

RESTATED STATIONS AGREEMENT (2005) NEW SOUTHERN RAILWAY
NEW SOUTHERN RAILWAY SETTLEMENT DEED
GLOBAL AMENDING DEED
DEED OF RELEASE

CONTRACTS SUMMARY

November 2005

CONTENTS

1. INTRODUCTION	2
2. BACKGROUND	2
2.1 <i>Airport Line Project</i>	2
2.2 <i>Original Project Documents</i>	2
3. DISPUTES	2
4. RESTATED STATIONS AGREEMENT	2
4.1 <i>Term and Purpose of the Restated Stations Agreement</i>	2
4.2 <i>RailCorp Train Service Obligations</i>	2
4.3 <i>ALC Station Obligations</i>	2
4.4 <i>Ticketing and Fares</i>	2
4.5 <i>Capped Amount</i>	2
4.6 <i>Revenue Sharing Arrangements</i>	2
4.7 <i>Accounting Records, Reporting and Audit</i>	2
4.8 <i>Indemnities</i>	2
4.9 <i>Insurance</i>	2
4.10 <i>Assignment by ALC</i>	2
4.11 <i>Default Events</i>	2
4.12 <i>Material Change</i>	2
4.13 <i>Consequences of Termination</i>	2
4.14 <i>Dispute Resolution</i>	2
4.15 <i>Crown Liabilities</i>	2
5. NEW SOUTHERN RAILWAY SETTLEMENT DEED	2

1. INTRODUCTION

The purpose of this summary is to inform Parliament and the public on the key terms and conditions of the Restated Stations Agreement (2005) – New Southern Railway executed on by Rail Corporation New South Wales (RailCorp) and the Airport Link Company Pty Limited (Receivers and Managers appointed) (ALC) on 13 October 2005 and its companion agreements.

While the terms of the Restated Stations Agreement include a Confidentiality clause no commercial in confidence material contained in the Restated Stations Agreement and the companion documents has been specifically excluded from this summary. Nor do the Confidentiality provisions diminish or restrict the Auditor-General's ability to carry out the Auditor-General's audit functions under the Public Finance and Audit Act by limiting the Auditor-General's access to the records and information of RailCorp that would otherwise be available to the Auditor-General.

The Restated Stations Agreement (2005) – New Southern Railway emanates from the settlement of disputes which arose between State Rail Authority of New South Wales (SRA) and the Airport Link Company Pty Limited (Receivers and Managers appointed) (ALC) in connection with the Original Stations Agreement – New Southern Railway entered into by the parties on 10 February 1995.

The Original Stations Agreement is a key project document governing the New Southern Railway project (now referred to as the Airport Line). Under the terms of the Original Stations Agreement:

- ALC was to design, construct, finance, lease and then operate and maintain four stations (Green Square, Mascot, Domestic and International Terminals at Sydney Airport) for a 30 year concession period following their practical completion and the practical completion of the New Southern Railway connecting them to the SRA network;
- SRA was to lease the station strata to ALC for the 30 year concession period prior to their reversion to SRA at the end of the concession;
- SRA was to provide train services to the stations; and
- Revenues generated by the stations business were to be distributed between the parties.

The Airport Line and Stations reached practical completion in early 2000 and entered into revenue service on 20 May 2000.

The rights and obligations of the SRA under the Original Stations Agreement and associated original project documents described in section 2.2 were transferred to Rail Corporation New South Wales (RailCorp) with effect from 1 January 2004 by order No. 7 made by the Minister for Transport under section 94 of the Transport Administration Act.

Under the terms of the New Southern Railway Settlement Deed dated 13 October 2005 SRA, RailCorp and ALC agreed to settle the Disputes between them and in connection with that settlement, RailCorp and ALC agreed to amend and restate the Original Stations Agreement on the terms and conditions of the Restated Stations Agreement.

On signing the New Southern Railway Settlement Deed and the Restated Stations Agreement, RailCorp contemporaneously entered into the following agreements:

- Global Amending Deed between RailCorp, ALC National Australia Trustees Limited (in its capacity as Security Trustee under the Security Trust Deed see section 2.2), and National Australia Bank – the provider of project finance to ALC. The Global Amending Deed makes consequential machinery type amendments to certain of the original project documents, for example, it provides for the substitution of “RailCorp” for “SRA” in the SRA Charge and SRA Security Deed (see section 2.2).
- Deed of Release between SRA, RailCorp, and the following Transfield Parties (some of whom are parties to certain of the original project documents listed in section 2.2) Transfield Holdings Pty Limited, Transfield Construction Pty Limited, Transfield ALC Pty Limited, Transfield (Part Owned) Pty Limited, TC1 Pty Limited and Guido Belgiorino-Nettis and Luca Belgiorino-Nettis as directors of ALC. Under the Deed of Release the Transfield Parties release RailCorp and SRA from any claim they may otherwise have had against RailCorp and the SRA in relation to the Original Stations Agreement or RailCorp’s entering into the Restated Stations Agreement.

The key elements of the:

- Restated Stations Agreement are summarised in section 4; and
- New Southern Railway Settlement Deed are summarised in section 5.

Capitalised terms in this contract summary are generally defined terms in the contract documents.

2. BACKGROUND

The Airport Line and four ALC Stations commenced operation on 20 May 2000. This section sets out brief details of the New Southern Railway project (now known as the Airport Line), the Original Stations Agreement and key related project documents. A more full description of the project is provided in the original summary of contracts at Appendix A – New Southern Railway; Summary of Contracts dated 27 September 1995.

That summary also sets out details of:

- the manner in which the original project contracts were let;
- the activities of the State and contractor during the now complete construction period including who was responsible for environmental, heritage, site risks, etc;
- a summary of the risks under the contracts;
- the results of economic benefits and cost analyses undertaken at the time;
- “value for money” and probity investigations.

2.1 Airport Line Project

The Airport Line is an underground railway with two tracks between Central Station and Turrella on the East Hills Line which passes under Redfern, South Sydney and Sydney Airport. The railway comprises four new underground stations at Green Square, Mascot, Domestic Terminal and International Terminal plus an underground and surface interchange station at Wolli Creek permitting interchange between the East Hills/Airport Line and the Illawarra Line.

The public sector funded and owns the Wolli Creek interchange stations, tunnels, tracks, catenary, signalling and communication systems. The four other stations were designed and constructed and are operated and maintained by the private sector during a 30 year concession period to 20 May 2030. The private sector parties also designed and constructed the public sector component of the project (tunnels, track, etc) and maintain the public sector component.

The principal private sector participants are:

- Transfield Holdings Pty Limited an Australian construction and engineering enterprise;
- Bouygues SA a large French corporation whose infrastructure construction projects include the Channel Tunnel, the Meteor Line of the Paris Metro and the Hong Kong Stadium; and
- ALC a special purpose company which in 1995 was 50% owned by Transfield ALC Pty Limited (a wholly owned subsidiary of Transfield Holdings) (TALC) and 50% owned by Bouygues.

In terms of the projects contractual agreements the key private sector participant is ALC. Under the terms of the Original Stations Agreement, ALC was required to finance, design, construct and then operate and maintain the Green Square, Mascot, Domestic Terminal and International Terminal Stations for a 30 year concession period.

Under the terms of the Original Stations Agreement RailCorp was to lease the strata containing the four stations to ALC and provide train services to the stations at specified standards for the 30 year concession period following which the stations will revert to RailCorp.

Passengers pay a Station Usage Fee to ALC to use its four Stations in addition to RailCorp's standard train fare. The Original Stations Agreement provided for RailCorp and ALC to share the net revenue generated by Station Usage Fees. The payments to RailCorp were intended to fund (over the 30-year concession period) the Government's investment in the Airport Line.

ALC was funded by:

- \$5 million in equity and \$10 million in subordinated loans from each of TALC and Bouygues. (Bouygues funding obligations were subsequently assumed by TALC which now owns 100% of ALC); and
- Project finance from the National Australia Bank (NAB) of approximately \$190 million as at the commencement of operations.

The design, construction and commissioning of the stations was carried out for ALC under a Stations Design and Construction Subcontract (exhibited to the Original Stations Agreement) by an unincorporated Build Joint Venture (BJV) comprised of Transfield Construction Pty Limited (a wholly owned subsidiary of Transfield Holdings) and Bouygues SA.

BJV also designed and constructed the tunnels, tracks and associated infrastructure for SRA under a Tunnels and Tracks Contract ("T + T Contract") and were to maintain the tunnels, tracks and associated infrastructure for RailCorp (originally SRA) under a "T + T Maintenance Contract" which runs to 2030. This contract is now performed by Transfield Services Pty Limited.

2.2 Original Project Documents

A brief description of each of the key project documents which were signed at or about the same time as the Original Stations Agreement are set out below. With the exception of the Original Stations Agreement, the following project documents are left unaffected by the new agreements referred to in section 1, other than as specifically provided for by those agreements as set out in sections 4 and 5.

- A Development Agreement between the SRA, The Director General of the Department of Transport, ALC, Transfield Holdings, Transfield Construction, Bouygues and CRI which recorded the parties' general commitments to the project and identified a number of now satisfied conditions precedent to the other project documents becoming unconditionally binding;

- A Stations Agreement (Original Stations Agreement) between the SRA and ALC.
- A Tunnels + Tracks (T + T) Contract between the SRA and BJV setting out the terms on which BJV will design, construct, commission and test the tunnels, tracks, signalling, power supply, communications systems etc on a “turnkey basis”.
- A T + T Maintenance Contract between SRA and BJV setting out the terms on which BJV will maintain the tunnels, tracks etc.
- An Interpretation Memorandum which provides definitions and dispute resolution procedures for all the project documents. This document is terminated by the Global Amending Deed and all references to the Interpretation Memorandum in the other project documents are taken as references to the Restated Stations Agreement.
- An SRA Parent Deed between SRA and Bouygues, Transfield Holdings, TALC, Transfield Construction and ALC under which Bouygues and TALC commitment of \$10 million in equity and \$20 million in subordinated loans is guaranteed to SRA plus commitments on securities, indemnities, non assignment and subordination of the TALC and Bouygues loans to ALC.
- An SRA Security Deed between the SRA, ALC, NAB and the Security Trustee concerning the Security Trustee's step in and cure rights in the event of a default. The Global Amending Deed makes amendments of a machinery nature to the SRA Security Deed, and the Settlement Deed records the consent of NAB and the Security Trustee under the SRA Security Deed to the Restated Stations Agreement being entered into.
- A series of other securities agreements under which the SRA holds:
 - A second charge, after the NAB, on ALC assets (the SRA Charge). The Global Amending Deed makes amendments of a machinery nature to the SRA Charge.
 - A second mortgage, after NAB, on the ALC shares held by TALC and Bouygues (now TALC only) (the SRA Equitable Mortgage of Shares).

Associated with the Original Stations Agreement is:

- A series of Financing Documents between ALC and the NAB including the Syndicated Facilities Agreement, a Financiers Parent deed, a Debenture Trust Deed, a Security Trust Deed and NAB Share Mortgages.
- Stations Leases between the SRA and ALC, setting out the terms for leases of the strata containing the stations to ALC for a 30 year term.
- A Stations Design and Construction Subcontract between ALC and BJV setting out the terms under which BJV was to design, build and commission the stations for ALC.

Associated with the T + T Contract and the T + T Maintenance Contract is:

- A Parent Company Guarantee between the SRA, Transfield Holdings, Transfield Construction and Bouygues under which Transfield Holdings

guarantees to the SRA Transfield Constructions performance under the T + T Contract and the T + T Maintenance Contract.

- A T + T Maintenance Contract Novation Deed between the SRA, Transfield Construction and Bouygues under which all of Bouygues rights and obligations under the T + T Maintenance Contract may be transferred to Transfield Construction within one month of practical completion of the T + T Contract.
- A T + T Maintenance Yard Lease between the SRA and Transfield Construction.

In addition to the above project documents, SRA entered into the FAC Development Agreement with the Federal Airports Corporation (FAC) on 30 June 1995.

The FAC Development Agreement sets out the basis for the SRA to construct, lease and operate the Airport Line under Sydney Airport. The Agreement was required because unlike the land traversed by the railway on the rest of the route the airport is Commonwealth land.

In 1997 FAC was replaced by Sydney Airport Corporation Limited (SACL) (which leases the airport from the Commonwealth) in preparation for the privatisation of Sydney Airport. Responsibility for the FAC Development Agreement was transferred to SACL at that time.

3. DISPUTES

The Airport Line commenced revenue services on 20 May 2000 and from the outset failed to meet its patronage forecast. In November 2000 ALC defaulted on senior debt payments to the National Australia Bank (NAB) and NAB appointed Receivers and Managers on 30 November 2000.

Following the failure of the Stations Business to achieve the patronage forecast in the early months of operation of the Airport Line, ALC made a number performance claims under the Original Stations Agreement of approximately \$10 million per quarter plus interest. In addition, ALC served a number of default notices on RailCorp commencing the termination process under the Original Stations Agreement. The Receiver pursued the original claims and default notices and issued further claims and default notices on a regular basis.

RailCorp disputed the claims and default notices and activated the dispute resolution procedures under the Original Stations Agreement.

The Government received a comprehensive analysis of the position in mid 2001 on the prospects of RailCorp successfully defending ALC's performance claims and termination action and on the basis of that analysis instructed RailCorp to settle the claims with ALC on a "pay as you go" basis to smooth the budgetary impact of a negotiated settlement.

The negotiations produced a Term Sheet which was endorsed by the Government in October 2002. The principal settlement terms provide for RailCorp to pay ALC a Capped Amount of \$80 million by way of diverting 85% of the train fares RailCorp receives for travel to and from the Airport Stations until the Capped Amount is extinguished. The Capped Amount is a present value with a discount date of 30 September 2001 and an annual discount rate of 7.75%. Payment of the Capped Amount in full is not guaranteed by Government under the terms of the Restated Stations Agreement. In return, ALC agreed to:

- a relaxation of the performance standards and termination provisions;
- codification of performance compensation payments and credits;
- codification of termination amounts; and
- other amendments as set out in the Restated Stations Agreement.

The annual discount rate of 7.75% and discount date of 30 September 2001 are used in a number of calculations set out in the Restated Stations Agreement. 30 September 2001 is notionally the day on which the parties reached in principal agreement on a number of key commercial terms including the:

- Capped Amount; and
- Agreed net present value of the Stations Business (excluding the Capped Amount) of \$120 million used in determining the termination payment to be made by RailCorp to ALC on early termination of the Agreement.

The sum of the Capped Amount and the \$120 million underlying business value has also been used to establish a Revenue Sharing Threshold beyond which RailCorp is entitled to receive a share of the net revenue generated by the Stations Business as set out in section 4.6. This amount is less than the value of the outstanding NAB senior debt at the time. The Restated Stations Agreement does not provide any guarantee that ALC will earn the Revenue Sharing Threshold amount or that NAB will be repaid its senior debt. ALC and NAB bear the full market (revenue/cost) risk in this regard.

4. RESTATED STATIONS AGREEMENT

4.1 Term and Purpose of the Restated Stations Agreement

The Restated Stations Agreement (Agreement) was signed by RailCorp and ALC on 13 October 2005. The Agreement adopts many of the terms of the Original Stations Agreement while:

- deleting those provisions that have become redundant due to the effluxion of time or the settlement of the disputes;
- amending other provisions to accommodate the settlement of the disputes or changed circumstances due to the effluxion of time; and
- introducing new provisions to give effect to the settlement of the disputes.

The Agreement came into effect on 13 October 2005 (Effective Restatement Date). It remains on foot for the remainder of the original 30 year concession period (Operations Term) and accordingly will terminate on 20 May 2030 unless:

- terminated earlier under the termination provisions; or
- extended for each day (if any) an Uninsurable Force Majeure Event prevents the four Stations from opening or the Timetabled Trains from operating at all on that day. There is no other provision under the Agreement to extend the Operations Term.

On termination for whatever reason the Stations which have been constructed on land to be leased by RailCorp to ALC will revert to RailCorp ownership. At that time ALC must offer to sell (but RailCorp is not obliged to purchase) the associated Station Assets being equipment, stock, manuals and the like.

The purpose of the Agreement is to:

- govern the relationship between the ALC and RailCorp for the balance of the Operations Term but without affecting the application of the Original Stations Agreement prior to the Effective Restatement Date. Nevertheless, some provisions of the Agreement require certain calculations and measurements under the Agreement to be made from dates prior to the Effective Restatement Date. For example, the performance regime (see section 4.2) is expressed to commence from 1 January 2002 and payment of the Capped Amount (see section 4.5) is backdated to 1 October 2001;
- preserve the rights and obligations of the parties under the Original Stations Agreement in respect of the design, construction and commissioning of the Stations; and
- subject to obligations on RailCorp to grant Leases of the Stations to ALC to leave its current occupancy rights unaffected.

Draft Leases of the Airport and non Airport Stations are annexed to the Agreement awaiting execution by the parties following resolution of a head

lease of the airport land with SACL and transfer to RailCorp of Roads and Traffic Land at Green Square.

4.2 RailCorp Train Service Obligations

RailCorp is required through out the operations term to operate trains on the Airport Line in accordance with a Conforming Timetable. A Conforming Timetable is one which schedules at least a minimum number of trains per hour by Business Day or non Business Day to stop at each of the four Stations. RailCorp is entitled to amend the Conforming Timetable from time to time but is required to provide ALC with advance notice of up to three months depending on the extent and duration of the proposed changes.

RailCorp's performance is measured against the Conforming Timetable in terms of reliability and punctuality. Reliability is defined as the number of trains operated in accordance with the Conforming Timetable divided by the number of trains timetabled to run. Punctuality is defined as the number of trains which depart from International Stations within ± 5 minutes of their scheduled time set out in the Conforming Timetable. Both reliability and punctuality are calculated on a calendar month basis and expressed as a percentage to three decimal places (Reliability Performance Level and Punctuality Performance Level).

The simple averages of the twelve monthly Reliability and Punctuality Performance Levels achieved by RailCorp each calendar year (commencing calendar 2002) are compared to benchmarks set out in the Agreement (90% for Punctuality and 98% Reliability from 2007 onwards). Where RailCorp underperforms the benchmarks it is liable to pay compensation to ALC or where it outperforms the benchmarks it earns credits which can be used to offset compensation payments which might otherwise be payable for the calculation year or subsequent year.

Compensation and credits are calculated by reference to a 10 rung scale above and below the benchmarks and are capped at \$2.8 million and \$1.4 million per annum for reliability and punctuality respectively prior to CPI adjustment relative to the September 2001 Sydney CPI. RailCorp's total liability to make performance compensation payments to ALC is capped at a present value of \$50 million as at 1 January 2002 adopting a 4% real discount rate.

Where RailCorp does not run trains due to a planned shutdown of the Airport Line for maintenance purposes it is required to organise replacement buses in accordance with its normal procedures and reimburse ALC, as Line Closure Compensation, the Station Usage Fees it would otherwise have earned. In such cases, all the trains that would have operated other than for the shutdown are treated as having run and run on time for the purposes of the performance regime.

The performance benchmarks are to be reviewed and reset in 2012 and 2022 as the higher of the then current benchmark or the average performance achieved over the previous ten years.

4.3 ALC Station Obligations

ALC is required to operate the Stations during the Operations Term in accordance with good operating practices and a Station Operation Manual endorsed by RailCorp to ensure that the Stations are cleaned and repaired such that:

- on opening each day the facilities are clean and presentable;
- on opening each day 90% of the interior lights are working;
- surfaces are cleaned daily for the removal of rubbish, dust, grime and the avoidance of people slipping;
- light cleaning is undertaken throughout the day to ensure the Stations remain presentable while open; and
- significant graffiti is removed as soon as practicable.

The Stations Operation Manual sets out in detail procedures for the operation, management, repair, routine maintenance and replacement and refurbishment of the Stations.

ALC must prepare on an annual basis a five year plan setting out proposed replacement and refurbishment works, timings and costs. ALC must provide a copy of the plan each year to RailCorp together with reconciliation of actual works and associated costs undertaken in the previous year.

To ensure that the Stations are transferred to RailCorp in an appropriate state of repair at the end of the Operations Term, ALC is required to provide RailCorp in 2025 with a bank guarantee to the value of the replacement and refurbishment works to be undertaken during the final five years of the Operations Term. The bank guarantee is to be reduced each year by the actual spend of the previous year or will be drawn upon by RailCorp at the end of the Operations Term to carry out any rectification works that are required.

4.4 Ticketing and Fares

Passengers wishing to travel to, from or between the Stations, in general, purchase a Combined Ticket comprised of a:

- Station ticket entitling the passenger to use the relevant Station in return for the payment of a Station Usage Fee; and
- Train ticket entitling the passenger to use the relevant RailCorp train in return for the payment of the relevant train fare.

Combined Tickets are sold at both the Airport Line stations and RailCorp stations. RailCorp is entitled to receive all train fares regardless of the point of sale and ALC is likewise entitled to all Station Usage Fees.

ALC also sells a separate Station Ticket generally for use by a passenger who already holds a valid train ticket such as a Travelpass zone based ticket.

Combined Tickets can be purchased in essentially all the standard RailCorp product forms including singles, returns, periodicals and concessions.

The Station Usage Fee (SUF) component of a Combined Ticket is set by ALC and is not subject to regulation by the Independent Pricing and Regulatory Tribunal (IPART). The SUF is currently a flat fee for entry to or exit from an Airport Line station regardless of the length of train journey. At present ALC charges the same SUF at International and Domestic Stations and a lower SUF at both Mascot and Green Square stations.

The current Station Usage Fees (as at 9 November 2005) are set out below:

	International & Domestic Terminal stations	Green Square and Mascot Stations
Adult Single	\$9.80	\$2.00
Adult Return	\$12.90	\$3.30
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Concession / Pensioner Single	\$7.20	\$1.00
Concession / Pensioner Return	\$10.00	\$1.60
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Adult Weekly	\$13.50	\$13.50
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Concession Weekly	\$11.00	\$11.00

Train Fares for travel to and from the Airport line stations are determined in accordance with RailCorp's standard flag fall and distance based pricing structure as regulated by IPART.

ALC's staff and contractors are permitted to use RailCorp trains to travel free of charge between Central and Wollie Creek stations while they are at work performing their work duties. ALC staff are not entitled to free RailCorp travel to and from work or any where else on the RailCorp network.

ALC provides free or concession priced station access to current and former RailCorp and other government transport authority employees. Generally if the pass holder is entitled to free or concession fare train travel he or she is entitled to free or concession fee station access. RailCorp compensates ALC for providing free or concession fee access by making a Staff Pass Lump Sum Amount payment to ALC each quarter.

ALC is obliged to install and maintain ticketing equipment at the Airport line stations capable of issuing Train Tickets and Combined Tickets. ALC's ticketing equipment has been provided by RailCorp for which it pays RailCorp a monthly operating lease type fee. ALC may alter its Stations Usage Fees at no cost where it provides RailCorp with at least 30 days notice of the proposed changes. ALC may give RailCorp a shorter notice period but if it does so it must meet RailCorp's reasonable costs of implementing the changes.

RailCorp's ticketing systems are used to record and process the sale of Combined Tickets across the entire RailCorp network. Data created by RailCorp's ticketing system is used to generate revenue and ticket sales information for use by RailCorp and ALC.

4.5 Capped Amount

RailCorp has agreed to pay ALC a Capped Amount in settlement of the disputes arising from the Original Stations Agreement and in return for ALC agreeing to the new train running performance regime outlined at section 4.2 and other matters under the Restated Stations Agreement.

The Capped Amount is a present value of \$80 million with a discount date of 30 September 2001 and annual discount rate of 7.75%. The Capped Amount is not a lump sum payment and it is not guaranteed by the Government. The Capped Amount is to be paid over time by RailCorp remitting to ALC 85% of the train fare revenue it earns from the sale of train tickets for travel to or from an Airport Line station and RailCorp station or between Airport Line stations until the \$80 million has been extinguished. RailCorp is under no obligation to pay any shortfall if the Capped Amount has not been fully paid by the end of the Operations Term.

The cash value of 85% of the relevant train fares sold each day is to be paid into ALC's bank account the next Business Day. The cash payment is to be discounted by 7.75% per annum in accordance with the following formula to convert it to a present value as at 30 September 2001.

$$DP = \frac{CP}{(1+r)^{E/365}}$$

Where

- DP* = the discounted payment
- CP* = the cash payment made
- r* = the discount rate of 7.75%
- E* = the number of days that have elapsed between 30 September 2001 and the date the cash payment is made.

4.6 Revenue Sharing Arrangements

The Agreement sets out an arrangement which provides for RailCorp to receive a share of the net revenue generated by ALC once certain thresholds have been achieved. Specifically, the Agreement provides for RailCorp to receive as a Train Service Fee, 50% of all Excess Cash Flow generated by ALC in excess of a present value of \$181,969,549 (Revenue Sharing Threshold) up to a present value of \$212,009,777 (Debt Equivalent Amount) and 85% of all Excess Cash Flow thereafter.

The Revenue Sharing Threshold is approximately equal to the agreed net present value of the business of \$120 million as at 30 September 2001 plus the

Capped Amount of \$80 million less debt repayments made between 30 September 2001 and 30 June 2005. The Debt Equivalent Amount is an agreed senior debt value as at 30 September 2001.

Excess Cash Flow is calculated on a calendar monthly basis commencing for July 2005 and is defined as:

Excess Cash Flow = $\text{Gross Revenue} - (\text{Approved Operations Cost} + \text{the Replacement and Refurbishment Amount}) \div 12 - \text{the Deductible Tax Amount (if any)}$.

Where

Gross Revenue means all revenues earned by ALC from all sources including:

- Station Usage Fees;
- Capped Amount payments;
- Compensation Payments made by RailCorp for poor train running performance;
- Line Closure Compensation Payments;
- Staff Pass Lump Sum Amounts; and
- Replacement and Refurbishment Release Amounts (see below).

The Approved Operations Cost is a fixed amount that ALC is entitled to deduct to operate the Stations. It is reset on an open book basis every three years and escalated annually in between in accordance with a set of indices.

The Replacement and Refurbishment Amount is a fixed allowance that ALC is entitled to deduct for station replacement and refurbishment works. This amount is also reset every three years and escalated annually in between. ALC is required to credit the Replacement and Refurbishment Amount to a Replacement and Refurbishment Provision Account. Any monies unspent after five years are returned with interest at 7.75% as Gross Revenue (Replacement and Refurbishment Release Amounts).

The Deductible Tax Amount means notional ALC tax payments calculated on a stand alone (non-consolidated) basis up to a Tax Amount Cap of \$45 million in nominal dollars. Actual tax paid by ALC is the responsibility of ALC. As at the Effective Restatement Date ALC is deemed to have Accumulated Tax Losses of \$166,604,795 which must be extinguished prior to the deduction of any Deductible Tax Amount.

The Agreement provides for the monthly Excess Cash Flow to be discounted to a present value as at 30 September 2001 at an annual discount rate of 7.75%. The Discounted Excess Cash Flow is added each month to the previous monthly amounts. RailCorp is entitled to be paid a Train Service Fee by ALC equal to 50% of the Excess Cash Flow each month once the Cumulative Discounted Excess Cash Flow exceeds the Revenue Sharing Threshold. The Train Service Fee rises to 85% of each month's Excess Cash Flow once the Cumulative Discounted Excess Cash Flow exceeds the Debt Equivalent Amount.

4.7 Accounting Records, Reporting and Audit

ALC is required to establish appropriate accounting systems, procedures and practices and keep records of its revenues, costs, ticket sales, RailCorp performance and other matters related to the operation of its business.

ALC is required to provide monthly and annual reports covering its operations and quarterly un-audited and annual audited financial statements to RailCorp. RailCorp may inspect ALC's records on giving 10 days notice.

RailCorp is similarly required to keep records of its sale of Combined Tickets. Each party is entitled to audit the other party's books and records.

4.8 Indemnities

Under the Agreement each party indemnifies the other party, its directors, officers and employees against all actions in respect of any public liability to any persons caused or contributed to by any breach of its obligations under the Agreement or any negligence on the part of it or its agents.

In addition, RailCorp indemnifies ALC against any loss or claims by other persons which arise as a result of any pre existing contamination:

- excavated during the construction stage; or
- which ALC is required to address by a relevant Authority.

4.9 Insurance

ALC is required to hold in the name of ALC and RailCorp as co-insureds, Public Liability cover of \$150 million and an Industrial Special Risk insurance against the physical loss/and or damage to the Stations for their full reinstatement or replacement value. ALC is also required to hold Workers' Compensation Insurance.

If the Stations are damaged, and in the reasonable opinion of RailCorp it is desirable and practicable to re-instate them, ALC is obliged to rebuild or reinstate the Stations using the insurance proceeds. RailCorp is entitled to receive all insurance proceeds where it decides that it is not practicable or desirable to reinstate them. However, if RailCorp decides not to rebuild the Stations and they were destroyed by a:

- Force Majeure Event either party may terminate the Agreement;
- RailCorp act or omission, ALC may terminate the Agreement; or
- ALC act or omission RailCorp may terminate the Agreement.

In all cases, RailCorp must make a termination payment to ALC the quantum of which is governed by the circumstances which gave rise to the termination of the Agreement – see section 4.13.

4.10 Assignment by ALC

ALC is not permitted to assign or encumber the Agreement or sub let or licence the Stations (other than for retail or advertising purposes) without RailCorp's consent which cannot be unreasonably withheld. Similarly, ALC must not permit a change in effective control of ALC including sale by a Receiver without the consent of RailCorp.

Where RailCorp's consent is required, its decision must not be unreasonably delayed or withheld and must be based upon a fair assessment of the probity, financial and operational capabilities of the proposed purchaser of ALC's business or person who is to assume control of ALC.

4.11 Default Events

The following are ALC Default Events:

- ALC does not pay any money due to RailCorp (other than money subject to a bona fide dispute) within 10 Business Days of its due date;
- ALC becomes bankrupt;
- ALC closes a Station for 90 consecutive days;
- ALC does not comply with a project document (for example, the Restated Stations Agreement or a Station Lease) the effect of which is to have a material adverse effect on the project;
- Any of the RailCorp securities (see section 2.2) ceases to have its required priority;
- There is a change in effective control of ALC or ALC encumbers the Agreement without RailCorp's approval.

RailCorp may serve a notice on ALC within six months of becoming aware of an ALC Default Event giving ALC a period of not less than 30 Business Days within which to remedy the default. ALC may seek and RailCorp must consent to a longer remedy period where it is reasonable to do so. RailCorp is entitled to terminate the Agreement where the default is not remedied.

The following are RailCorp Default Events:

- RailCorp does not pay any money due to ALC (other than money subject to a bona fide dispute) within 10 Business Days of its due date;
- RailCorp does not comply with a project document (for example, the Restated Stations Agreement or a Station Lease) the effect of which is to have a material adverse effect on the project;
- The Annual Reliability Performance Level is 4 percentage points or more below the benchmark (i.e. $\leq 94\%$ from 2007) for two consecutive years;
- The Annual Punctuality Performance Level is below the benchmark by 15 percentage points or more (i.e. $\leq 75\%$) for three consecutive years;
- The Reliability Performance Level is less than:
 - 75% for six consecutive months; or

- o 25% for three consecutive months.

ALC may serve a notice on RailCorp within six months of becoming aware of a RailCorp Default Event giving RailCorp a period of not less than 30 Business Days within which to remedy the default other than a performance default event which cannot be remedied. RailCorp may seek and ALC must consent to a longer remedy period where it is reasonable to do so.

ALC is entitled to issue RailCorp with a termination notice following a performance default event or following RailCorp's failure to remedy a non performance RailCorp Default Event within the remedy period. ALC is also entitled to serve a termination notice on RailCorp if the cumulative performance compensation paid by RailCorp equals a present value of \$50 million adopting a discount date of 1 January 2002 and a real discount rate of 4%.

However, an ALC termination notice does not become effective until the expiration of a six month negotiation period within which RailCorp can (if it opts for a negotiation period) seek to convince ALC not to terminate the Agreement by putting forward proposals to deal with the causes giving rise to the termination notice.

RailCorp must indemnify ALC for any trading losses it suffers during any negotiation period.

4.12 Material Change

The Material Change provisions have been retained from the Original Stations Agreement.

A Material Change is any one or more of the following events set out below which taken alone or together, materially affect or have been an essential element in materially affecting, the existing:

- ability of ALC or RailCorp to carry out the project; or
- ability of the Stations Business to generate Cumulative Excess Cash Flow equal to the Debt Equivalent Amount; or
- level or timing of revenues or outgoings of ALC or RailCorp in relation to the project.

Events

- (a) A Force Majeure Event;
- (b) A State or Commonwealth Government Body:
 - i. developing or substantially upgrading or granting a concession for another person to develop or substantially upgrade an alternative subsidised land based public transport route between the CBD and the Airport (other than a route for motor traffic or car parking at or near the Airport); or

- ii. taking actions relating to servicing the transport or commuting needs of the public along or around the Airport Line which discriminate against ALC in its operation of the Stations;
- (c) a Government Body causing any changes in law which affect directly or indirectly the usage of the Airport;
- (d) any other changes of law.

Where a Material Change occurs the parties are required to enter into good faith negotiations to deal with the Material Change having regard to a set of principles which include the:

- relative investment and risks assumed by each party under the project documents;
- ability of ALC to receive the Capped Amount;
- ability of RailCorp to receive Train Service Fees;
- remaining life of the Operations Term; and
- requirement that any adjustments to the rights and obligations of the parties to deal with the Material Change must not prejudice the existing ability of the Stations Business to generate Cumulative Discounted Excess Cash Flow equal to the Debt Equivalent Amount.

If the parties agree to terminate the Agreement, or are not able to agree on revised arrangements within:

- 3 months in the case of an Uninsurable Force Majeure Event; or
- 12 months in the case of any other Material Change,

then either party may terminate the Agreement on giving 10 Business Days notice to the other party.

4.13 Consequences of Termination

RailCorp is required to pay ALC a termination amount where the Agreement is terminated prior to the end of the concession period. In all cases the Stations revert to RailCorp control and ownership.

RailCorp is required to pay ALC the Maximum Termination Amount (see below) where the termination follows a:

- RailCorp Default Event;
- Material Change other than a Force Majeure Event; or
- RailCorp decision not to rebuild the Stations following their destruction due to an act or omission by RailCorp. In such circumstances, RailCorp receives the insurance proceeds.

RailCorp is required to pay ALC the Minimum Termination Amount (see below) where the termination follows:

- an ALC Default Event; or

- a RailCorp decision not to rebuild the Stations following their destruction due to an act or omission by ALC. In such circumstances, RailCorp receives the insurance proceeds.

Where the Agreement is terminated following a Force Majeure Event RailCorp is required to pay ALC the fair market value of the Station Business, either as agreed or as determined by an expert, subject to the payment falling within the Maximum and Minimum Termination Amounts.

The Maximum Termination Amount is equal to the sum of the following elements:

- ALC's Contract Break Cost limited to a maximum of three months of supplies under relevant contracts;
- ALC redundancy costs excluding employees statutory entitlements;
- Any remaining balance of the Capped Amount; and
- The Maximum Lump Sum Amount (see below);

less

- Any station rectification costs.

The Minimum Termination Amount is equal to the Minimum Termination Lump Sum Amount (see below) less any station rectification costs.

The Maximum Lump Sum Amount is equal to the unamortized value of \$120 million as at the date of termination. \$120 million was the agreed net present value of the Stations Business as at 30 September 2001 excluding the Capped Payment.

The \$120 million is amortised on a straight line present value basis using an annual discount rate of 7.75%. This equates to present value reductions of approximately \$4.186 million per annum. For example, if the Agreement were terminated on 30 September 2012 the Maximum Lump Sum Amount would have a (30 September 2001) present value of approximately \$74 million and a nominal value of approximately \$168.1 million as at that date. The Agreement sets out a formula for determining the Maximum Lump Sum Amount as at any termination date.

The Minimum Lump Sum Amount is calculated using the same formula but substituting the actual compound rate of inflation (CPI) from 30 September 2001 to the date of termination for the 7.75% compound discount rate used in the Maximum Lump Sum Amount calculation.

4.14 Dispute Resolution

The dispute resolution provisions of Agreement provide for a three level dispute resolution mechanism for general disputes plus expert determination for certain matters.

General disputes are subject to a formal written notice and written response process. If a dispute is not resolved within 5 Business Days of the written

response it must first be referred to senior executives of the parties for resolution. If they are unable to resolve the Dispute within 35 days of the dispute notice, the dispute is to be referred to mediation in accordance with the mediation rules of the Australian Commercial Disputes Centre before either party may take legal proceedings.

Disputes involving matters of calculation such as Line Closure Compensation, Reliability Performance Levels and the like are to be determined by an Independent Expert.

4.15 Crown Liabilities

The Crown in the right of New South Wales is not party to any project document. RailCorp is a State Owned Corporation and does not represent the Crown.

The Crown has not underwritten any agreement or guaranteed RailCorp's performance under any Project Document. As stated on page 9 above, ALC and NAB bear the full market (revenue/cost) risk and neither RailCorp nor the Crown have guaranteed that ALC will earn the Revenue Sharing Threshold amount or that NAB will be repaid its senior debt.

If, during the term of the Restated Stations Agreement, Train Fare Revenue is insufficient for the Capped Amount to be paid in full, then upon expiry of the agreement neither RailCorp nor the Crown have any obligation to pay the balance of the Capped Amount to ALC.

5. NEW SOUTHERN RAILWAY SETTLEMENT DEED

The key purposes of the Deed are set out below.

Under the Deed, RailCorp agreed to pay ALC in final settlement of all Disputes a Settlement Amount made up of:

- an initial payment of \$31,733,147.62 on signing the Deed;
- a subsequent payment made within 20 Business Days equal to 85% of the train fares collected by RailCorp for travel to, from or between the Stations during the period 1 July 2005 to 12 October 2005 inclusive.

The initial payment is made up of the following elements:

- \$27,698,887.92, being equal to 85% of the train fares collected by RailCorp for travel to, from or between the Stations during the period 1 October 2001 to 30 June 2005 inclusive. This amount both reduces the Capped Amount Balance (see section 4.5) and increases the Cumulative Discounted Excess Cash Flow amount (see section 4.6) by \$20,490,370.68;
- \$2,116,336.78 as performance compensation for the period 1 January 2002 up to 31 December 2004. This amount increases the Cumulative Discounted Excess Cash Flow amount by \$1,565,569.18;
- \$1,200,688.28 as Line Closure Compensation for the period from (and including) 1 May 2001 to 30 June 2005. This amount increases the Cumulative Discounted Excess Cash Flow amount by \$888,214.29;
- \$296,651.76 as Staff Pass Lump Sum Amount for the period 1 January 2001 to 30 June 2005. This amount increases the Cumulative Discounted Excess Cash Flow amount by \$219,449.41; and
- \$420,582.88, being RailCorp's share of 50% of Water Treatment Plant Costs from 1 July 2002 to 30 June 2005.

The Deed also:

- records for the purposes of the provisions of the Restated Stations Agreement which deal with the resetting of the performance benchmarks in 2012, the agreed Annual Reliability and Punctuality Levels for 2002, 2003 and 2004;
- establishes the value of the Debt Equivalent Amount and Revenue Sharing Thresholds at \$212,009,777 and \$181,969,549 respectively for the purposes of the Restated Stations Agreement (see section 4.6);
- provides for mutual releases by RailCorp/SRA and ALC from any claims, suits, rights actions etc arising out of or in connection with the Disputes;
- provides for various indemnities by RailCorp, SRA, NAB and the Security Trustee with respect to each other, the Receivers and ALC with regard to the Original Stations Agreement, the Restated Stations Agreement and the Deed; and

- records the consent of NAB and the Security Trustee (as required under the SRA Security Deed) to the Restated Stations Agreement being entered into.