conditions in, on, under or over, or in the direct vicinity of the Railway Corridor, the Rail Facilities and the Project Works, including:

- (a) ground water, ground water hydrology, the existence of any wells or springs and the effects of any de-watering;
- (b) physical and structural conditions in, on, under or over the ground including any Utilities, infrastructure (including Utilities infrastructure), partially completed structures, artefacts or in ground works;
- (c) pastures, grasses or other vegetation;
- (d) topography, ground surface and sub-surface conditions and geology including rock or other materials;
- (e) climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;
- (f) any Contamination;
- (g) any pollution;
- (h) all other physical conditions and characteristics in, on, under or over the surface, of or in the direct vicinity of the Railway Corridor, which may affect the Project Works; and
- (i) all easements over or in connection with the Railway Corridor,

whether or not they were in existence or known to TfNSW or a TfNSW Associate before the date of this Deed.

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

<b>Recipient</b>	has the meaning given to that term in <b>clause 26.2(a)</b> .
<b>Recipient Supply</b>	has the meaning given to that term in <b>clause 26.4(a)</b> .
<b>Relevant Authority</b>	means any court or tribunal with the relevant jurisdiction, any local, state, national or supra-national government, council, agency, authority, inspectorate, department, ministry, official or public or statutory person.
<b>Relevant Default</b>	has the meaning given to that term in <b>clause 30.1(a)</b> .
<b>Relevant PCBU</b>	has the meaning given to that term in <b>clause 11.1(a)(iii)</b> .
<b>Request for Information</b>	means a Request for Information referred to under <b>clause 4.4</b> .
<b>Risk Management Workshop</b>	refers to the risk workshops conducted as part of the risk management activities of TfNSW, guidelines for which are provided in the ARTC Standards and Procedures, in particular, RSK-WI-001 (Application of Risk Management).
<b>RIW</b>	means 'rail industry worker'.
<b>Safe Place</b>	means a place where workers and equipment cannot be struck by rail traffic, or as otherwise defined in ARTC's Network Rules.
<b>Safety Management System</b>	means ARTC's safety management system for TfNSW to request for access, as updated from time to time.
<b>Safety Protocol</b>	means ARTC's procedures, rules and protocols in relation to safety and the Railway network set out in <b>clause 8</b> .
<b>Safeworking Coordinator</b>	has the meaning given in <b>clause 8.5(b)</b> .
<b>Separable Portion</b>	means the portion of the Project Works agreed by ARTC to be a separable portion.
<b>Site Audit Statement</b>	means a site audit statement and site audit report prepared by an Accredited Site Auditor in accordance with Part 4 of the <i>Contaminated Land Management Act 1997</i> (NSW) and any EPA Guidelines.
<b>Supplier</b>	has the meaning given to that term in <b>clause 26.2(a)</b> .
<b>TA Act</b>	means the <i>Transport Administration Act 1988</i> (NSW).
<b>TAHE</b>	means the Transport Asset Holding Entity of New South Wales constituted under section 4 of the TA Act.

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<b>Temporary Equipment</b>	means all plant, machinery and equipment and other items used by TfNSW or TfNSW Associates solely for the purpose of enabling or facilitating delivery of the Project Works which does not and will not become part of the Railway Corridor or the Rail Facilities.
<b>Temporary Project Works Designs</b>	means the design of any temporary physical works required to be carried out to complete the Project Works.
<b>TfNSW Associate</b>	means each of the following persons when acting in connection with the Project Works: <ul style="list-style-type: none"> <li>(a) any Associate of TfNSW;</li> <li>(b) the TfNSW Project Manager; and</li> <li>(c) any other person to whom TfNSW delegates a right, power, function or duty under this Deed.</li> </ul>
<b>TfNSW Associate Deed Poll</b>	means the form set out in <b>Schedule 4</b> .
<b>TfNSW Contract</b>	means each contract entered into, or be entered into, between TfNSW and a TfNSW Associate to carry out the Project Works.
<b>TfNSW EPL</b>	has the meaning given in <b>clause 12.1(b)(iv)</b> .
<b>TfNSW Project Manager</b>	is the person named at <a href="#">Item 2</a> of <b>Schedule 1</b> , or any replacement appointed under <b>clause 2.4</b> .
<b>Third Party Operator</b>	means an entity which has entered into a commercial agreement with ARTC to operate trains including on the Railway Corridor.
<b>TMF</b>	means the Treasury Managed Fund.
<b>Track Occupation</b>	means any prescribed period, including a Track Possession, that ARTC notifies TfNSW it is authorised to have access to, and, for the purposes of the WHS Laws only, management and control of, a specified portion of the Railway Corridor for the purposes of carrying out the Project Works.
<b>Track Possession</b>	means a Track Occupation over a weekend.
<b>Track Possession Program</b>	has the meaning given in <b>clause 10.1(b)</b>
<b>Track Possessions Schedule</b>	means the Track Possessions Schedule provided to TfNSW: <ul style="list-style-type: none"> <li>(a) in accordance with <b>clause 10.1</b>; and</li> </ul>

- (b) updated by ARTC from time to time and in any case every 12 months in accordance with **clause 10.1(a)(iv)**.

**Unplanned Rail Disruption**

means any disruption to ARTC's Railway Operations caused by or arising from an act or omission of TfNSW or TfNSW Associates in connection with the Project Works, other than a disruption that occurs:

- (a) during any Track Occupation (but only to the extent permitted by that Track Occupation); or
- (b) due to a failure by TfNSW to hand back any Railway Corridor the subject of a Track Possession by the Agreed Hand Back Time in accordance with **clause 10.5**.

**Unplanned Rail Disruption Amount**

means the amount set out in [Item 6](#) of **Schedule 1**.

**Urgent Defect or Urgent Damage**

means a Defect or damage as contemplated under **clause 18** which, in the reasonable opinion of ARTC, is necessary because the Defect or damage has or will:

- (a) have an adverse effect on:
  - (i) the safety of any person or property; or
  - (ii) ARTC's Accreditation; or
- (b) have a material adverse effect on ARTC's:
  - (i) operations, which means for the purposes of this **paragraph (b)**, a delay to or re-routing of train services, which includes delayed shunting activities; or
  - (ii) maintenance activities, which means for the purposes of this **paragraph (b)** an inability to meet a specified time response as nominated in the ARTC Standards and Procedures or otherwise documented as a business wide practice;
- (c) result in a breach of the Rail Safety National Law or WHS Laws; or
- (d) result in a breach of any Law, or conditions and requirements of any Approval relating to the Environment.

**Utilities**

means any utility service, including water, electricity, gas, fuel, telephone, drainage, sewerage, industrial waste

	disposal and electronic communications service, whether belonging to ARTC or a third party.
<b>Utility Provider</b>	means a provider of any Utilities (whether ARTC or a third party).
<b>WHS Act</b>	means the <i>Work Health and Safety Act 2011</i> (NSW).
<b>WHS Laws</b>	means the WHS Act and the WHS Regulation.
<b>WHS Obligation</b>	has the meaning given in <b>clause 11.2(a)</b> .
<b>WHS Regulation</b>	means the <i>Work Health and Safety Regulation 2011</i> (NSW).
<b>Works Affecting ARTC Railway Operations</b>	means works undertaken by TfNSW on, above, beneath or adjacent to the Railway Corridor that: <ul style="list-style-type: none"> <li>(a) impacts on ARTC's Railway Operations; and</li> <li>(b) ARTC (acting reasonably) deems to have the potential to impact ARTC's Railway Operations.</li> </ul>
<b>Worksite</b>	means an area of land within the Railway Corridor required by TfNSW for the carrying out of any Project Works.
<b>Worksite Access Plan</b>	means a plan covering the proposed Project Works and the conditions of access to the various areas of land within the Worksite as developed and agreed by the parties pursuant to <b>clause 9.4</b> .
<b>Worksite Inspection</b>	means an inspection by ARTC of the Project Works.
<b>Worksite Master Plan</b>	means a plan that nominates all the Worksite Access Plans that together comprise of the total Worksite.
<b>Worksite Methodology</b>	means the methodology prepared in accordance with <b>clause 14.3</b> .
<b>Worksite Protection Plan</b>	means a plan discussing the protection method for the Worksite, the content of which is contained in the ARTC Standards and Procedures, in particular "RLS-PR-006 Worksite Protection Plan".

## 1.2 Rules for interpreting this Deed

The following rules apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) any legislation or to any section or provision of legislation includes any:



- (A) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
    - (B) ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision;
  - (ii) specific legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (iii) a document or a provision of a document, is to that document, including any permitted update, amendment, supplement, novation or replacement from time to time;
  - (iv) a party to this Deed or to any other document or deed includes a permitted substitute or a permitted assign of that party;
  - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (vi) nothing in this Deed creates a partnership or agency with ARTC;
  - (vii) anything (including a right, obligation or concept) includes each part of it;
  - (viii) a schedule, annexure or exhibit are references to schedules, annexures or exhibits to this Deed; and
  - (ix) a day or a month means a reference to a calendar day or calendar month respectively.
- (b) Headings are for convenience only, and do not affect interpretation of this Deed.
  - (c) A singular word includes the plural, and vice versa.
  - (d) A word which suggests one gender includes the other genders.
  - (e) "Include", "includes" and "including" will be read as if followed by the phrase "(without limitation)".
  - (f) Other grammatical forms of defined words or expressions have corresponding meanings.
  - (g) If a word is defined, another part of speech has a corresponding meaning.
  - (h) No waiver of any breach under this Deed or any of its terms will be valid unless the waiver is in writing and signed by the party against whom the waiver is claimed.
  - (i) No waiver of any breach will operate as a waiver of any other breach or subsequent breach.
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- (j) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

### **1.3 Business Days**

If the day on or by which a party or person must do something under this Deed is not a Business Day:

- (a) if the act involves a payment that is due on demand, the party or person must do it on or by the next Business Day; and
- (b) in any other case, the party or person must do it on or by the previous Business Day.

### **1.4 The rule about "contra proferentem"**

This Deed is not to be interpreted against the interests of a party merely because that party proposed this Deed or some provision in it or because that party relies on a provision of this Deed to protect itself.

### **1.5 Requirement on a person not a party to this Deed**

If a provision of this Deed requires a person that is not a party to this Deed to do, or not to do, a thing, each party must use reasonable efforts to ensure that the person does, or does not, do that thing.

### **1.6 Application of certain terms to Separable Portions**

- (a) TfNSW may notify ARTC that a portion of the Project Works will be contained in a Separable Portion and TfNSW must identify:
  - (i) the portion of the Project Works contained in a Separable Portion;
  - (ii) the Date of Completion; and
  - (iii) all other information set out in the Schedule of Separable Portions.
- (b) The interpretations of:
  - (i) Date of Completion;
  - (ii) Notice of Completion;
  - (iii) Completion;
  - (iv) Defects Liability Period; and

**clauses 8.9, 14.1, 14.6, 15, 15.2, 16, 17 and 27** apply separately to each Separable Portion and references in those definitions and clauses to the Project Works mean those parts of the Project Works comprised in the relevant Separable Portion.

### **1.7 Timing for ARTC's review of documents**

- (a) Subject to **clause 1.7(b)**, the parties acknowledge and agree that, except to the extent expressly provided in this Deed, ARTC must respond to a request for consent, approval or endorsement within 20 Business Days of that request.

- (b) In providing documents to ARTC for its consent, approval or endorsement, TfNSW must submit such documents at a reasonable rate of submission having regard to the Project Program and in sufficient time to allow review and comment by ARTC.

## 1.8 Hyperlinks

TfNSW acknowledges and agrees that:

- (a) any hyperlink stated or referred to in this Deed (including the ARTC Additional Requirements) is for information only;
- (b) any hyperlink may be updated from time to time; and
- (c) TfNSW must inform itself of any changes to any hyperlink and the content contained in any hyperlink stated in or referred to in this Deed.

## 2 OBJECTIVES AND RELATIONSHIPS

### 2.1 Relationship between the parties

The parties acknowledge and agree that:

- (a) this Deed governs the relationship between them in respect of the Project Works; and
- (b) nothing in this Deed or any other document to which TfNSW and ARTC are a party in relation to the Project Works creates a partnership, joint venture, agency or a fiduciary relationship between TfNSW and ARTC.

### 2.2 TfNSW's Management Structure

- (a) TfNSW must provide to ARTC a description of the roles and responsibilities of the Key Associates which will be carrying out the Project Works (including any Key Associates which it proposes to engage in accordance with **clause 3.4**). The description must include the:
    - (i) management structure of the Key Associates and the names of the lead representatives of all such Key Associates; and
    - (ii) names of the lead representative of all such Key Associates.
  - (b) TfNSW's Key Associates include the:
    - (i) TfNSW Project Manager;
    - (ii) key staff of TfNSW managing the Project Works for TfNSW;
    - (iii) lead design consultant;
    - (iv) design consultants;
    - (v) engineering consultants;
    - (vi) construction contractors; and
    - (vii) any other person required by ARTC to be a Key Associate.  
**(Key Associates)**.
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- (c) TfNSW must immediately notify ARTC in writing of a change to a Key Associate engaged by TfNSW and must provide the information required by this **clause 2.2** in respect of that replacement Key Associate.

### **2.3 ARTC Project Manager**

- (a) ARTC must appoint a project manager to carry out all relevant functions of ARTC under this Deed as the agent of ARTC, from time to time, and will at all times be represented by the ARTC Project Manager.
- (b) ARTC must promptly inform the TfNSW Project Manager in writing of any appointment or replacement of the ARTC Project Manager.
- (c) ARTC may delegate all or any of its functions under this Deed.

### **2.4 TfNSW Project Manager**

- (a) TfNSW must appoint a project manager to carry out all relevant functions of TfNSW under this Deed as the agent of TfNSW, from time to time, and will at all times be represented by the TfNSW Project Manager.
- (b) TfNSW must promptly inform the ARTC Project Manager in writing of any appointment or replacement of the TfNSW Project Manager.
- (c) TfNSW may delegate all or any of its functions under this Deed to a nominee approved in writing by the ARTC Project Manager (such approval not to be unreasonably withheld).

### **2.5 Communication between the parties**

- (a) Subject to **clause 22.3**, the parties agree that all communication between the parties (including the communication contemplated under **clause 22.2**) must be through the ARTC Project Manager or the TfNSW Project Manager, as the case may be.
- (b) When requested to do so by the ARTC Project Manager:
  - (i) the TfNSW Project Manager must meet with the ARTC Project Manager to discuss aspects of the Project Works; and
  - (ii) TfNSW must promptly give the ARTC Project Manager (as applicable) any information in respect of the Project Works or any related matter which it reasonably requires.
- (c) TfNSW must keep the ARTC Project Manager regularly informed of the progress of the Project Works and notify the ARTC Project Manager immediately of any matter that may threaten or is likely to threaten:
  - (i) the Railway, the Railway Corridor or the Rail Facilities;
  - (ii) safety of Railway patrons or the employees, lessees and representatives of ARTC;
  - (iii) continued operation of the Railway; and
  - (iv) exercise of the statutory powers and functions of ARTC as those powers and functions relate to the operation of the Railway, the Railway Corridor and the Rail Facilities.

- (d) When requested to do so by the TfNSW Project Manager, the ARTC Project Manager must meet with the TfNSW Project Manager to discuss matters relating to the Project Works.

## **3 GENERAL PROVISIONS**

### **3.1 Statutory powers and functions**

- (a) Nothing in this Deed in any way restricts or otherwise affects the unfettered discretion of either ARTC or TfNSW, their respective officers and boards as to the exercise of their statutory functions and powers and in the event of any conflict between these and this Deed, the former prevails.
- (b) TfNSW acknowledges the rights (among others) of ARTC under schedule 6A and 6B of the TA Act or under the Rail Safety National Law and that such rights may apply to the Project Works.
- (c) Nothing in this Deed limits or otherwise affects the rights of ARTC under schedule 6A or 6B of the TA Act or under the Rail Safety National Law.

### **3.2 Inconsistencies with ARTC Additional Requirements**

The parties acknowledge and agree that if there is any inconsistency between the provisions of this Deed and the ARTC Additional Requirements, the provisions of the ARTC Additional Requirements will prevail.

### **3.3 Rail safety interface agreement**

TfNSW and ARTC must enter into the Rail Safety Interface Agreement in a form to be agreed 2 months prior to the Completion of the Project Works, in accordance with the requirements of the Rail Safety National Law.

### **3.4 Subcontracting**

- (a) Subject to **clause 3.4(b)**, TfNSW may enter into subcontracts for the vicarious performance of the Project Works under this Deed.
- (b) TfNSW must:
  - (i) obtain ARTC's written approval (which may be conditional and will have regard to the criteria for TfNSW Associates set out in the ARTC Additional Requirements) for a TfNSW Associate to perform any part of the Project Works under this Deed before commencing any Project Works; and
  - (ii) promptly give ARTC any information requested by ARTC to enable ARTC to consider any request for approval under **clause 3.4(b)(i)**, having regard to the criteria for TfNSW Associates set out in the ARTC Additional Requirements.
- (c) TfNSW must ensure that all TfNSW Associates appointed or proposed to be appointed are suitably qualified and carry out the work with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional carrying out the relevant part of the



Project Works and otherwise meet the requirements in the ARTC Additional Requirements.

- (d) TfNSW must ensure that any work performed by a TfNSW Associate is done within the time required by, and otherwise complies with, this Deed.
- (e) TfNSW's obligations under this Deed are not lessened or otherwise affected by entering into a TfNSW Contract or approval to subcontract.
- (f) TfNSW must ensure that TfNSW Contracts adequately address industrial relations, safety, environmental and programming issues relevant to the Project Works under this Deed.
- (g) TfNSW must supply ARTC with a copy of any TfNSW Contract redacted to the extent permitted by the GIPA Act.

### **3.5 Co-operation and co-ordination with ARTC's contractor**

- (a) The parties acknowledge that ARTC intends to carry out works in connection with the Port Botany Rail Line Duplication in the proximity of the Project Works (**ARTC Works**).
- (b) Each party must (and must procure that their Associates):
  - (i) co-operate and co-ordinate with the other party in respect of the interface between the ARTC Works and the Project Works including without limitation in relation to design integration and safe working conditions;
  - (ii) do all things reasonably necessary to facilitate the undertaking of the Project Works and the ARTC Works (as applicable) by the other party;
  - (iii) take all necessary precautions to ensure that the Project Works and the ARTC Works (as applicable) are protected from accidental damage;
  - (iv) not damage the Project Works or the ARTC Works (as applicable); and
  - (v) promptly advise the other party if it becomes aware of any dispute or other matter arising out of the Project Works or the ARTC Works that may have an adverse effect upon the other party's activities or the safety of any person or property.

### **3.6 Term of Deed**

This Deed commences on the date on which it is executed by both parties and, unless terminated in accordance with **clause 30**, expires upon the later of:

- (a) the issue of the Notice of Completion;
- (b) the date of execution by the last party executing the Licence for Infrastructure and Maintenance Agreement; and
- (c) the last Defects Liability Period has expired.



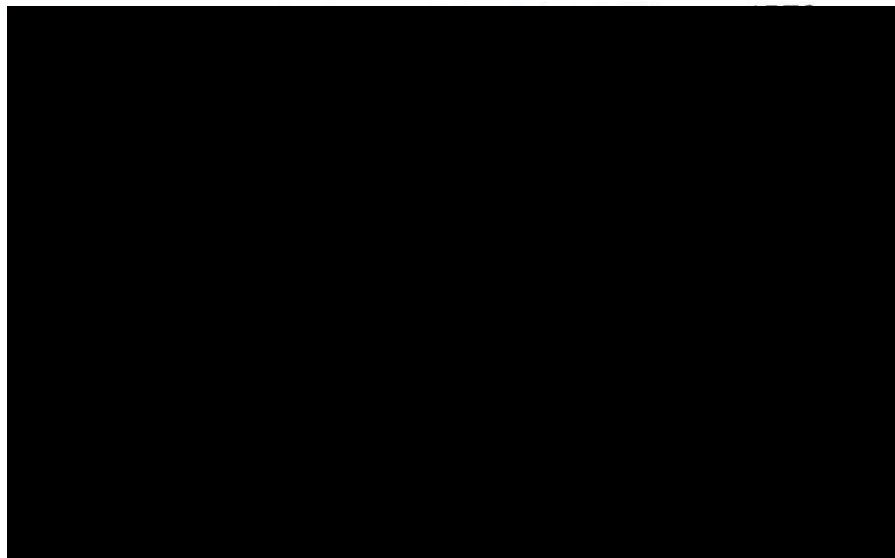
## 4 PROJECT WORKS AND PROJECT WORKS STRUCTURE

### 4.1 All risks

Except as otherwise provided in this Deed as between ARTC and TfNSW:

(a) TfNSW accepts all risks (and the cost of such risks) in connection with carrying out the Project Works or this Deed (including each Worksite, the Railway Corridor and Rail Facilities Conditions); and

(b)



### 4.2 Process for determining Project Works

(a) The parties acknowledge and agree that the Project Works comprise Rail Corridor Works and Works Affecting ARTC Railway Operations.

(b) At least 30 Business Days prior to submission of any Design Documentation under **clause 13**, TfNSW must provide ARTC a plan of work for the Project which TfNSW proposes to undertake adjacent or within the vicinity of the Railway Corridor which:

(i) identifies the work proposed to be undertaken adjacent to or within the vicinity of the Railway Corridor;

(ii) describes the disruption, interference with, damage or adverse impact of the relevant works on the Railway Corridor, the Rail Facilities, ARTC's operations or activities or the operations of Third Party Operators;

(iii) includes the scope and program of such work;

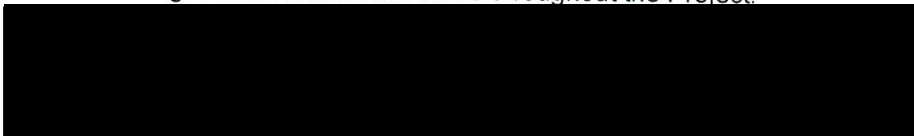
(iv) describes the effect of the relevant works on the parties' respective Rail Infrastructure Manager obligations; and

(v) includes any other information reasonably required by ARTC.

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- (c) Within 10 Business Days of receipt of the plan of proposed work submitted under **clause 4.2(b)**, ARTC will notify TfNSW whether it considers (acting reasonably) that:
  - (i) the proposed work contemplated under **clause 4.2(b)(i)** is not Works Affecting ARTC Railway Operations; or
  - (ii) the proposed work contemplated under **clause 4.2(b)(i)** is Works Affecting ARTC Railway Operations.
- (d) If ARTC notifies TfNSW under **clause 4.2(c)(ii)**, the proposed work contemplated under **clause 4.2(b)(i)** will be Works Affecting ARTC Railway Operations.
- (e) If ARTC identifies any additional work that will be carried out by TfNSW or a TfNSW Associate that may directly or indirectly affect the Railway Corridor, the Rail Facilities, ARTC's operations or activities or the operations of Third Party Operators that has not been presented to ARTC under this **clause 4.2**, the ARTC Project Manager may notify the TfNSW Project Manager of that additional work and TfNSW must amend the Project Works to include such additional work.
- (f) If TfNSW identifies any additional work to be carried out by a TfNSW Associate that may directly or indirectly affect the Railway Corridor, the Rail Facilities, ARTC's operations or activities or the operations of Third Party Operators that has not been presented to ARTC under this **clause 4.2**, the TfNSW Project Manager may request the ARTC Project Manager to agree to amend the Project Works to include additional work in accordance with the process under this **clause 4.2**.

#### 4.3 Project Works Structure

- (a) TfNSW must develop a Project Works Structure for the life of the Project.
- (b) The Project Works Structure must set out how:
  - (i) the Project Works will be carried out in various discrete packages (**Project Works Package**); and
  - (ii) these discrete packages will integrate with the Project Works.
- (c) The Project Works Structure must include all Project Works Packages to be designed, constructed and closed out by TfNSW.
- (d) Unless agreed by ARTC, the Project Works Structure and the Project Works Packages must remain the same throughout the Project.
- (e) 

#### 4.4 Request for Information

Where additional detail, inconsistency or further information is required by the parties in connection with the Project Works, each party is to raise a Request

For Information to the respective TfNSW Project Manager or ARTC Project Manager for response. A response will be provided:

- (a) within 5 Business Days (where practical); or
- (b) if the response justifies an amendment to the Design Documentation or Construction Documentation, an additional 10 Business Days should be allowed for transmittal of the revision.

#### 4.5 Project Specific Safeworking Process

- (a) TfNSW:
    - (i) will be carrying out works (including the Project Works) adjacent to or within the Railway Corridor along Qantas Drive;
    - (ii) when carrying out those works will comply with the Project Specific Safeworking Process approved by ARTC under this **clause 4.5** and the requirements set out in **section R5.7** of the ARTC Additional Requirements for each of the areas agreed between the parties (where the work has no impact on rail safety, including ARTC's rail operations and assets); and
    - (iii) must seek ARTC's approval in relation to these defined areas and the use of the Project Specific Safeworking Process and the requirements set out in **section R5.7** of the ARTC Additional Requirements.
  - (b) TfNSW must, when submitting the Project Works Structure for approval under **clause 4.3(e)**, include in that submission:
    - (i) which Project Works Packages TfNSW seeks to use Project Specific Safeworking Processes for; and
    - (ii) for each Project Specific Safeworking Process and the corresponding area agreed between the parties as contemplated by **clause 4.5(a)(ii)**:
      - (A) the extent of:
        - (1) lower risk activities (which generally are activities of a lower risk, including line marking, paving and the like); or
        - (2) higher risk activities (which generally are activities of a higher risk, including lifting and crange, excavations, piling and the like); and
      - (B) the basis for categorising work as a lower risk activity; and
      - (C) the reasons for ARTC to approve the use of the proposed Project Specific Safeworking Process for the relevant activities corresponding to the area agreed between the parties as contemplated by **clause 4.5(a)(ii)** and the requirements set out in **section R5.7** of the ARTC Additional Requirements.
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- (c) For each Project Specific Safeworking Process submitted as part of the Project Works Structure (corresponding to the area agreed between the parties as contemplated by **clause 4.5(a)(ii)**), ARTC must:
  - (i) approve the use of that Project Specific Safeworking Process at the same time that ARTC gives its approval to the relevant Project Works Structure submitted under **clause 4.3(e)**; and
  - (ii) when giving that approval, must take into account that:
    - (A) the majority of the works in that Project Works Package will have no impact to rail safety; and
    - (B) the Project Specific Safeworking Process is not to be used irregularly.

## 5 PROJECT PLANNING AND COORDINATION

### 5.1 Project Program and Approvals

- (a) Within 10 Business Days of the start of each month or such other time agreed by the parties, TfNSW must provide ARTC an up to date Project Program.
- (b) Each Project Program must satisfy the requirements set out in the ARTC Additional Requirements.
- (c) TfNSW acknowledges and agrees that the Project Program may be:
  - (i) discussed at Project Working Group meetings and Interface Working Group meetings; and
  - (ii) used by ARTC to, as a minimum, plan support resources and Track Occupations.
- (d) TfNSW must provide ARTC with a copy of all relevant Approvals for the delivery of the Project within 10 Business Days of issue by the Relevant Authority of each Approval.

### 5.2 Project Working Group

- (a) **(Establishment)**: The parties must establish a project working group within 15 Business Days of the date of this Deed or as otherwise agreed between the parties (**Project Working Group**).
- (b) **(Members)**: The Project Working Group will comprise the following members:
  - (i) the ARTC Project Manager; and
  - (ii) TfNSW Project Manager,
 each of whom will be a member of the Project Working Group with equal rights with each other member to participate in the Project Working Group's decision-making processes.

- (c) (**Attendees**): ARTC and TfNSW may invite other persons to attend meetings of the Project Working Group as observers with no rights to participate in the Project Working Group's decision-making processes, including:
    - (i) a representative of any TfNSW Associate as reasonably required by the TfNSW Project Manager; and
    - (ii) any other person that the ARTC Project Manager reasonably requires from time to time.
  - (d) (**Functions**): The functions of the Project Working Group include:
    - (i) co-ordinating the requirements of this Deed and the delivery of the Project by TfNSW; and
    - (ii) considering issues referred to the Project Working Group by the ARTC Project Manager or the TfNSW Project Manager, and resolving to the extent possible any difference or disputes.
  - (e) (**Good faith**): In exercising the functions of the Project Working Group, each of its members must act reasonably and in good faith.
  - (f) (**Meetings**): ARTC and TfNSW must hold Project Working Group meetings on a monthly basis or as otherwise agreed by ARTC and TfNSW.
  - (g) (**Meeting agenda**): TfNSW Project Manager must provide each party with an agenda for each Project Working Group meeting no less than 5 Business Days before that Project Working Group meeting.
  - (h) (**First meeting agenda**): The agenda for the first Project Working Group meeting must include as a minimum the:
    - (i) parties' proposed representatives at Project Working Group meetings;
    - (ii) TfNSW's document structure for Project Works Packages;
    - (iii) the frequency of Project Working Group meetings; and
    - (iv) the place of meetings.
  - (i) (**Other meetings agenda**): The agenda for each other Project Working Group meeting must address as a minimum:
    - (i) acceptance of the previous meeting minutes;
    - (ii) actions from the previous meeting;
    - (iii) safety performance and safety notices from ARTC;
    - (iv) Project Program update and review;
    - (v) project issues and review the Issues Log;
    - (vi) nominating key issues for the IWG; and
    - (vii) staff changes.
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- (j) **(Minutes)**: For each meeting of the Project Working Group, TfNSW Project Manager must record minutes of the meeting and distribute the minutes to all members within 3 Business Days after the meeting. The ARTC Project Manager or TfNSW Project Manager may distribute the minutes to each of their respective Associates.
- (k) **(Review of minutes)**: ARTC may review the minutes and provide comments and corrections in relation to the minutes within 3 Business Days of receiving the relevant minutes. Any such comments and corrections must be considered for inclusion in a revised version of those minutes, which must be distributed to members at the same time the agenda for the next meeting is issued.
- (l) **(Issues Log)**: TfNSW must prepare a log of issues to manage issues which arise in the course of TfNSW carrying out the Project Works (**Issues Log**). TfNSW must prepare and update the Issues Log in conjunction with the minutes for a meeting.
- (m) **(Review of Issues Log)**: ARTC may review the Issues Log and provide comments and corrections in relation to the Issues Log in conjunction with ARTC's review, comment and correction of the minutes of meeting under **clause 5.2(k)**. Any issues in the Issues Log which have been closed out must be documented in a separate section of the Issues Log.
- (n) **(Replacement attendees)**: The people who are required to attend the Project Working Group meetings under this Deed may, if necessary, be changed by the party they are representing from time to time on notice to the other parties together with details of the reason for the change.
- (o) **(Advisory only)**: The Project Working Group:
  - (i) is advisory only and their decisions or recommendations are not binding on the parties; and
  - (ii) does not have any legal responsibilities, Liability or power to require any of the parties to act or refrain from acting in any way.
- (p) **(No effect on rights and obligations)**: The parties' involvement in the Project Working Group does not affect their respective rights and obligations under this Deed.
- (q) **(No entitlement)**: No party will be entitled to:
  - (i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of or any member of the Project Working Group; or
  - (ii) make any Claim, arising in connection with:
    - (A) anything which occurs at any meeting of the Project Working Group; or



- (B) anything else which any member of the Project Working Group does or fails to do in their capacity as a member of any such group.
- (r) **(Freely discuss)**: TfNSW and each TfNSW Associate must freely and openly discuss the Project Works at all meetings conducted with ARTC and TfNSW must, and must procure that each TfNSW Associate, fully respond to any questions which ARTC may ask TfNSW or the relevant TfNSW Associate at any meetings conducted in accordance with this Deed within 5 Business Days.
- (s) **(Information)**: The ARTC Project Manager may require TfNSW to provide information on matters discussed at any meeting of the Project Working Group and TfNSW must provide that information in a timely manner.

### 5.3 Interface Working Group

- (a) **(Establishment)**: The parties must establish a project control group within 15 Business Days of the date of this Deed or as otherwise agreed between the parties (**Interface Working Group** or **IWG**).
  - (b) **(Members)**: The Interface Working Group will comprise the following members:
    - (i) TfNSW Sydney Gateway Project Director;
    - (ii) TfNSW Sydney Gateway Deputy Project Director;
    - (iii) TfNSW Sydney Gateway Delivery Director;
    - (iv) TfNSW Sydney Gateway Interface Lead;
    - (v) ARTC General Manager, NSW Projects;
    - (vi) ARTC Project Director, Major Construction Projects - Third Party Projects;
    - (vii) ARTC Project Director - Botany Rail Duplication Project; and
    - (viii) ARTC Interface Manager - Botany Rail Duplication Project;each of whom will be a member of the IWG with equal rights with each other member to participate in the IWG's decision-making processes. A substitute for each nominated formal member of the IWG may be nominated in writing prior to the meeting but no member of the IWG may delegate their attendance at a meeting except where:
    - (ix) the proposed delegate is of equivalent or higher seniority; and
    - (x) the other members of the IWG agree in writing to such delegation of attendance.
  - (c) **(Attendees)**: Subject to clause 5.3(f), ARTC or TfNSW may invite other persons to attend meetings of the IWG as observers with no rights to participate in the IWG's decision-making processes, including:
-

- (i) a representative of any TfNSW Associate as reasonably required by ARTC;
  - (ii) a representative of a Project Verifier (provided that a Project Verifier is only required to attend the part of the meeting relevant to that Project Verifier); and
  - (iii) any other person that the ARTC or TfNSW representatives reasonably requires from time to time.
- (d) **(Functions):** The functions of the IWG include:
- (i) agreeing terms of reference and a schedule of proposed meetings;
  - (ii) reviewing and considering TfNSW's proposed Project Programs for the Project Works under **section R4.1** of the ARTC Additional Requirements;
  - (iii) considering the documents required by ARTC to provide its authorisation for TfNSW to commence construction of the Project Works;
  - (iv) considering the progress of the Project Works against the Project Programs provided for the relevant works under **section R4.1** of the ARTC Additional Requirements;
  - (v) considering the anticipated dates for Completion of the whole or parts of the Project Works;
  - (vi) considering issues referred to the IWG by the ARTC Project Manager or the TfNSW Project Manager, and resolving to the extent possible any difference or disputes;
  - (vii) reviewing any matters concerning any Unplanned Rail Disruption;
  - (viii) reviewing the working relationship between the parties and addressing issues as they arise in a constructive and efficient manner;
  - (ix) reviewing all safety incidents and reporting incidents; and
  - (x) such other functions as may be agreed from time to time.
- (e) **(Good faith):** In exercising the function of the IWG, each of its members must act reasonably and in good faith.
- (f) **(Meetings):** The IWG must meet on a monthly basis unless agreed otherwise and will be co-chaired by TfNSW and ARTC. The co-chairs may request the presence of other persons (provided the co-chairs appointed for the relevant meeting have been notified of the invitees and agreed to their presence).
- (g) **(Agenda):** The TfNSW Project Manager must provide each party with an agenda for each meeting of the IWG no less than 3 Business Days before each meeting. Each agenda must address, as a minimum the:
- (i) acceptance of previous meeting minutes;

- (ii) safety moments;
  - (iii) actions from previous meeting;
  - (iv) safety performance;
  - (v) Project Program review;
  - (vi) discussion of differences or disputes, if any;
  - (vii) key issues from any Project Working Group meeting;
  - (viii) Key Associate changes; and
  - (ix) any of the issues identified in by the Interface Working Group in carrying out the functions set out in **clause 5.3(d)**.
- (h) **(Minutes)**: For each meeting of the IWG, the TfNSW Project Manager must record minutes of the meeting and distribute the minutes to all members within 3 Business Days after the meeting. The ARTC Project Manager or the TfNSW Project Manager may distribute the minutes to each of their respective Associates.
- (i) **(Review of minutes)**: ARTC may review the minutes and provide comments and corrections in relation to the minutes within 3 Business Days of receiving the relevant minutes. Any such comments and corrections must be considered for inclusion in a revised version of those minutes, which must be distributed to members within a further 3 Business Days and no less than 2 Business Days before the next meeting.
- (j) **(Replacement attendees)**: A co-chair may replace their appointed IWG members on 10 Business Days' notice provided that the new member or members are of equivalent or higher seniority and are agreed by the other co-chair (such agreement not to be unreasonably withheld).
- (k) **(Quorum)** A quorum is a minimum of two members from each of TfNSW and ARTC respectively.
- (l) **(Advisory only)**: The Interface Working Group:
- (i) is advisory only and their decisions or recommendations are not binding on the parties; and
  - (ii) does not have any legal responsibilities, Liability or power to require any of the parties to act or refrain from acting in any way.
- (m) **(No effect on rights and obligations)**: The parties' involvement in the Interface Working Group does not affect their respective rights and obligations under this Deed.
- (n) **(No entitlement)**: No party will be entitled to:
- (i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of or any member of the Interface Working Group; or
  - (ii) make any Claim, arising in connection with:
-



- (A) anything which occurs at any meeting of the Interface Working Group; or
  - (B) anything else which any member of the Interface Working Group does or fails to do in their capacity as a member of any such group.
- (o) **(Freely discuss)**: TfNSW and each TfNSW Associate must freely and openly discuss the Project Works at all meetings conducted with ARTC and TfNSW must, and must procure that each TfNSW Associate, fully respond to any questions which ARTC may ask the TfNSW or the relevant TfNSW Associate at any meetings conducted in accordance with this Deed within 10 Business Days.
  - (p) **(Information)**: The ARTC Project Manager may require TfNSW to provide information on matters discussed at any meeting of the Interface Working Group and TfNSW must provide that information in a timely manner.
  - (q) **(Dispute resolution)**: As contemplated by **clause 23.2(b)**, the Interface Working Group is the second level of dispute resolution where information regarding the dispute will be provided from the Project Working Group meeting for the IWIWG consideration.

## 6 ACCREDITATION

### 6.1 General principles

- (a) TfNSW must address and perform all safety and protection requirements for the Project Works, in accordance with the Rail Safety National Law and Rail Safety Regulations. The parties acknowledge and agree that at all times:
  - (i) ARTC will be the Accredited Rail Infrastructure Manager under the Rail Safety National Law in respect of the Railway Operations that it carries out on the Railway Corridor;
  - (ii) for the purposes of the Rail Safety National Law and to the extent it applies to that part of the Project Works which involves the performance of Railway Operations, when ARTC is the Accredited Rail Infrastructure Manager, ARTC will have effective control and management of the relevant Rail Infrastructure Facilities, notwithstanding the engagement of any Principal Contractor or other responsible party for the purposes of the WHS Laws (as the case may be);
  - (iii) ARTC cannot and will not delegate any of its rights, powers or obligations as the Rail Infrastructure Manager under the Rail Safety National Law; and
  - (iv) ARTC will be the Accredited Rail Transport Operator in respect of the Project Works.

- (b) TfNSW must, and procure that all TfNSW Associates, comply with all:
  - (i) Rail Laws and Rail Rules; and
  - (ii) Directions which are required to:
    - (A) ensure the safety of any person or property;
    - (B) ensure that the terms of ARTC's Accreditation are not breached;
    - (C) enable ARTC to comply with Rail Safety Legislation; or
    - (D) ensure compliance with the ARTC Requirements.
- (c) Nothing in this **clause 6.1** detracts from or lessens TfNSW's obligations under WHS Laws or any other Law.
- (d) TfNSW must, and must procure that TfNSW Associates, ensure at all times the Project Works are performed in such a manner so as to not endanger, impede, obstruct or interfere in any manner whatsoever with:
  - (i) the safe operation of the Railway; or
  - (ii) the safety of Railway patrons or the employees, lessees and representatives of ARTC.

## **6.2 ARTC Accreditation**

TfNSW must, and procure that each TfNSW Associate, in carrying out the Project Works:

- (a) cooperates with ARTC in relation to ARTC's compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
- (b) does not do anything or fail to do anything that would cause ARTC to be in breach of its obligations as Rail Infrastructure Manager under the Rail Safety National Law or the Rail Safety Regulations;
- (c) complies with any Directions or requirements of ARTC in relation to ARTC's compliance with its Accreditation, and for the purposes of safety, efficiency and security; and
- (d) does not do anything, or fail to do anything, which adversely impacts or jeopardises ARTC's Accreditation.

# **7 MANAGING RAIL SAFETY AND WORK HEALTH AND SAFETY**

## **7.1 Managing Safety Risks and Project Risk Report**

- (a) TfNSW must undertake a Risk Management Workshop to assess the major risks related to the safe delivery of the Project as contemplated in the ARTC Requirements.
-

- (b) TfNSW must provide a report within 10 Business Days of the Risk Management Workshop. The report must:
  - (i) be consistent with ARTC's Risk Management Standard; and
  - (ii) include the information set out in the ARTC Requirements  
**(Project Risk Report)**.
- (c) TfNSW may request that ARTC attend the Risk Management Workshop.
- (d) TfNSW must develop appropriate risk mitigation plans for significant risks identified in the Project Risk Report. Such risks and associated mitigation must be addressed in the Worksite Methodologies and the safe work method statements.

## 7.2 Project Safety Management Plan

Without limiting **clauses 6.1 to 8.1**, TfNSW must:

- (a) to the extent required by the Rail Safety National Law, WHS Laws and this Deed, develop, implement and maintain a Project Safety Management Plan with respect to the Project Works which includes the reasonable requirements of ARTC and promptly submit that plan to ARTC for review and comment;
- (b) in respect of any TfNSW Associate, to the extent required by the Rail Safety National Law, WHS Laws and this Deed, promptly (and before the commencement of any Construction Work) ensure that the TfNSW Associate develops, implements and maintains a safety management plan which complies with AS/NZS 4801:200 and includes any other reasonable requirements of ARTC;
- (c) ensure that the Project Safety Management Plan describes:
  - (i) how TfNSW will address and manage the Rail Safety National Law obligations imposed upon:
    - (A) TfNSW;
    - (B) TfNSW Associates; and
    - (C) ARTC (including how TfNSW's reporting processes will enable ARTC to meet its reporting obligations under Rail Safety National Law);
  - (ii) how and by whom the WHS Act Obligations of TfNSW and TfNSW Associates and where applicable the WHS Obligations of ARTC will be managed;
  - (iii) clearly and in detail how the specific requirements and their related processes are to be managed; and
  - (iv) how TfNSW will ensure that TfNSW and all TfNSW Associate safety management plans:



- (A) cover all of the relevant ARTC safety requirements to the same or higher level;
  - (B) are developed in line with ARTC Standards and Procedures; and
  - (C) integrate with the Project Safety Management Plan;
- (d) refer to ARTC's Safety Management System during the process of developing the Project Safety Management Plan and ensure that the Project Safety Management Plan sets out an equivalent or better standard than the ARTC Safety Management System (and ARTC may nominate any of the requirements included in ARTC's Management System as being mandatory);
  - (e) incorporate in the Project Safety Management Plan any requirements determined by ARTC as mandatory and otherwise incorporate comments or changes required by ARTC where practicable;
  - (f) do all things necessary to assist ARTC to obtain any variation to ARTC's Accreditation that is required as a consequence of the Project Works.
  - (g) do all things reasonably necessary to provide information, documentation, advice and other support in relation to the Project Works as required by ARTC for the purpose of amending ARTC's Safety Management System or obtaining a variation to its Accreditation; and
  - (h) make available all personnel who have assisted or are assisting in the preparation of changes to ARTC's Safety Management System or obtaining a variation to ARTC's Accreditation to attend Safety Management System meetings or workshops as may be arranged from time to time by ARTC.

### 7.3 Alert Events

- (a) An **Alert Event** means an actual or likely event or circumstance which arises because of the Project Works and which may interfere with or threaten:
  - (i) the safe operation of the Railway;
  - (ii) the operational capacity or efficiency of the Railway
  - (iii) the continued safe operation of the Railway or, except to the extent otherwise agreed between TfNSW and ARTC, the continued operational capacity or efficiency of the Railway, including any event or circumstance which has or is likely to have a material detrimental effect on:
    - (A) the Railway, Railway Corridor or Rail Infrastructure Facilities;
    - (B) the safety of the Railway patrons or the employees, lessees and representatives of ARTC;
    - (C) the continued operation of the Railway; or

- (D) the exercise of the statutory responsibilities of ARTC as those powers and functions relate to the safe and proper functionality and capacity of the Railway, Railway Corridor and the Rail Infrastructure Facilities,
- or which is an event which:
- (iv) TfNSW or ARTC is required to report to a regulatory authority; or
  - (v) results in calling an emergency service.
- (b) Without limiting TfNSW's obligations under **clause 20**, in the event of an Alert Event, TfNSW must follow the following procedures:
    - (i) immediately inform both the ARTC Project Manager and ARTC Network Control of the Alert Event;
    - (ii) keep the ARTC Project Manager informed in respect of the Alert Event; and
    - (iii) provide the ARTC Project Manager with sufficient information to enable the ARTC Project Manager to assess the nature of the Alert Event and the likely effect of the Alert Event.
  - (c) Without limiting TfNSW's obligations under **clause 20**, if an Alert Event occurs, TfNSW must immediately:
    - (i) co-operate with the ARTC Project Manager (including by ceasing to carry out that part of the Project Works and ordering the TfNSW Associate to immediately cease carrying out that part of the Project Works in respect of which the Alert Event applies if directed to do so by the ARTC Project Manager or the ARTC Network Controller (as referred to in the ARTC Network Rules and Network Procedures)); and
    - (ii) assist ARTC to take such action as the ARTC Project Manager directs is necessary to avert any danger and/or minimise or remove the risk or adverse impact.

## 8 RAIL SAFETY AND SAFETY PROTOCOL

### 8.1 Compliance with the Rail Safety National Law

- (a) TfNSW must, and must procure that each TfNSW Associate:
  - (i) makes themselves aware of all applicable duties, obligations and requirements under the Rail Safety National Law;
  - (ii) complies with all such duties, obligations or requirements; and
  - (iii) does all things necessary to assist ARTC to comply with ARTC's Accreditation,

and TfNSW must provide any evidence requested by ARTC of compliance by TfNSW or any TfNSW Associate with those duties, obligations or requirements.

- (b) TfNSW must, and must procure that TfNSW Associates do not do, or omit to do, anything which may cause:
  - (i) the Accreditation of ARTC to be suspended or cancelled; or
  - (ii) ARTC to breach the Rail Safety National Law.

## 8.2 Rail Safety Competencies

- (a) Without limiting TfNSW's obligation under **clause 8.1**, TfNSW must:
    - (i) ensure that each TfNSW Associate which is to carry out rail safety work:
      - (A) has the competence to carry out that work (including by satisfying the ARTC Competencies and following the five step ARTC competency framework and procedures referred to in the ARTC Standards and Procedures);
      - (B) has all relevant qualifications registered on their RIW identification cards;
      - (C) carries their RIW identification cards with them at all times whilst on a Worksite; and
      - (D) makes their RIW identification cards available for inspection by the ARTC Project Manager when requested to do so, and
    - (ii) maintain the records required to be maintained by regulation 30 of the Rail Safety Regulations and provide ARTC with a full copy of those records in so far as they relate to TfNSW Associates involved in performing the Project Works.
  - (b) TfNSW must ensure that in respect of the performance of the Project Works:
    - (i) only persons as are reasonably necessary to carry out the relevant works will be present on Worksites; and
    - (ii) TfNSW Associates are fully informed of hazards arising out of or relating to the operation of the Railway Corridor and procedures to be adopted while performing the relevant works in accordance with the ARTC Requirements.
  - (c) TfNSW must ensure that TfNSW Associates undertake Rail Safety Training, unless not required by ARTC, and only persons holding track awareness certification from a registered training organisation and other certificates as may be required by ARTC are permitted to be present on a Worksite.
  - (d) ARTC may exclude from a Worksite any person who cannot produce evidence required by ARTC in relation to qualifications and certifications for access to or work at the Worksite as required pursuant to **clause 8.2(a)**.
-



### 8.3 ARTC and Project Inductions

- (a) TfNSW must, and TfNSW must procure that all TfNSW Associates who undertake the Project Works must, undertake all ARTC inductions accordance with the ARTC Requirements.
- (b) TfNSW must develop the Project inductions in accordance with the ARTC Requirements for ARTC's review and approval (such approval not to be unreasonably withheld). TfNSW must, and TfNSW must procure that all TfNSW Associates must, undertake the approved Project induction.
- (c) TfNSW must, and TfNSW must procure that all TfNSW Associates must, undertake ARTC electrical safety induction in accordance with the ARTC Requirements.

### 8.4 Inspections

- (a) ARTC may, at any time, inspect or audit (including any associated entry or testing):
  - (i) the Project Works; or
  - (ii) any aspect of TfNSW's compliance with its rail safety obligations under this Deed,in order to determine compliance with the provisions of this Deed.
- (b) During any inspection of the relevant Project Works, the ARTC Project Manager must:
  - (i) not cause unnecessary inconvenience to TfNSW Associates;
  - (ii) comply with reasonable instructions given by TfNSW or TfNSW Associates in compliance with **clause 11.1(c)(ii)**; and
  - (iii) undertake any site induction directed by TfNSW or TfNSW Associates in compliance with **clause 11.1(c)(ii)**.
- (c) The ARTC Project Manager will liaise with TfNSW Project Manager prior to any planned inspection, except in the case of an emergency or any work that affects or has the potential to affect ARTC's Railway Operations (as determined by ARTC in its absolute discretion).
- (d) TfNSW must make available, on request by the ARTC Project Manager, all relevant information or records including those of TfNSW Associates during the inspection or audit process.
- (e) TfNSW must at its own cost provide all reasonable assistance to ARTC's audit team during the inspection and audit process including attendance by TfNSW.

### 8.5 Safety personnel

- (a) TfNSW must appoint an appropriate number of qualified and certified safety personnel (including Safeworking Coordinators and Rail Safety Representatives) in connection with the Project Works.

- (b) For each Worksite on which any Project Works are carried out, TfNSW must appoint a person to:
- (i) manage Worksite protection activities for quality and consistency;
  - (ii) review Worksite Protection Plans and ensure such plans are followed on the relevant Worksite;
  - (iii) ensure all Protection Officers hold the required competency (including the ARTC Competencies), are appropriately qualified and provide proof to ARTC of such competency and qualification; and
  - (iv) liaise with ARTC to ensure the Project Works are carried out safely and that all communication requirements are adhered to in accordance with this Deed;
- (Safeworking Coordinator).**
- (c) For each Worksite on which any Project Works are carried out, TfNSW must appoint a person:
- (i) who complies with and procures that all TfNSW Associates comply with the matters referred to in this **clause 8.5**;
  - (ii) who is present and on duty whenever Project Works are being carried out on each Worksite;
  - (iii) who is present and on duty at the Railway Corridor and at such other times as may be required by ARTC, Protection Officer or a Possession Protection Officer,
- (Rail Safety Representative).**
- (d) TfNSW is responsible for ensuring that the Safeworking Coordinator and the Rail Safety Representative are given sufficient authority to provide appropriate direction to any TfNSW Associate to achieve the purposes set out in **clause 8.5(b)** and **8.5(c)** respectively.

## **8.6 Directions and communications**

The Safeworking Coordinator must meet with the Protection Officer or the Possession Protection Officer at any time requested by the Protection Officer or the Possession Protection Officer, acting reasonably, in relation to any matter arising under or in relation to this **clause 8**.

## **8.7 Role of Protection Officer**

- (a) TfNSW must, in respect of the Project Works, comply with the Directions of the Protection Officer appointed by TfNSW for each Worksite made in the course of carrying out their roles and duties contemplated by this Deed (including under the ARTC Standard and Procedures and Network Rules).
  - (b) TfNSW must, and must procure that TfNSW Associates do not, perform any part of the Project Works, unless the Protection Officer is present and on duty at the relevant Worksite.
-

- (c) TfNSW must procure that the Protection Officers appointed pursuant to **clause 8.7(a)** at all times perform their duties under the instruction from the Safeworking Coordinator and in accordance with ARTC's Network Rules.
- (d) TfNSW must not give any instructions to any Protection Officers which TfNSW is aware is in conflict with any written Direction given by ARTC in accordance with this Deed without the prior written consent of ARTC, which must not be unreasonably withheld.
- (e) TfNSW must procure that Protection Officers supervise the activities of TfNSW Associates and are entitled to, if the Protection Officers believe there is a possibility of loss of life, personal injury or damage to property:
  - (i) give Directions directly to TfNSW Associates; and
  - (ii) stop or direct the movement of the TfNSW Associates (including by temporarily or permanently removing TfNSW Associates from Worksites).

## 8.8 Role of Possession Protection Officer

- (a) TfNSW must, in respect of the Project Works comply with the Directions of the Possession Protection Officer appointed by ARTC for each Worksite made in the course of carrying out their roles and duties contemplated by this Deed (including under the ARTC Standard and Procedures and Network Rules).
- (b) The key functions of the Possession Protection Officers include:
  - (i) establishing and monitoring safety requirements as required by ARTC's Network Rules;
  - (ii) monitoring progress of work on each possession Worksite to ensure that all work is completed within the possession periods. When TfNSW or TfNSW Associates are running behind their program and ARTC requests for a revised Track Possession Program for work in the remainder of the possession, the Possession Protection Officer is required to agree to the revised Track Possession Program. If TfNSW or TfNSW Associates do not provide a revised Track Possession Program which is agreed by the Possession Protection Officer, then the Possession Protection Officer can direct TfNSW to complete specific works or cease works in order for the possession to be completed on time; and
  - (iii) co-ordinating activities that affect multiple possession of Worksites, so that the possessions are completed on time. This may require the Track Possession Programs for each Worksite to change with the Possession Protection Officer's agreement.
- (c) TfNSW must procure that the Protection Officers and Possession Protection Officers appointed pursuant to **clause 8.8(a)** at all times



perform their duties under the instruction from the Safeworking Coordinator and in accordance with ARTC's Network Rules.

- (d) The number and positioning of Possession Protection Officers and other rail safety personnel is at the absolute discretion of ARTC.
- (e) TfNSW must not give any instructions to any Possession Protection Officers which TfNSW is aware is in conflict with any written Direction given by ARTC in accordance with this Deed, without the prior written consent of ARTC, which must not be unreasonably withheld.
- (f) TfNSW must provide evidence of compliance with this Deed (including rail safety competencies under **clause 8.2**, the ARTC Competencies and ARTC's Network Rules) as reasonably required by ARTC. If ARTC identifies a non-compliance, then ARTC may direct TfNSW (and TfNSW must comply with such Direction) to remedy the non-compliance (which may include replacing a person who does not satisfy the ARTC Competencies).
- (g) TfNSW must procure that Possession Protection Officers supervise the activities of TfNSW Associates and are entitled to, if the Possession Protection Officers believe there is a possibility of loss of life, personal injury or damage to property:
  - (i) give Directions directly to TfNSW Associates; and
  - (ii) stop or direct the movement of the TfNSW Associates (including by temporarily or permanently removing TfNSW Associates from Worksites).

## **8.9 Cleaning and Rubbish Removal**

TfNSW must, and must procure that TfNSW Associates:

- (a) not store trade waste, refuse, garbage or materials relating to the Project Works on any Worksite;
- (b) obtain prior written approval from the ARTC Project Manager (such approval not to be unreasonably withheld) before storing any construction materials or equipment on the Railway, Railway Corridor or Rail Infrastructure Facilities;
- (c) keep Worksites clean and free from unnecessary obstructions; and
- (d) to clear away and remove from the Worksite any rubbish and surplus material daily.

## **9 ACCESS**

### **9.1 MFN Lease and other land arrangements**

- (a) TfNSW acknowledges that ARTC is a lessee under the MFN Lease.
-

- (b) TfNSW acknowledges that ARTC may enter into a lease, licence or other arrangement in respect of the Railway Corridor, Adjoining Site or any other land.
- (c) When carrying out the Project Works, TfNSW must not, and must procure any TfNSW Associate must not, cause ARTC to be in breach of ARTC's obligations under the MFN Lease or any other arrangement contemplated under **clause 9.1(b)**.
- (d) TfNSW indemnifies ARTC against any Liability or Claim of every kind, made against or incurred by ARTC in respect of any failure by TfNSW or any TfNSW Associate to comply with **clause 9.1(c)**.

## 9.2 Licence

- (a) Subject to **clauses 9.1, 9.2A, 9.4, 11.1(b) and 14.1**, ARTC will grant to TfNSW a non-exclusive licence (**Licence**) to enter, occupy and use the Railway Corridor and Rail Facilities as may be reasonably necessary for the purpose of carrying out the Project Works and rectifying Defects in the Project Works.
- (b) ARTC:
  - (i) has full and unfettered access to the Railway Corridor and the Rail Facilities at all times and may not be excluded from entering the Railway Corridor by any action of TfNSW, except to the extent previously agreed in a Worksite Access Plan;
  - (ii) may grant rights to any third party in respect of the Railway Corridor or the Rail Facilities as it sees fit; and
  - (iii) has the legal right to possession and control of the Railway Corridor and facilities management rights for all of the Rail Facilities which will at all times remain vested in ARTC (as applicable), and

subject to ARTC (or any third party granted access rights by ARTC) complying with the safety systems of the Principal Contractor in respect of the Project Works (which have been notified to ARTC) when accessing the portion of the Railway Corridor over which the Principal Contractor has been given management and control (for the purposes of the WHS Laws) during a period of Track Occupation.
- (c) The rights conferred on TfNSW by the Licence rest in contract only and do not confer a proprietary interest on TfNSW or TfNSW Associates.
- (d) Without limiting the generality of **clause 9.2(c)**:
  - (i) ownership and control of the Railway Corridor remains vested in the relevant owner of the land at all times;
  - (ii) the Licence does not grant TfNSW ownership, control or legal entitlement to exclusive possession of the Railway Corridor nor does it extend to TfNSW an entitlement to rents or profits in respect of the Railway Corridor;

- (iii) TfNSW and TfNSW Associates can only access the Railway Corridor and must only use the Railway Corridor for the purpose of carrying out the Project Works;
  - (iv) TfNSW bears the risk of coordinating its access to the Railway Corridor with any other person that uses the access ways to the Railway Corridor; and
  - (v) TfNSW must comply with the conditions (if any) specified for each property that forms part of the Railway Corridor in the Worksite Access Plan.
- (e) TfNSW must, and must procure that TfNSW Associates:
- (i) in using or occupying the Railway Corridor; and
  - (ii) except to the extent necessary to carry out the Project Works and otherwise to comply with its obligations under this Deed,
- cause as little harm and inconvenience and do as little damage as reasonably possible to the Railway Corridor (and any adjacent area) and any improvement or foliage on the Railway Corridor or any adjacent area.
- (f) Upon Completion, TfNSW's access to the Railway Corridor and the rights and obligations of the parties with respect to the use, repair and maintenance of the relevant portions of the Project Works will be governed by Licence for Infrastructure and Maintenance Agreement which will be entered into by ARTC and TfNSW in accordance with **section R6.33**.

## 9.2A Lot 9 Interface Area

The parties agree that in this clause 9.2A:

**Interface Line** means the solid red line shown passing through the Lot 9 Interface Area in the drawing "SKETCH SR5642-AGR" as set out in Part 2 of Schedule 6.

**Lot 9 Interface Area** means the area shaded pink in the drawing "SKETCH SR5642-AGR" as set out in Part 2 of Schedule 6.

and that:

- (a) ARTC will design and construct the ARTC Works:
    - (i) east of the Interface Line; and
    - (ii) so as to ensure that upon completion of the ARTC Works the whole of the permanent ARTC Works located within the Lot 9 Interface Area are located east of the Interface Line;
  - (b) TfNSW will design and construct the Project Works:
    - (i) west of the Interface Line; and
    - (ii) so as to ensure that upon Completion of the Project Works the whole of the permanent Project Works located within the Lot 9 Interface Area are located west of the Interface Line.
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## **9.2B Early Access Areas**

Any Project Works undertaken by TfNSW or the TfNSW Associate on the Early Access Areas will be subject to the provisions of this Deed only where the Project Works are Works Affecting ARTC Rail Operations. For the avoidance of doubt, the Project Works undertaken in relation to the Early Access Areas will not constitute Rail Corridor Works.

## **9.3 Access to Worksites**

The parties acknowledge and agree that all access by TfNSW, the TfNSW Associate to individual areas of land within the Worksite will be gained in accordance with the Worksite Master Plan and Worksite Access Plan.

## **9.4 Worksite Access Plan**

- (a) Prior to the commencement of any work on a Worksite and for each Track Occupation, the parties must meet and agree:
  - (i) a Worksite Master Plan; and
  - (ii) once the Worksite Master Plan has been agreed, a Worksite Access Plan for each Worksite  
in accordance with the process set out in this **clause 9.4**.
- (b) TfNSW must issue to ARTC for ARTC's approval the Worksite Master Plan before each individual Worksite Access Plan is to be agreed upon
- (c) Following approval of the Worksite Master Plan, TfNSW must, if it wishes to access a Worksite (including under a Track Occupation), provide ARTC with a Worksite Access Plan which sets out:
  - (i) the nature, timing and duration of the proposed work;
  - (ii) the proposed hours;
  - (iii) access and access points (including for ARTC to carry out maintenance at any time) and conditions of access;
  - (iv) the interfaces with other works being carried out in the same location;
  - (v) fencing requirements; and
  - (vi) whether a Track Occupation is required,  
in respect of that Worksite.
- (d) TfNSW must meet, cooperate and consult with ARTC to enable the parties to agree each proposed Worksite Access Plan. If agreement cannot be reached in sufficient time to meet TfNSW's Project Program then the matter must be escalated to the IWG for a decision.
- (e) After a Worksite Access Plan has been agreed, TfNSW may request that ARTC consider a change to the Worksite Access Plan. Such request must include any changes to the information identified in **clauses 9.4(c)(i) to 9.4(c)(vi)**, and any other information that ARTC requests.

- (f) Upon receipt of a request under **clause 9.4(e)**, ARTC may (in its absolute discretion) approve TfNSW's request having regard to Rail Safety National Law, WHS Law and ARTC's operations.
- (g) In respect of Works Affecting ARTC Railway Operations, the Worksite Access Plan must include how access to the Danger Zone will be managed (including if ARTC notifies TfNSW that the Project Works must not be carried out in the Danger Zone during a Track Occupation).

#### **9.5 Access in accordance with Worksite Access Plan**

- (a) TfNSW and TfNSW Associates may access a Worksite for the purpose of carrying out the Project Works (including during any Track Occupations) in accordance with the arrangements and conditions set out in:
    - (i) the Worksite Access Plan; and
    - (ii) this Deed,and TfNSW accepts that right subject to the restrictions in this **clause 9.5** and the obligations contained in this Deed.
  - (b) ARTC:
    - (i) subject to **clause 11.1(c)(ii)** and unless otherwise agreed by TfNSW and ARTC having regard to the nature of the Project Works, retains the right to access Worksites and any Rail Infrastructure Facilities on the Worksites at all times;
    - (ii) may grant rights to any ARTC Invitees or any third party in respect of Rail Infrastructure Facilities within a Worksite as it sees fit, provided such access does not interfere with the carrying out of the Project Works under this Deed; and
    - (iii) in exercising its rights of access in respect of any Worksite or Rail Infrastructure Facilities must, whilst TfNSW or a TfNSW Associate is Principal Contractor in respect of the relevant part of the Worksite or Rail Infrastructure Facilities, comply with any instruction properly given by TfNSW or the relevant TfNSW Associate as the case may be in carrying out its duties and obligations as Principal Contractor under the WHS Regulation.
  - (c) If ARTC grants rights to any ARTC Invitee or any third party as contemplated under **clause 9.5(b)(ii)**, ARTC may request that TfNSW coordinate the Project Works with work carried out by the relevant ARTC Invitee or third party on a Worksite, and TfNSW must use its best endeavours to comply with such a request.
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## 10 TRACK POSSESSIONS

### 10.1 Track Possessions

Subject to **clause 10.2**, if, in order to carry out the Project Works, TfNSW requires a Track Possession, then ARTC agrees to provide access for that Track Possession in accordance with the following:

- (a) ARTC will provide to TfNSW the Track Possessions Schedule:
  - (i) within 5 Business Days of the date of this Deed;
  - (ii) upon request by TfNSW;
  - (iii) when the Track Possessions Schedule is revised; and
  - (iv) in any case, every 12 months;
- (b) TfNSW must at least 120 Business Days prior to a planned Track Possession, provide to ARTC, for its review and approval (in its absolute discretion), a detailed Track Possession Program for that Track Possession which sets out the proposed date (or dates) that it requests that Track Possession from the Track Possessions Schedule, with such program to include details of the planned work to be carried out and the extent to which rail access is required to be blocked (**Track Possession Program**) as developed and agreed in accordance with the process in **clause 10.1(c)**;
- (c) the Track Possession Program must show all critical activities required for the Track Possession. The Track Possession Program must have hourly intervals as a minimum.
- (d) ARTC and TfNSW must use their best endeavours to develop and agree a planned Track Possession Program within 30 Business Days of receipt of the planned Track Possession Program submitted under **clause 10.1(b)** so as to enable the relevant Project Works to be completed during the allocated Track Possession and having regard to:
  - (i) ARTC's operational requirements including any contingency planning (including time, staff and plant);
  - (ii) TfNSW's performance in handing back Track Possessions in previous Track Possessions; and
  - (iii) any other requirements of ARTC; and
- (e) ARTC must, within 20 Business Days of receipt of TfNSW's Track Possession Program submitted under **clause 10.1(b)**, provide ARTC's approval or rejection of the submitted Track Possession Program or approval of any other Track Possession Program agreed pursuant to **clause 10.1(c)**. If ARTC rejects TfNSW's Track Possession Program under this **clause 10.1(d)**, TfNSW must re-submit the TfNSW Track Possession Program within 10 Business Days of that rejection and any further periods of review by ARTC will be 20 Business Days for each re-submission by TfNSW.



## 10.2 Cancellation of Track Possessions

- (a) TfNSW acknowledges and agrees that:
- (i) ARTC cannot and will never, guarantee any date chosen for a Track Possession as fixed;
  - (ii) ARTC may be required to provide Third Party Operators and other persons with access to the Railway Corridor during any Track Possession, including for the performance of works on the Railway Corridor, provided that any such person must comply with the safety systems of the Principal Contractor in respect of such access (which have been notified to ARTC) when accessing the portion of the Railway Corridor over which the Principal Contractor has been given management and control (for purposes of the WHS Laws);
  - (iii) access by TfNSW to, and management and control by TfNSW (or a Principal Contractor engaged by TfNSW) of, the Railway Corridor is subject to ARTC's obligations to Third Party Operators and other persons and may be unavailable at certain times, including during the date chosen for a Track Possession under this **clause 10.2**; and
  - (iv) ARTC may:
    - (A) cancel a Track Possession;
    - (B) fail to give TfNSW a Track Possession by the date and time for commencement of an agreed Track Possession or at all;
    - (C) require TfNSW to hand back that part of the Railway Corridor the subject of a Track Possession to ARTC prior to the Agreed Hand Back Time; or
    - (D) require a train to run along a track the subject of a Track Possession during a Track Possession provided that:
      - (1) there is no reasonably practicable alternative track on which to run that train; and
      - (2) ARTC gives TfNSW reasonable prior notice of the date on which the train will run.
- (b) If ARTC proposes to exercise any of its rights under **clause 10.2(a)(iv)**, ARTC must:
- (i) if the events or circumstances giving rise to the relevant cancellation, failure or requirement are within ARTC's control, give TfNSW as much prior notice as possible and not less than 2 Business Days' prior notice of that cancellation, failure or requirement; and
  - (ii) if the events or circumstances giving rise to the relevant cancellation, failure or requirement are not within ARTC's control, use its best endeavours to give TfNSW reasonable prior written notice of that cancellation, failure or requirement,
-

and ARTC must use best endeavours to keep TfNSW informed of any potential cancellation, failure or requirement under **clause 10.2(a)(iv)**.

- (c) TfNSW releases and indemnifies ARTC from all Claims (of whatsoever kind and howsoever arising) by TfNSW and any TfNSW Associate in connection with ARTC's delay in granting or refusal to grant a Track Possession or the loss of the date (or any part of the date) chosen for a Track Possession under **clause 10.1**.
- (d) The parties acknowledge and agree that if ARTC exercises its rights under **clause 10.2(a)** and TfNSW is occupying any part of the Railway Corridor the subject of a cancelled Track Possession, TfNSW must immediately leave that part of the Railway Corridor that is the subject of the cancelled Track Possession and follow any directions given by ARTC.
- (e) TfNSW will not be entitled to make any Claim against ARTC, and ARTC will have no Liability to TfNSW, arising out of or in connection with any cancellation, delay or reduction to a Track Possession.
- (f) TfNSW acknowledges and agrees that, notwithstanding any other provision of this Deed:
  - (i) ARTC may need to carry out its own work within the Railway Corridor during any Track Possession and ARTC may determine in its sole discretion that its work will take priority over the work of any other party granted access to the Railway Corridor during that Track Possession; and
  - (ii) without limiting **clause 10.2(f)(i)**, ARTC reserves the right to determine the order of priority of the work of all parties granted access to the Railway Corridor during a Track Possession.
- (g) The parties acknowledge and agree that TfNSW may at any time cancel a Track Possession, but must notify ARTC as soon as reasonably practicable so as to minimise disruption to freight services and ARTC's other Railway Operations, in which case TfNSW must pay ARTC for its direct costs incurred as a result of such cancellation (including the costs of any operational delays, changes, re-scheduling, alternative transport and any amounts payable under an Access Agreement).

### **10.3 Management of Track Possessions**

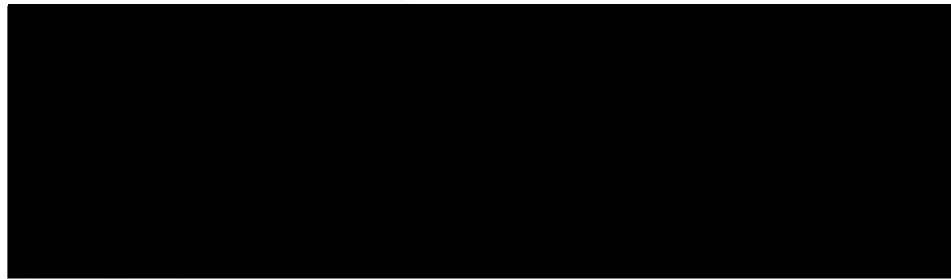
- (a) TfNSW must, and must procure that the TfNSW Associates, comply with the ARTC Requirements when utilising a Track Possession, including:
  - (i) submission of Project Program and Track Possession Program to the ARTC Project Manager; and
  - (ii) attending meetings with ARTC or the ARTC Project Manager:
    - (A) 12 weeks;
    - (B) 6 weeks;
    - (C) 4 weeks; and

(D) 2 weeks,

prior to each Track Possession.

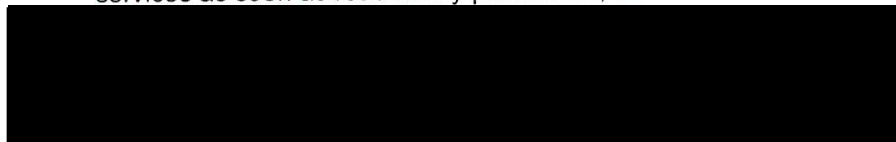
- (b) TfNSW may choose not to utilise a particular Track Possession in which case it must notify ARTC as soon as possible.

#### 10.4



#### 10.5 Hand back of Track Possessions and condition of hand back

- (a) TfNSW must ensure that the part of the Railway Corridor the subject of a Track Possession is handed back to ARTC by the Agreed Hand Back Time.
- (b) TfNSW must, on becoming aware of an event which is likely to cause a delay in the scheduled hand back of any part of the Railway Corridor the subject of a Track Possession, promptly notify ARTC of the event and the expected duration of the event.
- (c) TfNSW must demonstrate to ARTC that it has sufficient contingency (including time, staff and plant) in its Track Possession Program to manage events contemplated under **clause 10.5(b)** so as to enable TfNSW to hand back the part of the Railway Corridor the subject of a Track Possession by the Agreed Hand Back Time.
- (d) If, at any time, ARTC reasonably considers that TfNSW will fail to hand back any part of the Railway Corridor the subject of a Track Possession by the Agreed Hand Back Time, ARTC will direct TfNSW to prepare and implement a recovery plan in a form approved by ARTC to do all things reasonably necessary to enable TfNSW to hand back the part of the Railway Corridor the subject of a Track Possession by the Agreed Hand Back Time.
- (e) If TfNSW fails to hand back any part of the Railway Corridor the subject of a Track Possession by the Agreed Hand Back Time, TfNSW must:
- (i) implement a recovery plan in accordance with the ARTC Requirements approved by ARTC to do all things reasonably necessary to enable ARTC to recommence scheduled freight services as soon as reasonably practicable; and





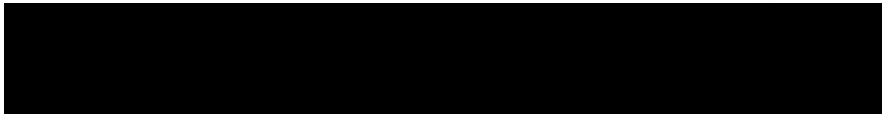
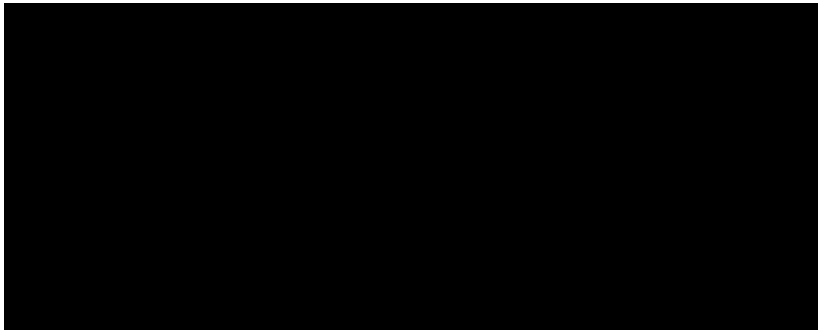
- (f) Where TfNSW or any TfNSW Associate, when carrying out any Project Works in the Railway Corridor, is required to install or commission additional or existing Rail Facilities, TfNSW must (and TfNSW must procure that the relevant TfNSW Associate must) obtain ARTC's approval for such installation and commissioning (in its absolute discretion). The requirements for such installation and commissioning are set out in the ARTC Requirements.

#### **10.6 Requests for Additional Track Possessions**

- (a) TfNSW may, for the benefit of its contractors and by notice in writing to ARTC and the Interface Working Group, request:
  - (i) one or more Additional Track Possessions; or
  - (ii) an increase in the duration of a Track Possession.
- (b) ARTC will consider any such request, but neither TfNSW nor TfNSW Associates will be entitled to make any Claim against ARTC arising out of ARTC's delay or refusal to agree to grant a Track Possession or to increase the duration of a Track Possession.
- (c) ARTC's agreement to grant a Track Possession or to increase the duration of a Track Possession may be subject to conditions.

#### **10.7 Liability for Unplanned Rail Disruption**

Where there is an Unplanned Rail Disruption that occurs under this Deed:

- (a) 
  - (i) 
  - (ii) 
- (b) TfNSW must hand back the part of the Railway Corridor the subject of the Unplanned Rail Disruption by the time agreed between TfNSW and ARTC. TfNSW will not be entitled to make any Claim against ARTC and ARTC will have no Liability to TfNSW arising out of or in connection with the hand back of the Railway Corridor.

#### **10.8 Use of plant and equipment in the Railway Corridor**

If TfNSW or any TfNSW Associate requires the use of any plant or equipment in the Railway Corridor (including rail mounted equipment), TfNSW must and must procure that the relevant TfNSW Associate:

- (a) use such plant and equipment in accordance with the ARTC Requirements; and
- (b) ensure that such plant and equipment satisfy the standard of verification set out in the ARTC Standards and Procedures.

## 11 WORK HEALTH AND SAFETY

### 11.1 PCBU

- (a) The parties acknowledge and agree that:
    - (i) this **clause 11.1** only applies when and to the extent that TfNSW or TfNSW Associates have been granted access to a Worksite in accordance with an approved Worksite Access Plan.
    - (ii) for the purposes of section 292 of the WHS Regulation, the Project Works are a construction project;
    - (iii) for the purposes of section 293 of the WHS Regulation, TfNSW is the person conducting a business and/or undertaking that commissions the construction of any of the Project Works (**Relevant PCBU**) and subject to **clauses 11.1(b)(ii)** and **11.1(c)**, is the Principal Contractor for the Project Works;
    - (iv) TfNSW as the Relevant PCBU has the ability to engage a principal contractor for the purposes of section 293 of the WHS Regulation and to authorise its Principal Contractor to have management and control of a Worksite;
    - (v) to the extent that TfNSW is not the Relevant PCBU and ARTC is the Relevant PCBU, ARTC hereby authorises TfNSW to have management and control of a Worksite and to discharge the duties of a Principal Contractor under the WHS Regulation in accordance with the Worksite Access Plan;
    - (vi) during any Track Occupation, ARTC authorises TfNSW (or a Principal Contractor engaged by TfNSW) to have management and control of the portion of the Railway Corridor in accordance with the Worksite Access Plan for the period of the Track Occupation for the purpose of the WHS Laws;
    - (vii) when undertaking the Project Works, TfNSW must:
      - (A) comply with all its obligations under the WHS Laws; and
      - (B) ensure that TfNSW Associates comply with the requirements of the WHS Laws;
    - (viii) the parties have entered into this Deed on the basis of the acknowledgements and agreements in this **clause 11.1**; and
    - (ix) nothing in this **clause 11.1**:
-

- (A) is intended to diminish or lessen the requirements of the Rail Safety National Law; and
  - (B) has the effect of diminishing ARTC's control of the Railway Corridor or the Rail Facilities other than is specified in clause **11.1(a)(vi)** in respect of each Track Occupation, and ARTC will at all relevant times continue to be the Rail Infrastructure Manager for the purposes of the Rail Safety National Law.
- (b) TfNSW warrants that:
- (i) to the extent that TfNSW is Principal Contractor for the Project Works, TfNSW must carry out all its duties and obligations as Principal Contractor in connection with the Project Works under the WHS Laws at all times properly and in strict accordance with the WHS Laws;
  - (ii) if TfNSW engages a TfNSW Associate as Principal Contractor for the Project Works, TfNSW must procure that the TfNSW Associate carries out all its duties and obligations under the WHS Laws at all times properly and in strict accordance with the WHS Laws;
  - (iii) whether or not TfNSW is the Relevant PCBU, and whether or not ARTC is in fact the Relevant PCBU, TfNSW must at all times conduct itself as if it were the Relevant PCBU and Principal Contractor in respect of the Project Works and shall not by its acts or omissions put ARTC in breach of any obligations which ARTC may have under the WHS Laws.
- (c) From the date on which a TfNSW Associate is given access to and control of a part of a Worksite in accordance with a TfNSW Contract:
- (i) then to the extent that Project Works include Construction Work, and TfNSW engages the TfNSW Associate referred to in **clause 11.1(b)(ii)** as the Principal Contractor in respect of the relevant Project Works, TfNSW must procure that the TfNSW Associate accepts the engagement as Principal Contractor, and agrees to discharge the duties imposed on a Principal Contractor by the WHS Regulation, in connection with the Project Works; and
  - (ii) while, and to the extent that, TfNSW or a TfNSW Associate (as the case may be) is Principal Contractor for a Worksite, TfNSW or the TfNSW Associate (as the case may be) will have full responsibility for the security of the Worksite.

## **11.2 Safety audits and surveillance**

- (a) ARTC may itself, or have a third party, conduct a safety audit or surveillance, or require TfNSW to conduct audits from time to time, of compliance by TfNSW and TfNSW Associates with their health and safety obligations under:
  - (i) this Deed; and



- (ii) all WHS Laws,  
in respect of the Project Works (**WHS Obligations**), and in carrying out such safety audit or surveillance on a Worksite:
  - (iii) TfNSW (or its representative) must accompany ARTC or the third party; and
  - (iv) ARTC or the third party must comply with TfNSW's or the relevant Principal Contractor's safety requirements for that Worksite.
- (b) TfNSW must, and must procure that TfNSW Associates, comply with all requirements of a party undertaking an audit or surveillance under this **clause 11.2**, including giving reasonable access to all documents necessary to conduct the audit or surveillance, and access to the workplace.
- (c) Any corrective work or action which an audit or surveillance identifies as necessary to rectify any departure from the WHS Obligations must be undertaken by TfNSW at its expense and within a reasonable time, given the nature of the departure.

### **11.3 Period of engagement**

TfNSW's and the TfNSW Associate's engagement and authorisation as a Principal Contractor will continue, in respect of any Project Works, until the point in time at which a TfNSW Associate's right of access to the relevant Worksite or part of a Worksite ends as set out in the relevant Worksite Access Plan.

### **11.4 Principal Contractor for Track Occupations**

- (a) Access for work in during a Track Occupation will be granted through the Worksite Access Plan.
- (b) The parties acknowledge that, subject to compliance with **clause 11.4(c)**, for the purposes of any Project Works which are Construction Work undertaken during a Track Occupation granted to a TfNSW Associate, the TfNSW Associate is engaged as Principal Contractor in accordance with **clause 11.1**.
- (c) TfNSW must, and must ensure that TfNSW Associates must, consult, co-operate and co-ordinate their construction activities during a Track Occupation with:
  - (i) ARTC; and
  - (ii) any other person conducting a business or undertaking who is performing work in the same area as the TfNSW Associate during a Track Occupation,

as required by section 46 of the WHS Act.

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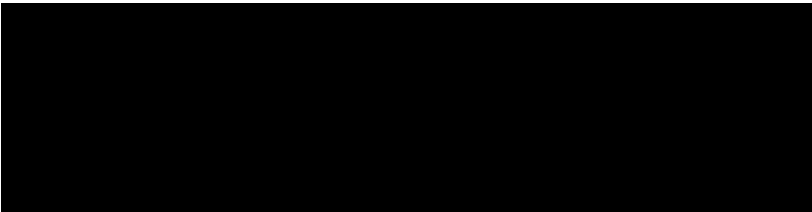
## 12 ENVIRONMENTAL REQUIREMENTS

### 12.1 General

- (a) TfNSW must, and must procure that TfNSW Associates, take all measures to comply with all Laws (including the terms of the TfNSW EPL and the *Protection of the Environment Operations Act 1997* (NSW)), the Project Environmental Management Plan and all reasonable requests and Directions from ARTC which are required to ensure that TfNSW complies with its obligations under this **clause 12**.
- (b) TfNSW must, and must procure that TfNSW Associates, in connection with the Project Works:
  - (i) take all measures to preserve and protect the Environment in the general area of a Worksite including by not indiscriminately clearing land, felling trees or interfering with natural waterways other than as permitted by Laws or Approvals, as contemplated in the Design Documentation approved by ARTC or as otherwise directed in writing by ARTC;
  - (ii) rehabilitate any Environment that has been disturbed or cleared by or for or as a consequence of carrying out the Project Works in accordance with applicable Laws and Approvals; and
  - (iii) ensure that all flora which is not cleared is adequately protected from damage from the conduct of the Project Works in accordance with applicable Laws and Approvals;
  - (iv) obtain, maintain and comply with an environmental protection licence issued under the *Protection of the Environment Operations Act 1997* (NSW) in relation to the Project Works to the extent that such works constitute rail systems activities (**TfNSW EPL**);
  - (v) submit the Project Environmental Management Plan to ARTC for its approval (such approval not to be unreasonably withheld), and implement the Project Environmental Management Plan as contemplated under **clause 14.4(c)**;
  - (vi) ensure that the Project Environmental Management Plan and the Project Works satisfy the requirements of the TfNSW EPL and the ARTC Additional Requirements;
  - (vii) carry out the Project Works under the TfNSW EPL (and not the ARTC EPL);
  - (viii) must comply with all environmental reporting requirements including under the Project Environmental Management Plan, any Approval, the TfNSW EPL, the ARTC Requirements or under any Laws; and
  - (ix) when performing its obligations under this Deed not cause ARTC to be in breach of its obligations under the ARTC EPL.

- (c) TfNSW must, when submitting the Project Environmental Management Plan to ARTC:
  - (i) notify ARTC of any inconsistencies between the TfNSW EPL and the ARTC EPL which would, without modification of one or both of the TfNSW EPL and the ARTC EPL, cause ARTC to be in breach of its obligations under the ARTC EPL; and
  - (ii) to the extent that TfNSW notifies ARTC of any such inconsistencies between the TfNSW EPL and the ARTC EPL, submit a proposal to ARTC for ARTC's consideration including to modify the TfNSW EPL or the ARTC EPL to address any such inconsistencies (and TfNSW must bear the reasonable costs and expenses incurred by ARTC in connection with any such modification of the ARTC EPL or the TfNSW EPL).


## 12.2 Noise, vibration and air pollution

- (a) TfNSW:
    - (i) acknowledges the existence of noise and vibration within and emanating from the Railway Corridor (in connection with the operation of the Railway); and
    - (ii) 
  - (b) TfNSW must:
    - (i) notify ARTC of the extent of the potential for any the Project Works to create noise, and take all proper precautions to prevent or minimise any nuisance arising from emissions (including noise and air pollution emissions) into the Environment caused by the construction, installation, maintenance or operation of the Project Works;
    - (ii) include in its Project Environmental Management Plan how TfNSW will comply with **clause 12.2(b)(i)** and how it will address any complaints;
    - (iii) notify ARTC of any sources of noise in addition to those identified in the Project Environmental Management Plan whilst carrying out the Project Works; and
    - (iv) obtain the approval of ARTC (such approval not to be unreasonably withheld) and approval of any Relevant Authority prior to causing any emissions (including noise and air pollution emissions) in excess of any contemplated by the Project Works which may affect or impact on:
-



- (A) the Railway, the Worksite or the Rail Infrastructure Facilities;
- (B) safety of Railway patrons or the employees, lessees and representatives of ARTC; and
- (C) the continued operation of the Railway.

### 12.3 Contaminated soil and material

- (a) TfNSW must not, and must procure that that TfNSW Associates do not, Contaminate any Worksite. TfNSW acknowledges and agrees that:
  - (i) there may have been existing Contamination in a Worksite prior to the ARTC take-up of the Railway;
  - (ii) the Worksite may be Contaminated by the operation of the Railway; and
  - (iii) it is TfNSW's responsibility to satisfy itself (including carrying out all necessary testing for Contamination) that the Worksite has no adverse or detrimental effect or impact on the Project Works or TfNSW Associates or any person TfNSW authorises to access the Worksite; and
- (b) Before TfNSW carries out any Project Works on a Worksite, TfNSW must carry out all necessary testing of the Worksite to identify:
  - (i) any Contamination on or affecting the Worksite (including testing of all potential Contaminates of concern based on the history of the Worksite) in accordance with EPA Guidelines, the National Remediation Framework and any other Legislative Requirements; and
  - (ii) whether any remediation is required to make the Worksite suitable for the intended use as a roadway, operational railway, or for the purposes of carrying out the Project Works.
- (c) Prior to TfNSW carrying out the testing contemplated by **clause 12.3(b)**, if TfNSW or ARTC identifies any Contamination on or affecting the Worksite, then TfNSW must carry out all testing to identify the full extent of the Contamination on, in or under the Worksite and provide the results of the testing to ARTC.
- (d) ARTC may, if it has reasonable grounds to believe that there may be Contamination on or affecting a Worksite, direct TfNSW to carry out testing of the Worksite to identify whether any Contamination exists on or affecting that Worksite.
- (e) 

(i)

(ii)

(iii)

(iv)

(f)

(i)

(ii)

## 13 DESIGN

### 13.1 Concept Design

- (a) Within 20 Business Days after the date on which TfNSW enters into a TfNSW Contract, TfNSW must provide ARTC with a Concept Design for the Project Works, which must:
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- (i) explain the Project and contain a level of detail satisfactory to ARTC so as to enable discussions with ARTC; and
- (ii) be accompanied with relevant drawings and a brief report or statement setting out TfNSW's objectives for the Project, scope of the Project Works and the impact of the Project and Project Works on ARTC (**Concept Design**), containing but not limited to the following:
  - (A) identification of preliminary Project Work Structure including specific design packages containing ARTC assets and preliminary number of commissioning events,
  - (B) demonstration of ARTC maintenance access to Rail Facilities, (eg for major periodic maintenance activities),
  - (C) design life for primary elements,
  - (D) horizontal and vertical track clearances from centreline of existing track to primary elements, and;
  - (E) preliminary design risk register,

within the time frame set out in the Project Program.

- (b) The Concept Design to the Project is to be approved by ARTC before any Design Documentation is to be submitted by TfNSW.

### **13.2 Project Works Structure**

- (a) TfNSW must, and must procure that TfNSW Associates, follow the Design Stages for the submission and review of the Design Documentation as set out in the ARTC Additional Requirements and the approved Project Works Structure.
- (b) TfNSW must, and must procure that TfNSW Associates, prepare the Design Documentation for each Design Stage in accordance with the approved Project Works Structure.

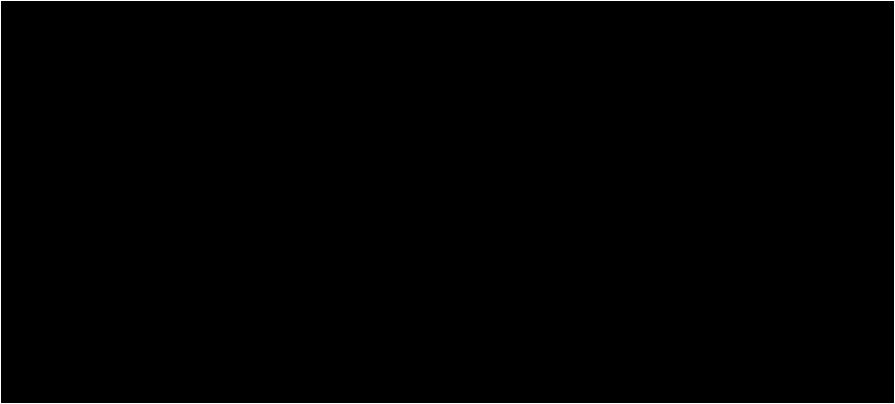
### **13.3 Engaging TfNSW Associates to carry out design**

- (a) TfNSW must not engage any TfNSW Associate to carry out any design work as part of the Project Works unless ARTC has provided its prior approval of the proposed TfNSW Associate in accordance with **clause 3.4**.
- (b) If TfNSW engages a TfNSW Associate to carry out design work for the Project Works TfNSW must engage one TfNSW Associate who will lead, integrate and be responsible for the design work for the Project Works (including engaging sub-consultants).
- (c) TfNSW must provide, and must procure that the relevant TfNSW Associate provides, ARTC a list of the individuals (who must satisfy the rail competencies set out in **clause 8.2**) proposed to carry out the relevant design work.




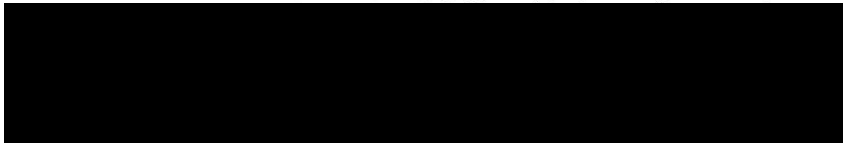
## 13.4 Project Verifier

- (a) **(Appointment):**
- (i) The parties acknowledge and agree that TfNSW has (or on or about the date of this Deed will), for Stage 1 and Stage 3 of the Sydney Gateway Project, appointed a Project Verifier for each of those Stages.
  - (ii) Subject to **clause 13.4(b)**, TfNSW must appoint one or more Project Verifiers at its own cost for the purpose of independently verifying that the design and construction of the Project Works meets the ARTC Requirements and that Project Works have been constructed in accordance with the verified design.
  - (iii) TfNSW may only appoint an entity as a Project Verifier if that entity is independent of:
    - (A) any consultant involved in preparation of the Design Documentation; and
    - (B) TfNSW and the TfNSW Associates.
  - (iv) The appointment made under this **clause 13.4(a)** must be made in a manner which allows a Project Verifier to have sufficient time to perform its obligations pursuant to the ARTC Requirements.
- (b) **(Selection):** Within reasonable time having regard to the requirements of **clause 13.4(c)**, TfNSW must propose in writing to ARTC the entity or entities that it proposes to appoint as a Project Verifier who:
- (i) is independent of:
    - (A) any consultant involved in preparation of the Design Documentation; and
    - (B) TfNSW and the TfNSW Associate;
  - (ii) must act reasonably and in good faith;
  - (iii) has personnel who:
    - (A) are chartered engineers:
      - (1) registered with Engineers Australia;
      - (2) who the entity agrees to procure will be engaged by the entity who must be registered under the *Design and Building Practitioners Act 2020* (NSW) if and when required by that Act; and
    - (B) must demonstrate 15 years of experience in the design and construction of works substantially similar to the Project Works;
-

- (iv) holds the required competency (including relevant ARTC Competencies) and is appropriately qualified (including providing proof to ARTC of such competency and qualification);
  - (v) holds the appropriate professional indemnity insurance and any other insurance required by ARTC; and
  - (vi) holds any other accreditations and certifications that are required by Law and to fulfil its functions and roles contemplated by this Deed.
- (c) **(ARTC's agreement):** If ARTC:
- (i) approves the entity and its relevant personnel proposed in accordance with **clause 13.4(a)(ii)**, then that entity must be appointed in accordance with **clause 13.4(a)**; or
  - (ii) does not approve the entity and its personnel proposed in accordance with **clause 13.4(a)(ii)**, then ARTC and TfNSW must negotiate in good faith to agree on an entity to be appointed and upon agreement that entity must be appointed under **clause 13.4(a)**.
- (d) **(Continuing obligations):** TfNSW must ensure that each Project Verifier and any personnel of a Project Verifier who perform a Project Verifier's functions under this Deed continue to meet the obligations and requirements set out in **clause 13.4(b)** at all times.
- (e) **(Deed poll):** Subject to **clause 13.4(h)**, on the date of this Deed, TfNSW must:
- (i) provide a copy of each deed under which TfNSW has appointed each Project Verifier (in the form executed by all parties to them with details related to pricing, including rates and margins, redacted);
  - (ii) ensure that each Project Verifier has executed the deed poll in favour of ARTC in the form set out in **Schedule 7** to this Deed on terms acceptable to TfNSW; and
  - (iii) ensure that each Project Verifier has provided ARTC with such executed deed poll.
- (f) 

(B)

(C)

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- (g) **(Verification of design)**: Each Project Verifier will independently verify that the design complies with the requirements of this Deed (including ARTC Requirements).
- (h) **(Failure to procure deed poll)**: Subject always to **clause 30**, if TfNSW is unable to procure a deed poll as required by **clause 13.4(e)**, TfNSW may terminate this Deed by written notice to ARTC whereupon it shall have no entitlement to construct the Project Works. Without limiting any rights of ARTC in the event that TfNSW terminates this Deed pursuant to this **clause 13.4(h)**, TfNSW must pay to ARTC all of its costs pursuant to **clause 24**.
- (i) **(Role of the Project Verifier)**: TfNSW and ARTC must provide each Project Verifier with all information and documents as may be reasonably necessary to allow that Project Verifier to:
- (i) perform its obligations contemplated under this Deed (including the ARTC Requirements);
  - (ii) attend any meetings in connection with the Project Works;
  - (iii) access any site upon which the Project Works are carried out; and
  - (iv) to inspect the records of TfNSW and TfNSW Associates.
- (j) **(Design)**: Subject to **clause 13.4(i)**, each Project Verifier must ensure that design and construction are compliant with this Deed prior to certification.
- (k) **(Effect of certificates)**: The parties acknowledge and agree that each certificate issued by a Project Verifier in accordance with this Deed will be final and binding and not capable of challenge on any basis other than manifest error.

### 13.5 General design requirements

TfNSW must:

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- (a) perform the Design Obligations and produce the Design Documentation to comply with ARTC Requirements and Approvals, including those required by **clause 14**;
- (b) ensure that the Design Documentation produced by or on behalf of TfNSW:
  - (i) is produced with due skill, care and diligence and by personnel who are suitably qualified and experienced and are consistent with best industry practice;
  - (ii) is fit for the carrying out of the Project Works;
  - (iii) complies with ARTC's Requirements as directed from time to time, provided that such requirements are limited to matters which may impact on or adversely affect the following:
    - (A) the Railway, the Railway Corridor or the maintenance and operation of the Rail Infrastructure Facilities including any increase or change in the loading on the Railway Corridor and any excavation in or around the Railway, Railway Corridor or the Rail Infrastructure Facilities;
    - (B) the safety of Railway patrons or employees, lessees or representatives of ARTC;
    - (C) the Safety Protocol;
    - (D) the continued operation of the Railway; and
    - (E) the exercise of the statutory powers and functions of ARTC as they relate to the operation of the Railway, the Railway Corridor and the Rail Infrastructure Facilities;
  - (iv) are produced by personnel complying with ARTC Competencies;
  - (v) complies with the ARTC Requirements;
  - (vi) complies with ARTC's configuration control processes set out in the ARTC Requirements;
  - (vii) complies with all applicable Laws;
  - (viii) complies with any Relevant Authority requirements;
  - (ix) complies with the other requirements of this Deed, and
- (c) ensure that each Design Document which is a drawing or a specification is endorsed with a certificate from a Project Verifier stating that:
  - (i) the Project Works will comply with:
    - (A) the ARTC Requirements; and
    - (B) all applicable Laws, and
  - (ii) the Design Documentation will be fit for its intended purpose.

### **13.6 Design Management Plan**

- (a) TfNSW must, and must procure that TfNSW Associates, prepare a draft Design Management Plan including as a minimum the requirements identified in Schedule 2, **section R6.14** describing how they plan to manage the design process and for the parties to manage the design review arrangements for the Project Works Packages and provide that plan to ARTC for its review and comment. For this purpose, the relevant plan must list each Project Works Package and state how the design, construction and close out arrangements for that Project Works Package will be managed.
- (b) If the parties cannot agree a Design Management Plan, then either party may refer the matter for dispute resolution in accordance with **clause 23**.
- (c) Prior to the commencement of any design work, TfNSW must procure that the TfNSW Associate proposed to carry out such design work provides:
  - (i) a list of staff proposed to carry out the design work; and
  - (ii) details of their relevant rail competencies (as set out under **clause 8.2**) and ARTC Competencies,  
for ARTC's review and approval (such approval not to be unreasonably withheld).

### **13.7 Competencies**

TfNSW must ensure, and must ensure that the relevant TfNSW Associate ensures, that the individuals identified in **clause 13.3(c)** satisfy the rail safety competencies set out in **clause 8.2** and the ARTC Competencies.

### **13.8 Design Program**

TfNSW must prepare a design program, as part of the Project Program described in **clause 5.1**, which must be:

- (a) updated within 10 Business Days of the start of each month or such other time agreed by the parties; and
- (b) issued 3 Business Days before each Project Working Group meeting.

### **13.9 Not used**

### **13.10 Temporary Project Works Design**

- (a) TfNSW may be required to carry out Temporary Project Works Designs.
  - (b) TfNSW must submit to ARTC for its approval (in its absolute discretion) a list of all Temporary Project Works Design at the time TfNSW seeks ARTC's approval (in its absolute discretion) for TfNSW's proposal to carry out Construction Work as part of the Project Works. The list provided under this **clause 13.10(b)** must identify any Temporary Project Works Design which may affect rail safety.
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- (c) TfNSW must, and must procure that all TfNSW Associates must, ensure that all design that ARTC considers may affect rail safety is reviewed in accordance with the design review process set out in this Deed (including the ARTC Requirements) and be verified by a Project Verifier.

#### **13.11 Licence to use TfNSW's documents**

TfNSW grants to ARTC an irrevocable non-exclusive, transferable, royalty-free licence to use (and to sub-licence others to use) all documentation which it provides to ARTC under or in connection with this Deed for purposes of carrying out the Project Works.

#### **13.12 Licence to use ARTC's documents**

ARTC grants to TfNSW an irrevocable non-exclusive, transferable, royalty-free licence to use (and to sub-licence others to use) all documentation which it provides to TfNSW under or in connection with this Deed for the purposes of carrying out the Project Works.

#### **13.13 Moral Rights**

TfNSW must:

- (a) obtain in writing from its TfNSW Associate and licensors all necessary, unconditional and irrevocable:
  - (i) consents permitted by applicable Law, to any alterations to, or use of the existing intellectual property or intellectual property created for the purpose of the Project Works that would otherwise infringe their respective Moral Rights in such intellectual property, whether occurring before or after the consent is given; and
  - (ii) waivers permitted by applicable Law of their respective Moral Rights outside Australia,for the benefit of ARTC;
- (b) provide ARTC with copies of each written consent and waiver obtained under this **clause 13.13**, at ARTC's request, or within 10 Business Days of the date of this Deed (or within 10 Business Days after engaging a contractor, employee, subcontractor or licensor not engaged at the date of this Deed), whichever occurs first; and
- (c) use its best endeavours to ensure that none of its TfNSW Associates, or licensors institutes, maintains or supports any Claim or proceeding for infringement of their Moral Rights by ARTC.

#### **13.14 Changing design consultants**

TfNSW must not change or replace the approved TfNSW Associate engaged to carry out any design work as part of the Project Works unless ARTC has provided its prior approval of the replacement TfNSW Associate in accordance with **clause 3.4**.



## 14 CONSTRUCTION

### 14.1 Approval to commence construction and access

- (a) TfNSW must not commence construction of the Project Works on the Railway Corridor or any part of the Project Works, and ARTC does not have any obligation to provide access to the Railway Corridor or the Rail Facilities, until TfNSW has satisfied each of its obligations below and any other conditions set out in [Item 3 of Schedule 1](#):
- (i) complied with all of the ARTC Requirements which are expressly required to be complied with prior to commencement of the Project Works;
  - (ii) obtained all Approvals necessary to start construction of the Project Works (including Approvals required under the *Airports Act 1996* (Cth));
  - (iii) engaged a TfNSW Associate to carry out Construction Work for the Project Works in accordance with **clause 3.4**;
  - (iv) obtained written confirmation from ARTC that TfNSW has complied with any other conditions reasonably required by ARTC, including a condition that TfNSW has provided to ARTC the:
    - (A) Project Environmental Management Plan;
    - (B) Project Quality Management Plan;
    - (C) Inspection and Test Plan,together with certifications from a Project Verifier stating that each of the above plans comply with the ARTC Requirements, the Approvals and this Deed and is suitable for its intended purpose;
  - (v) provided to ARTC the:
    - (A) Project Safety Management Plan; and
    - (B) Incident & Emergency Management Plan;
  - (vi) provided to ARTC the Project Program, which ARTC has confirmed in writing is acceptable to ARTC;
  - (vii) submitted the Project Works Structure to ARTC;
  - (viii) submitted all Worksite Methodologies to ARTC;
  - (ix) submitted an Initial Dilapidation Survey to ARTC in accordance with **clause 21**;
  - (x) provided ARTC with evidence of insurances in accordance with **clause 27.4**;
  - (xi) provided to ARTC the verified Construction Design (as that term is described in the definition of Design Stage) in accordance with ARTC Requirements;
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- (xii) obtained the relevant certificates from a Project Verifier under **clause 13.5(c)**;
  - (xiii) conducted an environmental assessment in accordance with Part 5 of the EP&A Act;
  - (xiv) carry out the testing contemplated under **clause 12.3(b)**;
  - (xv) given to ARTC Project Manager at least 10 Business Days' written notice of TfNSW's intention to start construction;
  - (xvi) provided to ARTC the documents identified in the Interface Working Group meetings in accordance with **clause 5.3(d)(iii)**; and
  - (xvii) provided anything required to be provided under this Deed prior to commencement of the Project Works.
- (b) After TfNSW satisfies the requirements set out in **clause 14.1(a)** to ARTC's reasonable satisfaction, TfNSW may notify ARTC and request ARTC to issue an authorisation letter for the commencement of the Project Works for each Worksite and, subject to **clause 14.1(c)**, ARTC must issue that authorisation letter within 10 Business Days of TfNSW's request.
- (c) ARTC may:
- (i) delay in issuing an authorisation letter for the commencement of the Project Works if any of the requirements under this Deed have not been satisfied to ARTC's reasonable satisfaction, or the Project Works will coincide with other works or rail occupancies which ARTC considers will cause undue disruption to Railway Operations; or
  - (ii) issue an authorisation letter for the commencement of the Project Works conditional upon TfNSW satisfying the conditions in the letter which may include TfNSW providing further information or fulfilling a requirement under this Deed to ARTC's reasonable satisfaction.
- (d) If ARTC issues a conditional authorisation letter under **clause 14.1(c)(ii)**, TfNSW must:
- (i) satisfy the conditions in the conditional authorisation letter, after which it must request that ARTC issues an unconditional authorisation letter; and
  - (ii) only commence construction of the Project Works when ARTC issues an unconditional authorisation letter.

## **14.2 Approval of construction contractors**

TfNSW must not engage any TfNSW Associate to carry out the Project Works unless ARTC has provided its prior approval of the proposed TfNSW Associate in accordance with **clause 3.4**.

### 14.3 Worksite Methodologies

- (a) TfNSW must develop and submit to ARTC for its review and approval (in its absolute discretion) a methodology which sets out the manner in which TfNSW will carry out the Project Works and access each Worksite (**Worksite Methodology**). Each Worksite Methodology must:
  - (i) describe how the Project Works will be completed in a safe manner, having regard to the Environment, work health and safety, and rail safety;
  - (ii) set out, if any, changes to a boundary fence;
  - (iii) set out a proposed Worksite protection protocol;
  - (iv) set out measures which mitigate the risks identified in the Project Risk Report; and
  - (v) otherwise be prepared in accordance with the ARTC Requirements.
- (b) ARTC may, within 15 Business Days of receipt of a draft Worksite Methodology submitted under **clause 14.3(a)**, approve or comment on the Worksite Methodology for the Project Works and TfNSW must have regard to comments provided by ARTC.
- (c) If ARTC provides comments on the draft Worksite Methodology submitted under **clause 14.3(a)**, TfNSW must re-submit to ARTC for its review and approval (in its absolute discretion) an updated draft Worksite Methodology having regard to ARTC's comments provided under **clause 14.3(b)**.
- (d) ARTC may, within 8 Business Days of receipt of an updated draft Worksite Methodology submitted under **clause 14.3(c)**, approve or comment on the Worksite Methodology for the Project Works. ARTC may comment on any further draft Worksite Methodology within 8 Business Days of receipt of that draft from TfNSW until ARTC approves the Worksite Methodology.
- (e) The Worksite Methodology approved by ARTC must be used by TfNSW to develop its SWMS.
- (f) If TfNSW proposes any change to an approved Worksite Methodology, TfNSW must submit that draft to ARTC and **clauses 14.3(a) to 14.3(d)** apply.
- (g) TfNSW must, upon request by the ARTC Project Manager, provide its SWMS for review for consistency with the approved Worksite Methodology.

### 14.4 General obligations for carrying out the Project Works

- (a) TfNSW must, and must procure that TfNSW Associates, ensure that any Project Works:
    - (i) are constructed in accordance with and otherwise comply with the requirements of this Deed (including the ARTC Requirements);
-



- (ii) are constructed in accordance with the Design Documentation certified by a Project Verifier and reviewed by ARTC;
  - (iii) are undertaken with professional skill and care consistent with best industry practice;
  - (iv) are constructed so that the Project Works, when completed, will be fit for their intended purpose;
  - (v) comply with:
    - (A) all applicable Laws affecting the Project Works, including the Rail Safety National Law, environmental Laws, workers' compensation legislation and work health and safety legislation;
    - (B) ARTC Network Rules, ARTC Standards and Procedures and ARTC Competencies;
    - (C) all requirements of other Relevant Authorities;
    - (D) the conditions of all Approvals for the Project Works;
    - (E) the conditions of any applicable environmental licence; and
  - (vi) are carried out expeditiously and proceed continuously until Completion in accordance with the Project Program accepted by ARTC prior to commencement of construction of the Project Works under **clause 14.1(a)(vi)**.
- (b) Prior to the Completion of the Project Works, TfNSW must ensure that the relevant TfNSW Associate provides to ARTC a duly executed TfNSW Associate Deed Poll.
  - (c) TfNSW must develop, submit to ARTC for its approval (such approval not to be unreasonably withheld), and implement the Management Plans in accordance with the ARTC Requirements.

#### **14.5 Quality Assurance for Project Works**

TfNSW must comply with the Project Quality Management Plan and the ARTC Requirements when carrying out the Project Works, including:

- (a) maintaining a documented quality system in accordance with AS/NZ ISO 9001/2. The quality system shall cover ARTC and Project Works under this Deed;
- (b) applying Hold Points for the Project Works; and
- (c) ITP review and agreement by ARTC as set out in the ARTC Requirements.

#### **14.6 Testing**

TfNSW must carry out all necessary tests on the Project Works as required by this Deed and comply with the Inspection and Test Plan and other requirements set out in the ARTC Requirements. TfNSW must give ARTC and the relevant Project Verifier at least 3 Business Days prior written notice of the date, time and location of any testing to be undertaken to allow the ARTC Project Manager to

attend. All testing required pursuant to this Deed will be carried out at TfNSW's cost.

#### **14.7 Compliance with TfNSW quality systems and procedures**

Without limiting **clause 14.5**, TfNSW must comply with the relevant TfNSW quality systems and procedures in carrying out the Project Works and its other obligations under this Deed (including the ARTC Standards and Procedures, Hold Points and the Inspection and Test Plan).

#### **14.8 Permanent boundary fences**

Unless otherwise agreed by ARTC in writing, TfNSW must:

- (a) retain all permanent boundary fences whilst carrying out the Project Works;
- (b) immediately replace any fence that is removed with a permanent boundary fence; and
- (c) not use any fence which is not a permanent boundary fence whilst carrying out the Project Works.

## **15 COMPLETION**

### **15.1 Notice of Anticipated Completion**

TfNSW must, and must procure the relevant TfNSW Associate, promptly issues:

- (a) a written notice to the ARTC Project Manager and the relevant Project Verifier; and
- (b) a handover package in respect of the relevant Project Works which is consistent with the Project Works Structure and in accordance with the ARTC Requirements,

once TfNSW considers that the Project Works have reached Completion (**Notice of Anticipated Completion**).

### **15.2 Worksite Inspection and issue of Notice of Completion**

- (a) Promptly, and in any event not later than 10 Business Days after receiving a Notice of Anticipated Completion, the ARTC Project Manager, the TfNSW Project Manager and the relevant Project Verifier must jointly inspect the Project Works.
  - (b) The ARTC Project Manager must, within 5 Business Days of the Worksite Inspection carried out under **clause 15.2(a)**, confirm by notice in writing to the TfNSW Project Manager, either that:
    - (i) Completion of the Project Works has been achieved, and stating the date on which Completion was achieved (**Notice of Completion**); or
    - (ii) the works identified in the notice must be completed to achieve Completion.
-

- (c) TfNSW must ensure that the works which must be completed to achieve Completion notified in accordance with **clause 15.2(b)(ii)** are completed immediately or within a period agreed by ARTC and, once completed, **clause 15.2** will re-apply.
- (d) The ARTC Project Manager must at the same time as issuing any notice under **clause 15.2(b)**, issue a list of damage contemplated under **clause 17.2** or Defects for the Project Works and must update that list continually as either party notifies further damage as contemplated under **clause 17.2** or Defects in any Project Works in respect of which the relevant notice under **clause 15.2(b)** has been issued.

### **15.3 Hand over upon Completion**

Without limiting **clauses 16, 17** and **18**, upon the issue of a Notice of Completion in respect of the Project Works under **clause 15.2(b)(ii)**, TfNSW must hand over the relevant Project Works and the relevant Worksite to ARTC in accordance with the ARTC Requirements.

## **16 DEFECTS**

### **16.1 Defects Direction and Defects Liability Period**

- (a) The Defects Liability Period for the Project Works commences on the Date of Completion and expires 12 months after the Date of Completion of the Project Works.
- (b) If at any time before the expiry of the Defects Liability Period in respect of the Project Works, in ARTC's opinion (acting reasonably) there is Defect in the Project Works, ARTC may give a direction in writing to TfNSW Project Manager requiring TfNSW to rectify that Defect or Defects (**Defects Direction**). The Defects Direction must state:
  - (i) the Defect or Defects in the Project Works which are required to be remedied by TfNSW; and
  - (ii) the date by which the Defect or Defects is or are to be remedied which date shall be reasonable having regard to the nature of the Defect(s).

### **16.2 Access for rectification of Defects**

- (a) Subject to TfNSW and TfNSW Associates complying with the relevant requirements dealing with access and safety under this Deed and all Laws, ARTC will permit reasonable access for TfNSW and the relevant TfNSW Associates to access the Project Works to carry out the rectification of Defects for which TfNSW is responsible under this Deed at such times that reasonably suit the convenience of ARTC and Third Party Operators.
- (b) TfNSW must ensure that the rectification of Defects is executed in such manner as will minimise inconvenience to ARTC and Third Party Operators.



### 16.3 Rectification of Defects

- (a) TfNSW must:
- (i) comply with a Defects Direction within the timeframe specified in that Defects Direction (such timeframe to be specified having regard to **clause 16.2(a)** and on the basis that TfNSW and any TfNSW Associate complies with all Laws and the relevant requirements dealing with access and safety under this Deed); and
  - (ii) as soon as reasonably practicable rectify any other non-conforming work in the Project Works to the extent caused or contributed to by TfNSW or any TfNSW Associate or which TfNSW is liable to make good, reinstate or repair under the provisions of this Deed,
- in accordance with the procedure set out under this **clause 16**.
- (b) TfNSW must prepare and submit to the ARTC Project Manager a program and method statement for the performance of the rectification work.
  - (c) ARTC may, within 5 Business Days receipt of the program prepared by TfNSW under **clause 16.3(b)**, review and provide comments on that program and direct TfNSW to perform the rectification work within a particular timeframe. TfNSW must comply with such a direction.
  - (d) If there is a change to the program prepared by TfNSW under **clause 16.3(b)**, TfNSW must submit a new program to ARTC for its review.
  - (e) TfNSW must give ARTC notice upon completion of the rectification work required under this **clause 16.3** and ARTC will direct TfNSW whether:
    - (i) ARTC will independently inspect the rectification work; or
    - (ii) the parties must carry out a joint inspection of the rectification work, in which case TfNSW must attend.

### 16.4 Carry out instructions

- (a) TfNSW must, and must procure the relevant TfNSW Associates, comply with the instructions of ARTC provided in a Defects Direction.
- (b) ARTC may only give a direction to a TfNSW Associate (whether by notice contemplated under **clause 4** of the TfNSW Associate Deed Poll or otherwise) in respect of a Defect in Works Affecting ARTC Railway Operations (**Associate Direction**) if:
  - (i) ARTC has given TfNSW a Defects Direction in respect of that Defect, and copied that Defects Direction to

[REDACTED]  
Director Sydney Assets, Greater Sydney Division

TfNSW  
[REDACTED]

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- (ii) the Defect is, or if it is not rectified by the date required by the Defect Direction will become, an Urgent Defect;
  - (iii) that Defect has not been rectified by the date required by the Defect Direction; and
  - (iv) ARTC has given a further 5 Business Days prior written notice (in accordance with the notice requirements of **clause 16.4(b)(i)**) of ARTC's intention to give an Associate Direction in respect of that Defect.
- (c) Any direction given by ARTC to a TfNSW Associate under the TfNSW Associate Deed Poll must be copied to:

[REDACTED]  
Delivery Director, Sydney Gateway

TfNSW  
[REDACTED]

#### 16.5 Final Defects Inspection

- (a) The ARTC Project Manager and TfNSW Project Manager will jointly carry out a final inspection of the Project Works, 3 months prior to the end of the Defects Liability Period (or an alternative date on which the inspection can practically be carried out to facilitate safe access) to determine and agree if there are any Defects or non-conforming work in Project Works.
- (b) If, following the final inspection, ARTC is of the opinion (acting reasonably) that, in respect of the Project Works, there is Defect in the Project Works, ARTC may give TfNSW a Defects Direction and **clauses 16.3** and **16.4** re-apply.
- (c) Promptly after:
  - (i) the inspection carried out in accordance with **clause 16.3(e)** and
  - (ii) the expiration of the Defects Liability Period for the Project Works, and ARTC is satisfied, acting reasonably, **clauses 16.5(a)** and **16.5(b)** have been satisfied, ARTC may issue TfNSW with a written notice confirming that these conditions have been satisfied.

#### 16.6 Further Defects Liability Period

- (a) If it becomes necessary for TfNSW to cause any remedial work to be carried out under this **clause 16**, ARTC may by written notice to TfNSW fix a further Defects Liability Period to apply in respect of the remedial work (being no longer than 12 months) commencing upon the date of completion of the remedial work, and all the provisions of this **clause 16** shall again apply to and in respect of such remedial work as if the further Defects Liability Period was the Defects Liability Period referred to in **clause 16.1(a)**.

- (b) ARTC and TfNSW may agree to reduce the Defects Liability Period for a Defect identified in the Worksite Inspection.

#### **16.7 ARTC may rectify a Defect**

If any Defect is not rectified within the time stipulated in the Defects Notice given by ARTC, ARTC may rectify the Defect at TfNSW's cost and expense but without prejudice to any other rights that ARTC may have against TfNSW in respect of that Defect. The costs incurred by ARTC in rectifying any Defects shall be a debt due and payable from TfNSW to ARTC.

#### **16.8 Notice of Defect completion**

Following the completion of all Defects for the Project Works, ARTC will give TfNSW a notice stating that all known Defects have been completed.

### **17 DAMAGE**

#### **17.1 Access for remedial works or to repair damage**

- (a) Subject to TfNSW and TfNSW Associates complying with the relevant requirements dealing with access and safety under this Deed and all Laws, ARTC will permit reasonable access for TfNSW and the relevant TfNSW Associates to access the Project Works to carry out remedial works or to repair damage for which TfNSW is responsible under this Deed at such times that reasonably suit the convenience of ARTC and Third Party Operators.
- (b) TfNSW must ensure that remedial or repair works are executed in such manner as will minimise inconvenience to ARTC and Third Party Operators.

#### **17.2 Making good of damage to the Railway Corridor, the Rail Facilities and boundary fences**

- (a) TfNSW must, and must procure that TfNSW Associates:
  - (i) give prompt written notice to the ARTC Project Manager of any damage caused to:
    - (A) the Railway Corridor or the Rail Facilities;
    - (B) any infrastructure that may impact the Railway Corridor, the Rail Facilities, ARTC's operations or activities;
    - (C) any ARTC boundary fence; or
    - (D) third party infrastructure or services,by the carrying out of any Project Works; and
  - (ii) comply with any Direction given by the ARTC Project Manager in respect of such damage.



- (b) ARTC may at any time give TfNSW Project Manager notice of any damage caused to the Railway Corridor, the Rail Facilities or any ARTC boundary fence by the carrying out of the relevant Project Works.
- (c) Within 48 hours of any damage notified to or by ARTC under **clauses 17.2(a) or 17.2(b)**, ARTC and TfNSW (or, if required by ARTC, the relevant TfNSW Associate), must inspect the damage. Following such inspection, the parties must agree on the scope and program of the rectification work.
- (d) TfNSW must ensure that any damage caused to the Railway Corridor or the Rail Facilities by the carrying out of any Project Works, including any damage that:
  - (i) may be notified to ARTC in accordance with **clause 17.2(a)**;
  - (ii) may be notified to TfNSW in accordance with **clause 17.2(b)**;
  - (iii) in respect of the Railway Corridor or the Rail Facilities identified in a Dilapidation Survey;
  - (iv) during an inspection prior to the Handback of a Worksite; or
  - (v) is notified by a third party to ARTC,
 is made good, reinstated or repaired by TfNSW (or the relevant TfNSW Associate) and in respect the relevant Railway Corridor or the Rail Facilities, to an equivalent or better condition disclosed in the relevant Initial Dilapidation Survey prepared under **clause 21.1** as soon as reasonably practicable.
- (e) Without limiting **clauses 17.2(a), 17.2(b) and 17.2(c)**, the parties acknowledge and agree that if the parties cannot agree on the scope and program for the rectification work under **clause 17.2(c)** or in the case of an emergency, ARTC may reinstate, repair, treat or otherwise make good any damage to the Railway Corridor or the Rail Facilities.
- (f) The reasonable cost incurred by ARTC in repairing any physical damage to the Railway Corridor or the Rail Facilities caused by the carrying out of the Project Works will be payable by TfNSW to ARTC.

### **17.3 Post Track Occupations, Inspections and Rectification**

- (a) Subject to ARTC's agreement, a full inspection of the Worksite should be undertaken either prior to the end of the Possession or during the next 24 hours to identify any Defects or damage to Rail Facilities that need to be rectified.
- (b) If a Defect or damage arises in connection with a Track Occupation which may impact on the operation of trains, TfNSW must immediately, and in any case before trains resume operation on the relevant track, notify ARTC of such Defect or damage.

- (c) If any such Defect or damage is an Urgent Defect or Urgent Damage, TfNSW must rectify, and must ensure the relevant TfNSW Associate rectifies, such Urgent Defect or Damage in accordance with **clause 18**.

## 18 URGENT DEFECTS OR URGENT DAMAGE

- (a) If an Urgent Defect or Urgent Damage is identified by ARTC or TfNSW during a Worksite Inspection (or as otherwise notified by ARTC to TfNSW),
    - (i) the party identifying the Urgent Defect or Urgent Damage must notify the other party of the reasons it considers such Defect or damage to be an Urgent Defect or Urgent Damage of that type;
    - (ii) TfNSW must, as soon as possible after (and in any case, no later than 2 hours after) TfNSW notifies ARTC of an Urgent Defect or Urgent Damage or receives notice from ARTC of an Urgent Defect or Urgent Damage under **clause 18(a)(i)**, convene a meeting on the Worksite with attendance by both TfNSW's Delivery Director and ARTC's Project Manager for the purpose of agreeing on the steps that TfNSW must take (and the timeframe over which those steps must be taken) in response to that Urgent Defect or Urgent Damage;
    - (iii) to the extent the parties are unable to reach an agreement on the steps to be taken at the meeting contemplated by **clause 18(a)(ii)** ARTC may, acting reasonably, direct TfNSW to take such steps to rectify the relevant Urgent Defect or Urgent Damage within a timeframe nominated by ARTC; and
    - (iv) TfNSW must take such steps (as agreed by the parties under **clause 18(a)(ii)** or as directed by ARTC under **clause 18(a)(iii)** (as the case may be)) in response to that Urgent Defect or Urgent Damage at that meeting within the timeframe agreed at that meeting.
  - (b) For the purposes of giving any notice under **clause 18(a)(i)**:
    - (i) that notice may be provided by ARTC or TfNSW by telephone or email; and
    - (ii) the notice requirements in **clause 22** do not apply, but a copy of any notice given by email must be lodged in Aconex as contemplated by **clause 22.3** afterwards.
  - (c) Subject to TfNSW and TfNSW Associates complying with the relevant requirements dealing with access and safety under this Deed and all Laws, ARTC will permit reasonable access for TfNSW and the relevant TfNSW Associates to access the Project Works under a Worksite Access Plan to carry out the rectification of Urgent Defects or Urgent Damage for which TfNSW is responsible under this Deed in the manner and at such times that ARTC and Third Party Operations direct.
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- (d) TfNSW must ensure that the rectification of Urgent Defects or Urgent Damage is executed in such manner as will minimise inconvenience to ARTC and Third Party Operators.
- (e) If ARTC reasonably believes that TfNSW will be not be able to rectify an Urgent Defect before any of the events identified in the definition of Urgent Defect manifests, ARTC may rectify that Urgent Defect or Urgent Damage and TfNSW must indemnify ARTC for all costs incurred by ARTC in rectifying that Urgent Defect or Urgent Damage.
- (f) TfNSW agrees that its obligations under this Deed are not limited or affected by any Urgent Defect or Urgent Damage that ARTC rectifies under **clause 18(e)**.
- (g) If an Urgent Defect or Urgent Damage occurs, ARTC may direct TfNSW to suspend the Project Works if ARTC considers a suspension is necessary having regard to:
  - (i) the impact of the Urgent Defect or Urgent Damage;
  - (ii) the potential for the Urgent Defect or Urgent Damage to give rise to further Urgent Defects or Urgent Damage; or
  - (iii) the cause of the Urgent Defect or Urgent Damage (including a failure to comply with the requirements for competency set out in this Deed),
 and TfNSW must, and TfNSW must procure that the TfNSW Associates must, comply with such a direction.
- (h) If ARTC is satisfied that an Urgent Defect or Urgent Damage is rectified in accordance with this **clause 18**, ARTC will direct TfNSW to resume the Project Works the subject of a suspension under **clause 18(g)** and TfNSW must comply with such a direction.

## 19 WORK NEAR UTILITY SERVICES

### 19.1 Location of known Utilities

- (a) TfNSW must investigate, locate and identify, using non-invasive means, all Utilities (whether owned by ARTC or a third party):
  - (i) within 3 metres of all areas where work or where access is planned; or
  - (ii) otherwise affected by the Project Works.
- (b) The location of the Utilities identified in **clause 19.1(a)** (whether owned by ARTC or a third party) must be recorded by a three-dimensional survey and notified to ARTC before TfNSW commences any Project Works.
- (c) TfNSW must obtain all relevant Dial Before You Dig information for all Utilities referred to in **clause 19.1(a)**.



- (d) Where the Project Works are carried out in any part of Railway Corridor subject to the MFN Lease, TfNSW must procure that Sydney Trains provides a Detailed Site Survey and TfNSW must provide that Detailed Site Survey to ARTC, if available.
- (e) TfNSW must comply with Sydney Trains' processes in respect of that part of the Railway Corridor in addition to TfNSW's obligations under this Deed.

## **19.2 Liaising with Utility Providers**

- (a) For any Project Works carried out within 3 metres of an identified Utility (whether owned by ARTC or a third party), TfNSW must advise the respective Utility Provider (whether ARTC or a third party) of the planned Project Works and obtain approval from all relevant Utility Providers and ARTC for undertaking such Project Works.
- (b) TfNSW must comply with the requirements of a Utility Provider (whether ARTC or a third party) for the relevant Utilities when investigating and locating such Utilities (whether owned by ARTC or a third party), and whilst carrying out the Project Work near any of those Utilities (whether owned by ARTC or a third party).
- (c) TfNSW must keep a record of all requirements of, and correspondence with, all Utility Providers (whether ARTC or a third party) in respect of the Project Works, and TfNSW must provide ARTC with a copy of such requirements and correspondence if requested by ARTC.

## **19.3 Preparation of and updates to a Project Detailed Site Survey**

- (a) TfNSW must prepare a Detailed Site Survey for each Worksite in accordance with the ARTC Requirements.
- (b) The Detailed Site Survey must be provided to ARTC for its review and confirmation that the Detailed Site Survey complies with **clause 19.3(a)** before the commencement of any Construction Work.
- (c) The Detailed Site Survey must be updated with the survey detail of all new or diverted services within 72 hours of work (including modification of Utilities (whether owned by ARTC or a third party)) being completed.

## **19.4 Excavation Permit Process**

- (a) TfNSW must develop and submit to ARTC for its review and approval (such approval not to be unreasonably withheld) an Excavation Permit Process prior to any excavation work in accordance with the ARTC Requirements (including a requirement for the Detailed Site Survey to be available on Site at all times).
  - (b) ARTC may, within 20 Business Days, review and comment on the initial Excavation Permit Process, and TfNSW must incorporate any such comments in an updated draft of the Excavation Permit Process.
  - (c) ARTC may, within a further 10 Business Days, review and provide comment on any updated Excavation Permit Process.
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- (d) TfNSW must implement the approved Excavation Permit Process.

#### **19.5 Responsibility for damage to Utilities**

- (a) TfNSW is responsible for any damage to any Utilities referred to in **clause 19.1(a)** (whether owned by ARTC or a third party) caused by the carrying out of the Project Works including rectifying damaged Utilities; the cost of repair, and additional costs incurred by ARTC arising out of the loss of availability of those Utilities (whether owned by ARTC or a third party).
- (b) TfNSW must promptly rectify any damage to any Utilities referred to in **clause 19.1(a)** (whether owned by ARTC or a third party) caused by the carrying out of the Project Works in accordance with **clauses 17 and 18**.

#### **19.6 Final Detailed Site Survey**

- (a) TfNSW must carry out and provide field marking to ARTC in accordance with the requirements of the relevant Utility Providers (whether ARTC or a third party) and the ARTC Requirements.
- (b) TfNSW must, prior to Completion, prepare and submit to ARTC (and, if required by ARTC, Sydney Trains) a draft Final Detailed Site Survey in accordance with the ARTC Requirements for ARTC's review and confirmation that the Final Detailed Site Survey complies with the ARTC Requirements.
- (c) Within 10 Business Days of receipt of the draft Final Detailed Site Survey, ARTC may inspect the relevant Worksite to assess field marking of Utilities (whether owned by ARTC or a third party) and the Detailed Site Survey. ARTC may provide its comments or direct TfNSW to rectify Defects or damage identified in that inspection.
- (d) TfNSW must promptly address ARTC's comments and rectify any Defects or damage identified by ARTC under **clause 19.6(c)** and re-submit to ARTC for its approval (such approval not to be unreasonably withheld) an updated Detailed Site Survey and Final Detailed Site Survey.

## **20 INCIDENT MANAGEMENT AND REPORTING**

### **20.1 Incident Management Plan**

- (a) Prior to commencing any Construction Work, TfNSW must prepare a draft Incident Management Plan which must set out how incidents will be managed for the Project, including:
  - (i) rail and non-rail incidents, and such other incidents as set out in the ARTC Requirements;
  - (ii) reporting requirements of both TfNSW and ARTC;
  - (iii) the roles of any TfNSW Associates who will prepare incident reports and the time frame for preparing such reports;
  - (iv) the content, timing of distribution and recipients of such incident reports;



- (v) references to other Management Plans which relate to the Incident Management Plan;
  - (vi) TfNSW's coordination of the interface with other projects including the Botany Rail Duplication Project and Sydney Metro City & Southwest; and
  - (vii) any other requirements set out in the ARTC Requirements.
- (b) If there are multiple stages to an incident report, then each stage should be specified in the above summary.
  - (c) TfNSW must submit a draft Incident Management Plan to ARTC for its review and approval (such approval not to be unreasonably withheld). Any reasonable comments from ARTC should be addressed.
  - (d) ARTC may, within 20 days of receipt of the draft Incident Management Plan, approve or provide comments on that draft.
  - (e) If ARTC provides comments on the draft Incident Management Plan in accordance with **clause 20.1(d)**, TfNSW must update the Incident Management Plan having regard to ARTC's comments and re-submit that updated draft to ARTC for its review and approval (such approval not to be unreasonably withheld).
  - (f) ARTC may, within 10 Business Days of receipt of any updated draft of the Incident Management Plan, approve or provide comments on each updated draft.

## **20.2 Co-ordination with Emergency Services**

- (a) TfNSW acknowledges and agrees that ARTC may be required to disclose TfNSW's Incident Management Plan to third parties (including emergency services).
- (b) Such third parties may provide comments on TfNSW's Incident Management Plan and TfNSW must update the Incident Management Plan accordingly.

## **20.3 Senior Manager to Manage a Major Incident**

TfNSW must, and must procure that TfNSW Associates:

- (a) have a senior manager available on the Site during all Construction Work who is trained in the implementation of the Incident Management Plan and who will be responsible for co-ordinating and managing the requirements of the Incident Management Plan; and
- (b) ensure that a minimum of 2 senior staff who are trained in the implementation of the Incident Management Plan and are on the Site during all Construction Work.

## **20.4 Notification of Incidents**

- (a) TfNSW must notify ARTC in accordance with the communication requirements set out in ARTC's Safety Management System and the
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ARTC Requirements as soon as reasonably practicable after becoming aware of any safety incident or accident which is related to rail safety.

- (b) TfNSW must provide ARTC with a copy of any notice, report or other correspondence given or received by TfNSW under or in connection with:
  - (i) the Rail Safety National Law;
  - (ii) any Accreditation;
  - (iii) any Laws; and
  - (iv) the ARTC Requirements.
- (c) TfNSW must notify ARTC of Alert Events in accordance with the communication requirements set out in the Incident Management Plan.

## **21 INITIAL DILAPIDATION SURVEY AND FINAL DILAPIDATION SURVEY**

### **21.1 Initial Dilapidation Survey**

- (a) In respect of each Worksite, TfNSW must, before commencing the Project Works:
  - (i) carry out a joint inspection of all:
    - (A) Rail Facilities;
    - (B) access roads;
    - (C) drainage and vegetated areas;
    - (D) ARTC boundary fences and gates;
    - (E) Adjoining Sites;
    - (F) third party infrastructure and services inside the Railway Corridor; and
    - (G) third party infrastructure and services outside the Railway Corridor,that may be affected by the Project Works, with ARTC and, if required, a representative of the owner of, or the Relevant Authority controlling, the land, footpath, road, building or other structure; and
  - (ii) submit to the ARTC Project Manager a draft Initial Dilapidation Survey, showing the date of the inspection, signed on behalf of TfNSW and the owner controlling Relevant Authority, by way of acknowledgment that the record of inspection is true and correct.
- (b) ARTC may, within 20 Business Days, approve (such approval not to be unreasonably withheld) or comment on the draft Initial Dilapidation Survey and TfNSW must address all of ARTC's reasonable comments and re-submit an updated draft Initial Dilapidation Survey to ARTC for its review and comment.

- (c) ARTC may, within 10 Business Days, approve (such approval not to be unreasonably withheld) or comments on any updated Initial Dilapidation Surveys and TfNSW must address all of ARTC's reasonable comments and re-submit the draft (and any updated drafts) of the Initial Dilapidation Survey for ARTC's review and approval (such approval not to be unreasonably withheld).

## 21.2 Final Dilapidation Survey

TfNSW must, before Completion:

- (a) inspect all:
  - (i) Rail Facilities;
  - (ii) access roads;
  - (iii) drainage and vegetated areas;
  - (iv) ARTC boundary fences and gates;
  - (v) Adjoining Sites;
  - (vi) third party infrastructure and services inside the Railway Corridor; and
  - (vii) third party infrastructure and services outside the Railway Corridor, that may be affected by the Project Works, in the company of the ARTC Project Manager and, if required, a representative of the owner of, or the Relevant Authority controlling, the land, footpath, road, building or other structure; and
- (b) submit to the ARTC Project Manager a Final Dilapidation Survey showing the date of the inspection and signed on behalf of TfNSW and the owner or controlling Relevant Authority by way of acknowledgment that the record of inspection is true and correct.

## 21.3 Inspections and correction of damage

- (a) The ARTC Project Manager may, at any time before issuing a certificate under **clause 15.2(b)(ii)**, give a written notice requiring TfNSW to perform a joint inspection of the Railway Corridor or each Adjoining Site affected by the Project Works.
  - (b) ARTC's Project Manager and TfNSW's Project Manager must jointly inspect the Railway Corridor or Adjoining Site affected by the Project Works on the date specified in a notice under **clause 21.3(a)**.
  - (c) TfNSW must promptly, after each inspection referred to in **clause 21.3(a)** and **21.3(b)**, provide ARTC's Project Manager with a written record of inspection.
  - (d) To the extent that there is discrepancy between the Initial Dilapidation Survey and the Final Dilapidation Survey which discrepancy has been caused by the carrying out of the Project Works (as determined by the
-

ARTC Project Manager, acting reasonably), TfNSW is responsible for that discrepancy or those discrepancies.

## 22 DOCUMENT MANAGEMENT

### 22.1 General

- (a) TfNSW must comply with ARTC's document management systems as set out in this **clause 22** and as otherwise set out in the ARTC Requirements.
- (b) TfNSW must store its design drawings in a document management system in accordance with the ARTC Requirements. TfNSW must, and must ensure that the relevant TfNSW Associate, uses the document number allocated by ARTC to label the documents in the document management system.

### 22.2 Email

- (a) Subject to **clause 22.3**, ARTC and TfNSW agree that informal correspondence under this Deed may be sent by electronic mail.
- (b) The party sending the notice must keep a contemporaneous printed record of any notice sent by it by electronic mail.
- (c) Each party must monitor the information systems on which the mailboxes for their respective email addresses reside on a frequent and regular basis but no less often than once a day.
- (d) Each party must immediately notify the other if they discontinue the use of, or change, their respective email addresses, or if they are unable to access their email addresses for a period longer than one day.
- (e) Each party must ensure that it is able to receive notices to its email address, including by ensuring that sufficient storage capacity is available at all times.
- (f) For the avoidance of doubt, a notice sent by electronic mail under the Contract will be taken to be a notice in writing signed by the person identified as the sender of the electronic mail.
- (g) For the purposes of this Deed, any documents transmitted by a web-based document management system will not be considered to be any notice, consent or direction required or authorised to be given in connection with this Deed.

### 22.3 Aconex

- (a) The parties must give any notice or direction that the party is entitled or required to give under this Deed to the other party by lodging it upon Aconex.
- (b) Where TfNSW gives a notice in accordance with **clause 22.3(a)**, the notice must be sent to both ARTC and the ARTC Project Manager simultaneously, irrespective of whether the notice is to ARTC or the ARTC Project Manager.



- (c) A notice or direction given in accordance with **clause 22.3(a)** is deemed to be in writing and delivered to the other party when the direction has been uploaded on Aconex by the first party, and the second party receives notification of the uploading of that direction from Aconex.
- (d) Each party must register itself on Aconex. TfNSW warrants that it has, and will maintain, the minimum software, hardware and other infrastructure required to operate Aconex.
- (e) ARTC will provide the ARTC Project Manager, TfNSW and, all TfNSW Associates with access to Aconex.
- (f) TfNSW must use Aconex in relation to this Deed and must ensure that each TfNSW Associate is required (including under a subcontract, if relevant) to use Aconex in connection with the Project Works.

#### **22.4 Notices**

- (a) Notwithstanding **clause 22.3(a)**, a party notifying or giving notice under **clause 23** and **30** of this Deed must:
  - (i) do so in writing delivered by hand or sent by prepaid registered post and the original by post to the other party's representative at the address specified in **Schedule 1**; and
  - (ii) provide the notice via Aconex as required by **clause 22.3**.
- (b) A notice given in accordance with this **clause 22.4** will be deemed to have been given and received:
  - (i) if delivered, on receipt; and
  - (ii) if posted, 3 Business Days after posting.
- (c) Any notice received after 5.00pm or on a day not a Business Day shall be deemed to have been received at 9.00am on the next Business Day.

#### **22.5 Quality Records for Construction**

TfNSW must, and must procure that all TfNSW Associates must, maintain a complete record of all ARTC property or infrastructure constructed or modified during the Project in accordance with the ARTC Requirements, including, without limitation, **section R11.5**.

## **23 DISPUTE RESOLUTION**

### **23.1 Disputes and differences**

All disputes or differences in respect of this Deed or the carrying out of the Project Works under this Deed must be resolved in accordance with this **clause 23**.

### **23.2 Levels of dispute resolution**

- (a) Either party may provide written notice of any dispute or difference to the Project Manager and the other party. That notice must:

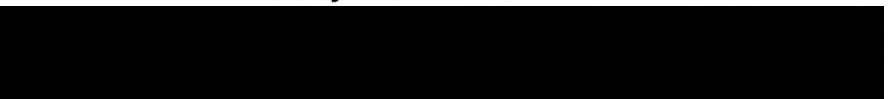
- (i) set out the legal basis of the Claim;
  - (ii) set out the facts upon which the Claim is based;
  - (iii) have annexed copies of correspondence and any relevant background material;
  - (iv) contain detailed particulars of the quantification of the Claim; and
  - (v) if the Claim is made by TfNSW, be signed by its chief executive officer.
- (b) If the parties are unable to resolve the dispute or difference at the next Project Working Group meeting after receipt of the notice under **clause 23.2(a)**, either party may refer the dispute or difference to the next Interface Working Group meeting.
  - (c) If the parties are unable to resolve the dispute or difference at the next Interface Working Group meeting following a referral under **clause 23.2(b)** after receipt of the notice under **clause 23.2(a)**, either party may refer the dispute or difference to the senior representatives of the parties referred to in **clause 23.2(f)** within 12 Business Days of the relevant Interface Working Group meeting.
  - (d) If the senior representatives of the parties are unable to resolve a dispute or difference referred to them under **clause 23.2(b)** or agree on a method for resolving the dispute within a further 20 Business Days, either party may refer the dispute or difference to the Executive Forum.
  - (e) If the Executive Forum is unable to resolve a dispute or difference referred to them under **clause 23.2(d)**, either party may, after giving written notice to the other party, commence litigation in respect of the dispute or difference.
  - (f) For the purposes of this **clause 23.2**, the senior representatives of the parties are stated at [Item 7](#) and [Item 8](#) of **Schedule 1**, or any replacement notified by a party to the other party in writing.
  - (g) Service of the notices under, and in compliance with the process outlined in, this **clause 23.2** are conditions precedent to the commencement of any litigation in respect of a dispute or difference.

**23.3 Dispute resolution not to delay carrying out the Project Works under this Deed**

Despite the other provisions of this **clause 23**, TfNSW must continue carrying out the Project Works and its other obligations under this Deed.

**24 COSTS**

**24.1 Payment of ARTC Costs by TfNSW**

- (a) 

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

(ix)

(x)

**(ARTC Costs).**

- (b) If the parties cannot agree on the quantum of the reasonable costs referred to in this **clause 24.1** in respect of a Project Works Package, the quantum of reasonable costs will be that agreed between the parties prior to AFC of the Design Documentation for the relevant Project Works Package.

## **24.2 Invoice**

ARTC may issue to TfNSW progressive valid tax invoices for ARTC Costs and interest accrued will be sent by ARTC to TfNSW upon execution of this Deed and then at not less than monthly intervals.

An itemised invoice of ARTC Costs, together with documentation to substantiate those ARTC Costs and a certification from the ARTC Project Manager that ARTC Costs incurred are true and accurate is sufficient evidence of ARTC Costs unless a clear error has been made.



### **24.3 Payment**

TfNSW must pay the full amount of each other invoice for ARTC Costs within 20 Business Days from the date of the invoice, including any interest payable under **clause 24.4**.

### **24.4 Interest**

Any amount owing by TfNSW (following the issue of an invoice by ARTC) and unpaid on the due date will incur interest for each day the amount is overdue, calculated at the end of each month and compounded on a daily basis at the Default Rate.

### **24.5 Right of set-off**

ARTC may withhold, deduct or set-off from moneys to which TfNSW is otherwise entitled, the amount of:

- (a) any debt or other moneys due and payable from TfNSW to ARTC; and
- (b) any claim to money which ARTC may have against TfNSW whether for damages or otherwise,

whether under this Deed or otherwise at Law relating to the Project Works.

## **25 WARRANTIES, ARTC MATERIALS AND RAILWAY CORRIDOR AND RAIL FACILITIES CONDITIONS**

### **25.1 TfNSW Warranties**

- (a) TfNSW warrants that:
  - (i) it will be responsible for all costs incurred by it associated with the Project Works, and such of the costs of ARTC as are specifically stated in this Deed to be payable by TfNSW;
  - (ii) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of those obligations;
  - (iii) it has entered into this Deed based on its own investigations, interpretations, deductions, information and determinations and acknowledges that ARTC has entered into this Deed relying on this warranty; and
  - (iv) it will ensure that the As Built Drawings and any other documentation it provides under this Deed will be accurate and complete and prepared with reasonable skill and care.

### **25.2 No reliance**

- (a) ARTC is not responsible for the accuracy or completeness of and makes no representations or warranties and assume no duty of care in respect of, any ARTC Material.
- (b) TfNSW acknowledges and agrees that it:

- (i) will satisfy itself as to the accuracy of all material relied on in performing the Project Works, including any ARTC Material;
  - (ii) has not relied on any of ARTC Material or the non-production of any other document held by ARTC in entering into this Deed;
  - (iii) will not rely on any ARTC Material or the non-production of any other document held by ARTC in carrying out the Project Works; and
  - (iv) has relied on the outcome of its own investigations in entering into this Deed and carrying out of the Project Works.
- (c) TfNSW:
- (i) releases ARTC and each ARTC Associate from and against any Claim made by TfNSW; and
  - (ii) indemnifies ARTC and each ARTC Associate from and against any Claim made by TfNSW or a TfNSW Associate or any other person to whom ARTC Material is disclosed by TfNSW, a TfNSW Associate or any person on TfNSW's or a TfNSW Associate's behalf,
- arising in connection with:
- (iii) the provision of, the purported reliance upon, or use of, the ARTC Material by TfNSW, a TfNSW Associate or any other person to whom the ARTC Material is disclosed by TfNSW, a TfNSW Associate or any person on TfNSW's or a TfNSW Associate's behalf; and
  - (iv) the ARTC Material:
    - (A) being relied upon; or
    - (B) otherwise being used in the preparation of any document or information, including any document or information which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in the *Competition and Consumer Act 2010* (Cth), or any equivalent provision of State or Territory legislation).
- by TfNSW, any TfNSW Associate, or any other person to whom the ARTC Material is disclosed by TfNSW a TfNSW Associate or any person on TfNSW's or a TfNSW Associate's behalf.

### **25.3 Risk of Railway Corridor and Rail Facilities Conditions**

- (a) TfNSW:
- (i) acknowledges that it has:
    - (A) examined the Railway Corridor, the Rail Facilities and their surroundings;
    - (B) examined all other information relevant to the risks, contingencies and other circumstances having an effect on its
-

- obligations under this Deed, which is obtainable by making reasonable enquiries;
- (C) examined this Deed;
  - (D) examined any information provided to TfNSW prior to the date of this Deed;
  - (E) examined the Approvals; and
  - (F) entered into this Deed based upon its own investigations, examinations and determinations; and
- (ii) warrants that it is practicable to perform the Project Works under this Deed in accordance with this Deed without the need for any modification.
- (b) TfNSW is responsible for, and assumes the risk of, all loss (including delay), expense or damage caused by Railway Corridor and Rail Facilities Conditions encountered by TfNSW or TfNSW Associates in the carrying out of the Project Works, and TfNSW's other obligations under this Deed.
  - (c) Neither ARTC nor the ARTC Project Manager:
    - (i) is responsible for the accuracy, or the contents, of; or
    - (ii) makes any representation, or assumes any duty of care, in respect of,
 

the following information:

      - (iii) the ARTC Material; and
      - (iv) any information, other reports, data, test results, samples or geotechnical investigations or information provided to TfNSW before the date of this Deed.
  - (d) TfNSW acknowledges that:
    - (i) the information referred to in **clause 25.3(c)** does not form part of this Deed and it has not relied on that information in choosing to enter into this Deed;
    - (ii) ARTC or the ARTC's Project Manager is not responsible for the accuracy of the information referred to in **clause 25.3(c)** or any negligence in the preparation of that information;
    - (iii) to the extent that ARTC is not the author of the information referred to in **clause 25.3(c)**, ARTC is merely passing on that information to TfNSW;
    - (iv) TfNSW has:
      - (A) been allowed adequate access to the Worksite;
      - (B) been allowed to consult with the authors of the information referred to in **clause 25.3(c)**;



- (C) had sufficient time thoroughly to review the information referred to in **clause 25.3(c)**;
  - (D) been allowed to perform its own investigations of the Worksite and its surroundings, before the date of this Deed to reach its own conclusions about Railway Corridor and Rail Facilities Conditions; and
  - (E) TfNSW must perform any work necessary to overcome the effect of, or which is otherwise occasioned by, Railway Corridor and Rail Facilities Conditions, whether or not TfNSW anticipated them at the date of this Deed.
- (e) Neither ARTC nor the ARTC Project Manager are liable in contract, tort or otherwise for any loss, expense or damage suffered or incurred by TfNSW (whether, subject to clause ~~28.2(a)~~ <sup>28.2A(a)</sup>, arising by the negligence of ARTC or the ARTC Project Manager or their employees, consultants or agents or otherwise) however caused in respect of:
- (i) the provision of the information referred to in **clause 25.3(c)**; or
  - (ii) a failure to provide any information to TfNSW.
- (f) TfNSW acknowledges that ARTC has entered into this Deed in reliance on the acknowledgments made by TfNSW in **clause 25.3(d)**.

#### 25.4 No warranty

- (a) ARTC gives no warranty:
- (i) as to the accuracy or completeness of any ARTC Material;
  - (ii) that there will be any or adequate Utilities available on or in relation to the Railway Corridor to meet the needs of TfNSW at any time;
  - (iii) as to the condition of the Railway, the Railway Corridor or the Rail Facilities;
  - (iv) that the Railway Corridor or the Rail Facilities will not be in a Contaminated state; or
  - (v) as to the suitability of the Railway Corridor or the Rail Facilities for any purpose to which land may be used by TfNSW under this Deed.
- (b) TfNSW releases and indemnifies ARTC from all Claims in connection with any of these matters, except to the extent that any such Claim results from a breach of this Deed or, subject to clause ~~28.2(a)~~ <sup>28.2A(a)</sup>, any negligent act or omission by ARTC.

#### 25.5 ARTC has no duty to review

TfNSW acknowledges and agrees that:

- (a) TfNSW is responsible for carrying out the Design Obligations under this Deed and for preparing TfNSW Provided Material;
- (b) ARTC has no obligations under this Deed to prepare or develop TfNSW Provided Material other than obligations to respond to requests for

consent, approval or endorsement within the timeframes required by this Deed;

- (c) neither ARTC nor any ARTC's Associate (each an **ARTC Party**) owes any duty to TfNSW to review the TfNSW Provided Material for errors, omissions or compliance with the requirements of this Deed; and
- (d) neither:
  - (i) an ARTC Party's participation in the Project Working Group, Interface Working Group, Worksite Inspection, the design review processes and the Management Plan review processes in this Deed or any other review group or workshop convened in respect of TfNSW Provided Material;
  - (ii) any review or rejection of, or consultation or comments by, or any approval (including any approval of any non-compliance or approval subject to conditions) by, an ARTC Party, nor any failure by an ARTC Party regarding any TfNSW Provided Material or any other Direction by the ARTC in respect of any TfNSW Provided Material; nor
  - (iii) the review of, comment upon or verification of, any TfNSW Provided Material by the relevant Project Verifier,will lessen or otherwise affect:
  - (A) TfNSW's warranties or any other of TfNSW's liabilities or responsibilities under this Deed or otherwise according to Law; or
  - (B) an ARTC Party's rights against TfNSW, whether under this Deed or otherwise according to Law; and
- (e) for the purposes of this **clause 25.5, TfNSW Provided Material** means any plan, design, program, information or data in respect of the Railway Corridor, the Rail Facilities or the Project Works supplied or made available by, TfNSW or TfNSW's Associates to an ARTC Party in any form from time to time including any reports relating to, or opinions in respect of any such information or data and includes (without limitation):
  - (i) the Worksite Master Plan and each Worksite Access Plan
  - (ii) the Project Program and Track Possession Program;
  - (iii) Project Works Structure; the
  - (iv) the Design Management Plan and the Design Documentation for each Design Stage;
  - (v) the Worksite Methodology; and
  - (vi) the Project Quality Management Plan and Inspection and Test Plan.

## 26 GST

### 26.1 Interpretation

- (a) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this **clause 26.1**.
- (b) Unless stated otherwise, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this **clause 26.1**.
- (c) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- (d) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- (e) Any contract entered into by a party to this Deed with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with this Deed, must include a clause including equivalent terms to this **clause 26.1**.

### 26.2 GST payable

- (a) If GST is or will be payable in relation to a supply made by a party (the **Supplier**) under or in connection with this Deed, then the party who is the recipient of the supply (the **Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable on the supply (**GST Amount**) at the same time as any other consideration is to be first provided for that supply.
- (b) The Supplier must provide a tax invoice to the Recipient for the supply no later than the time at which the GST Amount for that supply is to be paid in accordance with **clause 26.2(a)**.

### 26.3 Adjustments

- (a) If the GST Amount payable in relation to a supply made under or in connection with this Deed varies from the GST Amount paid by the Recipient under **clause 26.2(a)**, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient subject to the issue of an adjustment note.
  - (b) If an adjustment event occurs in relation to a supply made under or in connection with this Deed, the Supplier must give the Recipient an adjustment note as soon as reasonably practicable after the Supplier
-



becomes aware of the adjustment event, but no later than 20 Business Days after the adjustment event.

#### **26.4 Non-monetary consideration**

- (a) To the extent that the consideration provided for a taxable supply to which **clause 26.2(a)** applies is a taxable supply made by the Recipient to the Supplier in the same tax period (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with **clause 26.2(a)** shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with **clause 26.2(a)**.

#### **26.5 Reimbursements**

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this Deed must exclude the amount of GST referable to the cost to the extent to which an entitlement arises to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

#### **26.6 No merger**

This clause will not merge on completion or termination of this Deed.

### **27 INSURANCE**

#### **27.1 TfNSW's required insurance**

TfNSW must effect and maintain, or procure that the TfNSW Associates effect and maintain:

- (a) the policies of insurances listed in the Insurance Schedule, on the terms, for the risks identified and for the periods of time set out in the Insurance Schedule; and
- (b) any additional insurance which a prudent developer and owner would procure and maintain when undertaking works or carrying out activities of a similar nature to the Project Works.

#### **27.2 General insurance requirements**

All insurances the subject of the Insurance Schedule:

- (a) must:
  - (i) be effected with:
    - (A) Insurance and Care NSW (ABN 16 759 382 489) (**iCare**); or
    - (B) insurers approved in writing by ARTC or the ARTC Project Manager (such approval not to be unreasonably withheld);

- (ii) in the case of public and products liability insurances and contract works insurance, be on terms approved in writing by ARTC (such approval not to be unreasonably withheld) and which comply with this **clause 27.2** and the Insurance Schedule;
    - (iii) in the case of public and products liability insurances and contract works insurance, TfNSW undertakes to notify ARTC as soon as practicable of any exclusion, endorsement or alteration which has an adverse effect on the efficacy of the public and products liability insurances and contract works insurance;
    - (iv) except in the case of professional indemnity, workers' compensation insurance and compulsory third party motor vehicle insurance, name ARTC and TAHE as an Insured;
  - (b) which name more than one Insured must include in respect of each such Insured market-related waiver and cross liability terms and conditions in which the insurer agrees:
    - (i) to waive all rights of subrogation or action that it may have or acquire against any Insured and their contractors, subcontractors, directors, officers and employees;
    - (ii) that the term "Insured" applies to each of the persons comprising the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
    - (iii) that any non-disclosure, breach of any duty or act or omission by one Insured does not prejudice the right of any other Insured to claim or the right of that other Insured to indemnity under any insurance;
  - (c) in the case of public and products liability insurances and contract works insurance TfNSW must notify ARTC as soon as practicable of:
    - (i) the insurer giving a notice of cancellation;
    - (ii) the insurer cancelling the policy on the request of TfNSW;
    - (iii) TfNSW allowing the policy to expire; or
    - (iv) the insurer giving TfNSW any other notice in respect of the policy which has an adverse effect on the efficacy of the public and products liability insurances and contract works insurance;
  - (d) must contain market-related terms which provide that a notice of the claim or occurrence in respect of which an Insured gives notice must be accepted by the insurer as a notice of the occurrence given by all the Insureds under that policy; and
  - (e) except in the case of workers' compensation insurance and compulsory third party motor vehicle insurance, must contain market related terms and conditions to the effect that the insurer:
-

- (i) does not require ARTC or any ARTC Associate, to exhaust the indemnities given by TfNSW or any TfNSW Associate to them under this Deed, before the insurer will consider, accept or pay proceeds in respect of any claim under the insurance; and
- (ii) does not require TfNSW or any TfNSW Associate to exhaust the indemnities given by ARTC or any ARTC Associate to them under this Deed, before the insurer will consider, accept or pay proceeds in respect of any claim under the insurance; except in the case of public and products liability insurances, workers' compensation insurance and compulsory third party motor vehicle insurance, must contain a term that a loss adjuster approved by ARTC (such approval not to be unreasonably withheld) must be appointed to adjust any and all losses notified under the insurances;
- (iii) must contain a term that the insurance is primary insurance for the parties who are required to be insured in accordance with the Insurance Schedule and the insurers of that insurance agree that:
  - (A) they will not seek to limit or exclude their Liability by reason of the fact that such Insured is covered by another insurance policy (**Other Insurance**); and
  - (B) they have no right of subrogation against or contribution from any insurer of such Other Insurance; and
- (iv) if stipulated in the Insurance Schedule, must be effected on a project specific basis.

### **27.3 General insurance obligations**

TfNSW must:

- (a) punctually pay all premiums and other amounts payable in connection with each insurance listed in the Insurance Schedule, and give ARTC copies of receipts for payment of premiums if and when requested by ARTC;
- (b) not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, if this would result in the relevant Insurance not meeting the requirements of this Deed (or prejudice any Insured's entitlement to indemnity under the relevant Insurance), without the prior approval of ARTC (such approval not to be unreasonably withheld);
- (c) not do or permit, or omit to do, anything which prejudices any Insurance;
- (d) promptly rectify any situation which may, if not rectified, prejudice any Insurance;
- (e) immediately notify ARTC of any fact or circumstance or change in circumstances which may prejudice any Insurance;
- (f) fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;



- (g) comply at all times with the legal obligations of TfNSW's for, parties to and beneficiaries of contracts of Insurance and with the terms of each Insurance; and
- (h) do everything reasonably required by ARTC or an ARTC Associate to enable ARTC, an ARTC Associate or another Insured to claim, pursue and recover money due and payable under that Insurance.

#### **27.4 Evidence of insurances**

TfNSW must give ARTC:

- (a) for each insurance listed in Insurance Schedule other than professional indemnity, proof of currency acceptable to ARTC, evidencing at a minimum the sum insured, deductible(s), class of policy and unusual terms and must make such professional indemnity policies available to ARTC prior to the date of this Deed;
- (b) for each insurance listed in the Insurance Schedule other than professional indemnity, copies of all policies, endorsement slips and renewal certificates upon receipt from any insurer and upon request by ARTC; and
- (c) evidence satisfactory to ARTC that each insurance listed in the Insurance Schedule other than professional indemnity has been effected and maintained, whenever reasonably requested by ARTC; and
- (d) for professional indemnity insurance, certificates of currency evidencing that professional indemnity insurance has been effected and maintained, whenever reasonably requested by ARTC.

#### **27.5 Terms of insurance**

The parties acknowledge and agree that the insurance described in the Insurance Schedule may be effected and maintained through a principal arranged insurance scheme or a self-insurance scheme, provided that the interests of ARTC are protected as they would have been had TfNSW complied with this **clause 27**.

#### **27.6 ARTC may effect insurances**

If TfNSW does not comply with **clause 27.4**, ARTC may, but is not obliged to, effect the relevant insurance and the cost of doing so will be a debt due and payable from TfNSW which ARTC will be entitled to recover, including under **clause 24.5**.

### **28 RELEASE AND INDEMNITY**

#### **28.1 Release and Indemnity**

- (a) The Project Works 
- 

(i)

[Redacted]

(ii)

[Redacted] arise by reason of:

(iii)

[Redacted]

(iv)

(b) Subject to **clause 28.1(c)**,

[Redacted]

(i)

[Redacted]

(ii)

(iii)

(iv)

including:

(v)

[Redacted]

(vi)

(vii)

(viii)

to the extent arising out of or in any way connected to the matters described in **subclauses (i) to (iv)** above.

(c)

[Redacted]  
in **clause 28.1(b)**,  
[Redacted]

[REDACTED]

**28.2 Limitation and exclusion from TfNSW's Liability**

- (a) [REDACTED] in clause 28.2(b), [REDACTED]
  - (i) [REDACTED]
  - (ii) [REDACTED]  
notwithstanding any other [REDACTED]:
  - (iii) [REDACTED]
  - (iv) [REDACTED]
    - (A) [REDACTED]
    - (B) [REDACTED]

- (b) [REDACTED] contained in clause 28.2(a) [REDACTED]
  - (i) [REDACTED]
  - (ii) [REDACTED]

**28.2A Limitation on ARTC's liability**

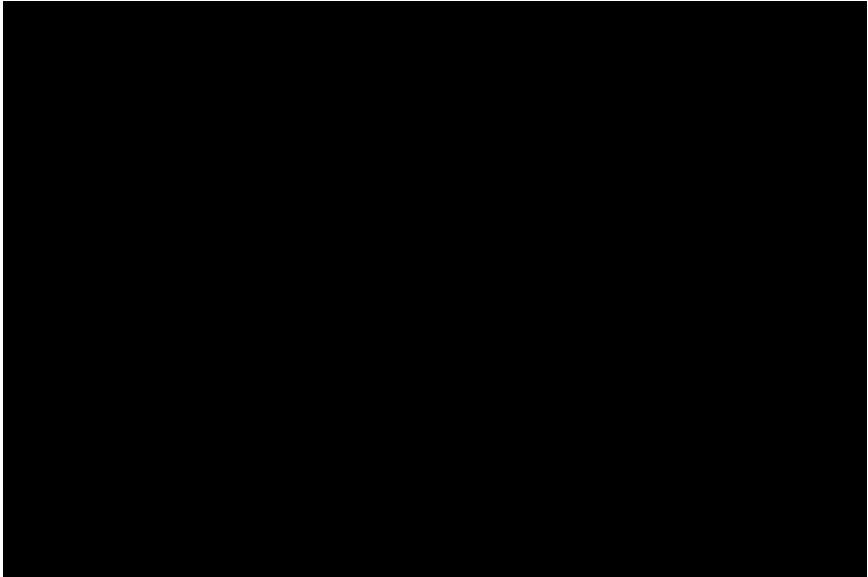
- (a) [REDACTED] clause 28.2A(b), [REDACTED]
  - (i) [REDACTED]
  - (ii) [REDACTED]





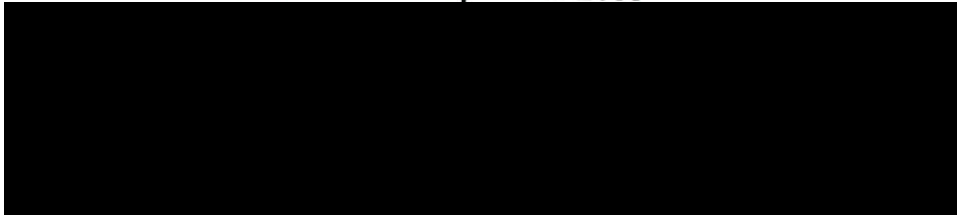
(b) The parties acknowledge and agree that:

(i)



(ii)

**28.3 Exclusion of Indirect or Consequential Loss**



**28.4 Survival of indemnity and release**

Each indemnity and release contained in this Deed:

- (a) is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity or release has been paid in full;
- (b) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
- (c) survives the termination of this Deed.

## 29 CONFIDENTIALITY

- (a) The parties acknowledge and agree that:
    - (i) ARTC must keep confidential such documents, samples, models, patterns and other information which are provided to ARTC under or in connection with this Deed and identified by TfNSW as confidential; and
    - (ii) TfNSW must keep confidential such documents, samples, models, patterns and other information which are provided to TfNSW under or in connection with this Deed and identified by ARTC as confidential.
  - (b) ARTC acknowledges that TfNSW may publish or disclose, on the internet or otherwise:
    - (i) the terms of and conditions of any TfNSW Contracts; and
    - (ii) any document or information arising under, out of or in connection with any TfNSW Contracts, relating to the performance of any TfNSW Contracts.
  - (c) TfNSW acknowledges that ARTC may publish or disclose, on the internet or otherwise:
    - (i) the terms of and conditions of any ARTC contracts; and
    - (ii) any document or information arising under, out of or in connection with ARTC or any ARTC project.
  - (d) TfNSW must procure that all TfNSW Associates:
    - (i) keep confidential any information relating to the Project Works; and
    - (ii) take reasonable steps to comply with the terms of this **clause 29**.
  - (e) ARTC must procure that all ARTC Associates:
    - (i) keep confidential any information relating to the Project Works; and
    - (ii) take reasonable steps to comply with the terms of this **clause 29**.
  - (f) Each party (as the discloser) acknowledges that the other party (as the recipient) is not obliged to keep confidential any information:
    - (i) which is in the public domain through no fault of the recipient; or
    - (ii) the disclosure of which is:
      - (A) required by Law;
      - (B) given with the written consent of the discloser; and
      - (C) given to a court in the course of proceedings to which the disclosing party is a party.
  - (g) If:
-

- (i) ARTC requires a TfNSW Associate to provide a confidentiality deed in respect of any confidential information identified by ARTC as confidential that ARTC provides to the TfNSW Associate, then TfNSW must procure that the TfNSW Associate executes such a confidentiality deed; and
  - (ii) TfNSW requires an ARTC Associate to provide a confidentiality deed in respect of any confidential information identified by TfNSW as confidential that TfNSW provides to the ARTC Associate, then ARTC must procure that the ARTC Associate executes such a confidentiality deed.
- (h) The parties acknowledge that TfNSW may be required by Law to disclose the contents of, or certain information concerning, this Deed (including in accordance with section 9 or sections 27 to 35 of the *Government Information (Public Access) Act 2009 (NSW)*). ARTC consents to, and releases TfNSW, in respect of any such required disclosure.

## 30 DEFAULT AND TERMINATION

### 30.1 Default by TfNSW

- (a) Should any of the following events of default occur:
- (i) TfNSW fails to comply with any Direction given by ARTC or an ARTC Associate in accordance with this Deed;
  - (ii) TfNSW fails to provide the As Built Drawings to the ARTC Project Manager in accordance with this Deed;
  - (iii) any undisputed monies payable to ARTC under this Deed are in arrears and unpaid for 20 Business Days after the due date;
  - (iv) TfNSW fails to comply with its obligations in relation to:
    - (A) **clause 24** dealing with costs;
    - (B) **clause 12** dealing with Environmental requirements;
    - (C) **clause 8** dealing with rail safety; and
    - (D) **clause 27** dealing with Insurance;
  - (v) TfNSW fails to hand back a Track Possession by the Agreed Hand Back Time; or
  - (vi) TfNSW is otherwise in default of a material obligation under this Deed,

ARTC may serve TfNSW with 10 Business Days written notice identifying and providing details of that event of default (**Relevant Default**).

- (b) Upon receiving a notice under **clause 30.1(a)**, TfNSW may submit a Cure Plan in relation to the Relevant Default to the ARTC Project Manager for approval.



- (c) If TfNSW submits a Cure Plan under **clause 30.1(b)** within the period referred to in **clause 30.1(a)**, the ARTC Project Manager (as applicable) must review the Cure Plan within a reasonable period of time having regard to the nature of the event of default to which the Cure Plan relates.
  - (d) In considering the Cure Plan, the ARTC Project Manager (as applicable) must:
    - (i) not unreasonably withhold its approval to the Cure Plan, unless the Relevant Default may impact on or adversely affect the following:
      - (A) the Railway, the Railway Corridor or the Rail Facilities;
      - (B) the safety of Railway patrons or the employees, lessees and representatives of ARTC;
      - (C) the continued operation of the Railway; or
      - (D) the exercise of the statutory powers and functions of ARTC as those powers and functions relate to the operation of the Railway, the Railway Corridor and the Rail Facilities;
    - (ii) otherwise act reasonably; and
    - (iii) act promptly in reviewing the Cure Plan.
  - (e) If the ARTC Project Manager approves the Cure Plan, the ARTC Project Manager must notify TfNSW in writing of the approval and TfNSW must immediately comply with the terms and conditions set out in the Cure Plan.
  - (f) If the ARTC Project Manager rejects the Cure Plan, the ARTC Project Manager must notify TfNSW in writing of the rejection and include in that notice the reasons for the rejection and the reasonable period of time in which TfNSW may, if TfNSW elects to do so, amend the Cure Plan and re-submit the Cure Plan to the ARTC Project Manager for approval under **clause 30.1(b)**.
  - (g) If TfNSW fails to:
    - (i) either submit a Cure Plan under this clause or remedy an event of default within the period of 10 Business Days after ARTC has served a notice under **clause 30.1(a)**; or
    - (ii) comply with the terms and conditions of any Cure Plan approved by the ARTC Project Manager (as applicable) in accordance with this clause, ARTC may:
      - (A) take over the whole or any part of the Project Works remaining to be completed or in its discretion, carry out other works so that the Railway Corridor is safe for its use;
      - (B) exclude TfNSW, the TfNSW Associate, from performing the Project Works taken over; or
      - (C) terminate this Deed as from the date of the notice under **clause 30.1(a)**, and in that case exercise any of the powers
-

of exclusion conferred by **clauses 30.1(g)(ii)(A) or 30.1(g)(ii)(B)**,

without prejudice to its accrued rights under this Deed.

### **30.2 Termination of this Deed**

- (a) On termination of this Deed for whatever reason, except by agreement between the parties, at the option of ARTC in its absolute discretion, TfNSW must either to the extent it relates to the Project Works:
- (i) at the direction of and in accordance with the instructions of ARTC, at TfNSW's cost, perform such works as are necessary to ensure that there is no threat to the structural integrity of the Railway;
  - (ii) pay all of ARTC's reasonable costs arising out of performing such remedial works as are necessary to ensure that there is no threat to the structural integrity of the Railway; and/or
  - (iii) do all other things reasonably necessary to give effect to **clauses 30.2(a)(i) and 30.2(a)(ii)**.
- (b) If ARTC exercises its rights under **clause 30.1**, ARTC may complete the whole or any part of the Project Works remaining to be completed and may engage TfNSW Associates for that purpose. ARTC may take possession of and permit other persons to use any materials or equipment to be incorporated into the Project Works. TfNSW will have no right to any compensation or allowance for any action taken by ARTC pursuant to this **clause 30.2**. ARTC may only exercise its rights under this **clause 30.2(b)**, where completion of those Project Works is required to:
- (i) prevent ARTC from being in breach of any Law; or
  - (ii) enable ARTC to meet its obligations (including any obligations under ARTC's contracts with third parties).

### **30.3 Adjustment of costs on Completion**

All costs, losses, charges and expenses (including legal costs on a full indemnity basis) incurred by ARTC in completing the whole or any part of the Project Works are a debt due and payable to ARTC which may, without limiting other rights, be recovered by ARTC by set-off against other moneys due at any time.

### **30.4 No release**

Termination by ARTC will not release TfNSW from Liability in respect of any breach of, or non-performance of any obligation pursuant to this Deed.

## **31 GENERAL**

### **31.1 Governing Law**

- (a) This Deed is governed by and will be construed according to the law of New South Wales.

- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### **31.2 Deed**

This document is a deed. Factors which might suggest otherwise are to be disregarded.

### **31.3 Rights cumulative**

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

### **31.4 Waiver**

- (a) A waiver of a provision of this Deed or a right or remedy arising under this Deed, including this **clause 31.4**, must be in writing and signed by the party granting the waiver.
- (b) Failure by a party to compel performance of any term or condition of this Deed does not constitute a waiver of that term or condition and does not impair the right of the party to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

### **31.5 Assignment**

TfNSW must not assign or otherwise transfer or encumber any right, obligation or interest under this Deed without the prior written approval of ARTC (such approval not to be unreasonably withheld). Approval is reasonably withheld if, without limiting other reasons that ARTC may validly assert under this clause, the proposed assignee or person giving an encumbrance of a right, obligation or interest is not solvent and reputable and the assignment or encumbrance will materially adversely affect the obligations of TfNSW and the rights of ARTC.

### **31.6 Modification of Deed**

No modification or alteration of any provision of this Deed will be valid unless it is in writing and signed by TfNSW and ARTC.

### **31.7 Further acts and documents**

Subject to the terms of this Deed, each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Deed.

### **31.8 Survive termination**

- (a) Each indemnity and release contained in this Deed is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.
  - (b) Each indemnity and release contained in this Deed:
-



- (i) is an additional, separate and independent obligation and except as otherwise stated in this Deed, no one indemnity or release limits the generality of another indemnity or release; and
- (ii) survives the termination of this Deed.
- (c) Any obligation which requires TfNSW or TfNSW Associates to undertake under this Deed after the rescission, termination or expiration of this Deed.
- (d) **Clauses 13, 24, 28, 26 and 23** will survive termination of this Deed.

**31.9 Entire agreement**

This Deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Deed and has no further effect.

**31.10 No prejudice to accrued rights**

The expiration or termination of this Deed shall be without prejudice to the accrued rights of either party at the time of expiration or termination.

**31.11 Proportionate Liability**

All rights, obligations and liabilities under or in connection with this Deed are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002* (NSW)), unlimited and otherwise unaffected by anything that but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities.

SIGNED, SEALED AND DELIVERED as a deed.

DATED the 30<sup>th</sup> day of April

2021

EXECUTED by AUSTRALIAN RAIL TRACK )  
CORPORATION in accordance with section )  
127 of the Corporations Act 2001 (Cth): )

[Redacted Signature]

Signature of Director

[Redacted Signature]

Signature of Director/Secretary

[Redacted Name]

Name of Director

[Redacted Name]

Name of Director/Secretary

SIGNED for and on behalf of )  
TRANSPORT FOR NSW by a duly )  
authorised delegate in the )  
presence of: )

.....  
signature of delegate

.....  
name of delegate

.....  
signature of witness

.....  
name of witness

**SIGNED, SEALED AND DELIVERED** as a deed.

DATED the 30<sup>th</sup> day of April 2021

**EXECUTED by AUSTRALIAN RAIL TRACK )  
CORPORATION in accordance with section )  
127 of the Corporations Act 2001 (Cth): )**

.....  
Signature of Director

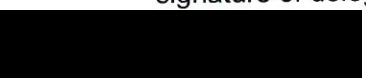
.....  
Signature of Director/Secretary

.....  
Name of Director


.....  
Name of Director/Secretary

**SIGNED** for and on behalf of )  
**TRANSPORT FOR NSW** by a duly )  
authorised delegate in the )  
presence of: )

.....  
  
signature of delegate

.....  
  
name of delegate

  
signature of witness

  
name of witness



## Schedule 1 – Contract Particulars

Item 1	ARTC Project Manager:	Name: [REDACTED] Address: [REDACTED] Email: [REDACTED]
Item 2	TfNSW Project Manager:	Name: [REDACTED] Delivery Director Address: [REDACTED] Email: [REDACTED] Telephone: [REDACTED]
Item 3	Preconditions to commencement of construction:	1. Provision to ARTC of a copy of the planning approvals (including the TfNSW EPL) (including the conditions of consent of those planning approvals) for the Project Works; and 2. Payment to ARTC of all ARTC Costs accrued by ARTC
Item 4	Defects Liability Period:	The period referred to in <b>clause 16.1(a)</b> .
Item 5	[REDACTED]	
Item 6	[REDACTED]	
Item 7	ARTC senior representatives:	Group Executive, Major Construction Projects General Manager, NSW Projects
Item 8	TfNSW senior representatives:	Project Director – Sydney Gateway Program Director – Southern Motorways Chief Development Officer

## Schedule 2 – ARTC Additional Requirements

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### Revision History

Revision	Date Issued	Clause Updated	Description
1.00	28/11/2019		Issued to RMS for Gateway Deed
1.01	12/12/2019	9.1, 9.2, 9.3, 9.4, 9.5	Internal update
2.00	18/12/2019	Updated clause numbering to R#. # to make the document distinct from the Deed.	Issued to Corrs for inclusion in draft Gateway Works Deed.
2.01	18/02/2020	R2.3 R4.1 R6.15, R6.22 R15	<ul style="list-style-type: none"> <li>• References to "ARTC Standards" being changed to "ARTC Standards and Procedures".</li> <li>• The clause concerning 'Project Program' has been edited for consistency</li> <li>• References to "As for Construction Design" and "Construction Design" have been amended to "Approved for Construction Design"</li> <li>• "Overall Construction Program" has been amended to "Project Program"</li> <li>• "ARTC Standards Manager" has been corrected to "Operations Standard Manager"</li> <li>• Differentiated between "Track Occupation" and "Track Possession"</li> </ul>

<b>3.00</b>	05/03/2020	All	<ul style="list-style-type: none"> <li>Removed references to TfNSW and the Gateway Project to make the document applicable to all third-party projects</li> </ul>
<b>4.00</b>	4/06/2020		<ul style="list-style-type: none"> <li>All changes listed in the document ARTC – Key Issues – JG Comment</li> </ul>



## R1. INTRODUCTION

- (a) The ARTC Requirements consist of the:
  - (i) ARTC Standards and Procedures; and
  - (ii) Requirements provided in this Schedule 2 to this Project Works Deed (**ARTC Additional Requirements**).
- (b) Schedule 2 provides technical information that is not provided in the ARTC Standards and Procedures.
- (c) Schedule 2 may also provide information to expand or support the ARTC Standards and Procedures.

## R2. AUSTRALIAN STANDARDS AND ARTC STANDARDS AND PROCEDURES

### R2.1 General

- (a) All design, materials, plant, equipment, workmanship and installations must comply with ARTC Engineering Standards, Guidelines, Network Rules and Regulations, Policies and Procedures, Rail Infrastructure Safety Standards Board (RISSB) standards, Australian Standards and ARTC's safeworking processes for the Metropolitan Freight Network (as each of them are updated from time to time) which:
  - (i) relate to the relevant element or component of the Project Works unless otherwise expressly set out in this Schedule 2; and
  - (ii) are current at the date of this Project Works Deed and as updated from time to time but only to the extent that such updates are necessary to:
    - (A) comply with the requirements of any Relevant Authority and any Legislative Requirements;
    - (B) satisfy or comply with any safety requirements;
    - (C) satisfy or comply with any updated, operational and maintenance requirements that generally apply across all of ARTC's operations which are required to be updated by ARTC to comply with the requirements of any Relevant Authority or Legislative Requirements; or
    - (D) without limiting the other parts of **section R2.1(a)(ii)**, satisfy or comply with any updated operational and maintenance requirements that generally apply across all of ARTC's operations,
      - (1) which ARTC will use its reasonable endeavours to notify TfNSW of the likely release of such updated requirement; and

- (2) to the extent that TfNSW reasonably considers that the implementation of such requirements will have a material impact on the cost of the Project or materially delay the Project, TfNSW may refer the issue for discussion at the next Executive Forum meeting following the notification by ARTC; and
  - (3) if TfNSW refers the issue for discussion at the next Executive Forum meeting, each party must procure their representative at the Executive Forum to meet within 5 Business Days of the date of referral to the Executive Forum and the Executive Forum must make a decision whether TfNSW must comply with the updated operational and maintenance requirements.
- (b) Without limiting **section R2.1** and notwithstanding **section R2.1(a)(ii)(D)(1)** and to the extent that TfNSW has not been notified of the release of updated requirements, TfNSW may subsequently refer the issue of compliance with the updated requirements at the next Executive Forum in accordance with **section R2.1(a)(ii)(D)**.
- (c) Where conflict exists between any statutory requirements, standards, reference documents and this Schedule 2, the most stringent requirement shall apply.
- (d) Where standards or specifications refer to “normal”, “service” or “safety requirements” and “minimum” or “maximum” criteria, the “normal”, “service” or “safety requirement” criteria must be adopted unless written approval for use of an alternative value or procedure is provided by the ARTC Project Manager.
- (e) TfNSW must ensure that all equipment or things (including assemblies and components) installed onto the network complies with the relevant Australian Standard and that all non-compliant equipment or things must be approved by ARTC in accordance with ARTC Document “EGP-21-01” or must obtain Rail Equipment Type Approval as per Australian Standard “AS7702”.
- (f) TfNSW must provide three (3) months written notice of the intention to use a product that does not comply with the relevant Australian Standard, which is not type approved, prior to type approving the equipment or thing. TfNSW will remain liable for delays to the program and all costs associated with such an approval and is not entitled to claim an extension of time or financial variation. If TfNSW is found to have installed any equipment or thing which is not compliant with the relevant Australian Standard, not type approved or not approved by ARTC in writing before such installation, TfNSW remains liable for the replacement of, and damage caused by the equipment or thing that was installed.

## R2.2 Australian Standards

Australian Standards are available from [www.standards.org.au](http://www.standards.org.au).

## R2.3 ARTC Standards and Procedures

ARTC Standards and Procedures:

- (a) consist of the ARTC Engineering Standards, Policies, Procedures and Network Rules and Regulations which are available from [www.ARTC.com.au](http://www.ARTC.com.au); and
- (a) include the following standards and procedures categorised into engineering disciplines:
  - (i) All Disciplines: [http://extranet.ARTC.com.au/eng\\_all.html](http://extranet.ARTC.com.au/eng_all.html)
  - (ii) Track & Civil (incl. Structures) [http://extranet.ARTC.com.au/eng\\_track-civil.html](http://extranet.ARTC.com.au/eng_track-civil.html)
  - (iii) Signals: [http://extranet.ARTC.com.au/eng\\_signal.html](http://extranet.ARTC.com.au/eng_signal.html)
  - (iv) Plant & Equipment: [http://extranet.ARTC.com.au/eng\\_plant-equip-ex.html](http://extranet.ARTC.com.au/eng_plant-equip-ex.html)
  - (v) Rolling Stock: [http://extranet.ARTC.com.au/eng\\_rolling-stock.html](http://extranet.ARTC.com.au/eng_rolling-stock.html)
  - (vi) Electrical: [http://extranet.ARTC.com.au/eng\\_electrical.html](http://extranet.ARTC.com.au/eng_electrical.html)
  - (vii) Communications: [http://extranet.ARTC.com.au/eng\\_comms.html](http://extranet.ARTC.com.au/eng_comms.html)

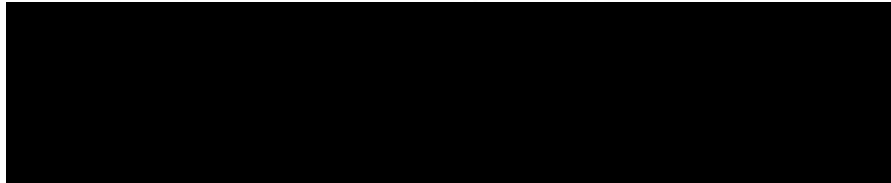
## R3. GENERAL REQUIREMENTS FOR PROJECT WORKS DEEDS

### R3.1 Criteria for assessment of TfNSW's Associates

- (a) TfNSW Associate must, at a minimum, have demonstrated experience in multiple brownfield rail projects
  - (i) of similar size and complexity;
  - (ii) with similar types of work; and
  - (iii) with a similar level of rail operation competency.
- (b) Senior management roles (which includes construction manager, senior project engineer(s), design manager, safety manager and site manager for the Project Works) must be held by Project personnel who have demonstrated experience in multiple brownfield rail projects:
  - (i) of similar size and complexity;
  - (ii) with similar types of work;
  - (iii) with a similar level of rail operation competency; and
  - (iv) where necessary, have the specialist skills and equipment to cover all aspects of the Project.

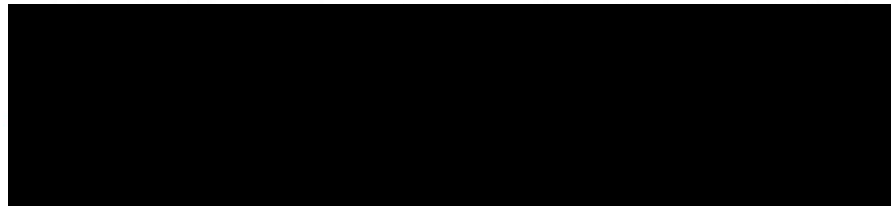


(c)



### R3.2 **ARTC Requirements for Competencies**

(a)



- (b) Information on competencies can be found at the following address <https://www.ARTC.com.au/work/contractors/rswc/> for competency framework and procedures (e.g. Engineering, Design and Project Management Identification of Competence Procedure PEO-PR-008);
- (c) For roles that do not have a specific competency identified, TfNSW must obtain the ARTC Project Manager's prior written approval before TfNSW Associate is appointed.

### R3.3 **Project Inductions**

- (a) All personnel who will be entering the Railway Corridor must complete the requisite inductions before commencing work. Depending on the scope of works, there may be more requirements (for example, possession specific inductions). Examples of inductions include, but are not limited to:
- (i) ARTC National Contractor Induction (<http://www.ARTC.com.au/work/contractors/inductions/>);
  - (ii) A black rectangular redaction box covering the text of item (ii).
  - (iii) For work in the Metro Freight Network between Port Botany and Marrickville Junction, inductions specific and relevant to the Project Works.
- (b) TfNSW must generate a project induction for their job site. The project induction must include rail safety risks, the Incident & Emergency Management Plan, Project Environmental Management Plan, and any other site-specific risks as directed by the ARTC Project Manager.
- (c) All completed inductions must be recorded on the employee RIW identification card where applicable.

## R4. PLANNING

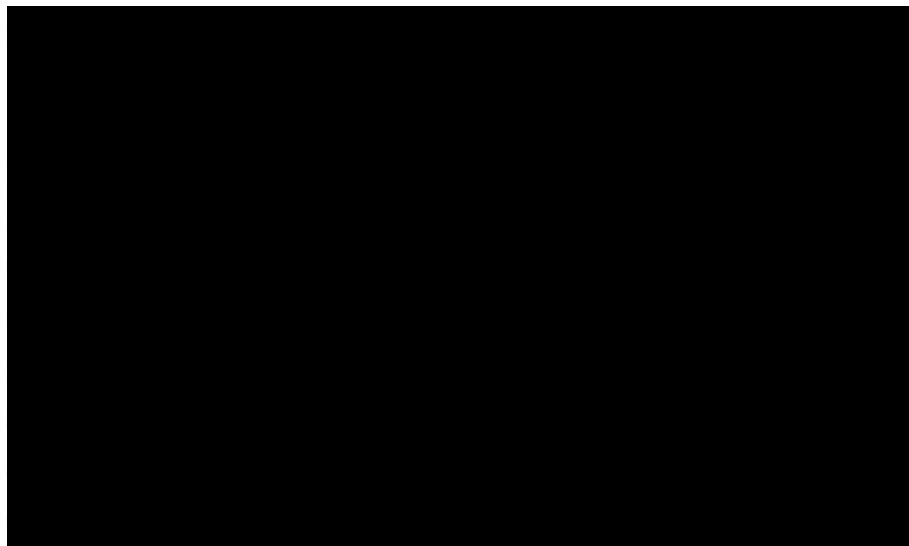
### R4.1 Project Programs

- (a) TfNSW must develop a program that describes the proposed Project Works including any activities that may be required by ARTC to support the Project Works, particularly with reference to the design or review process (**Project Program**) and any other programs in Primavera P6 format for the agreed Project Works.
- (b) The Project Program is to be developed so that it can cover multiple requirements and multiple levels in the following manner:
  - (i) a program that covers all the major items in 3 to 6 pages. This Program will be for management to be able to reasonably understand when required make decisions (**Overview Program**);
  - (ii) a program for the design which is a subset of the overall Works program and which will show the planned dates for each relevant phase for the supply of design packages, the planned ARTC and Project Verifier review periods and all relevant design approvals (**Design Program**);
  - (iii) separate to the Overview Program, a program that describes each Track Possession (**Track Possession Programs**);
  - (iv) Project Programs and Design Programs must be provided to ARTC within ten (10) Business Days of the start of the month or such other time agreed by the parties; and
  - (v) ARTC will rely on the Project Program to determine the level of resources required to support ARTC's input into the Project.

### R4.2 Project Works Structure

(a)

(b)



(c)

#### R4.3 **Project Working Group Meeting Agenda**

Without limiting **clause 5.2** of this Project Works Deed, the Project Working Group Meeting will, at a minimum, cover the following topics:

- (a) safety;
- (b) program updates;
- (c) environmental coordination and issues;
- (d) communication team updates; and
- (e) disputes required to be raised to the Interface Working Group.

### **R5. SAFETY AND ENVIRONMENT**

#### R5.1 **Risk, Review and Report**

- (a) TfNSW must undertake Risk Management Workshops and subsequently produce a Project Risk Report in line with the ARTC Standards and Procedures in all regards, particularly RSK-PR-001, Risk Management, available at <https://www.ARTC.com.au/uploads/RSK-PR-001.pdf>.
- (b) TfNSW must complete a Risk Management Workshop and produce a Project Risk Report for, at a minimum, the following areas
  - (i) safety for construction;
  - (ii) safety for design; and
  - (iii) type approvals and waivers.
- (c) A risk assessment may be requested by ARTC to demonstrate specific work methodologies are appropriate.

#### R5.2 **ARTC's Safety Management Systems**

- (a) TfNSW must consider ARTC's Safety Management System when developing their safety management system.
- (b) TfNSW and TfNSW Associates must all have access to the ARTC Safety Management System.
  - (i) Access can be requested at the following address:  
<https://www.ARTC.com.au/work/contractors/sms/>



### R5.3 Project Safety Management Plan

- (a) TfNSW must develop a Project Safety Management Plan that will apply for all work covered by this Project Works Deed. If TfNSW has multiple TfNSW Associates undertaking work at the same time, there must only be one Project Safety Management Plan. Any other TfNSW and TfNSW Associates safety plans relating to the Project Works must demonstrate how these safety plans integrate with the Project Safety Management Plan. The Project Safety Management Plan must identify any other TfNSW and TfNSW Associates safety plans and state how these other safety plans will integrate with the Project Safety Management Plan.
- (b) The Project Safety Management Plan is to cover the requirements for Work Health and Safety and Rail Safety National Law (including safety assurance obligations and the reporting of incidents). Incident reporting must be consistent with the Incident & Emergency Management Plan.
- (c) If required, TfNSW Associates must have Federal Work Health and Safety accreditations.
- (d) TfNSW must demonstrate that the Project Safety Management Plan covers all of the relevant ARTC safety requirements to the same or higher level. The Project Safety Management Plan must be developed in line with ARTC Standards and Procedures and must include details on how the following obligations will be satisfied:
  - (i) safety assurance obligations;
  - (ii) safety in Design Obligations; and
  - (iii) provision of safety assurance plans, reports and statements.
- (e) TfNSW must nominate within the Project Safety Management Plan how the Principal Contractor handover from TfNSW to a TfNSW Associate will occur;
- (f) The Project Safety Management Plan is subject to review and acceptance from the ARTC Project Manager prior to the commencement of the Project Works. TfNSW must modify the Project Safety Management Plan and incorporate the comments from the ARTC Project Manager;
- (g) Any changes to the Project Safety Management Plan must be agreed by the ARTC Project Manager.
- (h) Subject to changes to the Project Works, ARTC's safety policies and/or Standards, and relevant Laws, the ARTC Project Manager may at any time request TfNSW to update the Project Safety Management Plan accordingly.
- (i) The Project Safety Management Plan must include the following details:
  - (i) the objectives of the Project Safety Management Plan, including consideration of ARTC's Safety Policy and Procedures;
  - (ii) a clear indication of the respective safety responsibilities of TfNSW;

- (iii) a risk assessment in respect of the Project Works having regard to TfNSW's and, to the extent applicable, ARTC's obligations under WHS Laws;
- (iv) a listing of the processes for effectively managing the safety aspects and impacts associated with carrying out the Project Works and the appropriate control measures to manage the identified safety aspects/impacts and provide safety protection in accordance with the requirements of this Project Works Deed or ARTC's Standards and ARTC's Requirements;
- (v) a reference to the relevant section of the Incident & Emergency Management Plan; and
- (vi) a system for handling complaints from the public or reference to the communications plan.

#### R5.3.2 Inspection and Audits

- (a) ARTC may conduct, at any time, an inspection and audit on all aspects of TfNSW Associate's compliance with its safety obligations for the carrying out of the works on site including compliance with the Project Safety Management Plan.
- (b) TfNSW must make available, on request, all relevant records, including those of TfNSW Associates for the purpose of an inspection and audit.
- (c) TfNSW acknowledges that ARTC may authorise access to safety specialists to support ARTC for the purposes of inspections and audits.
- (d) TfNSW and TfNSW Associates must also conduct inspections and audits to verify that the carrying out of the Project Works is in compliance with the Project Safety Management Plan. TfNSW and TfNSW Associate must keep detailed records of such inspections and audits.

#### R5.3.3 Incident Reporting, Corrective and Preventive Action

- (a) Should any safety work practices be detected by TfNSW which do not conform to the requirements of this Schedule 2 or be observed to be ineffective or fail to operate, TfNSW must:
  - (i) immediately notify the ARTC Project Manager, and promptly apply appropriate corrective and preventative action procedures to address any safety management deficiencies;
  - (ii) promptly notify the ARTC Project Manager of the occurrence of an Alert Event (whether or not the occurrence of the Alert Event is required to be notified to a government authority or agency pursuant to WHS Laws);
  - (iii) no later than 24 hours after the occurrence of an Alert Event or incident, prepare and give to the ARTC Project Manager a written

- report setting out details of the nature, cause and effect, and any other details that the ARTC Project Manager may request;
- (iv) if required to give notice of any occurrence to a government authority or agency pursuant to WHS Laws, give to the ARTC Project Manager a copy of that notice at the same time; and
  - (v) promptly give to the ARTC Project Manager a copy of any notice received from or any penalty imposed by any government authority or agency.
- (b) As part of its record requirements under this Project Works Deed, TfNSW must, within seven (7) Business Days of the application of the corrective and preventive actions and procedures, provide a summary report on the Alert Event or incident including any related notices, responses, and relevant information.

#### R5.3.4 Safety Induction/Training

- (a) TfNSW must:
  - (i) provide any TfNSW Associates engaged in the carrying out the Project Works; and
  - (ii) ensure that those TfNSW Associates provide their employees, with safety training in respect of the Project Safety Management Plan to achieve a level of awareness and competence appropriate to their assigned activities. The safety training must include training of relevant persons to use plant and materials on the site efficiently so as to minimise all potential safety impacts.
- (b) Any person who has not received appropriate safety training in accordance with this clause must not work on the site.
- (c) TfNSW must attach the proof of induction to all inducted Associates' RIW cards as relevant.

#### R5.3.5 Complaint Management

- (a) TfNSW must keep and maintain written records of any complaints which it receives from a member of the public, Government organisations or external organisations in respect to the Project Works.
- (b) A record of a complaint received by TfNSW from a member of the public must detail:
  - (i) the method by which the complaint was made;
  - (ii) the date and time of the complaint;
  - (iii) any personal details of the complainant;
  - (iv) the nature of the complaint; and



- (v) any action taken or representations made by TfNSW in response to the complaint.
- (c) If TfNSW receives a complaint from any person or organisation in respect of the Project Works, it must notify the ARTC Project Manager. ARTC and TfNSW must agree as to how complaints are to be addressed.

#### R5.3.6 Performance Reporting

TfNSW must provide a monthly report covering monthly performance and total performance covering;


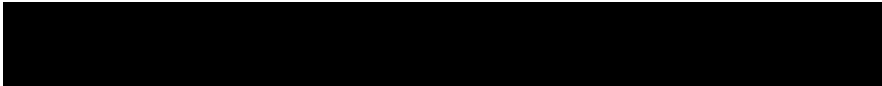
- (a) safety inspections and audits;
- (b) safety corrective actions required;
- (c) safety corrective actions completed;
- (d) safety incidents;
- (e) complaints; and
- (f) other relevant performance.

#### R5.4 **ARTC's Environmental Management System**

TfNSW must consider ARTC's Environmental Policy and Procedures, the ARTC EPL and any other relevant standards and procedures when developing their Project Environmental Management Plan. Information can be found at <https://www.ARTC.com.au/community/environment/>

##### R5.4.1 Project Environmental Management Plan

- (a) TfNSW must prepare and implement a Project Environmental Management Plan for the carrying out of the Project Works. The Project Environmental Management Plan will incorporate any conditions nominated in TfNSW's project environmental licence(s) or approvals where relevant as well as any other relevant environmental assessments conducted by ARTC or TfNSW.
- (b) The Project Environmental Management Plan must include the following details:
  - (i) the objectives of the Project Environmental Management Plan, including consideration of ARTC's Environmental Policy and Procedures;
  - (ii) a clear indication of the respective environmental responsibilities of TfNSW;
  - (iii) a risk assessment in respect of the Project Works having regard to TfNSW's and, to the extent applicable, ARTC's obligations under environmental Laws;

- (iv) a listing of the processes for effectively managing the environmental aspects and impacts associated with carrying out the Project Works and the appropriate control measures to manage the identified environmental aspects/impacts and provide environmental protection in accordance with the requirements of this Project Works Deed or ARTC's Standards and ARTC's Requirements;
  - (v) a reference to the relevant section of the Incident & Emergency Management Plan; and
  - (vi) a system for handling complaints from the public or reference to the communications plan.
- (c) 
- (d) 
- (e) Subject to changes in the Project Works, ARTC's Environmental Policies and/or Standards, or and relevant Laws, the ARTC Project Manager may at any time request TfNSW to update the Project Environmental Management Plan accordingly.

#### R5.4.2 Inspection and Audits

- (a) ARTC may conduct, at any time, an inspection and audit on all aspects of TfNSW Associate's compliance with its environmental obligations for the carrying out of the works on site including compliance with the Project Environmental Management Plan.
- (b) TfNSW must make available, on request, all relevant records, including those of TfNSW Associates for the purpose of an inspection and audit.
- (c) TfNSW acknowledges that ARTC may authorise access to environmental specialists to support ARTC for the purposes of inspections and audits.
- (d) TfNSW and TfNSW Associates must also conduct inspections and audits to verify that the carrying out of the Project Works is in compliance with the Project Environmental Management Plan. TfNSW and TfNSW Associate must keep detailed records of such inspections and audits.

#### R5.4.3 Incident Reporting, Corrective and Preventive Action

- (a) Should any environmental work practices be detected by TfNSW which do not conform to the requirements of this Schedule 2 or be observed to be ineffective or fail to operate, TfNSW must:

- (i) immediately notify the ARTC Project Manager, and promptly apply appropriate corrective and preventative action procedures to address any environmental management deficiencies;
  - (ii) promptly notify the ARTC Project Manager of the occurrence of an Alert Event (whether or not the occurrence of the Alert Event is required to be notified to a government authority or agency pursuant to environmental Laws);
  - (iii) no later than 24 hours after the occurrence of an Alert Event or incident, prepare and give to the ARTC Project Manager a written report setting out details of the nature, cause and effect, and any other details that the ARTC Project Manager may request;
  - (iv) if required to give notice of any occurrence to a government authority or agency pursuant to environmental Laws, give to the ARTC Project Manager a copy of that notice at the same time; and
  - (v) promptly give to the ARTC Project Manager a copy of any notice received from or any penalty imposed by any government authority or agency.
- (b) As part of its record requirements under this Project Works Deed, TfNSW must, within seven (7) Business Days of the application of the corrective and preventive actions and procedures, provide a summary report on the Alert Event or incident including any related notices, responses, and relevant information.

#### R5.4.4 Environmental Induction/Training

- (a) TfNSW must:
  - (i) provide any TfNSW Associates engaged in the carrying out of the Project Works; and
  - (ii) ensure that those TfNSW Associates provide their employees, with environmental training in respect of the Project Environmental Management Plan to achieve a level of awareness and competence appropriate to their assigned activities. The environmental training must include training of relevant persons to use plant and materials on the site efficiently so as to minimise all potential environmental impacts including noise, air quality, water quality, waste and contamination.
- (b) Any person who has not received appropriate environmental training in accordance with this clause must not work on the site.
- (c) TfNSW must attach the proof of induction to all inducted Associates' RIW cards as relevant.



#### R5.4.5 Complaint Management

- (a) TfNSW must keep and maintain written records of any complaints which it receives from a member of the public, Government organisations or external organisations in respect to the Project Works.
- (b) A record of a complaint received by TfNSW from a member of the public must detail:
  - (i) the method by which the complaint was made;
  - (ii) the date and time of the complaint;
  - (iii) any personal details of the complainant;
  - (iv) the nature of the complaint; and
  - (v) any action taken or representations made by TfNSW in response to the complaint.
- (c) If TfNSW receives a complaint from any person or organisation in respect of the Project Works, it must notify the ARTC Project Manager. ARTC and TfNSW must agree as to how complaints are to be addressed.

#### R5.4.6 Performance Reporting

TfNSW must provide a monthly report covering monthly performance and total performance covering;

- (a) environmental inspections and audits;
- (b) environmental corrective actions required;
- (c) environmental corrective actions completed;
- (d) environmental incidents;
- (e) complaints; and
- (f) other relevant performance.

#### R5.4.7 Scrap/Sleeper Recovery

- (a) If the Project Works include the recovery of steel, concrete and/or timber sleepers and/or jewellery from the Worksite:
  - (i) TfNSW acknowledges that steel, timber and concrete sleepers may be defined as “waste” (or a substantially similar term) under environmental Laws, and if so, TfNSW’s management including treatment, use and disposal of the sleepers and/or jewellery must be in accordance with the requirements of environmental Laws;
- (b) If the sleepers and/or jewellery are defined as “waste” (or a substantially similar term) under environmental Laws, TfNSW must not use, sell, transfer or otherwise deal with timber sleepers as firewood; and
- (c) The Project Environmental Management Plan must set out:

- (i) TfNSW's intended use for or method of disposal of the sleepers and/or jewellery;
- (ii) what procedures and policies TfNSW has in place to ensure that at all times it complies with its obligations under environmental Laws in respect of the sleepers and/or jewellery; and
- (iii) the approvals and licences obtained by TfNSW for the use and disposal of the sleepers and/or jewellery.

## R5.5 **Worksite Access Plans**

### R5.5.1 Worksite Master Plan

- (a) TfNSW must develop for ARTC to review and approve a plan of the full area where TfNSW will request access to ARTC leased land for a Worksite.
- (b) TfNSW must consider the Works Program (including possible staged starting dates and completion dates) and nominate the Worksites where Worksite Access Plans will make up the Worksite Master Plan.
- (c) Each Track Occupation, with the directly associated preparation work and past Track Occupation work, will need an individual Worksite Access Plan.
- (d) TfNSW must then provide the Worksite Master Plan for ARTC's review and agreement.

### R5.5.2 Worksite Access Plans for work outside of the Danger Zone

- (a) TfNSW and ARTC will consult about the relevant issues that must be included in the development of a Worksite Access Plan for each Worksite. The areas that must be covered in the preparation of a Worksite Access Plan are:
  - (i) planned starting date;
  - (ii) planned finish date;
  - (iii) outline of planned work;
  - (iv) access to the Worksite;
  - (v) changes to ARTC's boundary fencing;
  - (vi) segregation fencing;
  - (vii) summary of the potential impacts on rail operations;
  - (viii) ARTC's maintenance access requirements; and
  - (ix) services (ARTC and third party).
- (b) TfNSW must provide the Worksite Access Plan for ARTC's review and agreement.

R5.5.3 Worksite Access Plans for Track Occupations

- (a) A Worksite Access Plan will be required for each Track Occupation and/or Worksite. Multiple Worksites with all the Worksites under the one Worksite protection arrangement may be covered in a Worksite Access Plan.
- (b) As part of the Track Occupation, various trains and rail mounted machines may require access through the Worksites during the Track Occupation.
- (c) TfNSW will be the Principal Contractor for the Track Occupation including managing trains through their Worksite conditions for the Worksite Access Plan.

R5.6 **ARTC's Work Health and Safety Obligations**

ARTC's Associates and employees will be obligated to follow ARTC WH&S procedures as applicable to ensure they do not violate ARTC's WH&S obligations. TfNSW is not to act in a way as to compromise ARTC's obligations.

R5.7 **Project Specific Safeworking Process**

(a)

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(b)

(i)

(ii)

(iii)



(iv)

(v)

(vi)

(vii)

(viii)

(A)

(B)

(C)

(D)

(ix)

(A)

(B)

(C)

(D)

## **R6. DESIGN**

### **R6.1 Introduction**

All design for the Project Works must satisfy ARTC Requirements.

### **R6.2 Design Obligations**

TfNSW must ensure that the design of the Project Works comply with:

- (a) all Approvals;
- (b) ARTC Standards and Procedures;
- (c) all Laws;
- (d) best industry practice;
- (e) any other requirements in this Schedule 2; and
- (f) be prepared in such a way that the Project Works, if completed in accordance with the Design Documentation, will not disrupt, interfere with, damage or have any adverse impact on:
  - (i) the Rail Facilities;
  - (ii) ARTC's operations or activities; or
  - (iii) the operations of Third-Party Operators using the ARTC Facilities, and
- (g) must not result in any alteration, amendment or adjustment to the ARTC Facilities without the express written consent of ARTC.

**R6.3 Concept Design**

- (a) TfNSW must issue to ARTC a Concept Design containing Design Documentation as identified in **clause 13.1**.
- (b) ARTC review comments made on the Concept Design, where relevant will form the establishment of Operational Requirements and will be included within the Functional Design Stage 1.

**R6.4 Project Report including requirements and ARTC affects**

Not Used

**R6.5 Operational Requirements**

Operational Requirements including asset performance requirements will be identified to inform the submission of Functional Design Stage 1 and traced throughout the detailed design process in a requirements analysis, allocation and traceability matrix (RAATM) as part of the TfNSW design assurance obligations in accordance with ARTC Requirements.

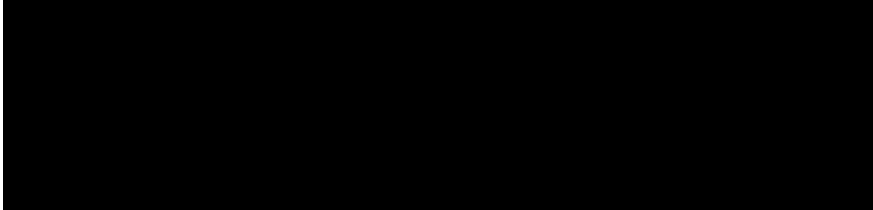
**R6.6 Project Requirements and Related Design Requirements**

- (a) Notwithstanding the requirements identified for the Concept Design in **clause 13.1**, TfNSW must clearly address in the Design Documentation as a minimum at each of the Design Stages the following;
  - (i) identify and detail ARTC's existing access and the access proposed, during and after completion of the Project. ARTC will require safe

access to all ARTC Rail Facilities and provide a plan for access during construction,

- (ii) identify and validate the existing drainage and demonstrate that following the Completion of the Project that track drainage is to ARTC's standards will be provided and provide a plan covering any changes to drainage during construction;
- (iii) identification and validation of the location of ARTC and third-party services. Nominate the proposed changes to all services including details of relocation and/or protection; and,
- (iv) nominate all proposed effects and changes to the ARTC signalling system. ARTC undertakes shunting and other rail operations in Cooks River Yard. TfNSW must describe the existing operations and demonstrate that these operations are not affected during both the final configuration and by construction activities.

#### R6.7 **Approval of Design Consultants**

- (a) TfNSW may choose to nominate a consultant for the purpose of assisting TfNSW to satisfy its Design Obligations (**Design Consultant**).
- (b) 
- (c) Both TfNSW and ARTC acknowledge that Design Consultants are TfNSW Associates for the purposes of this Project Works Deed and this Schedule 2.

#### R6.8 **Multiple Design Consultants**

If TfNSW intends to engage multiple Design Consultants, then TfNSW must provide a clear management structure and description showing how the overall design process will be managed. TfNSW must demonstrate how the various disciplines and elements of the design are integrated for all Design Stages through one lead Design Consultant.

#### R6.9 **Change of Design Consultants**

If TfNSW plans to change their Design Consultant, TfNSW must provide a plan of how they will manage the change in Design Consultants. ARTC will require that they review and agree to the proposed plan to change the Design Consultant.



## R6.10 Designer's competencies

Prior to the issue of any designs to ARTC for review, TfNSW must provide to ARTC and ARTC agree that the Design Consultant has staff with the required competencies.

## R6.11 Project Verifiers

### R6.11.1 Project Verifiers

- (a) TfNSW is required to engage a Project Verifier and provide to ARTC the completed Project Verifier Deed Poll to ARTC prior to the commencement of any design.
- (b) The form of the Project Verifier Deed Poll is provided in Schedule 7 of this Project Works Deed.

### R6.11.2 Project Verifier's Role

- (a) Each Project Verifier is to be engaged as an organisation, independent to the organisations engaged to prepare the required design.
- (b) Each Project Verifier is to act independently to the designer and the verifier of the design.
- (c) The organisations engaged to complete the design are required to approve the design to issue to ARTC for comment and to the relevant Project Verifier for the independent project verification.
- (d) Each Project Verifier is to be an independent check for the design process that must:
  - (i) reasonably consider ARTC's comments,
  - (ii) ensure that ARTC comments are addressed at each stage of the design process; and
  - (iii) include ARTC comments in the Project's master comments register.
- (e) The relevant Project Verifier is to be issued with, and must review the Final Detailed Design Stage 3 to verify that the design complies with this Project Works Deed, having regard to the following:
  - (i) the design has been competently and professionally designed;
  - (ii) the design is to ARTC Standards and Procedures;
  - (iii) the design is to the relevant Australian Standards;
    - (A) the design satisfied the functional requirements of the intended infrastructure including the integration of design elements across each Project Works Structure;
    - (B) the design has been fully traced in a RAATM and covers all the requirements nominated by ARTC following the

submission of Concept Design stage as included in **clause 13.1** of this Project Works Deed; and

- (C) the design has given sufficient consideration of Safety in Design requirements to cover safety during construction; safety in operations and safety in maintenance (available at <https://extranet.artc.com.au/docs/eng/all/guidelines/COR-GL-014.pdf> as otherwise updated from ARTC from time to time);
- (iv) to review the functional design and provide comments on the integration of the various design disciplines; and
- (v) this process will produce a verified design on completion of the Project Verifier Design Statement for each Project Works Package at Functional Design Stage 1, Detailed Design Stage 2 and the Project Verifier Design Certificate (and where relevant, the Proof Engineer's Design Certificate) on completion of Final Detailed Design Stage 3.
- (f) The relevant Project Verifier will provide ARTC a draft report (containing the information and contents contemplated by the form set out in Annexure 1 to this Schedule 2 and any further information requested by the ARTC Project Manager) for each design package to ARTC for ARTC's review and comments. That Project Verifier must address all of ARTC's comments to the draft reports.
- (g) The relevant Project Verifier is to finally provide for each design package a pack of verified designs and their final report to ARTC (containing the information and contents contemplated by the form set out in Annexure 1 to this Schedule 2).
- (h) Each Project Verifier must be a corporate entity and must have adequate staff to cover the various design disciplines and areas required to cover fully the role in verifying all aspects of the design.
- (i) The relevant Project Verifier is required to certify that the works as constructed has been completed to the verified design. This process will be based on the construction contractor's constructed drawings and quality documentation.
- (j) The relevant Project Verifier is required to verify all temporary works design required by the construction contractor.

R6.11.3 [REDACTED] Project Verifier

TfNSW must nominate each proposed Project Verifier and their relevant engineers for [REDACTED]

#### R6.11.4 Project Verifiers' competencies

TfNSW must provide to ARTC the competencies for all proposed engineers that will be involved in verifying the Project design s [REDACTED]

#### R6.12 Design Program

TfNSW must provide a Design Program updated each month and issued [REDACTED] prior to the Project Working Group Meeting. The Design Program is to cover each design package and cover all the stage issues dates and ARTC's review periods.

#### R6.13 Design packages

(a) [REDACTED]

(b) [REDACTED]

#### R6.14 Design Management Plan


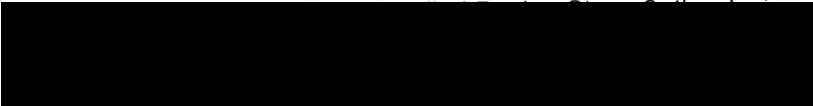
TfNSW must prepare a Design Management Plan (**DMP**) to describe how they plan to manage the production, timing, quality, integration and approval process flow of the Design Documentation.

- (a) The preliminary DMP is to be issued with the Concept Design as identified in **clause 13.1** and must, as a minimum include the following:
- (i) design objectives and outcomes (including operational and maintenance considerations);
  - (ii) relationship to other TfNSW Management Plans;
  - (iii) integration with Planning Approval;
  - (iv) roles and responsibilities;
  - (v) competency management;
  - (vi) Project Works Structure;
  - (vii) design program;
  - (viii) design delivery and approval process flow including Project Verifier interface;
  - (ix) systems assurance and design integration;
  - (x) safety in design;
  - (xi) identification and management of permanent and temporary works design risks;




- (xii) interface management;
  - (xiii) configuration management;
  - (xiv) drawing and document control,
  - (xv) design change management;
  - (xvi) management of Detailed Site Survey data; and
  - (xvii) production and issue of as built documentation to ARTC.
- (b) The final DMP must be submitted to ARTC for comment no less than eight (8) weeks prior to Project Works commencing.

#### R6.15 Design Development Stages

- (a) All Design Documentation must comply with the requirements of this Project Works Deed and must be submitted to the ARTC Project Manager and the relevant Project Verifier concurrently for review in accordance with this Project Works Deed, at the following times:
- (i) notwithstanding the requirements in **section R6.21**, at the completion of the Functional Design Stage 1, the design for each design package is to cover:
    - (A) 
    - (B) all services;
    - (C) ARTC safety requirements; and
    - (D) ARTC's maintenance/Operations Requirements; and
  - (ii) 
- (b) A design report is to be provided for each Design Stage and each design package. The design report may be updated for each stage.
- (c) TfNSW may request permission from the ARTC Project Manager to remove a Design Stage from its schedule for a specific Design package. Only when the ARTC Project Manager has provided a written approval to grant such a request may TfNSW delete that submission and must then include all the content and Design Documentation of that deleted Design Stage in the subsequent Design Stage submission.
- (d) The Project Verifier must review each Design Stage.
- (e) If the relevant Project Verifier is not provided with earlier stage designs, TfNSW will have no claim regarding delays resulting from re-design from the relevant Project Verifier's comments.
- (f) For changes to design packages, TfNSW must include in any new combined or split design package, all relevant requirements, information

and descriptions including a RAATM to the previous design packages to ensure that the ARTC Project Manager and Project Verifier can adequately review the new design package.

#### R6.16 Design Stage Review Process

- (a) TfNSW must, subject to **section R6.16(c)**, and must procure that TfNSW Associate must, seek ARTC's written approval (which may be given subject to conditions and changes in accordance with **section R6.16(b)**) before proceeding to the next Design Stage.
- (b) ARTC's approval may be given subject to conditions or changes in relation to matters which:
  - (i) would prejudice the safe operation or maintenance of:
    - (A) ARTC's operations; or
    - (B) the operations of third-party operators using the Railway, Railway Corridor or Rail Facilities; or
  - (ii) would affect the functionality or maintenance and repair costs of any Rail Facilities or would otherwise cause TfNSW to be in breach of this Project Works Deed, andmust be addressed in order for ARTC to provide approval to progress to the next Design Stage.
- (c) If TfNSW or TfNSW's Associates do not obtain the approval of ARTC as contemplated in **section R6.16(a)** before proceeding to the next Design Stage, they do so at their own risk but must subsequently comply with the conditions and changes identified by ARTC under **section R6.16(b)**.
- (d) Following TfNSW's submission of the Design Documentation for a Design Stage, ARTC must nominate a date (including time) for TfNSW to provide a presentation of that Design Documentation to ARTC and the relevant Project Verifier. Such nominated time must be within 20 Business Days of receipt of that Design Documentation by ARTC. ARTC will liaise with TfNSW the date (including the time) to be nominated by ARTC. TfNSW must procure that the Relevant Verifier attend that presentation at the date (including the time) nominated by ARTC.
- (e) 
- (f) TfNSW must, in both its submission and presentation to ARTC and the relevant Project Verifier contemplated by **section R6.16(d)**:
  - (i) explain clearly the changes from any previous submission; and

- (ii) demonstrate, where applicable, that any conditions or changes required by ARTC under **section R6.16(b)** have been complied with and addressed.
  - (g) The relevant Project Verifier must review the Design Documentation for each Design Stage and notify TfNSW and ARTC in writing of any non-compliance of the Design Documentation with the requirements of this Project Works Deed within 20 Business Days of receipt of the Design Documentation by ARTC, which will be extended by the additional periods contemplated by **sections R6.16(i), R6.16(j)** and **R6.17(b)**.
  - (h) ARTC must review the Design Documentation for each Design Stage and notify TfNSW and the Project Verifier in writing of any non-compliance of the Design Documentation with the requirements of this Project Works Deed within 20 Business Days of receipt of the Design Documentation by ARTC, which will be extended by the additional periods contemplated by **sections R6.16(i), R6.16(j)** and **R6.17(b)**
  - (i) If TfNSW does not provide a presentation of the Design Documentation to ARTC and the relevant Project Verifier on the date (including the time) nominated by ARTC under **section R6.16(d)**, then the period referred to in **sections R6.16(g)** and **R6.16(h)** will be extended by such period which is calculated by the difference between:
    - (i) the date TfNSW provides the presentation to ARTC and the relevant Project Verifier; and
    - (ii) the date nominated by ARTC for TfNSW to provide the presentation in accordance with **section R6.16(d)**.
- If TfNSW demonstrates to ARTC that TfNSW is ready to give the presentation at the nominated date (including time) and ARTC does not receive the presentation on that nominated date (including time), the extension referable to **section R6.16(i)** as contemplated by **sections R6.16(g)** and **R6.16(h)** will not apply.
- If ARTC have nominated a date under **section R6.16(d)** and subsequently changes that date (and which is not as a result of a request by TfNSW), the period of the 20 Business Days from receipt of the Design Documentation contemplated by **sections R6.16(g)** and **R6.16(h)** will continue to apply.
- (j) If the relevant Project Verifier or ARTC when reviewing the Design Documentation under **sections R6.16(g)** or **R6.16(h)** (as the case may be) identifies that the Design Documentation is incomplete or is otherwise missing information that has a material impact on the relevant Project Verifier's or ARTC's ability to complete their respective reviews then within 5 Business Days of the date of receipt of the Design Documentation:
    - (i) the relevant Project Verifier or ARTC may require TfNSW to provide that further information; and



- (ii) TfNSW must provide that information promptly to the relevant Project Verifier and ARTC,

and the periods referred to in **sections R6.16(g)** and **R6.16(h)** will re-apply with effect from the date of receipt of that further information.

- (k) Design Documentation submitted by TfNSW for review in accordance with this clause must include two sets of all the Design Documentation for each of ARTC and the relevant Project Verifier (or any such other reasonable number as may be required by the relevant Project Verifier).
- (l) TfNSW must comply with the conditions or changes to the Design Documentation required by ARTC under **section R6.16(b)** as part of ARTC's approval to progress to the next Design Stage (such approval not to be unreasonably withheld).
- (m) If TfNSW fails to comply with the conditions or changes to the Design Documentation required by ARTC under **section R6.16(b)** and ARTC rejects the Design Documentation, ARTC must, within 5 Business Days of the date on which TfNSW provides a presentation of the Design Documentation to ARTC and the relevant Project Verifier as required by **section R6.16(d)**, give notice to TfNSW in writing of the rejection and include in that notice the basis for the rejection including the conditions or changes that TfNSW failed to comply with.
- (n) TfNSW must, upon receipt of a notice under **section R6.16(m)**, promptly resubmit a compliant set of Design Documentation to ARTC for approval (which must address the basis for rejection stated in the notice).
- (o) If TfNSW does not accept any comment submitted by ARTC or the relevant Project Verifier, TfNSW must respond to ARTC in writing, identifying the comment that it has not accepted and providing reasons.
- (p) If requested by TfNSW or the ARTC Project Manager, TfNSW and ARTC must meet within 5 Business Days of a request to discuss the resolution of any comments.
- (q) If no agreement is reached by the parties within 15 Business Days of any written comments given by ARTC either party may give a written notice of any dispute or difference and thereafter **clause 23** of this Project Works Deed will apply.

#### R6.17 Design Integration

- (a) TfNSW must, when submitting Design Documentation for each Design Stage for review in accordance with **section R6.16**, ensure that:
  - (i) the design satisfies the functional requirements of the intended infrastructure including the integration of design elements within a design package and between design packages; and
  - (ii) all relevant design packages have been submitted to demonstrate that the design has been integrated.

- (b) ARTC may, when reviewing the Design Documentation submitted to ARTC for approval under **section R6.16(a)**, require other design packages to be presented to ARTC to demonstrate that the design has been integrated. To the extent that ARTC requires further design packages to be presented to ARTC, then the periods referred to in **sections R6.16(g)** and **R6.16(h)** will be extended by a reasonable period from when TfNSW submits to ARTC those further design packages.
- (c) As contemplated in **section R6.16(c)**, TfNSW and TfNSW Associates may proceed to the next Design Stage at their own risk. Any Design Documentation submitted by TfNSW will not be approved by ARTC until the relevant areas of other design packages required by ARTC under **section R6.17(b)** (if any) have been finalised and approved by ARTC.

#### R6.18 **Amendment of Design Documentation**

If the Design Documentation is amended or updated by TfNSW during the term of this Project Works Deed, TfNSW must:

- (a) submit the amended or updated Design Documentation to ARTC and Project Verifier for review; and
- (b) provide a presentation explaining where the Design Documentation has been amended, which must consider and address the impacts of the amendments to any design integration issues with other design packages.

#### R6.19 **Rights Unaffected**

- (a) TfNSW acknowledges that ARTC does not owe any duty of care to TfNSW to review or make comments on the Design Documentation or any variations to it.
- (b) Neither comments by ARTC, nor any failure to comment by ARTC regarding the Design Documentation or any other act or omission by ARTC will lessen or otherwise affect:
  - (i) TfNSW's warranties, or any of its other liabilities or responsibilities, under this Project Works Deed or otherwise according to Law; or
  - (ii) the rights of ARTC whether under this Project Works Deed or otherwise according to Law.

#### R6.20 **Presentation of Design to ARTC**

- (a) TfNSW must present to the ARTC Project Manager and the relevant Project Verifier, and any other parties required by ARTC or the relevant Project Verifier:
  - (i) Concept Design and Project scope;
  - (ii) Functional Design Stage 1 (30%);
  - (iii) Detailed Design Stage 2 (70%); and

- (iv) Final Detailed Design Stage 3 (100%).
- (b) The presentation must be of sufficient detail and quality as determined by the ARTC Project Manager.
- (c) Prior to TfNSW submission of the subsequent Design Stage submissions, all comments from the ARTC Project Manager and the relevant Project Verifier are to be placed in a register and must adequately address the views of the ARTC Project Manager and Project Verifier in accordance with this Project Works Deed. ARTC may agree that some comments may be closed out in the subsequent Design Stage and to the extent that ARTC agrees, such agreement will be noted in the comments register.
- (d) The presentation must be given prior to ARTC's acceptance of each design submission.

#### R6.21 Functional Design Stage 1


The Design Documentation for the first Design Stage, submitted to the ARTC Project Manager for review must:

- (a) include a schedule of all designers and their ARTC Competencies;
- (b) include all functional elements the of the design including horizontal and vertical clearances to both permanent and temporary works;
- (c) include relevant sections of AS5100.1:2017, clause 6, 'Matters for Resolution Before Design Commences'
- (d) include a Design Report as **section R6.26**;
- (e) demonstrate safety in design for both permanent and temporary works and how it will be implemented;
- (f) include integration of all design areas (i.e. all design packages as well as interface with existing infrastructure, ARTC or otherwise);
- (g) include an interface schedule highlighting interfaces with existing systems to ensure that the system interfaces are technically feasible, achievable and efficiently constructible;
- (h) include a full set of preliminary general arrangement drawing and cross-sections, etc.;
- (i) include a schedule of any existing non-conformance within the Project area;
- (j) include preliminary calculations and element sizes etc. with the relevant assumptions and engineering inputs;
- (k) include evidence of inter-disciplinary design checks to ensure that the Operational Requirements as defined following ARTC review of the Concept Design are technically feasible, achievable and efficiently constructible;



- (l) include a constructability report including Track Occupation requirements and staging;
- (m) include preliminary flood modelling diagrams and report clearly depicting pre- and post-development immunity, (including construction staging / temporary works) provided to Rail Facilities for 50%, 20%, 10% 5% and 1% Annual Exceedence Probability (AEP) scenarios,
- (n) include preliminary details of all equipment, plant and materials;
- (o) show all ARTC and third-party services in the relevant utility drawings;
- (p) nominate any material or design element that requires a waiver or type approval;
- (q) include any other details, calculations, models, drawings, reports or other information as requested by the ARTC Project Manager or the relevant Project Verifier;
- (r) be of sufficient quality and detail to demonstrate that TfNSW's proposed design approach complies with and satisfies the functional and performance requirements of this Project Works Deed;
- (s) demonstrate that TfNSW has identified, considered and resolved all of the relevant design requirements of this Project Works Deed;
- (t) include any other Design Documentation described elsewhere in this Project Works Deed as being required in the Design Stage 1 submission;
- (u) include the required signalling documentation;
- (v) include approved signal functional specifications;
  - (i) signal plan;
  - (ii) control tables;
  - (iii) interface coordination plan;
  - (iv) power calculations;
  - (v) signal sighting form; and
  - (vi) bill of materials;
  - (vii) cable plans;
  - (viii) communications arrangements;
  - (ix) rack layouts;
  - (x) preliminary RAATM;
- (w) include ARTC interface comment register in order to demonstrate that comments made by ARTC on the Concept Design Documentation have been addressed before the acceptance of the design package; and
- (x) include a list of the assets that form part of the Project Works (including the Rail Corridor Works and Works Affecting ARTC Railway Operations).

## R6.22 Detailed Design Stage 2

- (a) The submission of the Detailed Design Stage 2 Design Documentation must represent the 70% completion of the design development for each design package. Further development of the design package in Final Detailed Design Stage 3 must be limited to design detailing and the preparation of drawings suitable for construction.
- (b) The Detailed Design Stage 2 Design Documentation, submitted to the ARTC Project Manager for review in accordance with this Project Works Deed for each design package must:
  - (i) be consistent with and incorporate the development of design packages submitted in the Design Stage 1 submissions. If this is not achievable, clearly nominate the scope and design items that have significant changes;
  - (ii) include the register of issues raised in Design Stage 1 and demonstrate how the issues have been resolved;
  - (iii) clearly nominate all functional changes from Functional Design Stage 1;
  - (iv) include an updated Design Report;
  - (v) 
  - (vi) include a full set of general arrangement drawings, cross-sections etc, and any other specific relevant detail as required by the ARTC Project Manager to fully understand the permanent works design, and the temporary works, including ARTC access required to facilitate the permanent works;
  - (vii) include summary final calculations including assumptions, with the full calculation details to be provided if requested by the ARTC Project Manager;
  - (viii) include complete details and selections of all plant and equipment;
  - (ix) include updated flood modelling diagrams and report,
  - (x) include complete details and selections of all materials (e.g. ballast, capping, conduits, etc);
  - (xi) include details of all approved concession, waivers, or type approvals to ARTC Requirements, noting that all concession or waivers to ARTC Requirements must be submitted to and approved by the ARTC prior to the Detailed Design Stage 2 submission;
  - (xii) demonstrate to the ARTC Project Manager that TfNSW has identified, considered, completely thought through, resolved and drawn to scale on the design package drawings, all of the relevant design requirements of this Project Works Deed, for Design Stage 2;

- (xiii) be coordinated with any interface work;
- (xiv) be consistent with, coordinated and fully integrated with all other design packages that have already been submitted for review;
- (xv) include any other Design Documentation described elsewhere in this Project Works Deed as being required in the Design Stage 2 submission,
- (xvi) include updated signal drawings and plans such as:
  - (A) stage-works design (circuit books);
  - (B) correlation circuit design (circuit books);
  - (C) cable services route design; and
  - (D) include an ARTC interface comment register in order to demonstrate that comments made by the ARTC and the relevant Project Verifier on the Design Stage 1 Design Documentation have been addressed before the acceptance of the design package.
- (xvii) provide an updated RAATM; and,
- (c) Any updated versions of all documents required under **section R6.21** must also be produced and submitted to the ARTC Project Manager during Design Stage 2 for review.

### R6.23 Final Detailed Design Stage 3

- (a) The Final Design Stage 3 Design Documentation, submitted to the ARTC Project Manager for review must:
  - (i) be of a quality and content to permit the Detailed Design Stage 3 design package Design Documentation to support application to the ARTC CCB for approval of the proposed configuration change;
  - (ii) be fully complete, correct, detailed, and integrated;
  - (iii) be fully co-ordinated with the any other Project Works, design packages, ARTC Facilities, third party services etc;
  - (iv) have any residual risks arising out of the design, operation and ongoing maintenance of the asset agreed with by ARTC, the relevant Project Verifier and the ARTC Project Manager;
  - (v) include the asset management information for all Project Works;
  - (vi) include final flood modelling diagrams and report;
  - (vii) include a full set of complete drawings technical specifications and acceptance criteria for construction suitable for construction of the Project Works and the temporary works;
  - (viii) include verification of the Design Documentation against the design inputs, including achievement of acceptance criteria, safety,



environmental and other management requirements for the Design Documentation;

- (ix) include an updated and final design report;
  - (x) include the following signalling documentation:
    - (A) site integrity plan;
    - (B) interlocking data;
    - (C) construction circuit design;
    - (D) AFC signalling plan;
    - (E) AFC track insulation plan;
    - (F) AFC cable services route design;
    - (G) design integrity test plan;
    - (H) microlock interlocking simulation system (MISS) design, set to work, integration, and principals testing on simulator; and
  - (xi) include ARTC interface comment register in order to demonstrate that comments made by the ARTC and the relevant Project Verifier on the Design Stage 3 Design Documentation have been addressed before the acceptance of the design package and the package is Approved for Construction.
- (b) The updated versions of all documents required must be [REDACTED] submitted to:
- (i) the ARTC Project Manager for the Final Detailed Design Stage 3 review; and
  - (ii) the relevant Project Verifier for final design verification.

#### **R6.24 Issued For Construction Design Documentation**

TfNSW must produce Issued For Construction (IFC) drawings which accurately replicate the certified Final Detailed Design Stage 3 Design Documentation and must ensure at least two bound copies are kept on each Worksite and made available for inspection by the ARTC Project Manager and the relevant Project Verifier during construction of the Project Works.

#### **R6.25 Temporary Project Works Design**

- (a) TfNSW must carry out, develop and maintain a list of all Temporary Project Works Designs. This must be kept up-to-date and contain a description of the status of the temporary works which will be included in each monthly report.
- (b) TfNSW must include the temporary works list, the Temporary Project Works Designs and the review of Temporary Project Works Designs in the

Design Management Plan processes and as activities in the Project Program.

- (c) Following any review of the temporary works list, the ARTC Project Manager will advise TfNSW which of the Temporary Project Works Designs are to be reviewed by the relevant Project Verifier as part of the design review process and which of the Temporary Project Works Designs will require submission through the design submission process.
- (d) Any designer of Temporary Project Works Designs must have the relevant ARTC Competencies.
- (e) For those Temporary Project Works Designs that the ARTC Project Manager determines to be reviewed by the relevant Project Verifier, the design submissions for the Temporary Project Works Designs must include:
  - (i) a list of the temporary works assumptions that the designer has made in the construction, including any assumptions or calculated assessments relating to the load capacity of any existing infrastructure that is required to support the temporary works;
  - (ii) identification of potential effects on adjacent works;
  - (iii) identification of any potential effects to ARTC operational safety;
  - (iv) a description of mitigation measures to ensure that the design is adequate in both the short and long term;
  - (v) any key site data that must be confirmed prior to construction of the temporary works;
  - (vi) methods for reinstatement of any permanent infrastructure affected by the temporary works;
  - (vii) details of the staging and sequencing of the Project Works and temporary works;
  - (viii) details of any Track Occupations or special safe working arrangements required;
  - (ix) inspection and test requirements; and
  - (x) settlement monitoring criteria (if settlement of either the temporary works or existing infrastructure is a possibility).
- (f) TfNSW must address temporary works in a safety assurance statement and safety assurance report(s). TfNSW's safety assurance report(s) must present the safety assurance demonstration for the design, construction, maintenance and dismantling of the temporary works. The safety assurance demonstration for the temporary works must be to a standard comparable to the safety assurance demonstration for the Project Works.

## R6.26 Design Reports

- (a) The Design Documentation prepared for each design package must include a comprehensive design report which describes the basis for the development of the design for each particular design package in which it appears.
- (b) All design reports must be of consistent format, layout and content. All changes to the design from the previous version of the design report must be summarised in the subsequent design report for each design package.
- (c) Design reports must identify, address and include:
  - (i) the scope of the design package to which it applies;
  - (ii) a description of the overall asset, system and its sub assets and systems;
  - (iii) a list of all the documents that make up the design package;
  - (iv) a list of all design changes compared to the previous Design Stage submission;
  - (v) a list of all the codes and standards, design guidelines and other design reference documents applicable to the design package;
  - (vi) details of how all review comments made against the previous Design Stage submission have been addressed;
  - (vii) all assumptions, dependencies and constraints;
  - (viii) a section on maintainability to demonstrate how TfNSW has addressed the following where applicable or required by the ARTC Project Manager:
    - (A) whole of life costs for asset operations, maintenance, replacement and refurbishment demonstrating how costs have been minimised;
    - (B) enabling maintenance to be carried out with minimum disruption to freight operations;
    - (C) Reliability, Availability, Maintainability and Safety (**RAMS**) demonstration for any proposed new equipment as required by EN 50126 to support RAM targets;
    - (D) tabulation of condition monitoring systems, parameters and interfaces required to the operator/ asset information system;
    - (E) access points, methodology and access time;
    - (F) maintenance activities including replacement and refurbishment, including detailed steps, any special tools and equipment required, duration of activities with and without access time;



- (G) the appropriate application of whole of life considerations in the design and construction of the Project Works including application of AS4536 for quantitative whole life cycle cost analysis;
  - (H) consideration of the maintainability of ARTC and TfNSW assets; and
  - (I) standards and acceptance criteria applicable for maintenance activities.
- (d) Design reports must identify and address all design inputs relevant to the design package including:
- (i) any departures from the previous Design Stage, stating the reasons for the changes and demonstrating consultation of how these changes have been coordinated and agreed with ARTC;
  - (ii) a list of all computer software used for analysis of the design or in preparation of the design package;
  - (iii) performance criteria and measures to comply with the performance requirements of discrete design components, parts or elements;
  - (iv) environmental and sustainability design requirements;
  - (v) the sustainability initiatives incorporated as part of the design package;
  - (vi) the findings of any assessments or review conducted with ARTC;
  - (vii) interim design reviews in summary form;
  - (viii) details of integration and multi-disciplinary design interface issues and risks associated with other discrete design elements and associated mitigation strategies;
  - (ix) details of durability issues and risks, and measures to comply with the durability requirements for the discrete design components, parts or elements;
  - (x) the design loadings, load combinations, exposure conditions and design standards that will be adopted for the detailed design of the discrete design elements or components;
  - (xi) details of constructability issues; and
  - (xii) any specialist engineering input and reports including geotechnical, groundwater, hydrology, flooding, noise and vibrations, materials testing, settlement and movement assessment, monitoring and infrastructure protection.
- (e) The design reports must identify and reference all design outputs relevant to the design package including:
- (i) design drawings, calculations and schedules;

- (ii) details of any computer software;
  - (iii) details of functional analysis and requirements allocation, including functional flow block diagrams;
  - (iv) RAMS assessments;
  - (v) details of any alternative designs considered, and the process used to determine the recommended option;
  - (vi) consideration of requirements for future safeguarding;
  - (vii) detailed specifications for materials, finishes, equipment and systems; and
  - (viii) design model verification.
- (f) The design reports must also identify and provide details of compliance and potential inconsistency with:
- (i) the environmental documents;
  - (ii) any statutory Approval; and
  - (iii) any other approval that TfNSW is required to obtain for the design and construction of the Project Works and the temporary works.
- (g) The design reports must identify safety issues and other risks relevant to the design package, and describe measures to comply with the criteria specified for the discrete design elements and components, including:
- (i) details to address the requirements of security, fire life safety, accessibility, and operational requirements;
  - (ii) details to address the requirements for Accreditations or certification; and
  - (iii) details to address the safe construction of the Project Works and the temporary works through Safety in Design considerations.
- (h) The design reports must identify all tests relevant to the design package, including the testing and commissioning requirements to be addressed in the relevant Inspection and Test Plans and Management Plans, and contain any test results applicable to the Design Stage.

#### **R6.27 Design Changes and Non-Conformances During Construction**

- (a) TfNSW must submit details of any proposed changes to the approved Final Detailed Design Stage 3 design to the ARTC Project Manager and the relevant Project Verifier for review and approval prior to their inclusion within the Project Works.
- (b) TfNSW must not propose any change to the approved Final Detailed Design Stage 3 design or action to address non-conformances and Defects that would result in a lower standard or service level, or in any way

impact the operation of the ARTC Facilities other than that specified in this Project Works Deed or agreed to within the design approval process.

**R6.28 Safety in Design and Design Risk Report**

For each design package, the designer is to undertake a Risk Management Workshop with ARTC Associates as nominated by the ARTC Project Manager and produce a Safety in Design report for the design package which complies with the guideline accessible via <https://extranet.artc.com.au/docs/eng/all/guidelines/COR-GL-014.pdf>.

**R6.29 Management of Design Risks**

The design must resolve all the significant ant safety risks in their design solution. A summary of key Safety in Design risks and solutions along with any outstanding safety risks must be nominated in the Design Report for each design package.

**R6.30 Type approval for new infrastructure**

Not Required for the Project.

**R6.31 Waivers**

- (a) If TfNSW plans to propose a design solution that is not to ARTC Standards and Procedures, then TfNSW must discuss the options available in regard to proposed design with the ARTC Project Manager. If no agreed solution can be found, then TfNSW must make a submission to Operations Standards Manager for a waiver in line with ARTC Requirements.
- (b) ARTC must respond to TfNSW's request for a design waiver within 30 Business Days of receipt of the request.
- (c) TfNSW are responsible for obtaining any ARTC waiver in accordance with the ARTC Procedure EGP-02-01 – Engineering Waiver Management.

**R6.32 Maintenance**

The parties acknowledge that:

- (a) as at the date of this Deed, TfNSW has not commenced construction of the Project Works;
- (b) upon Completion, TfNSW will be responsible for maintaining the Project Works;
- (c) ARTC will, in the course of the design review process under this clause R6, notify TfNSW of any Works Affecting ARTC Railway Operations which,



if not adequately maintained, could impact on ARTC's Railway Operations or give rise to safety issues; and

- (d) TfNSW will procure that:
  - (i) the Rail Corridor Works; and
  - (ii) any Works Affecting ARTC Railway Operations which, if not adequately maintained, could impact on ARTC's Railway Operations or give rise to safety issues,

are addressed in the operation and maintenance manuals prepared by TfNSW's contractor to the satisfaction of ARTC (acting reasonably) prior to expiry of this Deed.

#### **R6.33 Licence for Infrastructure and Maintenance Agreement**

- (a) The parties must use their best endeavours to agree and enter into a licence for the maintenance of the Project Works (**Licence for Infrastructure and Maintenance Agreement**) including the asset management plan and performance standards addressed in the operation and maintenance manuals contemplated at **section R6.32** 6 months prior to Completion.
- (b) If the parties have not entered into the Licence for Infrastructure and Maintenance Agreement by the Date of Completion, either party may refer the dispute or difference to dispute resolution pursuant to clause 23 of this Deed.

Until the parties entering into the Licence for Infrastructure and Maintenance Agreement

access to the Project Works will be governed by this Deed.

### **R7. ASSET MANAGEMENT AND CONFIGURATION MANAGEMENT**

#### **R7.1 ARTC Asset Requirements**

- (a) TfNSW must ensure that its configuration management activities include a change management process aligned with AS ISO 10007 Quality management systems - Guidelines for Configuration Management.
- (b) For all Project Works, TfNSW must follow EGP-03-01 Rail Network Configuration and Management.
- (c) TfNSW must have in place, maintain and consistently apply until Completion configuration control measures to ensure those activities are supported to meet the requirements of ARTC's configuration control processes.

## R7.2 Design Development requirements for Asset Management

- (a) Based on the scope provided for the Project, TfNSW must be replacing ARTC's assets with the same type of assets that currently exist.
- (b) If the scope of works results in significant additional work and requires the introduction of new asset types, TfNSW must gain ARTC's approval for the new types of asset in line with ARTC's Standards.
- (c) Any waiver or type approval must comply with the ARTC Standards and Procedures.

## R7.3 Spare Parts Requirements

- (a) At this stage, based on the scope provided by TfNSW for the Gateway Project, no additional spare parts will need to be provided for the Gateway Project.
- (b) If significant additional work is required on ARTC assets, then ARTC will nominate its spare parts requirements.

## R7.4 Configuration Control Board Submissions and Approvals

- (a) TfNSW must not commence any new project phase until the ARTC CCB has issued an approved Configuration Change Request for the relevant Project Works Package.
- (b) TfNSW must adequately address any residual open assurance comments provided from ARTC prior to the Configuration Control Gates noted in Table R7.3.
- (c) The ARTC Project Manager will establish an ARTC CCB dedicated for the Project which will meet monthly to assess ARTC CCB submissions.
- (d) TfNSW must submit to and attain approval via the ARTC CCB for the following Configuration Control Gates:

Gate	Description	Requirements
Gate 0	Project Approval	ARTC will present an overview of the Project to ARTC Stakeholders to identify the purpose, impacts and or potential impacts in to ARTC assets and operations.
Gate 1	Concept Design	Submit Concept Design <i>(note: ARTC will establish the CCB and present this design stage to the CCB)</i>
Gate 2	Functional Design Stage 1	Submit approved Functional Design Stage 1 Design Documentation
Gate 3	Final Detailed Design Stage 3	Submit approved Final Detailed Design Stage 1 Design Documentation, including Project Verifier Design Certificate and evidence of all closed comments.

Gate	Description	Requirements
Gate 4	Commissioning	Submit commissioning work packs and any Asset Management Information required pre-commissioning.
Gate 5	Handover	Submit As Built Drawings, quality records, relevant certifications, update asset registers.

**Table R7.3. Configuration Control Gates**

- (e) TfNSW must submit presentation materials for each Project Works Package and with the exception of Gate 0 and Gate 1, shall present to the ARTC CCB through each Configuration Control Gate.
- (f) Prior to any presentation, TfNSW must allow 10 Business Days for the ARTC Project Manager to review the Presentation Material and associated Design Documentation and provide an approval to present.
- (g) If the ARTC Project Manager does not provide such an approval the presentation material and Design Documentation must be revised, and resubmitted and a further 5 Business Days will apply for the ARTC Project Manager to consider its approval.
- (h) Once approved, TfNSW must submit the presentation material to the ARTC CCB. The submission must be made no later than 5 Business Days unless otherwise approved by the ARTC Project Manager.
- (i) The ARTC CCB will review and provide comment on certain aspects of the design, construction and operations which impact or have the potential to impact ARTC assets.
- (j) All comments provided by the ARTC CCB must be tabulated and appropriate responses provided to close the comments out. TfNSW must provide this table to the ARTC CCB to facilitate the ARTC CCB's endorsement.
- (k) TfNSW must obtain the ARTC CCB's written endorsement of each Configuration Control Gate submission. Such endorsement must be provided prior to proceeding to a subsequent Configuration Control Gate.
- (l) TfNSW must prepare and submit to the ARTC Project Manager all Design Documentation, including Asset Management Information required to support ARTC's network.
- (m) TfNSW must provide a list of all Design Documentation including revision numbers and must complete and comply with ARTC's configuration change management process.
- (n) TfNSW must nominate design review packages and include asset management project managers.
- (o) Presentations must include appropriate drawings and/or construction methodology.



- (p) TfNSW must present the relevant parts of the design as determined by the ARTC Project Manager to the ARTC CCB, which may consist of ARTC Operations and the ARTC Project Team. Presentation Material may include discipline specific elements including track, signalling, civil, geotechnical drainage, electrical, earthing and bonding, and communications.
- (q) By agreement of the ARTC Project Manager, presentations to the ARTC CCB may be omitted at Functional Design Stage 1 and Final Detailed Design Stage 3.

#### **R7.5 Network Alteration Notice (NAN)**

- (a) Following the CCB approval for the first work CCB gate for each package, ARTC will issue a NAN to TfNSW to identify the Project Works Package. The NAN will be used by ARTC for the Project Works Package for all of the ARTC Asset Management activities.
- (b) TfNSW must subsequently close out each NAN that is issued. The requirements are nominated in EGP-03-01.

#### **R7.6 Providing information to support ARTC maintenance**

Prior to the approval of the ARTC CCB Gate 4, TfNSW must prepare all the asset management and maintenance information required by ARTC to be loaded into the Ellipse Equipment Register. The ARTC Project Manager will review and confirm that the information presented is correct.

### **R8. CONSTRUCTION**

#### **R8.1 Approval to Construct Project Works**

- (a) For all Project Works, in addition to what is required by the ARTC Standards and Procedures, the following documents are to be submitted for ARTC review and comment. The Project Works cannot commence without closeout of all ARTC comments and the acceptance of the ARTC Project Manager.
- (b) [REDACTED] prior to commencement of any Project Works:
  - (i) Project Safety Management Plan;
  - (ii) Incident & Emergency Management Plan;
  - (iii) Project Quality Management Plan;
  - (iv) Project Environmental Management Plan; including an operational noise assessment report;
  - (v) Communications Plan;
  - (vi) Project Works Structure agreed by ARTC

- (vii) Project Program for the Project Works;
  - (viii) Agreed Worksite Access Plans covering all of ARTC's licensed land;
  - (ix) Dilapidation reports for all ARTC assets, and section of the ARTC Facilities that may be affected by the Project;
  - (x) Detailed Site Survey for the whole Project and Excavation Permit Process; and
  - (xi) Provide synopsis of contracts for execution of the Project Works, and letter from TfNSW providing a summary of TfNSW Contracts including TfNSW Associate competencies.
- (c) [REDACTED] prior to commencement of a Work Package of Project Works:
- (i) Worksite Methodology agreed by ARTC including relevant risk assessments;
  - (ii) Worksite Access Plan for work outside the Danger Zone agreed by ARTC including material storage and access;
  - (iii) Draft Worksite Access Plans for Track Occupations;
  - (iv) Design Documentation agreed by ARTC and verified by the relevant Project Verifier;
  - (v) Signalling installation work package;
  - (vi) Lift plans, temporary works design, settlement management plans
  - (vii) ARTC CCB approvals; and
  - (viii) Material storage.
- (d) [REDACTED] prior to the commencement of Project Works
- (i) All SWMS;
  - (ii) draft Worksite Protection Plans;
  - (iii) role reports; and
  - (iv) any other safety documents in line with the Worksite Methodology issued and agreed by ARTC.

## R8.2 Worksite Methodology

- (a) For all significant work tasks for each Project Works Package, TfNSW must develop their proposed Worksite Methodology, including a proposal for worksite protection. The Worksite Methodology must be issued by TfNSW to obtain ARTC's agreement.
- (b) Any change to the Worksite Methodology must be re-issued to ARTC and must receive ARTC's approval.

## **R9. TRACK POSSESSIONS**

### **R9.1 ARTC Track Possession Programs**

- (a) For weekend possessions, ARTC will issue the current ARTC Track Possessions Schedule on a regular basis. The Track Possessions Schedule will usually show possessions twelve months in advance. ARTC is currently planning to have four possessions each year.
- (b) TfNSW must advise ARTC at the Interface Working Group meetings, a [REDACTED]
- (c) TfNSW may request to have weekend possession dates changed through the monthly Interface Working Group's meetings.
- (d) For planned weekday possessions or planned regular worksite protection arrangements, ARTC is yet to gain internal agreement for any significant arrangements.
- (e) In the planning of Track Possessions, ARTC maintenance will always have priority for access ahead of Project Work. ARTC major maintenance work is usually known at least six months in advance.

### **R9.2 ARTC's General Requirements for Track Possessions**

- (a) TfNSW must complete the planned Project Works without disruption, interference or impact on operational rail traffic or other planned ARTC project work. TfNSW is required to liaise with the ARTC Project Manager and where necessary the Possession Protection Officer and must comply with any proposed changes to their work methods and program.
- (b) During Track Possessions, ARTC may have planned other activities in adjacent worksites which may impact and delay progress of TfNSW's work. ARTC will endeavour to minimise the potential for delays to TfNSW, however, TfNSW must ensure all work activities are scheduled within the available working hours in each Track Possession. TfNSW must ensure that prior to commencement of the Track Possession, all plant and equipment are ready to work or ready to travel to the Worksite and all TfNSW Associates have undertaken a pre-work briefing and any necessary preparatory works is completed.

### **R9.3 Track Possession Program**

- (a) TfNSW must supply a Track Possession Program for every component of work to be completed in the Track Possession. The draft of the detailed Track Possession Program is to be provided to the ARTC Project Manager [REDACTED]
- (b) ARTC will review the Track Possession Program and will discuss any improvements or concerns with TfNSW prior to providing a response



within 20 Business Days. ARTC's key objective in assessing the program is that the work can be completed in the available time and has the appropriate levels of resources, contingencies for time, equipment and resources.

- (c) TfNSW, if needed, may revise its program and re-issue it to ARTC 90 Business Days prior to a Track Possession. ARTC will review the revised Track Possession Program and will discuss and improvements or concerns with TfNSW prior to providing a response within 20 Business Days.
- (d) TfNSW must develop the proposed final Track Possession Program and issue it to the ARTC Project Manager 60 Business Days before the Track Possession. ARTC will review the program to determine that TfNSW has the appropriate level of contingency and resources to ensure the work is completed within the Track Possession period.
- (e) If ARTC has not agreed to the final Track Possession Program issued in **clause R9.3(d)** above access to the Track Possession will not be granted by ARTC. TfNSW may then raise ARTC's rejection of the Track Possession to the next Executive Forum Meeting.
- (f) The Track Possession Program will be completed in the template format issued by ARTC and will include:
  - (i) as a minimum, activities that define the protection limits, time for the commencement of Project Works; tracks blocked, tamping (if required), signalling/ wheels free (if required), hand back times;
  - (ii) as a minimum, the columns entitled; task, duration (hrs.), start time, finish time, km from and km to, up blocked and down blocked (yes/no);
  - (iii) show inter-relationships between worksite activities;
  - (iv) programs are to be presented in 24-hour calendars with hourly increments;
  - (v) estimated float for activities within the Track Possession to deliver planned scope;
  - (vi) estimated duration of all TfNSW's tasks and activities and scope to be delivered;
  - (vii) contingency periods;
  - (viii) track and civil certification requirements; and
  - (ix) signal re-instatement and certifications.
- (g) TfNSW's progress against this program will be tracked throughout the Track Possession.
- (h) TfNSW must allow six (6) hours per Track Possession (two (2) hours at the start for ARTC handover, and four (4) hours at the conclusion for ARTC inspection, protection pick-up, and hand back); and

- (i) TfNSW must satisfy all reporting requirements for closedown management as directed by the ARTC Project Manager. This will include progressive updates against each Track Possession Program (both in Microsoft Word and Microsoft Project formats) and may include participation in closedown management teleconference meetings held at nominated times during each shift in each closedown event.

**R9.4 Passage of Third-Party Trains, work trains and track machines through a TfNSW Worksite During a Track Possession**

- (a) TfNSW must establish a clear protocol for the transfer of work trains and track machines through their Worksites during a Track Possession. Staff from Trains and track machines will not be allowed to leave their Trains or Machines in TfNSW's Worksite.
- (b) The established protocol is not to delay the movement of the Trains or Machines other than stopping at the boundary of the Worksite.
- (c) Coordination of Train and Machine movements
  - (i) Prior to the Track Possession: Train and Machine movements will be programmed into the overall Track Possession Program by ARTC's Possession Protection Officer.
  - (ii) During the Track Possession: There may need to be changes to the programmed running times of trains and machines. The ARTC Possession Protection Officer will liaise with TfNSW respective site manager and Worksite Protection Officer(s) and other Worksites and advise TfNSW site manager/Worksite Protection Officer the revised running times for Trains and Machines.

**R9.5 Track Possession Planning**

- (a) TfNSW must ensure that all required TfNSW Associates attend the Project Working Group Meetings run by the ARTC Possessions Planning Manager to address project planning, delivery and debriefs as detailed in Table R9.4
- (b) TfNSW must provide all project specific bid sheet details to the ARTC Project Manager more than 60 Business Days prior to work commencing.

<b>Scheduling</b>	<b>Details / Purpose</b>
T – 6 weeks	Planning and program development meeting. Project risk review and coordination meeting.
T – 4 weeks	Worksite specific planning meeting. Track Possession details discussed.
T - 2 weeks	Review and finalisation of all planning requirements and site-specific plans. Interaction and coordination with other projects/shareholders confirmed.

Scheduling	Details / Purpose
T – 6 weeks	Planning and program development meeting. Project risk review and coordination meeting.
T + 2 weeks	Track Possession debrief and lessons learnt to be held within 2 weeks of the completed Track Possession. This meeting may also be used to complete a performance report.

**Table R9.4 – Track Possession Specific Planning Meeting Schedule**

#### R9.6 Handover Documentation

- (a) The geometry of the completed track work shall be in accordance with ARTC's National Codes of Practice (**ARTC NCoP**) Standard.
- (b) Completion of the Project Works for the purposes of this Project Works Deed will not occur until ARTC has confirmed that the completed Project Works are in accordance with ARTC design requirements and ARTC Standards and Procedures, this Schedule 2 and constructed within the construction tolerances.
- (c) Prior to the Completion of the Project Works, TfNSW must certify the completed sections of track are fit and suitable for rail traffic at the design operating line speed. The completed track shall be certified by TfNSW's track certifier and handed back to ARTC in a condition that complies with the base operating standard for track geometry as described in ARTC NCoP standard.
- (d) TfNSW must immediately advise the ARTC Project Manager of any requirements for temporary speed restrictions as a result of any incomplete work.
- (e) Following completion of the physical Project Works, TfNSW is entitled to make a submission for Completion. However, prior to this submission TfNSW must ensure that:
  - (i) the track within the Worksite has been certified and handed back to ARTC;
  - (ii) the Worksite has been left neat and tidy, in pre-existing condition or better;
  - (iii) cess drains have been maintained and/or re-established and all culverts are free of debris;
  - (iv) all Handover Documentation have been submitted;
  - (v) all unserviceable materials have been disposed of;
  - (vi) all serviceable material has been returned to ARTC; and
  - (vii) any other works directed by the ARTC Project Manager have been completed.



## **R9.7 Certification of Completed Project Works**

- (a) The geometry of the completed track work shall be in accordance with ARTC's NCoP Standard.
- (b) Completion of Project Works will not occur until ARTC has confirmed that the Project Works completed are in accordance with ARTC design requirements and standards and constructed within the construction tolerances.
- (c) Prior to the Completion of Project Works, TfNSW must certify the completed sections of track are fit and suitable for rail traffic at the design operating line speed. The completed track shall be certified by TfNSW's track certifier and handed back to ARTC in a condition that complies with the base operating standard for track geometry as described in ARTC's NCoP standard.
- (d) TfNSW must immediately advise the ARTC Project Manager of any requirements for temporary speed restrictions as a result of any incomplete work.
- (e) Following Completion of Project Works, TfNSW is entitled to make a submission for Completion. However, prior to this submission TfNSW must ensure that:
  - (i) the track within a Worksite has been certified and handed back to ARTC;
  - (ii) the Worksite has been left neat and tidy, in pre-existing condition or better;
  - (iii) all cess drains have been maintained and/or re-established and all culverts are free of debris;
  - (iv) all Handover Documentation has been submitted;
  - (v) all unserviceable materials have been appropriately disposed of;
  - (vi) all serviceable material has been returned to a secure location reasonably nominated by ARTC; and
  - (vii) any other works reasonably directed by the ARTC Project Manager have been completed.

## **R10. WORK NEAR SERVICES**

### **R10.1 Detailed Site Survey**

- (a) TfNSW must develop a Detailed Site Survey for all Worksite access roads to a minimum of three meters from any work, storage or access area.
- (b) TfNSW must initially obtain all Dial Before You Dig information from third party services owners as well as from ARTC and Sydney Trains, (if relevant) for their services.

- (c) TfNSW must then locate and survey all the services identified in a manner approved by the service owner. For ARTC owned services, this survey should be completed to a minimum standard no less than the current TfNSW standard for railway surveying. The survey is to nominate the three-dimensional position of the services.
- (d) TfNSW must then develop a plan showing all the services identified.
- (e) All initial Detailed Site Surveys are to be issued to ARTC for ARTC's comment.

#### **R10.2 Excavation Permit Process**

- (a) TfNSW must develop an Excavation Permit Process. The process is to be issued to ARTC for review and agreement.
- (b) TfNSW must fully comply with their established process.
- (c) As a minimum for all excavation work, TfNSW's Associates must, in a non-destructive manner, locate all services within two meters of the excavation. In addition, any excavation or work must comply with all the Services Owners requirements.

#### **R10.3 Final Detailed Site Survey**

Upon the Completion of the Project Works TfNSW must provide the Final Detailed Site Survey to ARTC showing the survey details of original, relocated and new services. The Final Detailed Site Surveys are to be provided to ARTC in a format acceptable to ARTC.

### **R11. QUALITY**

#### **R11.1 Quality System Standard**

TfNSW must maintain a documented quality system in accordance with AS/NZ ISO 9001/2. The quality system shall cover the Project Works under this Project Works Deed.

#### **R11.2 Project Quality Management Plan**

- (a) The Project Quality Management Plan must detail how TfNSW will manage and control the quality of Project Works under this Project Works Deed. The plan is to be submitted to the ARTC Project Manager prior to the commencement of Project Works on the MFN Side.
- (b) The Project Quality Management Plan must be submitted no less than eight (8) weeks prior to Project Works commencing on the MFN Side and will include:
  - (i) management responsibilities specific to the Project Works including the responsibility and authority for quality, including a nominated

person to maintain the project quality records and submit them to the ARTC Project Manager;

- (ii) organisational structure proposed for the Project Works, site management and supervision;
- (iii) qualifications and competencies including currency of all staff proposed to be used to deliver the Project Works;
- (iv) TfNSW's method of control of subcontract work;
- (v) equipment, methods and processes proposed to be used in the Project Works:
- (vi) Worksite access routes;
- (vii) material storage areas;
- (viii) distribution of materials prior to installation;
- (ix) quality of ballast contained in stockpiles;
- (x) structural fill and capping layer;
- (xi) subsurface and surface drainage; and
- (xii) certification of track prior to handover to network control;
- (xiii) safe work method statements for all Project Works;
- (xiv) provision of quarry material test certificates for all fill materials and ballast. Certificates containing test results must be less than two (2) months old;
- (xv) the construction, testing, commissioning and certification of track work in accordance with ARTC Standards and Procedures;
- (xvi) adopted procedures and tests ensure that all materials used are compliant to ARTC Standards and Procedures;
- (xvii) detailed equipment and machinery maintenance plans to assist assurance of expected performance standards;
- (xviii) Worksite management and supervision; and
- (xix) Inspection and Test Plans.

### R11.3 ITPs

- (a) Inspection and Test Plans must be submitted to the ARTC Project Manager for acceptance with the Project Quality Management Plan prior to the Project Works commencing and nominate those ITPs which relate to ARTC assets. TfNSW's own Inspection and Test Plans may also include evaluation of the effectiveness of all site-specific management plans including traffic management plans, Project Environmental Management Plans and Project Safety Management Plans through internal auditing systems.



- (b) The ITPs must:
  - (i) identify tests / inspections aligned with ARTC Standards and Procedures and the requirements of this Project Works Deed;
  - (ii) identify Hold Points and responsibilities to release these points (Hold Points can be nominated by the ARTC Project Manager, including responsibilities for release by ARTC personnel);
  - (iii) identify records to be maintained or particular tests and / or inspections; and
  - (iv) detail test equipment to be used for specified tests and / or inspections.

#### **R11.4 Hold Points and Witness Points**

- (a) Hold Points and witness points shall be specified by TfNSW in the ITPs (including any Hold Points and witness points nominated by the ARTC Project Manager). TfNSW must not proceed beyond a Hold Point until that Hold Point has been released by the assigned position.
- (b) TfNSW must make suitable arrangements to notify the ARTC Project Manager 48 hours prior to when a Hold Point or witness point they are assigned to will be reached so that they can review and witness any work process, record or test being undertaken by TfNSW and thus expedite the release of that Hold Point or witness point. TfNSW must define the method of fulfilling a Hold Point or witness point.

#### **R11.5 Records**

- (a) TfNSW must establish and maintain a system of records that provides objective evidence that the requirements of this Project Works Deed have been satisfied.
- (b) TfNSW must make all records pertaining to this Project Works Deed available to the ARTC Project Manager at all reasonable times and, where requested by the ARTC Project Manager, shall provide a copy of the records. The documents shall be scanned and submitted electronically, and one bound hard copy submitted to the ARTC Project Manager within the time frames noted below in **clause R11.6**.

#### **R11.6 Document Submission Requirements**

- (a) All documents must be submitted formally via Aconex including a cover page with a lot-register indicating which will track the progress of all quality documentation to be submitted.
- (b) All quality documentation must be grouped and submitted per the agreed contract work structure.

#### **R11.7 Submission 48 hours post completion of the Track Possession**

TfNSW must submit copies (electronic is acceptable) of all documents listed below to the ARTC Project Manager within 48 hours of the completion of the Track Possession:

- (a) copies of all completed Worksite Protection Plans used;
- (b) copies of all safe work method statements;
- (c) before and after track alignment measurements;
- (d) completed weld return forms;
- (e) signalling Infrastructure Booking Authority (IBA) form;
- (f) stressing records;
- (g) weld testing reports;
- (h) completed and signed Inspection and Test Plans; and
- (i) track certification certificates (completed and signed by the track certifier).

#### **R11.8 Submission two weeks post completion of the Track Possession**

The following documents must be submitted to the ARTC Project Manager within two (2) weeks of completion of the Track Possession (except where noted otherwise):

- (a) a copy of the final construction environmental management plan (including all "as-constructed" records of erosion and sediment control plans);
- (b) requests for information, non-conformance reports and other forms and reports as specified in the Project Quality Management Plan; and
- (c) marked up copies of design or survey drawings or survey reports showing measured levels, grades (excluding track levels), with all mark-ups incorporated in Computer Aided Design (**CAD**) format per EGP-04-01, available at <https://extranet.artc.com.au/docs/eng/all/procedures/EGP-04-01.pdf> ;
- (d) quantification and utilisation of labour, plant and equipment on site;
- (e) dilapidation report / photographs of the site before and after TfNSW carried out the Project Works;
- (f) photographs throughout construction;
- (g) material disposal docket;
- (h) rail creep recording sheet;
- (i) geotechnical construction compliance report;
- (j) all incidents, causes and remedial actions taken;
- (k) a Defect walkthrough and updated Defect list; and

- (l) any other material as directed by the ARTC Project Manager.

#### **R11.9 Independent Testing**

- (a) The ARTC Project Manager may carry out independent examination and testing of materials that have been supplied, stored, handled, transported or installed.
- (b) TfNSW must provide any necessary resources and facilitate the ARTC Project Manager in such independent examinations and tests. The independent testing organisation to be used in any such independent examinations and testing shall be a National Association of Testing Authorities (**NATA**) accredited laboratory, accredited for the test being performed with test results reported on NATA endorsed test documentation.

#### **R11.10 Quality Audit and Non-Conformances**

- (a) TfNSW must make or arrange to be made available to ARTC, all facilities, documentation, records and personnel that are reasonably required for any audits or surveillance to be undertaken by ARTC to ensure specified requirements are being met.
- (b) TfNSW must immediately report any non-conformances to the ARTC Project Manager. This may be completed orally. This must be followed up with a complete and written non-conformance report submitted within three (3) Business Days of the non-conformance occurring.

#### **R11.11 Inspections**

- (a) The ARTC Project Manager may inspect the Project Works in order to determine compliance with the provisions of this Schedule and this Project Works Deed.
- (b) During any inspection of the Project Works, the ARTC Project Manager must not cause unnecessary inconvenience to TfNSW or TfNSW Associates.
- (c) The ARTC Project Manager will liaise with TfNSW and will also use reasonable endeavours to liaise with TfNSW Associates, prior to any inspection, except in the case of an emergency (as determined by ARTC in its absolute discretion).
- (d) TfNSW must make available, on request by the ARTC Project Manager, all relevant information or records including those of TfNSW Associates during the inspection or audit process.
- (e) TfNSW must at its own cost provide all reasonable assistance to ARTC's audit team during the inspection and audit process including attendance by TfNSW.



## **R12. INCIDENT MANAGEMENT**

### **R12.1 Project Incident Management Plan**

- (a) TfNSW must develop an Incident & Emergency Management Plan for the Project Works covering all types of incidents- safety, environmental, etc.
- (b) The Incident & Emergency Management Plan must be coordinated with adjacent projects including:
  - (i) Botany Rail Duplication;
  - (ii) Botany Yard Signalling;
  - (iii) Sydney Metro;
  - (iv) ARTC maintenance and possession works; and
  - (v) any other third-party works as told by the ARTC Project Manager.
- (c) The Incident & Emergency Management Plan is to cover the following areas:
  - (i) Processes for dealing with potential emergencies;
  - (ii) Key contacts for TfNSW and TfNSW Associates for the Project Works;
  - (iii) Key contacts for ARTC including:
    - (A) ARTC Project Manager;
    - (B) Network control office Emergency Number;
    - (C) Area Manager; and
    - (D) ARTC Enviroline.
- (d) Adjacent projects
  - (i) ARTC Network Control;
  - (ii) Key contacts for emergency services and emergency access routes as applicable; and
  - (iii) Key contacts for third-party services.
- (e) The Incident & Emergency Management Plan will be submitted to the ARTC Project Manager for approval.

## **R13. SIGNALLING PROJECT WORKS AND DESIGN ACCESS ARTC EQUIPMENT**

### **R13.1 General**

- (a) TfNSW must provide resources for signalling support work for Project Works. This includes:

- (i) provide a signalling works package prior to commencing work in accordance with ESC-21-02, available at <https://extranet.artc.com.au/docs/eng/signal/procedures/constructi on/ESC-21-02.pdf>, to describe the proposed signalling scope of works;
  - (ii) book signalling equipment out by removing fuses and terminals at the appropriate location;
  - (iii) completion of an Infrastructure Booking Authority (**IBA**) form at the start and finish of each Track Possession;
  - (iv) disconnection and reconnection and certification of track connections;
  - (v) disconnection and reconnection and certification of signals protecting the Worksite;
  - (vi) restoring fuses and terminals, carry out testing on affected track circuits and completing a track history card;
  - (vii) carrying out shunt test on new rails. Where possible, ARTC shall arrange the new rail to be ground as part of the installation possession. In this case the shunt test may be carried out using a shunt box. Otherwise the shunt test must be attempted either using any available track machines, or the first operational train(s) to use the section after hand back of the Track Possession. If operational trains are used, then TfNSW must ensure the affected signals and track circuits are nominated as part of the signalling Project Works Package; and
  - (viii) If necessary, carrying out repairs to damaged signalling equipment attributed to the Project Works carried out by TfNSW or any TfNSW Associate.
- (b) All signalling work must be carried out by staff appropriately qualified to work on the Railway, in the Railway Corridor or with the Rail Facilities, and in accordance with the appropriate ARTC Standards and Procedures, including:
- (i) SMP08 Booking signalling equipment out of use;
  - (ii) SMP09 Disconnection of signalling apparatus;
  - (iii) ESM-07-01 Track Circuits;
  - (iv) ESM-07-02 Track Circuit and Train Detection Devices; and
  - (v) SMP26 Re-railing – Precautions to be taken.
- (c) TfNSW must include all ARTC Standards and Procedures in relation to signalling for testing and certification of signalling equipment in the ITPs for the Project Works.

## R13.2 Buried Services

- (a) TfNSW is responsible for the pot holing and marking out on site of buried services and ensuring they remain undisturbed during the Project Works. Any cables which may impact upon TfNSW carrying out the Project Works are to be identified and advised to the ARTC Project Manager. Unless specified in the site-specific scopes, there is to be no relocation of buried services.
- (b) Any work that requires temporary support or relocation of ARTC services requires a temporary works plan.
- (c) All services that are within the area of planned work or access routes shall be overlaid on the relevant design plan and provided to ARTC. These plans are to be updated with any detailed service location information found during the Project Works. These plans shall be kept on site at all times.
- (d) TfNSW must advise ARTC of any excavation or vehicle movement within 1 metre of an identified service before the Project Works. ARTC may require a representative to attend the Worksite during the relevant work.
- (e) For any work within 3 metres of an ARTC or third-party service, the service must be visually sighted through non-destructive excavation to confirm its location. The location of the services must be confirmed and/or updated on the services plan and must be physically demarcated on site.
- (f) The detailed locations identified of all services must be added to ARTC service location plans (**DSS**) per ARTC's DSS requirements and standards.
- (g) TfNSW is responsible for carrying out a Dial Before You Dig services search and keeping the appropriate documentation on site during the works.
- (h) In the event of any identified cables or infrastructure being damaged or disturbed, TfNSW must:
  - (i) immediately report the incident to the ARTC Project Manager or other ARTC delegate;
  - (ii) identify TfNSW Associates competent to determine whether any damaged cables are 'live' or redundant; and
  - (iii) carry out any repairs necessary to repair, test and commission the damaged infrastructure.



## **R14. SURVEY**

### **R14.1 Survey Equipment**

- (a) TfNSW must use electronic total stations for all permanent control mark coordination, track measurements and track control mark (TCM) placements and as a minimum meet the following requirements:
  - (i) electromagnetic distance measuring device with a capability of measuring distances with the error having a standard deviation of less than 5mm + 5ppm;
  - (ii) angular measurement error for both horizontal and vertical circles with a standard deviation of less than three (3) seconds of arc;
  - (iii) one (1) second of arc minimum count;
  - (iv) diametrical vertical circle reading and automatic tilt compensator; and
  - (v) a capability to electronically record and store field data such as horizontal and vertical angles, distances, point notation, target and instrument heights.
- (b) The electronic total station must have a calibration procedure and must be calibrated within 12 months prior to it being used for any survey task outlined within this document.
- (c) For surveys using Real-Time GNSS equipment for construction, noting that Real Time GNSS procedures must not be used for height determination where a construction accuracy of less than 50 mm is specified, TfNSW must:
  - (i) validate equipment and survey by occupying established survey control marks and comparing surveyed coordinates with recorded coordinates; and
  - (ii) record all measurements including quality checks.

### **R14.2 Maintaining Permanent Survey Control**

- (a) All permanent survey control marks installed must adhere to the ARTC standard ETD-00-04 Control Survey, updated from time to time and available at <https://extranet.artc.com.au/docs/eng/track-civil/procedures/track-civil/ETD-00-04.pdf>. TfNSW is responsible for preserving and maintaining all existing permanent survey control marks during the Project Works.
- (b) Where a permanent survey control mark is likely to be disturbed or destroyed as part of the Project Works, a new replacement permanent control mark must be installed and traversed (not resected) prior to the existing mark being disturbed. Both the existing and new mark must be included in the traverse and subsequent least squares adjustment. Unless

approved, the new mark and the mark being disturbed must be directly connected as part of the traverse by observing distance and angular measurements from both marks.

- (c) All permanent and temporary survey control marks must be placed in stable ground positions and allow for the mark to be occupied. They are to be located clear of running lines and as far as practicable clear of all access roads and other areas that pose a risk to survey staff and/or a risk the mark will be disturbed or destroyed by current or future works.
- (d) Temporary survey control marks must be durable and remain in place for the duration of this Project Works Deed.
- (e) If TfNSW places additional control marks and obtains coordinates for these marks by utilising resection techniques, these must be noted in the coordinate listing provided to ARTC at the conclusion of the Project Works.

#### R14.3 Track mark-up for Permanent Control Marks

- (a) All track control marks (TCMs) installed must adhere to the ARTC standard ETD-00- 04 Control Survey. TfNSW must be responsible for preserving and maintaining all existing TCMs during the Project Works.
- (b) Where TCMs do not exist, have been removed or have been disturbed for the purposes of the Project Works TfNSW must install new TCMs at the following frequency:
  - (i) every 100m on straight track;
  - (ii) every 20m on curves of radius greater than 400m;
  - (iii) every 10m on curves of radius less than or equal to 400m;
  - (iv) every 10m on transition curves irrespective of radius; and
  - (v) at all frame points (TP, TRS, CTP, CTRS, etc.).

#### R14.4 Offset

TfNSW must adhere to the requirements below for all offsets.

- (a) In open track areas:
  - (i) 2.5m nominal offset from the near rail running face, without affecting access or drainage. All alternate offsets shall be increased by 0.5m increments up to a maximum of 5.0m. (i.e.: 3.0m, 3.5m, 4.0m, 4.5m & 5.0m). Any requirement for offsets less than 2.0m or greater than 5.0m must be approved by the ARTC Project Manager; or
  - (ii) where offsets other than 2.5m have been used, the offset must be written on the web of the rail adjacent to the TCM next to the meterage (e.g. o/s 3.5m) using permanent white marking paint.
- (b) In rock or shotcrete cuttings, steel rods or similar must be either be drilled and epoxied or driven into the cutting face adjacent to the required point.

Minimum embedment depth must be 100-150mm and maximum protrusion must be 50-100mm. The offset must be written on the web of the rail adjacent to the TCM next to the meterage to the nearest 5mm. (E.g. o/s 3.515m). Alternatively, the mark may have a metal tag permanently affixed to the TCM (not the cutting face) with the meterage & offset details either stamped or engraved into the tag;

- (c) At platforms, structures and in tunnels:
  - (i) before undertaking any work at platforms, near structures or in tunnels, TfNSW must seek advice from the ARTC Survey Manager on the specific survey requirements for the location; and
  - (ii) refer to ARTC Standard ETD-00-04 CONTROL SURVEYS which is available at the following website address: <http://extranet.ARTC.com.au/docs/eng/track-civil/procedures/track-civil/ETD-00-04.pdf>.

#### R14.5 Track mark-up for TCM's

TfNSW must ensure that all track mark-ups must be written on the web of rail facing the TCM using white permanent paint pen. The following specific requirements also apply:

- (a) for TCMs at regular intervals the mark-up does not need to include the whole km just the metres, e.g. 050, 150, 500, 850;
- (b) for TCMs placed at whole km locations, only the whole km must be shown followed by the letters km, not the metres, e.g. 206km, 315km, 476km;
- (c) at frame point locations the mark-up shall include the frame point type and metres to 3 decimal places, e.g.: TRS 456.789, CTRS 321.789, CTP 209.852; and
- (d) where offsets other than 2.5m have been used, the offset must be written on the web of the rail adjacent to the TCM next to the meterage, e.g. o/s 3.5m using permanent white marking paint.

#### R14.6 Maintaining track mark-up

- (a) Where existing track mark-up is compromised by re-railing or relocation of the existing rails, TfNSW must ensure that all permanent survey control and TCM information is re-marked onto the rails. If pre-existing rails have been relocated, then TfNSW must ensure that all previous mark-ups are permanently removed. TfNSW must complete this task by painting over the superseded information using black paint.
- (b) Under no circumstances is yellow paint to be used on rails or sleepers.



#### R14.7 **Setting Out of Project Works and Project Works**

- (a) ARTC is to be responsible for providing to TfNSW the required track design and nominated survey control point(s) a minimum of three (3) weeks prior to undertaking the Project Works.
- (b) A minimum of two (2) weeks prior to undertaking the Project Works in any nominated track section TfNSW must verify and confirm that the survey design and permanent control points provided by ARTC are correct. TfNSW must set out the Project Works in accordance with the approved ARTC survey control points from which the work will be installed, measured and controlled.
- (c) Any issues or discrepancies identified by TfNSW must be immediately reported to the ARTC Project Manager for investigation and remedial action. To facilitate this investigation, TfNSW must supply an electronic copy of the least squares' adjustment and any other relevant data.

#### R14.8 **Construction and As Built Survey**

TfNSW is required to provide all surveying services (such as the equipment, materials and TfNSW Associates). Electronic copies of all survey reports are to be forwarded to the ARTC Project Manager as per **clause 19** of this Project Works Deed. The survey component of these records includes:

- (a) the coordinates and construction type of any newly placed control marks;
- (b) confirmation and electronic listing of new and existing survey control coordinates and copy of least squares adjustment;
- (c) the location of the existing track in relation to the design vertical & horizontal alignments prior to works;
- (d) the location of the existing track in relation to the design vertical & horizontal alignments prior to tamping;
- (e) the location of the track in relation to the design vertical & horizontal alignments at the conclusion of works and/or tamping;
- (f) provision of a final track marking sheet including the final rail position and any TCMs;
- (g) electronic listing of all track shots, TCMs, structures, etc. including X, Y, Z coordinates, km, offset, height and description of point surveyed;
- (h) clearance measurements for any structure within Normal Structure Gauge 1994. Refer to <http://extranet.ARTC.com.au/docs/eng/track-civil/procedures/clearances/ETM-07-01.pdf>;
- (i) provision of survey conformance reports on the layers of excavation and backfill including, box-out, subgrade, structural, capping, top of bottom ballast and/or layers as otherwise specified in the description of the Project Works;

- (j) a report on the km and offset (or rail) of:
  - (i) full depth excavation;
  - (ii) top of excavation ramp;
  - (iii) rail cuts;
  - (iv) weld locations (noting type of weld); and
  - (v) geotech test pit locations; and
- (k) identification and quantification of foundation treatment locations, areas of geogrid and geofabric placement, and the location of any known or discovered services within the Worksite limits.

#### **R14.9 Track Level Monitoring**

- (a) For works that may cause track settlement (e.g. piling, underboring, etc) or affect rail alignment, TfNSW must implement a monitoring plan as agreed by ARTC.
- (b) If the monitoring or ARTC geometry car testing determine that settlement or alignment changes have occurred, TfNSW must conduct remediation works per this Project Works Deed.
- (c) Access to conduct monitoring activities will be in line with this Project Works Deed including this Schedule 2.

#### **R14.10 DSS**

The detailed locations identified of all services must be added to ARTC service location plans (DSS) as instructed by the ARTC Project Manager. This includes any changes to services within the Project area as well as any services identified that were not previously recorded.

### **R15. TRACK MOUNTED EQUIPMENT**

#### **R15.1 PlantGuard**

All required plant must be certified via Plant Guard as per EPP-32-01.

#### **R15.2 Track Maintenance Vehicle Registration and Operation**

- (a) All track vehicle(s) when in travel mode or work operation configuration must conform to the Maximum Non-Electric Rolling Stock Envelopes in accordance with the ARTC Standards and Procedures.
- (b) Track vehicle(s) that do not comply with these standards, which are unlisted or unauthorised, are not permitted to access the Railway within the Railway Corridor. TfNSW is required to complete and provide all necessary information for registration through the Operations Standards



Manager. TfNSW is required to make themselves aware of all the relevant Network Rules, ARTC Standards and Procedures involved in this process.

- (c) TfNSW (vehicle owner / operator) proposing to utilise track vehicles on the Railway are to provide evidence that the track vehicles comply with ARTC Standards and Procedures and are individually registered and warranted to operate as track vehicles on the Railway. This shall include providing ARTC with engineering compliance certificates and assurance that the proposed vehicle(s) complies with the applicable ARTC Standards and Procedures.
- (d) TfNSW is required to obtain ARTC authorisation for the use of the track vehicle(s) on the Railway by providing the Operations Standards Manager submission containing the track vehicle specific details in accordance with the registration procedure available on the following ARTC website address: <https://extranet.artc.com.au/docs/eng/plant-equip/procedures/EPP-32-01.pdf>.
- (e) These details must be submitted to the Operations Standards Manager who will determine whether TfNSW's (track vehicle owner / operator) track vehicle is suitable for ARTC listing. Authorisation by the Operations Standards Manager is necessary prior to the use of the proposed track vehicle(s) on the Railway within the Railway Corridor. TfNSW must allow the time necessary for completion of the registration process, warranty notification (listing) and authorisation. The general period of time required to permit listing of track vehicle(s) is approximately eight (8) weeks from the submission of all required information.
- (f) The ARTC listing may specify restrictions on the use of the track vehicle(s) having regard to the following requirements:
  - (i) Safe working categorisation;
  - (ii) vehicle(s) speed(s); or
  - (iii) block working classification(s).
- (g) TfNSW must ensure the proposed track vehicle(s) shall comply with the applicable requirements of the Procedure for Plant Maintenance PP139 which is available at the following ARTC website address <http://extranet.ARTC.com.au/docs/eng/plant-equip/procedures/PP-139.1.pdf>
- (h) This procedure specifies the minimum operating and safety requirements TfNSW's (vehicle owner /operator) track vehicle(s) are required to meet when being used on the Railway within the Railway Corridor.
- (i) All proposed track vehicles are required to operate in accordance with ARTC's Network Rule ANWT 316, available at [https://www.artc.com.au/uploads/ANWT\\_316\\_I-3\\_Rev-1.pdf](https://www.artc.com.au/uploads/ANWT_316_I-3_Rev-1.pdf) (or other State equivalent) and comply with the minimum operating standards for rolling stock as specified in WOS 01 (in NSW) for specific track maintenance vehicle types (available at



<https://extranet.artc.com.au/docs/eng/rolling-stock/procedures/WOS01.pdf>). This standard is available on the ARTC website.

**R15.3 Hi-Rail Plant and Track Vehicle Operations**

- (a) TfNSW must ensure all hi-rail motorised plant is certified to operate on the Railway within the Railway Corridor.
- (b) If signals are required to be passed by hi-rail plant, then the operator must be qualified as a track vehicle operator or have safe working qualification of level 1 or 2. This will be enforced as per the Network Rules and procedures.

# Annexure 1

## Form of Project Verifier's Report

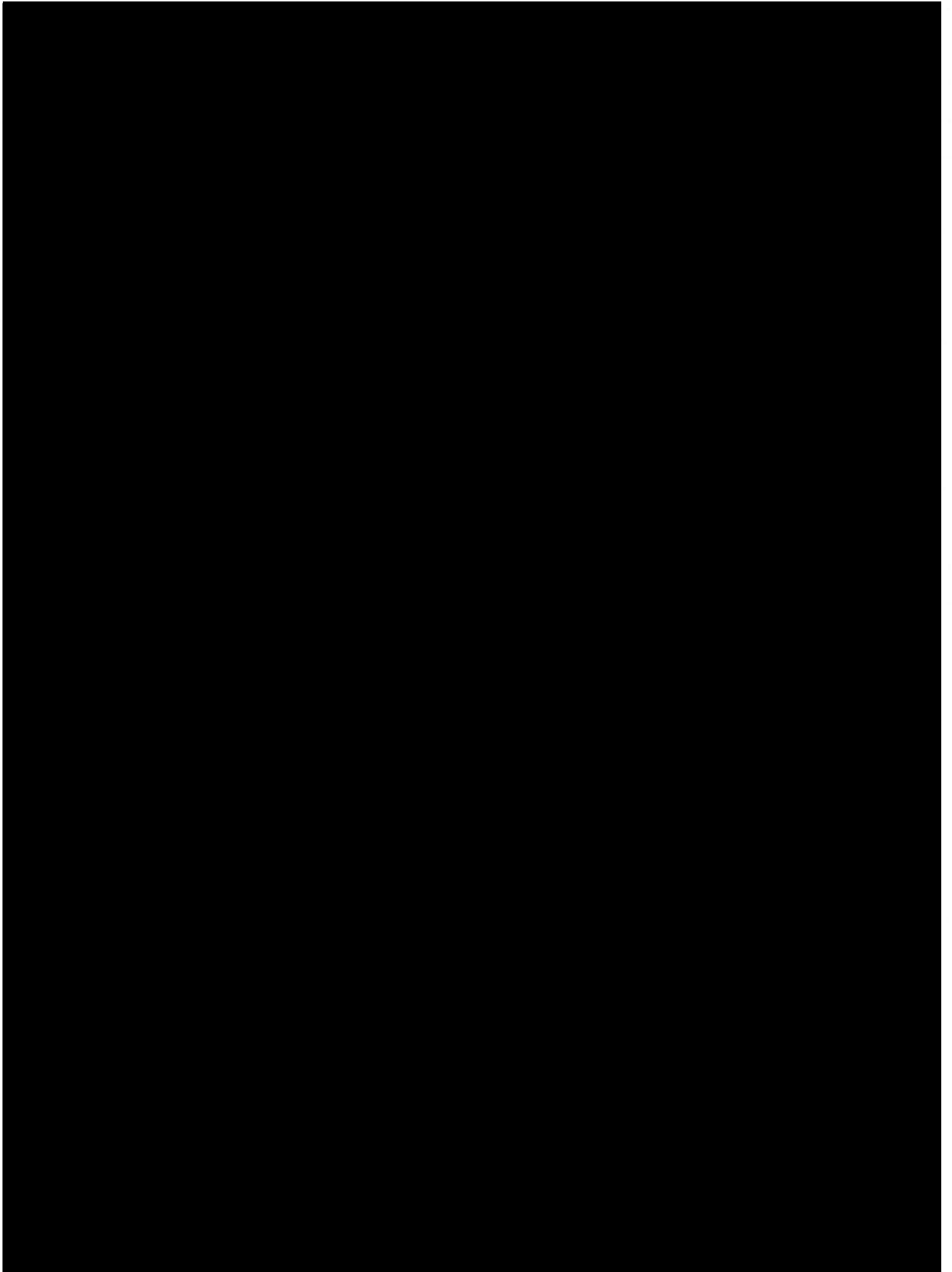
Each Project Verifier's Report must contain the following information:

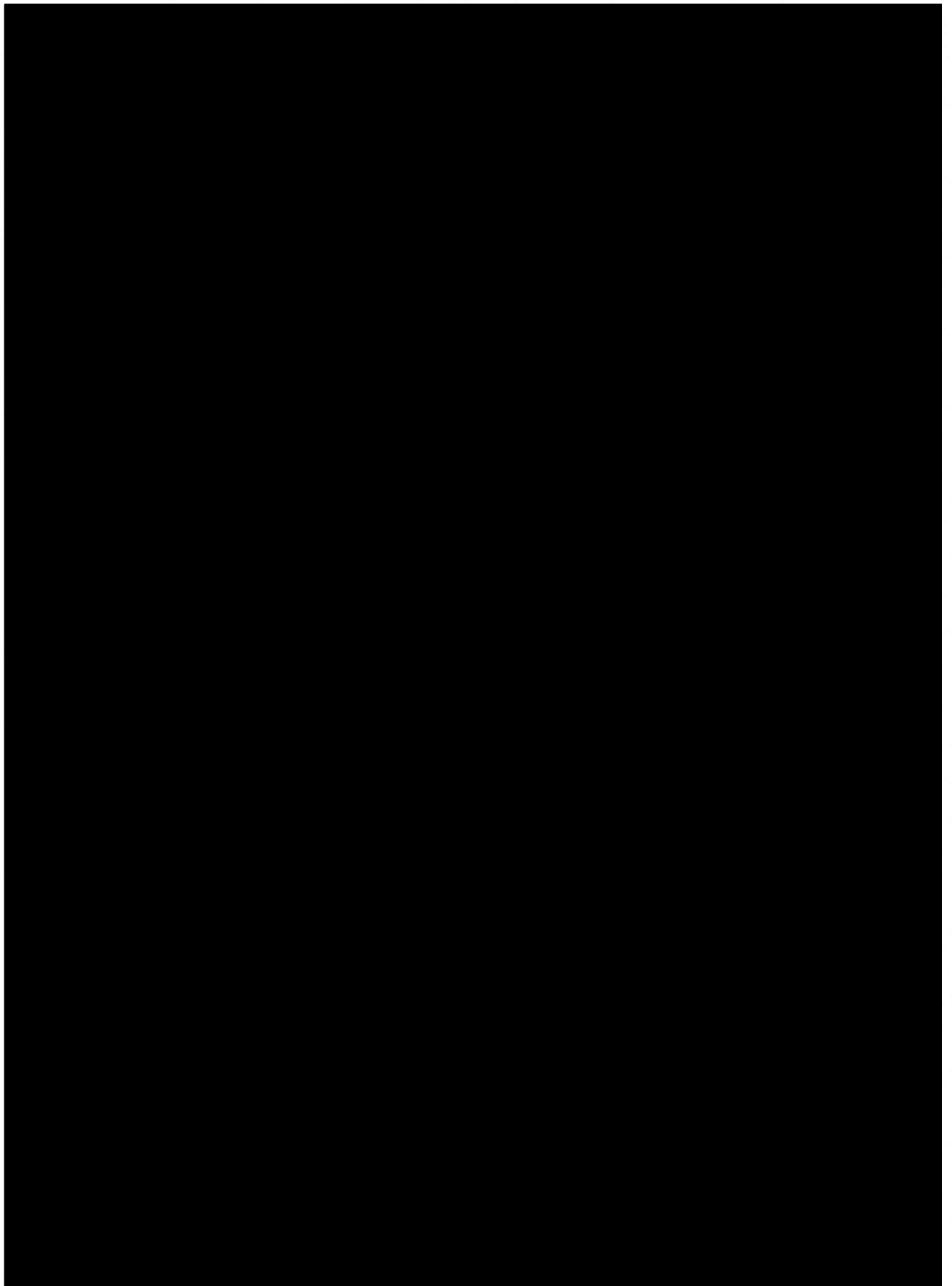
1. Introduction
  - a) Project
  - b) Contractor's structure
  - c) Design Consultant's structure
  - d) design package and Project Works Package structure
2. Design Project Verifier's role generally
3. Design package description
  - a) Physical description
  - b) Design Consultant's competent staff
  - c) Disciplines verified for the design package
  - d) Other design packages required to be integrated with the nominated design package
4. Project verification summary
  - a) Standards considered for the design package
  - b) Review for design integration and design functionality
  - c) Response to stakeholders comments
  - d) Project Verifier's questions, non-conformances and comments on the design package and closure when relevant
  - e) Design improvements nominated to the Design Consultant by the relevant Project Verifier
  - f) Outstanding issues

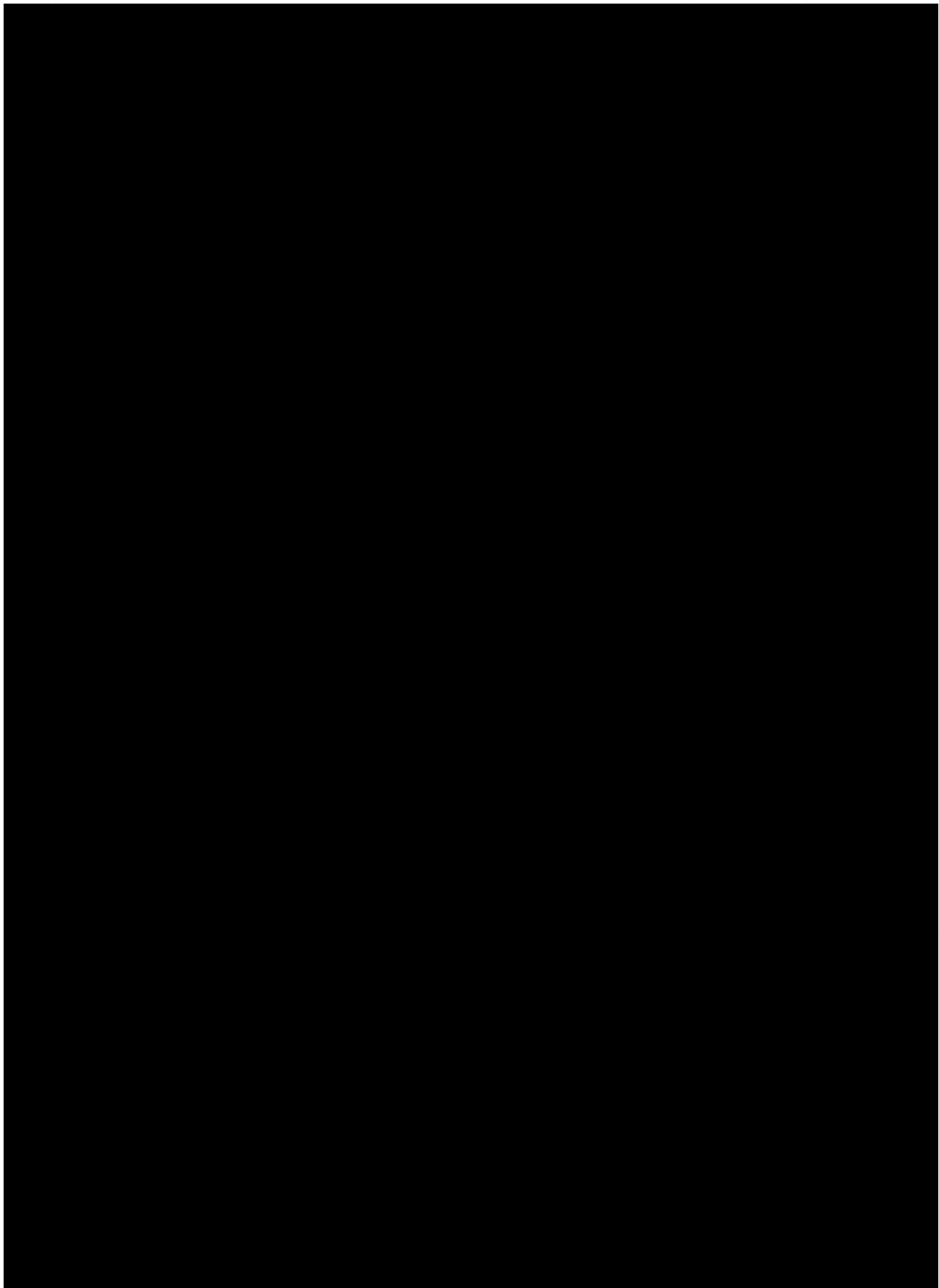
Note: Each Temporary Works Designs package is required to be verified by the relevant Project Verifier including providing a Project Verifier's report covering relevant areas.

## Schedule 3 – Railway Corridor











## Schedule 4 – TfNSW Associate Deed Poll

Deed Poll made at ..... on ....., 20.....

By: **XXX Pty Limited ABN XX XXX XXX XXX** of **INSERT ADDRESS** ("TfNSW Contractor" which expression will include its successors and assigns).

In favour of: **Australian Rail Track Corporation Limited ABN 75 081 455 751** of 11 Sir Donald Bradman Drive Keswick Terminal SA 5035 ("**ARTC**")

### Recitals

- A. Transport for NSW ABN 18 804 239 602 (**TfNSW**) and ARTC are parties to the TfNSW - ARTC Gateway Project - Project Works Deed (**ARTC Gateway Project - Project Works Deed**) dated **XXX**.
- B. TfNSW and the TfNSW Contractor are parties to the TfNSW Contract dated **XXX**.
- C. Under the TfNSW Contract, the TfNSW Contractor is to (among other things) construct the Project Works (including the Rail Corridor Works and Works Affecting ARTC Railway Operations).
- D. The TfNSW Contractor has agreed to give warranties to ARTC in respect of the Project Works as a pre-condition to the TfNSW Contractor commencing the Project Works.

### This deed poll provides

- 1 The TfNSW Contractor warrants to ARTC that, on the Date of Completion of the Project Works, the Project Works:
  - (a) will be to the quality and standard stipulated by the ARTC Gateway Project – Project Works Deed; and
  - (b) will be fit for the purpose for which they are required.The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Project Works.
- 2 The TfNSW Contractor must make good or replace at its sole cost so much of the Project Works as within the period of 12 months commencing on the Date of Completion of the Project Works:
  - (a) are found to be of a lower quality or standard than that referred to in **clause 1**; or
  - (b) show deterioration of such extent that in the opinion of ARTC (acting reasonably) the Project Works ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

- 3 The TfNSW Contractor will be liable for the cost of any work necessary to any part of the Railway Corridor or the Rail Facilities to enable the requirements of **clause 2** to be carried out or to make good the Railway Corridor or the Rail Facilities afterwards.
- 4 If the TfNSW Contractor does not, within 10 Business Days of ARTC giving the TfNSW Contractor notice to do so, make good or replace the Project Works as required by **clause 2**, then:
- (a) without limiting any other rights or remedies which ARTC may have against the TfNSW Contractor, ARTC may do so; and
  - (b) the costs, expenses, losses and damages including ARTC Costs suffered or incurred by ARTC in making good or replacing the Project Works as required by **clause 2** will be a debt due and payable from the TfNSW Contractor to ARTC.
- 5 Not used.
- 6 The TfNSW Contractor hereby indemnifies ARTC against all liabilities, costs, expenses, losses, or damages including ARTC Costs suffered or incurred by ARTC arising out of or in connection with:
- (a) any breach by the TfNSW Contractor of its other obligations under this Deed Poll;
  - (b) any loss or damage to property or death or personal injury to the extent caused by the TfNSW Contractor or its agents, employees, or subcontractors; or
  - (c) any loss, damage, disruptions, interference, or adverse impact to the extent caused by the TfNSW Contractor or its agents, employees, or subcontractors to the Rail Facilities, ARTC's operations or activities or operations of third party operators using the Rail Facilities.
- 7 The TfNSW Contractor will not be liable to ARTC (in contract for breach of this Deed Poll, for debt, in tort including negligence, by way of strict or vicarious liability, under statute or otherwise according to law or in equity) for any Indirect or Consequential Loss (including any Indirect or Consequential Loss for which ARTC is liable to third parties) arising out of or in any way in connection with this Deed Poll, Project Works and the conduct of the TfNSW Contractor or any TfNSW Associate (including breach of this Deed Poll and any other acts or omissions, whether before, on or after the date of this Deed Poll).
- This **clause 7** does not, however, apply to or limit or restrict in any way:
- (a) the Liability of the TfNSW Contractor or any TfNSW Associates for fraudulent acts or omissions, wilful defaults or criminal conduct;
  - (b) any Liability that cannot be limited or excluded at law;
  - (c) any Liability of the TfNSW Contractor to the extent it is paid or indemnified, or entitled to be paid or indemnified, for the Liability by an insurer under an Insurance policy required by this Deed Poll;

- (d) any Liability of the TfNSW Contractor to the extent the TfNSW Contractor would have been entitled to be paid or indemnified for the Liability by an insurer under an Insurance policy required by this Deed Poll, but for a failure by the TfNSW Contractor to effect and maintain the Insurance policy as required by this Deed Poll; and
- (e) any Liability to the extent that the TfNSW Contractor is entitled to be indemnified by any third party for that Liability.

8 The TfNSW Contractor shall maintain for the duration of the Project Works:

- (a) public liability insurance with a limit of indemnity not less than \$250 million for any single claim and which covers ARTC's Liability as a result of the acts or omission of the TfNSW Contractor;
- (b) workers compensation insurance as required by Law; and
- (c) professional indemnity insurance with a limit of indemnity not less than \$20 million for any single claim and to maintain this insurance for 6 years thereafter.

The TfNSW Contractor shall provide satisfactory evidence of such insurance policies (including certificate of currency and copies of policies) as a precondition to commencement of the Project Works and whenever requested by ARTC (but not more frequently than once in any calendar year).

9 Nothing contained in this Deed Poll is intended to nor will render ARTC in any way liable to the TfNSW Contractor in relation to any matters arising out of the TfNSW Contract or otherwise.

10 The terms "Rail Facilities", "Project Works", "Worksite", "Railway Corridor", "Rail Facilities Condition", "Indirect or Consequential Loss", "Claim" and "Liability" have the same meanings as defined in the ARTC Gateway Project – Project Works Deed.

11 The TfNSW Contractor is not entitled to make any Claim against ARTC, and ARTC has no Liability to the TfNSW Contractor, in connection with carrying out the Project Works (including each Worksite, the Railway Corridor and Rail Facilities Conditions) (including in connection with any design, construction or construction methodology of the Project Works, review of any documentation or comments, assessment, approval, agreement or endorsement provided by ARTC).



**Executed as a deed poll**

Executed by the [TfNSW Contractor] in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

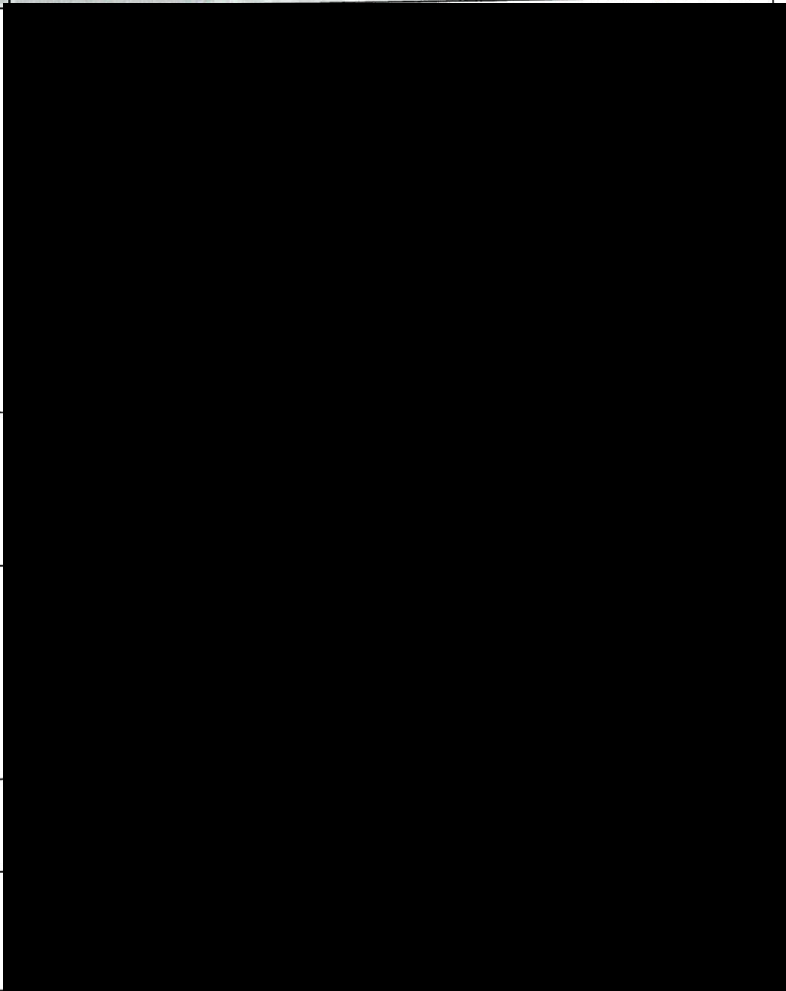
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 5 – Insurance

- 1 TfNSW must effect and maintain, or procure that the TfNSW Associates effect and maintain, each of the insurances with respect to carrying out the Project Works and its other obligations under this Deed for the applicable period of insurance. Each such insurance must be procured and maintained upon the minimum terms specified in this Schedule and **clause 27** of this Deed.
- 2 Summary of insurances required:
  - (a) public liability insurance;
  - (b) workers' compensation insurance;
  - (c) compulsory third party motor vehicle insurance;
  - (d) professional indemnity insurance; and
  - (e) contract works insurance.
- 3 ARTC and TfNSW acknowledge that TfNSW is a member of the Treasury Managed Fund (**TMF**) and the TMF will provide TfNSW with professional indemnity insurance to fulfil their obligations in **clause 2(d)** of this Schedule 5.
- 4 TfNSW acknowledges that, without limitation the other obligations of this Deed, if TfNSW is no longer a member of the TMF, TfNSW must comply with the requirements of this Schedule in relation to the professional indemnity insurance. TfNSW indemnifies ARTC and TAHE for any Claims that have arisen before TfNSW is no longer a member of the TMF and would have covered by TfNSW as if it is a member of the TMF.

(a) public liability insurance

Insurance element	Minimum Requirement
Insured	
Sum insured	
Scope of cover	
Situation of risk	
Period of insurance	



(b) workers' compensation insurance and employer's liability insurance

Insurance element	Minimum Requirement
Insured	[REDACTED]
Level of cover	
Risks covered	
Maximum deductibles	
Period of insurance	

(c) compulsory third party motor vehicle insurance

Table 1 – Vehicle damage

Insurance element	Minimum Requirement
Party responsible for procuring the insurance	
Insured	
Risks covered	
Additional requirements	
Period of cover	

Table 2 – Bodily injury

Insurance element	Minimum Requirement
Insured	
Level of cover	
Risks covered	
Maximum deductibles	
Period of cover	

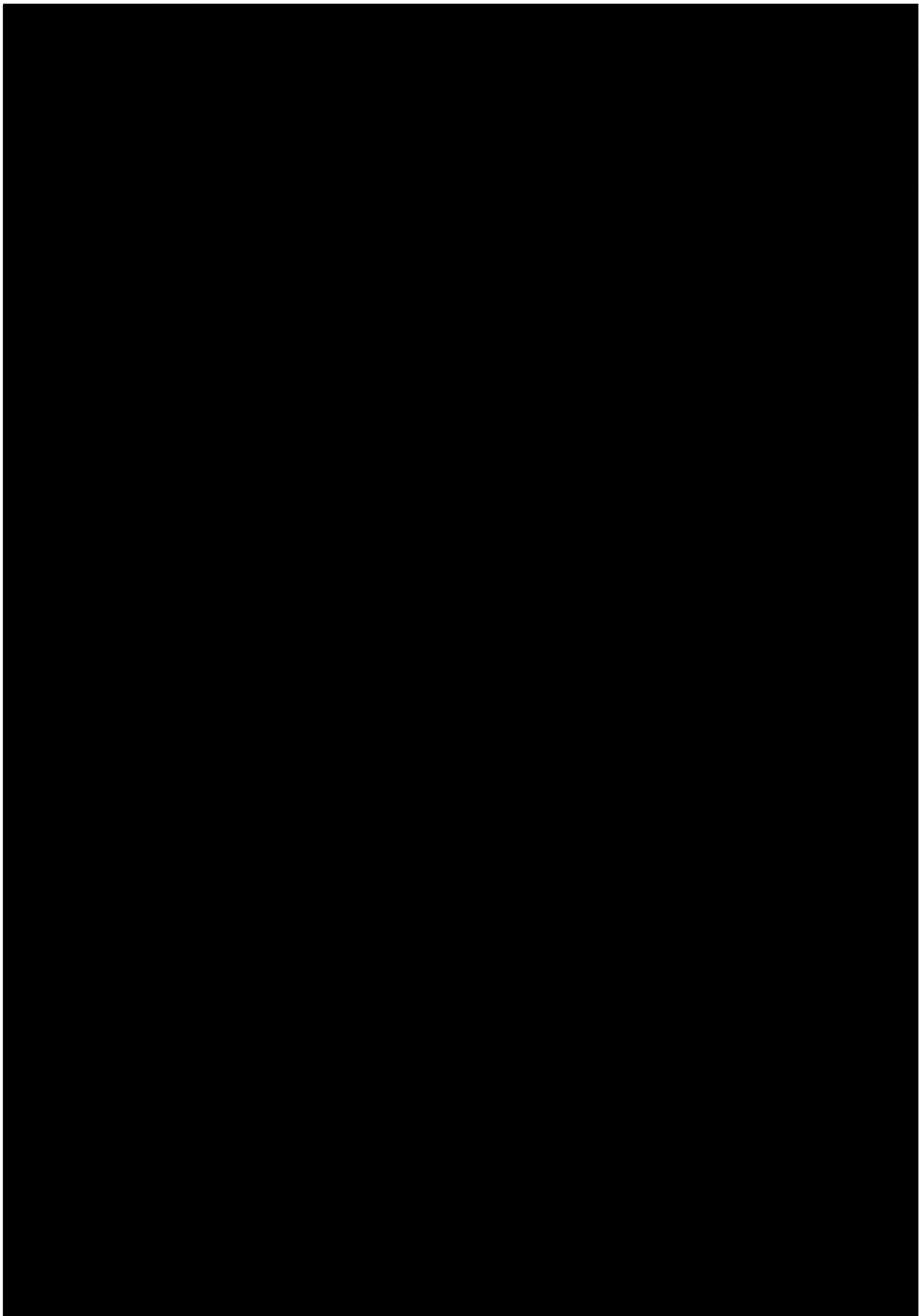
(d) professional indemnity insurance

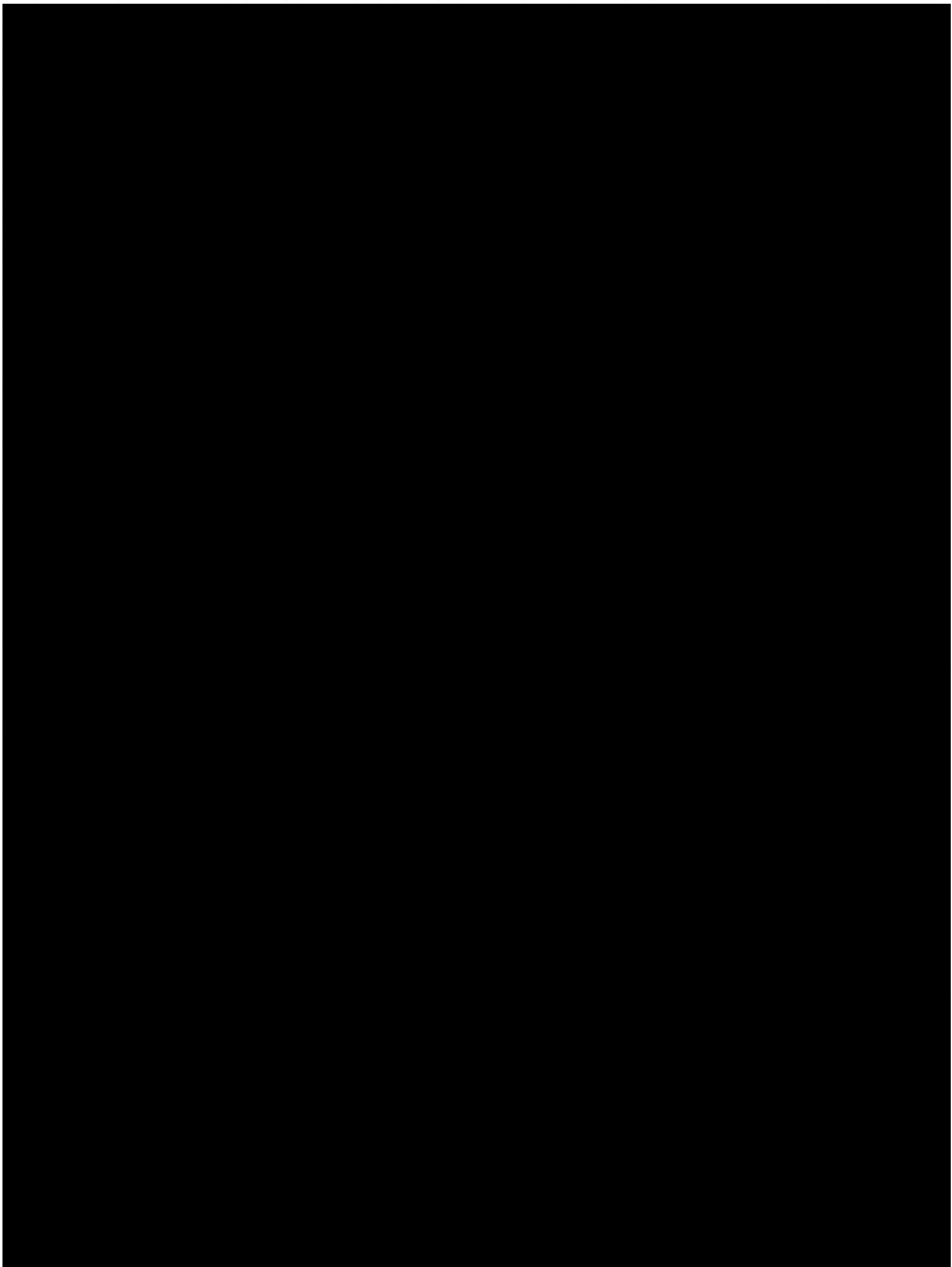
Insurance element	Minimum Requirement
Insured	
Sum insured	
Scope of cover	
Situation of risk	
Retroactive date	
Additional requirements	
Period of cover	



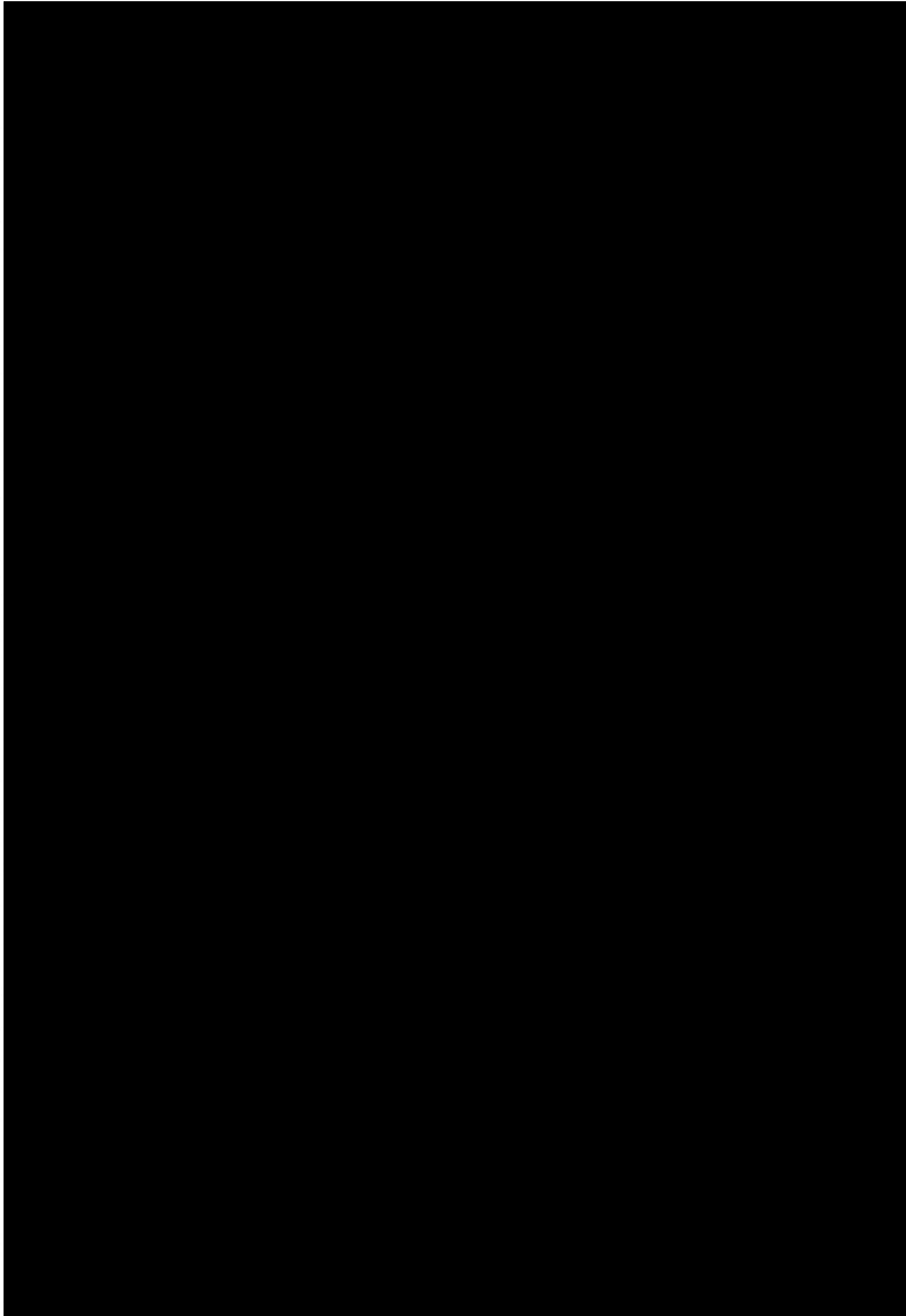
## Schedule 6 – Early Access Area

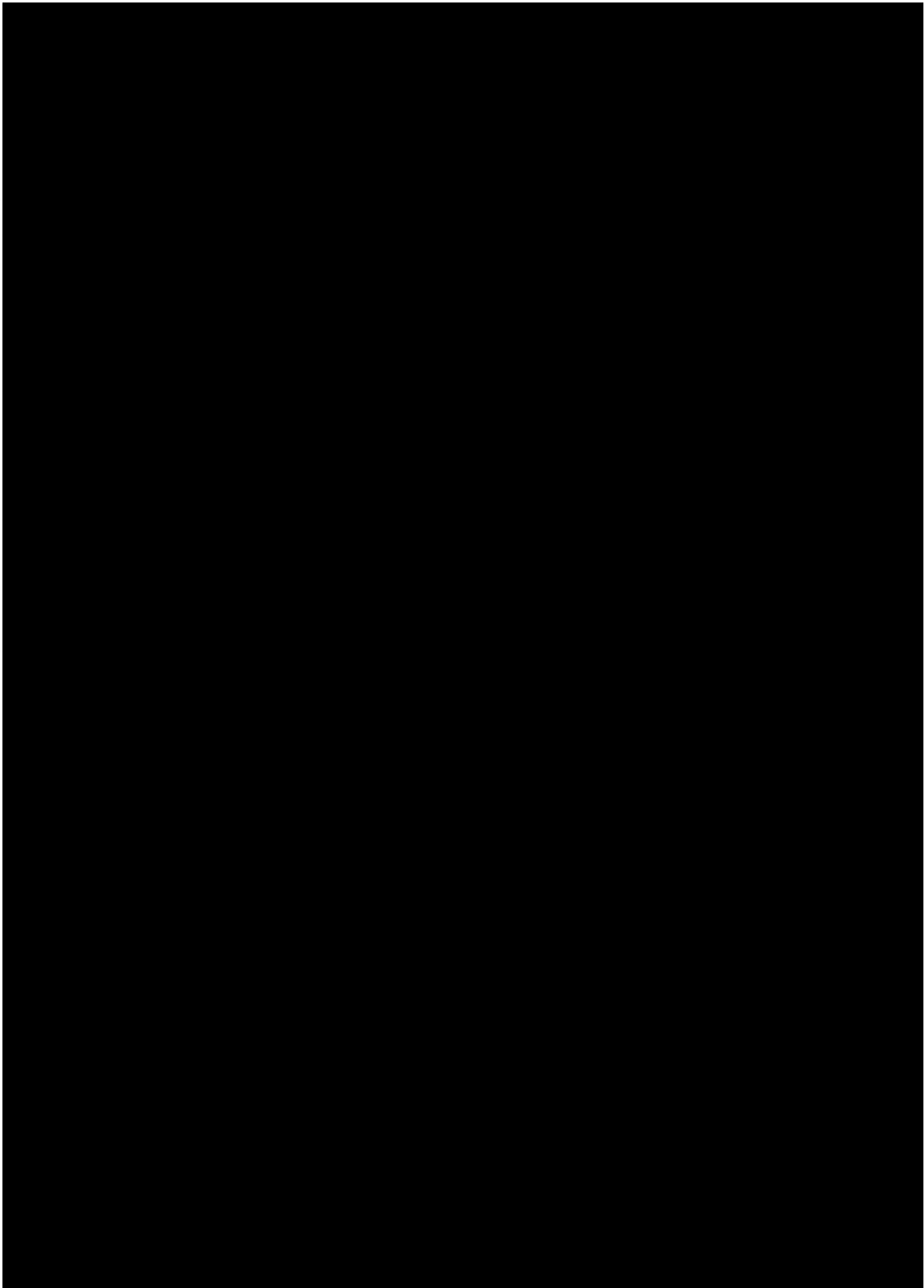
### Part 1

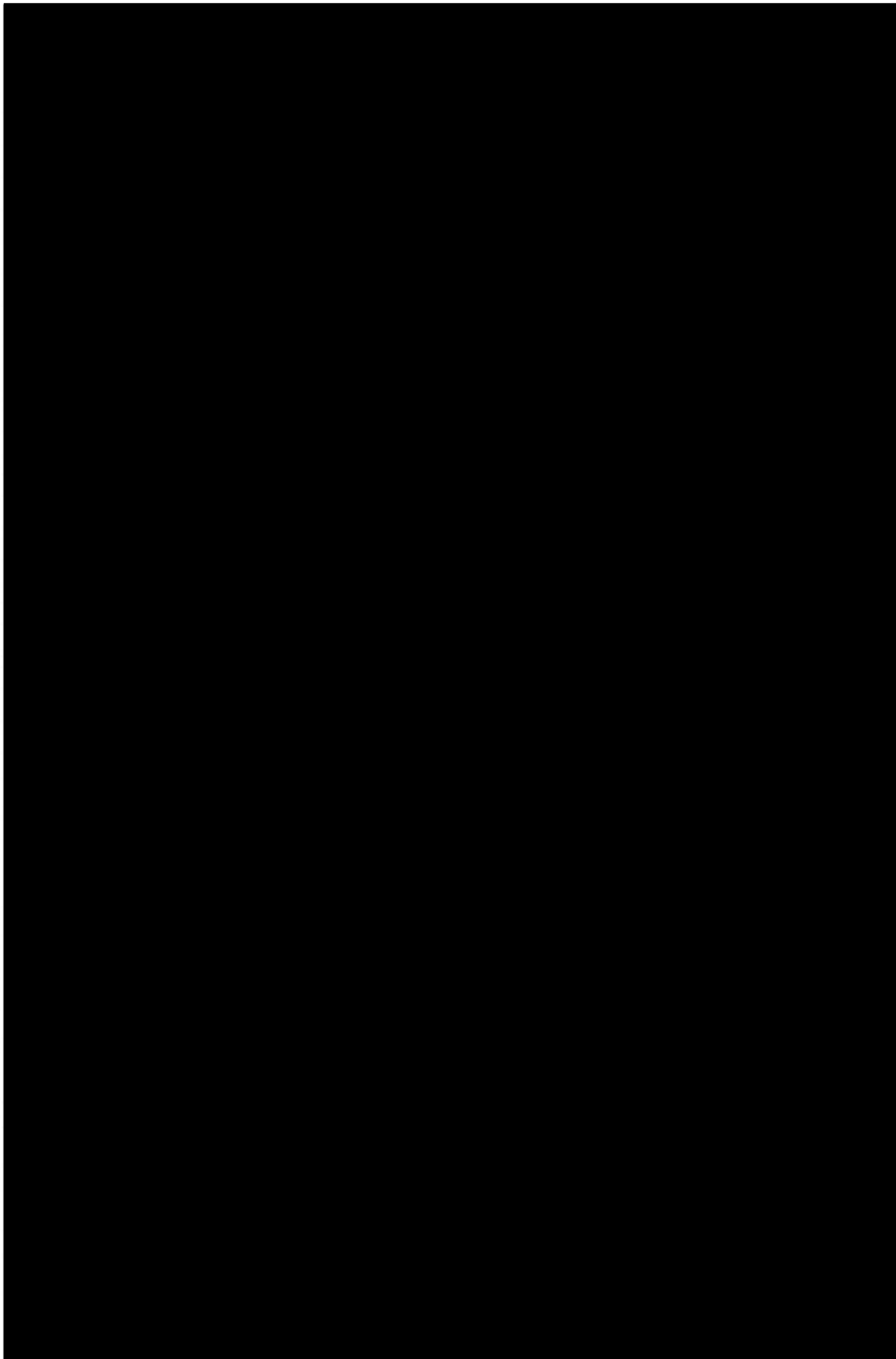




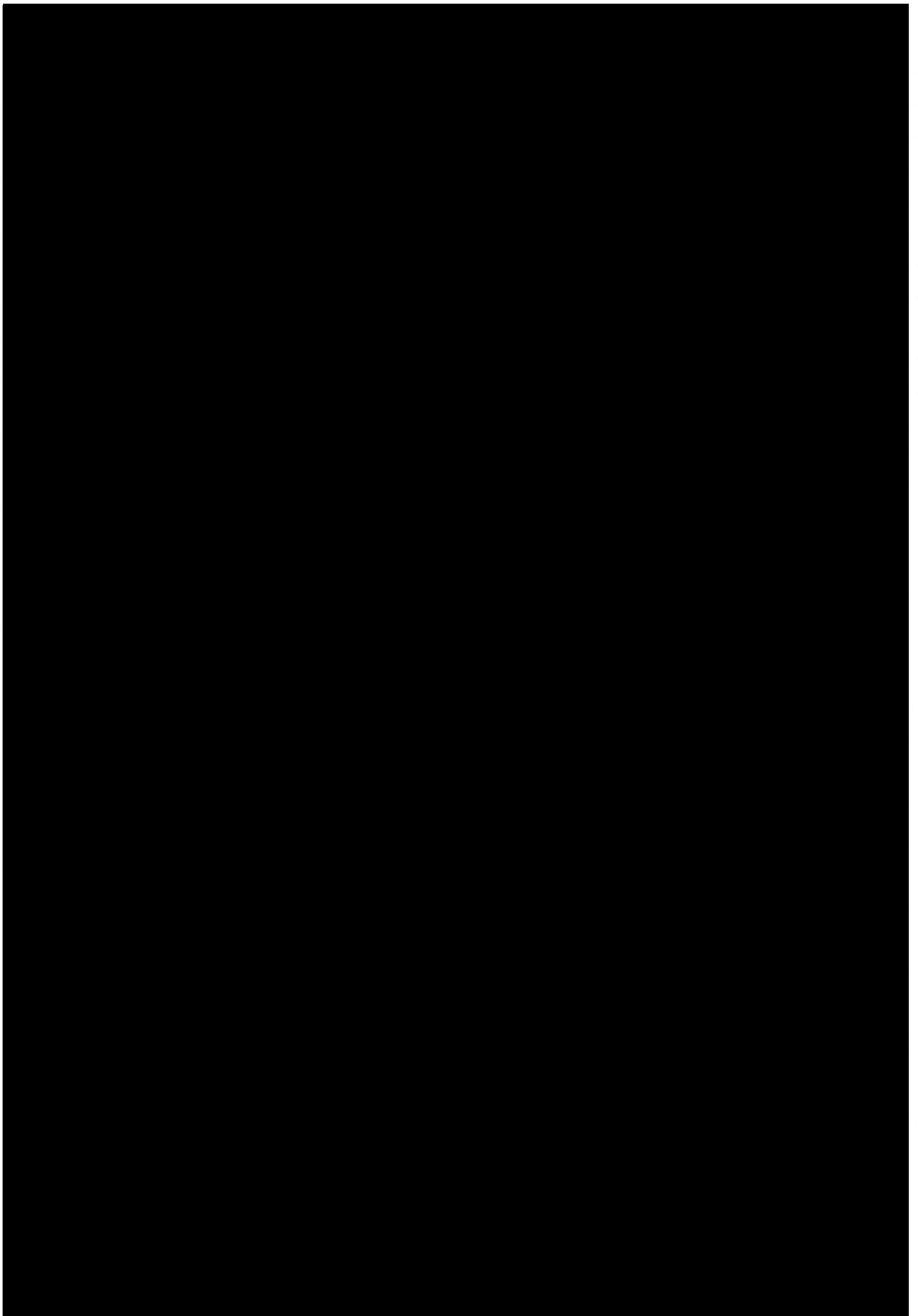








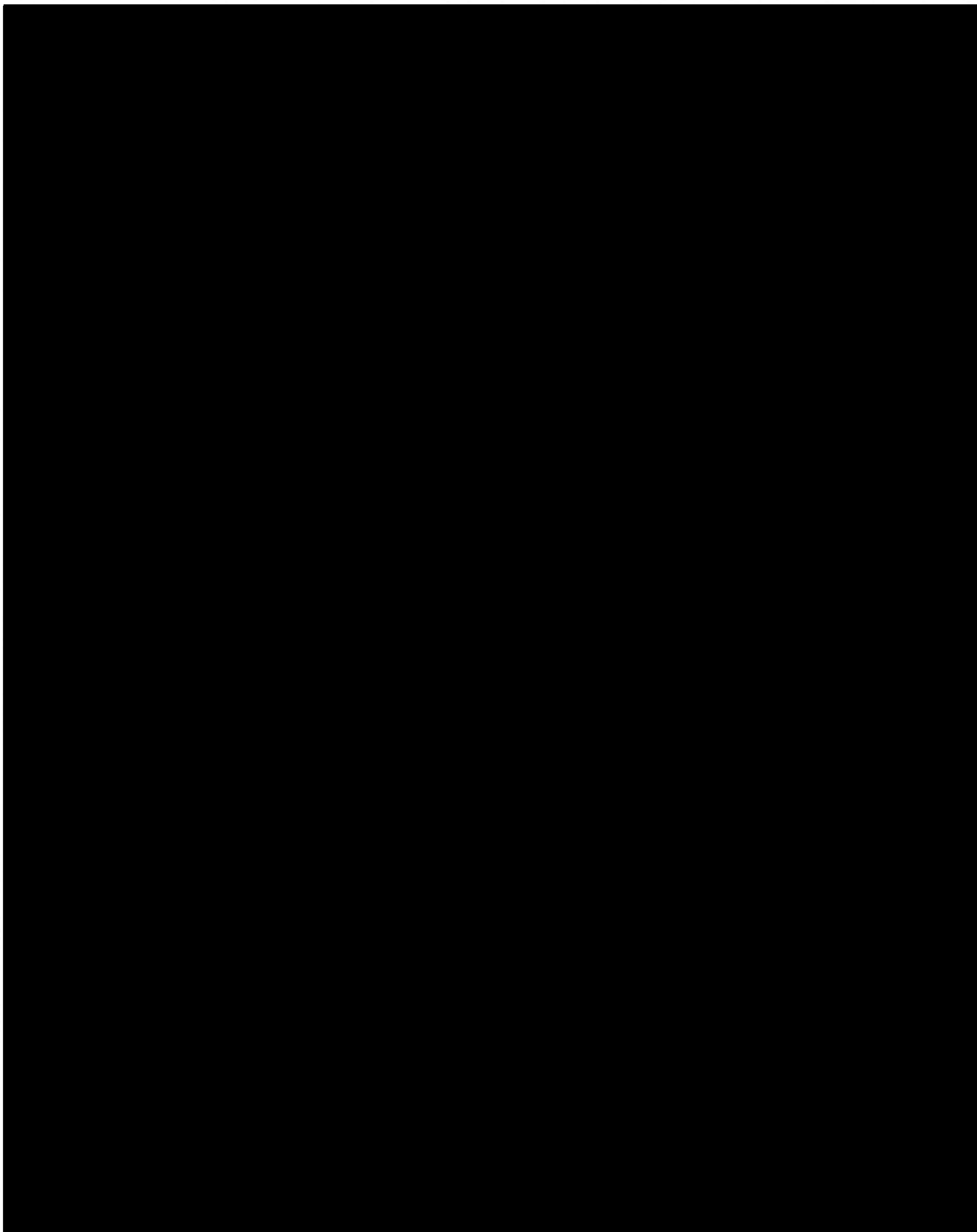






## Part 2





# Schedule 7 – Project Verifier Deed Poll

Made by [#insert details of Project Verifier#] (Project Verifier)

In favour of:

**Australian Rail Track Corporation Limited** (ACN 081 455 754) of 11 Sir Donald Bradman Drive, Keswick Terminal SA 5035 (“ARTC”).

## 2 DEFINITIONS AND INTERPRETATION

Unless expressly stated otherwise, the definitions and rules of interpretation as set out in the Gateway Project - Project Works Deed apply to this deed poll. In addition:

**Project Verifier's Obligations** means the duties and functions of the Project Verifier under the Gateway Project - Project Works Deed, including certification in favour of ARTC that the Project Works have been completed in accordance with the requirements set out in the Gateway Project – Project Works Deed.

**Project Verifier Services Deed** means the agreement between TfNSW and the Project Verifier for the provision of various services, including the Project Verifier's Obligations.

**Gateway Project – Project Works Deed** means the deed between ARTC and Transport for NSW dated [#insert date#].

**Transport for NSW or TfNSW** means Transport for New South Wales (ABN 18 804 239 602) of Level 6, 18 Lee Street, Chippendale NSW 2008, a NSW Government agency constituted by section 3C of the *Transport Administration Act 1998* (NSW).

## 3 GOVERNING LAW

This deed poll is governed by and will be construed according to the laws of New South Wales.

## 4 PROJECT VERIFIER

### 4.1 Acknowledgment

The Project Verifier acknowledges that:

- (a) it has been appointed by TfNSW as Project Verifier under the Gateway Project – Project Works Deed;
- (b) it has received a copy of the Gateway Project – Project Works Deed and it has read and is familiar with the terms of the Gateway Project – Project Works Deed as it relates to the Project Verifier's Obligations; and

(c) ARTC:

- (i) is relying on the skill and expertise of the Project Verifier in the performance of its obligations under this deed poll;
- (ii) may suffer loss if it does not perform its obligations in accordance with the requirements of this deed poll;
- (iii) may provide written comments and submissions to the Project Verifier and the Project Verifier must give due consideration to those submissions; and

is entitled to and will rely on any certificate signed by or given by the Project Verifier under or pursuant to this deed poll.

#### 4.2 Warranties

The Project Verifier warrants to ARTC that in performing the Project Verifier's Obligations, it will comply with all Law act honestly, diligently, reasonably and with the degree of professional skill and care which would be expected of a professional providing similar services within the construction industry generally.

The Project Verifier further warrants that at all times, it will act within the requirements for performance of its obligations under this deed poll or if no time is stated, within a reasonable period of time.

#### 4.3 Other obligations

The Project Verifier must certify in accordance with **clauses 13.4 and 15** of the Gateway Project – Project Works Deed, as a prerequisite to the achievement of Completion of the Project Works that the Project Works comply with the requirements of the Gateway Project – Project Works Deed.

## 5 Independence and Confidentiality

### 5.1 Independence

- (a) The Project Verifier warrants to ARTC that, in performing its obligations, it will act:
  - (i) independently of TfNSW;
  - (ii) honestly, diligently and reasonably;
  - (iii) with the degree of professional, knowledge, skill, expertise, experience and care which would be reasonably expected of a professional providing similar services within the construction industry generally and the design and construction of major engineering works in particular; and
  - (iv) within the time prescribed under this deed poll or the Gateway Project – Project Works Deed.
- (b) **Clauses 5.1(a)(i) and 5.1(a)(ii)** do not prevent the Project Verifier from meeting with TfNSW without ARTC being present.



- (c) The Project Verifier will immediately notify ARTC in writing upon becoming aware of the existence or possibility of a conflict of interest.

## 5.2 Confidentiality

The Project Verifier must keep confidential details of this deed poll and the Gateway Project – Project Works Deed and any documentation in relation to the Project Works including all information and documents provided to it and must not provide or disclose or use the information or documents unless:

- (a) in performance of the Project Verifier's Obligations under or in accordance with this deed poll or as otherwise permitted by ARTC;
- (b) where required by law or to obtain legal advice on this deed poll;
- (c) with the prior written consent of ARTC; or
- (d) where the information is in the public domain (other than by reason of breach of this deed poll).

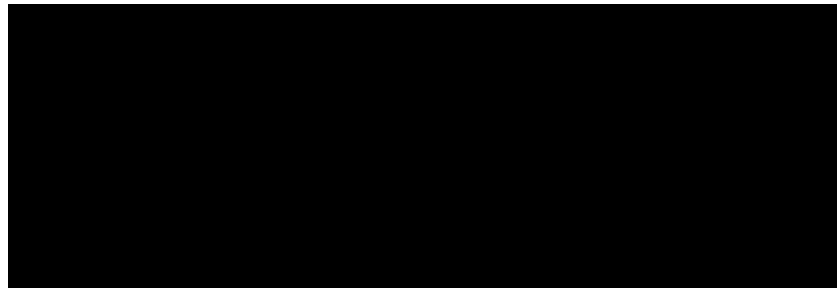
This obligation will survive completion of the Project Verifier's Obligations or termination of this deed poll.

## 6 Insurances and Indemnity

### 6.1 Insurances

- (a) The Project Verifier must, from the date of the Gateway Project – Project Works Deed effect and maintain:

- (i)



- (ii) workers compensation insurance in accordance with the requirements of Law.

- (b) The Project Verifier acknowledges that TfNSW will effect and maintain public liability insurance as required under the Gateway Project – Project Works Deed.

### 6.2 Notice of matter affecting insurance

The Project Verifier must notify ARTC 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

### 6.3 Provision of information

Before the Project Verifier starts any work for or in connection with this deed poll and whenever requested in writing by ARTC, the Project Verifier must

provide proof that all insurance policies which the Project Verifier is required to effect and maintain under the Project Verifier Services Deed and this deed poll are current.

#### 6.4 **Periods for insurance**

The Project Verifier must effect and maintain:

- (a) the professional indemnity insurance current until 6 years after the later of Project Verifier ceases to perform the Project Verifier's Obligations or its functions under the Gateway Project – Project Works Deed; and
- (b) the workers compensation insurance current until it ceases to perform the Project Verifier's Obligations.

#### 6.5 **Obligations unaffected by insurance**

The requirement to effect and maintain insurance in this **clause 6** does not limit the liability or other obligations of the Project Verifier under this deed poll.

#### 6.6 **Indemnity**

The Project Verifier must indemnify ARTC against any liability, loss, claim, expense or damage which ARTC may suffer or incur in connection with a failure of the Project Verifier to perform its obligations under the Project Verifier Services Deed and its functions under the Gateway Project - Project Works Deed, and any negligent act or omission including (without limitation)

- (a) any damage to or loss of property; or
- (b) death of or injury to any person, in so far as the liability, loss, claim, expense or damage arises out of the negligent act, error or omission of the Project Verifier, its employees, agents, subcontractors or consultants.

#### 6.7 **Limitation of liability**

(a) The aggregate of the Project Verifier's Liability to:

- (i) ARTC under this deed poll;
- (ii) TfNSW and Sydney Airport under the Project Verifier Services Deed; and
- (iii) any beneficiary under any other deed poll executed by the Project Verifier in accordance with the Project Verifier Services Deed,

(together the **Other Parties**):

- (A) will not exceed the liability which the Project Verifier would have had under the Project Verifier Services Deed if that deed had named, as the principal under that deed, the Other Parties jointly and severally; and
- (B) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Project Verifier Services Deed.

- (b) The limitations on the Project Verifier's Liability contained in **clause 6.7** do not in limit or restrict in any way:
  - (i) the Project Verifier's Liability for loss, damage and expense caused by the reckless, malicious, deliberate or fraudulent acts of the Project Verifier, whilst in the course of carrying out its other obligations under this deed poll; and
  - (ii) any Liability that cannot be limited by Law.

**EXECUTED** as a deed poll.

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_ 20

**EXECUTED** by **[#INSERT PROJECT VERIFIER#]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:  
 .....  
 Signature of director  
 .....  
 Name of director (block letters)

.....  
 Signature of director/company secretary\*  
 \*delete whichever is not applicable  
 .....  
 Name of director/company secretary\* (block letters)  
 \*delete whichever is not applicable