



# Regional Rail Project

## Project Summary

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# 1 Project Overview

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## 1.1 Introduction

This Project Summary of the Regional Rail Public Private Partnership (**PPP**) Project (**Project**) has been prepared in accordance with the *NSW Public Private Partnership Guidelines 2017 (NSW PPP Guidelines)*.

The Project Documents, with confidential information redacted, are available on the Transport for NSW website at <https://www.transport.nsw.gov.au/industry/contracts-awarded>.

## 1.2 Overview of the Project

The Project will deliver on the NSW Government's commitment to replace the regional passenger fleet. The new fleet will improve customer experience in regional NSW and will substantially reduce maintenance costs compared with the current fleet, which is made up of ageing, diesel powered XPT, XPLORER and Endeavour trains. The current fleet is now approaching the end of its design life.

To service the future fleet, a new maintenance facility in Dubbo will alleviate current and anticipated maintenance facility pressure and will support local economic growth. Train completion works will also be undertaken at the Dubbo maintenance facility, which will contribute to economic development and growth for regional NSW.

Following a competitive tender process, on 14 February 2019, the contract to design, build, finance and maintain the new fleet and the associated Dubbo maintenance facility (**Project Deed**) was awarded to Momentum Trains Pty Ltd (**Momentum Trains**). A public announcement was made on the same day in Dubbo.

Under the Project Deed and the associated Project Documents, Momentum Trains will be responsible for:

- the design, manufacture, supply, delivery, testing and commissioning of the new regional fleet (comprising the regional fleet and intercity fleet) to replace the current fleet of XPT, XPLORER and Endeavour diesel trains, together with associated supporting equipment;
- the design, construction, testing, commissioning and operations of a new maintenance facility in Dubbo;
- the upgrade of the legacy maintenance centre in Sydenham;
- providing asset management services, including maintenance, obsolescence management, spare part management and engineering support to maintain the future fleet and other related assets; and
- financing the project activities for the future fleet and maintenance facility.

## 1.3 Purpose of the Project Summary

This document has been prepared by Transport for NSW in accordance with the public disclosure requirements of the NSW PPP Guidelines, to provide a high level plain-English summary of the Project and the key commercial terms of the Project Deed.

**This Project Summary should not be relied upon as legal advice or for interpretation of the Project Documents or for other legal purposes and is not**

**intended to be used as a substitute for the Project Documents.** The Project Summary is based on the form of the Project Documents as at 14 February 2019. As such, any subsequent amendments or variations to the Project Documents (if any) are not reflected in this document.

Unless otherwise defined in the Glossary of Terms at **Appendix A** or elsewhere in the Project Summary, capitalised terms used have the meaning given to them in the Project Deed.



**Figure 1-1 NSW TrainLink regional staff at Dubbo Station**

## 2 Project Description

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### 2.1 Project objectives

The objectives of the Project are to:

- enhance customer experience and satisfaction in using regional and intercity non-electric services and increase patronage through improved safety, service reliability and customer amenity;
- maximise value for money, improve whole of life outcomes and provide lower ongoing operational and financial risk to the State;
- stimulate regional economies through regional jobs and skills development;
- ensure on-going provision of a regional and intercity non-electric fleet that best meets current and future requirements for service delivery, and balances the need for reliability, availability, innovation, energy efficiency, carbon management and affordability; and
- provide regionally centred rail maintenance facilities and services for the new regional and intercity trains.

### 2.2 Description of infrastructure, scope and site

The Project Deed is a Design, Build, Finance and Maintain (**DBFM**) contract for the provision of a regional rail fleet consisting of 117 new carriages forming 10 regional intercity trains (30 carriages in 3 car sets), 9 short regional trains (27 carriages in 3 car sets) and 10 long regional trains (60 carriages in 6 car sets), as well as the design, build, finance, maintain and operation of the new, purpose-built maintenance facility at Dubbo.

The fleet will include on-board features to benefit customers including:

- more comfortable and reversible seating;
- window blinds;
- charging points for electronic devices;
- overhead luggage storage similar to what is available on airlines;
- new economy and premium classes for trips on the regional network – economy class will have a two by two seating layout while premium class will have a two by one layout;
- buffet cars on trains for longer regional journeys;
- wider doors than the current fleet, accessible spaces for customers using mobility aids, priority seats and accessible toilets; and
- lower emission-producing engines to reduce impact on air quality.

NSW TrainLink will continue to operate regional rail and coach services.

An artist's impression of one of the new trains is shown in **Figure 2-1**.



**Figure 2-1** Artist's impression of one of the new trains. This image is representative of the preliminary design and may be subject to change during detailed design activities.



**Figure 2-2** Artist's impression of the buffet facilities in the new regional train. This image is representative of the preliminary design and may be subject to change during detailed design activities.



**Figure 2-3 Artist's impression of the new regional train interior (premium class), showing allocated wheelchair accessible spaces. This image is representative of the preliminary design and may be subject to change during detailed design activities.**



**Figure 2-4 Artist's impression of one of the new train interior (economy class). This image is representative of the preliminary design and may be subject to change during detailed design activities.**

Momentum Trains will begin work on the design development for the maintenance facility in Dubbo in 2019.

An artist's impression of the new maintenance facility is shown in **Figure 2-5** below.



**Figure 2-5 Artist's impression of the Dubbo Maintenance Facility. This image is representative of the preliminary design and subject to change during detailed design activities.**

## 2.3 Project timetable

The progress of the Project and anticipated dates for the future of the Project are shown in **Table 2-1**.

**Table 2-1 Project timetable**

Activity	Date
Expression of Interest process	July to September 2017
Customer survey and market research	September to October 2017
Request for Proposals	December 2017
Evaluation of Proposals	June to November 2018
Planning approval granted for the Dubbo Maintenance Facility	November 2018
Contract awarded	14 February 2019
Financial close	15 February 2019
First trains in service	Early 2023

## 2.4 Main funding sources

As the Project is a PPP, Momentum Trains is responsible for securing debt and equity finance for the Project. The financing structure comprises a mix of senior debt and equity. See **section 5.1** for details regarding the debt financing parties.

As to the payment obligations of TfNSW, see **section 8.1**.

## **3 History of the Project and Strategic Need**

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### **3.1 Project drivers**

In 2012, the NSW Government announced its long term plan, the *NSW Long Term Transport Master Plan*, to manage Sydney's and regional NSW's long term transport needs to support a growing population. At that time, the NSW Government acknowledged an expected population growth in regional NSW of 563,000 people by 2031. One aspect of this plan included replacing the various existing fleets currently operating regional services.

There are a number of primary drivers to replace the regional and intercity rail fleet of XPT, XPLORER and Endeavour diesel trains. These include:

#### **Poor and declining customer experience**

Due to the age of the existing fleets, customers are experiencing outdated and unreliable services.

#### **Ageing fleet with increasing maintenance costs**

The current fleet is approaching the end of its design life. Routine and major periodic maintenance is required more frequently due to the age of the existing fleet and the existing backlog of maintenance. In addition, the cost of parts required for scheduled maintenance continue to increase due to obsolescence. Fleet age and historical maintenance practices result in higher fuel consumption.

#### **Maintenance facilities are operationally and capacity constrained**

Upgrades to the legacy maintenance facility at Sydenham are required to relieve congestion on the main line and make way for the new metro timetable. South Eveleigh maintenance centre is required to maintain the new intercity non-electric fleet. Upgrades to Sydenham are required to accommodate any new fleet.

#### **Committing to regional economic and population growth**

As outlined in *A 20-Year Economic Vision for Regional NSW*, the NSW Government is committed to facilitating connectivity between regions through continued support for rail services across the state. The policy also outlines the NSW Government's plan to deliver economic growth for regional NSW, and provide sustainable, regional jobs.

### **3.2 Final Business Case**

In September 2017, the final business case for the Project was submitted to the NSW Government for review. The business case considered the benefits, costs and funding requirements to invest in a replacement fleet to support the delivery of rail services in regional NSW based on pre-procurement assumptions of fleet type, numbers and maintenance arrangements. The final business case also considered a range of procurement models and processes, resulting in the decision to procure the Project through a DBFM approach.

## **4 Procurement**

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### **4.1 Overview**

TfNSW conducted a competitive tender process to identify the proponent to deliver the Project and to ensure the best value-for-money outcome for NSW. The procurement process involved the following stages:

- Market sounding;
- Expression of interest;
- Request for Proposal; and
- Contract finalisation.

### **4.2 Summary of the Public Interest Evaluation**

A multi-criteria analysis to ensure that the Project is in the public interest was drafted as part of the final business case, and considered the eight public interest attributes as required by the NSW PPP Guidelines. These are:

- Effectiveness in meeting Government's objectives;
- Achieves better value for money;
- Community consultation;
- Consumer rights;
- Accountability and transparency;
- Public access;
- Health and safety; and
- Privacy.

The public interest evaluation outlined the Project's alignment with each of the criteria and demonstrated from a qualitative perspective that procuring the Project through a DBFM contract would not be adverse to any aspect of the public interest.

### **4.3 Tender or other evaluation/assessment criteria**

The evaluation structure for responses to the Request for Proposal included separate criteria-focused specialist advisor teams, a range of specialist, independent and transaction advisors and relevant government departments to assist in the evaluation of shortlisted proponents. Each proposal was evaluated against the following criteria:

- Evaluation Criterion 1: Customer Focused Outcomes;
- Evaluation Criterion 2: Train Solution;
- Evaluation Criterion 3: Maintenance Facility and Asset Management Solution;
- Evaluation Criterion 4: Management Requirements;
- Evaluation Criterion 5: Jobs, Skills and Industry Participation;
- Evaluation Criterion 6: Commercial Solution;
- Evaluation Criterion 7: Financial Structure and Capacity; and

- Evaluation Criterion 8: Price.

The non-commercial criteria (and their relative importance) were given to proponents, noting that proposals were evaluated using a holistic, value for money assessment that included evaluation of commercial and non-commercial evaluation criteria:

The relative importance of non-commercial criteria is outlined in **Table 4-1**.

**Table 4-1 Relative importance of non-commercial criteria**

Relative Importance	Non Commercial Criteria
Most Important	<ul style="list-style-type: none"> <li>a) Train Solution; and</li> <li>b) Customer Focused Outcomes.</li> </ul>
Important	<ul style="list-style-type: none"> <li>a) Maintenance Facility and Asset Management;</li> <li>b) Management Requirements; and</li> <li>c) Jobs, Skills and Industry Participation.</li> </ul>

Further details on each of the criteria are set out in **Table 4-2**:

**Table 4-2 Request for Proposal Evaluation Criteria**

Evaluation Criteria	Assessment Criteria
Evaluation Criterion 1: Customer Focused Outcomes	<p>The extent to which the proposal achieved customer focused outcomes appropriate for the needs of the Project, including:</p> <ul style="list-style-type: none"> <li>a) the extent to which the proposal's overall solution will consistently deliver safe and sustainable high-quality customer focused outcomes, including passenger capacity, comfort, human factors integration and amenity over the design life of the train;</li> <li>b) the extent to which the proposal's overall solution met the requirements of the five scenarios for different customer types and provides the customer benefits; and</li> <li>c) improved customer safety and the customer experience.</li> </ul>
Evaluation Criterion 2: Train Solution	<p>The extent to which the proposal achieved the train solution appropriate for the needs of the Project, including whether the proposal:</p> <ul style="list-style-type: none"> <li>a) met or exceeded the requirements of TfNSW and the operator;</li> <li>b) met the delivery schedule;</li> <li>c) was compatible with the network;</li> <li>d) delivered high service required reliability and availability;</li> <li>e) minimised energy impacts;</li> <li>f) provided flexibility and future proofing features to accommodate future changes;</li> <li>g) provided simulators that will meet the crew training requirements of the operator; and</li> <li>h) provided assurance that the assets can be constructed and operated safely.</li> </ul>
Evaluation Criterion 3: Maintenance Facility and Asset Management Solution	<p>The extent to which the proposal's maintenance facility and asset management solution met the objectives of the Project, including whether the proposal:</p> <ul style="list-style-type: none"> <li>a) was developed from the concept design within the constraints of the key planning approval;</li> <li>b) met or exceeded the requirements of the maintenance facility;</li> <li>c) met the delivery schedule;</li> </ul>

Evaluation Criteria	Assessment Criteria
	<ul style="list-style-type: none"> <li>d) supported the achievement of TfNSW's operation requirements, including consistently achieving high levels of required availability and reliability;</li> <li>e) mitigated environmental impacts;</li> <li>f) ensured the trains, simulators, maintenance facility and other delivered rail assets are managed and maintained on a whole of life basis consistent with the technical solution and services solution;</li> <li>g) provided for the trains, simulators, maintenance facility and other assets and sites to be effectively and efficiently handed over;</li> <li>h) demonstrated safety management for construction and operation of the maintenance facility and rolling stock maintenance;</li> <li>i) demonstrated environmental management and sustainability outcomes for constructing the maintenance facility and rolling stock maintenance; and</li> <li>j) demonstrated innovation to optimise whole-of-life outcomes.</li> </ul>
Evaluation Criterion 4: Management Requirements	Assessment of management requirements, including management plans and other related documents were allocated against Evaluation Criteria 2, 3, 5 and 6.
Evaluation Criterion 5: Jobs, Skills and Industry Participation	<p>The extent to which the proposal achieved jobs, skills and industry participation appropriate for the needs of the Project. In this evaluation, the criteria that were considered included:</p> <ul style="list-style-type: none"> <li>a) the ability to deliver the Project in compliance with the requirements of the project scope and requirements (<b>PSR</b>);</li> <li>b) the ability to provide sustainable employment for people residing in regional NSW;</li> <li>c) the ability to implement initiatives that increase workforce diversity;</li> <li>d) the approach to skills development and training initiatives, including apprenticeships, to address regional skills shortages and gaps;</li> <li>e) the approach to partnering with government agencies, industry bodies and key stakeholders to support: <ul style="list-style-type: none"> <li>• regional employment;</li> <li>• skills development;</li> <li>• capability and capacity-building in regional NSW businesses, ANZ Small to Medium Enterprises and recognised Aboriginal businesses;</li> </ul> </li> <li>f) the approach to developing and promoting opportunities for regional NSW businesses, ANZ Small to Medium Enterprises and recognised Aboriginal businesses in the supply chain;</li> <li>g) the ability to deliver additional jobs, skills and industry participation initiatives and outputs that are innovative, practical and effective; and</li> <li>h) the degree to which the train completion works approach achieved skills development and sustainable regional jobs that transition through to maintenance.</li> </ul>
Evaluation Criterion 6: Commercial Solution	<p>The overall commercial solution including:</p> <ul style="list-style-type: none"> <li>a) the appropriateness of the proposed commercial structure to deliver the Project and the proposed contractual arrangements</li> </ul>

Evaluation Criteria	Assessment Criteria
	<p>within the consortium;</p> <p>b) the nature and extent of the proposed departures from the draft TfNSW project documents;</p> <p>c) the extent to which the proposed commercial opportunities can be undertaken without adversely interfering with or detracting from the Project objectives and the delivery of the Project (including the delivery of customer experience outcomes; and</p> <p>d) the appropriateness of the insurance approach;</p> <p>demonstrated ability to:</p> <p>e) work effectively with the NSW Government as required under the Premier's Memorandum M2014-11; and</p> <p>f) deliver the Project without exposing NSW Government, TfNSW or the community to an unacceptable or adverse actual or reputational risk, including by reference to:</p> <ul style="list-style-type: none"> <li>• delivery of previous projects (time / quality / cost/issues of serious underperformance);</li> <li>• maintenance of good corporate citizen status (litigation / conduct and claims history / solvency / media scrutiny / government relations / relationship with sub-contractors);</li> <li>• commitment to, and engagement with, the local region / community; and</li> <li>• submission of a Workplace Relations Management Plan that was in compliance with statutory obligations.</li> </ul>
Evaluation Criterion 7: Financial Structure and Capacity	<p>Financial capacity, financing structure and certainty of finance for the Project including:</p> <p>a) financial capacity to deliver the Project in its entirety, as demonstrated by:</p> <ul style="list-style-type: none"> <li>• the financial strength and capacity of each participant, provider, parent guarantor and financier to fulfil and bear the risk associated with its contractual obligations; and</li> <li>• the level and appropriateness of financial support provided, including credit enhancements;</li> </ul> <p>b) the appropriateness, competitiveness and flexibility of the financing structure, including the:</p> <ul style="list-style-type: none"> <li>• nature and quantum of each form of finance;</li> <li>• level of gearing;</li> <li>• terms of the finance;</li> <li>• competitiveness of the pricing and other terms of the finance structure;</li> <li>• approach to conditional debt pay down;</li> <li>• refinancing strategy; and</li> <li>• hedging strategy for interest rates and foreign exchange rates.</li> </ul> <p>c) the certainty and robustness of financing, as demonstrated by the:</p> <ul style="list-style-type: none"> <li>• degree to which the proposal provided certainty of delivering the proposed debt and equity solution (with limited conditionality or further due diligence); and</li> <li>• appropriateness and completeness of the financial close adjustment protocols.</li> </ul>
Evaluation Criterion 8: Price	The whole of life risk adjusted cost to TfNSW of the proposal including:

Evaluation Criteria	Assessment Criteria
	<ul style="list-style-type: none"> <li>a) all payments by TfNSW taking into account adjustments for risks and departures to the TfNSW Project Documents as determined by TfNSW;</li> <li>b) assessment of the commercial offer under alternate scenarios and sensitivities; and</li> <li>c) the appropriateness of the assumptions underpinning the proposal.</li> </ul>

#### 4.4 Value for money rationale

The NSW PPP Guidelines provide a framework that enables the value for money assessment with reference to a range of matters including the quality of the proposals and non-price evaluation criteria, as well as a comparison of the whole-of-life, risk and opportunity adjusted cost of each proposal. As part of the final business case, a Public Sector Comparator (**PSC**) and a Shadow Bid Model (**SBM**) were developed to test initial value for money for the Project against an affordability envelope. The value for money assessment took a holistic approach which included comparing the proposals against each other, the affordability envelope and the PSC.

The overall value for money of each proposal took into account quantifiable and non-quantifiable benefits, costs and risks. The value for money assessment concluded that Momentum Trains be recommended as the successful proponent.

#### 4.5 Public Sector Comparator

Under the NSW PPP Guidelines the development of a PSC is mandatory. The PSC for the Project was developed at the business case stage and updated, consistent with the terms of the RFP, draft contract and technical specification.

The PSC is an estimate of the net present value of a project's whole of life costs and revenues using the most efficient and likely form of Government delivery. The PSC developed for the Project provides an estimate of the risk-adjusted cost of the Project if it were to be designed, built and maintained by the State of NSW. To develop the estimate, the PSC was based on a reference project developed by TfNSW that was consistent with the technical specification for the Project.

In accordance with the *National PPP Guidelines*, the PSC was discounted using the project risk free rate of 4.43%. Proposals received by the State were discounted using the project risk free rate plus an adjustment of 0.89% for the conditional debt pay down amount and 1.8% for all other payments to a successful proponent. The adjustments were based on the levels of systematic risk premium transferred to the private sector under the PPP model. Discounting at these rates provides the Net Present Cost (**NPC**) comparison shown in **Table 4-3**.

**Table 4-3 Comparison with PSC**

Model	NPC (\$m)
PSC (NPC @ 4.43% discount rate)	1,258.1
Momentum Trains (NPC @ 5.31% for CDPD amount and 6.23% for all other payments)	1,176.7

The comparison of the PSC versus the NPC of Momentum Trains' proposal shows a benefit of \$81.4 million in NPC terms.

## 5 Key Commercial and Contractual Features

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### 5.1 Key contracts and parties

#### Project Deed

The principal document that sets out the terms on which the Project will be delivered is the Project Deed between:

- Transport for NSW (**TfNSW**), a New South Wales Government agency constituted as a statutory corporation under the *Transport Administration Act 1988* (NSW). TfNSW manages the transport services in the State of New South Wales;
- Rail Corporation New South Wales (**RailCorp**), a New South Wales Government agency constituted as a statutory corporation under the *Transport Administration Act 1988* (NSW). RailCorp holds rail property assets, rolling stock and rail infrastructure in the Sydney metropolitan area; and
- Momentum Trains Pty Ltd (ACN 630 634 507) (**Momentum Trains** and referred to in the Project Deed as '**Project Co'**) (in its capacity as trustee for the Momentum Trains Trust (ABN 40 340 691 016)), a special purpose entity established by the consortium comprising Pacific Partnerships, CAF Investment Projects (CAF IP) and DIF Infrastructure V Coöperatief.

RailCorp is a party to the Project Deed as it will own the assets delivered under the Project Deed, but it has appointed TfNSW as its agent and authorised TfNSW to exercise all RailCorp's rights under the Project Deed.

The Project Deed includes a number of Schedules and the Annexures. There are also four Attachments attached to the Project Deed (including draft plans and draft technical solution), however, these do not form part of the Project Deed. The Project Deed sets out the terms under which Momentum Trains must:

- a) design, manufacture, supply, test, commission and maintain the new fleet of regional and intercity trains to replace the current fleet of XPT, XPLORE and Endeavour diesel trains;
- b) design, construct, complete and maintain a new regional maintenance facility in Dubbo;
- c) upgrade the legacy maintenance centre in Sydenham;
- d) provide services during the maintenance phase of the term and maintain the rail assets, including the legacy maintenance centre in Sydenham; and
- e) finance the project activities.

A number of associated Project Documents (such as side deeds, licences, financing documents, equity documents, subcontracts, independent certifier deeds, parent guarantees and interface agreements), have also been executed or will be executed by a number of parties in connection with the Project. The parties to each Project Document vary depending on the nature, purpose and the rights and obligations contained in it. TfNSW is a party to a number of these Project Documents.

#### Key Subcontractors and Parent Guarantors

Momentum Trains has entered into two key subcontracts in connection with the Project, as follows:

- a) the Delivery Subcontract, with Construcciones y Auxiliar de Ferrocarriles S.A (NIF A20001020) to provide works and services during the Delivery Phase of the Project (**Delivery Subcontractor**); and
- b) the Maintenance Subcontract, with UGL Rail Services Pty Ltd (ABN 58 000 003 136) to provide works and asset management services during the Maintenance Phase of the Project (**Maintenance Subcontractor**);

Momentum Trains has also obtained a deed of guarantee (**Maintenance Subcontract Parent Guaranteee**) which is provided in favour of Momentum Trains by CIMIC Group Limited (ABN 57 004 482 982) (**Parent Guarantor**) to secure the obligations of the Maintenance Subcontractor under the Maintenance Subcontract.

### **Significant Subcontractors**

There are also other significant subcontracts in connection with the Project, as follows:

- a) **Depot Subcontract** with CPB Contractors Pty Ltd (ABN 98 000 893 667) for the design and construction of the Maintenance Facility (**Depot Subcontractor**);
- b) **Design Consultant Engagement** with WSP Australia Pty Limited (ABN 80 078 004 798) for design services in relation to the Maintenance Facility (**Design Consultant**); and
- c) a number of other subcontracts for the supply of equipment or the provision of works or services in relation to the Project (as listed in Schedule 1 of the Project Deed);

Additionally, Side Deeds in favour of TfNSW and RailCorp have been provided in respect of the following:

- a) Delivery Subcontract;
- b) Maintenance Subcontract;
- c) Depot Subcontract;
- d) Design Consultant's engagement; and
- e) any other significant subcontract to the extent required by the Project Deed.

The parties to each Side Deed are TfNSW, RailCorp, Momentum Trains, the party appointing the subcontractor (if not Momentum Trains), the relevant subcontractor and the parent guarantor of the subcontractor (if any). Each Side Deed entitles TfNSW to step-in to the role of the appointing party under the relevant subcontract and novate that subcontract to TfNSW's nominee in the event of default by the appointing party. This will enable TfNSW to avoid the relevant subcontract terminating the subcontract as a result of such default and thereby preserve the subcontract arrangements, should TfNSW wish to do so.

### **Independent Certifier**

APP Corporation Pty Limited (ABN 29 003 764 770) (**Independent Certifier**) has been engaged by TfNSW, RailCorp and Momentum Trains under the independent certifier deed dated 8 March 2019 (**Independent Certifier Deed**). The independent certification process provides assurance to all parties involved in the Project, including the financiers.

More specifically, the Independent Certifier performs the functions allocated to the:

- a) Independent Certifier, such as reviewing design documentation, management plans, programs and reports, and performing services in relation to acceptance processes; and

b) Environmental Management Representative,  
under the TfNSW Project Documents and the Key Planning Approval.

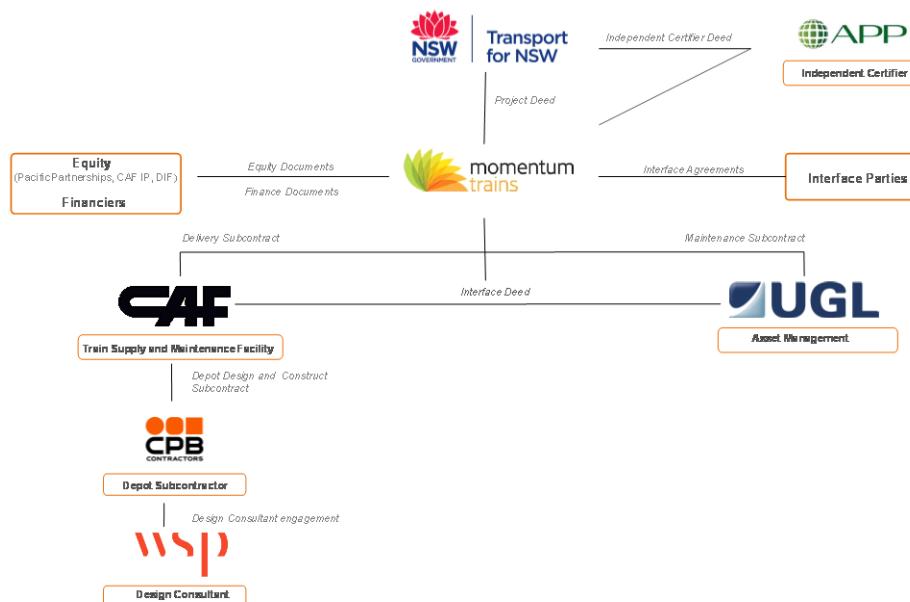
### Debt Financing Parties

Momentum Trains Finance Pty Limited (ACN 624 093 947) (**Finance Co**) is a special purpose company which was established to raise debt finance for the Project and to securitise Momentum Trains' licence payment obligations.

The debt raised by Finance Co is contributed to Momentum Trains by way of a securitised licence payment structure governed by, amongst other documents, the receivables purchase deed and payment directions deed.

MUFG Bank, Ltd (ARBN 103 418 882) has been engaged by Momentum Trains as the security trustee (**Security Trustee**) and as the facility agent (**Facility Agent**) and has entered into, amongst others, the Project Documents known as the financiers' tripartite deed and payment directions deed.

A simplified overview of the contractual structure described above for the delivery of the Project is shown in **Figure 5-1**.



**Figure 5-1 Simplified overview of the contractual structure for the delivery of the Project**

## 5.2 Term of the Project Deed

Upon execution of the Project Deed on 14 February 2019, certain provisions of the Project Deed took effect immediately. The remaining provisions came into effect when all conditions precedent specified in the Project Deed had been satisfied (or waived), the date of Financial Close.

The term of the Project Deed is comprised of two phases:

- the Delivery Phase; and
- the Maintenance Phase, which, subject to the exercise of any options to extend by TfNSW, is initially scheduled to expire in 2037.

TfNSW (in its discretion) has options to extend the contract term up to four times, with each such extension being for a period of five years.

# 6 Risk Allocation

## 6.1 Project Deed risk allocation

The risk allocation for the key risks under the Project Deed is summarised in **Table 6-1**.

**Table 6-1 Risk allocation summary**

No.	Risk	Risk Allocation
1	Design failure	Momentum Trains
2	Interface with existing infrastructure	Momentum Trains
3	Procurement of Maintenance Facility land	TfNSW
4	Construction / assembly noise, pollution etc.	Momentum Trains
5	Integration with the rail networks	Momentum Trains
6	Access to the rail network and train drivers for acceptance testing	Shared
7	Changes to rail network access agreements and new third party agreements	TfNSW
8	Commissioning and acceptance	Momentum Trains
9	Authorisation for operation on a rail network	TfNSW
10	Failure to satisfy requirements / technical specification	Momentum Trains
11	Loss or damage during delivery phase	Momentum Trains
12	Delay in delivery or acceptance	Momentum Trains
13	Rail networks condition causing acceptance test failure	Momentum Trains
14	New fleet and train condition	Momentum Trains
15	Loss or damage during operations / maintenance phase	Shared
16	Maintenance Facility condition	Momentum Trains
17	Timetable changes impacting availability of trains for maintenance	Shared
18	Lifecycle maintenance required earlier than anticipated	Momentum Trains
19	Failure to meet key performance measures/criteria	Momentum Trains
20	Technological obsolescence	Momentum Trains
21	Performance or maintenance affected due to distance travelled being greater than estimated	Shared
22	Third party claims arising from Momentum Trains' acts or omissions	Momentum Trains
23	Residual value of assets	TfNSW
24	Residual life of assets	Momentum Trains

No.	Risk	Risk Allocation
25	Asset condition	Momentum Trains
26	Transition to successor	Shared
27	Obtaining and maintaining rail safety accreditation	Momentum Trains
28	Obtaining and maintaining AEO status	Momentum Trains
29	Obtaining Key Planning Approval	TfNSW
30	Compliance with Key Planning Approval conditions	Shared
31	All other approvals, permits and consents	Momentum Trains
32	Customs clearance	Momentum Trains
33	Customs duties, fees and taxes	Momentum Trains
34	Obtaining and servicing financing	Momentum Trains
35	Change to base interest rate after financial close	Shared
36	Refinancing gains	Shared
37	Refinancing losses	Momentum Trains
38	Tax changes	Momentum Trains
39	Foreign exchange risk	Shared
40	Inflation	Shared
41	Cost of insurance	Momentum Trains
42	Uninsurability	TfNSW
43	Program risk	Momentum Trains
44	TfNSW required modifications	TfNSW
45	Momentum Trains initiated modifications	Momentum Trains
46	Site conditions and contamination (Maintenance Facility and Legacy Maintenance Centre)	Shared
47	Site conditions and contamination (additional land)	Momentum Trains
48	Native title or heritage claims	TfNSW
49	Costs and delays from industrial action	Momentum Trains
50	Availability of spares and consumables	Momentum Trains
51	Change in law, mandatory standard or policy	Shared
52	Site safety and security	Momentum Trains
53	Force majeure events	Shared
54	Access to stabling yards or Legacy Maintenance Centre	TfNSW
55	Access to the Maintenance Facility	TfNSW

# 7 General Obligations of Momentum Trains

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## 7.1 Overarching Obligations

The general obligations of Momentum Trains are summarised below. Obligations specific to the Delivery and Maintenance Phases are set out separately at **sections 7.2 and 7.3**.

### **Deliver the Project**

The primary obligation of Momentum Trains is to carry out the Project Activities in accordance with the Project Documents, all applicable Laws and Standards, the Management Plans and Best Industry Practices.

Momentum Trains must also ensure that it does not cause RailCorp, TfNSW or any of their respective Associates to breach any Law and must ensure that it manages all risks associated with the Project Activities in accordance with Best Industry Practices.

### **Fit for Purpose Warranty**

Momentum Trains provides a fitness for purpose warranty that:

- each Deliverable will be Fit for Purpose by reference to the purposes, function, uses and requirements which are current and apply as at the relevant warranty commencement date, will meet the relevant Transition Out Condition and will comply with all applicable Laws and Standards; and
- the Returned Asset will be Fit for Purpose by reference to the purposes, function, uses and requirements which are current and apply as at the relevant warranty commencement date, comply with all applicable Laws and Standards and be capable of remaining Fit for Purpose until the end of the Project Deed Term.

### **Key Planning Approval**

TfNSW has obtained the Key Planning Approval for the Project. Momentum Trains' obligation is to comply with the Key Planning Approval, including all conditions and requirements of the Key Planning Approval, except for those that TfNSW has expressly agreed to fulfil in the Key Planning Approval schedule of the Project Deed.

### **Other Approvals**

Momentum Trains must obtain, maintain and comply with and ensure that the Assets satisfy all other Approvals.

### **Rail Safety**

Momentum Trains' main obligations in respect of rail safety are:

- cooperate with, provide input into and prepare documents for any Accreditation Variation Applications that may be required to be obtained by Accredited Persons in order to facilitate delivery of the Project in compliance with the Rail Safety National Law;
- cooperate with and do everything necessary to enable each Accredited Person to maintain its Accreditation and comply with its obligations under the Rail Safety National Law;
- hold and comply with (and ensure the Key Subcontractors hold and comply with) the conditions of any necessary Accreditation to carry out any railway

- operations that form part of the Project Activities and comply with all obligations of a rail transport operator under the Rail Safety National Law; and
- enter into a Safety Interface Agreement where required by the Rail Safety National Law.

### **Access Agreements**

A number of Access Agreements have been entered into by TfNSW governing the terms of access to the rail Networks. Momentum Trains must not do anything or fail to do anything so as to cause TfNSW or a NSW Rail Entity to be in breach of its obligations under an Access Agreement. Momentum Trains must also cooperate and assist, as reasonably required, to enable TfNSW or a NSW Rail Entity to comply with its obligations under an Access Agreement.

### **Authorised Engineering Organisation (AEO)**

Momentum Trains must, or must ensure that its relevant Subcontractors engaged in engineering services that require AEO authorisation from the Asset Standards Authority, obtain AEO authorisation prior to commencing such services and maintain such authorisation while performing such services.

Information on AEOs can be accessed at

<https://www.transport.nsw.gov.au/industry/asset-standards-authority/authorised-engineering-organisations>.

### **Sites, Contamination and Environmental Requirements**

Momentum Trains must:

- not do anything to cause or contribute or exacerbate any Contamination on the Sites, cause any Pollution or disturb or discharge Hazardous Substances from the Sites except as authorised by Law or an Approval;
- carry out the Project Activities in accordance with the Environmental Requirements and in accordance with the relevant environmental Management Plans and assist TfNSW and RailCorp to comply with their own obligations under such requirements and plans;
- prevent or minimise Contamination on each Project Site in accordance with Best Industry Practices and any Environmental Requirements, and conduct all monitoring and testing regarding any Contamination in, on, or over or emanating from a Project Site in accordance with such practices and requirements; and
- notify TfNSW of any Contamination and remediate such Contamination as necessary to comply with such requirements and the directions of TfNSW in accordance with the Contamination Remediation Action Plan confirmed by TfNSW under the Review Procedures.

### **Utility Infrastructure**

Momentum Trains must make its own enquiries as to the location of existing Utility Infrastructure at the Sites and liaise with the relevant owner of the Utility Infrastructure for any potential relocation, protection or decommissioning.

Momentum Trains must undertake, or procure that a Utility Provider undertakes, all work in connection with Utility Infrastructure within the Sites which is required to deliver the Works.

### **Momentum Trains representatives and personnel**

Momentum Trains must:

- appoint a natural person as Project Co Representative in respect of the Project with the authority and skills to perform its role and duties and discharge its obligations under the Project Deed;
- ensure that from Financial Close until at least 12 months after the Date of Final Acceptance (Project) there is a natural person appointed as the Project Director in respect of the Project with the authority and skills to perform its role and duties and discharge its obligations under the Project Deed;
- ensure that the Key People specified in the Contract Particulars are employed or engaged in the roles specified therein. It must not replace them or delegate their functions without prior written approval from TfNSW; and
- ensure that the Required People specified in the Contract Particulars are employed or engaged in the roles specified therein. It must only replace them or delegate their functions to persons who possess at least equivalent qualifications, experience, ability and expertise and only after first providing to TfNSW a copy of the CV of the proposed replacement.

### **Project Control Group**

Under the agreed governance model, Momentum Trains must, together with TfNSW, establish a Project Control Group to perform the monitoring, review and dispute resolution functions specified in the Project Deed. It must appoint Momentum Trains' representatives to the Project Control Group and provide reports and prepare agendas and minutes of such meetings as required under the Project Deed.

### **Senior Control Group**

Momentum Trains must also, together with TfNSW, establish a Senior Control Group to perform the strategic planning and matter review functions specified in the Project Deed. It must appoint Momentum Trains' representatives to the Senior Control Group.

### **Annual Performance Review**

To assist TfNSW to undertake an annual assessment of Momentum Trains' performance under the Project Deed, Momentum Trains must prepare Annual Performance Review Reports and provide such information as reasonably requested by TfNSW. Where TfNSW identifies unsatisfactory performance by Momentum Trains or an unsatisfactory working relationship, Momentum Trains must submit a rectification strategy for review by TfNSW in accordance with the Review Procedures.

### **Contract Review Meetings**

Momentum Trains must participate in regular Contract Review Meetings (to be convened monthly by TfNSW) and must provide to TfNSW the reports required by the Management Requirements under the Project Deed to facilitate the efficient conduct of such meetings.

### **Community and stakeholder engagement and communications**

Momentum Trains:

- must manage and participate in all community relations programs, involvement programs and activities as required by the Project Deed or reasonably requested by TfNSW from time to time; and
- must not (except where required by Law or by the relevant recognised stock exchange) communicate with the media or communicate any information publicly with regard to the Project without the prior written consent of TfNSW.

## **Aboriginal Participation in Construction**

Momentum Trains must comply with the NSW Government Aboriginal Participation in Construction Policy and prepare and submit to TfNSW and the NSW Procurement Board its Aboriginal Participation Plan (Construction) and implement this plan in accordance with the policy at <https://www.procurepoint.nsw.gov.au/policy-and-reform/construction-procurement-policy/aboriginal-participation-construction-policy-apic>.

## **Quality Assurance**

Momentum Trains must, and must procure its Key Subcontractors to, develop, implement, maintain and comply with a Quality Assurance System with a minimum standard at least to the standards set out in AS/NZS ISO 9001, certified by a Joint Accreditation System of Australia and New Zealand accredited certifying body. Such certification must remain current throughout the Term.

## **Subcontracting**

The Key Subcontractors and the Significant Subcontractors that will be engaged for the Project are listed in **section 5.1** of the Project Summary. Momentum Trains must:

- notify TfNSW of all Subcontractors that will be engaged to undertake the Project Activities and it must not subcontract the performance of the Project Activities except in accordance with the Project Deed;
- employ the Key Subcontractors and Significant Subcontractors specified in the Contract Particulars of the Project Deed in the relevant roles specified in it;
- procure for TfNSW executed Side Deeds from each Key Subcontractor, each Design Consultant, each Depot Subcontractor and any other Significant Subcontractor if identified in the Project Deed as providing a Side Deed; and
- ensure that each Key Subcontract and Significant Subcontract includes the prescribed terms specified in the Project Deed regarding the termination of the Key Subcontract or the Significant Subcontract.

## **Interface obligations**

As TfNSW, RailCorp or other persons authorised by them may simultaneously be carrying out operations, functions or other work, services or activities in connection with the Assets and the Project Activities, Momentum Trains has express interface obligations. Momentum Trains must permit the Interface Parties to undertake their work, services and activities and must cooperate with and coordinate the Project Activities with the work, services and activities of the Interface Parties.

Momentum Trains must, and must procure that its Key Subcontractors, use reasonable endeavours to negotiate and enter into Interface agreements with the Operator and comply with Momentum Trains' obligations under such an agreement.

## **Momentum Trains Workforce**

Momentum Trains must ensure its employees and Subcontractors providing the Project Activities hold appropriate qualifications and have received appropriate training and are subject to testing in relation to alcohol and drugs.

## **Principal Contractors for NSW WHS Act and NSW WHS Regulations**

Under the Side Deeds and pursuant to the NSW WHS Act and Regulations, TfNSW appoints each Appointed Principal Contractor for any construction project forming part of the Project Activities for which the relevant contractor is engaged. TfNSW authorises each Appointed Principal Contractor to have management and control of the part of the workplace to which the construction work it will undertake relates.

## Work Health and Safety

Momentum Trains must:

- ensure that in carrying out the Project Activities it complies with (and requires its Subcontractors to comply with) all Laws and other requirements of the Project Deed and TfNSW Project Documents and Side Deeds in respect of work health and safety;
- implement and comply with a WHS Management System and Plan confirmed by TfNSW in accordance with the Review Procedures, which is Fit for Purpose;
- notify TfNSW of all work health and safety and rehabilitation matters that arise in connection with the performance of the Project Activities that are required to be reported under the WHS Legislation and all major injury incidents sustained at a Site and provide to TfNSW copies of all notices issued to Momentum Trains by an Authority related to safety issues;
- ensure that it does not do anything or fails to do anything that would cause TfNSW to be in breach of WHS Legislation; and
- regularly audit and monitor Momentum Trains' compliance with WHS Legislation and its safety obligations under the WHS Management Plan and the Project Deed and report the outcome of such monitoring to TfNSW and comply with any directions about work health and safety and rehabilitation from TfNSW or an Authority.

## Independent Certifier

TfNSW has appointed, and TfNSW and Momentum Trains have engaged, the Independent Certifier referred to in **section 5.1** to act as independent certifier in accordance with the Project Deed and the Independent Certifier Deed.

## NSW Code and Guidelines

Momentum Trains must in carrying out the Project Activities at all times comply with and meet obligations imposed by the NSW Government's *Code of Practice for Procurement (NSW Code)* and associated NSW Guidelines.

Momentum Trains must ensure that an equivalent obligation is imposed on the Subcontractors or consultants under their subcontracts. Momentum Trains must maintain adequate records of such compliance and allow authorised personnel to access sites and inspect sites and records for compliance with the NSW Code.

## 7.2 Delivery Phase Obligations

### Management Plans

Momentum Trains must prepare, develop update and submit to TfNSW all required Management Plans for review in accordance with the Review Procedures and the timeframes specified in the Project Deed.

### Program

Momentum Trains must also develop the Baseline Delivery Program and submit it to TfNSW for review in accordance with the Review Procedures. Momentum Trains must continue to update and submit the Baseline Delivery Program for review throughout the Delivery Phase.

## **Standards**

Momentum Trains must update the Minimum Operating Standards and Presentation Standards to reflect the design of the trains and submit them to TfNSW for review in accordance with the Review Procedures. Momentum Trains must continue to update and submit them for review throughout the design development process.

## **Manuals**

Momentum Trains must prepare the Operation and Maintenance Manuals and submit them to TfNSW for review in accordance with the Review Procedures.

## **Design**

Momentum Trains must design the new fleet of Regional and Intercity Trains, the Simulators, the Maintenance Facility and the upgrade to the Legacy Maintenance Centre in accordance with the Design Requirements in the Project Deed and so that those Assets, when manufactured and constructed, satisfy the Fit For Purpose warranty and the Design Life and Residual Life requirements specified in the Project Deed.

In respect of design, Momentum Trains must comply with the design development process described in the Project Deed in developing, refining and finalising the Technical Documents, including submitting the Technical Documents for review in accordance with the Review Procedures specified in the Project Deed.

## **Spares list**

Momentum Trains must update, and keep updated, the initial spares, consumables and equipment list for the Deliverables under the Project Deed.

## **Sites**

During the Delivery Phase, Momentum Trains must keep the Sites safe, clean and tidy at all times and secure and free from unauthorised access.

## **TfNSW Access**

Momentum Trains must allow TfNSW, RailCorp and their respective Associates and any person authorised by them (including the Independent Certifier) to access the Sites in accordance with the Site Access and Interface Protocols.

## **Verification**

Momentum Trains must allow TfNSW and its nominees to attend and witness and comment on the conduct of the Verification Activities required under the Project Deed, including submitting to TfNSW a Verification Plan, Verification Matrix and Verification Procedures for review under the Review Procedures and undertake the Verification Activities in accordance with the Confirmed documents.

## **7.3 Maintenance Phase Obligations**

### **Site Licences**

During the Maintenance Phase, Momentum Trains must enter and occupy:

- the Maintenance Facility Site to carry out the Project Activities in accordance with the Maintenance Facility Site Maintenance Phase Licence.
- the Legacy Maintenance Site to carry out the Project Activities in accordance with the Legacy Maintenance Centre Licence.

### **TfNSW Access**

Momentum Trains must allow TfNSW, RailCorp and their respective Associates and any person authorised by them to access the sites in accordance with the Site Access and Interface Protocols.

### **Defects**

Momentum Trains must during the relevant Defects Term, rectify all Project Co Defects identified by Momentum Trains or notified by TfNSW within the timeframes specified in the relevant notice or as required by the Project Deed (as the case may be).

### **Simulators**

Momentum Trains must ensure that the Simulators meet the Minimum Simulator Operating Condition throughout the Minimum Simulator Available Hours.

### **Required Availability**

Momentum Trains must make available the Units required to meet the Required Availability for the relevant Availability Period.

### **Train Plan requirements**

Momentum Trains must perform the Services so that the Units are capable of being operated in accordance with the Train Plan developed by TfNSW or the Operator of the Trains.

### **Spares management**

Momentum Trains must manage the procurement, use, storage, security, overhaul, modification and Maintenance of Spares and Consumables required for the Assets so as to ensure that the Assets meet the performance standards and requirements set out in the Project Deed.

### **Obsolescence management**

Momentum Trains must monitor Obsolescence and notify TfNSW of any Obsolescence issues.

## **7.4 Financing Obligations**

During the Delivery Phase, Momentum Trains is responsible for raising sufficient financing to fund the design, manufacture, supply, testing, and commissioning of the New Fleet, and the design and construction of the new regional Maintenance Facility in Dubbo.

During the Maintenance Phase, Momentum Trains is responsible for refinancing the outstanding debt as required.

## **7.5 Reporting Obligations**

Momentum Trains must prepare and submit Project Reports as required by the Project Scope and Requirements and in accordance with the content and frequency requirements and other relevant requirements in the Project Scope and Requirements.

More specifically, Momentum Trains must submit the following reports:

- Monthly Works Reports;
- Monthly Performance Reports;

- Annual Performance Review Report;
- Delivery Phase Quarterly Sustainability Report;
- Climate Change Impact Assessment Report;
- Aboriginal Participation Reports (Construction);
- Configuration audit reports;
- Contamination report;
- Verification Reports;
- Preliminary Acceptance Reports;
- Provisional Acceptance Reports;
- Final Acceptance Reports;
- Technical Reports;
- Lifecycle Assessment Reports;
- Track detection systems compatibility study report;
- Train design safety assurance report;
- Train construction and dynamic testing safety assurance report;
- Train operational safety assurance report;
- Simulator design safety assurance report;
- Simulator operational safety assurance report;
- Maintenance Facility design safety assurance report;
- Maintenance Facility testing safety assurance report;
- Maintenance Facility operational safety assurance report;
- Independent Certifier progress reports; and
- Independent Certifier Aboriginal Participation Reports.

These Project Reports are subject to review under the Review Procedures.  
Momentum Trains provides a warranty that they are complete and correct, not false or misleading in any material respect and Fit for Purpose.

## 8 Obligations of TfNSW

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### 8.1 Payment mechanism, performance standards, key performance indicators and measurement

TfNSW will provide payments to Momentum Trains based on Unit availability. Monthly Service Payments (**MSPs**) will commence following Provisional Acceptance of the first Unit and will be generally calculated based on a combination of Availability Payments, Maintenance Payments and other Adjustments. The formula for calculating the MSPs is detailed in the Payment Schedule (Schedule 16) of the Project Deed.

The MSPs may be adjusted in the future to reflect the inclusion of the pre-priced options referred to below.

If TfNSW makes a Conditional Debt Pay Down (**CDPD**) Amount payment, ongoing future MSPs will be reduced accordingly.

#### Availability Payments

Momentum Trains will be entitled to Availability Payments based on the number of Units which have reached Provisional Acceptance and are required to be Available. Momentum Trains sized the Availability Payments on the basis that TfNSW will exercise all of its options to extend the Term of the Project Deed Term (refer to **section 5.2**). If the Term is not extended beyond the Initial Term, the remaining debt balance upon expiry of the Initial Term is to be paid by TfNSW to Momentum Trains as an Expiry Refund Payment.

#### Maintenance Payments

Maintenance Payments by TfNSW will be comprised of three payment streams all of which are indexed:

- Fixed monthly payments to cover fixed overheads and fixed costs associated with routine maintenance;
- Variable monthly payments to cover variable maintenance costs payable in line with the Unit delivery profile and Required Availability; and
- Lifecycle payments to cover major maintenance including overhaul activities, calculated on a distance based profile.

#### Other Adjustments

Other Adjustments payable by TfNSW include:

- A Marginal Unit Adjustment Payment for the provision of additional Units for special events;
- An Additional Maintenance Service Payment to cover TfNSW Defect related maintenance work required (for example, operational damage). Additional Maintenance Service Payments will accrue based on the schedule of rates included in the Payment Schedule); and
- Base Interest Rate Adjustments where TfNSW takes the base interest rate risk after the Date for CDPD.

#### Pre-priced Options

Under the Project Deed, TfNSW has the option at its absolute discretion at any time during the Term, but prior to the applicable final cut-off date for the exercise of its

option, to require Momentum Trains to provide one or more Option Units. If TfNSW exercises this option then the Option Units become part of the New Fleet, and the Option Units will be subject to the terms of the Project Deed.

If TfNSW notifies Momentum Trains during the period which allows Momentum Trains to continuously produce the Option Units as it is producing the **Units (Option Continuous Production Period)**, the schedule for the Acceptance process and the Acceptance milestones for the Option Units will be in accordance with the pre-agreed schedule for them in the Project Deed. However, if TfNSW notifies Momentum Trains after the end of the Option Continuous Production Period, the schedule will have to be agreed by the parties.

TfNSW also has an option, at its absolute discretion at any time during the Term, but prior to the applicable final cut-off date for the exercise of its option, to require Momentum Trains to provide an Additional Option Item, being the Bi-Mode System allowing the Units to operate on diesel or electric power, for the Regional Fleet, the Intercity Non-Electric Fleet or both. If TfNSW exercises this option then the Additional Option Item will be subject to the terms of the Project Deed.

The Payment Mechanism includes future proofing for these options by way of inclusion of pre-agreed pricing for each option.

#### **Conditional Debt Pay Down**

TfNSW has an obligation to make a lump sum payment to Momentum Trains between two and four years after the Date for Final Acceptance (**CDPD Amount**) provided specified CDPD conditions specified in the Project Deed are met (or waived by the State).

### **8.2 Key Planning Approval**

TfNSW has obtained the Planning Approval granted or required to be granted under the EP&A Act in respect of the Maintenance Facility and Returned Asset (being the design and construction of a new storm water detention basin on the site in Dubbo).

### **8.3 Approvals from Network Access Providers**

Subject to Momentum Trains complying with its obligations under the Project Deed, TfNSW will be responsible for obtaining the approval of the network Access Providers to the use of the new rolling stock on their infrastructure.

### **8.4 Access to the Network and Provision of Train Drivers**

TfNSW must manage and procure access to the Network and provision of Train Drivers in accordance with the agreed protocol set out in the Project Deed.

### **8.5 Accredited Persons**

Whilst Momentum Trains will have obligations to cooperate and provide required documents and information, TfNSW will act as the point of contact between Momentum Trains and the Accredited Persons to enable the Accredited Persons to obtain any variations to their rail safety accreditation required to facilitate delivery of the Project.

## **8.6 Access to Maintenance Facility sites**

TfNSW is responsible for providing access to the Sydenham and Dubbo Sites in accordance with the terms of the relevant licences which have been agreed under the Project Deed.

## **8.7 TfNSW responsibility for damage outside Maintenance Facilities**

In addition to some of the typical damage that TfNSW is responsible for (i.e. certain vandalism and graffiti, collisions and derailments), TfNSW is also responsible for the cost of damage caused by fire and flood outside the Maintenance Facilities at Dubbo and Sydenham.

## **9 Performance Regime**

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Momentum Trains' MSPs will be subject to Monthly Service Payment Adjustments in accordance with the Performance Regime (Schedule 17) of the Project Deed.

### **9.1 Availability**

Availability of Units will be assessed once per day before their first service of the day. An adjustment will occur if Momentum Trains fails to meet the Required Availability on each day.

### **9.2 Reliability**

Reliability of Units will be measured through Cancellation and Delay events. A cancellation will be determined as either Cancelled in Service or Cancelled after reaching its Terminate Destination and result in specified payment deductions.

Delays caused by Momentum Trains greater than the agreed period of time specified in the Project Deed, as compared to the Timetable and measured at Monitored Platforms on each train line, will result in payment deductions.

### **9.3 One-time Adjustments**

To appropriately incentivise performance, there are a limited number of one-time adjustments which may result in either payment deductions or additional payments for the level of achieved performance of:

- Environmental and Sustainability of the Regional Maintenance Facility;
- Aboriginal participation, percent of apprentice trade positions, and industry participation in sustainable jobs during the delivery phase; and
- Train Completion Works undertaken in Regional NSW.

### **9.4 Key performance indicators (KPIs)**

KPIs are in place for Safety, EPA Reportable Events, and submitting required reports. They will be monitored and measured, with Momentum Trains subject to monthly deductions if their performance is below the KPI specified thresholds.

# 10 Change and project modification procedures

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## 10.1 Modifications

Either party may propose a Modification. A Modification includes:

- a) any change to the Works or the Design Requirements in the period prior to Final Acceptance (Project);
- b) a change to the Maintained Rail Assets during the Maintenance Phase;
- c) a change to Services Requirements or Services after the date of the Project Deed;
- d) a New Access Agreement that has the direct effect of making Momentum Trains' obligations more onerous or which materially increases liability of Momentum Trains after the date of the Project Deed; or
- e) a TfNSW direction for a new Third Party Agreement that has the direct effect of making Momentum Trains' obligations more onerous or which materially increases liability of Momentum Trains after the date of the Project Deed.

## 10.2 TfNSW proposed Modifications

TfNSW may propose a Modification at any time by providing a Modification Request to Momentum Trains setting out the proposed modification and requiring Momentum Trains to submit a Modification Proposal. TfNSW may also require Momentum Trains, before submitting its Modification Proposal, to submit an estimate of the cost of engaging a third party (other than a Consortium Member or a related body corporate) for any design, engineering, quantity surveying or other due diligence required in preparing its Modification Proposal.

If Momentum Trains considers that it will be delayed as a consequence of a Modification, it must also include in its Modification Proposal a claim for an extension of time or relief from performance of its obligations (as the case may be) to be assessed in accordance with the relevant provisions in the Project Deed.

Following receipt of Momentum Trains' Modification Proposal in response to its Modification Request, TfNSW may decide to proceed or not proceed with the Modification. If TfNSW does not proceed with issuing a Change Response (Modification Order) it must reimburse Momentum Trains' reasonable third party costs capped to the estimate submitted by Momentum Trains (if any).

TfNSW may also issue a Change Response (Modification Order) without first issuing a Modification Request or requesting a Modification Proposal from Momentum Trains. In such case, Momentum Trains must implement the Modification except where implementing the Modification would cause it to breach any Legislation or its Accreditation.

## 10.3 Project Co proposed Modifications

If Momentum Trains proposes a Modification, TfNSW will consider the proposed Modification and approve or reject it. Unless otherwise agreed in writing by TfNSW, Momentum Trains bears all risks and costs associated with a Modification proposed by Momentum Trains. Any Savings that arise from a Modification will be shared by the parties, as determined in accordance with the Change Compensation Principles.

## **10.4 Directions as Modifications**

If Momentum Trains considers that a direction by TfNSW constitutes a Modification, it must provide a notice to TfNSW and then submit a Change Notice in respect of the alleged Modification before commencing any work that is the subject of the direction.

TfNSW may confirm that its direction is a Modification and issue a Modification Request in accordance with the process described above and the Change Compensation Principles or withdraw its direction or inform Momentum Trains that the TfNSW direction does not constitute a Modification, in which case Momentum Trains must comply with the direction.

## **10.5 Minor Modifications**

Momentum Trains or TfNSW may propose Minor Modifications (for which the Financiers' consent is not required) throughout the Project in order to more efficiently give effect to minor modifications (as defined under the Project Deed) and to ease the administrative burden on Momentum Trains and TfNSW in implementing Modifications.

The parties will implement the Minor Modifications on the terms agreed and the adjustment to the payment regime will be in accordance with the Change Compensation Principles.

# 11 Default and termination arrangements, including step-in arrangements

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## 11.1 Major Default by Project Co

The Project Deed specifies the events that will be considered to be Major Defaults by Momentum Trains and these relate to:

- a) late Final Acceptance of a Simulator, a Train Unit or the Maintenance Facility;
- b) an event that would restrict any Project Co Entity's ability to obtain or have finance;
- c) fraud;
- d) materially incorrect or misleading representations and warranties;
- e) breach of the obligations relating to Subcontracting and Key People;
- f) failure to comply with obligations relating to the handling of Personal Information;
- g) breach of a TfNSW Project Document which is not cured;
- h) a Change in Management or Change in Control without TfNSW consent;
- i) failure to remedy Probity Events;
- j) refinancing without TfNSW consent;
- k) breach of any other Project Document with a material adverse effect and where Momentum Trains is not diligently pursuing the remedy of the breach;
- l) unacceptable Availability or Reliability;
- m) insolvency;
- n) failure to comply with obligations relating to insurance;
- o) suspension of access under an Access Agreement;
- p) safety breaches;
- q) breaches relating to rail safety Accreditation; and
- r) breaches relating to AEO authorisation.

If a Major Default occurs, Momentum Trains must promptly notify TfNSW and take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default. If Momentum Trains provides such notice to TfNSW or TfNSW considers that a Major Default has occurred, TfNSW may issue a Major Default Notice to Momentum Trains which:

- a) if the Major Default is capable of remedy, provides a reasonable amount of time for Momentum Trains to remedy the Major Default; or
- b) if the Major Default is not capable of remedy, states any reasonable requirements of TfNSW in connection with the Major Default and the date by which the requirements must be satisfied or, if there are no reasonable requirements that can be met by Momentum Trains, a statement to that effect along with its reasons for forming that view.

If Momentum Trains, acting in good faith, does not agree with a Major Default Notice or any part of it, it must notify TfNSW with reasons and reasonable periods of time for remedy for TfNSW's consideration in good faith. If Momentum Trains is not satisfied

with any changes or determinations made by TfNSW, it may refer the matter to expert determination.

## 11.2 Remedy program

Momentum Trains must prepare and submit a draft cure program to TfNSW within 10 business days of receiving a Major Default Notice setting out:

- a) where the Major Default is capable of remedy, a program to remedy the Major Default; or
- b) where the Major Default is not capable of remedy, a program to prevent the Major Default from recurring and complying with any reasonable requirements of TfNSW set out in the Major Default Notice.

Any program provided by Momentum Trains will be reviewed by TfNSW in accordance with the Review Procedures. In certain circumstances where a Relief Event occurs, Momentum Trains will be entitled to an extension of time to the period by which the Major Default must be remedied.

## 11.3 Persistent and Frequent Breaches

TfNSW may issue notices to Momentum Trains where Momentum Trains has committed Frequent or Persistent Breaches.

## 11.4 State termination rights

The Project Deed entitles TfNSW to terminate the Project Deed for a number of reasons:

- a) voluntary termination by TfNSW by giving Momentum Trains not less than 60 days' notice, in which case TfNSW may complete any uncompleted part of the Project itself or engage others to do so;
- b) termination by TfNSW where a Force Majeure Termination Event has occurred by giving written notice to Momentum Trains; (Momentum Trains is also entitled to terminate the Project Deed where a Force Majeure Termination Event has occurred, but not if Momentum Trains is entitled to recover for the relevant event under the advance loss of profits insurance or the consequential loss cover of the industrial special risks insurance or other business interruption insurance);
- c) termination for a Default Termination Event, subject to the Financiers' Tripartite Deed, by giving written notice to Momentum Trains.

The Default Termination Events under the Project Deed include:

- a) abandonment;
- b) an insolvency event occurs in relation to a Group Member;
- c) Project Co Entity fraud;
- d) a Project Co Entity assignment, transfer or disposal in breach of the Project Deed;
- e) a Change in Control not in accordance with the Project Deed;
- f) unremedied Major Default within the time period set out in the Major Default Notice;
- g) unremedied Major Default by a specified sunset date (where remedy is possible);

- h) Momentum Trains fails to comply with TfNSW's reasonable requirements to overcome the consequences of a Major Default not capable of remedy;
- i) termination of an Access Agreement by an Access Provider;
- j) an Illegality Event occurs;
- k) Momentum Trains fails to comply with certain obligations in relation to a Probitry Event;
- l) Momentum Trains fails to achieve Provisional Acceptance by a specified date after the relevant Date of Provisional Acceptance.
- m) Persistent Breaches that continue over a specified period or that recur a specified number of times after TfNSW has issued a Final Persistent Breach Notice;
- n) Frequent Breaches that occur during a specified period of time after TfNSW has issued a Final Frequent Breaches Notice;
- o) a breach of Momentum Trains' obligation to ensure that a train Unit does not leave the Manufacturer's Facility prior to TfNSW issuing a Certificate of Preliminary Acceptance in respect of that Unit;
- p) if a Maintenance Facility has been wholly or substantially damaged by a Momentum Trains act or omission; and
- q) if TfNSW maintains the view, acting reasonably, that there are no reasonable requirements that can be met by Momentum Trains to overcome the consequences or compensate TfNSW and RailCorp for a Major Default.

Alternatively, if a Default Termination Event occurs, TfNSW may elect to step-in or to exercise its rights to cure or attempt to cure the Default Termination Event.

## **11.5 Termination payments**

If the Project Deed is terminated under the Project Deed (as a voluntary termination, a termination for a Force Majeure Event or for a Default Termination Event) by either party, TfNSW will pay Momentum Trains a termination payment calculated in accordance with the Termination Payments Schedule (Schedule 24) of the Project Deed.

The calculation of the termination payment differs depending on the reason the Project Deed was terminated.

## **11.6 State Step-In rights**

### **Project Deed**

If certain emergencies occur which cannot be dealt with by the normal performance of the Project Activities, TfNSW may instruct Momentum Trains to immediately suspend performance of all or any part of the Project Activities or undertake additional or alternative services as and when required by TfNSW.

In certain circumstances, the direction by TfNSW to suspend the performance of all or part of the Project Activities due to an Emergency will be considered a Relief Event that may entitle Momentum Trains to an extension of time, compensation, or both an extension of time and compensation.

TfNSW also has a right to Step-in to the role of Momentum Trains and assume Momentum Trains' obligations under the Project Deed if any of the following Step-In Events occur:

- a) a Major Default;
- b) a Default Termination Event;
- c) a TfNSW Cure Notice has been issued by the Delivery Subcontractor or the Maintenance Subcontractor in accordance with the relevant Side Deed requiring TfNSW to cure a default by Momentum Trains under the relevant subcontract (as applicable);
- d) an Intervening Event;
- e) an event or circumstances which requires additional or alternate services materially greater than the Services required under the Project Deed;
- f) an Emergency; and
- g) TfNSW is entitled by law to act or discharge a statutory power or duty.

On the occurrence of a Step-In Event, TfNSW may elect to do any or all of the following:

- a) assume total or partial management and control of the whole or any part of the Site, the Assets or the Project Activities;
- b) access those parts of the Site and the Assets to which Momentum Trains has access or is entitled to occupy; and
- c) take such other steps as are necessary in the reasonable opinion of TfNSW for it to carry out the Project Activities and minimise the effect of the relevant Step-In Event.

However, TfNSW may not exercise its rights to step-in where the Step-In Event is the occurrence of a Major Default and Momentum Trains is complying with its obligations to remedy that Major Default.

During the period of step-in by TfNSW, Momentum Trains and TfNSW must comply with certain cooperation obligations as outlined under the Project Deed.

Where TfNSW has exercised its Step-In rights as a result of the occurrence of an event listed in paragraphs (a) – (d) or (e) – (g) (where it was the result of any act or omission of Momentum Trains):

- a) during the Delivery Phase, any step-in liability incurred by TfNSW will be a debt due and payable by Momentum Trains to TfNSW; and
- b) during the Maintenance Phase, the Monthly Service Payment will be adjusted in accordance with the Performance Regime and Payment Schedule to the extent that Services are not being provided in accordance with the Project Deed and any step-in liability in excess of the Monthly Service Payment will be a debt due and payable by Momentum Trains to TfNSW.

Where a Step-In Event under paragraphs (e) – (g) occurs which is not the result of an act or omission of Momentum Trains, then TfNSW's exercise of its rights to step-in will be assessed under the Project Deed as a Compensable Extension Event, Intervening Event or Force Majeure Event depending on the specific circumstances at hand.

TfNSW may cease to exercise its step-in rights upon written notice to Momentum Trains and must cease to exercise its step-in rights in specific circumstances where the relevant event has ceased and its consequences have been remedied or overcome.

### **Financiers' Tripartite Deed**

Upon the occurrence of a Default Termination Event, and prior to TfNSW issuing a notice to terminate the Project Deed, TfNSW is required under the Financiers'

Tripartite Deed to issue a notice to the Security Trustee of its intention to terminate the Project Deed.

The Security Trustee may provide notice to TfNSW of its intention to step-in and during the period of step-in by the Security Trustee, certain rights of TfNSW to terminate the Project Deed are restricted by the operation of the Financiers' Tripartite Deed.

The parties have agreed to an order of priority of step-in rights under the Financiers' Tripartite Deed.

### **Side Deeds**

Under the Delivery Side Deed and the Maintenance Side Deed, on the occurrence of any default by Momentum Trains under the relevant subcontract or any other event which gives rise to a right of the relevant subcontractor to terminate the subcontract, TfNSW may take steps to remedy such default.

TfNSW's rights to step-in under the Delivery Side Deed and the Maintenance Side Deed are subject to the Security Trustee's rights to step-in to the Delivery Subcontract and the Maintenance Subcontract under the consent deeds (being the direct deeds between the financiers, Momentum Trains and the relevant subcontractor in relation to certain rights and obligations).

# **12 Change of control and assignment provisions**

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## **12.1 Change of Control**

Momentum Trains must not, and must ensure that there is not at any time, any Change in Control of a Consortium Member without TfNSW's prior consent (unless it is a Permitted Change in Control).

Momentum Trains must notify TfNSW of any proposed Change in Control that is not a Permitted Change in Control and such notice must include the extent and nature of the proposed Change in Control, including the identity of each person proposed to acquire Control and all other information necessary for TfNSW to determine whether to consent to the Change and the probity or other investigations that TfNSW wants to undertake in respect of each person proposed to acquire Control.

TfNSW (acting reasonably) has the right to refuse consent to a Change in Control on a number of grounds set out in the Project Deed.

In the event of a Permitted Change in Control in relation to Momentum Trains or a Consortium Member, Momentum Trains must give notice to TfNSW prior to the Permitted Change in Control or, in the event of a change in any equity interest which is listed on a recognised stock exchange, as soon as reasonably practicable.

## **12.2 Assignment**

TfNSW and RailCorp may not assign their respective interests in the TfNSW Project Documents without the prior consent of Momentum Trains, except where the proposed transferee is:

- a) the State (including the Crown in right of the State) or a Minister on behalf of the Crown in right of the State); or
- b) any governmental, semi-governmental or local government authority, administrative judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality which is a GSF Agency and the obligations of which are supported by a guarantee from the State.

Momentum Trains is not permitted to (and must ensure that Finance Co does not) without TfNSW's prior consent:

- a) enter into any financing agreements other than the Finance Documents;
- b) assign, mortgage, create or allow to exist any Security Interest or permit any material amendment, waiver, termination, rescission, surrender or repudiation of any Project Document or enter into any agreement which affects the operation or interpretation of any Project Document; or
- c) lease, licence, transfer, sell, dispose of, part with possession of, mortgage, charge, create or allow to exist any Security Interest over or otherwise deal with any part of the Site or an Asset,

except as expressly permitted by the Project Deed, the Financiers' Tripartite Deed or the TfNSW Security.

# 13 Handover obligations

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## 13.1 Handback during the Term

Handback obligations of Momentum Trains arise during the Term of the Project Deed, as the relevant assets are required to be handed to the Operator or asset owner to operate or use. Momentum Trains must Handback:

- a) the train Units and Simulators to the Operator in accordance with the Interface Protocols (to be developed by Momentum Trains in accordance with Project Scope and Requirements in the Project Deed); and
- b) the Returned Asset (being a new storm water detention basin on the Returned Asset Site) to the Returned Asset Owner when the Returned Asset has been completed in accordance with the Project Documents.

## 13.2 Transition Out at the end of the Term

In preparation for expiry of the Project Deed, Momentum Trains must prepare a Transition Out Package, keep it up to date at all times and provide a copy of the Transition Out Package to TfNSW annually. In the period prior to expiry of the Project Deed, Momentum Trains must do all things reasonably required by TfNSW to ensure the smooth and orderly transfer of responsibility for delivering the Project to TfNSW or its nominee, including providing a dedicated person with appropriate expertise and experience to manage the transition out and handover of the Project.

By the Expiry Date, Momentum Trains must have:

- a) handed over the Assets and the Sites to TfNSW or its nominee free from encumbrances and in the Transition Out Condition;
- b) transferred free from encumbrances the Spares and Consumables for the Assets, and the Equipment required, deliver the Transition Out Package;
- c) performed all obligations and delivered all the things required under the Transition Management Plan;
- d) delivered all Project Co Material not already provided to TfNSW;
- e) transferred Approvals to TfNSW;
- f) paid to TfNSW all insurance proceeds received by Momentum Trains for the reinstatement of replacement of Assets;
- g) procured the execution of a Through Life Support Deed by the Delivery Subcontractor if required by TfNSW; and
- h) removed all Momentum Trains equipment which are not otherwise required to be handed over to TfNSW.

TfNSW and Momentum Trains will jointly appoint, and where they are unable to agree, TfNSW will appoint, a person reasonably acceptable with suitable qualifications and experience to be the Transition Out Reviewer. The Transition Out Reviewer will regularly carry out joint inspections of the Assets and the Sites before Transition Out, reporting on the Maintenance and repair work which must be carried out by Momentum Trains prior to Transition Out. Momentum Trains must undertake these relevant Final Refurbishment Works in accordance with the Project Deed. If any of the Final Refurbishment Works are not undertaken by the Expiry Date to the satisfaction of the Transition Out Reviewer, TfNSW may undertake those works and

all costs incurred by TfNSW will be a debt due and payable by Momentum Trains to TfNSW.

TfNSW has the right to, when the Transition Out Reviewer carries out their inspection within the final 3 year period of the Term, relieve Momentum Trains from any obligation to undertake any of the Final Refurbishment Works or increase the number of inspections the Transition Out Reviewer must undertake.

In certain circumstances, Momentum Trains may be required to provide an unconditional bank bond to TfNSW or set up a Transition Out escrow account for part of the Transition Out period.

## **14 Guarantees and security arrangements**

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### **14.1 Government Sector Finance Act 2018 (NSW)**

Under the ‘GSF Act Deed Poll of Guarantee’ executed by the NSW Treasurer (on behalf of the State), in favour of Momentum Trains dated 14 February 2019, the State provides a guarantee to the beneficiaries of Momentum Trains in accordance with section 6.27 of the *Government Sector Finance Act 2018 (NSW)*, of the State’s performance of its obligations under the Project Documents and any other documents approved by the Treasurer from time to time.

## 15 Dispute Process

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The Project Deed requires all disputes that arise between TfNSW and Momentum Trains under a TfNSW Project Document to be resolved in accordance with the procedures set out in the Project Deed (unless a TfNSW Project Document provides otherwise).

The Project Deed prescribes the dispute resolution process that must be undertaken in the following three progressive steps: senior negotiations, expert determination, and arbitration. Throughout the dispute resolution process both parties must continue to perform all of their obligations under the Project Deed.

If a dispute arises, either party may give the other party notice of the dispute and request referral of the dispute for resolution by negotiation between the Executive Representatives (CEO or equivalent) of TfNSW and Momentum Trains. If no resolution is achieved within the timeframe set out in the Project Deed, the dispute may be referred for expert determination (if the parties agree to refer the matter to expert determination or if the dispute is expressed in the Project Deed as one that is to be referred to expert determination) or arbitration, depending on the circumstances. Expert determination will be final and binding except in certain circumstances outlined in the Project Deed.

If the dispute is referred to arbitration, the Australian Centre for International Commercial Arbitration rules will apply.

# **16 Insurance**

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## **16.1 Delivery Phase**

Momentum Trains is required to maintain the following types of insurance during the Delivery Phase:

- construction risks (material damage);
- construction risks (public and products liability);
- contractors' pollution liability;
- construction risks (delay in start up / advance loss of profits);
- marine transit (material damage);
- marine transit (delay in start up / advance loss of profits);
- professional indemnity insurance;
- contractors' plant and equipment;
- workers' compensation insurance; and
- motor vehicle insurance.

## **16.2 Maintenance Phase**

Momentum Trains is required to maintain the following types of insurance during the Operating Phase:

- industrial special risks/consequential loss insurance;
- public and products liability insurance;
- professional indemnity;
- plant and equipment;
- workers' compensation insurance; and
- motor vehicle insurance.

## **16.3 Agreed Uninsurable Risks**

Momentum Trains does not have to take out or maintain insurance for Agreed Uninsurable Risks. These are risks expressly specified in the Project Deed (such as war, terrorism, ionising radiation etc.) and risks that are required to be insured by the Project Deed but which become uninsurable during the Term (and the parties agree or an expert determination determines have become uninsurable but not through a Momentum Trains act or omission).

Momentum Trains may be entitled to an extension of time or relief from performance of its obligations and compensation under the Change Compensation Principles if an Agreed Uninsurable Risk occurs.

## **16.4 Requirements in relation to insurance**

All required insurance must be:

- a) maintained with reputable insurers with at least a minimum specified Standard and Poor's (Australia) Pty Limited credit rating or Moody's Investor Service Inc. credit rating or an equivalent rating with another reputable rating agency; and
- b) on terms acceptable to TfNSW and in accordance with the Project Deed.

Momentum Trains is responsible for paying the premiums, deductibles and/or excesses payable under any of the insurances required to be effected in accordance with the Project Deed or as required by Law.

## **16.5 Insurance claims procedure**

TfNSW is not required to make a claim against an insurer under any of the relevant insurance policies before enforcing any of its rights or remedies under the indemnities in the Project Deed.

Momentum Trains must promptly notify TfNSW of any occurrence that may give rise to a claim (except where such notice would prejudice the insured's right of indemnity) and must:

- a) keep TfNSW informed of subsequent developments;
- b) diligently pursue any claim which it has under any insurance; and
- c) not compromise, settle, prosecute or enforce any claim under any insurance without the prior consent of TfNSW (not to be unreasonably withheld).

## **16.6 Insurance Proceeds for Uninsurable Risks, construction risks and industrial special risks**

Any amounts paid by TfNSW in respect of an Uninsurable Risk in respect of the reinstatement or replacement of Assets or the Change Compensation Principles and all proceeds of the following Insurances:

- a) construction risks - material damage, during the Delivery Phase; and
- b) industrial special risks - material damage, during the Maintenance Phase,

which may be received by TfNSW or Momentum Trains from the insurers, are to be deposited into the Insurance Proceeds Account. This account must be established by Momentum Trains with a financial institution approved by TfNSW and applied toward the reinstatement of the relevant Assets or any relevant Termination Payment in accordance with the Termination Payments Schedule, as the case may be.

## **16.7 All other proceeds of insurance**

All proceeds of insurance (except business interruption insurance) must be applied:

- a) to discharge the relevant liability or claim, or make good the relevant liability; or
- b) to TfNSW or to such account as TfNSW may reasonably direct.

# Appendix A – Glossary of Terms

**Notes:** The Glossary of Terms includes the definitions of the terms as they appear in the Project Deed and is intended to be used as a guide for the definition of terms used in the Project Summary.

Not all of the definitions in the Project Deed have been included. For the complete list of definitions as agreed in the Project Deed, please refer to publicly available copy of the Project Deed at <https://www.transport.nsw.gov.au/industry/contracts-awarded>.

References to 'Project Co' in the definitions below are references to Momentum Trains.

**Table A1 Glossary of Terms**

Term	Definition
Acceptance	means: (a) Preliminary Acceptance; (b) Provisional Acceptance; and (c) Final Acceptance, or the relevant one of these as the case may be.
Access Agreements	means: (a) the Existing Access Agreements; and (b) the New Access Agreements.
Access Provider	means any person who manages or is responsible for providing access to any part of the Network.
Accreditation	means accreditation in accordance with the requirements of the Rail Safety National Law.
Accreditation Variation Application	means all and any applications or submissions required to be made to ONRSR under or in accordance with the Rail Safety National Law in order to obtain any Accreditation Variation.
Accredited Persons	means each Access Provider, the Operator, Sydney Trains, TfNSW and any other person that has, or will have, effective control and management of: (a) any Rail Infrastructure forming part of the Network; (b) the operation or movement of Rolling Stock other than the New Fleet on any Rail Infrastructure forming part of the Network; or (c) the operation or movement of the New Fleet on any Rail Infrastructure.
Additional Maintenance Service Payment	has the meaning given in section 7 of the Payment Schedule.
Agreed Uninsurable Risk	means each: (a) Day 1 Uninsurable Risk; (b) Uninsurable Risk, but only as agreed or determined in accordance with clause 47.1.
Annual Performance Review Report	has the meaning given in clause 10.8C(c).
Appointed Principal Contractor	means: (a) in respect of the Maintenance Facility Site during the period

Term	Definition
	<p>prior to and including the Date of Provisional Acceptance (Maintenance Facility), the Depot Subcontractor;</p> <p>(b) in respect of the Returned Asset Site during the period prior to and including Returned Asset Handback, the Depot Subcontractor;</p> <p>(c) in respect of the Maintenance Facility Site during the period after the Date of Provisional Acceptance (Maintenance Facility) until the Expiry Date, the Maintenance Subcontractor; and</p> <p>(d) in respect of the Legacy Maintenance Centre Site, on and from the Date of Handover (Legacy Maintenance Centre) until the Expiry Date, the Maintenance Subcontractor.</p>
Approval	<p>means:</p> <p>(a) the Key Planning Approval; and</p> <p>(b) any other licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission, exemptions, notification, application, filing, lodgement, deed, direction or declaration or the like, which must be obtained or satisfied in connection with the Project.</p>
Asset	<p>means:</p> <p>(a) during the Delivery Phase, the Works; and</p> <p>(b) during the Maintenance Phase, the Maintained Rail Assets.</p>
Asset Standards Authority	<p>means that body within TfNSW known as the 'Asset Standards Authority' with the objectives, functions, powers and governance as described in its charter, a copy of which can be found at <a href="http://www.asa.transport.nsw.gov.au">www.asa.transport.nsw.gov.au</a>.</p>
Associates	<p>means, in relation to a person, any Related Body Corporate of that person, and any officer, agent, adviser, consultant, contractor or employee of that person or that Related Body Corporate and:</p> <p>(a) in the case of Project Co, includes:</p> <p>(i) the Project Co Representative;</p> <p>(ii) any Group Member or Consortium Member (other than Project Co) and their respective officers, agents, advisers, consultants, contractors, employees, nominees and licensees, each acting in connection with the Project;</p> <p>(iii) the Equity Investors, any Subcontractors (that are not covered by paragraph (a)(ii)) and their respective officers, agents, advisers, consultants, contractors, employees, nominees or licensees, each acting in connection with the Project; and</p> <p>(iv) any person on or at a Site at the express or implied invitation of Project Co or a Subcontractor in connection with the performance of the Project Activities, but does not include TfNSW or any of TfNSW's Associates, RailCorp or any of RailCorp's Associates, the Operator, the Operator's Associates, the Independent Certifier, the Environmental Management Representative or any Transition Out Reviewer;</p> <p>(b) in the case of TfNSW, includes:</p> <p>(i) officers, agents, advisers, consultants, contractors, authorised officers and employees of TfNSW, each acting in connection with the Project;</p> <p>(ii) the TfNSW Representative and any other person responsible for the administration or management or implementation of the Project, or any aspect of the Project, for and on behalf of TfNSW;</p>

Term	Definition
	<p>(iii) any other person to whom TfNSW delegates a right, power, function or duty under this Deed; and</p> <p>(iv) RailCorp, TAHE, Sydney Trains and the Operator, but does not include Project Co or any of Project Co's Associates, the Independent Certifier, the Environmental Management Representative, any Transition Out Reviewer, the author of a Site Information Report or any Rail Entity (other than those Rail Entities referred to in paragraph (b)(iv)); and</p> <p>(c) in the case of RailCorp, includes:</p> <ul style="list-style-type: none"> <li>(i) officers, agents, advisers, consultants, contractors, authorised officers and employees of RailCorp, each acting in connection with the Project;</li> <li>(ii) any person responsible for the administration or management or implementation of the Project, or any aspect of the Project, for and on behalf of RailCorp;</li> <li>(iii) any other person to whom RailCorp delegates a right, power, function or duty under this Deed; and</li> <li>(iv) TfNSW, TAHE, Sydney Trains and the Operator, but does not include Project Co or any of Project Co's Associates, the Independent Certifier, the Environmental Management Representative, any Transition Out Reviewer, the author of a Site Information Report or any Rail Entity other than those referred to in paragraph (c)(iv).</li> </ul>
Australian Rail Track Corporation or ARTC	means Australian Rail Track Corporation Limited (ABN 75 081 455 754).
Authorised Engineering Organisation or AEO	means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering organisation status by the Asset Standards Authority.
Authority	<p>means:</p> <ul style="list-style-type: none"> <li>(a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and</li> <li>(b) any other person having jurisdiction over, or ownership of, any Utilities, External Infrastructure or Utility Infrastructure.</li> </ul>
Available and Availability	has the meaning given in section 10.3 of the Payment Schedule and Availability has a corresponding meaning.
Availability Payment	means, in respect of a Payment Period, the amount calculated in accordance with section 2.1 of the Payment Schedule.
Baseline Delivery Program	means the Initial Delivery Program until such time as the Initial Delivery Program is updated in accordance with clause 16.2(b)(i), or as further updated from time to time in accordance with clauses 16.2(b)(ii), 16.2(b)(iii) and section 4.1 of the Programming Requirements and having been Confirmed.
Best Industry Practices	means Best Delivery Practices and Best Services Practices (or either as the context requires).
Cancellation	means, in relation to a Unit, that it suffers a Type 1 Failure, a Type 2 Failure, or a Delay or likely Delay which results in a Type 1 Failure and references to <b>Cancelled</b> shall be construed

Term	Definition
	accordingly.
Certificate of Preliminary Acceptance	means each certificate issued by TfNSW pursuant to clause 22A.7(a)(i) certifying that Preliminary Acceptance has been achieved in respect of a Unit in the form set out in section 1 of the Schedule of Forms and Certificates.
Change Compensation Event	has the meaning given in the Change Compensation Principles.
Change Compensation Principles	means Schedule 5.
Change in Control	<p>means:</p> <p>(a) where, at any time, any person or Entity alone or together with any Associate or Associates (as defined in the Corporations Act 2001 (Cth)), ceases to or commences to, directly or indirectly have Control of an Entity; or</p> <p>(b) a change in the manager, trustee or Responsible Entity of any Group Member that is a trust.</p> <p>For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an Associate of a designated body (within the meaning of section 12 of the Corporations Act).</p>
Change Notice	has the meaning given in the Change Compensation Principles.
Change Response	has the meaning given in the Change Compensation Principles.
Compensable Extension Event	<p>means any of the following events occurring during the Delivery Phase:</p> <p>(a) (<b>TfNSW breach</b>): a breach by TfNSW of any TfNSW Project Document;</p> <p>(b) (<b>fraud</b>): fraud, a malicious act or a malicious omission of TfNSW or a TfNSW Associate (other than any NSW Rail Entity) in connection with the Project;</p> <p>(c) (<b>Contamination Compensation Event</b>): a Contamination Compensation Event;</p> <p>(d) (<b>Emergency and Step in</b>): TfNSW exercises its step-in rights under clause 41.3(e) to 41.3(g), other than where the event which gives rise to the exercise of TfNSW's rights is a Force Majeure Event or is a result of a Project Co Act or Omission;</p> <p>(e) not used;</p> <p>(f) (<b>Accreditation Variation delay</b>): any delay in an Accredited Person obtaining an Accreditation Variation beyond the date for such Accreditation Variation being obtained as set out in the Baseline Delivery Program, except to the extent that the delay is caused or contributed to by Project Co's failure to comply with its obligations in clause 6A in respect of the Accreditation Variation; or</p> <p>(g) (<b>other events</b>): any other event described as a Compensable Extension Event in the Project Deed.</p>
Conditional Debt Pay Down (CDPD) Amount	<p>means the lesser of:</p> <p>(a) <b>X%</b> (<b>redacted - commercial-in-confidence provisions of a contract</b>) of the Debt (other than Debt in respect of the Option Capital Cost) outstanding immediately prior to the scheduled amortisation payment which falls due on the CDPD Payment Date;</p>

Term	Definition
	<p>and</p> <p>(b) X% (<b>redacted - commercial-in-confidence provisions of a contract</b>) of the Debt (other than Debt in respect of the Option Capital Cost) forecast in the Financial Model to be outstanding immediately prior to the scheduled amortisation payment which falls due on the CDPD Payment Date in the Financial Model.</p>
Consortium and Consortium Member	<p>means any of:</p> <ul style="list-style-type: none"> <li>(a) Project Co;</li> <li>(b) Finance Co;</li> <li>(c) each Holding Entity;</li> <li>(d) the Delivery Subcontractor up to the commencement of the CDPD Period;</li> <li>(e) the Maintenance Subcontractor;</li> <li>(f) the Depot Subcontractor up to the date falling 2 years after the Date of Final Acceptance (Maintenance Facility);</li> <li>(g) not used;</li> <li>(h) not used; and</li> <li>(i) the Parent Guarantor of the Maintenance Subcontractor, and Consortium Member means any of them.</li> </ul>
Consumable	means any consumable materials required to support the Maintenance, repair or overhaul of any Maintained Rail Assets during the Term.
Contamination	has the meaning set out in the <i>Contaminated Land Management Act 1997</i> (NSW).
Contamination Remediation Action Plan	has the meaning given in clause 8.5(a), as may be updated from time to time by Project Co in accordance with this Deed.
Contract Particulars	means Schedule 1.
Contract Review Meeting	means a meeting held in accordance with clause 10.8D.
Control	<p>means:</p> <ul style="list-style-type: none"> <li>(a) 'Control' as defined in the Corporations Act;</li> <li>(b) the ability to control, directly or indirectly, the composition of the board or partnership committee (or if the Entity is a trust, the appointment of a trustee of that trust);</li> <li>(c) being in a position to cast, or control the casting of, more than X% (<b>redacted - commercial-in-confidence provisions of a contract</b>) of the maximum number of votes that may be cast at a general meeting or similar (or if the Entity is a trust, a meeting of unit holders); or</li> <li>(d) having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to 'securities' were a reference to Securities as defined in the Project Deed) in more than X% (<b>redacted - commercial-in-confidence provisions of a contract</b>) of the Securities,</li> </ul> <p>of an Entity (whether alone or together with any Associates). For the purposes of this definition, Associate has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of</p>

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	the Corporations Act).
Date for Conditional Debt Pay Down (CDPD)	(redacted - commercial-in-confidence provisions of a contract)
Date of Final Acceptance (Project)	<p>means the latest of:</p> <ul style="list-style-type: none"> <li>(a) the Date of Final Acceptance (Base Fleet and Continuous Production Options);</li> <li>(b) not used;</li> <li>(c) the Date of Final Acceptance (Maintenance Facility); and</li> <li>(d) the Date of Final Acceptance (Simulator) in respect of the second Simulator to achieve Final Acceptance (Simulator).</li> </ul>
Date of Provisional Acceptance	<p>means, in respect of:</p> <ul style="list-style-type: none"> <li>(a) the Maintenance Facility, the Date of Provisional Acceptance (Maintenance Facility);</li> <li>(b) the Base Fleet and Continuous Production Options, the Date of Provisional Acceptance (Base Fleet and Continuous Production Options);</li> <li>(c) each Simulator, the relevant Date of Provisional Acceptance (Simulator);</li> <li>(d) each Unit forming part of the New Fleet, the relevant Date of Provisional Acceptance (Unit); and</li> <li>(e) the Upgrade Services, the Date of Provisional Acceptance (Upgrade Services),</li> </ul> <p>or the relevant one of these as the case may be.</p>
Default Termination Event	refer to section 11.4 of the Project Summary.
Defects Term	has the meaning given in clause 29.2(a).
Delay	occurs when a Train is behind its schedule at any point in its Journey, substantially because of a Project Co Defect affecting that Train on that Journey. It is measured in Customer Delay Seconds.
Deliverable	<p>means each:</p> <ul style="list-style-type: none"> <li>(a) Delivered Rail Asset;</li> <li>(b) item of Project Co Material;</li> <li>(c) item of Software; and</li> <li>(d) Mock-up,</li> </ul> <p>and any other item to be designed, developed, constructed, manufactured, supplied, delivered, tested or commissioned by Project Co under this Deed, and including any Modifications to such items.</p>
Delivery Phase	means the period beginning on the date of Financial Close and ending on the Date of Final Acceptance (Project).
Delivery Side Deed	means the document entitled 'Delivery Side Deed' dated on or about the date of this Deed between TfNSW, RailCorp, Project Co, the Delivery Subcontractor substantially in the form set out in Schedule 27.
Delivery Subcontract	means the agreement between Project Co and the Delivery Subcontractor to carry out the Delivery Phase Activities, and any

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	other contract between Project Co and a Subcontractor to carry out any part of the Delivery Phase Activities.
Delivery Subcontractor	means, as at the date of this Deed, the party listed as such in item 17 of the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out any part of the Delivery Phase Activities.
Depot Subcontract	means the agreement between the Delivery Subcontractor and the Depot Subcontractor in respect of the design and construction of the Maintenance Facility.
Depot Subcontractor	means, as at the date of this Deed, the party listed as such in item 18 of the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out the design and construction of a material part of the Maintenance Facility.
Design Consultant	means, as at the date of this Deed, the party listed as such in item 13A of the Contract Particulars, and any person who in addition or substitution is engaged by Project Co, a Key Subcontractor or a Significant Subcontractor to design a material part of the Maintenance Facility.
Design Life	means, in respect of a Design Life Item, the period of years for which the item must be designed, manufactured and constructed to be Fit For Purpose as specified for that Design Life Item in column 2 of Table 1 of the Residual Life and Design Life Schedule, measured from the FFP Warranty Commencement Date in respect of the Asset which contains or comprises the Design Life Item.
Design Requirements	means requirements for the design of the Delivered Rail Assets as set out in: (a) the Project Scope and Requirements; (b) the Technical Solution; (c) the Design Development Schedule; (d) any relevant Standards (including all Approvals); (e) the Systems Engineering Management Plan; (f) any Modification directed by TfNSW; and (g) the remainder of this Deed.
Emergency	means any event or circumstance which: (a) involves serious personal injury, death or significant damage to or destruction of the Assets, or any other real or personal property; (b) poses a serious risk to: (i) the public interest; (ii) the health or safety of any person; (iii) the Environment; (iv) any part of a Site; (v) the structural integrity of any part of the Assets; or (vi) any part of the Network; (c) poses a serious risk of damaging or destroying the Assets or any other real or personal property; or (d) may interfere or threaten: (i) the safe operation of the Assets; (ii) the safe operation of the Network; or

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	(iii) the operational capacity or efficiency of the Network.
Environmental Management Representative	means the independent environmental representative appointed to the Project jointly by TfNSW and Project Co from time to time in accordance with clause 8.4A.
Environmental Requirements	means all Laws relating to the Environment and the conditions and requirements of any Approval relating to the Environment and all environmental safeguards and measures necessary to avoid, reduce, minimise or mitigate the environmental impacts of the Project Activities, including those identified in the Project Scope and Requirements.
EPA Reportable Event	means a breach of any Environmental Requirement required to be notified to the EPA including:
	(a) a Pollution Incident referred to in section 148(1) of the <i>Protection of the Environment Operations Act 1997</i> (NSW); and
	(b) Contamination of land referred to in section 60(1) of the CLM Act.
Equipment	means all plant, machinery, furniture, fittings and fixtures which:
	(a) are necessary for the performance of the Services;
	(b) are referred to in the Project Scope and Requirements; or
	(c) without limiting paragraphs (a) and (b) above, Project Co or its Associates installs, constructs or places on a Site and which is, or becomes, part of a Maintained Rail Asset,
	and includes Special Tools but excludes Temporary Equipment and Spares.
Executive Representatives	has the meaning given in clause 51(a).
Expiry Date	means the date of termination of the Project Deed in accordance with its terms or the date on which this Deed expires by effluxion of time (as applicable).
Expiry Refund Payment	has the meaning given to it in the Receivables Purchase Deed.
Facility Agent	means the person appointed from time to time as agent under the Facility Agreement.
Final Acceptance	means:
	(a) Final Acceptance (Maintenance Facility);
	(b) Final Acceptance (Base Fleet and Continuous Production Options);
	(c) Final Acceptance (Simulator) for each Simulator;
	(d) Final Acceptance (Unit) for each Unit forming part of the New Fleet;
	(e) Final Acceptance (CDPD);
	(f) Final Acceptance (Project); and
	(g) Final Acceptance (Upgrade Services),
	or the relevant one of these as the case may be.
Final Frequent Breaches Notice	has the meaning given in clause 48.7(b).

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Final Persistent Breach Notice	has the meaning given in clause 48.6(b).
Final Refurbishment Works	has the meaning given in clause 36.5(b)(i).
Finance Co	means Momentum Trains Finance Pty Limited (ACN 624 093 947).
Finance Documents	means: (a) each of the documents listed in the Finance Documents Schedule; (b) any document entered into in relation to a Refinancing of the Debt approved by TfNSW under clause 40; and (c) any other document which TfNSW and Project Co agree is a Finance Document for the purposes of this Deed.
Financial Close	means the date on which the last Condition Precedent to be satisfied has been satisfied (or waived in accordance with clause 3.3(b) as set out in a notice given by TfNSW to Project Co in accordance with clause 3.2(d)).
Financiers' Tripartite Deed	means the document entitled 'Financiers' Tripartite Deed' dated on or about the date of this Deed between RailCorp, TfNSW, each Project Co Entity and the Security Trustee on behalf of the Financiers.
Fit for Purpose or FFP	means: (a) is fit for its intended purposes, functions and uses specified in, or which can reasonably be ascertained from, clauses 1 to 66 of the Project Deed, the Project Scope and Requirements, the Performance Regime or the Payment Schedule; (b) otherwise meets the requirements set out in or which can reasonably be ascertained from: (i) the Design Requirements and, other than in respect of the Returned Assets, the Services Requirements; and (ii) all other requirements of the Project Deed; and (c) other than in respect of the Returned Assets, is fit for the performance of the Services in accordance with Service Requirements and so as to facilitate the achievement of the Project Objectives.
Force Majeure Event	means any of the following events occurring: (a) a Day 1 Uninsurable Risk or an Uninsurable Risk; (b) bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation; (c) a flood which might at the date of the Project Deed be expected to occur no more frequently than once in 100 years; (d) fire or explosion caused by events referred to in paragraphs (a) to (c); or (da) during the Maintenance Phase, any electricity not being available for use at a Project Site (at all or in the necessary quantity) due to an interruption (excluding an interruption that is caused or contributed to by a failure of Project Co to comply with the relevant requirements of the PSR) that occurs upstream of the point of supply of that electricity, and Project Co has exhausted any back-up supply of electricity

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	<p>and which:</p> <ul style="list-style-type: none"> <li>(e) in respect of paragraphs (a) to (d), occurs at or directly in the vicinity of a Project Site;</li> <li>(f) in: <ul style="list-style-type: none"> <li>(i) respect of a claim for an extension of time pursuant to clause 37 only, prevents or delays Project Co from carrying out all or substantially all of the Project Activities; or</li> <li>(ii) all other circumstances, prevents Project Co from carrying out all or substantially all of the Project Activities;</li> </ul> </li> <li>(g) was not caused by Project Co or its Associates, or TfNSW or its Associates;</li> <li>(h) was beyond the reasonable control of Project Co or its Associates; and</li> <li>(i) could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent designer, constructor, manufacturer, supplier, maintainer or operator of assets similar to the Assets and providing services similar to the Services would have taken using Best Industry Practices (including the expenditure of reasonable sums of money).</li> </ul>
Force Majeure Termination Event	<p>means:</p> <ul style="list-style-type: none"> <li>(a) TfNSW or Project Co has been prevented from carrying out all or substantially all of the Project Activities for a continuous period exceeding 180 days as a result of a Force Majeure Event; and</li> <li>(b) at least 180 days has elapsed since Project Co gave notice to TfNSW in accordance with clause 37.3 or 38.1(d) (as the case may be) of the Force Majeure Event,</li> </ul> <p>or any other event expressly deemed to be a Force Majeure Termination Event in this Deed.</p>
Frequent Breaches	<p>means frequent breaches of any TfNSW Project Document by Project Co which, in aggregate:</p> <ul style="list-style-type: none"> <li>(a) substantially frustrate the Project Objectives;</li> <li>(b) significantly impair TfNSW's ability to fulfil any of its objectives under the <i>Transport Administration Act 1988 (NSW)</i>;</li> <li>(c) have a material adverse effect on the Project, TfNSW, RailCorp, any Rail Entity or Customers; or</li> <li>(d) in TfNSW's reasonable opinion, indicate that Project Co does not intend to be, or does not regard itself as being, bound by this Deed,</li> </ul> <p>and whether or not such breaches are of the same type or class or constitute a Major Default.</p>
Group Member	means any of Project Co, Finance Co, each Holding Entity or any wholly owned subsidiary of any of them.
GSF Act Deed Poll of Guarantee	means the guarantee made on or about the date of Financial Close pursuant to section 6.27 of the <i>Government Sector Finance Act 2018 (NSW)</i> in respect of TfNSW's financial obligations under the TfNSW Project Documents, substantially in the form set out in Schedule 31.
GSF Agency	has the meaning given in the <i>Government Sector Finance Act 2018 (NSW)</i> .
Handback	means the process of delivery of a Train or Simulator from Project

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	Co to the Operator as described in the Interface Protocols.
Hazardous Substance	means any substance which would or might reasonably be expected to cause damage or injury to any person, any property or the Environment.
Illegality Event	means the Project Co, a Key Subcontractor or a Significant Subcontractor: (a) ceases to hold an Approval; or (b) breaches applicable Legislation, and TfNSW forms the view (acting reasonably) that such failure or breach is material to the performance of Project Co's obligations under the Project Deed and such failure or breach is not remedied within 30 days after the earlier of: (c) the date on which TfNSW notifies Project Co of the failure or breach; and (d) the date on which Project Co becomes aware of the failure or breach.
Independent Certifier	means the entity appointed as the Independent Certifier under the Independent Certifier Deed, being APP Corporation Pty Ltd as replaced (if at all) in accordance with clause 14.4.
Independent Certifier Deed	means the deed entered in to between TfNSW, RailCorp, Project Co and the Independent Certifier substantially in the form set out in Schedule 25.
Insurance Proceeds Account	has the meaning given in clause 46.11(a).
Intercity Non-Electric Fleet	means the new fleet of Trains to be designed, manufactured, supplied, tested, commissioned and Maintained by Project Co in accordance with this Deed and which will be used by the Operator to operate Intercity Non-Electric Services in place of the Endeavour fleet.
Interface Protocols	means the interface protocols between Project Co, the Operator, TfNSW and any other Rail Entities (to the extent required) which are to be developed by Project Co in accordance with the requirements of Part B2 (Schedule of Deliverables) of the Project Scope and Requirements and sections 3.5 and 3.6 of Part C3 (Services Specification) of the Project Scope and Requirements, as may be amended from time to time in accordance with clause 16.1.
Intervening Event	means any of the following occurring during the Maintenance Phase: (a) ( <b>Compensable Intervening Event</b> ): a Compensable Intervening Event; (b) ( <b>TfNSW act or omission</b> ): subject to clause 2.1(b), any act or omission of: (i) TfNSW; or (ii) any Associate of TfNSW (other than any NSW Rail Entity), in connection with the Project other than any such act or omission which is authorised or permitted under a TfNSW Project Document, Standard or Law; (c) ( <b>Force Majeure Event</b> ): a Force Majeure Event; (d) ( <b>loss or damage</b> ): TfNSW requires Project Co to repair or

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	<p>rebuild the Assets and clause 44.3(d) applies;</p> <p>(e) <b>(Emergency and Step-In)</b>: TfNSW exercises its rights under clause 41.1(a) or its step-in rights under clause 41.3(d) to 41.3(g), other than where the event that gives rise to the exercise of TfNSW's rights is a Force Majeure Event or is, or is a result of, a Project Co Act or Omission; or</p> <p>(f) <b>X (redacted - commercial-in-confidence provisions of a contract)</b></p> <p>and in each case it is, in order to permit Project Co to perform the Services (other than the Rectification Works) at the Legacy Maintenance Centre Site, essential to undertake those Rectification Works not approved in the case of paragraph (i) above in the Financial Year proposed by Project Co in the relevant Annual Rectification Works Proposal and, in the case of paragraph (ii) above, at the time proposed by Project Co in the Notice of Urgent Rectification Works.</p>
Key People	<p>means:</p> <p>(a) the people so named in item 15 of the Contract Particulars as replaced (if at all) in accordance with clauses 106(a)(ii) or 10.6(a)(iii); and</p> <p>(b) the dedicated transition person provided by Project Co in accordance with clause 36.2.</p>
Key Planning Approval	means the approval procured by TfNSW and identified as such in item 16 of the Contract Particulars.
Key Subcontractors	<p>means:</p> <p>(a) the Delivery Subcontractor;</p> <p>(b) the Maintenance Subcontractor; and</p> <p>(c) any other Subcontractor who is engaged to perform the Project Activities and is referred to in the Contract Particulars as a 'Key Subcontractor',</p> <p>as replaced in accordance with clause 12.2.</p>
Law	<p>means:</p> <p>(a) those principles of common law and equity established by decisions of courts; and</p> <p>(b) Legislation.</p>
Legacy Maintenance Centre	means the Maintenance centre located at the Legacy Maintenance Centre Site and includes all associated assets and systems, and all other physical infrastructure contained within the boundaries of the Legacy Maintenance Centre Site.
Legacy Maintenance Centre Licence	has the meaning given in clause 28.1(a)(ii).
Legislation	means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the State, the state of Victoria, the state of Queensland or an Authority, including the lawful directions of an Authority.
Long Unit	means the long Units that will form part of the Regional Fleet, as described in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements.
Maintain and	means planned and responsive inspections, examinations,

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Maintenance	condition assessments, maintenance, servicing, cleaning, adjustments, alterations, modifications, repairs, reconditioning, overhauls, renewals, refurbishments and replacement of component parts.
Maintained Rail Assets	means all assets in respect of which Project Co is required under the Project Deed to undertake the Services, being: (a) the Delivered Rail Assets; and (b) on and from the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre, including any Modifications to those assets.
Maintenance Facility	means the facility to be designed and constructed by Project Co and, following Provisional Acceptance (Maintenance Facility), to be operated and Maintained by Project Co, including the service and administration buildings, train wash, wheel lathe, roads and fuelling and decanting facilities, all associated assets and systems, and all other physical infrastructure contained within the boundaries of the Maintenance Facility Site, as further described in Part C5 (Maintenance Facility Specification) of the Project Scope and Requirements.
Maintenance Facility Site Maintenance Phase Licence	has the meaning given in clause 28.1(a)(i).
Maintenance Payment	means, in respect of a Payment Period, the amount calculated in accordance with section 3.1 of the Payment Schedule.
Maintenance Phase	means the period beginning on the earliest of: (a) the Date of Handover (Legacy Maintenance Centre); (b) the Date of Provisional Acceptance (Simulator); and (c) the Date of Provisional Acceptance (Maintenance Facility), and ending on the Expiry Date.
Maintenance Side Deed	means the document entitled 'Maintenance Side Deed' dated on or about the date of this Deed between TfNSW, RailCorp, Project Co, the Maintenance Subcontractor and the Parent Guarantor of the Maintenance Subcontractor substantially in the form set out in Schedule 28.
Maintenance Subcontract	means the agreement between Project Co and a Maintenance Subcontractor to perform any of the Services.
Maintenance Subcontractor	means, as at the date of this Deed, the party listed as such in item 17 of the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out any Services during the Maintenance Phase.
Major Default	refer to section 11.1 of the Project Summary.
Major Default Notice	has the meaning given in clause 48.2(b).
Management Plan	means each document listed in the Management Requirements, including all subsidiary plans, programs and supporting documents, information and the Interface Protocols, as updated from time to time in accordance with clause 16.1.
Marginal Unit	means, in respect of a Payment Period, the amount calculated in

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Adjustment Payment	accordance with clause 6.2 of the Payment Schedule.
Minimum Operating Standards	means the minimum operating standards that must be met by a Train as set out in Part C2 (Minimum Operating Standards) of the Project Scope and Requirements and as updated from time to time in accordance with clause 16.1A.
Minimum Simulator Available Hours	means the times of the day during which each Simulator is to be made available to TfNSW, being from 06:00 hours to 22:00 hours each day.
Minimum Simulator Operating Condition	means a Simulator is free from Project Co Defects and otherwise meets the requirements for a Simulator as set out in Part C4 (Simulator Specification) of the Project Scope and Requirements.
Minor Modifications	<p>means a Modification proposed by either Project Co or TfNSW in accordance with clause 39.12(b) that:</p> <ul style="list-style-type: none"> <li>(a) has a Base Cost of less than:           <ul style="list-style-type: none"> <li>(i) \$X% (redacted - commercial-in-confidence provisions of a contract) (Indexed) per Unit; or</li> <li>(ii) \$X% (redacted - commercial-in-confidence provisions of a contract) (Indexed) for the Maintenance Facility;</li> </ul> </li> <li>(b) is a Non-Sensitive Modification, being a Modification that could not reasonably be expected to materially increase the risk to Project Co of incurring Abatements or causing a Major Default or Default Termination Event; and</li> <li>(c) in respect of which Project Co will not be entitled to an extension of time to any Date for Acceptance if it occurs during the Delivery Phase.</li> </ul>
Modification	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in the period prior to the Date of Final Acceptance (Project), any change to the Works or the Design Requirements, including any addition, decrease, omission, deletion, demolition or removal to or from the Works or the Design Requirements;</li> <li>(b) during the Maintenance Phase, a change to the Maintained Rail Assets; and</li> <li>(c) after the date of this Deed:           <ul style="list-style-type: none"> <li>(i) in respect of the Services, a change to the Services Requirements or the Services including any addition, increase, decrease, omission, deletion, or removal of any part of the Services;</li> <li>(ii) a New Access Agreement which has the direct effect of:               <ul style="list-style-type: none"> <li>A. making performance of Project Co's obligations under this Deed materially more onerous; or</li> <li>B. materially increasing any liability or potential liability of Project Co in connection with the Project; or</li> </ul> </li> <li>(iii) a direction under clause 6E(a) in respect of a New Third Party Agreement which has the direct effect of:               <ul style="list-style-type: none"> <li>A. making performance of Project Co's obligations under this Deed materially more onerous; or</li> <li>B. materially increasing any liability or potential liability of Project Co in connection with the Project,</li> </ul> </li> </ul> <p>but excluding:</p> <ul style="list-style-type: none"> <li>(d) development and refinement of the Technical Documents in accordance with the Design Development Process, provided that</li> </ul> </li> </ul>

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	<p>this paragraph (d) does not apply to Rectification Works to the extent those Rectification Works comprise construction works;</p> <p>(e) not used;</p> <p>(f) any direction by TfNSW to Project Co to undertake additional or alternative works or services in accordance with clause 41.1(b);</p> <p>(g) any change of the type referred to in paragraphs (a) to (c) which is required to ensure that the Assets or the Services are otherwise in accordance with this Deed, provided that this paragraph (g) does not apply to Rectification Works;</p> <p>(h) the changes contemplated by clause 16.1A(d), 16.1B(d), 18.1(c), 43.1(d)(iii);</p> <p>(i) Minor Technical Changes;</p> <p>(j) Configurable Item Changes;</p> <p>(k) any direction by TfNSW under clause 39.14(a) in respect of the Option Units prior to the applicable Option Final Date; and</p> <p>(l) any change to the bounds of the Network.</p>
Modification Order	means a Change Response entitled 'Modification Order' in accordance with clause 39.5 or 39.7 and the Change Compensation Principles, requiring Project Co to proceed with the relevant Modification or comply with the Change in Mandatory Requirements (as applicable).
Modification Proposal	means a Change Notice submitted by Project Co under clause 39.3 or 39.8.
Modification Request	has the meaning given in clause 39.1.
Monitored Platform	means each of the Platforms at the stations listed in Appendix A of the Performance Regime schedule.
Monthly Service Payment	means a monthly service payment payable to Project Co calculated in accordance with the Payment Schedule.
Monthly Service Payment Adjustment	means, in respect of a Payment Period, the amount calculated in accordance with section 1 of the Performance Regime.
Network	means the Intercity Trains Network and the Regional Trains Network and includes all Rail Infrastructure associated with them.
New Access Agreement	<p>means any:</p> <p>(a) variation to any Existing Access Agreement made after the date of this Deed; and</p> <p>(b) agreement entered into by the Operator with an Access Provider after the date of the Project Deed providing for access to any part of the Network, including any variation or extension of, such agreement.</p>
New Fleet	means the Regional Fleet and the Intercity Non-Electric Fleet to be designed, manufactured, supplied, tested, commissioned and Maintained by Project Co in accordance with the this Deed, as further described in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements and the Option Units in respect of which TfNSW has issued Option Notices.
New Third Party Agreement	means any agreement entered into by TfNSW or any other NSW Rail Entity with a third party after the date of this Deed, as notified

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	by TfNSW to Project Co from time to time.
NSW Government	means the Crown in right of the State of New South Wales and its agencies.
NSW Rail Entity	means RailCorp, Transport Asset Holding Entity of New South Wales, Sydney Trains, the Operator, Australian Rail Track Corporation and any other Authority in New South Wales that owns or operates railway infrastructure or Rolling Stock.
Obsolescence	<p>Obsolescence occurs if:</p> <p>(a) a Project Co Item is no longer manufactured by its original manufacturer or is no longer generally available and the lack of availability of the relevant Project Co Item cannot be managed through holding additional Spares, Consumables, component parts or subsystems for the remaining design life of the relevant Maintained Rail Asset; or</p> <p>(b) any Software required to use, operate or Maintain a Maintained Rail Asset is no longer supported by its supplier.</p>
Operation and Maintenance Manuals	means each of the operation and maintenance manuals to be prepared and updated by Project Co in accordance with clause 16.3 which must comply with section 21 of the Management Requirements.
Operator	means NSW Trains and any other entity or entities from time to time established, constituted, or appointed by the State, TfNSW or another Associate of the State to operate all or any of the New Fleet.
Option Unit	means each of those Units identified in section 1 of Schedule 44 as Option Units.
Parent Guarantee	means the guarantee given by the Parent Guarantor of the Maintenance Subcontractor to Project Co in connection with the obligations of the Maintenance Subcontractor to Project Co under the Maintenance Subcontract.
Parent Guarantor	means each person giving a Parent Guarantee which, as at the date of this Deed, means the parties listed as Parent Guarantors in item 20 of the Contract Particulars.
Payment Schedule	means Schedule 16.
Performance Regime	means the regime set out in Schedule 17.
Permitted Change in Control	<b>(redacted - commercial-in-confidence provisions of a contract)</b>
Persistent Breaches	<p>means a breach of the same obligation by Project Co under a TfNSW Project Document that occurs X <b>(redacted - commercial-in-confidence provisions of a contract)</b> or more times in any rolling X <b>(redacted - commercial-in-confidence provisions of a contract)</b> Month period, regardless of whether the breach constitutes a Major Default but not where such breach is:</p> <p>(a) a Major Default that:</p> <p>(i) is the subject of a program provided by Project Co under clause 48.3(a) and Confirmed by the TfNSW Representative in accordance with the Review Procedures; and</p> <p>(ii) Project Co is diligently pursuing the remedy of;</p>

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	(b) a breach that results in an adjustment to the Monthly Service Payment by application of the Performance Regime and the Payment Schedule; or (c) a failure to achieve Acceptance by the relevant Date for Acceptance.
Personal Information	means personal information, within the meaning given in the <i>Privacy Act 1988</i> (Cth) that is collected, used, disclosed or otherwise handled by Project Co or its Associates in the course of, or for the purposes of, performing Project Co's obligations under the Project Documents or otherwise in connection with the Project.
Planning Approval	means each consent or approval granted or required to be granted under the EP&A Act by the authority with jurisdiction to assess or determine the Planning Approval Application in accordance with the EP&A Act in respect of the Maintenance Facility and Returned Asset.
Pollution	has the same meaning as in the Protection of the <i>Environment Operations Act 1997</i> (NSW).
Preliminary Acceptance	means, for each Unit forming part of the New Fleet, when all the Preliminary Acceptance Criteria in respect of that Unit have been met to the satisfaction of TfNSW (or waived by TfNSW).
Presentation Standards	means the minimum presentation standards for the Trains that must be achieved prior to each Train leaving the Stabling Yards, Legacy Maintenance Centre or the Maintenance Facility, set out in Part C3 (Presentation Standards) of the Project Scope and Requirements and as updated from time to time in accordance with clause 16.1B.
Probit Events	includes any event or thing which occurs before or after the date of the Project Deed which: (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Group Member, a Consortium Member or a Relevant Person; (b) has a material adverse effect on the public interest, or public confidence, in the Project; or (c) involves a material failure of a Group Member, Relevant Person, Consortium Member or any Subcontractor (who is not a Consortium Member) to achieve or maintain (i) reasonable standards of ethical behaviour; (ii) the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of the Group Member, Relevant Person or Consortium Member or Subcontractor (as applicable) to carry out and observe its obligations in connection with the Project; or (iii) other standards of conduct that would otherwise be expected of a party involved in a TfNSW or NSW Government project.
Project	means: (a) the performance of the Project Activities including; (i) financing the Project Activities; (ii) carrying out the Delivery Phase Activities; and

Term	Definition
	<p>(iii) performing the Services;</p> <p>(b) the handover of the Assets to TfNSW and RailCorp;</p> <p>(c) the Returned Asset Handback of the Returned Asset; and</p> <p>(d) the performance of all other obligations,</p> <p>in accordance with, or as contemplated by, any Project Document, or incidental to any Project Document.</p>
Project Activities	<p>means all works, things and tasks that Project Co is, or may be, required to do to comply with its obligations in connection with the TfNSW Project Documents, including:</p> <p>(a) the Delivery Phase Activities; and</p> <p>(b) the Services.</p>
Project Co Defect	means all Defects excluding TfNSW Defects.
Project Co Entity	means Project Co and Finance Co.
Project Co Material	<p>means:</p> <p>(a) the Technical Documents;</p> <p>(b) the Management Plans and Project Reports;</p> <p>(c) the O&amp;M Manuals;</p> <p>(d) Engineering Change Notices;</p> <p>(e) the Baseline Delivery Program; and</p> <p>(f) all other Material which Project Co or any of its Associates prepares, uses or provides to RailCorp, TfNSW or any of their Associates in connection with the Project whether before or after the date of this Deed.</p>
Project Co Representative	means the person identified in item 21 of the Contract Particulars subject to replacement, termination or delegation in accordance with clauses 10.3 and 10.6.
Project Control Group	means the group referred to in clause 10.7(a).
Project Director	means the person identified as such in item 13 of the Contract Particulars, subject to replacement, termination or delegation in accordance with clause 10.6.
Project Document/s	<p>means:</p> <p>(a) the Project Deed;</p> <p>(b) each Licence;</p> <p>(c) the Financiers' Tripartite Deed;</p> <p>(d) each TfNSW Security;</p> <p>(e) the Delivery Subcontract;</p> <p>(f) the Delivery Side Deed;</p> <p>(g) the Maintenance Subcontract;</p> <p>(h) the Maintenance Side Deed;</p> <p>(I) the Depot Subcontract;</p> <p>(j) the Depot Subcontract Side Deed;</p> <p>(k) each other Key Subcontract;</p> <p>(l) the Design Consultant Engagement;</p> <p>(m) the Design Consultant Side Deed;</p> <p>(n) each other Side Deed;</p>

Term	Definition
	(o) each Consent Deed; (p) each Parent Guarantee; (q) each Significant Subcontract; (r) the Independent Certifier Deed; (s) the Interface Deed; (t) the GSF Act Deed Poll of Guarantee; (u) the Equity Documents; (v) the Finance Documents; (w) each Operator Interface Agreement entered into pursuant to clause 12.8(c); (x) each Escrow Agreement; (y) the Receivables Purchase Deed; (z) the Payment Directions Deed; (aa) any Deed of Novation; (bb) the Sub-Independent Certifier Deed; and (cc) any other document TfNSW and Project Co agree is a Project Document.
Project Report	means each of the reports described in the Project Scope and Requirements.
Project Scope and Requirements or PSR	means Schedule 3 (Project Scope and Requirements).
Project Site	means: (a) the Returned Asset Site; (b) the Maintenance Facility Site; and (c) on and from the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre Site, (or the relevant one of these as the context requires).
Provisional Acceptance	means: (a) Provisional Acceptance (Maintenance Facility); (b) Provisional Acceptance (Base Fleet and Continuous Production Options); (c) Provisional Acceptance (Simulator) for each Simulator; (d) Provisional Acceptance (Unit) for each Unit forming part of the New Fleet; and (e) Provisional Acceptance (Upgrade Services), or the relevant one of these as the case may be.
Quality Assurance System	means a quality assurance system that covers: (a) the carrying out of the Delivery Phase Activities; (b) the performance of the Services; and (c) personnel and human resources during the Delivery Phase and the Maintenance Phase, including recruitment, training, and occupational health and safety management of Project Co and its Associates.
Queensland Rail	means the statutory authority known as the Queensland Rail Transit Authority which was established under the <i>Queensland Rail Transit Authority Act 2013</i> (Qld) and its wholly-owned subsidiary Queensland Rail Limited ABN 47 564 947 264.

Term	Definition
Rail Safety National Law	means: (a) the Rail Safety National Law (NSW) No 82a; (b) the Rail Safety National Law (Vic); and (c) the Rail Safety National Law 2017 (Qld).
Regional Fleet	means the new Trains to be designed, manufactured, supplied, tested, commissioned and Maintained by Project Co in accordance with the Project Deed and which will be used by the Operator to operate Regional Train Services in place of the XPT and XPLORER fleets.
Relief Event	means any Extension Event, Intervening Event, Change Compensation Event or other event (including a TfNSW Defect) which entitles Project Co to: (a) relief or suspension from performance of its obligations, or to an extension of time, under a TfNSW Project Document; (b) compensation from TfNSW; or (c) bring any other Claim against TfNSW, in connection with the Project.
Required Availability	in respect of an Availability Period is the minimum number of Units to be made Available for that Availability Period as specified in section 10.2 the Payment Schedule.
Required People	means the people so named in item 22A of the Contract Particulars as replaced (if at all) in accordance with clause 10.6(b)(iii).
Residual Life	means, in respect of a Design Life Item, the period of years during which the item must be capable of remaining Fit For Purpose, measured from the Expiry Date and being the longer of: (a) the period specified for that Design Life Item in column 3 of Table 1 of the Residual Life and Design Life Schedule; and (b) the period from the Expiry Date to the end of the Design Life.
Returned Asset	means the Returned Works to be completed and handed back to the Returned Asset Owner in accordance with this Deed.
Returned Asset Owner	means Dubbo Regional Council.
Returned Asset Site	means the site on which the Returned Asset is to be constructed, as Project Co may nominate, subject to TfNSW's approval in accordance with clause 24(aa).
Review Procedures	means Schedule 9.
Safety Interface Agreement	has the meaning given to it in the Rail Safety National Law.
Savings	has the meaning given in the Change Compensation Principles.
Security Interest	means any mortgage, pledge, lien, encumbrance, assignment, charge, hypothecation or any security or preferential interest or arrangement of any kind and includes: (a) a 'security interest' as defined in section 12 of the <i>Personal Property Securities Act 2009</i> (Cth); (b) anything which gives a creditor priority to other creditors with respect to any asset or the proceeds of any asset; and (c) retention of title (other than in the ordinary course of day-to-day

Term	Definition
	trading) and a deposit of money by way of security.
Security Trustee	means, as at the date of this Deed, the party named as such in item 23 of the Contract Particulars and who is from time to time party to the Financiers' Tripartite Deed in that capacity.
Senior Control Group	means the body described in clause 10.8A(a).
Services	means: (a) the services ( <b>redacted - commercial-in-confidence provisions of a contract</b> ) referred to in the Services Requirements to be undertaken by Project Co during the Maintenance Phase; and (b) all other things (excluding the Works) that Project Co is required to provide or undertake during the Maintenance Phase as set out in the Services Requirements or TfNSW Project Documents, in each case as modified in accordance with this Deed.
Services Requirements	means the requirements for the provision of the Services as set out in: (a) the Project Scope and Requirements; (b) the Asset Management Solution; and (c) the remainder of this Deed.
Short Unit (Intercity)	means the short Units that will form the Intercity Non-Electric Fleet, as described in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements, including, subject to section 1.1 of Schedule 44, the Extended Short Units (Intercity).
Short Units (Regional)	means the short Units that will form part of the Regional Fleet, as described in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements, including, subject to section 1.1 of Schedule 44, the Extended Short Units (Regional).
Side Deed	means each of: (a) the Delivery Side Deed; (b) the Maintenance Side Deed; (c) the Depot Subcontract Side Deed; (d) the Design Consultant Side Deed; and (e) where the context permits, any other Subcontract Side Deed executed in accordance with the Project Deed.
Significant Subcontract	means: (a) the Depot Subcontract; (b) the Design Consultant Engagement; (c) the contracts listed as such in item 24 of the Contract Particulars; and (d) any other Subcontract under which a Subcontractor supplies, Maintains or operates any of the systems or works listed in item 24 of the Contract Particulars.
Significant Subcontractor	means a party (other than Project Co or a Key Subcontractor) to a Significant Subcontract.
Simulator	means each Crew Cab simulator with a control station as further described in Part C4 (Simulator Specification) of the Project Scope and Requirements.

Term	Definition
Site	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Returned Asset Site;</li> <li>(b) the Maintenance Facility Site; and</li> <li>(c) the Maintenance Phase Sites (as the case may be),            (as the context requires) and includes any part of such area or land.</li> </ul>
Spares	means any spare parts or rotatable items which are required to Maintain, repair or overhaul any Asset, including for the replacement of any part fitted to any Asset, either on a scheduled basis, related to time or distance travelled, or as a result of actual or suspected failure, Defect or damage and includes any rotatable items, but excludes Consumables.
Stabling Yards	means those stabling yards listed in the Train Plan Parameters, or any substitute stabling yard notified by TfNSW to Project Co under clause 29A.3(d), including, prior to the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre.
Standards	<p>means all standards, codes, specifications, guidelines, policies and requirements to be complied with in accordance with, and subject to, the terms of the Project Deed including:</p> <ul style="list-style-type: none"> <li>(a) the standards, codes, specifications, guidelines, policies and requirements set out in, or otherwise expressly referred to in, the Project Scope and Requirements;</li> <li>(b) all Approvals (including any conditions or requirements under them);</li> <li>(c) all standards, codes, specifications, policies and requirements of Authorities, including:           <ul style="list-style-type: none"> <li>(i) TfNSW, the Rail Entities or the Asset Standards Authority; and</li> <li>(ii) any Access Provider;</li> </ul> </li> <li>(d) any other policy, guideline, standard, procedure or requirement, which applies in connection with the Project:           <ul style="list-style-type: none"> <li>(i) which is notified to Project Co;</li> <li>(ii) which is publicly available or otherwise available to Project Co; or</li> <li>(iii) with which Project Co is expressly required by the terms of this Deed, by Law or by direction of TfNSW to comply,</li> </ul> </li> </ul> <p>unless TfNSW gives written notice to Project Co that any Approval, standard, code, specification, policy, guideline, procedure or requirement does not constitute a Standard for the purposes of this Deed.</p>
State	means the State of New South Wales.
Step-In Event	has the meaning in clause 41.3.
Subcontract	<p>means an agreement which:</p> <ul style="list-style-type: none"> <li>(a) Project Co enters into with a Subcontractor; or</li> <li>(b) a Subcontractor enters into with another Subcontractor, in connection with the Project Activities.</li> </ul>
Technical Documents	means all deliverables in respect of the technical documents (including all draft, updated and final technical specifications, procedures, reports, work instructions, drawings, calculations, models, samples, manuals and training materials) associated with

Term	Definition
	the design, development, construction, manufacture, verification, operation, Maintenance or disposal of an Asset or Deliverable, which Project Co or any of its Associates requires, or is required to create, as part of, or for the purpose of, performing the Project Activities.
Term	means the term of the Project Deed: (a) commencing in accordance with clause 4.1; and (b) ending on the Expiry Date.
Termination Payment	Termination Payment means a termination payment calculated in accordance with the Termination Payments Schedule of the Project Deed but does not include any Expiry Refund Payment.
TfNSW	means Transport for New South Wales.
TfNSW Cure Notice	has the meaning given in the Delivery Side Deed, Maintenance Side Deed, Depot Subcontract Side Deed or Delivery Side Deed (as applicable).
TfNSW Defects	means: (a) Operational Damage; (b) Vandalism; (c) Major Graffiti to a Unit or Simulator; (ca) (redacted - commercial-in-confidence provisions of a contract), except to the extent such loss or damage: (d) (Project Co contribution): is caused or contributed to by a Project Co Act or Omission; or (e) (Outside operation): occurs in respect of a Unit or a Simulator: (i) on or before the Date of Provisional Acceptance (Unit) of that Unit or the Date of Provisional Acceptance (Simulator) of that Simulator; (ii) at the Maintenance Facility Site; or (iii) on or after the Date of Handover (Legacy Maintenance Centre) at the Legacy Maintenance Centre Site; or (f) (Minor damage or damage caused by TfNSW breach): is loss or damage to which clause 44.3(e) or clause 44.5 applies.
TfNSW Security	means: (a) the document entitled 'TfNSW Security' between TfNSW, RailCorp and Project Co; and (b) the document entitled 'TfNSW Security' between TfNSW, RailCorp and Finance Co.
Through Life Support Deed	means the deed for the provision of Through Life Support services that may be entered into by TfNSW, RailCorp or a nominee of either of them and the Delivery Subcontractor, under clause 36.3(a)(viii) in the form set out in Schedule 43.
Timetable	means the general timetable for Intercity Non-Electric Services and Regional Train Services as published or updated by TfNSW or the Operator from time to time.
Train	means a single Unit or multiple Units coupled for operation.
Train Completion	means, in respect of each Unit other than the first Unit, the:

Term	Definition
Works	(a) final fit out of components in accordance with the requirements specified in the Project Scope and Requirements; (b) routine testing of the completed Unit; and (c) commissioning.
Train Driver	means a person with the skills, training and authorisation to operate the Train.
Train Plan	Train Plan means the train plan to be produced from time to time by TfNSW or the Operator for the operation of the Timetable in accordance with clause 29A.3 and the Train Plan Parameters.
Transition Out	means the stage when Project Co has done everything that the Project Deed requires to enable Project Co to hand over the Assets and Sites in the Transition Out Condition.
Transition Out Condition	means, if Transition Out of the Assets and Sites is to occur, (a) in respect of an Asset, prior to the Date of Provisional Acceptance of the relevant Asset, the condition that the Asset would be in if Project Co had complied with all of its obligations in connection with the Asset, the Project Activities under this Deed having regard to the time and circumstances of the termination; (b) in respect of a Site, at any time, the condition the Site would be in if Project Co had complied with all of its obligations in connection with the Site and the Project Activities under this Deed having regard to the time and circumstances of the termination; and (c) any time after the Date of Provisional Acceptance of the relevant Asset, or if the Asset is not subject to Acceptance, the condition the relevant Asset would be in: (i) had all the scheduled and unscheduled Maintenance of the relevant Asset been completed in accordance with this Deed; and (ii) such that when Maintained in accordance with comparable requirements to those in this Deed: A. the relevant components of the relevant Asset as specified in the Residual Life and Design Life Schedule can reasonably be expected to be Fit For Purpose by reference to the purposes, function, uses and requirements which are current and apply as at the relevant FFP Warranty Commencement Date (without any Maintenance or refurbishment works being required other than the Maintenance or refurbishment works that Project Co would have had to carry out under this Deed) for the relevant Residual Life specified in the Residual Life and Design Life Schedule; and B. components of the relevant Asset for which no Residual Life is specified in the Residual Life and Design Life Schedule can reasonably be expected to continue to meet the Services Requirements for 5 years after the Expiry Date without any Maintenance or refurbishment works, other than the Maintenance or refurbishment works that Project Co would have had to carry out under this Deed if the expiry of this Deed was in fact 5 years later than the Expiry Date; and (iii) had Project Co complied with the requirements of Part A of Schedule 40.

Term	Definition
Transition Out Package	has the meaning given in clause 36.1A.
Transition Out Reviewer	means a person with suitable expertise and experience appointed as the independent certifier for Transition Out in accordance with clause 36.4.
Uninsurable Risk	means a risk that is required to be insured in accordance with this Deed and is insurable at the date of this Deed, but during the Term: (a) insurance becomes unavailable in the recognised international insurance market in connection with that risk by Reputable Insurers; or (b) the insurance premium payable for insuring that risk with a reputable insurer or the terms and conditions of the relevant insurance are such that the risk is no longer generally being insured against by private sector organisations bearing risks and responsibilities similar to those of Project Co or performing activities similar to the Project Activities in Australia or in the United Kingdom.
Unit	means Cars (including two Driving Motor Cars) semi-permanently coupled.
Utility Infrastructure	means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems, but not including any part of the Assets.
Verification Activities	means each Verification: (a) required by the Project Scope and Requirements; (b) identified in either or both of the Verification Plan and the Verification Matrix; (c) directed by TfNSW or the Independent Certifier in accordance with clause 21.4; or (d) which is otherwise reasonably required for Project Co to perform its obligations under the Project Deed, including any additional Verification of Works or Upgrade Services: (i) that have previously failed a Verification Activity; or (ii) after the Maintenance or repair of those Works or Upgrade Services.
Verification Matrix	means the Management Plan of that name which meets the requirements in section 19.4 of the Management Requirements.
Verification Plan	means the Management Plan of that name which meets the requirements in section 19.1 of the Management Requirements.
Verification Procedure	means the Management Plan used to carry out the Verification Activities which meets the requirements in section 19.2 of the Management Requirements.
VicTrack	means Victorian Rail Track, a statutory corporation established under section 8 of the <i>Rail Management Act 1996</i> (Vic) and continued under section 116 of the <i>Transport Integration Act 2010</i> (Vic).
WHS Management	means the Management Plan of that name.

Term	Definition
Plan	
WHS Management System	means a documented work health and safety management system which, at a minimum, complies with Australian Standard 4801 (as amended or replaced from time to time).
Works	means the physical things and works (including the Delivered Rail Assets (other than the Upgrade Services) and the Returned Works) that Project Co must design, manufacture, supply, construct, install, produce, test, commission and complete in accordance with this Deed (including until the end of the Delivery Phase the carrying out of Modifications to, and achievement of Final Acceptance in respect of, such things and works).