

**Southern Cross Station Transport
Interchange Facility – Services and
Development Agreement – Civic Nexus**

**Southern Cross Station Authority
Civic Nexus Pty Limited (in its capacity as
Trustee of the Civic Nexus Unit Trust)**

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Date

2 August 2006

Parties

1. **Southern Cross Station Authority** a statutory corporation established under the *Rail Corporations Act 1996* (Vic) of Level 1, Southern Cross Station, 151 Spencer Street, Melbourne, Victoria (the *SCSA*)
2. **Civic Nexus Pty Limited** (ABN 46 097 827 819) of Level 4, ABN AMRO Tower, 88 Phillip Street, Sydney, New South Wales in its capacity as Trustee of the Civic Nexus Unit Trust (the *Concessionaire*).

Recitals

- A Pursuant to an allocation statement made under the *Rail Corporations Act* dated 28 November 2000, the SCSA was vested with the land within the Precinct (other than the Excluded Land).
- B For the purposes of improving the services available to users of public transport and public transport operators in Victoria, the State considers it appropriate that a world class intermodal transport interchange facility be developed at the site of the existing Southern Cross Station.
- C Under the *Rail Corporations Act*, the SCSA has the power to manage the Precinct and its development and redevelopment for transport and related purposes.
- D In accordance with the powers conferred on it by the *Rail Corporations Act*, on or about 19 July 2001 the SCSA (through the Rail Projects Group) called for expressions of interest for the delivery of a project or projects for the design, construction, finance, lease, operation and maintenance of a new intermodal transport interchange facility at Southern Cross Station, the redevelopment of the existing Southern Cross Station site and associated rail infrastructure works.
- E On or about June 2002 and after the completion of a public bid process, the SCSA approved and confirmed the Concessionaire as the preferred bidder for the Project.
- F The SCSA and the Concessionaire wish to enter into this Agreement and, as applicable, the other Project Agreements to record the terms on which the Project will be developed and implemented.
- G This Agreement is in the form as amended and restated by agreement called the Second Deed of Variation between, inter alia, the parties and dated on or about the date of this Agreement.

It is agreed as follows.

1. Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Abatement Amount or **AA** means the amount of the abatement which is determined in accordance with Clause 2(b) of Schedule 5.

Abatement Points means the amount of points which is equal to the aggregate of the Penalty Points accumulated (in accordance with Clause 2(a) of Schedule 5) for the KPI Failures for the applicable Quarter.

Access Agreement means:

- (a) the Access Agreement between the Operator and the Connex Franchisee dated on or about 14 June 2004;
- (b) the Access Agreement between the Operator and the VLP Franchisee dated on or about 5 May 2004;
- (c) an Access Agreement to be entered into between the Operator and CountryLink;
- (d) an Access Agreement to be entered into between the Operator and GSR;
- (e) the Coach Facilities Access Agreement between the Operator and the VLP Franchisee dated on or about 5 May 2004; and
- (f) each access agreement between the Operator and a New Franchise Operator or a Successor Franchise Operator entered into during the Contract Term,

pursuant to which the Operator grants access to the Interchange Facility to a Franchise Operator, New Franchise Operator or Successor Franchise Operator (as the case may be).

Access Charges means the charges and payments the Concessionaire is permitted under this Agreement or any other Project Agreement to levy on any person for access to the Interchange Facility Works, the Interchange Facility or the Site (as the case may be).

Access Parties means the SCSA, the Commercial Developer, each Transport Operator, the Director (and his contractors), VicTrack, each Government Agency, the Independent Reviewer, the RCH, OneLink (including any Successor Ticketing Operator), Green Star, any of those parties' respective officers, employees, agents or consultants and the general public.

Accreditation means to the extent required by Law with respect to the Operating Phase, accreditation under Division 3 of Part VI of the *Transport Act* or Part 5 of the *Rail Safety Act* (including under any guideline, regulation or ordinance made pursuant to that Division or Part as applicable) and any specified conditions of such accreditation or other condition or restriction imposed, or which may be imposed from time to time on such accreditation by any statute, regulation, ordinance or guideline.

Accredited Commercial Rail Operator has the meaning in section 163 of the *Rail Safety Act*.

Accredited Rail Operator has the meaning in section 3(1) of the *Rail Safety Act*.

Adjusted Core Services Payment or **XCSP** has the meaning given to it in Clause 4 of Schedule 5.

Adjusted Deduction Amount or **XDA** has the meaning given to it in Clause 4 of Schedule 5.

Adjusted Escrow Amount or **XEA** has the meaning given to it in Clause 4 of Schedule 5.

Adjustment Note has the meaning given by the GST Law.

Agreed Concessionaire Works means those works described in Part 1 of Annexure R.

Agreed GS Occupations means the occupations described in Annexure M.

Agreed List means the list of persons set out in Schedule 7, as amended from time to time in accordance with Clause 55.5.

Agreed Outstanding RMSU Works means the works specified in Annexure 1 of the Global Settlement Agreement.

Agreed SCSA Works means those works described in Part 1 of Annexure R.

Agreed Works means the Agreed Concessionaire Works and the Agreed SCSA Works.

Agreement Date means 2 July 2002.

Alternative Occupations has the same meaning as in the Occupations and Administration Agreement.

Air Quality Standards means the air quality standards which are required to be maintained at the Transport Interchange Facility in accordance with the standards set out in Annexure V.

Applicable Cure Period has the meaning given to it in Clause 42.2(c)(ii).

Approval means a consent, licence, permit or other approval required by any Law or lawfully required by any Government Agency including:

- (a) any Authorisation;
- (b) any building or planning approval including any planning scheme amendment (other than the Initial Planning Scheme Amendment), planning permit or development approval;
- (c) any FIRB Approval;
- (d) any approval under the *Environment Protection Act 1970*; and
- (e) any consent, licence, permit or other approval in respect of any Artefacts in, on or below the surface of, the Site.

Approved Cure Plan has the meaning given to it in Clause 42.2(c).

Approved Design Documentation means the Design Documentation approved in accordance with Clause 13.3(e), 13.3(f), 13.3(h) or 13.5 (as applicable).

Approved Interchange Facility Works Program means the Interchange Facility Works Program referred to in Clauses 12.1 or 12.4 (as the case may be).

AQMS means a NATA-approved permanent air quality monitoring system which is to be installed and commissioned in the Transport Interchange Facility by a NATA accredited contractor, which system must be capable of detecting and recording, among other things, carbon monoxide levels, nitrogen dioxide levels and air borne diesel particulates in the Transport Interchange Facility.

Artefacts means any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains, or things or structures of a scientific, geological, historical, cultural, heritage, archaeological or Aboriginal nature or interest or things otherwise of value.

As Built Drawings means final drawings of the Interchange Facility as constructed and the Rail Modifications and the Signalling Upgrade as completed, to be prepared and updated in accordance with Clause 26.4 and paragraph 3.5 of Schedule 1.

Asset Management Plan means the annual plan prepared and updated by the Concessionaire in accordance with Clause 19.3.

Associate means, in relation to a person, any Related Body Corporate of that person or any officer, employee, agent, contractor, consultant or adviser of that person and:

- (a) in the case of the SCSA, includes the Rail Projects Group, the State, DOI, the Director, any Government Agency of the State and any officer, employee, agent, contractor, consultant or adviser of the Rail Projects Group, the State, DOI, the Director or any Government Agency of the State; and
- (b) in the case of the Concessionaire, includes any Consortium Member and any Related Body Corporate, officer, employee, agent, contractor, consultant or adviser of a Consortium Member.

Authorisation means any Accreditation, consent, authorisation, registration, filing, notice, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, order, declaration, authority or exemption from, by or with a Government Agency.

Bayside means National Express Group Australia (Bayside Trains) Pty Ltd (ABN 33 087 425 287).

Bayside Franchisee means Bayside or any successor Transport Operator from time to time operating the passenger rail business operated by Bayside as at the Agreement Date.

Bid Process means the public bid process conducted by the Rail Projects Group for the delivery of the Project.

Bid Proposal means the offer to undertake the Project submitted in response to the Request for Proposal including the written submission of 5 February 2002 and the revisions to that written submission of 15 May 2002 submitted on behalf of the Concessionaire to the Rail Projects Group (including the clarifications referred to in Annexure L).

Bourke Street Bridge means that part of the bridge situated on the BSB Land, but limited to:

- (a) the wearing surface;
- (b) all fittings and fixtures above the wearing surface;
- (c) any modifications made by the Concessionaire to the bridge structure; and
- (d) any items the Concessionaire has or will affix to the structure of the Bourke Street Bridge and the relevant part or parts of the structure to which the item is affixed.

BSB Land means such part of the land the subject of .declaration G10 made under the *Docklands Authority Act (Vic) 1991* published in the Victorian government gazette on 9 March 2000 as is bounded to the east by Spencer Street and bounded to the west by Wurundjeri Way, excluding the footings, pilings and soffits forming part of the structure of the bridge situated on that land.

Business Day means a weekday on which banks are open in Melbourne.

CAD means the Central Activity District of Melbourne, being the area bounded by Southbank, Spring Street, Dudley Street, Victoria Street and Docklands.

Capital Cost Component means

- (a) the amount specified in Schedule 6 pursuant to the Deed of Variation; or
- (b) when used in the context of part of the Adjusted Core Services Payment, the amount referred to in paragraph (a) (Indexed).

Category Two Works are any works (including rail and signalling works) in the Precinct that the SCSA has identified as being necessary or desirable to be undertaken in accordance with the SCSA Works Agreement, the scope of which will be set out in a Category Two Works Request.

Category Two Works Request means a request issued by the SCSA for the carrying out and completion of Category Two Works.

CCTV means the Closed Circuit Television installed within the Interchange Facility and monitored by the Concessionaire, including the Closed Circuit Television installed and permanently directed on each Duress Alarm and its surroundings, but excluding any camera associated with a spot monitor.

Certificate of Practical Completion means in respect of the Principal Works or the Slab Construction Works as the case may be, the certificate issued by the Independent Reviewer in accordance with Clause 21.3 and in the form set out in Annexure A.

Cessation Date has the meaning set out in Clause 46.2.

Change in Law means:

- (a) the enactment or making of a new Law;
- (b) any amendment, repeal or change in any Law; or

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- (c) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a Government Agency,

that occurs on or after the Agreement Date but does not include an Excluded Change in Law.

Change in Ownership means:

- (a) the acquisition by a person of any voting power in the Civic Nexus Unit Trust or a change in any person's voting power in the Civic Nexus Unit Trust;
- (b) any other event such that a change occurs in the control of the Civic Nexus Unit Trust or of the Trustee or Manager or of any company which is a holding company of the Trustee or Manager from that which existed at the Agreement Date (whether occurring at one time or through a series or succession of transactions); or
- (c) any other event which results in a person other than the Foundation Shareholder Group:
 - (i) controlling the composition of the board of directors of the Trustee or Manager;
 - (ii) controlling the voting power of the board of directors or any class of shareholders, or both, of the Trustee or Manager; or
 - (iii) holding more than one half of the issued share capital (either beneficially or otherwise) of the Trustee or Manager.

For the purposes of this definition ***control*** has the meaning set out in section 50AA of the *Corporations Act* and ***voting power*** has the meaning given in section 610 of the *Corporations Act*.

City Loop means the Melbourne underground rail loop.

City Loop Expansion means a project to provide additional rail loop tunnels and platforms as part of the City Loop.

Civic Nexus Unit Trust means the unit trust constituted by the Trust Deed.

Claim includes any claim, proceeding, cause of action, action, demand or suit (including by way of contribution or indemnity):

- (a) under, arising out of, or in connection with this Agreement or any other Project Agreement;
- (b) arising out of, or in connection with, the Project, the Interchange Facility Works or the Interchange Facility; or
- (c) otherwise at law or in equity including:
 - (i) by statute;

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- (ii) in tort for negligence or otherwise, including negligent misrepresentation;
or
 - (iii) for quantum meruit or restitution, including restitution based on unjust enrichment.

Clean Up Notice means a notice served or a direction made under section 62A of the *Environment Protection Act 1970* (Vic) or a notice served under any legislation relating to Contamination existing in, on, under or emanated or emanating from the Land.

Coach Operator means an operator of passenger coaches in Victoria requiring access to any part of Southern Cross Station or the Interchange Facility, as the case may be, in connection with its operation of those coaches.

Commencement Date means 27 August 2002.

Commercial Developer means the Developer for the purposes of each Commercial Development Agreement.

Commercial Development means the developments to be undertaken by the Commercial Developers on the Commercial Development Sites other than the Interchange Facility Works.

Commercial Development Agreement means an agreement for the carrying out of Commercial Development Works and the conduct of a Commercial Development between the SCSA and a Commercial Developer and in the form, or substantially in the form of the draft Commercial Development Agreement, initialled on behalf of the SCSA and the Concessionaire on the Agreement Date for the purposes of identification.

Commercial Development Lease means a deed of lease or licence between the SCSA and a Commercial Developer as contemplated by a Commercial Development Agreement.

Commercial Development Site means the site of a Commercial Development as identified or described in a Commercial Development Lease.

Commercial Development Works means the permanent and physical works required for the development, construction and commissioning of the Commercial Development.

Commissioning Plans means:

- (a) "Testing Plan – Transport Interchange Facility" (V794-CS-205 Rev 01C), subject to any amendments approved by the SCSA;
- (b) "Commissioning Plan – Transport Interchange Facility" (V794-CS-206 Rev 02), subject to any amendments approved by the SCSA; and
- (c) "Testing & Commissioning Plan – Rail Modifications to Metropolitan Lines and Main Goods Line" (V794-CS-204 Rev 03), subject to any amendments.

Commissioning Tests means the tests and criteria to be applied to the Interchange Facility Works which are set out in the Commissioning Plans.

Concessionaire's Business means the business of:

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- (a) providing the Services; and
 - (b) operating and maintaining the Interchange Facility,

in accordance with the Project Agreements.

Connex means Connex Melbourne Pty Ltd, formerly known as Melbourne Transport Enterprises Pty Ltd, (ABN 96 087 516 210) or any successor Transport Operator from time to time operating the passenger rail business operated by Connex as at the date of this Agreement.

Connex Franchisee means Connex or any successor Transport Operator from time to time operating the passenger rail business operated by Connex as at the Agreement Date.

Consideration has the meaning given by the GST Law.

Consortium Member means any of:

- (a) ABN AMRO Australia Pty Limited (ABN 78 000 862 797);
- (b) Leighton Contractors Pty Ltd (ABN 98 000 893 667);
- (c) Honeywell Ltd (ABN 74 000 646 882); and
- (d) Delaware North Australia Pty Ltd (ABN 92 003 435 345),

or a Related Body Corporate of any of them.

Construction Agreement means an agreement or agreements between the Concessionaire and the Construction Contractor for the construction of the Interchange Facility Works dated on or about the Agreement Date and in the form approved by the SCSA, as amended from time to time in accordance with its terms and Clause 16.4.

Construction Bond means the performance bond provided to the SCSA under Clause 6.2(a) or, as applicable, any performance bond replacing it in accordance with Clause 6.3(b) or Clause 6.4(b).

Construction Bond Amount means the sum of *[text deleted]* reduced as follows:

- (a) on the Final Completion Date, by *[text deleted]* (or if amounts have been deducted, set-off or are claimed by the SCSA to be payable by the Concessionaire, the sum of *[text deleted]* less those amounts); and
- (b) on the later of the first Business Day 1 month after the last day of the last of the Defects Liability Periods, or if, on that day, there are any Claims or disputes outstanding with respect to Defects or Outstanding Items, the day on which the last of those Claims or disputes to be resolved are resolved to the reasonable satisfaction of the SCSA, by *[text deleted]* (or if amounts have been deducted, set-off or are claimed by the SCSA to be payable by the Concessionaire, the sum of *[text deleted]* less those amounts).

Construction Bond Return Date means:

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- (a) the date falling 1 month after the end of the last of the Defects Liability Periods, if at that date there are no Claims or disputes outstanding with respect to Defects or Outstanding Items; or
- (b) if there are Claims or disputes outstanding with respect to Defects or Outstanding Items at the date falling 1 month after the end of the last of the Defects Liability Periods, the date on which the last of those disputes to be resolved is resolved to the reasonable satisfaction of the SCSA.

Construction Contractor means Leighton Contractors Pty Ltd (ABN 98 000 893 667).

Construction Direct Agreement means the deed of that name between the Construction Contractor, the Concessionaire and the SCSA dated on or about the Commencement Date.

Construction Licence means the licence for the Licensed Area granted by the SCSA to the Concessionaire pursuant to Clause 9.1.

Construction Management Plan means the plan described in Clause 11.6 of the Project Brief.

Construction Sub-Contract means each of the Construction Agreement, any Trade Agreement and any Supply Agreement and any other agreement entered into by the Concessionaire or the Construction Contractor and a third party in connection with the execution of the Interchange Facility Works (or any part of the Interchange Facility Works).

Construction Sub-Contractor means the Construction Contractor, a Supplier or Trade Contractor, or any other person who enters into a Construction Sub-Contract with the Concessionaire or the Construction Contractor.

Contamination means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make the Environment unsafe, unfit or harmful for habitation, use or occupation by any person or animal or is such that any part of the Environment does not satisfy the contamination criteria or standards published or adopted by the Victorian Environment Protection Authority from time to time and the word Contaminant has a corresponding meaning.

Contract Term means the period beginning on the Commencement Date and ending on the earlier of the Expiry Date of the Operating Concession Period and the date on which this Agreement is terminated in accordance with its terms.

Copyright Act means the *Copyright Act 1968* (Cth).

Core Services Payment has the meaning given to it in Clause 4 of Schedule 5.

Corporations Act means the *Corporations Act 2001* (Cth).

CountryLink means the State Rail Authority of New South Wales (trading as CountryLink).

CPI means the CPI: All Groups, Weighted Average of Eight Capital Cities, Index Number as published Quarterly by the Australian Bureau of Statistics.

In this definition:

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- (a) the reference to the CPI: All Groups, Weighted Average of Eight Capital Cities, Index Number means:
- (i) the same number but with different names at any time;
 - (ii) the same number adjusted mathematically to take account of a change at any time in the base period, coverage or periodicity provided that indices of the same base year are used throughout the calculations; and
- (b) the reference to the Australian Bureau of Statistics includes a reference to:
- (i) the Bureau but with a different name at any time; and
 - (ii) a Government Agency in Australia (in the absence of the Australian Bureau of Statistics) at any time having similar functions.

CSP Escrow Account means the interest bearing account earning commercial interest rates established in the name of the SCSA by the SCSA in consultation with the Concessionaire.

Daily Timetable has the same meaning given to it in the Franchise Agreements.

Deduction Amount means, in respect of a Quarter being one of the last 5 Quarters before the Expiry Date, the amount of 75% of the Core Services Payment for that Quarter.

Deed of Undertaking means the deed of that name between the Minister for Transport and the Concessionaire dated on or about the Commencement Date, and updated by letter agreement between the Minister for Transport and the Concessionaire dated on or around the GSA Effective Date.

Deed of Variation means the agreement of that title between the SCSA and the Concessionaire dated 27 August 2002.

Default means:

- (a) a Major Default;
- (b) accumulation by the Concessionaire of a total of 20 or more Penalty Points in a Quarter for failing to achieve or satisfy one or more Low Service Category KPIs;
- (c) any other breach by the Concessionaire of, or other failure by the Concessionaire to comply with, an obligation of the Concessionaire under this Agreement or any other Project Agreement; or
- (d) a representation, warranty or statement made, given or repeated by the Concessionaire in this Agreement or any other Project Agreement being false or misleading when made or given.

Default Notice has the meaning set out in Clause 42.1.

Default Rate means a rate equivalent to 2% per annum above the base lending rate or base rate (or similar expression) published by the National Australia Bank Limited (or such other bank as the SCSA may, after consultation with the Concessionaire, notify from time to time) during any period in which an amount payable under this Agreement remains unpaid.

Defect includes any fault, error, omission, shrinkage or other defect but excluding any normal shrinkage of materials and/or Fair Wear and Tear Items.

Deferred Works means the activities listed in the extract of the Approved Interchange Facility Works Program attached at Annexure U.

Defects Liability Period means:

- (a) with respect to the Principal Works, the period commencing on the Principal Works Practical Completion Date and ending 24 months after the Final Completion Date; and
- (b) with respect to the Slab Construction Works, the period commencing on the Slab Construction Works Practical Completion Date and ending 24 months after the Final Completion Date.

Delay Notice has the meaning set out in Clause 20.2(a).

De-Scoped Works means:

- (a) that part of the Rail Modifications not completed by the Concessionaire under this Agreement and the Construction Contractor under the D&C Contract as at 1 November 2005, other than the Agreed Outstanding RMSU Works; and
- (b) that part of the Signalling Upgrade not completed by the Concessionaire under this Agreement and the Construction Contractor under the D&C Contract as at 1 November 2005, other than the Agreed Outstanding RMSU Works.

Design and Construction Phase means the period from the Commencement Date until the Final Completion Date.

Design Documentation means all drawings, plans, specifications and other information, samples, models, patterns and like documents required for the Interchange Facility Works.

Designated Metrol Area has the meaning set out in Clause 48.3(b).

Director means the Director of Public Transport under the Transport Act.

Disclosed Information means all information of whatever nature which is obtained by or on behalf of the Concessionaire or any of its Associates from the SCSA, any of its Associates or any Government Agency including:

- (a) the Expression of Interest;
- (b) the Request for Proposal and all documentation issued in connection with the Bid Process;
- (c) all material disclosed in presentations by or on behalf of the SCSA or any of its Associates in connection with the Project;
- (d) all discussions and negotiations between the SCSA and its Associates on the one hand and the Concessionaire and its Associates on the other hand relating to the Project or the Project Agreements; and

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- (e) any other information disclosed to, or obtained by or on behalf of, the Concessionaire or any of its Associates from the SCSA or any of its Associates or which is otherwise acquired by or on behalf of, or comes to the knowledge of, the Concessionaire or any of its Associates, whether the information is in oral, visual or written form or is recorded in any other medium (including all information contained on CD Rom).

Docklands means the docklands area, as that term is defined in the *Docklands Act 1991* (Vic).

Docklands Authority means the Victorian Urban Development Authority established pursuant to the *Victorian Urban Development Authority Act 2003* (Vic).

DOI means the Department of Infrastructure of the State.

Draft Cure Plan has the meaning set out in Clause 42.2(a).

Draft Design Documentation means the draft Design Documentation developed and submitted by the Concessionaire to the Independent Reviewer for certification in accordance with Clause 13.3.

Environment includes the meaning given to that term at common law and in any legislation in force in the State including any land, water, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants and the social factors of aesthetics.

Environmental Hazard means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Environmental Law means any Law relating to the Environment including any law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property.

Escrow Account means a bank or financial institution account titled 'SCSR Escrow Account' opened by the SCSA in the name of the SCSA.

Escrow Amount means, in respect of a Quarter, the amount set out in Schedule 8.

Essential Service has the meaning given to that term in the *Terrorism (Community Protection) Act 2003* (Vic).

Excluded Change in Law means a Change in Law of the State which directly and specifically affects the Interchange Facility Works or the Interchange Facility (including a Change in Law of the State which directly and specifically impacts passenger railway stations or bus interchanges) that occurs on or after the Agreement Date, but does not include any Change in Law of which notice of the change or proposed change has been given publicly prior to the Agreement Date or of which the Concessionaire reasonably should be aware prior to the Agreement Date.

Excluded Change in Law Notice means the notice described in Clause 50.2(a).

Excluded Land means the land within the area marked red on the map set out in Annexure A of the Deed of Variation.

Expiry Date means:

- (a) in relation to the Finance Concession Period, 27 April 2035 as adjusted in accordance with this Agreement; and
- (b) in relation to the Operating Concession Period, 30 years after the Financial Completion Date,

or, in each case, when this Agreement is terminated, whichever is the earlier.

Expression of Interest means the document of that name issued by the Rail Projects Group on 19 July 2001 in relation to the Project.

Extension Event means:

- (a) a fraudulent, negligent or intentional act or omission of the SCSA, the Rail Projects Group, the State, the DOI or the Director or a breach by the SCSA of this Agreement (but does not in any circumstances include:
 - (i) any act or omission of the SCSA, the Rail Projects Group, the State, the DOI or the Director which is otherwise authorised or permitted by this Agreement;
 - (ii) the exercise by the SCSA or the Rail Projects Group of a statutory duty;
 - (iii) the exercise by the State or the DOI of a statutory power, duty or discretion; or
 - (iv) the exercise by the Director of a statutory power, duty or discretion, or a contractual right or obligation arising under a Franchise Agreement or an Infrastructure Lease (each a **relevant power**), to the extent that that relevant power is required to be exercised with respect to safety issues);
- (b) any change to the Special Events Timetable by way of an inclusion or exclusion of an event (other than the inclusion or exclusion of any AFL matches or any of the events described in paragraphs (a)(i) to (v) of the definition of Special Events) after the Agreement Date;
- (c) a Force Majeure Event;
- (d) industrial action by way of picket, blockade or strike, or other industrial action at the Site which directly affects the Interchange Facility Works where the Concessionaire can demonstrate that the industrial action results from an act or omission of the SCSA or any Government Agency of the State;
- (e) any one or more Utility Services not being available for use at the Site for any reason other than because of:
 - (i) an act or omission of the Concessionaire, the Construction Contractor or any other Construction Sub-Contractor, or any of their respective Associates; or

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- (ii) a dispute between the Concessionaire and any applicable Utility Services provider, regardless of how or why that dispute is initiated or by whom;
 - (f) an event that is an Extension Event under Clause 9.5(f);
 - (g) ionising radiation or Contamination by radioactivity from any nuclear product affecting the Interchange Facility Works (or any part of them) the cause or occurrence of which is beyond the reasonable control of the Concessionaire;
 - (h) Non-Identified Pre-Existing Contamination;
 - (i) any collision, accident or rail safety related incident involving a train which occurs within or adjacent to Southern Cross Station or the Interchange Facility the cause or occurrence of which is beyond the reasonable control of the Concessionaire;
 - (j) with respect only to that part of the Interchange Facility Works comprising the Agreed Outstanding RMSU Works, a fraudulent, negligent or intentional act or omission of Connex or any of its Associates or a breach by Connex of the Occupations and Administration Agreement which directly affects the Agreed Outstanding RMSU Works;
 - (k) if during the Design and Construction Phase the SCSA or its nominee (other than the Construction Contractor) does not comply with any reasonable access procedures (including protocols relating to site management, safety, security, insurance and industrial relations matters) with respect to the Licensed Area, the Interchange Facility or the Site (as applicable) which the Construction Contractor has in place from time to time and details of which it has made known in writing to the SCSA within a reasonable period prior to the SCSA or its nominee accessing or using the Licensed Area, the Interchange Facility or the Site (as applicable), and by reason of such non-compliance unreasonably obstructs or interferes with the carrying out of the Interchange Facility Works; or
 - (l) where an Agreed GS Occupation is not made available (other than to the extent caused or contributed to by the Concessionaire and/or the Construction Contractor) as set out in Clause 10.7.

Facility Certificate of Commissioning means a certificate in the form of Annexure E issued pursuant to Clause 21.1(c).

Facility Lease means a lease in the form set out in Annexure F.

Facility Lease Plan means the survey plan as determined under Clauses 25.1(h), or 25.2, as the case may be.

Fair Wear and Tear Items means the items listed in Annexure S.

Final Completion means the achievement of each of the matters referred to in Clause 22(a).

Final Completion Certificate means the certificate referred to in Clause 22(a).

Final Completion Date means the date on which Final Completion occurs as certified or determined in accordance with Clause 22.

Final Design Documentation has the meaning set out in Clause 13.4(b).

Final Safety Audit Report means the final safety audit report described in Clause 11.12 of the Project Brief.

Finance Concession Period means the period during which payments of the Capital Cost Component of the Core Services Payments are to be made.

Financial Completion means when:

- (a) the Certificate of Practical Completion in relation to the Principal Works has been issued in accordance with Clause 21.3; and
- (b) the Concessionaire has obtained all insurances and provided the SCSA with evidence of all insurances required under Clause 54.2.

Financial Completion Date means the date on which Financial Completion occurs as certified or determined in accordance with Clause 21.7.

Financial Year means the period commencing on 1 July and ending on the next 30 June provided that:

- (a) the first Financial Year during the Contract Term will commence on the Commencement Date and will end on the next 30 June; and
- (b) the last Financial Year during the Contract Term will commence on the 1 July immediately preceding the end of the Contract Term and will end at the end of the Contract Term.

Financier means ABN AMRO Australia Pty Limited (ABN 78 000 862 797) or any other provider of financial accommodation to the Concessionaire or any of its Related Bodies Corporate for the purposes of the Project.

Financing Agreements means the agreements for the financing of the Project in the form approved by the SCSA as amended or replaced in accordance with their terms and Clause 47.3(b).

FIRB Approval means:

- (a) written advice from or on behalf of the Treasurer of the Commonwealth of Australia that the Commonwealth Government does not object to the Project;
- (b) written approval from the Foreign Investment Review Board under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or any business policy of the Commonwealth Government allowing the Concessionaire to enter into this Agreement; or
- (c) the failure by the Treasurer of the Commonwealth of Australia to make an order under Part II of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (other than an interim order under section 22) in respect of entry or performance by the Concessionaire of this Agreement within the time limits specified in sections 26 and 26A of that Act.

Flinders Street Station means the railway station and associated infrastructure located at Flinders Street.

Flinders Street Viaduct means a project to link Flinders Street Station and Southern Cross Station, including the provision of underground tunnels for that purpose.

Force Majeure Event means the following events or causes which are beyond the reasonable control of the party claiming force majeure:

- (a) acts of God, specifically storms, lightning, cyclones, earthquakes, natural disasters, actions of the elements, floods, landslides and mudslides;
- (b) civil riots, rebellions, revolutions, terrorism, civil commotion, insurrections and military and usurped power, malicious damage, sabotage, acts of a public enemy and war (declared or undeclared);
- (c) fire or explosion caused by acts of God as referred to in paragraph (a);
- (d) during the Operating Phase, industrial action by way of picket, blockade, strike, or other industrial action at the Site which directly affects the Interchange Facility where the Concessionaire can demonstrate that the industrial action results from an act or omission of the SCSA, any Government Agency of the State or a Transport Operator;
- (e) material threat or risk of terrorism or any other material potential threat to the safety or security of people and property at or in the immediate vicinity of the Site;
- (f) a direction issued under Section 18 of the *Terrorism (Community Protection) Act 2003* (Vic); or
- (g) an order in respect of an act of, threat or risk of terrorism or any other material potential threat to the safety or security of people and property at or in the immediate vicinity of the Site, which order is given by the fire services, police, ambulance or any other emergency services provider required to be complied with by the Concessionaire.

and as a result of which a party is prevented from or delayed in performing any of its non financial obligations under this Agreement.

Foundation Shareholder Group means ABN AMRO Australia Pty Limited (ABN 78 000 862 797) and its Related Bodies Corporate.

Franchise Agreement means any agreement between a Franchisee and the Director, the Secretary or a Government Agency of the State which regulates the Franchisee's rights and obligations in relation to its passenger rail or passenger coach services.

Franchise Operator means each of:

- (a) the Connex Franchisee;
- (b) the VLP Franchisee;
- (c) Connex;

(d) Great Southern Railway; and

(e) CountryLink.

Franchisee means each of:

(a) the VLP Franchisee;

(b) the Connex Franchisee; and

(c) Connex.

Franchisee Facilities means any of the facilities described as 'Franchisee Facilities' in an Access Agreement.

GA7 means version 7 of the general arrangements drawings listed in Annexure W.

Global Settlement Agreement means the agreement entered into between the State, the SCSA, the Concessionaire, ABN AMRO Australia Pty Limited, the Construction Contractor and Leighton Holdings Limited on the date of this Agreement entitled "Global Settlement Agreement".

Good Design and Construction Practices means practices followed when work is undertaken:

(a) in a sound and workmanlike manner;

(b) with due care and skill in applying nationally accepted design, engineering, construction and maintenance procedures;

(c) with due expedition and without unnecessary or unreasonable delays having regard to any Force Majeure Events;

(d) in a manner which allows for the work to be performed efficiently;

(e) in accordance with all applicable Laws, Approvals and Quality Standards; and

(f) using new materials of merchantable quality which are fit for their intended purpose.

Government Agency means a government or a governmental, semi governmental, judicial, municipal, statutory or public entity or authority and also includes a self regulatory authority established under statute or a stock exchange (wherever created or located).

Government Extension Event means an event referred to in paragraph (a), (b), (d), (f), (h), (k) or (l) of the definition of Extension Event.

Great Southern Railway means Great Southern Railway Limited (ABN 57 079 476 949).

Green Star means the business unit of the Public Transport Corporation operating as Green Star Parcel Services or, as applicable, any purchaser of that business unit or business from the Public Transport Corporation.

GSA Effective Date means 31 July 2006, subject to all Conditions Precedent having been satisfied or waived in accordance with Clause 2 of the Global Settlement Agreement.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Handover Packages means the packages required to be prepared by the Concessionaire pursuant to this Agreement containing the information required by the Services Standards.

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.

Heritage Council means the statutory body of that name established under the *Heritage Act 1995* (Vic).

High Service Category KPI means each KPI in the high service category in Clause 17 of Schedule 1.

Hourly Passenger Flow means the number of passengers and other users within the Interchange Facility during a period of one hour.

Identified Pre-Existing Contamination means Pre-Existing Contamination the existence of which at the Agreement Date:

- (a) was known to the Concessionaire or any of its Associates; or
- (b) would reasonably have been anticipated by an experienced and competent contractor if the contractor had examined all of the following information made available by the SCSA or the Rail Projects Group to the Concessionaire or any of its Associates for the purpose of tendering for the Project:
 - (i) “*Spencer Street Station Redevelopment – Geotechnical Desktop Study*”, report prepared for DOI by Connell Wagner, dated 1 December 2000;
 - (ii) “*Spencer Street Station Redevelopment – Preliminary Contamination Study*”, report prepared for DOI by Connell Wagner, dated 29 September 2001;
 - (iii) “*Environmental Assessment – Bayside Trains, Swanston Trams and V/Line Passenger*” (part), report prepared for National Express Group by PPK Environment & Infrastructure, dated December 1999;
 - (iv) *Spencer Street Station – XPT Refuelling Facility*, Drawing No.85059-A023 Rev T; and
 - (v) *Spencer Street Station – Diesel Fuelling Facility, Tank & Pit Installation*, Drawing No.785-12, Rev B.

Independent Reviewer means the person initially appointed by the SCSA, the Concessionaire and the Construction Contractor to act as the independent reviewer pursuant to the Independent Reviewer Deed of Appointment or any other person appointed as independent reviewer pursuant to Clause 8.5.

Independent Reviewer Deed of Appointment means the deed of that name between the Independent Reviewer, the Concessionaire, the Construction Contractor and the SCSA effective on or about the GSA Effective Date.

Indexed means, in relation to any referenced monetary amount, that amount multiplied by the Payment Multiplier.

Indexed CCC means for any Quarter, the Capital Cost Component of the Core Services Payment as indexed by multiplying the Capital Cost Component by the Payment Multiplier applicable for that Quarter.

Industrial Waste means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials which are potentially harmful to human beings, any property or the Environment.

Infrastructure Lease means:

- (a) in the case of the VLP Franchisee, the VLP Station Lease between the Director and the VLP Franchisee dated 25 June 1999;
- (b) in the case of the Connex Franchisee, the Hillside Infrastructure Lease between the Director and the Connex Franchisee dated 12 July 1999; and
- (c) in the case of the Bayside Franchisee, the Bayside Infrastructure Lease between the Director and the Bayside Franchisee dated 25 June 1999.

Initial Planning Scheme Amendment means an amendment to the applicable Planning Scheme to rezone the Precinct to Capital City zone.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Insolvency Event means if the Trust:

- (a) stops or suspends payment of all or a class of its debts;
- (b) has an administrator appointed over all or any of its assets or undertaking;
- (c) has a controller within the meaning of section 9 of the *Corporations Act* or similar officer appointed to all or any of its assets or undertaking;
- (d) has an application or order made, proceedings commenced, a resolution passed, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for (if it is a registered scheme within the meaning of section 9 of the *Corporations Act*) its deregistration or (in any event) its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of

its creditors, a class of them or any of them and the application, order, proceeding or resolution is not withdrawn or otherwise removed within 20 Business Days; or

- (e) has any step taken to enforce security over or a distress, execution or other similar process levied or served against the whole or any of its assets or undertaking,

or any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Insurance Cost Component means the component of a Core Services Payment which reflects the Concessionaire's insurance costs, as determined and adjusted in accordance with Clause 54.2A.

Insurance Principles has the meaning set out in Annexure J.

Intellectual Property Rights means any intellectual or industrial property rights whether protectable by Law, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or other subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered and unregistered trademarks and circuit layout designs, confidential information but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers, directors and screenwriters.

Interchange Facility means the buildings to be designed, constructed and commissioned by the Concessionaire within the boundaries of the Site in accordance with this Agreement and the Project Brief.

Interchange Facility Criteria means the criteria specified in Clause 26.2.

Interchange Facility Name has the meaning set out in Clause 34.2(a)(i).

Interchange Facility Sunset Date means 27 April 2008 (it being agreed that the Interchange Facility Sunset Date will not be extended even if the Scheduled Final Completion Date is extended in accordance with this Agreement).

Interchange Facility Works means the permanent and physical works required for the development, construction and commissioning of the Interchange Facility as set out in the Project Brief including the Slab Construction Works and including any Modification undertaken in accordance with this Agreement but excluding the De-Scoped Works (which De-Scoped Works for the avoidance of doubt do not include the Agreed Outstanding RMSU Works).

Interim Access Agreement means:

- (a) the Interim Access Agreement between the SCSA and the Connex Franchisee;
- (b) the Interim Access Agreement between the SCSA and the VLP Franchisee;
- (d) the Interim Access Agreement between the SCSA and CountryLink;
- (e) Interim Access Agreement to be entered into between the SCSA and GSR;

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- (f) the Coach Facilities Access Agreement between the SCSA and the VLP Franchisee, as amended by the deed of amendment between the SCSA and the VLP Franchisee; and
 - (g) each access agreement between the SCSA and a New Franchise Operator or a Successor Franchiser Operator entered during the Contract Term,

pursuant to which the SCSA grants access to all or any part of the Site to a Franchise Operator, New Franchise Operator or Successor Franchise Operator (as the case may be).

Interim KPI Relief Allowance means the adjustment or suspension of the identified KPI specified in Part B of Annexure T.

Interim KPI Relief Period means the period between the Principal Works Practical Completion Date and the Slab Construction Works Practical Completion Date, or such other period as specified in Part B of Annexure T.

Issuer means any body regulated by APRA (as that phrase is defined in the *Australian Prudential Regulation Authority Act 1988* (Cth)):

- (a) whose usual business includes the issue of performance bonds;
- (b) who is not the Concessionaire; and
- (c) who has been approved in writing by the SCSA.

KPI means the key performance indicators described in Schedule 1 as amended or varied in accordance with this Agreement.

KPI Failure has the meaning given to it in Clause 2(a) of Schedule 5.

Land means the land forming the Site.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation and includes any Environmental Law.

Laydown Areas means those areas within the Licensed Area marked in black broken line on the map to be set out in Annexure A pursuant to the Deed of Variation.

Lease Land means the Land as defined in the Facility Lease.

Level of Service C for Walkways has the meaning given to it in the Project Brief.

Level of Service D for Walkways has the meaning given to it in the Project Brief.

Level of Service C for Queuing has the meaning given to it in the Project Brief.

Level of Service D for Queuing has the meaning given to it in the Project Brief.

Liability means any debt, obligation, cost, expense, loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Licensed Area means the area of the Precinct bordered in blue on the map to be set out in Annexure A pursuant to the Deed of Variation.

Loss means any Liability (including legal expenses) of any kind whatsoever (and includes but is not limited to direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other such claim arising from any cause whatsoever whether or not such loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise).

Low Service Category KPI means each KPI in the low service category in Clause 17 of Schedule 1.

Main Goods Line means the main goods line within the area which is the subject of a lease under this Agreement or any Commercial Development Agreement.

Maintenance and Refurbishment Plan means the maintenance and refurbishment plan for the Interchange Facility, as set out in Annexure K.

Maintenance Agreement means the agreement between the Concessionaire and the Maintenance Contractor for the maintenance of the Interchange Facility dated on or about 10 September 2002.

Maintenance Contractor means Honeywell Ltd (ABN 74 000 646 882) or, as applicable, a new maintenance contractor for the Interchange Facility appointed by the Concessionaire in accordance with Clause 31.

Maintenance Direct Agreement means the deed of that name between the SCSA, the Concessionaire and the Maintenance Contractor dated on or about 17 September 2002.

Maintenance Sub-Contract means the Maintenance Agreement and any other agreement entered into by the Maintenance Contractor or the Concessionaire and a third party for the maintenance of all or any part of the Interchange Facility.

Maintenance Sub-Contractor means the Maintenance Contractor or any other sub-contractor engaged by the Concessionaire or the Maintenance Contractor pursuant to a Maintenance Sub Contract.

Maintenance Works means the maintenance and refurbishment works to be undertaken by the Concessionaire, as set out in the Maintenance and Refurbishment Plan, in accordance with Clause 26.1.

Major Default means:

- (a) a breach by the Concessionaire of, or a failure by the Concessionaire to comply with, an obligation of the Concessionaire under Clause 25.5, Clause 33.2(d), Clause 34.1 or Clause 54 of this Agreement;
- (b) a failure by the Concessionaire to achieve or satisfy a High Service Category KPI;

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- (c) a failure by the Concessionaire to achieve or satisfy the same Medium Service Category KPI twice in a Quarter or in successive Quarters;
 - (d) if the Concessionaire accumulates a total of 50 or more Penalty Points in a Quarter for failing to achieve or satisfy any one or more Medium Service Category KPIs;
 - (e) a representation, warranty or statement made, given or repeated by the Concessionaire in this Agreement or any other Project Agreement being false or misleading when made, given or repeated which has a material adverse effect on the SCSA or its ability or capacity to exercise its rights or perform its obligations under this Agreement or any other Project Agreement; or
 - (f) any other breach by the Concessionaire of, or other failure by the Concessionaire to comply with, an obligation of the Concessionaire under this Agreement or any other Project Agreement which has or, if not remedied or cured in accordance with this Agreement, would have a material adverse effect on the SCSA or on users of Southern Cross Station or the Interchange Facility.

Manager means the person (if any) who from time to time is manager of the Civic Nexus Unit Trust under the Trust Deed (there being no such person, as at the Agreement Date).

Master Spencer Street Deed means the deed titled 'Master Spencer Street Deed' dated 13 July 1999 and entered into between the VicTrack, Public Transport Corporation, Director, Bayside, VLP and others.

Master Timetable has the same meaning given to it in the Franchise Agreements.

MATL Project means a project for the construction and operation of a transport link between Tullamarine Airport and the CAD.

Medium Service Category KPI means each KPI in the medium service category in Clause 17 of Schedule 1.

Metrol Facility Requirements means the requirements set out in Clause 4.11 of Appendix C and Appendix C8 Accommodation Schedule of the Project Brief.

Metrol Relocation Date has the meaning set out in Clause 48.3(d).

Metrol Train Management Facility means the facility used for control of signalling and train movements for the Melbourne metropolitan rail transport system.

Metropolitan PIDs means metropolitan passenger information plasma display monitors.

Modification means:

- (a) prior to Practical Completion of the Principal Works, a variation, addition or deletion to the Principal Works;
- (b) prior to Practical Completion of the Slab Construction Works, a variation, addition or deletion to the Slab Construction Works;
- (c) after Practical Completion of the Principal Works but prior to Practical Completion of the Slab Construction Works, a variation, addition or deletion to the Interchange

Facility (excluding the Slab Construction Works, minor changes of a non-structural nature and Maintenance Works); and

- (d) after both Practical Completion of the Principal Works and Practical Completion of the Slab Construction Works, a variation, addition or deletion to the Interchange Facility (excluding minor changes of a non-structural nature and Maintenance Works).

Modification Compensation Principles means the principles set out in Schedule 4.

Modification Payment has the meaning set out in Schedule 3.

Modification Payment Period has the meaning set out in paragraph (b) of Schedule 3.

Modified Ambient Conditions Table means the table contained in Section 3 of the SCSA's letter to the Concessionaire and the Builder of 8 September 2004 in relation to external ambient conditions, internal conditions, occupancy, lighting, power and outside air titled "Modified Table D.4.4".

Native Title Application means any Claim or application under any law or future law relating to native or aboriginal title, including any application under the *Native Title Act 1993* (Cth) or the *Land Titles Validation Act 1994* (Vic).

New Franchise Operator means any Train Operator or Coach Operator which becomes a party to a Service Contract after the Agreement Date other than a Successor Franchise Operator.

Non-Identified Pre-Existing Contamination means all Pre-Existing Contamination other than Identified Pre-Existing Contamination. It includes any release or leaching of or deterioration in or alteration to Non-Identified Pre-Existing Contamination that arises by reason of the use or occupation of the Land by the Concessionaire or any person deriving an interest in the Land from the Concessionaire or enjoying the use or occupation of the Land with the consent of the Concessionaire.

Notice of Financial Completion means a notice issued in accordance with Clause 21.7 and in the form set out in Annexure B

Occupations and Administration Agreement means the agreement between the SCSA, the Concessionaire and the Franchisees with respect to, among other things, track and platform occupations required by the Concessionaire for the purposes of carrying out the Interchange Facility Works dated on or about the Commencement Date.

OneLink means OneLink Transit Systems Pty Ltd (ABN 47 059 733 443).

OneLink AFC System means the automated fare collection system, revenue management system, retail agent network and marketing programme that has been or will be designed, delivered, installed, tested, commissioned, operated, managed, maintained, marketed and promoted (as the case may be) by OneLink for the train, tram and bus services operating in the Melbourne metropolitan area and all associated equipment (including the OneLink Equipment), software (including the OneLink Software), consumables, documents and data, as such items are added to, reduced, varied, enhanced, improved, modified, upgraded or changed, from time to time.

OneLink Equipment means all items of computer hardware, technical equipment, devices and other items of equipment forming part of the OneLink AFC System (other than OneLink Software), including any spares and prototypes, as such items are added to, reduced, varied, enhanced, improved, upgraded, modified, adjusted or changed, from time to time.

OneLink Software means all computer programs and associated manuals and documentation developed, provided or supplied for use in, or which forms part of, the OneLink AFC System, including any embedded software and all upgrades, new releases, modifications, enhancements, variations, improvements and other changes in respect of such items, from time to time.

Operating Agreement means the agreement between the Operator and the Concessionaire for the operation of the Interchange Facility dated on or about the Commencement Date.

Operating Concession Period means the period in which payments of the Operating Cost Component and the Insurance Cost Component of the Core Services Payments are to be made.

Operating Cost Component means the component of a Core Services Payment which reflects the Concessionaire's operating costs, as set out in Schedule 6.

Operating Direct Agreement means the deed of that name between the Operator, the Concessionaire and the SCSA dated on or about the Commencement Date.

Operating Manual has the meaning set out in Clause 19.2.

Operating Phase means the period beginning on the Operations Commencement Date and ending on the earlier of the Expiry Date of the Operating Concession Period and the date on which this Agreement is otherwise terminated in accordance with its terms.

Operations Commencement Date means the day immediately following the Financial Completion Date.

Operations Sub-Contract means the Operating Agreement and any other agreement entered into by the Operator or the Concessionaire and a third party for the operation of all or any part of the Interchange Facility.

Operations Sub-Contractor means the Operator or any other sub-contractor engaged by the Concessionaire or the Operator pursuant to an Operations Sub-Contract.

Operator means the entity which as operator enters into the Operating Agreement with the Concessionaire prior to the Condition Precedent Deadline Date or, as applicable, a new operator of the Interchange Facility appointed by the Concessionaire in accordance with Clause 31.

Original Project Brief means the project brief for the Project attached to this Agreement as Annexure I.

Original Scheduled Final Completion Date means 27 April 2005.

Other State Projects has the meaning set out in Clause 37(a).

Outstanding Debt means the amount of debt principal outstanding for each month during the period from the Commencement Date to the Financial Completion Date or each Quarter during the Operating Phase, calculated in accordance with Schedule 9, adjusted to include any break costs or other termination costs in respect of the Financing Agreements.

Outstanding Items means:

- (a) in respect of the Principal Works, minor Defects:
 - (i) which do not prevent the Principal Works from being lawfully used in accordance with their intended purpose;
 - (ii) which do not prevent, hinder or obstruct the provision of the Services in accordance with the Services Standards; and
 - (iii) the existence and rectification of which will not prejudice the convenient use of the Principal Works;
- (b) in respect of the Slab Construction Works, minor Defects which:
 - (i) do not prevent the Slab Construction Works from being lawfully used in accordance with their intended purpose;
 - (ii) do not prevent, hinder or obstruct the provision of the Services in accordance with the Services Standards; and
 - (iii) the existence and rectification of which will not prejudice the convenient use of the Slab Construction Works.

Passenger and User Survey has the meaning given in Clause 27.1(a).

Payment Multiplier has the meaning set out in Clause 4 of Schedule 5.

Payment Notice means a notice given by the SCSA to the Concessionaire pursuant to Clause 1 of Schedule 5.

Penalty Points means the penalty points for each KPI, as specified in Schedule 1.

Performance Management System or **PMS** has the meaning set out in Clause 2.1 of Schedule 1.

Permitted Change in Ownership means a change which does not result in a person, together with that person's associates, who, at the Agreement Date, did not have any voting power in the Civic Nexus Unit Trust or had less than 10% of the voting power in the Civic Nexus Unit Trust having, after the Agreement Date, more than 10% of the voting power in the Civic Nexus Unit Trust.

For the purposes of this definition: **voting power** has the meaning given in section 610 of the *Corporations Act* and **associate** has the meaning given in section 9 of the *Corporations Act*.

Permitted Security Interest means:

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- (a) a Security Interest to which the SCSA has given its prior written consent and in respect of which the amount secured by that Security Interest (other than costs, fees and uncapitalised interest or amounts in the nature of interest) does not increase beyond the amount in respect of which the SCSA has given that consent; or
 - (b) a Security Interest (if any) created under a Project Agreement; or
 - (c) a lien which arises solely by operation of law in the ordinary course of ordinary business, where the amount secured is not overdue for payment.

Phantom User means any person who is engaged by or on behalf of the SCSA to act as a user of the Interchange Facility and to report on the performance of Services by the Concessionaire.

Planning Scheme means any planning scheme made under the *Planning and Environment Act 1987* (Vic) applicable to all or any part of the Land.

Plant means all plant, machinery and equipment and other items which the Concessionaire or any of its Sub-Contractors or any other person acting on their behalf installs, constructs or places on the Site and which is or becomes part of the Interchange Facility or which is used for operating or maintaining the Interchange Facility or performing the Services but excludes all plant, machinery and equipment and other items used by the Concessionaire or its Sub-Contractors solely for the purpose of enabling or facilitating construction of the Interchange Facility which is not and will not become part of the Interchange Facility or is not and will not be used for operating or maintaining the Interchange Facility or performing the Services.

Power means any power, right, authority, discretion or remedy, whether express or implied.

Practical Completion means in respect of the Principal Works or the Slab Construction Works (as relevant), when:

- (a) that Principal Works or the Slab Construction Works (as relevant) are completed in accordance with the Approved Design Documentation except for:
 - (i) any Outstanding Items;
 - (i) Fair Wear and Tear Items;
 - (iii) any Modifications that the SCSA instructs the Concessionaire to execute in accordance with Clause 14.3(d)(iii);
 - (iv) any works which are affected or altered by any Modifications that the SCSA instructs the Concessionaire to execute in accordance with Clause 14.3(d)(iii); and/or
 - (v) Deferred Works,
- (b) all Commissioning Tests:
 - (i) in the case of the Principal Works, that the Independent Review considers are necessary for it to certify that the Principal Works have reached

Practical Completion have been carried out in accordance with Clause 21.1;

- (ii) in the case of the Slab Construction Works, have been carried out (including those Commissioning Tests of Principal Works that the Independent Reviewer did not consider necessary for Practical Completion of the Principal Works) in accordance with Clause 21.1 and the Facility Certificate of Commissioning of Principal Works and Facility Certificate of Commissioning of Slab Construction Works have been issued in accordance with Clause 21.1,
- (c) the Concessionaire has:
 - (i) in the case of the Principal Works, submitted the Interim Survey Plan and Certificate and report pursuant to Clause 25.2(a)(i) and the report required under Clause 25.2(a)(i)(C); and
 - (ii) in the case of the Slab Construction Works, submitted the Survey Plan and Certificate pursuant to Clause 25.2(a)(ii) and the report required under Clause 25.2(a)(ii)(C).
- (d) all Approvals (other than Accreditation) required for the Principal Works or the Slab Construction Works (as relevant) have been obtained and satisfactory evidence of compliance with the requirements of any Government Agency (other than in respect of Accreditation) has been submitted by the Concessionaire to the SCSA;
- (e) the Principal Works or the Slab Construction Works (as relevant) are fit and ready for occupancy and capable of use for the provision of the Services; and
- (f) in the case of the Principal Works, the Concessionaire has prepared and delivered to the SCSA and the Independent Reviewer the Commissioning Plans.

Precinct means the area bounded by Spencer Street, Flinders Street, Wurundjeri Way and Dudley Street in Melbourne, Victoria being the area outlined in green on the map to be set out in Annexure A pursuant to the Deed of Variation.

Pre-Existing Contamination means any Contamination existing in, on, under or emanated or emanating from the Land at the Agreement Date.

Principal Works means the entire Interchange Facility Works other than the Slab Construction Works.

Principal Works Practical Completion Date means the date on which Practical Completion of the Principal Works occurs as certified or determined in accordance with Clauses 21.3 and 21.5.

Prohibited Business means a business involving:

- (a) the sale, provision or operation of:
 - (i) sexually explicit or pornographic goods;
 - (ii) brothels;

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- (iii) tattoo parlours; or
 - (iv) guns, firearms, explosives or offensive weapons; or
 - (b) any other business or activity which the SCSA notifies the Concessionaire would be offensive to users of the Interchange Facility.

Project means the project for the design, construction, commissioning, finance, lease, operation and maintenance of a new intermodal transport interchange facility at Southern Cross Station, the redevelopment of the existing Southern Cross Station site and associated rail infrastructure and signalling works, in accordance with the Project Agreements.

Project Administration Plan means the plan described in Clause 21.2 of the Project Brief.

Project Agreements means:

- (a) this Agreement;
- (b) the Facility Lease;
- (c) the Construction Direct Agreement;
- (d) the Operating Direct Agreement;
- (e) the Maintenance Direct Agreement;
- (f) the Construction Bond;
- (g) the Occupations and Administration Agreement; and
- (h) the Deed of Variation.

Project Brief means the Original Project Brief as amended by the Agreed Works and any other provision of this Agreement or the Global Settlement Agreement which expressly amends the Original Project Brief.

Project Committee has the meaning set out in Clause 15.1(a).

Project Director means the person (if any) from time to time appointed by the SCSA pursuant to Clause 1.4.

Project Objectives means the project objectives set out in Clause 2.1.

Provisional Services Payment Date means the last date of each Quarter, provided that:

- (a) the first Provisional Services Payment Date will be the first such day occurring after the GSA Effective Date; and
- (b) the last Provisional Services Payment Date will be the earlier of:
 - (i) the Financial Completion Date; and
 - (ii) the Scheduled Date for Financial Completion.

Public Transport Corporation means the body corporate of that name established under the Transport Act.

Quality Assurance Manual has the meaning set out in Clause 19.1.

Quality Standards means any standards and codes issued from time to time by Standards Australia (an incorporated body formerly known as Standards Association of Australia) and any other standards and codes set out in the Project Brief, whether relating to quality assurance or otherwise.

Quarter means any calendar quarter commencing on 1 January, 1 April, 1 July or 1 October in any year, provided that:

- (a) the first Quarter of the Operating Phase commences on the Operations Commencement Date and ends on the next 31 December, 31 March, 30 June or 30 September (whichever first occurs); and
- (b) the last Quarter of the Operating Phase commences on the last 1 January, 1 April, 1 July or 1 October (whichever last occurs) and ends at the end of the Contract Term.

Quarterly Performance Report has the meaning given to it in Clause 2.3 of Schedule 1.

Rail Contractor has the meaning in section 3(1) of the *Rail Safety Act*.

Rail Corporations Act means the *Rail Corporations Act 1996* (Vic).

Rail Modifications means the works to be carried out on certain of the rail infrastructure (including track, signalling and electrical infrastructure) existing within the Precinct as at the Agreement Date consequent on the relocation of certain platforms at Southern Cross Station and the undertaking of the Interchange Facility Works, but excluding the Signalling Upgrade and the De-scoped Works.

Rail Projects Group means the joint team established by the DOI and the Department of Treasury and Finance of the State to manage the Bid Process and the appointment of the Concessionaire.

Rail Safety Act means the *Rail Safety Act 2006* (Vic).

Rates and Taxes means all municipal rates, water rates (including excess water rates), sewerage rates, drainage rates and other rates, Taxes, assessments, charges, costs and expenses (including for the construction of any private street, channel, kerbing, flagging or paving of any footway or pathway abutting the Land) which may at any time be payable to any Government Agency with respect to the Site (other than GST).

Rating means, in relation to a person at any time, the rating applicable to that person's long term debt or obligations at that time by either Standard & Poor's Australia or Moody's Investor Service but, if both those organisations cease to exist or cease to disclose such rating publicly, the rating given in relation to that debt or those obligations by another person specified in writing by the SCSA whose business is or includes the publication of such ratings.

If (whether by reason of a change in practice by an organisation mentioned above or because reference is to be made to the ratings given by another organisation as contemplated above) a rating level specified in this Agreement ceases to be used by any

relevant organisation the specified rating level is to be taken to be a reference to a level used by the relevant organisation which the SCSA determines and notifies the Concessionaire to most closely correspond to the specified rating level.

RCH means Revenue Clearing House Pty Ltd (ABN 96 082 923 126).

Recipient Created Tax Invoice has the meaning given by the GST Law.

Regional Fast Rail Project means a project for the introduction of fast rail services between Melbourne and the regional centres of Ballarat, Bendigo, Geelong and Traralgon.

Reinstatement Payment means the Outstanding Debt as at the date of the SCSA's Notice under Clause 53.3(g).

Related Body Corporate has the meaning given to that term in the Corporations Act.

Request for Proposal means the document of that name (together with all related documentation, including the Commercial Framework Summary and the Original Project Brief) in relation to the Project issued by the Rail Projects Group in October 2001.

Required Rating means a Rating of at least either A- (in respect of Standard & Poor's Australia) or A3 (in respect of Moody's Investors Service).

Reserved Facilities means any of the facilities described as 'Reserved Facilities' in an Access Agreement.

Residual SP means the difference between:

- (a) the Services Payment applicable for the period between the Original Scheduled Final Completion Date and the Financial Completion Date; and
- (b) the Indexed CCC for the period between the Original Scheduled Final Completion Date and the earlier of:
 - (i) the Scheduled Date for Financial Completion;
 - (ii) the Financial Completion Date; or
 - (iii) the date on which this Agreement is terminated;

Retail Business means any retail business operated within Southern Cross Station or the Interchange Facility (as the case may be) pursuant to a sub-lease or sub-licence from the Concessionaire, the Operator or the Station Retail Operator.

Reversion Amount means \$10.00.

Revised Interchange Facility Works Program has the meaning set out in Clause 12.2.

Safety Audit Report means the safety audit report described in Clause 11.12 of the Project Brief.

Safety Management Plan means the plan described in Clause 13.2 of the Project Brief.

Scheduled Date for Final Completion of the Interchange Facility Works means 15 December 2006 as extended pursuant to the terms of this Agreement.

Scheduled Date for Financial Completion means 31 July 2006 as extended pursuant to the terms of this Agreement.

Scheduled Date for Practical Completion of the Principal Works means 31 July 2006 as extended pursuant to the terms of this Agreement.

Scheduled Date for Practical Completion of the Slab Construction Works means 3 November 2006 as extended pursuant to the terms of this Agreement.

SCSA Accreditation means the accreditation held by the SCSA as a manager of rail infrastructure under Division 3 of Part VI of the Transport Act, subject to the specified conditions of the SCSA's accreditation and any further condition or restriction imposed, or which may be imposed from time to time on such accreditation by any statute, regulation, ordinance or guideline.

SCSA Works Agreement means the agreement entered into between the SCSA and the Construction Contractor on the date of this Agreement entitled "SCSA Works Agreement".

Secretary means the secretary of DOI or his or her delegate.

Security Interest means:

- (a) any bill of sale, mortgage, charge, pledge, hypothecation, title, retention arrangement, trust or power as or in effect as security for the payment of a monetary obligation or the observance of any other obligation;
- (b) any lien, profit à prendre, easement, restrictive covenant, any equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, licence or agreement to use or occupy, assignment of income or monetary claim; and
- (c) an agreement to create or give any arrangement referred to in paragraph (a) or (b) of this definition.

Security Trustee means the party to the Tripartite Deed who holds the benefit of the Permitted Security Interests granted by the Concessionaire prior to the GSA Effective Date.

Service Contract means any agreement between the Director, or the Secretary or any Government Agency of the State and a Train Operator or a Coach Operator regulating all or any of the Train Operator's or Coach Operator's rights and obligations with respect to its provision of passenger rail or passenger coach services.

Service Standard Modification means a variation, addition or deletion to the Services Standard or to any KPI, in accordance with Clause 29.

Services means the services referred to in Schedule 1.

Services Failure means the failure by the Concessionaire to satisfy the Service Standards as referred to in Clauses 14.3(k) and 21.6A.

Services Payment has the meaning given to it in Clause 4 of Schedule 5.

Services Payment Date means, with respect to a Quarter during the Operating Phase, the first Business Day occurring after 20 Business Days after the day on which the SCSA receives from the Concessionaire the Quarterly Performance Report for that Quarter.

Services Standards means the standards and specifications set out in Schedule 1 as modified in accordance with Clause 29.

Signalling Upgrade means the works to be carried out for the upgrade of the existing rail signalling system located within the Precinct for country rail services described in the Project Brief but excluding the De-Scoped Works.

Site means:

- (a) for the period from the Agreement Date to and including the Principal Works Practical Completion Date, the area shaded blue on the map to be set out in Annexure A pursuant to the Deed of Variation; and
- (b) for the period from the day after the Principal Works Practical Completion Date to the Slab Construction Works Practical Completion Date the Lease Land and the areas of the Southern Cross Station required for access to and completion of the Slab Construction Works; and
- (c) from the period the day after the Slab Construction Works Practical Completion Date, to the end of the Operating Phase, the Lease Land.

Site Conditions mean the following conditions (whether latent or otherwise) relating to the Land:

- (a) ground water, ground water hydrology and the effects of any dewatering;
- (b) physical conditions above, on or below the Land;
- (c) demography of the Land surface and sub-surface conditions and geology including rock or other materials encountered at the Land;
- (d) availability and conditions of roads and all Utility Services (including drainage), servicing or required to service, the Land and the Project;
- (e) climatic and weather conditions, rain surface water run-off and drainage, water seepage, wind, windblown dust and sand in season;
- (f) all existing systems and Utility Services above, on or below the surface of the Land and the location of all facilities with which such systems and Utility Services are connected; and
- (g) all other physical conditions and characteristics of the Land above, on or below the surface of the Land which may affect the performance by the Concessionaire of its obligations under this Agreement.

Slab Construction Works means:

- (a) the Slab Construction Works (as defined in the Variation Implementation Deed), as amended by the Approved Design Documentation, the Agreed Works and the

letter from the Construction Contractor to the Concessionaire dated 7 July 2006 (a copy of which is attached at Annexure P);

- (b) the activities listed in the extracts of the Approved Interchange Facility Program attached at Annexure Q; and
- (c) finalisation of any outstanding Design Documentation and/or Approved Design Documentation.

Slab Construction Works Practical Completion Date means the date on which Practical Completion of the Slab Construction Works occurs as certified or determined in accordance with Clauses 21.3 and 21.5.

Southern Cross Station means the railway station and transport interchange facility (and associated infrastructure) located at Spencer Street existing as at the Agreement Date which may be known as Spencer Street Station, Southern Cross Station or some other name nominated by the SCSA.

Special Event means:

- (a) any of the following events:
 - (i) the Melbourne Formula One Grand Prix;
 - (ii) the AFL Football Finals;
 - (iii) the Royal Melbourne Show;
 - (iv) the Spring Racing Carnival;
 - (v) the 2006 Commonwealth Games; and
 - (vi) public events at Telstra Dome (including any concerts or sporting matches); or
- (b) any other event forming part of the Special Events Timetable.

Special Events Timetable means the list of special events issued by the Director from time to time to the Franchisees, as notified by the SCSA to the Concessionaire from time to time.

Specified Occupations has the same meaning as in the Occupations and Administration Agreement.

State means the State of Victoria.

Station Retail Agreement means the agreement between the Concessionaire, the Operator and the Station Retail Operator dated on or about the Commencement Date.

Station Retail Operator means Delaware North Property Services Pty Ltd (ABN 52 003 435 112).

Step-in Right has the meaning set out in Clause 45(a).

Sub-Contract means any Construction Sub-Contract, Operations Sub-Contract or Maintenance Sub-Contract.

Sub-Contractor means any Construction Sub-Contractor, Operations Sub-Contractor or Maintenance Sub-Contractor.

Subsequent Contamination means any Contamination existing in, on, under or emanated or emanating from the Land that was not in existence at the Agreement Date and any release or leaching of or deterioration in or alteration to Identified Pre-Existing Contamination that arises by reason of the use or occupation of the Land by the Concessionaire or any person deriving an interest in the Land from the Concessionaire or enjoying the use or occupation of the Land with the consent of the Concessionaire.

Successor Franchise Operator means any person succeeding or replacing a Franchise Operator in the conduct or operation of all or any part of that Franchise Operator's passenger rail or passenger coach business.

Successor Operator means any person who operates the Interchange Facility after termination of this Agreement or expiry of the Contract Term.

Successor Ticketing Operator means any person succeeding or replacing OneLink in the conduct or operation of all or any part of OneLink's business.

Supplier means a person engaged by or on behalf of the Concessionaire or the Construction Contractor under a Supply Agreement.

Supply Agreement means an agreement to be entered into between the Concessionaire or the Construction Contractor and a third party for the supply of material or goods for the Interchange Facility Works.

Suspension Notice has the meaning given in Clause 46.1(b).

Target Capacity means an Hourly Passenger Flow in peak periods at the Interchange Facility of 30,000.

Tax includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Government Agency, including without limitation any withholding, income, stamp, transaction or capital gains tax, land tax, payroll tax, fringe benefits tax, duty or charge together with any related additional tax, further additional tax, interest, penalty, fine, charge, fee or like amount.

Tax Invoice has the meaning given by the GST Law.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Termination Date has the meaning set out in Clause 44.2(a) or Clause 44.5(a) (whichever is applicable).

Termination Event means:

- (a) if the Concessionaire wholly or substantially abandons the Interchange Facility Works, the Interchange Facility or the provision of the Services;

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- (b) a failure by the Concessionaire to comply with its obligations under Clause 42.2 or, as applicable, Clause 42.3 in respect of a Major Default;
 - (c) the occurrence of an Insolvency Event;
 - (d) subject to Clause 47.2(c)(iv), a Change in Ownership (other than a Permitted Change in Ownership) occurs without the prior written consent of the SCSA;
 - (e) it becomes and (despite the Concessionaire having endeavoured to remedy) for 5 Business Days remains unlawful for the Concessionaire to operate all or a material part of the Concessionaire's Business (including as a result of the Concessionaire failing to obtain or maintain any necessary Approval) unless that results from an Excluded Change in Law;
 - (f) if a Force Majeure Event substantially prevents the performance by the Concessionaire of its material obligations under this Agreement for a continuous period of 12 months or more;
 - (g) an event which is described to be a Termination Event under Clause 12.6(c)(ii);
 - (h) if Final Completion has not occurred by the Interchange Facility Sunset Date (other than if Clauses 53.2(a)(v), 53.3(f)(i), 53.3(f)(ii) or 53.3(f)(iv)(A) apply and the Concessionaire is diligently pursuing and continues diligently to pursue its obligations under Clause 53.2(a)(v), 53.3(f)(i), 53.3(f)(ii) or 53.3(f)(iv)(A) (as the case may be); or
 - (i) a failure by the Concessionaire to comply with its obligations under Clause 53.2(a)(v), Clause 53.2(b)(ii), Clause 53.3(f)(ii) or Clause 53.3(f)(iv).

Termination Payment has the meaning set out in Schedule 2.

Termination Period means the period from the Termination Date to the Expiry Date (each inclusive).

Terrorism Reinstatement Payment means the Outstanding Debt as at the date of the SCSA's Notice under Clause 53.3(g), together with the market value of all equity interests in the Concessionaire (including Units) as at the date of the SCSA's Notice (but assuming that the Terrorism Uninsurable Force Majeure Event had not occurred) as agreed between the SCSA and the Concessionaire, or failing agreement, as determined by an independent expert in accordance with Clause 55.2.

Terrorism Uninsurable Force Majeure Event means an Uninsurable Force Majeure Event which is an act of terrorism as defined in any terrorism exclusion to generally available commercial insurance policies, including any such act which is an act of violence or an act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

Third Party Costs means the costs associated with amending or terminating any agreement or arrangement (including debts) between the relevant party and a third party for the purposes of the Project.

Trade Agreement means an agreement entered into between the Concessionaire or the Construction Contractor and a third party in relation to part of the Interchange Facility Works.

Trade Contractor means a person engaged by or on behalf of the Concessionaire or the Construction Contractor under a Trade Agreement.

Train Operator means an operator of passenger trains in Victoria requiring access to any part of Southern Cross Station or the Interchange Facility, as the case may be, in connection with its operation of those trains.

Transitional Period means the period commencing on the Operations Commencement Date and expiring on the later of the date on which Accreditation as required by:

- (a) Clause 7.1(a); or
- (b) Clause 7.1(b),

is obtained.

Transport Act means the *Transport Act 1983* (Vic).

Transport Interchange Facility means that part of the Interchange Facility under the main roof of the railway station.

Transport Operator means a Train Operator or Coach Operator which is party to a Service Contract.

Trigger Date means the date falling 1 year prior to the expiry of the Construction Bond.

Tripartite Deed means the deed of that name between the SCSA, the Concessionaire and the Security Trustee dated on or about the Commencement Date.

Trust Deed means the unit trust deed dated 1 July 2002 between Civic Nexus Pty Limited and ABN AMRO Australia Pty Limited.

Trustee means the person who from time to time is trustee of the Civic Nexus Unit Trust (such person, at the Agreement Date, being Civic Nexus Pty Limited (ABN 46 097 827 819)).

Uninsurable Force Majeure Event means a Force Majeure Event in respect of which:

- (a) insurance against the risk of its occurrence is excluded from standard market policies on commercially reasonable terms and conditions (including as to premiums and deductibles), with insurers with a claims paying ability of at least the Required Rating; or
- (b) insurance against the risk of its occurrence is agreed by the SCSA under Clause 54.2A(n) or is determined by an independent expert under Clause 54.2A(p) to be within the scope of Clause 54.2A(m).

Unit means any unit in the Civic Nexus Unit Trust.

Unitholder means the holder of any Unit.

Usage means the Hourly Passenger Flow at the Interchange Facility in peak periods, as determined in accordance with Clause 27.3(c).

User Survey means any survey prepared by or on behalf of the SCSA, to seek information from the users of the Interchange Facility on the adequacy and quality of the Interchange Facility or the adequacy and quality of the Services provided by the Concessionaire.

Utility Services means any utility service, including water, electricity, gas, oil or any other source or type of energy or fuel, telephone, drainage, sewerage and electronic communications services.

Variation Implementation Deed means the deed of that name between the Concessionaire, the Construction Contractor and others dated 5 November 2003.

Verification Test means a test carried out pursuant to Clause 27.3(b).

VHST Project means a project for the introduction of a very high speed train service linking Melbourne and any of Brisbane, Sydney and Canberra.

VicRoads means the Roads Corporation (trading as VicRoads), established under the Transport Act.

VicTrack means Victorian Rail Track, a body corporate established under the Rail Corporations Act.

VicUrban means the Victorian Urban Development Authority established by the *Victorian Urban Development Authority Act 2003* (Vic), trading as VicUrban.

VIPP means the Victoria Industry Participation Policy.

VIPP Statement means the VIPP statement prepared by or on behalf of the Concessionaire and set out in Annexure N.

VLP means V/Line Passenger Pty Ltd (ABN 29 087 425 269).

VLP Franchisee means VLP or any successor Transport Operator from time to time operating the passenger rail and/or passenger coach business operated by VLP as at the Agreement Date.

VMIA means the Victorian Managed Insurance Authority, a statutory body established under the *Victorian Managed Insurance Authority Act 1996* (Vic).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

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- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
 - (e) A reference to a Clause, Schedule or Annexure is a reference to a Clause of, or a schedule or annexure to, this Agreement.
 - (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
 - (g) A reference to a party to this Agreement or another agreement or document includes that party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
 - (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (i) A reference to **conduct** includes an omission, statement and undertaking, whether or not in writing.
 - (j) A reference to an **agreement** includes any undertaking, deed, agreement or legally enforceable arrangement, whether or not in writing, and a reference to a **document** includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
 - (k) A reference to **dollars** and **\$** is to Australian currency.
 - (l) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
 - (m) A reference to **writing** includes any method of representing or reproducing words, figures, drawings or symbols in a visible form.
 - (n) A reference to an **asset** includes any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset.
 - (o) A reference to an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises.
 - (p) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
 - (q) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it.

1.3 Delegation

- (a) The SCSA may delegate any Power, function or responsibility which the SCSA has under any of the Project Agreements.

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- (b) Any such delegation may be:
 - (i) revoked, changed or delegated; and
 - (ii) limited or may be subject to such conditions as the SCSA determines from time to time.
 - (c) The Concessionaire is entitled to request details of the delegation of any Power, function or responsibility by the SCSA under any of the Project Agreements where a person purports to be acting under such a delegation. Once the Concessionaire obtains such details in writing from the SCSA it is entitled to rely on them unless and until given notice by the SCSA of revocation of, or change to, that delegation by the SCSA.
 - (d) If the SCSA delegates any Power, function or responsibility under any of the Project Agreements, the SCSA must give notice of such delegation to the Concessionaire (including the identity and address of any person to whom such Power, function or responsibility is delegated). Where such notice has been given by the SCSA, the Concessionaire is entitled to rely upon such notice unless and until given notice by the SCSA of revocation of, or change to, that delegation by the SCSA.
 - (e) Any person to whom a Power, function or responsibility is delegated by the SCSA has, to the extent of that delegation, full power and authority to act for and on behalf of and to bind the SCSA under the Project Agreements.
 - (f) An act or omission of a person to whom a Power, function or responsibility is delegated under this Clause 1.3 constitutes, to the extent of that delegation, an act or omission of the SCSA for the purposes of the Project Agreements.

1.4 Project Director

- (a) The SCSA may exercise its rights under Clause 1.3 to appoint a natural person to be the Project Director to manage and oversee the implementation of the Project on behalf of the SCSA. Appointment of a Project Director does not limit the rights or powers of the SCSA pursuant to Clause 1.3.
- (b) An act or omission of the Project Director appointed in accordance with Clause 1.4(a) constitutes an act or omission of the SCSA for the purposes of the Project Agreements.

1.5 Transfer of Functions

- (a) The Concessionaire acknowledges and agrees that the SCSA or VicTrack may be reconstituted, renamed or replaced and that some or all of the Powers, functions or responsibilities of the SCSA or VicTrack may be transferred to or vested in another entity.
- (b) If the SCSA or VicTrack is reconstituted, renamed or replaced or if some or all of the SCSA's or VicTrack's Powers, functions or responsibilities are transferred to or vested in another entity, references in the Project Agreements to the SCSA or VicTrack, as applicable, must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has had transferred to it or vested in it those Powers, functions or responsibilities.

1.6 Consents or approvals

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of the SCSA or the Independent Reviewer or is within the discretion of the SCSA or the Independent Reviewer, the consent or approval may be given, or the discretion may be exercised, conditionally or unconditionally or withheld by the SCSA or the Independent Reviewer, as applicable, in their respective absolute and unfettered discretion unless express provision to the contrary has been made.

1.7 Payments

If any amount becomes payable under this Agreement on a day which is not a Business Day, that amount will instead be payable on the immediately preceding Business Day.

1.8 No partnership or agency

Except as expressly provided in this Agreement nothing contained or implied in this Agreement or any other Project Agreement will:

- (a) constitute or be deemed to constitute a party as a partner, joint venturer, agent or legal representative of any other party for any purpose whatsoever; or
- (b) create or be deemed to create any partnership, joint venture, agency or trust between the parties or any of them.

PART 1 – GENERAL PROJECT REQUIREMENTS

2. The Project

2.1 Project Objectives

- (a) The Concessionaire acknowledges and agrees that the objectives for the Project are as follows:
 - (i) **(Facility)** to obtain a world class intermodal transport interchange facility at the Site, which provides high quality services for public transport passengers and public transport operators (including the Transport Operators) and which reflects the significance of that facility as the major transport hub servicing Docklands and as a major linkage between Docklands and the CAD;
 - (ii) **(Quality)** to significantly enhance the public amenity and aesthetic quality of the Site and provide development gain for Docklands and the western end of the CAD;
 - (iii) **(Cost)** to minimise the long term costs to the taxpayer for provision of the Interchange Facility;
 - (iv) **(Risk Transfer)** to transfer risk to the Concessionaire where appropriate;
 - (v) **(Increased capacity)** to make cost effective allowance for future patronage growth and for new transport services and infrastructure at the Site over time;

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- (vi) **(Timeliness)** to secure delivery of the Project in a timely and safe fashion; and
 - (vii) **(Accountability)** to ensure that the Project is managed in a transparent and accountable way, in consultation with stakeholders and in accordance with the highest standards of probity.
- (b) The Concessionaire must design, construct, commission, lease, operate and maintain the Interchange Facility and the Interchange Facility Works (excluding the lease, operation and maintenance of the Rail Modifications and Signalling Upgrade) in accordance with the terms and conditions of this Agreement and the other Project Agreements.

2.2 Project Risk

Except to the extent that this Agreement or another Project Agreement expressly provides to the contrary, the Concessionaire accepts all risks relating to the Project, including:

- (a) the actual cost of the Project (including cost increases and rates of interest) being greater than estimated;
- (b) the passenger usage of the Interchange Facility being other than estimated;
- (c) the Interchange Facility not being economically viable;
- (d) the revenue generated from the Interchange Facility being less than estimated;
- (e) land or interests in land additional to the Site being necessary to enable compliance by the Concessionaire with the provisions of the Project Agreements;
- (f) technical obsolescence occurring in relation to the Interchange Facility or otherwise in relation to equipment or systems used in the design, construction, commissioning, operation or maintenance of the Interchange Facility;
- (g) any Law affecting the nature or extent of the Concessionaire's rights or obligations under the Project Agreements or its ability to exercise those rights or perform those obligations;
- (h) any Change in Law;
- (i) the risk of industrial action;
- (j) weather conditions, or the effects of weather conditions, causing the incurring of delay, increased cost or decreased revenue;
- (k) delay in any Government Agency granting an Approval causing the incurring of delay, increased cost or decreased revenue; and
- (l) the ability to obtain and maintain insurances in accordance with the Project Agreements,

and the Concessionaire will not be entitled to make any Claim or seek to be indemnified for or against any Liability arising from any risk accepted by the Concessionaire.

2.3 Wrongs Act

The Concessionaire agrees that, without limiting any of its rights under the Project Agreements, for the purposes of Part IVAA and particularly sections 24AI and 24AF of the *Wrongs Act 1958* (Vic), as between the SCSA and the Concessionaire:

- (a) in respect of any apportionable claim in relation to which the Concessionaire's Associates are concurrent wrongdoers; and
- (b) to the extent liability assumed by the Concessionaire or its Associates to any person under this Agreement is apportioned by a court to the Concessionaire's Associates,

the Concessionaire will have joint and several liability in relation to any amount payable by the Concessionaire's Associates.

3. Representations and Warranties

3.1 Representations by SCSA

The SCSA represents and warrants that:

- (a) it has the power to execute the Project Agreements to which it is a party and perform its obligations under or as contemplated by those Project Agreements and all necessary action has been taken to authorise their execution, delivery and performance;
- (b) those Project Agreements constitute the SCSA's valid and binding obligations enforceable against the SCSA in accordance with their terms, subject to the availability of equitable remedies; and
- (c) the execution by the SCSA of, the performance by the SCSA of its obligations under, and the compliance by the SCSA with the provisions of, those Project Agreements does not and will not contravene any existing Law to which the SCSA is subject.

3.2 Representations by Concessionaire

(a) The Concessionaire represents and warrants that:

- (i) it is empowered by the Trust Deed to execute the Project Agreements to which it is a party, to perform its obligations under or as contemplated by those Project Agreements and to carry on its business as now conducted or as contemplated by those Project Agreements and under the Trust Deed there is no restriction on or condition of its doing so;
- (ii) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the Trust Deed for it to enter into and perform those Project Agreements to which it is a party;
- (iii) each of its Associates which is a party to a Project Agreement has the power to execute the Project Agreements to which it is a party and perform its obligations under or as contemplated by those Project Agreements and

all necessary corporate and other action has been taken to authorise such execution, delivery and performance;

- (iv) those Project Agreements constitute the Concessionaire's (or, as applicable, that Associate's) valid and binding obligations enforceable against the Concessionaire (or, as applicable, that Associate) in accordance with their terms, subject to the availability of equitable remedies;
 - (v) the execution by the Concessionaire (or, as applicable, that Associate) of, the performance by the Concessionaire (or, as applicable, that Associate) of its obligations under, and the compliance by the Concessionaire (or, as applicable, that Associate) with, the provisions of those Project Agreements does not and will not contravene any existing Law to which the Concessionaire (or, as applicable, that Associate) is subject;
 - (vi) no litigation, arbitration, tax claim, dispute or administrative proceeding (each a *Proceeding*) is current or pending or (to its knowledge) threatened, which will or is likely to have a material adverse effect upon it or the Trust (or any applicable Associate) or its (or any applicable Associate's) ability to perform its financial and other obligations under the Project Agreements;
 - (vii) it is the sole Trustee of the Trust and no resolution has been passed or direction or notice given removing it or proposing its removal as Trustee of the Trust or appointing or proposing the appointment of any other person as Trustee of the Trust;
 - (viii) the Trust has not been terminated and nor has any event for the vesting of the assets of the Trust occurred;
 - (ix) its right of indemnity out of, and lien over, the assets of the Trust has not been limited in any way and it has no Liability which may be set off against that right of indemnity and it has not done, or failed to do, anything, which would or may have the effect of releasing, waiving, harming or impairing any present or future right of the Concessionaire to be indemnified out of, and to exercise its lien over, the assets of the Trust; and
 - (x) the Trust Deed complies with all applicable Laws and it has complied with its obligations and duties under the Trust Deed and at Law.
- (b) The representations and warranties of the Concessionaire under this Clause 3.2 are made and given on the Agreement Date and each of them is taken to be repeated on the Commencement Date and each anniversary of the Commencement Date.

3.3 Concessionaire's Acknowledgement, Waiver and Indemnity

- (a) The Concessionaire acknowledges and agrees that, except as expressly set out in this Agreement, neither the SCSA nor any of its Associates has made any representation, given any advice or given any warranty or undertaking of any kind in respect of:
 - (i) any of the Project Agreements or any of the Financing Agreements;

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- (ii) any transaction or arrangement contemplated under any of the Project Agreements or any of the Financing Agreements; or
 - (iii) any other matter relevant to the Concessionaire's decision to enter into the Project Agreements or the Financing Agreements.
- (b) Without limiting Clause 3.3(a), the Concessionaire acknowledges and agrees that:
- (i) the Disclosed Information, and all Intellectual Property Rights in the Disclosed Information, will remain the property of the SCSA or any of its Associates (as the case may be);
 - (ii) the Disclosed Information did not constitute an invitation, offer or recommendation by or on behalf of the SCSA or any of its Associates;
 - (iii) the purpose of the Disclosed Information was to provide the Concessionaire and its Associates with information to assist in preparing and lodging a proposal for the Project;
 - (iv) the Disclosed Information did not purport to contain all of the information that the Concessionaire and its Associates required for the purposes of preparing and lodging a proposal (including the Bid Proposal) or making the decision to enter into the Project Agreements and did not purport to have been prepared having regard to the Concessionaire's or its Associate's business objectives, financial situation or particular needs;
 - (v) neither the SCSA, its Associates nor any other person acting on behalf of or associated with any of them has verified, or has any obligation to verify, the accuracy, reliability or completeness of the Disclosed Information;
 - (vi) neither the SCSA, its Associates nor any other person acting on behalf of or associated with any of them has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
 - (vii) the Concessionaire and its Associates have not relied in any way on the skill or judgment of the SCSA, its Associates or any person acting on behalf of or associated with any of them and the Concessionaire and its Associates have relied absolutely on their own opinion and professional advice based upon their own independent analysis, assessment, investigation and appraisal in deciding to lodge the Bid Proposal and to enter into the Project Agreements and the Financing Agreements;
 - (viii) the Concessionaire and its Associates have carried out all relevant investigations and has examined and acquainted themselves concerning:
 - (A) all aspects of the Project;
 - (B) the contents, correctness and sufficiency of the Disclosed Information;
 - (C) all information which is relevant to the risks, contingencies and other circumstances related to the Project which could affect their

decision to enter into the Project Agreements and the Financing Agreements;

(D) the Site and Site Conditions; and

(E) all amounts payable between the parties to the Project Agreements and the Financing Agreements;

(ix) on the basis that the Disclosed Information has been given in good faith and that the SCSA has no knowledge that any part of the Disclosed Information is misleading or deceptive (but acknowledging that neither the SCSA, its Associates nor any person acting on behalf of or associated with any of them is under any obligation to make and that none of them has made enquiries to verify that state of knowledge) any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by the SCSA, its Associates or any person acting on behalf of or associated with any of them in any prior negotiation, arrangement, understanding or agreement has no effect except to the extent expressly set out or incorporated in any of the Project Agreements; and

(x) the acknowledgements under this Clause 3.3(b) are in addition to and do not replace the terms and conditions already agreed to or accepted by the Concessionaire or its Associates when receiving the Disclosed Information.

(c) To the extent permitted by Law, the Concessionaire expressly waives any right which it or any of its Associates have (whether at the Agreement Date or otherwise) to bring any action or make any Claim against the SCSA, any of its Associates or any person acting on behalf of or associated with any of them arising out of any alleged misrepresentation or misleading or deceptive conduct on the part of the SCSA, any of its Associates or any person acting on behalf of or associated with any of them in providing the Disclosed Information or in connection with the negotiation or preparation of any of the Project Agreements or any Financing Agreement.

(d) The Concessionaire indemnifies the SCSA and its Associates and will hold them harmless against all Claims and Liabilities that any of them may sustain or incur as a result of or in connection with any breach of this Clause 3.3 by the Concessionaire.

3.4 Reliance on Representations

(a) Each of the SCSA and the Concessionaire acknowledges and agrees that the other of them has entered into the Project Agreements in reliance on the representations and warranties contained in this Clause 3.

(b) The Concessionaire acknowledges and agrees that all of its representations, warranties, acknowledgements and agreements under Clauses 3.2 and 3.3 survive the execution and delivery of the Project Agreements and the completion of the transactions contemplated by any of them.

3.5 Exclusion of Warranties

To the maximum extent permitted by Law (and except as otherwise expressly provided in this Agreement) all terms, conditions, promises, undertakings, representations, warranties

and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which would be implied or incorporated into any of the Project Agreements are excluded and the SCSA disclaims all Liability in relation to them.

3.6 Obligations to Notify of Proceedings

The Concessionaire must inform the SCSA if any Proceeding referred to in Clause 3.2(a)(vi) becomes current, pending or threatened where that Proceeding will or is likely to have a material adverse effect upon its or any of its Associate's ability to perform any of its obligations under any of the Project Agreements.

4. Monitoring During Defects Liability Period

4.1 [Not used]

4.2 Monitoring

- (a) The Concessionaire must monitor the data generated by the AQMS at least once a day during the Defects Liability Period.
- (b) The Concessionaire must provide the SCSA with details of the data generated by the AQMS at least once a day until the expiration of the Defects Liability Period.
- (c) Nothing in this Clause 4 requires the Concessionaire to incur any expenditure in excess of \$10,000 (Indexed) per annum during the Defects Liability Period in relation to monitoring of the data generated by the AQMS.

4.3 Non-compliance with Air Quality Standards

- (a) Without limiting any other provision of this Agreement, if at any time during the Defects Liability Period the Transport Interchange Facility does not comply with the Air Quality Standards, the Concessionaire must:
 - (i) immediately notify the SCSA and provide the SCSA with particulars of the non-compliance and the reasons therefor in writing; and
 - (ii) where that non-compliance results from any breach of this Agreement by the Concessionaire, the Concessionaire must design, manufacture, install and commission in the Transport Interchange Facility at its cost appropriate plant, equipment or systems, within the time specified by the SCSA as notified in writing (in any event, not less than 12 weeks) (the "AQMS Notice"), as necessary so as to ensure that the Transport Interchange Facility is able to meet the Air Quality Standards for the Contract Term (the "AQMS Rectification Works").
- (b) Nothing in this Clause prevents the SCSA from exercising its right to deduct an Abatement Amount to the extent that the non-compliance with Air Quality Standards results in the Concessionaire failing to meet the Service Standards.

4.4 Completion Requirements

- (a) Prior to Practical Completion of the Slab Construction Works (but not as a condition to the achievement of Practical Completion of the Slab Construction Works), the Concessionaire must:

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- (i) install the AQMS at least one month prior to the Scheduled Date for Practical Completion of the Slab Construction works; and
 - (ii) demonstrate that the data generated by the AQMS confirms that the Air Quality Standards at the Transport Interchange Facility have been complied with for at least a continuous period of at least 30 days.
- (b) If during the period referred to in Clause 4.4(a)(ii), the SCSA issues an AQMS Notice, the SCSA must (acting reasonably) also stipulate in the relevant AQMS Notice the period of time within which the AQMS Rectification Works are to be completed (in any event, not less than 12 weeks). When the AQMS Rectification Works have been completed to the reasonable satisfaction of the SCSA, it shall issue a certificate of completion of the AQMS Rectification Works specifying the date when completion occurred.
- (c) If the Concessionaire fails to complete the AQMS Rectification Works within the period of time specified in the AQMS Notice as referred to in Clause 4.4(b), it shall be liable to pay as pre-ascertained and liquidated damages, *[text deleted]* for each day thereafter until the date of completion of the AQMS Rectification Works as certified in the certificate of completion issued under Clause 4.4(b).
- (d) The Concessionaire acknowledges and agrees that the liquidated damages payable in accordance with Clause 4.4(c) are reasonable and are not intended as a penalty.
- (e) Where an AQMS Notice is issued by the SCSA, the Concessionaire must carry out the AQMS Rectification Works, but for the avoidance of doubt nothing herein prevents the Concessionaire referring for resolution under clause 55.2 the question of whether the non-compliance was caused by a breach of this Agreement by the Concessionaire. If it is subsequently determined that any non-compliance was not caused by a breach of the Concessionaire's obligations under this Agreement, the SCSA will pay the Concessionaire any costs (including any liquidated damages paid under this Clause 4, and the Construction Contractor's direct costs, preliminaries and margin) incurred by the Concessionaire as a result of carrying out the AQMS Rectification Works.
- (f) If the SCSA gives the Concessionaire an AQMS Notice and the Concessionaire fails to comply with that notice (including any time periods specified in that notice) to the reasonable satisfaction of the SCSA, then the SCSA may elect to carry out the AQMS Rectification Works itself (or such parts of it which remains incomplete) or to have such AQMS Rectification Works carried out by a person nominated by the SCSA and the costs and expenses incurred by the SCSA in carrying out or having the nominated person carry out any such AQMS Rectification Works (or such part) will be a debt due and payable from the Concessionaire to the SCSA in addition to the amounts payable by the Concessionaire under Clause 4.4(c). The SCSA may make a demand under the Construction Bond for that amount, or may deduct or set off that amount from any amount otherwise payable by the SCSA to the Concessionaire, or may take any other enforcement action available to it in respect of an unpaid debt owed to it.

5. Grant of Rights

5.1 Grant of Rights

The SCSA grants to the Concessionaire, subject to the terms and conditions of the Project Agreements, the right to:

- (a) design the Interchange Facility Works;
- (b) undertake the Interchange Facility Works to construct the Interchange Facility;
- (c) test and commission the Interchange Facility Works;
- (d) operate and maintain the Interchange Facility; and
- (e) exercise any other rights conferred on it under this Agreement and the other Project Agreements,

during the Contract Term.

6. Construction Bond

6.1 General requirement for Construction Bond

The Concessionaire must procure and maintain a Construction Bond in accordance with this Clause 6.

6.2 Provision of Construction Bond

- (a) The Concessionaire must, on or prior to the Commencement Date, procure the issue to the SCSA of a performance bond which:
 - (i) is in the form of Annexure G (or such other form as the SCSA in writing may approve);
 - (ii) is issued by an Issuer with the Required Rating;
 - (iii) has a face amount which is no less than the Construction Bond Amount as at the date it is issued to the SCSA; and
 - (iv) expires no earlier than 3 years after the date it is issued to the SCSA; and
 - (v) is payable at an office of the Issuer in Melbourne (or such other place as the SCSA in writing may approve).
- (b) The SCSA and the Concessionaire acknowledge and agree that the Construction Bond secures the performance by the Concessionaire of its obligations and Liabilities with respect to design, construction and commissioning of the Interchange Facility Works under this Agreement, its obligations and Liabilities with respect to Outstanding Items and its obligations and Liabilities with respect to Defects in the Interchange Facility Works (each such obligation or Liability a *relevant obligation or Liability* for the purposes of Clause 6.5).

6.3 Replacement Construction Bond

- (a) The Concessionaire must, on or prior to the Trigger Date, procure the issue to the SCSA of a replacement performance bond which complies with Clauses 6.2(a).
- (b) If at any time prior to the Construction Bond Return Date:
 - (i) the Rating of the Issuer of the Construction Bond falls below the Required Rating; or
 - (ii) such Issuer ceases to have a Rating at all,the Concessionaire must:
 - (iii) promptly notify the SCSA in writing of that circumstance; and
 - (iv) within 20 Business Days after being requested by the SCSA to do so, procure the issue to the SCSA of a replacement performance bond which complies with Clauses 6.2(a) to (e) (each inclusive).

6.4 Reduction in the amount of the Construction Bond

Promptly following the relevant event as set out in paragraph (a) or (b) (as applicable) of the definition of "Construction Bond Amount", the SCSA must, at the request of the Concessionaire, either:

- (a) provide a written acknowledgement, in form and substance satisfactory to the Issuer, that the face amount of the Construction Bond is reduced to the then applicable Construction Bond Amount; or
- (b) provide the Construction Bond to the Concessionaire in exchange for a replacement performance bond which complies with Clause 6.2(a).

6.5 Demands under Construction Bond

The SCSA must not make a demand under the Construction Bond except in accordance with the following.

- (a) The SCSA may make a demand under the Construction Bond in respect of any amount which the SCSA considers:
 - (i) is due and payable by the Concessionaire to the SCSA under, in respect of or as a result of a breach of or a failure to comply with a relevant obligation or Liability; or
 - (ii) the Concessionaire will become liable to pay to the SCSA under, in respect of or as a result of a breach of or a failure to comply with a relevant obligation or Liability if an event or circumstance occurs, and that event or circumstance will or is likely to occur but is unlikely to occur until after the Construction Bond Return Date.
- (b) If a replacement Construction Bond is not provided to the SCSA in accordance with Clause 6.3 or Clause 6.4(b), the SCSA may make a demand under the Construction Bond for the full Construction Bond Amount as at that time.

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- (c) The SCSA may make a demand in respect of an amount referred to in paragraphs (a) or (b) irrespective of whether the amount is, or the circumstances relating to the amount are:
 - (i) in dispute;
 - (ii) subject to the dispute resolution procedures set out in Clause 55 or in any other Project Agreement;
 - (iii) the subject of a claim under any of the insurances required under Clause 54; or
 - (iv) subject to any court or other proceedings.
 - (d) The SCSA's rights under paragraphs (a) and (b) are independent and not cumulative.
 - (e) In this Clause 6.5, the term **amount** includes fees, costs, indemnities, charges, duties, penalties, expenses and liquidated or unliquidated damages.

6.6 Repayment by SCSA if event or circumstance does not materialise

If the Issuer of the Construction Bond makes a payment to the SCSA as a result of a demand made under the Construction Bond in accordance with Clause 6.5(a)(ii) and the Concessionaire did not in fact become liable to pay to the SCSA all or part of the amount in respect of which demand and payment was made, then the SCSA must pay to the Concessionaire:

- (a) all or, as the case may be, that part of the amount (the **Relevant Amount**) which the Concessionaire did not in fact become liable to pay to the SCSA; and
- (b) interest at the Default Rate on the Relevant Amount on a daily basis from (and including) the date the Issuer of the Construction Bond met the demand in respect of the Relevant Amount to the date the Relevant Amount is paid to the Concessionaire. Such interest must be paid on the date the Relevant Amount is paid to the Concessionaire.

6.7 Return of Construction Bond

- (a) The SCSA must provide the Construction Bond to be replaced to the Concessionaire in exchange for the replacement Construction Bond.
- (b) The SCSA must return the Construction Bond to the Concessionaire no later than the Construction Bond Return Date.

6.8 Notices of demand

The SCSA must, as soon as practicable after it has made a demand under the Construction Bond, give a notice to the Concessionaire specifying the amount of the demand and the SCSA's reasons for making the demand.

7. Accreditation, Approvals, Laws and Artefacts

7.1 Accreditation

- (a) Subject to Clause 7.1A, the Concessionaire must hold Accreditation to the extent required by Law.
- (b) Subject to Clause 7.1A, the Concessionaire must ensure that officers, employees, agents and contractors (including the Sub-Contractors) engaged in or in connection with the Project, to the extent required by Law, hold Accreditation or otherwise are acceptable to or approved by the Government Agency from time to time responsible for Accreditation.
- (c) To the extent that:
 - (i) Connex requires further or other Accreditation for the purposes of assisting the Concessionaire with the Rail Modifications or as a result of the Rail Modifications; or
 - (ii) any Transport Operator requires further or other Accreditation for the purposes of assisting the Concessionaire with the Interchange Facility Works (other than the Rail Modifications or the Signalling Upgrade) or as a result of the Interchange Facility Works (other than the Rail Modifications or the Signalling Upgrade),then the Concessionaire must, at its own cost and expense, liaise, co-operate and use its reasonable endeavours to assist that party to obtain that Accreditation, including providing such information and documentation required by the Project Brief (including Clause 10 of the Project Brief) and the Government Agency from time to time responsible for Accreditation.
- (d) Without limiting any obligation of the Concessionaire, if the SCSA reasonably is able to assist the Concessionaire in obtaining any Accreditation (including assistance in formulating any interface co-ordination plan(s) which may be required as a criteria for obtaining Accreditation) referred to in the preceding paragraphs of this Clause 7.1, the SCSA will, at the reasonable request of the Concessionaire, use its reasonable endeavours to provide such assistance.

7.1A Accreditation during the Transitional Period

- (a) SCSA Accreditation will apply during the Transitional Period.
- (b) The Concessionaire:
 - (i) warrants that it will procure Accreditation as required by Clause 7.1 by the Scheduled Date for Final Completion of the Interchange Facility Works;
 - (ii) must, during the Transitional Period, comply with all of the Concessionaire's Operating Phase obligations and other obligations under this Agreement as if it held Accreditation as required by Clause 7.1, other than Clause 26A.2(a); and
 - (iii) must, during the Transitional Period, at its own cost and expense, liaise, co-operate and use its reasonable endeavours to procure the agreement of

intended parties to any interface co-ordination plan(s) which may be required as a criteria for obtaining Accreditation as required by Clause 7.1.

7.2 Approvals to be obtained by Concessionaire

(a) The Concessionaire must:

- (i) obtain and comply with;
- (ii) ensure that the Interchange Facility Works and the Interchange Facility comply with,

all Approvals necessary in connection with the Project including those necessary for the design, construction and commissioning of the Interchange Facility Works and the Interchange Facility and the operation and maintenance of the Interchange Facility and provision of the Services.

(b) Without limiting Clause 7.2(a), the Concessionaire must:

- (i) obtain and comply with; and
- (ii) ensure that the Interchange Facility Works and the Interchange Facility comply with,

all necessary Approvals from VicRoads, the Melbourne City Council, the Docklands Authority and any other applicable Government Agency, as the case may be, in connection with any modification of or interference with roads or Utility Services controlled by any of them, caused or affected by the design, construction or commissioning of the Interchange Facility Works or the operation or maintenance of the Interchange Facility.

(c) Without limiting any obligation of the Concessionaire, if the SCSA reasonably is able to assist the Concessionaire in obtaining any Approval referred to in the preceding paragraphs of this Clause 7.2, the SCSA will, at the reasonable request of the Concessionaire, use its reasonable endeavours to provide such assistance.

7.3 Compliance with Laws and Quality Standards

The Concessionaire must:

- (a) comply with; and
- (b) ensure that the Interchange Facility Works and the Interchange Facility comply with,

all applicable Laws and all Quality Standards from time to time applicable to the Interchange Facility Works or the Interchange Facility.

7.4 Artefacts

- (a) All Artefacts discovered on or under the surface of the Land will, as between the SCSA and the Concessionaire, be the absolute property of the SCSA.
- (b) The Concessionaire must:

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- (i) at all times permit and allow the SCSA or any person authorised by the SCSA to watch or examine any excavations on the Site;
 - (ii) at its own cost and expense, take every reasonable precaution to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made;
 - (iii) immediately upon discovery of any Artefact notify the SCSA of such discovery; and
 - (iv) without limiting Clause 7.2(a), comply at its own cost and expense with any Approval imposed upon the SCSA or the Concessionaire in respect of any Artefact .
- (c) The parties acknowledge and agree that the discovery of, dealing with or removal of any Artefacts does not:
- (i) entitle the Concessionaire to make any Claim;
 - (ii) in any way limit or change the Concessionaire's obligations under this Agreement or any other Project Agreement; or
 - (iii) relieve the Concessionaire of any Liabilities,
- with respect to the design, construction and commissioning of the Interchange Facility Works, the operation and maintenance of the Interchange Facility or the provision of the Services.

8. Independent Reviewer

8.1 Role of Independent Reviewer

The SCSA and the Concessionaire acknowledge and agree that the Independent Reviewer will act as an independent reviewer and certifier to:

- (a) the SCSA; and
- (b) the Concessionaire,

for the purposes of and in accordance with the terms of this Agreement and the Independent Reviewer Deed of Appointment.

8.2 Costs and expenses of the Independent Reviewer

The costs and expenses of the Independent Reviewer (including the Independent Reviewer's professional fees) will be borne as to 50% by the SCSA and as to 50% by the Concessionaire.

8.3 Liability of the Independent Reviewer

Neither the SCSA nor the Concessionaire will be liable to the other in any way whatsoever for any act or omission of the Independent Reviewer or for any Claim or Liability arising from the Independent Reviewer's exercise of its functions under this Agreement or the Independent Reviewer Deed of Appointment.

8.4 Determinations of the Independent Reviewer

Determinations of the Independent Reviewer under this Agreement and the Independent Reviewer Deed of Appointment will be final and binding on the SCSA and the Concessionaire.

8.5 Replacement

If the Independent Reviewer Deed of Appointment is terminated in accordance with its terms or if the first appointed Independent Reviewer ceases to act as the Independent Reviewer for the purposes of this Agreement, another person must be appointed to act as independent reviewer on substantially the same terms as the Independent Reviewer Deed of Appointment provided that the new independent reviewer must:

- (a) be reasonably acceptable to both the SCSA and the Concessionaire;
- (b) have appropriate qualifications and experience;
- (c) have no interest or duty which conflicts or may conflict with its functions as independent reviewer;
- (d) not be or have been, engaged or employed by the Concessionaire or its Associates in connection with the Project; and
- (e) not be, or have been engaged or employed by the SCSA or the State in connection with the Project within the 3 years prior to appointment as the Independent Reviewer.

8.6 Information and Access

The SCSA and the Concessionaire must provide such information and documentation to the Independent Reviewer and, without limiting Clauses 9.1(a)(vi) or 26.1(d), the Concessionaire must give such access to the Site, the Interchange Facility Works or the Interchange Facility (as the case may be), as, in each case, may be reasonably required by the Independent Reviewer for the purpose of performing its role and functions under this Agreement and the Independent Reviewer Deed of Appointment.

PART 2 – DESIGN AND CONSTRUCTION PHASE

9. Construction Licence, Commercial Development and Environmental Issues

9.1 Grant of Construction Licence

- (a) The SCSA grants to the Concessionaire a non-exclusive licence to use, and to permit any Construction Sub-Contractor to use, the Licensed Area from the Commencement Date on the following terms:
 - (i) the licence is for the purpose of carrying out the Interchange Facility Works on the Licensed Area;
 - (ii) the Concessionaire and any Construction Sub-Contractor may use the Laydown Areas for the storage and location of any equipment, vehicles and machinery necessary for the carrying out of the Interchange Facility Works;

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- (iii) the Concessionaire is responsible for ensuring that all Laydown Areas are left in a clean and safe condition and that all construction waste, rubbish and debris are removed promptly from the Laydown Areas in accordance with Good Design and Construction Practices;
 - (iv) on Practical Completion of the Interchange Facility Works the Concessionaire must remove all plant, equipment, facilities, vehicles and any construction waste, machinery, rubbish and debris from the Laydown Areas and other parts of the Licensed Area used for the Interchange Facility Works;
 - (v) the licence, with respect to that part of the Licensed Area on which the Principal Works are located, terminates upon the earlier of:
 - (A) the termination of this Agreement; and
 - (B) the commencement of the Facility Lease; andwith respect to that part of the Licensed Area on which the Slab Construction Works are located, terminates upon the earlier of:
 - (C) the termination of this Agreement; and
 - (D) the Slab Construction Works Practical Completion Date.
 - (vi) the Concessionaire acknowledges and agrees that the Access Parties will require access to, and use of, the Licensed Area on a daily or other periodic basis and the Concessionaire must co-operate with the Access Parties in ensuring that they are given reasonable access at all times to the Licensed Area and otherwise must use its reasonable endeavours not to disrupt or obstruct the use of the Licensed Area by the Access Parties.
- (b) The Concessionaire is responsible for gaining access to and from the Licensed Area and is not entitled to any Claim against the SCSA in connection with access, or failure to gain or delay in gaining access, to and from the Licensed Area.

9.2 Commercial Development

- (a) The Concessionaire acknowledges and agrees that the Commercial Development Works will be undertaken by the Commercial Developer during the Contract Term.
- (b) The Concessionaire must use its reasonable endeavours not to interfere unreasonably with, or disrupt or obstruct, the Commercial Development Works or the carrying out of the Commercial Development Works.

9.3 Contamination

- (a) If the Concessionaire discovers any Contamination in, on or under the Land the Concessionaire must notify the SCSA within 5 Business Days after the discovery of the Contamination.
- (b) The SCSA and the Concessionaire must meet as soon as practicable after receipt of notification under Clause 9.3(a) to determine:

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- (i) to the extent possible, whether and to what extent the Contamination is Non-Identified Pre-Existing Contamination, Identified Pre-Existing Contamination or Subsequent Contamination; and
 - (ii) with respect to any Non-Identified Pre-Existing Contamination, whether any action is required to be taken to deal with the Non-Identified Pre-Existing Contamination in accordance with any applicable Laws or in accordance with any legally binding requirements of any applicable Government Agency. To the extent that any action required to be taken to deal with the Non-Identified Pre-Existing Contamination is agreed between the SCSA and the Concessionaire or determined under Clause 9.3(d), the costs and expenses of taking such action will be borne as to 50% by the Concessionaire and as to 50% by the SCSA.

In the case of the costs to be borne by the SCSA in accordance with this paragraph, such amount will be payable by the SCSA to the Concessionaire in accordance with the reasonable request of the Concessionaire made on the basis that the SCSA and the Concessionaire bear the progressive payments for the costs associated with actions necessary to deal with Non-Identified Pre-Existing Contamination in the same proportion as the costs are to be borne by the SCSA and the Concessionaire in accordance with this paragraph.

- (c) Subject to Clause 9.3(g), the Concessionaire is responsible for any Identified Pre-Existing Contamination or Subsequent Contamination whenever discovered and however caused and must, at its sole cost and expense, deal with such Contamination in accordance with any applicable Laws and any legally binding requirements of any applicable Government Agency.
- (d) If the SCSA and the Concessionaire cannot agree within a reasonable time on any of the matters referred to in Clause 9.3(b), then either party may refer the matters in dispute to be determined by an environmental auditor (being a person appointed to that office by the Environment Protection Authority pursuant to the *Environment Protection Act 1970 (Vic)*) appointed as an independent expert under Clause 55.2.
- (e) The SCSA indemnifies and will keep indemnified the Concessionaire from and against all Liabilities and Claims of every kind arising from a failure by the SCSA to comply with the SCSA's obligations under Clause 9.3(b)(ii), except to the extent that the failure was caused or contributed to by any act or omission of the Concessionaire, any of its Associates or any of its Sub-Contractors.
- (f) The Concessionaire indemnifies and will keep indemnified the SCSA from and against all Liabilities and Claims of every kind arising from any Identified Pre-Existing Contamination, any Subsequent Contamination (subject to Clause 9.3(g)) and any Contamination (including Non-Identified Pre-Existing Contamination for which the Concessionaire is responsible under Clause 9.3(b)(ii)) existing in, on, under or emanated or emanating from the Land or caused or contributed to by any act or omission of the Concessionaire, any of its Associates or any of its Sub-Contractors, other than Contamination for which the SCSA is responsible under Clause 9.3(b)(ii) or Clause 9.3(g), including a failure by the Concessionaire to comply with its obligations under Clause 9.3(b)(ii) or Clause 9.3(c) except to the extent that the failure was caused or contributed to by any act or omission of the SCSA or any of its Associates.

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- (g) The SCSA indemnifies and will keep indemnified the Concessionaire from and against all Liabilities and Claims of every kind arising from any Contamination which after the Agreement Date migrates from any land adjacent to the Land (whether or not the Contamination originated on that land) to the Land, or any Contamination in, under or emanated or emanating from the Land to the extent it has been caused or exacerbated after the Agreement Date by Contamination on land adjacent to the Land other than Identified Pre-Existing Contamination.
 - (h) The Concessionaire and the SCSA covenant with each other that they will not do anything with the intent of causing or assisting in causing the service of a Clean Up Notice provided that neither party in complying with this Clause 9.3(h) will be prevented from complying with nor will be taken to be in default of this Clause 9.3(h) in complying with any Laws.

9.4 General Environmental Compliance

During the term of the Construction Licence the Concessionaire covenants:

- (a) not to use the Land or allow the Land to be used so that:
 - (i) any Industrial Waste or Hazardous Substance is abandoned or dumped on the Land; or
 - (ii) any Industrial Waste or Hazardous Substance is handled in a manner which is likely to cause an Environmental Hazard; and
- (b) without limiting Clause 7, to comply with all Environmental Laws and to obtain and maintain in full force and effect and to comply with the terms of all Approvals required in order to release or emit anything from the Land into the air or water or on to the ground or otherwise into the Environment or to emit any substantial noise.

9.5 Native Title

- (a) The Concessionaire acknowledges and agrees that neither the SCSA nor any other person has made any representation, given any advice or given any warranty as to the existence or otherwise of any native or aboriginal title in respect of the Land or any part of the Land.
- (b) Despite anything to the contrary contained in this Agreement, as between the SCSA and the Concessionaire:
 - (i) the SCSA is responsible for dealing with any Native Title Application in respect of any part of the Land; and
 - (ii) the SCSA will be responsible for the payment of any compensation or other moneys required to be paid to the native title holders of the Land or any part of the Land pursuant to a Native Title Application by those native title holders.
- (c) Except as otherwise expressly provided, the SCSA will not be liable to the Concessionaire for any Liability which the Concessionaire suffers or incurs as a result of a Native Title Application in respect of any part of the Land.

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- (d) If there is a Native Title Application with respect to the Land or any part of it, the Concessionaire must:
- (i) continue to perform its obligations under this Agreement, except to the extent the Concessionaire is otherwise prevented from performing its obligations under this Agreement as a result of the existence of the Native Title Application including to the extent the Concessionaire is required to suspend or cease performance of its obligations in accordance with:
 - (A) a direction of the SCSA under Clause 9.5(e); or
 - (B) any applicable Law or order of a court or tribunal; and
 - (ii) at the request of the SCSA and at the SCSA's cost and expense, provide all reasonable assistance in connection with dealing with such Native Title Application (including giving the SCSA and any other persons authorised by the SCSA access to the Land or that part of the Land which is the subject of the Native Title Application when reasonably required by the SCSA for that purpose).
- (e) For the purposes of Clause 9.5(d)(i), the SCSA may by written notice direct the Concessionaire to suspend the execution of any or all of the Interchange Facility Works under this Agreement until such time as the SCSA gives the Concessionaire further written notice and the Concessionaire must comply with such direction.
- (f) If, in accordance with Clause 9.5(d), the Concessionaire is prevented from performing its obligations under this Agreement such that it is required to suspend or cease undertaking all or part of the Interchange Facility Works, that will constitute an Extension Event to the extent of such cessation or suspension of the Interchange Facility Works.

9.6 Access by Access Parties

The SCSA must use its reasonable endeavours to ensure that any of the Access Parties who exercise a right of access to, or use of, the Licensed Area, the Interchange Facility or the Site (including pursuant to Clauses 9.1(a)(vi) or 26.1(d) of this Agreement):

- (a) comply with any reasonable access procedures (including protocols relating to site management, safety, security, insurance and industrial relations matters) with respect to the Licensed Area, the Interchange Facility or the Site (as applicable) which the Concessionaire has in place from time to time and details of which the Concessionaire has made known in writing to such persons within a reasonable period prior to those persons accessing or using the Licensed Area, the Interchange Facility or the Site (as applicable); and
- (b) does not unreasonably obstruct or interfere with the carrying out of the Interchange Facility Works.

10. General Obligations

10.1 Responsibility for Construction

The Concessionaire:

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- (a) is responsible for and is not entitled to make any Claim in connection with construction means, methods and techniques used to undertake the Interchange Facility Works; and
 - (b) must provide everything (including labour, materials and plant) necessary for the design, construction and commissioning of the Interchange Facility Works.

10.2 Consultation with Franchisees

- (a) The Concessionaire must give each affected Franchisee not less than 20 Business Days' written notice of the proposed commencement of each stage of the Interchange Facility Works. The notice must identify that part of the Site on which the Concessionaire proposes to undertake those Interchange Facility Works.
- (b) Without limiting the Concessionaire's obligations under Clauses 12.2 and 13.2, the Concessionaire must consult with each affected Franchisee regularly and, in any event, within a reasonable time (which must be not less than 20 Business Days) prior to the commencement of the Interchange Facility Works for which notice has been given pursuant to Clause 10.2(a), regarding the following matters:
 - (i) the effect (if any) that the undertaking of those Interchange Facility Works or the use or operation of the Completed Interchange Facility Works will have on the Franchisee's ongoing use of the areas the subject of the Franchisee's Interim Access Agreement;
 - (ii) the compatibility of the Completed Interchange Facility Works with the existing infrastructure leased by the Franchisee under its Infrastructure Lease;
 - (iii) the effect (if any) that the undertaking of the Interchange Facility Works will have on the Franchisee's use of the areas the subject of the Franchisee's Interim Access Agreement during the period those Interchange Facility Works are being undertaken;
 - (iv) the procedures or arrangements (if any) that can reasonably be put in place by the Concessionaire and the Franchisee to:
 - (A) minimise as far as reasonably practicable any disruption to the Franchisee's use of the areas the subject of the Franchisee's Interim Access Agreement; and
 - (B) ensure that the areas the subject of the Franchisee's Interim Access Agreement can be safely used by the Franchisee;
 - (v) the effect (if any) that the undertaking of the Interchange Facility Works will have on the Franchisee's operations; and
 - (vi) any other matters nominated by the Franchisee as relevant matters for the Concessionaire and the Franchisee to consider in connection with those Interchange Facility Works.
- (c) The Concessionaire must:

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- (i) provide prior written notice to the SCSA of any discussion, consultation or meeting with any Franchisees under or in connection with this Agreement, and allow the SCSA or its nominee to attend such discussions, consultations or meetings; and
 - (ii) provide to the SCSA a copy of all notices given to any Franchisee under or in connection with this Agreement at the same time the applicable notice is given to the Franchisee.

10.3 Interaction with Franchisees

Subject to the provisions of the Occupations and Administration Agreement, in undertaking the Interchange Facility Works, the Concessionaire must endeavour as far as reasonably practicable to minimise any disruption to the Franchisees' use of the area the subject of the Franchisees' Interim Access Agreements and to minimise:

- (a) any costs incurred by the Franchisees; and
- (b) any revenue forgone by the Franchisees,

as a result of the undertaking of the Interchange Facility Works.

10.4 Interconnection

Where any Interchange Facility Works are attached to or otherwise form part of the infrastructure leased by a Franchisee under an Infrastructure Lease, the Concessionaire must do all things reasonably necessary to assist the Franchisee to ensure proper integration of those Interchange Facility Works once they have been completed with the infrastructure which is the subject of the Franchisee's Infrastructure Lease.

10.5 Franchisee's Inspection Rights

Without limiting Clause 9.1(a)(vi), during the undertaking of any Interchange Facility Works the Concessionaire must allow an affected Franchisee reasonable access (upon the Franchisee giving reasonable notice) to enter the Licensed Area which relates to those Interchange Facility Works for the purpose of inspecting the Interchange Facility Works to ensure they will be compatible, on completion, with the infrastructure which is the subject of the Franchisee's Infrastructure Lease.

10.6 Rail Modifications and Signalling Upgrade

- (a) The Concessionaire must provide Connex with all reasonable access to allow Connex to witness any Commissioning Tests to be undertaken in respect of any Interchange Facility Works which incorporate the Rail Modifications or the Signalling Upgrade (or any part of them).
- (b) The Concessionaire must ensure that Connex has the benefit of any warranties, guarantees and indemnities provided by third parties to the Concessionaire or the Construction Contractor in respect of the Rail Modifications or the Signalling Upgrade (whether by assignment of those warranties, guarantees and indemnities to Connex or otherwise).

10.7 Occupations and Access

- (a) The Concessionaire acknowledges that the Agreed GS Occupations are sufficient to enable it to carry out and complete each of:
 - (i) the Principal Works by the Scheduled Date for Practical Completion of the Principal Works;
 - (ii) the Slab Construction Works by the Scheduled Date for Practical Completion of the Slab Construction Works;
 - (iii) the Outstanding Items; and
 - (iv) the Deferred Works,and as such the SCSA has agreed to ensure that the Agreed GS Occupations are made available to the Concessionaire.
- (b) Where the Agreed GS Occupations are made available to the Concessionaire, the Concessionaire will not be entitled to any extensions of time or to make any Claim based on the occupations and access regime as dealt with by the Occupations and Administration Agreement at law or in equity or under the Project Agreements.
- (c) For the avoidance of doubt it is acknowledged that:
 - (i) the Concessionaire may request further Alternative Occupations in accordance with this Agreement and the Occupations and Administration Agreement. However, where any requested further Alternative Occupations are not provided for whatever reason, the Concessionaire will not be entitled to any extensions of time or to make any Claim for any resulting delay to the Principal Works and/or the Slab Construction Works;
 - (ii) a Claim may be made under Clause 20 where any of the Agreed GS Occupations have not been made available to the Concessionaire before, on or after the GSA Effective Date; and
 - (iii) Clause 10.7(a) does not apply to the extent affected by a Modification.
- (d) Nothing in this Clause 10.7 affects, in any way, the Concessionaire's rights and obligations under this Agreement and/or the Occupations and Administration Agreement in relation to Specified Occupations or its rights to obtain further Alternative Occupations.

11. Design, Construction and Commissioning Warranties

- (a) The Concessionaire represents and warrants that:
 - (i) it will design, construct and commission the Interchange Facility, the Rail Modifications and the Signalling Upgrade:
 - (A) in accordance with the Project Brief, the Project Agreements, the Approved Design Documentation and all applicable Laws, Approvals and Quality Standards;

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- (B) in a manner which is consistent with, and so as to enable achievement of, the Project Objectives;
 - (C) in a timely manner and, subject to Clauses 12.2 and 12.4, in accordance with the Approved Interchange Facility Works Program, so as to achieve:
 - (1) Practical Completion of the Principal Works by the Scheduled Date for Practical Completion of the Principal Works; and
 - (2) Practical Completion of the Slab Construction Works by the Scheduled Date for Practical Completion of the Slab Construction Works;
 - (3) Final Completion by the Scheduled Date for Final Completion of the Interchange Facility Works;
 - (D) using Good Design and Construction Practices; and
 - (E) in a manner which:
 - (1) allows the Southern Cross Station to remain (except to the extent otherwise provided under this Agreement), operational and open to the general public at all times during Southern Cross Station opening hours as notified by the SCSA; and
 - (2) minimises as far as reasonably practicable any disruption to the Transport Operators' businesses and operations, the businesses and operations of retail businesses at Southern Cross Station and the users of the Southern Cross Station;
 - (ii) it has or will procure the resources, expertise and experience necessary to design, construct and commission the Interchange Facility and the Rail Modifications and the Signalling Upgrade in accordance with the requirements of paragraph (i);
 - (iii) the design, construction and commissioning of the Interchange Facility, the Rail Modifications and the Signalling Upgrade will be carried out:
 - (A) professionally, and with the due skill, care and diligence which may reasonably be expected of a skilled professional person suitably qualified and experienced in the performance of obligations similar to the Concessionaire's obligations under this Agreement; and
 - (B) in a commercial, prudent and reasonable manner; and
 - (iv) the public circulation spaces of Interchange Facility will accommodate Usage up to the Target Capacity at:

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- (A) Level of Service C for Walkways or better at all times except during Special Events which directly affect Southern Cross Station; and
 - (B) Level of Service D for Walkways or better during Special Events which directly affect Southern Cross Station.
 - (b) The Concessionaire represents and warrants that:
 - (i) the Principal Works and Slab Construction Works will each be designed, constructed and commissioned so as to be at their respective Practical Completion Dates fit for the purpose specified in the Project Brief and the uses specified in this Agreement for the remainder of the Contract Term;
 - (ii) the Interchange Facility, the Rail Modifications and the Signalling Upgrade will be designed, constructed and commissioned so as to be at Final Completion fit for the purpose specified in the Project Brief and the uses specified in this Agreement and be structurally sound for the remainder of the Contract Term; and
 - (iii) the Interchange Facility and the Rail Modifications will be designed, constructed and commissioned so as to allow the Services to be delivered to the Services Standards.
 - (c) Nothing in this Clause 11 will otherwise affect or reduce the Concessionaire's obligations or liabilities under this Agreement or any other Project Agreement including the obligations referred to in Clause 9 and Clause 10 of this Agreement.

12. Interchange Facility Works Program

12.1 Approved Interchange Facility Works Program

The Approved Interchange Facility Works Program for the purposes of this Agreement as at the GSA Effective Date is attached at Schedule 13.

12.2 Departure from Approved Interchange Facility Works Program

Where there is a material departure from the Approved Interchange Facility Works Program, the Concessionaire shall prepare and submit (in the same format, using the same logic and pursuant to the same requirements as the Approved Interchange Facility Works Program) to the SCSA and the Independent Reviewer a program which:

- (a) contains and clearly shows a critical path network for the design, construction and commissioning activities required for the applicable Interchange Facility Works (including time scale in calendar weeks);
- (b) shows:
 - (i) all principal activities relating to the design, construction and commissioning of the applicable Interchange Facility Works;
 - (ii) weekly time scales, their order, duration and interrelationship;

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- (iii) the dates by which a copy of the Draft Design Documentation for the applicable Interchange Facility Works will be submitted to the Independent Reviewer;
 - (iv) the dates or periods for, and the nature of input from, or instructions or decisions required by, the SCSA;
 - (v) any Approvals which must be obtained prior to the commencement of construction and occupation of the applicable Interchange Facility Works;
 - (vi) if known, the impact, and the estimated potential impact of any delaying events or circumstances;
 - (vii) the work to be undertaken by the Construction Contractor and any other Trade Contractors or Suppliers;
 - (viii) alternative sources of supply of essential materials where the lack of timely ordering in advance would be likely to delay the program for the applicable Interchange Facility Works;
 - (ix) details of the proposed Commissioning Tests for the applicable Interchange Facility Works and a program for the timing of those Commissioning Tests; and
 - (x) any item of plant or equipment or material that may take a long time to obtain and therefore requires early ordering,

includes such other information as required by the Project Brief (including Clauses 11.14.1 and 21.3 of the Project Brief),

(referred to hereafter as the *Revised Interchange Facility Works Program*).

- (c) The Concessionaire may proceed with any Revised Interchange Facility Works Program submitted under this Clause 12.2 at its own risk.

12.3 Consultation with Franchise Operators

- (a) On or before the submission of the Revised Interchange Facility Works Program to the SCSA and the Independent Reviewer in accordance with Clause 12.2, the Concessionaire must:
 - (i) submit, or otherwise make available, a copy of the Revised Interchange Facility Works Program to each of the Franchise Operators;
 - (ii) allow each Franchise Operator a reasonable time, but not less than 5 Business Days after complying with paragraph (i) within which to submit comments to the Concessionaire on the Revised Interchange Facility Works Program; and
 - (iii) consult in good faith with each Franchise Operator who has submitted comments pursuant to paragraph (ii) with respect to those comments within 5 Business Days after receipt of such comments.
- (b) Forthwith after the 10 Business Day period in Clause 12.3(a), has expired, the Concessionaire must provide the SCSA and the Independent Reviewer with written confirmation that it has complied with its obligations under Clause 12.3.

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- (c) It is acknowledged and agreed by the SCSA and the Concessionaire that the Independent Reviewer and the Concessionaire may consult and confer with each other about the Revised Interchange Facility Works Program prior to submission of a copy of such documentation by the Concessionaire to the Independent Reviewer under Clauses 12.2 and 12.6 respectively.
 - (d) For the purposes of this Clause 12.3, a reference to a Franchise Operator includes a Successor Franchise Operator or a New Franchise Operator.

12.4 New Approved Interchange Facility Works Program

- (a) Subject to compliance with Clause 12.2 and Clause 12.3, the Revised Interchange Facility Works Program submitted to the SCSA and the Independent Reviewer will constitute the Approved Interchange Facility Works Program for the applicable Interchange Facility Works for the purposes of this Agreement and the Concessionaire will proceed with such program at its own risk. The Concessionaire may depart from such program with reasonable cause, in which case such departure will also be at the Concessionaire's own risk.
- (b) The SCSA and the Independent Reviewer may, but have no obligation or duty to, review and comment on a Revised Interchange Facility Works Program or an Approved Interchange Facility Works Program. Any review or comment by the SCSA or the Independent Reviewer in respect of a Revised Interchange Facility Works Program or an Approved Interchange Facility Works Program, does not:
 - (i) entitle the Concessionaire to make a Claim;
 - (ii) in any way limit or change the Concessionaire's obligations under this Agreement or any other Project Agreement; or
 - (iii) relieve it of any Liabilities,

with respect to the design, construction and commissioning of the Interchange Facility Works.

12.5 [Not used].

12.6 Review of Programs

- (a) At the request of the SCSA, the Independent Reviewer may, subject to prior notice to the Concessionaire, carry out a review of the Approved Interchange Facility Works Program and the Concessionaire's performance of its design, construction and commissioning obligations having regard to those programs.
- (b) If the Independent Reviewer gives notice under Clause 12.6(a), the Concessionaire must, within 10 Business Days after receipt of such notice, submit a written report to the Independent Reviewer, in the form reasonably required by the Independent Reviewer, showing:
 - (i) the progress of the Interchange Facility Works, with a comparison to the progress planned in the Approved Interchange Facility Works Programs;

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- (ii) the Concessionaire's current estimate, and particulars of the estimate, of the percentage of the Interchange Facility Works which has been completed; and
 - (iii) such other information relevant to the achievement of Practical Completion of:
 - (A) the Principal Works by the Scheduled Date for Practical Completion of the Principal Works; and
 - (B) the Slab Construction Works by the Scheduled Date for Practical Completion of the Slab Construction Works.
 - (iv) as the Independent Reviewer may reasonably require or the Concessionaire reasonably considers pertinent.
- (c) If, after review by the Independent Reviewer (including if it has been submitted by the Concessionaire, of the written report submitted by the Concessionaire under Clause 12.6(b)) and further consultation with the Concessionaire, the Independent Reviewer reasonably determines that, irrespective of the resources, expertise and experience available to and allocated by the Concessionaire to achieve Practical Completion of both the Principal Works and the Slab Construction Works there is no reasonable prospect that the Concessionaire will achieve this by the Interchange Facility Sunset Date, then:
- (i) the Independent Reviewer may issue to the Concessionaire and the SCSA a certificate certifying such opinion; and
 - (ii) the issuing of that certificate to the SCSA is a Termination Event.

13. Interchange Facility Design Development

13.1 Development of Design Documentation

- (a) The Concessionaire must, at its own cost and expense:
 - (i) procure the development and completion of the Design Documentation; and
 - (ii) maintain and procure the best industry standard Design Documentation.
- (b) The Design Documentation must:
 - (i) comply with the Project Brief; and
 - (ii) be certified by the Independent Reviewer in accordance with Clause 13.3.
- (c) It is acknowledged and agreed by the SCSA and the Concessionaire that the Independent Reviewer and the Concessionaire may consult and confer with each other about the Draft Design Documentation prior to the formal submission of such documentation by the Concessionaire to the Independent Reviewer under Clauses 13.3 and 13.4 respectively.

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- (d) Subject to Clauses 13.1(e) and (f), the Agreed Works are deemed to have satisfied the design criteria of this Agreement (including the Project Brief).
 - (e) Where the Agreed Works modify or amend Design Documentation submitted to the Independent Reviewer prior to the GSA Effective Date (whether or not such Design Documentation has been certified), the Concessionaire must:
 - (i) amend the relevant Design Documentation to incorporate any such modification or amendment; or
 - (ii) resubmit such amended Design Documentation to the Independent Reviewer for certification in accordance with Clause 13.5.
 - (f) All designs relating to the Agreed Works and created as and from the GSA Effective Date will be dealt with in accordance with the processes set out in this Clause 13.

13.2 Consultation with Franchise Operators

- (a) The Concessionaire must on or before the time it submits Draft Design Documentation for each part of the Interchange Facility Works to the Independent Reviewer and the SCSA in accordance with Clause 13.3(a) or where the SCSA has provided notice to the Concessionaire under Clause 13.5(b)(ii):
 - (i) submit, or otherwise make available, a copy of that Draft Design Documentation to each of the Franchise Operators;
 - (ii) allow each Franchise Operator a reasonable time, but not less than 15 Business Days after complying with paragraph (i), within which to submit written comments on the Draft Design Documentation; and
 - (iii) consult in good faith with each Franchise Operator who has submitted comments pursuant to paragraph (ii) with respect to those comments within 20 Business Days after complying with paragraph (i).
- (b) If and to the extent that any changes are made to the Draft Design Documentation pursuant to Clause 13.3(g) the Concessionaire must, if requested by the SCSA, submit or otherwise make available, the revised Draft Design Documentation to each Franchise Operator and comply with paragraphs (ii) and (iii) of Clause 13.2(a) with respect to that revised Draft Design Documentation.
- (c) Any Draft Design Documentation submitted, or otherwise made available, to a Franchise Operator pursuant to this Clause 13.2 must comply with the requirements of Clause 13.3(b).
- (d) For the purposes of this Clause 13.2, a reference to a Franchise Operator includes a Successor Franchise Operator or New Franchise Operator.

13.3 Submission of Draft Design Documentation

- (a) The Concessionaire must, either before, at the same time or after it has commenced the process described in Clause 13.2(a), progressively during the Design and Construction Phase and in sufficient time to allow:

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- (i) Practical Completion of the Principal Works to be achieved by the Scheduled Date for Practical Completion of the Principal Works; and
 - (ii) Practical Completion of the Slab Construction Works to be achieved by the Scheduled Date for Practical Completion of the Slab Construction Works;
- (b) (as applicable) submit to the SCSA and the Independent Reviewer:
- (i) the Draft Design Documentation for each part of the Interchange Facility Works; and
 - (ii) as soon as it has occurred, written confirmation that it has fulfilled its obligations under Clause 13.2(a) by either (as applicable):
 - (A) providing written confirmation that no comments were received from Franchise Operators within the 15 Business Day period specified in Clause 13.2(a)(ii); or
 - (B) where it has received written comments from any Franchise Operator as contemplated by Clause 13.2(a)(iii):
 - (1) particulars of the amendments (if any) to the Draft Design Documentation which have been or are to be made, and any such amendments will be treated as if they were originally submitted under Clause 13.3(a); or
 - (2) confirmation that the consultation process as contemplated by Clause 13.2(a)(iii) has been concluded.
- (c) The Draft Design Documentation submitted in accordance with Clause 13.3(a) must contain the following information:
- (i) identification of the Interchange Facility Works to which it relates;
 - (ii) a design development report demonstrating that issues of planning, design, materials selection, constructability and building services have been coordinated and integrated into the Draft Design Documentation;
 - (iii) all necessary design drawings and specifications; and
 - (iv) any other information required by the Project Brief.
- (d) If required by the Independent Reviewer, the Concessionaire must make available at the cost and expense of the Concessionaire the appropriate design personnel to explain the Draft Design Documentation or provide information on such matters in relation to the Draft Design Documentation as the Independent Reviewer reasonably requests, and in such form as the Independent Reviewer reasonably requests.
- (e) Subject to the Concessionaire having complied with any reasonable requests of the Independent Reviewer under Clause 13.3(c), the Independent Reviewer must review the Draft Design Documentation and on or before the later of:

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- (i) 10 Business Days after the submission of the relevant Draft Design Documentation to the Independent Reviewer and the SCSA; and
 - (ii) 3 Business Days after receipt of the written confirmation referred to in Clause 13.3(a)(iv),

and either

- (iii) give the Concessionaire and the SCSA a certificate certifying that the Draft Design Documentation:
 - (A) complies with the Project Brief; and
 - (B) satisfies the requirements of Clause 13.3(b); or
- (iv) give the Concessionaire and the SCSA a notice notifying in writing the Independent Reviewer's opinion that the Draft Design Documentation:
 - (B) does not comply with the Project Brief; or
 - (C) does not satisfy the requirements of Clause 13.3(b),

(each a *Design Deficiency*) and specifying the parts of the Draft Design Documentation which result in a Design Deficiency and reasonable particulars of the Design Deficiency.

- (f) If the Independent Reviewer certifies in accordance with Clause 13.3(d)(iii) or fails to certify or notify in accordance with Clause 13.3(d)(iv), then, subject to the Concessionaire having complied with Clause 13.2 in relation to that Draft Design Documentation, the Draft Design Documentation will be the Approved Design Documentation for the applicable Interchange Facility Works for the purposes of this Agreement.
- (g) If the Independent Reviewer notifies in accordance with Clause 13.3(d)(iv), then the SCSA may, in its discretion, within 10 Business Days after receipt of that notice, notify the Concessionaire and the Independent Reviewer it accepts the Draft Design Documentation, in which case, and subject to the Concessionaire having complied with Clause 13.2, that Draft Design Documentation will be the Approved Design Documentation for the applicable Interchange Facility Works for the purposes of this Agreement.
- (h) If :
 - (i) the Independent Reviewer notifies in accordance with Clause 13.3(d)(iv); and
 - (ii) the SCSA does not give a notice under Clause 13.3(g) the Concessionaire must amend, in consultation with the SCSA and the Independent Reviewer, the Draft Design Documentation to correct each Design Deficiency and resubmit to the Independent Reviewer the amended Draft Design Documentation; and
 - (iii) in such a case this Clause 13.3 will apply in respect of the resubmitted Draft Design Documentation as if it were originally submitted under Clause 13.3(a) (except that for the purposes of Clause 13.3(d) the

Independent Reviewer must respond to the Draft Design Documentation within a further 5 Business Days from the date that the Draft Design Documentation is resubmitted).

- (i) The SCSA or the Concessionaire may refer any dispute in relation to the issue or non-issue of a certificate under Clause 13.3(d)(iii) or a notice under Clause 13.3(d)(iv) for resolution by an independent expert in accordance with Clause 55.2, in which case the Approved Design Documentation for the applicable Interchange Facility Works will be as determined by the independent expert in accordance with that Clause.
- (j) The Concessionaire may at its own risk proceed with the construction of any Interchange Facility Works whether or not at that time there is Approved Design Documentation for those Interchange Facility Works. If the Concessionaire so proceeds and if the construction of those Interchange Facility Works is not in accordance with the Approved Design Documentation for those Interchange Facility Works (a *Construction Deficiency*) the Concessionaire:
 - (i) must at its own cost and expense rectify that Construction Deficiency; and
 - (ii) is not entitled to any extension of time or any payment or other compensation from the SCSA in connection with or as a result of that Construction Deficiency.
- (k) The Concessionaire must not change Approved Design Documentation except in accordance with Clauses 13.5 and 13.6.
- (l) The Independent Reviewer's review of, comment on or certification of Draft Design Documentation, the SCSA's review of, comment on or approval of Draft Design Documentation or the determination of a dispute in relation to Draft Design Documentation by an independent expert in accordance with Clause 55.2, does not:
 - (i) entitle the Concessionaire to make any Claim;
 - (ii) in any way limit or change the Concessionaire's obligations under this Agreement or any other Project Agreement;
 - (iii) relieve the Concessionaire of any Liabilities; or
 - (iv) subject to Clause 20, entitle the Concessionaire to any extension of time or any payment or other form of compensation from the SCSA,

with respect to the design, construction and commissioning of the Interchange Facility Works.

13.4 Final Design Documentation

- (a) As soon as reasonably practicable after Draft Design Documentation becomes Approved Design Documentation in accordance with Clause 13.3, the Concessionaire must provide, to the extent it does not already form part of the Approved Design Documentation, the following further information (which must be consistent with the Approved Design Documentation and comply with the Project Brief) to the SCSA and the Independent Reviewer in relation to the applicable Interchange Facility Works:

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- (i) working drawings and specifications;
 - (ii) evidence of all necessary Approvals; and
 - (iii) any other documents required under the Project Brief.
- (b) Subject to the Concessionaire complying with Clause 13.4(a), the further documentation so provided and the Approved Design Documentation will be the Final Design Documentation for the applicable Interchange Facility Works for the purposes of this Agreement.
- (c) The Concessionaire must not change the Final Design Documentation except in accordance with Clauses 13.5 and 13.6.

13.5 Amendments to Approved Design Documentation and Final Design Documentation

- (a) If the Concessionaire wishes to amend Approved Design Documentation or Final Design Documentation it must:
- (i) submit the relevant part or parts of the Approved Design Documentation or Final Design Documentation subject to amendment (the *Design Amendment*) to the SCSA for review;
 - (ii) include a comprehensive itemised summary of any amendments made to the Approved Design Documentation or Final Design Documentation as previously submitted; and
 - (iii) confirm to the SCSA that the Design Amendment will have no adverse implications on the Concessionaire's ability to meet its obligations under this Agreement.
- (b) The SCSA will review the Design Amendment and within 5 Business Days of the date of submission if (and to the extent that) the SCSA considers that the Design Amendment impacts on Franchise Operators then it may, in its discretion, by notice in writing to the Concessionaire, advise whether it requires the Concessionaire to re-submit the Design Amendment to and consult with the Franchise Operators in accordance with Clause 13.2, as if references in Clause 13.2 to the Draft Design Documentation are to that Design Amendment.
- (c) Upon receipt of any Design Amendment, the SCSA shall review the Design Amendment for compliance with the Project Brief including, if necessary, by referring the submission to the Independent Reviewer for an opinion as to whether the Design Amendment complies with the Project Brief.
- (d) Within 10 Business Days of any submission made by the Concessionaire in accordance with Clause 13.5(a)(i) and (ii) and after compliance by the Concessionaire with Clause 13.5(a)(iii), or if a notice is given by the SCSA to the Concessionaire under Clause 13.5(b) within 3 Business Days of the Concessionaire complying with the requirements of a notice given under Clause 13.5(b), the SCSA shall notify the Concessionaire in writing whether it considers that:
- (i) the Design Amendment complies with the Project Brief (in which case the Design Amendment will become part of the Approved Design Documentation or the Final Design Documentation (as applicable));

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- (ii) the Design Amendment does not comply with the Project Brief (in which case the Design Amendment may be approved or rejected. If rejected, the SCSA shall provide reasons (including a copy of any opinion received from the Independent Reviewer in accordance with Clause 13.5(c)). If accepted, the Design Amendment will become part of the Approved Design Documentation or the Final Design Documentation (as applicable).
 - (e) Where the Concessionaire disagrees with a rejection by the SCSA under subclause 13.5(d)(ii) or where the SCSA fails to respond under Clause 13.5(d), then the Concessionaire may refer to determination the issue as to whether the Design Amendment complies with the Project Brief, in accordance with Clause 55.2 of this Agreement.
 - (f) If the determination is in favour of the Concessionaire then, to the extent that it is, the SCSA will provide its consent to the Design Amendment.
 - (g) Any Design Amendment approved by the SCSA (other than a Design Amendment which complies with the Project Brief) shall be deemed to have amended, where necessary, any applicable provisions of the Project Brief.

13.6 Approvals and Design Documentation

If after:

- (a) the submission of any Draft Design Documentation in accordance with Clause 13.3;
- (b) the certification or determination of any Approved Design Documentation in accordance with Clause 13.3; or
- (c) the amendment to any Approved Design Documentation and/or Final Design Documentation under Clause 13.5,

the Concessionaire obtains any Approval that results in, or requires, any change to any such documentation, then the Concessionaire must:

- (d) amend accordingly the documentation which is so affected; and
- (e) re-submit the amended documentation in accordance with Clause 13.5.

14. Modifications to Interchange Facility Works Prior to Final Completion

14.1 Restrictions on Modifications

Neither the Concessionaire nor the SCSA may make any:

- (a) Modification to the Principal Works prior to Practical Completion of the Principal Works; or
- (b) Modification to the Slab Construction Works prior to Practical Completion of the Slab Construction Works,

other than in accordance with this Clause 14.

14.2 Concessionaire Initiated Modifications

- (a) The Concessionaire may at any time:
 - (i) prior to Practical Completion of the Principal Works by notice to the SCSA request a Modification to the Principal Works; or
 - (ii) prior to Practical Completion of the Slab Construction Works by notice to the SCSA request a Modification to the Slab Construction Works.
- (b) If the Concessionaire requests a Modification in accordance with Clause 14.2(a), the notice requesting the Modification (*Concessionaire's Notice*) must set out the reasons for the proposed Modification and must confirm that:
 - (i) the proposed Modification and the undertaking of the works for the proposed Modification:
 - (A) will not result in any delays to the achievement of Practical Completion of either the Principal Works or the Slab Construction Works; or
 - (B) will result in delay and the estimate of the delay that will result.
 - (ii) the proposed Modification and the undertaking of the works for the proposed Modification will not:
 - (A) have an adverse effect on the workmanship or durability of any part of the Interchange Facility (including any items of plant or equipment forming part of the Interchange Facility);
 - (B) have an adverse effect on the ability of the Concessionaire to deliver the Interchange Facility or to provide the Services;
 - (C) breach any applicable Laws, Approvals or Quality Standards;
 - (D) have an adverse effect on the costs of operation or of maintenance of the Interchange Facility;
 - (E) diminish or lessen the Concessionaire's obligations with respect to liability for Defects in the Interchange Facility Works or for the design, construction or commissioning of the Interchange Facility Works; or
 - (F) have an adverse effect on the provision of Services in accordance with the Services Standards;
 - (G) or if it may have such an effect as contemplated by sub-clauses (A), (B) or (D), a description of that effect;
 - (iii) the proposed Modification is consistent with this Agreement, the Project Brief and the Bid Proposal, or if not, the nature and extent of the inconsistency; and

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- (iv) the Concessionaire has consulted with each Transport Operator who will or may be affected by the proposed Modification and that the proposed Modification and the undertaking of the works for the proposed Modification will not have an adverse effect on the business or operations of any of those Transport Operators, or if it will, the nature and extent of such effect.
 - (b) If the Concessionaire gives notice of a proposed Modification under this Clause 14, the Concessionaire must at the same time submit to the SCSA the details of any changes required to the Approved Design Documentation or the Approved Interchange Facility Works Program to incorporate the proposed Modification.
 - (c) If, within 20 Business Days after receipt of the Concessionaire's Notice, the SCSA by notice to the Concessionaire approves the Modification then:
 - (i) the Approved Design Documentation and the Approved Interchange Facility Works Program will be amended to incorporate the changes proposed pursuant to Clause 14.2(c) and those documents as amended will be the Approved Design Documentation and the Approved Interchange Facility Works Program (respectively) for the purposes of this Agreement on and from the date of approval; and
 - (ii) the Concessionaire must implement the Modification in the execution of the Interchange Facility Works and in accordance with the Approved Design Documentation and the Approved Interchange Facility Works Program, amended pursuant to paragraph (i), and the Concessionaire's obligations in Clause 10 and subject to the warranties in Clause 11.
 - (d) The SCSA may refuse to approve a Modification, or may approve a Modification on conditions, in its discretion.
 - (e) The Concessionaire will not be entitled to any extension of time in relation to the Interchange Facility Sunset Date as a consequence of a Modification proposed by the Concessionaire and approved by the SCSA pursuant to this Clause 14.2.
 - (f) The Concessionaire must bear all costs and expenses of any Modification proposed and approved pursuant to this Clause 14.2.

14.3 SCSA Initiated Modifications

- (a) The SCSA may at any time:
 - (i) prior to Practical Completion of the Principal Works by notice to the Concessionaire request a Modification to the Principal Works; or
 - (ii) prior to Practical Completion of the Slab Construction Works by notice to the Concessionaire request a Modification to the Slab Construction Works.
- (b) If the SCSA proposes to request a Modification it will use its best endeavours to provide the Concessionaire with details of the proposed Modification and to consult with the Concessionaire with respect to the proposed Modification within a reasonable period (and, in any event, not less than 10 Business Days) prior to issuing the notice referred to in Clause 14.3(a).

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- (c) If the SCSA requests a Modification in accordance with Clause 14.3(a) the Concessionaire must:
- (i) if requested by the SCSA, consult with each of the Transport Operators who will or may be affected by the proposed Modification; and
 - (ii) within 10 Business Days after receipt of the notice inform the SCSA in writing (*Concessionaire's Notice*) of:
 - (A) the effects of the proposed Modification on:
 - (1) the workmanship or durability of any part of the Interchange Facility (including any items of plant or equipment forming part of the Interchange Facility);
 - (2) the design, construction or commissioning of the Interchange Facility Works;
 - (3) the operation or maintenance of the Interchange Facility;
 - (4) the performance of any other of the Concessionaire's obligations under the Project Agreements; and
 - (5) to the best of the knowledge of the Concessionaire, after complying with Clause 14.3(c)(i), the business or operations of any Transport Operator,
 - (B) the time and cost consequences, including any changes to the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Final Completion of the Facility Works (as applicable);
 - (C) the time within, and the manner in which, the Concessionaire proposes to implement the Modification having regard to minimising disruption to users and Transport Operators;
 - (D) the variation (if any) proposed to the Operating Cost Component of the Core Services Payments as a consequence of the proposed Modification (including any evidence supporting that variation), provided that the variation referred to in this paragraph (D) must be assessed having regard to the Modification Compensation Principles; and
 - (E) if requested by the SCSA:
 - (1) the way in which the Concessionaire proposes to fund the proposed Modification; and
 - (2) the effect of the proposed Modification on the Capital Cost Component of the Core Services Payment.
- (d) Within 10 Business Days after receipt of the Concessionaire's Notice, the SCSA must, by notice in writing to the Concessionaire, either:

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- (i) accept the Concessionaire's Notice (*Acceptance Notice*);
 - (ii) dispute the Concessionaire's Notice, in which case Clause 14.3(g) will apply;
 - (iii) instruct the Concessionaire to execute the Modification in which case Clause 14.3(h) will apply; or
 - (iv) reject the Concessionaire's Notice.
- (e) If the SCSA has not accepted, disputed, instructed or rejected the Concessionaire to execute the Modification under Clause 14.3(d) within 10 Business Days after receipt of the Concessionaire's Notice, the SCSA is deemed to have rejected the Concessionaire's Notice.
- (f) If the SCSA issues an Acceptance Notice in accordance with Clause 14.3(d)(i), the Concessionaire must, after finalisation of any funding for the works required for the proposed Modification referred to in Clause 14.3(c)(ii)(E) (if applicable), execute the Modification in accordance with the Acceptance Notice.
- (g) If the SCSA disputes the Concessionaire's Notice then:
- (i) the parties must negotiate, in good faith, and use best endeavours to agree on a mutually acceptable resolution to the matters set out in the Concessionaire's Notice which are in dispute; and
 - (ii) if the parties are unable to reach agreement under paragraph (i) within 3 Business Days after attempts to negotiate, either party may refer the matters which are in dispute to an Independent Expert for resolution in accordance with Clause 55.2 in which case if the parties are unable to agree upon an independent expert within a further 3 Business Days, the parties must immediately seek the appointment of a nominated independent expert by the President of the Bar Council (as contemplated by Clause 55.2(b)) instead of the expiration of the 10 Business Day period specified in that Clause.
- (h) If the SCSA instructs the Concessionaire to execute the Modification under Clause 14.3(d)(iii):
- (i) the Concessionaire must, after finalisation of any funding for the Modification as contemplated by Clause 14.3(c)(ii)(E) (if applicable), commence forthwith and thereafter diligently execute and complete the Modification in accordance with the SCSA's request;
 - (ii) in the event of any discrepancy, inconsistency or other omission relating to the Modification, the SCSA shall issue a clarification resolving the same and the Concessionaire forthwith shall comply with that clarification;
 - (iii) the Concessionaire must give prompt written notice to the SCSA once the Concessionaire considers that the Modification is completed;
 - (iv) as soon as reasonably practicable thereafter the Concessionaire must submit a written notice (the *Modification Claim*) to the SCSA providing a detailed claim as to the time and cost consequences of the Modification as

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- contemplated by sub-clauses 14.3(c)(ii)(B), 14.3(c)(ii)(D) and (if applicable) 14.3(c)(ii)(E), but subject to subparagraph (ix) below; and
- (v) within 10 Business Days of receipt of the Modification Claim, the SCSA shall notify the Concessionaire whether or not it accepts the Modification Claim. If the Modification Claim is rejected, the SCSA shall provide to the Concessionaire the reasons for the SCSA's disagreement with the Modification Claim or aspects thereof (the **SCSA Response**);
 - (vi) within 10 Business Days of receipt of the SCSA Response, the Concessionaire and the SCSA shall meet, conduct good faith negotiations, and use best endeavours to resolve the disagreements the subject of the SCSA Response. The Concessionaire shall procure that the Construction Contractor also attends and participates on the terms set out in this paragraph (vi);
 - (vii) failing resolution of any one or more of the matters the subject of the SCSA Response, the SCSA and the Concessionaire agree, and the Concessionaire shall procure the Construction Contractor's agreement, to appoint an independent expert pursuant to Clause 55.2, to adjudicate those unresolved matters. The independent expert shall be instructed to have regard to:
 - (A) the Modification Compensation Principles;
 - (B) this Clause 14.3; and
 - (C) the terms of this Agreement, including but not limited to Clause 20 (it being acknowledged by the parties that the notification requirements set out in Clause 20 do not apply to the extent that this Clause 14.3 applies);
 - (viii) any monies determined to be payable by the SCSA in respect of the Modification Claim (either as accepted by the SCSA, as agreed between the parties, or as determined by an independent expert) shall be paid upon receipt of the appropriate tax invoice, and this payment shall constitute a sufficient discharge of the SCSA's liability in respect of the Modification Claim; and
 - (ix) the Concessionaire shall procure the Construction Contractor's acknowledgement and agreement that:
 - (A) despite anything to the contrary in this Agreement, the Construction Contract or as otherwise alleged by the Construction Contractor, no Modification will set time at large or have any other retrospective effect on time under either agreement; and
 - (B) save for any dispute as to the time and cost consequences of a Modification pursuant to Clauses 14.3(c)(ii)(B), (D) and (E), (if applicable) and as provided for in and subject to this Clause 14.3, no Modification shall have any other impact or effect on the Interchange Facility and/or the Interchange Facility Works or otherwise, of the nature referred to in Clauses 14.3(c)(ii)(A), (C) or (E), or otherwise.
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- (i) If the SCSA rejects the Concessionaire's Notice in accordance with Clause 14.3(d)(ii), the Concessionaire is not required to execute the Modification referred to in Clause 14.3(a).
 - (j) Where the SCSA instructs the Concessionaire to execute the Modification in accordance with Clause 14.3(d)(iii), completion of the Modification and any works which are affected or altered by the Modification will not be required to enable the Concessionaire to achieve Practical Completion of the Principal Works, Financial Completion or Practical Completion of the Slab Construction Works or Final Completion.
 - (k) To the extent that the Concessionaire executes a Modification under Clause 14.3(d)(iii) or fails to execute a Modification instructed by the SCSA pursuant to this Clause 14.3 and this has the effect of preventing, hindering or disrupting the Concessionaire from providing the Services in accordance with this Agreement, including in respect of any Services Standards or KPIs:
 - (i) the Concessionaire's obligation to provide those Services will be suspended for the period during which that Services Standard or KPI is affected;
 - (ii) the SCSA must pay the amount of any Services Payment without deducting any Abatement Amount for that Services Failure and the Services Failure will be deemed not to have occurred for the purpose of determining any Abatement Amount or in relation to any other relevant provision of this Agreement; and
 - (iii) the SCSA will not be entitled to give a Default Notice in relation to that Services Failure and any relevant Default will be deemed not to have occurred.

14.4 Amendment to Project Brief

Any Modifications approved or instructed by the SCSA shall be deemed to have amended any applicable provisions of the Project Brief.

15. Project Management

15.1 Project Committee

- (a) Before the Concessionaire commences the Interchange Facility Works the SCSA and the Concessionaire must establish a committee (the ***Project Committee***) comprising at least one representative of each of them and a representative of such other persons as are nominated by the SCSA for representation on the Project Committee.
- (b) During the Design and Construction Phase, the Project Committee must:
 - (i) meet at such times as the SCSA and the Concessionaire agree (and at intervals of not less than 1 month or such other period as agreed by the SCSA and the Concessionaire) to discuss any matters relating to the Interchange Facility Works including:
 - (A) design, construction and commissioning issues;

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- (B) any Approved Interchange Facility Works Program or Revised Interchange Facility Works Program;
 - (C) issues arising from the reports or documents provided by the Concessionaire under Clause 19.4 and Clause 57;
 - (D) issues of public concern;
 - (E) quality assurance and safety issues;
 - (F) community and media relations issues; and
 - (G) any matters referred to in Clause 18.2 and Clause 18.4; and
- (ii) conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least 1 representative from each of the SCSA and the Concessionaire must be present in order for there to be a quorum at a meeting of the Project Committee.
- (c) The Project Committee will not have any legal responsibility to either the SCSA or the Concessionaire and will not have any power to require either the SCSA or the Concessionaire to act or refrain from acting in any way.
 - (d) The decisions of the Project Committee do not affect the rights or obligations of either the SCSA or the Concessionaire under any of the Project Agreements.

15.2 Review Committee

- (a) Before the Concessionaire commences the Interchange Facility Works the SCSA and the Concessionaire must use all reasonable endeavours to establish a committee (the **Review Committee**) comprising at least one representative of each of them, and one representative of each of the Franchise Operators and one representative of such other Transport Operators as determined by the SCSA from time to time.
- (b) The SCSA and the Concessionaire must use all reasonable endeavours to ensure that, during the Design and Construction Phase, the Review Committee:
 - (i) meets at such times as the Review Committee agrees (and at intervals of not less than 1 month or such other period as agreed by the Review Committee) to discuss any matters relating to the Interchange Facility Works affecting the Franchise Operators or any other Transport Operator (including their operations and businesses); and
 - (ii) conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least 1 representative from each of the SCSA and the Concessionaire must be present in order for there to be a quorum at a meeting of the Review Committee.
- (c) The Review Committee will not have any legal responsibility to either the SCSA or the Concessionaire and will not have any power to require either the SCSA or the Concessionaire to act or refrain from acting in any way.

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- (d) The decisions of the Review Committee do not affect the rights or obligations of either the SCSA or the Concessionaire under any of the Project Agreements.

16. Sub Contracting – Design and Construction Phase

16.1 Subcontracting the Interchange Facility Works

Subject to Clause 16.2, the Concessionaire may subcontract the performance of all or any part of the Interchange Facility Works provided that in so doing the Concessionaire will not be relieved of any of its Liabilities under this Agreement or any other Project Agreement and the Concessionaire is at all times responsible for the performance of all Construction Sub-Contractors in relation to the Interchange Facility Works and acts or omissions of the Construction Sub-Contractors will be deemed to be acts or omissions of the Concessionaire.

16.2 Subcontracting Terms and Conditions

- (a) The Concessionaire must not enter into, or allow the Construction Contractor to enter into, any agreement with a Construction Sub-Contractor (other than the Construction Contractor) for the Signalling Upgrade unless the applicable Construction Sub-Contractor has been approved in writing by the SCSA (which approval will not be unreasonably withheld).
- (b) The Concessionaire must not enter into, or allow the Construction Contractor to enter into any Construction Sub-Contract (other than the Construction Contract) the value of the works under which:
 - (A) exceeds \$50 million; or
 - (B) when aggregated with the value of the works under other Construction Sub-Contracts (other than the Construction Contract) already entered into between the Concessionaire (or the Construction Contractor) and the relevant Construction Sub-Contractor exceeds \$50 million,unless the applicable Construction Sub-Contractor has been approved in writing by the SCSA (which approval will not be unreasonably withheld).
- (c) The Concessionaire must ensure that each Construction Sub-Contract referred to in Clauses 16.2(a) and 16.2(b) contains provisions recognising the SCSA's rights under Clauses 42.4, 42.5 and under Clause 45 in relation to the relevant Construction Sub-Contractor and that Construction Sub-Contract.

16.3 Monitoring of Construction Sub-Contracts

The Concessionaire must:

- (a) comply with the obligations imposed on the Concessionaire under any Construction Sub-Contract;
- (b) ensure that the Construction Contractor complies with its obligations under any Construction Sub-Contract to which it is a party;

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- (c) ensure that the Construction Contractor complies with all applicable Laws, Approvals and Quality Standards in relation to any Construction Sub-Contract to which the Construction Contractor is a party; and
 - (d) give the SCSA notice of termination of any Construction Sub-Contract immediately upon the Concessionaire becoming aware of such termination.

16.4 Construction Agreement

- (a) The Concessionaire must promptly notify the SCSA of any amendment, replacement, supplement or waiver of any of the Concessionaire's rights or obligations under the Construction Agreement.
- (b) The Concessionaire must not:
 - (i) make or permit any material amendment to be made to; or
 - (ii) replace, supplement or waive any material right or obligation it has under, the Construction Agreement without the prior written consent of the SCSA which will not be unreasonably withheld when such amendment, supplement, replacement or waiver will not adversely affect the Concessionaire's ability to satisfy its obligations under this Agreement or the SCSA's ability to exercise its rights under this Agreement.

17. SCSA's Right to Inspect and Test

- (a) The Concessionaire must:
 - (i) allow the SCSA, and any person authorised by the SCSA, at any time prior to conclusion of the Design and Construction Phase to enter, inspect and test the relevant part of the Interchange Facility Works upon the giving of reasonable notice to the Concessionaire, provided that in the case of an emergency no notice will be required; and
 - (ii) give such assistance as reasonably required by the SCSA in respect of any inspection or testing under paragraph (i), including:
 - (A) providing access to such part of the Interchange Facility Works and all relevant drawings or documents as may be required by the SCSA;
 - (B) preparing samples of materials used in connection with the Interchange Facility Works to the reasonable satisfaction of the SCSA; and
 - (C) forwarding the samples prepared under paragraph (B) to the SCSA or such other place or person notified by the SCSA.
- (b) The SCSA will ensure that any persons entering and inspecting in accordance with Clause 17(a) comply with all applicable Laws and use reasonable endeavours not to interfere unnecessarily with the undertaking of the Interchange Facility Works.

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- (c) The SCSA indemnifies and will keep indemnified the Concessionaire from and against all Liabilities and Claims whatsoever to which the Concessionaire is liable in respect of:
- (i) any breach by the SCSA of Clause 17(b); or
 - (ii) any negligent act or omission of any person authorised by the SCSA to enter and inspect the Interchange Facility Works under Clause 17(a) while that person is on the Licensed Area.
- (d) The SCSA or any person authorised by the SCSA for the purposes of this Clause 17 may notify the Concessionaire of any actual failure by the Concessionaire to undertake the Interchange Facility Works as required in accordance with this Agreement (including any material or workmanship not conforming to the Approved Design Documentation or any applicable Laws, Approvals or Quality Standards) and the manner in which any such matter must be rectified prior to the Scheduled Date for Practical Completion of the Principal Works or the Scheduled Date for Practical Completion of the Slab Construction Works (as the case may be).
- (e) On completion of any tests under this Clause 17, the Concessionaire must make good the applicable Interchange Facility Works so that they comply with this Agreement.
- (f) The SCSA may direct that any part of the Interchange Facility Works must not be covered up or made inaccessible without the SCSA's prior written approval.
- (g) Subject to Clause 17(i), the Concessionaire will:
- (i) bear the cost and expense it incurs in complying with this Clause 17; and
 - (ii) reimburse the SCSA for the reasonable costs and expenses incurred by the SCSA or any person authorised by the SCSA in carrying out inspections and tests the SCSA reasonably requires under this Clause 17.
- (h) Subject to Clause 17(i), inspection, testing or notification, or failure to inspect, test or notify, by the SCSA or any person authorised by the SCSA under this Clause 17 does not:
- (i) entitle the Concessionaire to make any Claim;
 - (ii) in any way limit or change the Concessionaire's obligations under this Agreement or any other Project Agreement; or
 - (iii) relieve the Concessionaire of any Liabilities,
- with respect to the design, construction and commissioning of the Interchange Facility Works.
- (i) If the inspection or testing conducted by or on behalf of the SCSA under this Clause 17 does not reveal an actual failure by the Concessionaire to undertake the Interchange Facility Works as required in accordance with this Agreement (including any material or workmanship not conforming to the Approved Design Documentation or any applicable Laws, Approvals or Quality Standards), each of

the SCSA and the Concessionaire will bear their own costs and expenses of complying with this Clause 17 and the Concessionaire will not be required to reimburse the SCSA in accordance with Clause 17(g)(ii) in respect of costs and expenses incurred by the SCSA.

18. General Obligations During Design and Construction Phase

18.1 Site Conditions

Subject to Clause 9.3 and Clause 9.5:

- (a) the Concessionaire will be responsible for the Site and Site Conditions and will carry out all investigations necessary to ensure the adequacy and suitability of the Site; and
- (b) the Concessionaire will not be entitled to make any Claim in connection with the Site or Site Conditions.

18.2 Notification of Safety Issues

The Concessionaire must, during the Design and Construction Phase (unless the SCSA directs otherwise):

- (a) identify and inquire into:
 - (i) any activity performed in respect of the Interchange Facility Works which may give rise to health and safety risks for the Concessionaire's officers, employees, agents or consultants, any Construction Sub-Contractor or its officers, employees, agents or consultants or any of the Access Parties; and
 - (ii) any accidents or other incidents involving any (or any risk of) loss, injury or damage to persons (including death) or property of any kind, which occurs on or about the Licensed Area or the Interchange Facility Works as a result of or in connection with the Concessionaire performing, or failing to perform, its obligations under this Agreement;
- (b) in the case of the matters referred to in Clause 18.2(a)(i), give the SCSA written notice of each such matter as soon as reasonably practicable after it is identified;
- (c) in the case of the matters referred to in Clause 18.2(a)(ii), give the SCSA a detailed written report of such matters as soon as reasonably practicable after such accident or incident occurs; and
- (d) give any Transport Operator who holds an Accreditation:
 - (i) such assistance, information and documentation as may be reasonably required by such Transport Operator to enable it to comply with section 129T of the Transport Act; and
 - (ii) a copy of the notices or reports given to the SCSA pursuant to paragraphs (b) and (c) respectively which relate to, or impact upon, such Transport Operator's officers, employees, agents, consultants, property, business or operations.

18.3 Information

The Concessionaire must, during the Design and Construction Phase, provide the SCSA with any information relating to the Project (including access to documents and copies of documents) reasonably requested by the SCSA.

18.4 Notification of Industrial Issues

The Concessionaire must, during the Design and Construction Phase:

- (a) keep the SCSA regularly informed of any industrial action which will or is likely to affect the design, construction or commissioning of the Interchange Facility Works; and
- (b) immediately inform the SCSA of:
 - (i) any industrial action which causes the Concessionaire to suspend or cease carrying out all or any part of the design, construction or commissioning of the Interchange Facility Works; and
 - (ii) what action or measures (including settlement) the Concessionaire has taken or proposes to take to overcome, or minimise the effects of, such industrial action.

18.5 Personnel

If, during the Design and Construction Phase, the SCSA notifies the Concessionaire of any person employed or engaged on the Interchange Facility Works who, in the SCSA's reasonable opinion, is incompetent, negligent, dishonest or guilty of misconduct then:

- (a) the Concessionaire must promptly remove such person or ensure that such person is promptly removed from working on the Interchange Facility Works; and
- (b) the Concessionaire must promptly replace such person or ensure that such person is promptly replaced.

19. Manuals and Reports

19.1 Quality Assurance

The Concessionaire must:

- (a) prepare (in consultation with the SCSA) manuals setting out the Concessionaire's quality assurance system for the operation and maintenance of the Interchange Facility and the provision of the Services which complies with the quality assurance and quality system requirements set out in the Services Standards (the *Quality Assurance Manual*);
- (b) prior to and as a pre-requisite to Final Completion provide a copy of the relevant Quality Assurance Manual to the SCSA; and
- (c) comply with the Quality Assurance Manual and update the Quality Assurance Manual in accordance with the requirements of the Services Standards.

19.2 Operating Manual

The Concessionaire must:

- (a) prepare (in consultation with the SCSA) manuals setting out the Concessionaire's standards and procedures for the operation and maintenance of the Interchange Facility as required in accordance with the Services Standards (the *Operating Manual*);
- (b) prior to and as a pre-requisite to Final Completion, provide a copy of the relevant Operating Manual to the SCSA; and
- (c) comply with the Operating Manual and update the Operating Manual in accordance with the requirements of the Services Standards.

19.3 Asset Management Plan

The Concessionaire must:

- (a) prepare (in consultation with the SCSA) an annual Asset Management Plan which adopts the format of the draft asset management plan contained in the Bid Proposal and which complies with the requirements set out in the Services Standards in respect of such plan;
- (b) provide a copy of:
 - (i) the initial Asset Management Plan to the SCSA at least 3 months prior to and as a pre-requisite to Final Completion (and that initial Asset Management Plan must cover the period from Practical Completion of the Principal Works and Practical Completion of the Slab Construction Works (as applicable) to the next following 30 June); and
 - (ii) each subsequent Asset Management Plan to the SCSA in accordance with the Services Standards; and
- (c) comply with the applicable Asset Management Plan and update the applicable Asset Management Plan in accordance with the requirements of the Services Standards.

19.4 Concessionaire's Reporting Requirements

- (a) The Concessionaire must, until the Slab Construction Works Practical Completion Date, submit to the SCSA at least every month a written report signed by an authorised representative of the Concessionaire, which sets out the matters required by Clause 21.3.4 of the Project Brief, and includes:
 - (i) a Safety Audit Report for the period to which the report relates;
 - (ii) a copy of any information provided by the Concessionaire to the Financier during the period to which the report relates in relation to any cost overruns in connection with the Interchange Facility Works;

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- (iii) such other information relevant to the design, construction and commissioning of the Interchange Facility Works as the SCSA may reasonably require or the Concessionaire reasonably considers pertinent;
 - (iv) updates of the Approved Interchange Facility Works Program in full electronic unrestricted (for the avoidance of doubt, non-'read only' form and free from any constraints) Primavera P3 native format and showing all available details in accordance with Clause 12.2 of this Agreement. Updates must clearly show the current/as-built status of the Interchange Facility Works as against the critical path contained in the Approved Interchange Facility Works Program;
 - (v) the then current 'target' program of the Concessionaire, for information purposes only;
 - (vi) a report on progress against all current Approved Interchange Facility Works Program activities, including explanations of delayed progress and intended recovery actions, for information purposes only; and
 - (vii) details of all Occupations used or cancelled and the reasons why any Occupations were not used
- (c) The parties shall participate in monthly review meetings at which key delivery personnel of the Construction Contractor will be present to brief and respond to questions from the Concessionaire and the SCSA on the progress of the Interchange Facility Works.
- (d) Where the Concessionaire fails to comply with any of the provisions of this Clause 19.4, the SCSA shall be entitled to have those obligations met by a third party programmer or other relevant service provider, at the cost of the Concessionaire.
- (e) The Concessionaire must:
- (i) on or before the Commencement Date, prepare and submit to the SCSA a Project Administration Plan which complies with the requirements set out in the Project Brief for such plan; and
 - (ii) regularly update the Project Administration Plan until the Slab Construction Works Practical Completion Date to reflect changes to any information contained in it and otherwise in the same manner as a skilled professional person suitably qualified and experienced in the performance of obligations similar to those of the Concessionaire under the Project Agreements would do, and promptly provide a copy of each updated Project Administration Plan to the SCSA.
- (f) The Concessionaire must:
- (i) on or before the Commencement Date, prepare and submit to the SCSA a Construction Management Plan which complies with the requirements set out in the Project Brief for such plan; and
 - (ii) regularly update the Construction Management Plan until the Slab Construction Works Practical Completion Date, to reflect changes to any information contained in it and otherwise in the same manner as a skilled

professional person suitably qualified and experienced in the performance of obligations similar to those of the Concessionaire under the Project Agreements would do, and promptly provide a copy of each updated Construction Management Plan to the SCSA.

- (g) The Concessionaire must:
- (i) on or before the Commencement Date, prepare and submit to the SCSA a Safety Management Plan (which will form part of the Quality Assurance Manual) which complies with the requirements set out in the Project Brief for such plan; and
 - (ii) regularly update the Safety Management Plan until the Slab Construction Works Practical Completion Date to reflect changes to any information contained in it and otherwise in the same manner as a skilled professional person suitably qualified and experienced in the performance of obligations similar to those of the Concessionaire under the Project Agreements would do, and promptly provide a copy of each updated Safety Management Plan to the SCSA.

19.5 Format of Manuals, Plans and Reports

Any manuals, plans or reports, or any updates or revisions to such manuals, plans or reports, to be submitted by the Concessionaire under this Agreement must be submitted as a hard copy and as an electronic copy and in the form agreed between the Concessionaire and the SCSA (or, failing agreement, in such form as the SCSA or the Independent Reviewer, as the case may be, requires).

20. Timing for Completion of Interchange Facility Works

20.1 Delays

If the Concessionaire considers that a delay in the progress of the Interchange Facility Works has occurred or will occur, the Concessionaire must immediately notify the SCSA stating the nature and cause of the delay or likely delay. To the extent possible, the Concessionaire must advise the SCSA of an impending delay in sufficient time to enable action to be taken to avoid the delay to the extent possible.

20.2 Extension Events

- (a) If the progress of the Interchange Facility Works is or will be delayed by the occurrence of an Extension Event which delays or will delay:
- (i) the achievement of Practical Completion of the Principal Works;
 - (ii) the achievement of Practical Completion of the Slab Construction Works;
 - (iii) the achievement of Financial Completion; or
 - (iv) the achievement of Final Completion,

the Concessionaire must (if it wishes to claim an extension of time) as soon as practicable and, in any event, not later than 10 Business Days after the Concessionaire first becomes aware of the delay or likely delay, give notice in

writing (*Delay Notice*) to the SCSA stating the nature, cause and, where possible, the extent of the Extension Event and the resulting delay.

- (b) The Concessionaire may not claim an extension of time under Clause 20.2(a) for any delay other than a delay caused by an Extension Event which first occurs after the GSA Effective Date.

20.3 Information

- (a) As soon as practicable but not later than 10 Business Days after a Delay Notice is given to the SCSA, the Concessionaire must give further notice to the SCSA with supporting evidence (including details of the activities affected by the Extension Event which are critical to the Interchange Facility Works) stating:
 - (i) whether the Extension Event or the effects resulting from the Extension Event have concluded ;
 - (ii) if the Extension Event and the effects resulting from the Extension Event have concluded, a fair and reasonable period by which, in the Concessionaire's opinion, the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion and/or the Scheduled Date for Final Completion (as applicable) should be extended; or
 - (iii) if the Extension Event or its effects have not concluded, in which case Clause 20.3(b) will apply.
- (b) Where the Extension Event or the effects resulting from the Extension Event continue beyond the date of the Delay Notice referred to in subclause (a) above, the Concessionaire shall provide to the SCSA:
 - (i) updated versions of the information and evidence referred to in subclause (a) above every 10 Business Days after submitted the first notice under subclause (a); and
 - (ii) a final update within 10 Business Days of the conclusion of the Extension Event and the effects resulting from the Extension Event, stating a fair and reasonable period by which, in the Concessionaire's opinion, the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion and/or the Scheduled Date for Final Completion (as applicable) should be extended.

20.4 Extension

- (a) Subject to Clauses 20.5 and 20.7 and to the Concessionaire having complied with Clauses 20.2 and 20.3, the SCSA (acting reasonably) will, within 20 Business Days, after receiving a notice under Clause 20.3(a) or (b) stating that the Extension Event and the effects of the Extension Event have concluded, determine what, if any, period by which the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion and/or the Scheduled Date for Final Completion (as applicable) is to be extended and the SCSA must notify

the Concessionaire of its determination as soon as reasonably practicable after making such determination.

- (b) Where more than one cause causes concurrent delays and at least one cause is not an Extension Event, then to the extent that the delays are concurrent, the SCSA (acting reasonably) will apportion the delays according to the various causes of the delays on the basis of their respective contributions to the delay in achieving Practical Completion of the Principal Works, Practical Completion of the Slab Construction Works, Financial Completion and/or Final Completion (as applicable)
- (c) Despite the Concessionaire not being entitled to or not making a claim for an extension of time, the SCSA may at its discretion, by notice in writing to the Concessionaire, at any time and from time to time extend the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion and/or the Scheduled Date for Final Completion (as applicable).
- (d) A delay caused by any act or omission of the SCSA, or any failure by the SCSA to comply with this Clause 20, will not cause the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion and/or the Scheduled Date for Final Completion (as applicable) or the Interchange Facility Sunset Date to be set at large but nothing in this paragraph (d) will prejudice any right of the Concessionaire to damages for breach of this Agreement by the SCSA.
- (e) If an extension of time is granted in respect of the Scheduled Date for Practical Completion of the Principal Works then the Scheduled Date for Financial Completion will be extended for an equivalent period.

20.5 Acceleration

- (a) If the progress of the Principal Works and/or the Slab Construction Works is or will be delayed by the occurrence of an Extension Event, the Concessionaire must, if so requested by the SCSA, give to the SCSA a notice setting out the time and cost consequences of accelerating the Principal Works and/or Slab Construction Works so that no extension of time, or a lesser extension of time, is required.
- (b) If the SCSA makes a request under Clause 20.5(a), the Concessionaire must as soon as reasonably practicable inform the SCSA of the time and cost consequences of the acceleration, and submit for approval any details of any changes required to the Approved Interchange Facility Works Program to reflect the effects of the Extension Event and the acceleration of the Principal Works and/or Slab Construction Works (the *Concessionaire's Notice*).
- (c) Within 20 Business Days after receipt of the Concessionaire's Notice, the SCSA by notice may accept the Concessionaire's Notice (*Acceptance Notice*). If the SCSA issues an Acceptance Notice:
 - (i) the Approved Interchange Facility Works Program will be amended to incorporate the changes proposed pursuant to Clause 20.5(b);
 - (ii) the Concessionaire must execute the Interchange Facility Works in accordance with the Approved Interchange Facility Works Program

amended pursuant to subclause (i) above from the date of the Acceptance Notice; and

- (iii) the SCSA must pay the Concessionaire the price notified in the Concessionaire's Notice by making an appropriate adjustment to the amount or timing of the Concessionaire's Core Services Payment from the Operations Commencement Date.

20.6 Approval of Extension

If an Extension Event occurs and the SCSA does not make a request under Clause 20.5(a) or, having made such a request, does not issue an Acceptance Notice under Clause 20.5(c) and either:

- (a) the SCSA determines in accordance with Clause 20.4(a) or (c) that the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion and/or the Scheduled Date for Final Completion (as applicable) should be extended; or
- (b) the Independent Reviewer determines in accordance with Clause 20.10 that the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion and/or the Scheduled Date for Final Completion (as applicable) should be extended,

then the Concessionaire will, subject to Clause 20.7, be entitled to an extension and:

- (c) the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion and/or the Scheduled Date for Final Completion (as applicable) will be extended as determined by the SCSA pursuant to Clause 20.4(a) or (c) or as determined by the Independent Reviewer pursuant to Clause 20.10 (as the case may be); and
- (d) the Approved Interchange Facility Works Program will be revised to incorporate the changes referred to in paragraph (c) and the Concessionaire must update the Approved Interchange Facility Works Program accordingly and:
 - (i) promptly provide an updated Revised Interchange Facility Works Program to the SCSA and upon receipt by the SCSA of that Revised Interchange Facility Works Program it will become the Approved Interchange Facility Works Program; and
 - (ii) undertake the Interchange Facility Works in accordance with the Revised Interchange Facility Works Program provided in accordance with paragraph (d)(i).
- (e) If an extension of time is granted in respect of the Scheduled Date for Practical Completion of the Principal Works then the Scheduled Date for Financial Completion will be extended for an equivalent period.

20.7 Mitigation

The Concessionaire is entitled to an extension of time under this Clause 20 only if and to the extent that:

- (a) an Extension Event has occurred which has:
 - (i) first occurred after the GSA Effective Date;
 - (ii) directly caused a delay in Practical Completion of the Principal Works and/or Practical Completion of the Slab Construction Works ; and
 - (iii) affected a critical activity (or a non-critical activity that becomes critical as a result of the delay) on the Concessionaire's critical path network contained and shown in the applicable Approved Interchange Facility Works Program as at the date of the relevant Extension Event;
- (b) the Concessionaire has notified the SCSA and submitted its claim strictly within the time periods specified in Clauses 20.2 and 20.3, or Clause 20.4(c) applies; and
- (c) the Concessionaire has:
 - (i) taken all proper and reasonable steps to prevent or minimise the risk of the occurrence of the delay; and
 - (ii) taken all proper and reasonable steps (not including acceleration of the Interchange Facility Works) to minimise the duration and consequences of the delay.

20.8 Delay Costs

- (a) The Concessionaire is not entitled to any costs of delay or disruption in the progress of the Interchange Facility Works as a result of the occurrence of an Extension Event other than in accordance with Clause 20.5 or this Clause 20.8.
- (b) Where an extension of time has been granted to the Concessionaire pursuant to Clause 20.6 as a result of the occurrence of a Government Extension Event which delays or will delay the achievement of Practical Completion of the Principal Works, Practical Completion of the Slab Construction Works, Financial Completion and/or Final Completion (as applicable), then the Concessionaire must, if it wishes to claim any costs associated with the delay or disruption (including any agreed financing costs as set out in Schedule 11), submit a notice to the SCSA as soon as practicable (and, in any event, within 10 Business Days) after the Government Extension Event has ceased to occur stating:
 - (i) the quantum of the costs claimed; and
 - (ii) confirming, and to the extent possible, demonstrating that the costs were unavoidable, reasonable and justifiable and have arisen despite the Concessionaire having taken all proper and reasonable steps to minimise any such costs.
- (c) The SCSA's obligation under Clause 20.8(b) is to pay only up to the amount calculated by the SCSA, or as otherwise determined by the Independent Reviewer

in accordance with Clause 20.10, having regard to the notice submitted by the Concessionaire pursuant to Clause 20.8(b). Except as provided in Clause 20.5 or this Clause 20.8(c), no other costs of delay or disruption as a result of the occurrence of an Extension Event are payable by the SCSA.

- (d) Any delay or disruption costs payable pursuant to this Clause 20.8 must be paid by the SCSA as an adjustment to the amount or timing of the Core Services Payment from the Operations Commencement Date.

20.9 Liquidated Damages

- (a) Liquidated damages will be due and payable and are to be paid by the Concessionaire to the SCSA on the following basis:
 - (i) at a rate of *[text deleted]* per day for every day between the Scheduled Date for Practical Completion of the Principal Works and the Principal Works Practical Completion Date; and
 - (ii) at a rate of *[text deleted]* per day for every day between the Scheduled Date for Practical Completion of the Slab Construction Works and the Slab Construction Works Practical Completion Date,

provided that the maximum amount payable under this provision will be *[text deleted]* per day.

- (aa) The Concessionaire acknowledges and agrees that:
 - (i) it has examined a schedule titled Liquidated Damages Calculation, dated 28 July 2006 provided to it by the SCSA, which includes a breakdown of items making up the SCSA's calculation upon which the liquidated damages rates in Clause 20.9(a) are based;
 - (ii) on the basis of its examination of the schedule in Clause 20.9(aa)(i), the liquidated damages rates in Clause 20.9(a) are a genuine pre-estimate of the anticipated or actual Loss the SCSA will or may suffer if:
 - (A) Practical Completion of the Principal Works does not occur by the Scheduled Date for Practical Completion of the Principal Works; and
 - (B) Practical Completion of the Slab Construction Works does not occur by the Scheduled Date for Practical Completion of the Slab Construction Works; and
 - (iii) the liquidated damages payable in accordance with this Clause 20.9 are reasonable and are not intended as a penalty.
- (ab) Without limiting Clause 44, the SCSA acknowledges and agrees that the liquidated damages payable by the Concessionaire in accordance with Clause 20.9 will be the SCSA's sole and exclusive remedy for the delay but nothing in this Clause 20.9(ab) otherwise affects, limits or reduces in any way the SCSA's rights (including entitlement to damages) with respect to an event giving rise to delay or the consequences of that event (other than delay).

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- (b) The liquidated damages set out in:
 - (i) paragraph (a)(i) above are claimable progressively for every day after the Scheduled Date for Practical Completion of the Principal Works; and
 - (ii) paragraph (a)(ii) above are claimable progressively for every day after the Scheduled Date for Practical Completion of the Slab Construction Works.
 - (c) The Concessionaire must, within 10 Business Days of receiving a written notice from the SCSA (which may be given from time to time) demanding payment of outstanding liquidated damages, pay to the SCSA all outstanding liquidated damages owing at the time of the receipt of that notice.
 - (d) For the avoidance of doubt, the amounts in respect of liquidated damages set out in Clauses 20.9(a)(i) and (a)(ii) above are not cumulative.

20.10 Determination by Independent Reviewer

- (a) If the Concessionaire is dissatisfied with any decision of the SCSA under Clauses 20.4(a) or 20.8, then the Concessionaire may dispute it by submitting a written notice of dispute (a *Dispute Notice*) to the Independent Reviewer and the SCSA, within 10 Business Days after the decision is notified to the Concessionaire, which notice must:
 - (i) state that it is a notice under this Clause 20.10(a);
 - (ii) identify and provide details of the dispute; and
 - (iii) include the Concessionaire's assessment of the relevant extension of time required under Clause 20.4(a) and/or costs payable under Clause 20.8.
- (b) Within 10 Business Days after receiving the Dispute Notice in accordance with Clause 20.10(a) (the *Response Period*) the SCSA may submit a written notice of response to the Independent Reviewer and the Concessionaire (the *Response Notice*), which notice must:
 - (i) state that it is a notice under this Clause 20.10(b); and
 - (ii) set out the SCSA's response to the Dispute Notice.
- (c) Within 10 Business Days after the Independent Reviewer receives the Response Notice, or if no Response Notice is given pursuant to Clause 20.10(b) within 10 Business Days after the end of the Response Period, the Independent Reviewer must:
 - (i) review the Dispute Notice and, if applicable, any Response Notice and any other information or documentation the Independent Reviewer may reasonably request either the SCSA or the Concessionaire to provide or which the Independent Reviewer may, in its discretion, decide to take into account;
 - (ii) if the period of an extension of time is being disputed by the Concessionaire, determine the appropriate extension of time under Clause 20.4, in accordance with this Clause 20; and

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- (iii) if an amount of costs is being disputed by the Concessionaire, determine the appropriate amount of costs under Clause 20.8, in accordance with this Clause 20.

21. Commissioning, Practical Completion and Financial Completion

21.1 Commissioning

- (a) Commissioning of the Interchange Facility Works and any Commissioning Tests will be undertaken in accordance with the Approved Interchange Facility Works Program and the requirements of the Project Brief (including Clauses 16 and 17 of the Project Brief).
- (b) The Commissioning Tests will be conducted on days and at times proposed by the Concessionaire after reasonable notice of the proposed conduct of each Commissioning Test has been given to the Independent Reviewer. The Commissioning Tests must be conducted to the reasonable satisfaction of the Independent Reviewer.
- (c) As soon as reasonably practicable after all the Commissioning Tests for the relevant part of the Principal Works or the Slab Construction Works (as applicable) have been successfully completed to the reasonable satisfaction of the Independent Reviewer, the Independent Reviewer will issue a Facility Certificate of Commissioning for the Principal Works or the Slab Construction Works (as applicable). If any Commissioning Tests for the Principal Works or the Slab Construction Works (as applicable) have not been so completed, the Independent Reviewer must, as soon as reasonably practicable, give a notice to the Concessionaire specifying in reasonable detail which of the Commissioning Tests have not been satisfied and the reasons why.
- (d) The date of commissioning of the relevant part of the Principal Works or the Slab Construction Works (as applicable) will be:
 - (i) the date of commissioning set out in the relevant Facility Certificate of Commissioning; or
 - (ii) where a dispute in relation to the issue or non-issue of the relevant Facility Certificate of Commissioning is referred for resolution by an independent expert under Clause 55.2, the date (if any) which is determined by resolution under that Clause.

21.2 Notice of Practical Completion

- (a) When the Concessionaire is of the reasonable opinion that the Principal Works or the Slab Construction Works (as relevant) have reached Practical Completion, the Concessionaire must give notice to that effect to the Independent Reviewer (*Practical Completion Notice*).

21.3 Certification

- (a) On receipt by the Independent Reviewer of a Practical Completion Notice in relation to the Principal Works or the Slab Construction Works (as relevant), the

Independent Reviewer must, within 10 Business Days after receipt of the Practical Completion Notice:

- (i) if satisfied that the Principal Works or Slab Construction Works (as relevant) have reached Practical Completion, issue to the Concessionaire and the SCSA a certificate of Practical Completion (*Certificate of Practical Completion*); or
 - (ii) issue to the Concessionaire and the SCSA written notice of the matters and things the Independent Reviewer reasonably considers are required to be done by the Concessionaire before the Principal Works or Slab Construction Works (as relevant) will reach Practical Completion; or
 - (iii) where the Independent Reviewer reasonably considers that the Principal Works or Slab Construction Works (as relevant) are so far from Practical Completion that it is not practicable to issue a notice under Clause 21.3(a)(ii), direct the Concessionaire in writing to continue with the execution of the Principal Works or Slab Construction Works (as relevant) in accordance with this Agreement, and set out in a written notice to the Concessionaire and the SCSA the reasons why the Independent Reviewer considers that Practical Completion has not been reached.
- (b) Any dispute in relation to the content of, the issue or non-issue of, or the date in, a Certificate of Practical Completion may be referred by either party for resolution by an independent expert under Clause 55.2.

21.4 Further Interchange Facility Works

If the Concessionaire is issued with a written notice under Clause 21.3(a)(ii) (and the Concessionaire has not referred a dispute in relation to the issue or non-issue of a Certificate of Practical Completion to an independent expert pursuant to Clause 21.3(b)) then the Concessionaire must, upon compliance with that notice, give to the Independent Reviewer notice that the Concessionaire has complied with those requirements and that the Concessionaire is of the reasonable opinion that the Principal Works or the Slab Construction Works (as relevant) have reached Practical Completion. That notice will be deemed to be a notice given by the Concessionaire under Clause 21.2 and Clause 21.3 will apply to that notice (except that the Independent Reviewer must respond to the Practical Completion Notice within 5 Business Days) and continue to apply to any other notices so deemed to be given until Practical Completion has been achieved and a Certificate of Practical Completion has been issued under Clause 21.3(a)(i).

21.5 Practical Completion Dates

Practical Completion of the relevant part of the Interchange Facility Works occurs:

- (a) on the date set out in the relevant Certificate of Practical Completion; or
- (b) where a dispute in relation to the issue or non-issue of the Certificate of Practical Completion is referred for resolution by an independent expert under Clause 55.2, on the date which is determined by that independent expert under that Clause.

21.6 Outstanding Items in respect of Principal Works

- (a) The Certificate of Practical Completion in respect of the Principal Works issued by the Independent Reviewer under Clause 21.3(a)(i) may identify Outstanding Items;
- (b) The Concessionaire must within 5 Business Days after the Independent Reviewer issues the Certificate of Practical Completion for the Principal Works provide the Independent Reviewer with a written program for completion of those Outstanding Items identified by the Independent Reviewer in the Certificate of Practical Completion, and the Concessionaire must comply with that program and remedy address or complete, as applicable, those Outstanding Items in respect of the Principal Works in accordance with that program. Any dispute in relation to the program for completion or completion of Outstanding Items in respect of the Principal Works may be referred by either party to an independent expert for resolution under Clause 55.2.
- (c) If the Concessionaire does not comply with Clause 21.6(b), the SCSA may elect to rectify any Outstanding Item in respect of the Principal Works itself or to have such Outstanding Item in respect of the Principal Works rectified by a person nominated by the SCSA and the costs and expenses incurred by the SCSA in rectifying or having the nominated person rectify any Outstanding Item in respect of the Principal Works will be a debt due and payable from the Concessionaire to the SCSA. The SCSA may make a demand under the Construction Bond for that amount or may deduct or set off that amount from any amount otherwise payable by the SCSA to the Concessionaire, or may take any other enforcement action available to it in respect of an unpaid debt owed to it.

21.6A Fair Wear and Tear Items and Deferred Works

- (a) The SCSA bears responsibility for any rectification of Fair Wear and Tear Items.
- (b) To the extent that the SCSA enters or remains on the Land to rectify any Fair Wear and Tear Item or does not rectify any Fair Wear and Tear Item, and this has the effect of preventing, hindering or disrupting the Concessionaire from providing the Services in accordance with this Agreement, including in respect of any Services Standards or KPI:
 - (i) the Concessionaire's obligation to provide those Services will be suspended for the period during which that Services Standard or KPI is affected;
 - (ii) the SCSA must pay the amount of any Services Payment without deducting any Abatement Amount for that Services Failure and the Services Failure will be deemed not to have occurred for the purpose of determining any Abatement Amount in relation to any other relevant provision of this Agreement; and
 - (iii) the SCSA will not be entitled to give a Default Notice in relation to that Services Failure and any relevant Default will be deemed not to have occurred.
- (c) The Concessionaire must complete the Deferred Works within a reasonable time after the Principal Works Practical Completion Date.

21.6B Outstanding Items in respect of Slab Construction Works

- (a) The Certificate of Practical Completion in respect of the Slab Construction Works issued by the Independent Reviewer under Clause 21.3(a)(i) may identify Outstanding Items in respect of the Slab Construction Works which must be remedied, addressed or completed by the Concessionaire. The Concessionaire must, within 5 Business Days after the issue of the Certificate of Practical Completion in respect of the Slab Construction Works which identifies Outstanding Items in respect of the Slab Construction Works, provide the Independent Reviewer with a written program for completion of those Outstanding Items in respect of the Slab Construction Works within a reasonable time and the Concessionaire must comply with that program and remedy, address or complete, as applicable, those Outstanding Items in respect of the Slab Construction Works in accordance with that program. Any dispute in relation to the program for completion or completion of Outstanding Items in respect of the Slab Construction Works may be referred by either party to an independent expert for resolution under Clause 55.2.
- (b) If the Concessionaire does not comply with Clause 21.6B(a), the SCSA may elect to rectify any Outstanding Item in respect of the Slab Construction Works itself or to have such Outstanding Item in respect of the Slab Construction Works rectified by a person nominated by the SCSA and the costs and expenses incurred by the SCSA in rectifying or having the nominated person rectify any Outstanding Item in respect of the Slab Construction Works will be a debt due and payable from the Concessionaire to the SCSA. The SCSA may make a demand under the Construction Bond for that amount or may deduct or set off that amount from any amount otherwise payable by the SCSA to the Concessionaire, or may take any other enforcement action available to it in respect of an unpaid debt owed to it.

21.7 Financial Completion

- (a) The Concessionaire shall give notice in writing to the SCSA when it is of the reasonable opinion that Financial Completion has been achieved and within 10 Business Days after receipt of such notification, the SCSA must:
 - (i) if it is satisfied that Financial Completion has been achieved, issue to the Concessionaire a Notice of Financial Completion; or
 - (ii) if it is not satisfied that Financial Completion has been achieved, issue a notice to the Concessionaire stating that it is not satisfied that Financial Completion has been achieved.
- (b) Any dispute in relation to the issue or non-issue of or the date stated in a Notice of Financial Completion may be referred by either party to an independent expert for resolution under Clause 55.2.
- (c) Financial Completion occurs:
 - (i) on the date stated in the Notice of Financial Completion issued under Clause 21.7(a)(i); or
 - (ii) where a dispute in relation to the issue or non-issue of or the date stated in the Notice of Financial Completion is referred for resolution by an independent expert under Clause 55.2, on the date, if any, which is determined by resolution under that Clause.

22. Final Completion

- (a) If a written application is made by the Concessionaire to the Independent Reviewer for acceptance of the Interchange Facility and:
- (i) Certificates of Practical Completion in respect of each of the Principal Works and the Slab Construction Works has been issued in accordance with Clause 21.3, and
 - (ii) Financial Completion has occurred;
 - (iii) the Concessionaire has provided the SCSA a copy of the As Built Drawings in accordance with Clause 26.4;
 - (iv) the Facility Lease Plan has been approved or determined in accordance with Clause 25.2;
 - (v) the Concessionaire has submitted to the SCSA the Final Safety Audit Report;
 - (vi) all documents and other information required by this Agreement or the Project Brief (including the Operating Manual, the Quality Assurance Manual and the initial Asset Management Plan) to be supplied to the SCSA or the Independent Reviewer for the Interchange Facility Works have been supplied in final form to the SCSA or the Independent Reviewer, as the case may be;
 - (vii) a written program for completion of Outstanding Items has been provided in accordance with Clauses 21.6 and 21.6B, if and to the extent to which the relevant Certificates of Practical Completion issued under Clause 21.3(a)(i) identified any Outstanding Items;
 - (viii) the Agreed Outstanding RMSU Works have been completed,
- the Independent Reviewer must, if he is satisfied that Final Completion has occurred, issue a Final Completion Certificate within 10 Business Days after receipt of such written application. Any dispute in relation to the issue or non-issue of or the date in a Final Completion Certificate may be referred by either party to an independent expert for resolution under Clause 55.2.
- (b) Final Completion occurs:
- (i) on the date stated in the Final Completion Certificate issued under Clause 22(a); or
 - (ii) if a dispute in relation to the issue or non-issue of the Final Completion Certificate is referred for resolution by an independent expert under Clause 55.2, on the date determined by resolution under that Clause.

23. Defects Liability Periods

- (a) The Concessionaire must rectify all Defects in the Interchange Facility Works which are discovered or become apparent or were reasonably apparent during the relevant Defects Liability Period.

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- (b) If the Concessionaire does not comply with Clause 23(a), the SCSA may give the Concessionaire a notice requiring the Concessionaire to rectify any Defect in the Interchange Facility Works that has not been so rectified in accordance with Clause 23(a), in a reasonable period of time as stated in the notice.
 - (c) If the SCSA gives the Concessionaire a notice under Clause 23(b) and the Concessionaire fails to comply with the requirements of that notice, including any time periods specified in that notice, to the reasonable satisfaction of the SCSA then the SCSA may elect itself to rectify any such Defect the subject of the notice (or such part of it as remains unrectified) or to have such Defect (or such part) rectified by a person nominated by the SCSA and the costs and expenses incurred by the SCSA in rectifying or having the nominated person rectify any such Defect (or such part) will be a debt due and payable from the Concessionaire to the SCSA. The SCSA may make a demand under the Construction Bond for that amount, or may deduct or set off that amount from any amount otherwise payable by the SCSA to the Concessionaire, or may take any other enforcement action available to it in respect of an unpaid debt owed to it.

24. SCSA Works Agreement

- (a) On and from 1 November 2005, the Concessionaire will have no further rights or obligations under this Agreement with respect to the Signalling Upgrade or the completed infrastructure the subject of the Rail Modifications and/or Signalling Upgrade other than in accordance with Clause 10.6(b), Clause 23, Clause 35, Clause 54.1(a)(i) (and any other parts of Clause 54 applicable to such insurance) and Clauses 59 to 61 (each inclusive).
- (b) The SCSA must, upon issuing a Category Two Works Request to the Construction Contractor, contemporaneously provide a copy to the Concessionaire.
- (c) Within 5 Business Days of receipt of a copy of a Category Two Works Request, the Concessionaire may notify the SCSA if it considers that the relevant Category Two Works will adversely impact on the Interchange Facility or its obligations under this Agreement or cause the Concessionaire to incur any costs or expenses.
- (d) If the Concessionaire notifies the SCSA that it considers that the relevant Category Two Works will adversely impact the Interchange Facility or its obligations under this Agreement or cause the Concessionaire to incur any costs or expenses, the SCSA will not be entitled to instruct the Construction Contractor to carry out the relevant Category Two Works under the SCSA Works Agreement.
- (e) If the Concessionaire does not respond to the SCSA within 5 Business Days of receipt of a copy of a Category Two Works Request or if the Concessionaire notifies the SCSA within the 5 Business Days that there is no adverse impact or cost or expense consequences, the Category Two Works will be deemed to have no adverse impact on the Interchange Facility or the Concessionaire's obligations under this Agreement, and the SCSA will be entitled to instruct the Construction Contractor to carry out the relevant Category Two Works under the SCSA Works Agreement.
- (f) Where subclause (e) applies, the Concessionaire shall not be entitled to any extension of time or any payment or any other form of compensation from the SCSA.

PART 3 – OPERATING PHASE

25. Agreement to Lease

25.1 Facility Lease

- (a) Subject to Financial Completion having occurred, the SCSA must grant the Concessionaire a lease of the Lease Land for a term commencing on the Operations Commencement Date and expiring on the Expiry Date of the Operating Concession Period (the *Facility Lease Term*) on the terms and conditions set out in the Facility Lease.
- (b) The SCSA must take all steps and do all things necessary to ensure that, at the time of its execution of the Facility Lease, the SCSA is the registered proprietor of the Lease Land and the SCSA must subject to Clause 25.1(c) and if requested by the Concessionaire, execute the Facility Lease in registrable form and do all things reasonably required by the Concessionaire to enable the Facility Lease to be registered at the Land Titles Office.
- (c) Not later than 5 Business Days (or any such shorter period that the SCSA agrees) prior to the Scheduled Date for Financial Completion, the Concessionaire must deliver to the SCSA two counterparts of the Facility Lease executed by the Concessionaire.
- (d) The Concessionaire authorises the SCSA to complete the Facility Lease by inserting:
 - (i) the Operations Commencement Date in Clause 1.1 of the Facility Lease; and
 - (ii) (pursuant to Clause 25.2(g)), the Facility Lease Plan as schedule 1; and
 - (iii) any other particulars necessary to complete the Facility Lease.
- (e) The SCSA shall no earlier than:
 - (i) Final Completion; and
 - (ii) 10 Business Days of the date that the Facility Lease Plan comes into existence pursuant to Clauses 25.2(d), (e) and (f) (as applicable) and has been annexed to the Facility Lease pursuant to Clause 25.2(g),complete the counterparts of the Facility Lease delivered by the Concessionaire, execute each counterpart and return one of the completed and executed counterparts to the Concessionaire.
- (f) Pending completion and execution of the Facility Lease by the SCSA under Clause 25.1(e), the parties agree that they will be bound by the terms and conditions of the Facility Lease presented by the Concessionaire pursuant to Clause 25.1(c) from the Operations Commencement Date irrespective of whether the SCSA has completed and executed the Facility Lease by that date.
- (g) The SCSA will procure the grant to the Concessionaire of a lease in respect of the BSB Land as part and in accordance with the terms of the Facility Lease.

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- (h) For the purposes of subclause (f), the Interim Survey Plan and Certificate submitted by the Concessionaire in order to achieve Practical Completion of the Principal Works will be the Facility Lease Plan on the Operations Commencement Date and form part of the Facility Lease until replaced by the operation of Clause 25.2.

25.2 Facility Lease Plan

- (a) The Concessionaire must, at its own cost and expense:
- (i) submit to the SCSA prior to and as a prerequisite to Practical Completion of the Principal Works:
- (A) an updated survey plan of the Site which is based on, and consistent with, the draft plans of the Site referred to in clause 25.1(h) (*draft plans*), which updated survey plan:
- (1) sets out the location of the Principal Works;
 - (2) takes into account amendments to the draft plans as a result of the Approved Design Documentation; and
 - (3) includes interim plans for lease purposes,
- (B) a certificate which certifies that the Principal Works have been constructed within all relevant boundaries,
- signed by a licensed surveyor (the *Interim Survey Plan and Certificate*); and
- (C) at the same time as the Interim Survey Plan and Certificate, a report which identifies the amendments made to the relevant draft plans as a result of the construction of the Principal Works in accordance with the Approved Design Documentation;
- (ii) submit to the SCSA prior to and as a prerequisite to Practical Completion of the Slab Construction Works:
- (A) an updated survey plan of the Site which is based on, and consistent with, the draft plans referred to in (a)(i)(A) above and also incorporates the Slab Construction Works, which updated survey plan:
- (1) sets out the location of the Interchange Facility Works;
 - (2) takes into account amendments to the draft plans as a result of the Approved Design Documentation; and
 - (3) includes updated plans for lease purposes,
- (B) a certificate which certifies that the Interchange Facility Works have been constructed within all relevant boundaries,
- signed by a licensed surveyor (the *Survey Plan and Certificate*); and

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- (C) at the same time as the Survey Plan and Certificate, a report which identifies the amendments made to the relevant draft plans as a result of the construction of the Slab Construction Works in accordance with the Approved Design Documentation.
- (b) If required by the SCSA the Concessionaire must make available, at the cost and expense of the Concessionaire, the appropriate personnel to explain the Interim Survey Plan and Certificate or the Survey Plan and Certificate (as applicable) and/or provide information in relation to the Interim Survey Plan and Certificate or the Survey Plan and Certificate (as applicable) in such form as the SCSA reasonably requests.
- (c) The Concessionaire must allow the SCSA a reasonable time, but not longer than 15 Business Days from submission of the Survey Plan and Certificate under Clause 25.2(a)(ii) within which to approve the Survey Plan and Certificate or to submit to the Concessionaire written amendments to the Survey Plan and Certificate.
- (d) If the SCSA approves the Survey Plan and Certificate, or fails to approve or submit amendments to the Survey Plan and Certificate in accordance with Clause 25.2(c), then the Survey Plan and Certificate will become the Facility Lease Plan.
- (e) If the SCSA submits amendments to the Survey Plan and Certificate in accordance with Clause 25.2(c), then:
- (i) the Concessionaire and the SCSA must consult in good faith with respect to, and use their reasonable endeavours to establish, the amendments required to the Survey Plan and Certificate; and
 - (ii) if, and to the extent that, those amendments are agreed, the revised Survey Plan and Certificate agreed by the SCSA and the Concessionaire will become the Facility Lease Plan.
- (f) If the SCSA and the Concessionaire do not agree on the amendments required to the Survey Plan and Certificate within 10 Business Days after the commencement of the consultation pursuant to Clause 25.2(e), then:
- (i) the SCSA or the Concessionaire may refer the dispute to an independent expert for resolution in accordance with Clause 55.2; and
 - (ii) when the independent expert has made his or her determination in relation to any matter referred pursuant to this Clause 25.2(f), the Survey Plan and Certificate as determined by the independent expert will become the Facility Lease Plan.
- (g) The Facility Lease Plan shall, upon coming into existence pursuant to this Clause 25.2, be deemed to form schedule 1 to the Facility Lease, and the SCSA shall promptly annex the Facility Lease Plan to the execution copies of the Facility Lease.

25.3 Termination of this Agreement

The parties acknowledge and agree that if this Agreement is terminated by either the Concessionaire or the SCSA for any reason prior to the Operations Commencement Date,

the Concessionaire ceases to have any entitlement to call for the Facility Lease and has no further interest or entitlement (whether legal or equitable) in or to the Land.

25.4 Right to Licence and Grant of Easements

The Concessionaire grants to the SCSA a royalty free, non-exclusive licence (including the right to sub-licence) to access the Interchange Facility and to use the plant, equipment, furnishings and fittings in the Interchange Facility, for the purposes of exercising any of its rights (including any Step-in Rights) or performing any of its obligations under this Agreement or any other Project Agreement.

25.5 Right to Grant Leases, Sub-Leases and Licences

- (a) The Concessionaire may from time to time during the Operating Phase grant leases, sub-leases and licences over parts of the Lease Land or the Interchange Facility provided that, unless otherwise first approved in writing by the SCSA:
 - (i) the lease, sub-lease or licence is for a use or purposes permitted under the Planning Scheme and is not for a Prohibited Business;
 - (ii) the term of the lease, sub-lease or licence (including options) does not exceed the balance of the Contract Term then remaining;
 - (iii) the lease, sub-lease or licence will not reduce the SCSA's or the Concessionaire's ability to comply with its obligations under any Project Agreement; and
 - (iv) the lease, sub-lease or licence will not reduce the SCSA's ability to exercise rights under any Project Agreement and will not reduce VicTrack's (or any other Government Agency's) ability to exercise the rights referred to in Clauses 25.7 and 48.1(a).
- (b) The SCSA may waive the requirement that a lease, sub-lease or licence comply with Clause 25.5(a)(ii) if:
 - (i) the Concessionaire agrees that, and the terms of the lease, sub-lease or licence allow that, upon the expiration or earlier termination of the Facility Lease, the lease, sub-lease or licence may, at the SCSA's request, be novated to the SCSA or its nominee and will continue as a lease, sub-lease or licence (as the case may be) between the SCSA or its nominee and the tenant, sub-tenant or licensee (as the case may be);
 - (ii) the term of the lease, sub-lease or licence (including options) does not exceed the balance of the Contract Term then remaining by more than ten years; and
 - (iii) the net revenue derived from the lease, sub-lease or licence is distributed evenly throughout the term of the lease, sub-lease or licence (including options).

25.6 OneLink Equipment

The Concessionaire acknowledges and agrees that it does not and will not have any interest whatsoever in any of the One Link Equipment or One Link Software and acknowledges

and agrees that the One Link Equipment and One Link Software will not constitute fixtures on the Lease Land.

25.7 Reservations in favour of VicTrack

The Concessionaire acknowledges and agrees that:

- (a) VicTrack has exclusive rights to:
 - (i) the City Loop;
 - (ii) all Victorian rail track telecommunication infrastructure, including, but not limited to, fibre optic cables located through the Precinct and the baggage handling tunnel;
 - (iii) telephone and radio communications equipment in the room (located within the Southern Cross Station and, subsequently, to be located in the Interchange Facility) housing the emergency train control system and equipment (the *Emergency Train Control Room*);
 - (iv) radio communications equipment in, and the radio antennae on, the room (located within Southern Cross Station and, subsequently, to be located in the Interchange Facility) housing the air conditioning system and equipment (the *Air Conditioning Equipment Room*);
 - (v) cables connecting the Emergency Train Control Room and the Air Conditioning Equipment Room;
- (b) the Concessionaire does not and will not have any interest whatsoever in any of the equipment and infrastructure referred to in Clause 25.7(a) and acknowledges and agrees that such equipment and infrastructure will not constitute fixtures on the Lease Land.

25.8 Bourke Street Bridge

- (a) If and to the extent that any revenue-generating activity which is not a Prohibited Business under this Agreement is unable to be conducted on the BSB Land solely as a result of the SCSA failing to provide the Concessionaire with sufficient tenure over the BSB Land to enable those revenue-generating activities to be conducted, the SCSA will compensate the Concessionaire for third party revenue forgone, or loss incurred, by the Concessionaire as a result of those revenue generating activities being unable to be conducted, until such time as the SCSA provides a lease in accordance with Clause 25.1(g).
- (b) The Concessionaire must provide evidence of the revenue forgone, or loss incurred, at the time that it makes a claim for compensation under this Clause 25.8.
- (c) The SCSA or the Concessionaire may refer a dispute in respect of the compensation payable under this Clause to an independent expert for resolution in accordance with Clause 55.2.

26. Operating Phase

26.1 Concessionaire's Obligations

During the Operating Phase the Concessionaire must:

- (a) provide all of the Services in accordance with this Agreement and the Services Standards;
- (b) operate and maintain the Interchange Facility in accordance with:
 - (i) this Agreement;
 - (ii) the Project Brief;
 - (iii) the Access Agreements; and
 - (iv) the Interchange Facility Criteria;
- (c) provide all of the Services and operate and maintain the Interchange Facility:
 - (i) in a manner consistent with the Project Objectives;
 - (ii) in accordance with the Maintenance and Refurbishment Plan;
 - (iii) so as to comply with all applicable Laws, Approvals and Quality Standards; and
 - (iv) so as to comply with the Quality Assurance Manual, the Operating Manual, and the Asset Management Plan; and
- (d) subject to the terms of the Access Agreements (as applicable), permit (and ensure that the Operator permits) the Access Parties to have access to, and use of, the Lease Land and the Interchange Facility, on a daily or other periodic basis and co-operate (and ensure that the Operator co-operates) with the Access Parties in ensuring that the Access Parties are given reasonable access at all times to the Lease Land and the Interchange Facility and otherwise use reasonable endeavours to not (and to ensure that the Operator does not) disrupt or obstruct the use of the Lease Land by the Access Parties.

26.2 Interchange Facility Criteria

Subject to Clause 26A.2, during the Operating Phase, the Concessionaire must ensure that the Interchange Facility:

- (a) complies with all applicable Laws;
- (b) satisfies all applicable Services Standards;
- (c) is of a world class standard incorporating modern technology where and when appropriate;
- (d) provides a safe and secure environment which includes:

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- (i) provision of access to disabled users; and
 - (ii) provision of an effective security system or protocol that is responsive in the event of an emergency in relation to the Interchange Facility.

26.3 Concessionaire's Warranties

The Concessionaire warrants that it has or will procure and will at all applicable times have or will procure the resources, expertise and experience necessary to operate and maintain the Interchange Facility and to provide the Services in accordance with Clause 26.1 and Clause 26.2.

26.4 As Built Drawings

The Concessionaire must update the As Built Drawings in the same manner as a competent provider of similar services would do whenever a Modification is made to the Interchange Facility and promptly provide a copy of the updated As Built Drawings to the SCSA.

26.5 Notification of Safety Issues

The Concessionaire must, during the Operating Phase (unless the SCSA directs otherwise):

- (a) identify and inquire into:
 - (i) any activity performed in respect of the operation or maintenance of the Interchange Facility or the provision of Services which may give rise to health and safety risks for the Concessionaire's officers, employees, agents or consultants, any Operations Sub-Contractor or Maintenance Sub-Contractor or any of their respective officers, employees, agents or consultants or any of the Access Parties; and
 - (ii) any accidents or other incidents involving any (or any risk of) loss, injury or damage to persons (including death) or property of any kind, which occurs on or about the Lease Land or the Interchange Facility as a result of or in connection with the Concessionaire performing, or failing to perform, its obligations under this Agreement;
- (b) in the case of the matters referred to in Clause 26.5 (a)(i), give the SCSA written notice of each such matter as soon as reasonably practicable after it is identified;
- (c) in the case of the matters referred to in Clause 26.5(a)(ii), give the SCSA a detailed written report of such matters as soon as reasonably practicable after such accident or incident occurs; and
- (d) give any Transport Operator who holds an Accreditation:
 - (i) such assistance, information and documents as may be reasonably required by such Transport Operator to enable it to comply with section 129T of the Transport Act; and
 - (ii) a copy of the notices and reports given to the SCSA pursuant to paragraphs (b) and (c) respectively, which relate to, or impact upon, such Transport Operator's officers, employees, agents, consultants, property, business or operations.

26.6 Information

The Concessionaire must, during the Operating Phase, provide the SCSA with all information relating to the operation or maintenance of the Interchange Facility or the provision of the Services (including access to documents and copies of documents) reasonably requested by the SCSA.

26.7 Notification of Industrial Issues

The Concessionaire must, during the Operating Phase:

- (a) keep the SCSA regularly informed of any industrial action which will or is likely to affect the operation or maintenance of the Interchange Facility or the provision of the Services; and
- (b) immediately inform the SCSA of:
 - (i) any industrial action which causes the Concessionaire to suspend or cease carrying out all or any part of the operation or maintenance of the Interchange Facility or the provision of the Services; and
 - (ii) what action or measures (including settlement) the Concessionaire has taken or proposes to take to overcome, or minimise the effects of, such industrial action.

26.8 SCSA's Right to Enter and Inspect

- (a) The Concessionaire must allow the SCSA, and any person authorised by the SCSA, at any time during the Operating Phase, to enter and inspect any part of the Interchange Facility upon the giving of reasonable notice to the Concessionaire, provided that in the case of an emergency no notice will be required.
- (b) The SCSA will ensure that any persons entering and inspecting in accordance with Clause 26.8(a) comply with all applicable Laws and use reasonable endeavours not to interfere unnecessarily with the conduct of the Concessionaire's Business.
- (c) The SCSA indemnifies and will keep indemnified the Concessionaire from and against all Liabilities and Claims to which the Concessionaire is liable in respect of:
 - (i) any breach by the SCSA of Clause 26.8(b); or
 - (ii) any negligent act or omission of any person authorised by the SCSA to enter and inspect the Interchange Facility under Clause 26.8(a) while that person is on the Lease Land.

26.9 Personnel

If, during the Operating Phase, the SCSA notifies the Concessionaire of any person employed or engaged in operating or maintaining any part of the Interchange Facility or providing any of the Services who, in the SCSA's reasonable opinion, is incompetent, negligent, dishonest or guilty of misconduct then:

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- (a) the Concessionaire must promptly remove such person or ensure that such person is promptly removed from working in any part of the Interchange Facility or providing any of the Services; and
 - (b) the Concessionaire must promptly replace such person or must ensure that such person is promptly replaced.

26.10 Damage

- (a) Subject to Clause 26.1(d), 53.2(b) and 53.3, on and from the Operations Commencement Date, the Concessionaire must at its own cost and expense remedy any damage to, Defect in, or matter requiring repair at, the Interchange Facility (including Modifications).
- (b) The Concessionaire must promptly notify the SCSA of any serious damage to, serious Defect in, or serious matters requiring repair at, the Interchange Facility (including Modifications) and provide a detailed written report of any such damage, Defect or required repair which is likely to cause any serious danger, risk or hazard to the Interchange Facility (including Modifications) or any person or property.
- (c) The Concessionaire must provide the SCSA with a further detailed written report of all action being taken or to be taken to remedy the damage, Defect or matter requiring repair, including the estimated time such remedy will require.
- (d) If the Concessionaire does not comply with Clause 26.10(a), the SCSA may elect to remedy any damage to, Defect in, or matter requiring report at, the Interchange Facility (including Modifications) itself or to have such work done by a person nominated by the SCSA and the costs and expenses incurred by the SCSA in doing such work or having such work done by another person will be a debt due and payable by the Concessionaire to the SCSA and the SCSA may take any enforcement action available to it in respect of an unpaid debt owed to it.

26.11 Project and Review Committees

During the Operating Phase:

- (a) the Project Committee must:
 - (i) meet at such times as the SCSA and the Concessionaire agree (and at intervals of not less than 1 month or such other period as agreed by the SCSA and the Concessionaire) to discuss any matters relating to the Interchange Facility including:
 - (A) operation and maintenance issues;
 - (B) the provision of the Services;
 - (C) issues arising from the reports or documents provided by the Concessionaire under the Services Standards and Clause 57;
 - (D) issues of public concern;
 - (E) quality assurance and safety issues;

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- (F) community and media relations issues; and
 - (G) any matters referred to in Clause 26.5, Clause 26.7 and Clause 27; and
- (ii) conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least 1 representative from each of the SCSA and the Concessionaire must be present in order for there to be a quorum at a meeting of the Project Committee; and
- (b) the SCSA and the Concessionaire must use all reasonable endeavours to ensure that the Review Committee:
 - (i) meets at such times as the Review Committee agrees (and at intervals of not less than 1 month or such other period as agreed by the Review Committee) to discuss any matters relating to the Interchange Facility affecting the Franchise Operators or any other Transport Operator (including their operations and businesses); and
 - (ii) conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least 1 representative from each of the SCSA and the Concessionaire must be present in order for there to be a quorum at a meeting of the Review Committee.

26A Transitional Period

26A.1 Legislative Obligations During the Transitional Period

- (a) On commencement of section 119 of the Rail Safety Act (which repeals Division 3 of Part VI of the Transport Act), the SCSA, as an Accredited Commercial Rail Operator, is deemed, pursuant to section 168(1)(a) of the Rail Safety Act, to be accredited under Part 5 of the Rail Safety Act as an Accredited Rail Operator in respect of the rail infrastructure operations the SCSA carries out.
- (b) The SCSA will, on commencement of section 119 of the Rail Safety Act, in addition to compliance with the specified conditions of the SCSA Accreditation, comply with all such obligations imposed on it as an Accredited Rail Operator by the Rail Safety Act, any relevant regulations and all other applicable Laws.
- (c) During the Transitional Period, the Concessionaire must, on and after the commencement of the Rail Safety Act, in addition to and without derogating from its obligations under the Agreement (except as provided in Clause 26A):
 - (i) comply with all obligations imposed on it as a Rail Contractor by the Rail Safety Act and any relevant regulations; and
 - (ii) ensure that the Concessionaire's officers, employees, agents or contractors (including the Sub-Contractors) engaged in or in connection with the Project, comply with all obligations imposed on any such party as a Rail Contractor (where applicable) by the Rail Safety Act and any relevant regulations.

26A.2 Interchange Facility emergency response

During the Transitional Period:

- (a) the Concessionaire's obligations under Clause 26.2(d)(ii) will be suspended and the SCSA must ensure that the Interchange Facility provides an effective security system or protocol that is responsive in the event of an emergency in relation to the Interchange Facility;
- (b) the Concessionaire must comply with all safety, security and emergency protocols, plans, policies and systems of the SCSA (including, without limitation, the safety management system) in relation to the Interchange Facility and must ensure that the Concessionaire's officers, employees, agents or contractors (including the Sub-Contractors) engaged in or in connection with the Project, also comply with all safety, security and emergency protocols, plans, policies and systems of the SCSA (including, without limitation, the safety management system) in relation to the Interchange Facility; and
- (c) to the extent the Concessionaire is prevented, hindered or disrupted from complying with a Service Standard or a KPI affected by Clause 26A.2(a) as a result of a direction given by the SCSA or its officers, employees, agents or contractors, the Concessionaire's obligation to comply with that Service Standard or KPI will be suspended for the period during which that Service Standard or KPI is affected.

26B Interim KPI Relief

- (a) During the Interim KPI Relief Period, the KPIs identified in Annexure T will be adjusted or suspended in accordance with the relevant Interim KPI Relief Allowance.
- (b) For the avoidance of doubt where a KPI is not identified in Annexure T, Schedule 1 shall apply in respect of that KPI.
- (c) After the expiry of the Interim KPI Relief Period, the Concessionaire must comply with paragraph 4.9 of Schedule 1.
- (d) The SCSA and the Concessionaire agree that they will jointly undertake a floor coverings cleaning trial to establish a cleaning standard in respect of all floor coverings, and during the floor coverings trial period the Concessionaire must expend a minimum of \$100,000 per month on cleaning (including of floor coverings) of the whole of the Interchange Facility.
- (e) Once the cleaning trial has achieved a standard that is agreed between the SCSA, in its absolute discretion, and the Concessionaire, acting reasonably, this standard will be applied for the purposes of paragraph 7.2A of Schedule 1 (***Cleaning Standard***).
- (f) If the SCSA and the Concessionaire have been unable to agree the Cleaning Standard in accordance with Clause 26B(e), the matter is to be referred to an independent expert for determination in accordance with Clause 55.2.
- (g) Prior to the expiry of the Interim KPI Relief Period, the SCSA and the Concessionaire are to agree the number of days within which all graffiti scratched or etched onto a surface, excluding within Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any

Franchisee Facility occupied exclusively by a sole Franchisee must be removed for the purposes of paragraph 7.3A of Schedule 1.

- (h) After the expiry of the Interim KPI Relief Period and until such time as the SCSA and the Concessionaire agree that matters in Clause 26B(g) the Concessionaire must comply with paragraph 7.3A of Schedule 1.
- (i) Once the SCSA and the Concessionaire have agreed the matters referred to in Clause 26B(g) then those matters will form the basis of the KPI in paragraph 7.3A of Schedule 1.

27. Target Capacity

27.1 Annual Monitoring and Reporting

At least once each Financial Year during the Contract Term, the Concessionaire must:

- (a) carry out a survey which reports the Hourly Passenger Flow in peak periods for a minimum of four time intervals, which intervals:
 - (i) are nominated by the Concessionaire;
 - (ii) are each of one hour's duration;
 - (iii) are all during any continuous 30 day period; and
 - (iv) do not coincide (in whole or in part) with any Special Events which directly affect Southern Cross Station,(the *Passenger and User Survey*); and
- (b) provide to the SCSA a written report of the details and results of each Passenger and User Survey within 10 Business Days after carrying out such survey.

27.2 Usage Close to Target Capacity

If, at any time during the Contract Term, the Concessionaire is of the reasonable opinion that the Hourly Passenger Flow in peak periods would, if subject to a Verification Test, be no less than 90% of the Target Capacity, then:

- (a) the Concessionaire must notify the SCSA in writing of that opinion (including the reasons and evidence justifying such opinion); and
- (b) within 10 Business Days after the SCSA receives such notice, the Concessionaire and the SCSA must consult with respect to:
 - (i) if and when the parties reasonably consider that Hourly Passenger Flow in peak periods will or is likely to exceed the Target Capacity;
 - (ii) the SCSA's preliminary view on the timing and manner (if any) in which it intends to address the matter in paragraph (i); and
 - (iii) each party's view on the most appropriate methodology for conducting a Verification Test.

27.3 Verification Testing

- (a) Subject to Clause 27.2 being complied with, if the Concessionaire is of the reasonable opinion that the Hourly Passenger Flow in peak periods has reached, or is about to reach in the immediate future, the Target Capacity, the Concessionaire may request in writing to the SCSA that a Verification Test be conducted by the SCSA, which request must:
 - (i) nominate a minimum of four, and a maximum of eight, time intervals, which intervals:
 - (A) are each of one hour's duration;
 - (B) are all during any continuous 30 day period; and
 - (C) do not coincide (in whole or in part) with any Special Events which directly affect Southern Cross Station; and
 - (ii) have the first nominated interval being no less than one month after the Concessionaire's request,

(the *Concessionaire's Request*).
- (b) Following receipt of a Concessionaire's Request, the SCSA must arrange for, and record, a test to verify the Hourly Passenger Flow in peak periods (*Verification Test*), to be conducted:
 - (i) in accordance with the applicable Concessionaire's Request; and
 - (ii) using methods and measures determined by the SCSA, in its discretion, having regard to the Concessionaire's views as provided in accordance with Clause 27.2(b)(iii).
- (c) The Usage determined in respect of a Verification Test will be the mean of the four highest levels of Hourly Passenger Flow in peak periods recorded by that Verification Test, as notified to the Concessionaire by the SCSA within 10 Business Days after the Verification Test is conducted.
- (d) The Concessionaire must pay for, and indemnify the SCSA against, the cost and expense incurred by the SCSA in conducting a Verification Test.

27.4 Usage Exceeding Target Capacity

If the SCSA's notification under Clause 27.3(c) specifies a level of Usage that exceeds the Target Capacity then:

- (a) within 10 Business Days after the Concessionaire receives such notice, the Concessionaire and the SCSA must consult with respect to the SCSA's views:
 - (i) on compensating the Concessionaire by an agreed adjustment to the Core Services Payment over the balance of the Contract Term or an agreed one off payment to the Concessionaire (or failing agreement, in either case, as reasonably determined by the SCSA); or

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- (ii) on implementing a Service Standard Modification;
 - (iii) on implementing a Modification; or
 - (iv) on implementing any combination of (i), (ii) and (iii),

if and to the extent required to overcome, or mitigate, the direct effects of Hourly Passenger Flow in peak periods (other than during, in whole or in part, Special Events which directly affect Southern Cross Station) exceeding the Target Capacity over the balance of the Contract Term;

- (b) following the consultation required pursuant to Clause 27.4(a), the SCSA must submit to the Concessionaire its proposal in accordance with this Agreement in respect of the matters described in Clause 27.4(a)(i), Clause 27.4(a)(ii), Clause 27.4(a)(iii) or Clause 27.4(a)(iv), as applicable; and
- (c) to the extent that the Concessionaire is unable to provide the Services to the Services Standards as a direct result of Hourly Passenger Flow in peak periods (other than during, in whole or in part, Special Events which directly affect Southern Cross Station) at the Interchange Facility exceeding the Target Capacity, the Concessionaire's performance of the Services to the Services Standards will, to that extent, be suspended from the date of the notification under Clause 27.3(c) until the earlier of:
 - (i) the Concessionaire's performance of the applicable Services to the Services Standards ceasing to be so affected; or
 - (ii) the implementation of the SCSA's proposal under Clause 27.4(b).

28. Payment Arrangements for Rail Modifications and Signalling Upgrade

28.1 Definitions

In this Clause:

Rail Modifications and Signalling Upgrade Cost means *[text deleted]* and in respect of a component of the Rail Modifications or the Signalling Upgrade, the amount specified for that component in Clause 28.6, as adjusted in accordance with Clause 28.3.

Repayment Date means each Services Payment Date on which the Services Payment is payable or, but for this Clause 28 would be payable, to the Concessionaire by the SCSA in accordance with Clause 40, commencing on the first Services Payment Date after the Operations Commencement Date and ending in accordance with Clause 28.5.

28.2 Payment of Rail Modifications and Signalling Upgrade Cost

- (a) Expenditure incurred in relation to the Rail Modifications and Signalling Upgrade will be paid by the Concessionaire on behalf of the SCSA up to the Rail Modifications and Signalling Upgrade Cost.
- (b) The SCSA agrees to reimburse the Concessionaire for the performance of the Rail Modifications and Signalling Upgrade on the terms and conditions set out in this Clause 28.

28.3 Payment by SCSA

- (a) On each Repayment Date the SCSA will pay the Concessionaire, as part reimbursement of the Rail Modifications and Signalling Upgrade Cost, the amount of the Capital Cost Component of the Adjusted Core Services Payment that, but for Clause 28.3(b), would actually be paid by the SCSA to the Concessionaire on that Repayment Date in accordance with Clause 40 and paragraph 1(a)(ii) of Schedule 5.
- (b) If payment is made by the SCSA pursuant to Clause 28.3(a), the SCSA is relieved of any obligation to make payment of that amount as part of the Services Payment that otherwise would be payable by it pursuant to Clause 40 on that Repayment Date.
- (c) The Concessionaire acknowledges that as a result of the de-scoping of the De-Scoped Works, there has been a reduction of the Rail Modifications and Signalling Upgrade Cost of *[text deleted]* as at the GSA Effective Date.

28.4 Passing of Title

- (a) On 1 November 2005, as between the SCSA and the Concessionaire, full and absolute ownership of and title to the Signalling Upgrade has passed to and vested in the SCSA, without the need for physical delivery to the SCSA.
- (b) On 1 November 2005, as between the SCSA and the Concessionaire, full and absolute ownership of and title to the Rail Modifications has passed to and vested in the SCSA, without the need for physical delivery to the SCSA.
- (c) Nothing in this Clause 28, including the passing of title to the Rail Modifications or to the Signalling Upgrade to the SCSA, will in any way affect the obligations of the Concessionaire to provide the Services in accordance with this Agreement or any other obligation or Liability of the Concessionaire under the Agreement.

28.5 Satisfaction of SCSA's Obligations

The SCSA's obligations under this Clause 28 cease on the SCSA reimbursing the Concessionaire in full for the Rail Modifications and Signalling Upgrade Cost for the Rail Modifications and Signalling Upgrade. If on the date on which the last payment is due to be made for the Rail Modifications and Signalling Upgrade in accordance with Clause 28.3(a) the amount of that last payment would exceed the outstanding balance of the Rail Modifications and Signalling Upgrade Cost, the SCSA must:

- (a) pay the outstanding balance of the Rail Modifications and Signalling Upgrade Cost in accordance with Clause 28.3(a); and
- (b) pay the excess to the Concessionaire in accordance with Clause 40,

and such payments together shall satisfy the SCSA's obligation to pay amounts to the Concessionaire under this Clause 28 and Clause 40 on that date.

28.6 Description

The Rail Modifications and Signalling Upgrade Cost is as set out below.

[text deleted]

28.7 GST

- (a) If the performance of the Rail Modifications and Signalling Upgrade is a Taxable Supply, as between the SCSA and the Concessionaire, the GST Amount referred to in Clause 39 is payable by the SCSA only upon and to the extent of receipt by the SCSA of any amount of refund from the Commissioner of Taxation in relation to the GST Amount.
- (b) Clause 39.6(a) does not apply to any Taxable Supply under this Clause 28, and to the extent that a payment is made under Clause 28.3(a) any RCTI issued to the Concessionaire in relation to the Services Payment will exclude the amount payable under Clause 28.3(a).

28A Connex Ticketing Box

- (a) If required by Connex, the SCSA will, at no cost to the Concessionaire, undertake or procure the carrying out of any modifications to the Connex Collins Street Concourse Ticketing Box (***Ticketing Box***) to ensure that the Ticketing Box is compliant with the *Disability Discrimination Act 1992* (Cth), and the SCSA indemnifies the Concessionaire in relation to any non-compliance that may occur until the completion of any modifications required to remedy the non-compliance.
- (b) The Concessionaire will immediately notify the SCSA upon receipt of any claim or proceedings or becoming aware of any threatened claim or proceedings in connection with paragraph (a).
- (c) In the event that a claim is made or proceedings are commenced against the Concessionaire in connection with paragraph (a), the Concessionaire will:
 - (i) use its best endeavours to mitigate its potential loss or damage as a result of the claim or proceedings;
 - (ii) permit the SCSA to conduct the proceedings in the name and on behalf of the Concessionaire, and the Concessionaire will carry out the SCSA's reasonable directions in this regard; and
 - (iii) not compromise any claim or proceedings in connection with paragraph (a) without the prior written consent of the SCSA.
- (d) The SCSA waives any requirement under this Agreement that would otherwise require the Concessionaire to comply with the *Disability Discrimination Act 1992* (Cth) in respect of the Connex Collins Street Concourse Ticketing Box.

29. Modifications to Services Standards

- (a) The SCSA may at any time by notice in writing to the Concessionaire request a Service Standard Modification.

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- (b) If the SCSA proposes to request a Service Standard Modification it will use its best endeavours to provide the Concessionaire with details of the proposed Service Standard Modification and to consult with the Concessionaire with respect to the proposed Service Standard Modification within a reasonable period (and, in any event, not less than 10 Business Days) prior to issuing the notice referred to in Clause 29(a).
- (c) If the SCSA requests a Service Standard Modification in accordance with Clause 29(a) the Concessionaire must:
- (i) consult with each of the Transport Operators who will or may be affected by the proposed Service Standard Modification; and
 - (ii) within 20 Business Days after receipt of the notice, inform the SCSA in writing (*Concessionaire's Notice*) of:
 - (A) the effects of the proposed Service Standard Modification on:
 - (1) the provision of the Services;
 - (2) the Concessionaire's ability to operate and maintain the Interchange Facility;
 - (3) the performance of any other of the Concessionaire's obligations under the Project Agreements; and
 - (4) to the best of the knowledge of the Concessionaire after complying with Clause 29(c)(i), the business or operations of any Transport Operator;
 - (B) the timing and cost consequences of the proposed Service Standard Modification, provided that the time and cost consequences referred to in this paragraph (B) must be assessed having regard to the Modification Compensation Principles and must be amortised evenly over the remainder of the Contract Term;
 - (C) the time within, and the manner in which, the Concessionaire proposes to implement the Service Standard Modification having regard to minimising disruption to users and Transport Operators; and
 - (D) the variation (if any) proposed to the Core Services Payments as a consequence of the proposed Service Standard Modification (including any evidence supporting that variation), provided that the variation referred to in this paragraph (D) must be assessed having regard to the Modification Compensation Principles and must be amortised evenly over the remainder of the Contract Term.
- (d) Within 10 Business Days after receipt of the Concessionaire's Notice, the SCSA must:
- (i) accept the Concessionaire's Notice, by notice to the Concessionaire (*Acceptance Notice*); or

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- (ii) reject the Concessionaire's Notice, by notice to the Concessionaire.
 - (e) If the SCSA issues an Acceptance Notice in accordance with Clause 29(d)(i), with effect from the date specified in the Acceptance Notice, the Services Standards will be amended in accordance with the Service Standards Modification and the Concessionaire must provide the Services to the Services Standards as modified by the Service Standards Modification.
 - (f) If the SCSA rejects the Concessionaire's Notice in accordance with Clause 29(d)(ii):
 - (i) the parties must negotiate, in good faith, and use best endeavours to agree on a mutually acceptable resolution to the matters set out in the Concessionaire's Notice which are in dispute; and
 - (ii) if the parties are unable to reach agreement under paragraph (i) within 10 Business Days after the commencement of the negotiation, the SCSA may refer the dispute to an independent expert for resolution in accordance with Clause 55.2.
 - (g) If a dispute about a proposed Service Standard Modification is referred to an independent expert in accordance with Clause 29(f)(ii), the independent expert must be instructed to have regard to the Modification Compensation Principles in determining the time or cost consequences of the proposed Services Standard Modification or the proposed variation in the Core Services Payment as a consequence of the proposed Service Standard Modification. The SCSA may, following determination of the dispute, elect:
 - (i) to require the Concessionaire to proceed with the Service Standard Modification in accordance with the Concessionaire's Notice as varied by the independent expert's determination; or
 - (ii) to not proceed with the Service Standard Modification, in which case the SCSA may elect to terminate this Agreement.
 - (h) If the Concessionaire is required to proceed with a Service Standard Modification, subject to the relevant Service Standard being performed in accordance with this Agreement, the Concessionaire will be compensated in accordance with the Concessionaire's Notice or the independent expert's determination (as the case may be), by an increase or decrease (as applicable) in the Core Services Payment over the balance of the Contract Term.

30. Modifications to Interchange Facility After Final Completion

30.1 Restrictions on Modifications

Neither the SCSA nor the Concessionaire may make any Modification after Practical Completion of the Principal Works or Practical Completion of the Slab Construction Works (as applicable) other than in compliance with this Clause 30.

30.2 SCSA Modifications

- (a) The SCSA may at any time after Final Completion by notice in writing to the Concessionaire request a Modification.
- (b) If the SCSA proposes to request a Modification it will use its best endeavours to provide the Concessionaire with details of the proposed Modification and to consult the Concessionaire with respect to the proposed Modification within a reasonable period (and, in any event, not less than 10 Business Days) prior to issuing the notice referred to in Clause 30.2(a).
- (c) If the SCSA requests a Modification in accordance with Clause 30.2(a) the Concessionaire must:
 - (i) if requested by the SCSA, consult with each of the Transport Operators who will or may be affected by the proposed Modification; and
 - (ii) within 30 Business Days after receipt of the request, inform the SCSA in writing (*Concessionaire's Notice*) of:
 - (A) the effects of the proposed Modification on:
 - (1) the workmanship or durability of any part of the Interchange Facility (including any items of plant or equipment forming part of the Interchange Facility);
 - (2) the provision of the Services;
 - (3) the operation or maintenance of the Interchange Facility;
 - (4) the performance of any other of the Concessionaire's obligations under the Project Agreements; and
 - (5) to the best of the knowledge of the Concessionaire after complying with Clause 30.2(c)(i), the business or operations of any Transport Operator;
 - (B) the cost consequences of the proposed Modification, provided that the cost consequences referred to in this paragraph (B) must be assessed having regard to the Modification Compensation Principles and must be amortised evenly over the remainder of the Contract Term;
 - (C) the time within, and the manner in which, the Concessionaire proposes to implement the Modification having regard to minimising disruption to users and Transport Operators;
 - (D) the variation (if any) proposed to the Operating Cost Component of the Core Services Payments as a consequence of the proposed Modification (including any evidence supporting that variation) provided that the variation referred to in this paragraph (D) must be assessed having regard to the Modification Compensation Principles and must be amortised evenly over the remainder of the Contract Term; and

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- (E) if requested by the SCSA:
- (1) the way in which the Concessionaire proposes to fund the proposed Modification; and
 - (2) the effect of the proposed Modification on the Capital Cost Component of the Core Services Payment.
- (d) Within 10 Business Days after receipt of the Concessionaire's Notice, the SCSA must:
- (i) accept the Concessionaire's Notice, by notice to the Concessionaire (*Acceptance Notice*); or
 - (ii) reject the Concessionaire's Notice, by notice to the Concessionaire.
- (e) If the SCSA issues an Acceptance Notice in accordance with Clause 30.2(d)(i), the Concessionaire must, after finalisation of the funding for the works required for the proposed Modification referred to in Clause 30.2(c)(ii)(E), execute the Modification.
- (f) If the SCSA rejects the Concessionaire's Notice in accordance with Clause 30.2(d)(ii):
- (i) the parties must negotiate, in good faith, and use best endeavours to agree on a mutually acceptable resolution to the matters set out in the Concessionaire's Notice which are in dispute; and
 - (ii) if the parties are unable to reach agreement under paragraph (i) within 10 Business Days after the commencement of the negotiation, the SCSA may refer the dispute to an independent expert for resolution in accordance with Clause 55.2.
- (g) If a dispute about a proposed Modification is referred to an independent expert in accordance with Clause 30.2(f)(ii), the independent expert must be instructed to have regard to the Modification Compensation Principles in determining the cost consequences of the proposed Modification or the proposed variation in the Core Services Payment as a consequence of the proposed Modification. The SCSA may, following determination of the dispute, elect:
- (i) to require the Concessionaire to proceed with the Modification in accordance with the Concessionaire's Notice as varied by the independent expert's determination, after finalisation of the funding for the works required for the proposed Modification referred to in Clause 30.2(c)(ii)(E) if applicable;
 - (ii) to require the Concessionaire to allow (in which case, the Concessionaire must allow) the SCSA or a person nominated by the SCSA to proceed with the Modification in accordance with the Concessionaire's Notice as varied by the independent expert's determination; or
 - (iii) to not proceed with the Modification, in which case the SCSA may elect to terminate this Agreement.

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- (h) If the Concessionaire is required to execute a Modification pursuant to Clause 30.2(e) or 30.2(g)(i), subject to the Modification being executed as required, the Concessionaire will be compensated in accordance with the Concessionaire's Notice or the independent expert's determination (as the case may be):
 - (i) within 14 days of receipt by the SCSA of an appropriate tax invoice;
 - (ii) if advised by the SCSA otherwise, by an increase or decrease (as applicable) in the Core Services Payment over the balance of the Contract Term.

31. Appointment and Termination of Operator and Maintenance Contractor

31.1 Appointment of Operator

- (a) The Concessionaire must not enter into the Operating Agreement without the prior written approval of the SCSA (which approval must not be unreasonably withheld).
- (b) If the Operating Agreement is terminated or expires or if the Operator under the Operating Agreement resigns or is removed, the Concessionaire must select and appoint a new Operator. The new Operator and the new operating agreement must first be approved by the SCSA in accordance with this Clause 31.1.
- (c) An Operator must:
 - (i) be capable of performing all of the operating obligations of the Concessionaire under this Agreement; and
 - (ii) have demonstrated recent good performance and have a good reputation in the management and operation of facilities similar to the Interchange Facility.

31.2 Handover on change of Operator

If, for whatever reason, the Operator under the Operating Agreement ceases to be the Operator or the Operating Agreement is terminated or expires, pending appointment by the Concessionaire of a new Operator in accordance with this Agreement, the Concessionaire must, if requested by the SCSA:

- (a) grant a licence to any person nominated by the SCSA for the purpose of operating the Interchange Facility and providing the Services; and
- (b) take such other action and provide such other assistance as is reasonably required by the SCSA to ensure an effective handover of the operation of the Interchange Facility to the new Operator, including:
 - (i) providing the Handover Packages to the SCSA and the new Operator; and
 - (ii) preparing and providing to the SCSA and the new Operator as soon as possible a handover plan setting out the proposed timetable procedures for handover to the new Operator.

31.3 Appointment of Maintenance Contractor

- (a) The Concessionaire must not enter into the Maintenance Agreement without the prior written approval of the SCSA (which approval must not be unreasonably withheld).
- (aa) Within 30 Business Days after the Commencement Date the Concessionaire must deliver to the SCSA a certified copy of a fully executed counterpart of the Maintenance Direct Agreement executed by each of the parties to it other than the SCSA but a failure to deliver those documents within that period will not constitute a breach of this Clause if and to the extent that the Concessionaire is diligently pursuing and continues diligently to pursue the delivery to the SCSA of those documents.
- (b) If the Maintenance Agreement is terminated or expires or if the Maintenance Contractor under the Maintenance Agreement resigns or is removed, the Concessionaire must select and appoint a new Maintenance Contractor. The new Maintenance Contractor and the new maintenance agreement must first be approved by the SCSA in accordance with this Clause 31.3.
- (c) A Maintenance Contractor must:
 - (i) be capable of performing all of the maintenance obligations of the Concessionaire under this Agreement; and
 - (ii) have demonstrated recent good performance and have a good reputation in the maintenance of facilities similar to the Interchange Facility.

31.4 Handover on change of Maintenance Contractor

If, for whatever reason, the Maintenance Contractor under the Maintenance Agreement ceases to be the Maintenance Contractor or the Maintenance Agreement is terminated or expires, pending appointment by the Concessionaire of a new Maintenance Contractor in accordance with this Agreement, the Concessionaire must, if requested by the SCSA:

- (a) grant a licence to any person nominated by the SCSA for the purpose of maintaining the Interchange Facility; and
- (b) take such other action and provide such other assistance as is reasonably required by the SCSA to ensure an effective handover of the maintenance of the Interchange Facility to the new Maintenance Contractor, including:
 - (i) providing the Handover Packages to the SCSA and the new Maintenance Contractor; and
 - (ii) preparing and providing to the SCSA and the new Maintenance Contractor as soon as possible a handover plan setting out the proposed timetable and procedures for handover to the new Maintenance Contractor.

32. Sub Contracting

32.1 Subcontracting Operations

Without limiting Clauses 31.1 and 31.2 and subject to Clause 32.2, the Concessionaire may subcontract the performance of all or any part of its operating obligations under this Agreement to any Operations Sub-Contractor provided that in so doing the Concessionaire will not be relieved of any of its Liabilities under this Agreement or any other Project Agreement and the Concessionaire is at all times responsible for the performance of all Operations Sub-Contractors in relation to the subcontracted obligations and acts or omissions of an Operations Sub-Contractor will be deemed to be acts or omissions of the Concessionaire.

32.2 Subcontracting Terms and Conditions

The Concessionaire must ensure that each Operations Sub-Contract contains provisions recognising and permitting the SCSA to exercise the SCSA's rights under Clauses 42.4 and 42.5 and under Clause 45 in relation to the relevant Operations Sub-Contractor and that Operations Sub-Contract.

32.3 Monitoring of Operation Sub-Contracts

The Concessionaire must:

- (a) comply with the obligations imposed on the Concessionaire under any Operations Sub-Contract;
- (b) ensure that the Operator complies with its obligations under any Operations Sub-Contract to which it is a party;
- (c) ensure that the Operator complies with all applicable Laws, Approvals and Quality Standards in relation to any Operations Sub-Contract to which the Operator is a party; and
- (d) give the SCSA notice of termination of any Operations Sub-Contract prior to or immediately upon the Concessionaire becoming aware of such termination.

32.4 Operating Agreement

- (a) The Concessionaire must promptly notify the SCSA of any amendment, replacement, supplement or waiver of the Concessionaire's rights or obligations under the Operating Agreement.
- (b) The Concessionaire must not:
 - (i) make or permit any material amendment to be made to; or
 - (ii) replace, supplement or waive any material right or obligation it has under, the Operating Agreement without the prior written consent of the SCSA which will not be unreasonably withheld if such amendment, supplement, replacement or waiver will not adversely affect the Concessionaire's ability to satisfy its obligations under this Agreement or any other Project Agreement or the SCSA's ability to exercise its rights under this Agreement or any other Project Agreement.

32.5 Subcontracting Maintenance

Without limiting Clauses 31.3 and 31.4 and subject to Clause 32.6, the Concessionaire may subcontract the performance of all or any part of its maintenance obligations under this Agreement to any Maintenance Sub-Contractor provided that in so doing the Concessionaire will not be relieved of any of its Liabilities under this Agreement or any other Project Agreement and the Concessionaire is at all times responsible for the performance of all Maintenance Sub-Contractors in relation to the subcontracted obligations and acts or omissions of a Maintenance Sub-Contractor will be deemed to be acts or omissions of the Concessionaire.

32.6 Subcontracting Terms and Conditions

The Concessionaire must ensure that each Maintenance Sub-Contract contains provisions recognising and permitting the SCSA to exercise the SCSA's rights under Clauses 42.4 and 42.5 and under Clause 45 in relation to the relevant Maintenance Sub-Contractor and that Maintenance Sub-Contract.

32.7 Monitoring of Maintenance Sub-Contracts

The Concessionaire must:

- (a) comply with the obligations imposed on the Concessionaire under any Maintenance Sub-Contract;
- (b) ensure that the Maintenance Contractor complies with its obligations under any Maintenance Sub-Contract to which it is a party;
- (c) ensure that the Maintenance Contractor complies with all applicable Laws, Approvals and Quality Standards in relation to any Maintenance Sub-Contract to which the Maintenance Contractor is a party; and
- (d) give the SCSA notice of termination of any Maintenance Sub-Contract prior to or immediately upon the Concessionaire becoming aware of such termination.

32.8 Maintenance Agreement

- (a) The Concessionaire must promptly notify the SCSA of any amendment, replacement, supplement or waiver of any of the Concessionaire's rights or obligations under the Maintenance Agreement.
- (b) The Concessionaire must not:
 - (i) make or permit any material amendment to be made to; or
 - (ii) replace, supplement or waive any material right or obligation it has under, the Maintenance Agreement without the prior written consent of the SCSA which will not be unreasonably withheld if such amendment, supplement, replacement or waiver will not adversely affect the Concessionaire's ability to satisfy its obligations under this Agreement or any other Project Agreement or the SCSA's ability to exercise its rights under this Agreement or any other Project Agreement.

33. Performance Monitoring and Review

33.1 Performance Monitoring, Measuring and Reporting

- (a) The SCSA may monitor and review in any way it thinks fit:
- (i) the provision by the Concessionaire of the Services in accordance with this Agreement; and
 - (ii) the Concessionaire's Performance Management System,
- including by any (or any combination) of the following methods and processes:
- (A) the use of User Surveys;
 - (B) the auditing process described in Clause 33.2;
 - (C) undertaking scheduled reviews and inspections of the Services being provided by the Concessionaire;
 - (D) undertaking unscheduled reviews and inspections of the Services being provided by the Concessionaire, including by means of Phantom Users; and
 - (E) obtaining information from any Transport Operator or other user of the Interchange Facility in relation to the adequacy and quality of the Interchange Facility and the adequacy and quality of the Concessionaire's performance of the Services.
- (b) A copy of all information, documentation and data relevant to the monitoring, measurement and reporting of:
- (i) the provision by the Concessionaire of the Services; and
 - (ii) the Concessionaire's Performance Management System,
- must be kept and maintained by the Concessionaire for 7 years after it is created, produced or prepared.
- (c) The Concessionaire represents and warrants that the Quarterly Performance Reports and the source information, documentation and data required for, created, produced or prepared by, the Performance Management System (the *Performance Data*) will at all times be accurate, complete and correct.
- (d) Upon the SCSA providing reasonable prior notice to the Concessionaire, the Concessionaire must provide, the SCSA with:
- (i) access to the Performance Management System; and
 - (ii) access to, and copies of, the Performance Data.

33.2 Auditing

- (a) At any time up to 6 months after the end of the Contract Term, the SCSA may give notice to the Concessionaire requiring an audit of the Performance Management System, any Quarterly Performance Report or the Performance Data to be undertaken (*Audit Notice*) for the purpose of reviewing the Performance Management System, any Quarterly Performance Report or the Performance Data and verifying their accuracy, correctness and completeness.
- (b) If the SCSA gives an Audit Notice under Clause 33.2 (a):
 - (i) the SCSA will appoint, and notify the Concessionaire of, a person to carry out and complete the audit (the *Auditor*), at the SCSA's cost and expense, on terms and conditions of appointment determined by the SCSA; and
 - (ii) the Concessionaire must, within a reasonable period, make its Performance Management System, its Quarterly Performance Reports and the Performance Data available for audit by the Auditor.
- (c) If the written report of the Auditor (the *Auditor's Report*) states that the Performance Management System, any Quarterly Performance Report or any Performance Data is not accurate, complete and correct, then:
 - (i) the Concessionaire must:
 - (A) fix the inaccuracy, incorrectness or incompleteness in the affected report or data and re-issue the affected report or data to the SCSA; and
 - (B) as applicable, promptly take steps to remedy the inaccuracy, incorrectness or incompleteness in its monitoring, measuring and reporting systems; and
 - (ii) if the inaccuracy, incorrectness or incompleteness has affected the amount of any Services Payment, that has been paid to the Concessionaire, the SCSA will determine, and notify the Concessionaire of, the amount of the appropriate adjustment to the affected amounts and that amount will be added to or deducted from (as the case may be) the next Core Service Payment scheduled after the date of the SCSA's notice.
- (d) If an Audit Report or the SCSA's access pursuant to Clause 33.1(d) discloses any:
 - (i) fraud; or
 - (ii) false, misleading or negligent reporting or selective measurement,in respect of the Performance Management System, any Quarterly Performance Reports or the Performance Data, then each such event is a Major Default for the purposes of this Agreement.

34. Use of Interchange Facility

34.1 Prohibited Business

- (a) The Concessionaire must not operate or permit the operation of any Prohibited Business at the Interchange Facility or on the Land.
- (b) The Land and the Interchange Facility must only be used by the Concessionaire, or be permitted by the Concessionaire to be used by others, for purposes which are permitted under the Planning Scheme and which are not Prohibited Businesses.

34.2 Naming Rights

- (a) The SCSA has the sole right to:
 - (i) determine the name of and rename the Interchange Facility (*Interchange Facility Name*);
 - (ii) vary the Interchange Facility Name from time to time; and
 - (iii) grant naming rights for the Interchange Facility and all or any parts of the Interchange Facility to any person, including the Concessionaire.
- (b) During the Contract Term the Concessionaire must display the Interchange Facility Name:
 - (i) on its financial and other records and correspondence;
 - (ii) on any signage it is required to provide in or on the Interchange Facility or the Interchange Facility Works or the Site or any part of it;
 - (iii) in its advertising and promotional material;
 - (iv) on the uniforms of its employees and the Operator's employees; and
 - (v) for any other purpose involving the Interchange Facility where reference to the name of the Interchange Facility is required or appropriate,

provided that the SCSA will bear the Concessionaire's reasonable direct costs associated with complying with this Clause 34.2(b) on a change of the Interchange Facility Name (other than a change of name from Spencer Street Station to Southern Cross Station or such other name nominated by the SCSA not less than 3 months prior to the Operations Commencement Date) where such costs are claimed in writing under this Clause 34.2 within 1 month after the change.

- (c) During the Contract Term the Concessionaire must not:
 - (i) intentionally, recklessly or negligently do anything that diminishes the value of the Interchange Facility Name or the name of any part of the Interchange Facility; or
 - (ii) use any name (other than the Interchange Facility Name) to describe or refer to the Interchange Facility or use any name other than the name of the

part of the Interchange Facility to describe or refer to that part of the Interchange Facility.

- (d) The Concessionaire must include in any contract with a third party for the lease of, occupation of, or access to any part of the Interchange Facility (including any contract for the conduct by that third party of a Retail Business):
- (i) an acknowledgement by the third party of the SCSA's rights under this Clause 34.2; and
 - (ii) an undertaking on the part of the third party:
 - (A) to do everything necessary to facilitate the SCSA's exercise of its rights and the performance of the Concessionaire's obligations under this Clause 34.2; and
 - (B) not to do anything that precludes or prevents the SCSA exercising those rights or the Concessionaire performing those obligations or which may diminish the value of the Interchange Facility Name or the name of any part of the Interchange Facility.

34.3 Advertising

Any advertising placed on the Land or any part of the Interchange Facility or any Interchange Facility Works by or on behalf of the Concessionaire must:

- (a) comply with all applicable Laws;
- (b) comply with voluntary codes of conduct established by the advertising industry;
- (c) not depict subject matter which is or reasonably would be regarded as offensive;
- (d) not resemble or be capable of confusion with directional or informational signs either by size, shape or colour; and
- (e) be consistent with the Services Standards and not impede, or interfere with, the Concessionaire's provision of the Services to the Services Standards.

PART 4 – GENERAL RIGHTS AND OBLIGATIONS FOR DESIGN AND CONSTRUCTION PHASE AND OPERATING PHASE

35. Intellectual Property Rights

35.1 Intellectual Property

- (a) The Concessionaire:
 - (i) must not, and warrants that it will not, breach any Intellectual Property Rights, moral rights or other protected rights of any person in performing the Project, including the Interchange Facility Works; and
 - (ii) warrants that, subject to Clause 35.1(c), it has the authority to grant the rights granted to the SCSA under this Agreement and neither the use nor the exercise of those rights by the SCSA or any person authorised by it will

infringe any Intellectual Property Rights or moral rights of any person or give rise to any Liability on behalf of the SCSA or any Successor Operator (including any Liability to pay compensation or a royalty to any person).

- (b) The Concessionaire, subject to Clause 35.1(c):
- (i) grants to the SCSA;
 - (ii) without limiting the Concessionaire's obligations under Clause 35.2, must ensure that the person legally entitled to do so grants to the SCSA; and
 - (iii) must do all things reasonably necessary to give effect to the grant to the SCSA of,

an irrevocable, non-exclusive, perpetual, transferable, royalty-free licence (including the right to sub-licence) to use and exercise all the Intellectual Property Rights (whether owned by the Concessionaire or not) in or used in:
 - (iv) the design of the Interchange Facility Works;
 - (v) the Design Documentation;
 - (vi) methods of working and materials used in the construction and commissioning of the Interchange Facility Works; and
 - (vii) the Project itself,for the purpose of the design, construction and commissioning of the Interchange Facility Works and operation, maintenance and alteration of the Interchange Facility:
 - (viii) in the exercise of the rights of the SCSA under the Project Agreements (including its Step-in Rights); and
 - (ix) following the termination of this Agreement or the expiry of the Contract Term.
- (c) Notwithstanding Clause 35.1(b), if the Concessionaire is, or reasonably considers it will be, after having used its reasonable endeavours, unable to grant the SCSA the licences it is required to grant under Clause 35.1(b), it must promptly notify the SCSA of that failure and the SCSA and the Concessionaire will negotiate in good faith with respect to the Concessionaire obtaining for the SCSA's benefit, such rights or arrangements as the SCSA reasonably requires in order to design, construct or commission the Interchange Facility Works and in relation to the operation and maintenance of the Interchange Facility.
- (d) Subject (provided that the Concessionaire has used its reasonable endeavours as required by Clause 35.1(c)) to Clause 35.1(c), the Concessionaire indemnifies and will keep indemnified the SCSA, its Associates and any other party which the SCSA grants any rights to use or exercise the licensed rights granted pursuant to Clauses 35.1(b)(i) and (ii) from and against all Liabilities and Claims arising out of or in connection with such parties use or exercise of the licensed rights granted pursuant to Clauses 35.1(b)(i) and (ii) infringing any person's Intellectual Property Rights or moral rights or the Concessionaire or other applicable person not having

the right to grant the SCSA a licence in respect of those Intellectual Property Rights or moral rights in accordance with and on the terms stated in Clauses 35.1(b) and (e).

- (e) The rights granted pursuant to Clauses 35.1(b)(i) and (ii) will survive:
 - (i) fundamental breach, repudiation, rescission, frustration, suspension or termination or expiry of this Agreement; and
 - (ii) works being taken out of the hands of the Concessionaire pursuant to the exercise of the SCSA's Step-In Rights.
- (f) The Concessionaire indemnifies and will keep indemnified the SCSA, its Associates and each Government Agency against Liabilities or Claims which may arise from or be incurred by reason of, any infringement, violation, alleged infringement or alleged violation by the Concessionaire or any Sub-Contractor of any Intellectual Property Rights, moral rights or other protected rights of any person.
- (g) The SCSA must promptly notify the Concessionaire in writing of any actual, suspended or anticipated Claim made or to be made under Clause 35.1(d) or Clause 35.1(f). The SCSA and the Concessionaire must meet as soon as practicable after receipt of that notice by the Concessionaire to discuss the action to be taken with respect to the Claim, including any action to be taken to settle or defend the Claim.
- (h) The Concessionaire's obligations in this Clause 35.1 with respect to moral rights do not extend to alterations to the buildings existing at Southern Cross Station at the Agreement Date (the *existing buildings*) to the extent that section 195AT of the *Copyright Act* applies to allow the SCSA to serve a notice on the author of the work or subject matter in which applicable copyright with respect to those buildings exists.
- (i) The Concessionaire must cooperate and assist the SCSA in giving notice to the holders of moral rights in the existing buildings in accordance with section 195AT of the *Copyright Act*.

35.2 Moral Rights

- (a) If the Concessionaire, in the course of the Project, including in relation to the design of the Interchange Facility Works, the Design Documentation, methods of working and materials used in the construction and commissioning of the Interchange Facility Works and the Project itself, includes or makes use of any work or other subject matter in which copyright subsists, the Concessionaire must use its reasonable endeavours to procure from every person (whether a Sub-Contractor or an officer, employee or consultant of the Concessionaire or of a Sub-Contractor) who is an author of that work or subject matter a written consent signed by that person for the benefit of the SCSA, its Associates and each Government Agency and any Successor Operator, under which (to the maximum extent permitted by Law) that person irrevocably and unconditionally consents to the SCSA, its Associates and each Government Agency and any Successor Operator:
 - (i) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting or publishing that work or subject matter anywhere in the world in

whatever form the SCSA thinks fit (including the making of any distortions, additions or alterations to that work or subject matter or any adaptation thereof, or to any part of that work or subject matter or of any such adaptation) as so used, disclosed, reproduced, transmitted, exhibited, communicated, adapted or published; and

- (ii) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting or publishing that work or subject matter or any adaptation thereof (or any part of that work or subject matter or of any such adaptation) anywhere in the world without making any identification of that person in relation thereto.

In procuring such consent, the Concessionaire will not (and must not encourage or permit anyone else to) apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular, or knowing that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular.

- (b) The Concessionaire's obligations under Clause 35.2(a) survive:
 - (i) fundamental breach, repudiation, rescission, frustration, suspension or termination or expiry of this Agreement; and
 - (ii) works being taken out of the hands of the Concessionaire pursuant to the exercise of the SCSA's Step-In Rights.

36. [Not used]

37. **Accommodation of Other State Projects**

- (a) The Concessionaire acknowledges and agrees that during the Contract Term other transport infrastructure projects of the State (including the MATL Project, the VHST Project, the City Loop Expansion, the Flinders Street Viaduct and the Regional Fast Rail Project) (*Other State Projects*) may impact on the Land, the Interchange Facility Works, the Interchange Facility or on the Project.
- (b) The Concessionaire must co-operate with and provide reasonable assistance to the State, the SCSA and all Government Agencies of the State in connection with and for the purposes of the planning, development and implementation of Other State Projects. Without limitation the Concessionaire must give the State, the SCSA and all Government Agencies of the State reasonable access at all times to the Site, the Interchange Facility Works and the Interchange Facility in connection with and for the purposes of the planning, development and implementation of any Other State Projects.
- (c) The SCSA must provide the Concessionaire with reasonable notice of proposed access to the Site in accordance with Clause 37(b) by the SCSA, the State or any Government Agency of the State.
- (d) The SCSA, so far as it is able to do so, must ensure that any person exercising a right of access on behalf of the SCSA, the State or any Government Agency of the State in accordance with Clause 37(b):

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- (i) complies with any reasonable access procedures with respect to the Site which the Concessionaire has in place from time to time and details of which the Concessionaire has made known in writing to such persons within a reasonable period prior to those persons accessing the Site; and
 - (ii) does not unreasonably obstruct or interfere with the carrying out of the Interchange Facility Works.
- (e) The Concessionaire must use its reasonable endeavours to not disrupt, obstruct or interfere with any person exercising a right of access in accordance with Clause 37(b). The SCSA will compensate the Concessionaire for the direct costs it incurs solely as a result of the exercise of those access rights.
 - (f) Upon request by the SCSA, the Concessionaire must provide to the SCSA any information with respect to the Site, the Interchange Facility Works, the Interchange Facility or the Project reasonably requested by or through the SCSA for the purposes of any Other State Project.
 - (g) The Concessionaire must use its reasonable endeavours to coordinate the operation and maintenance of the Interchange Facility with any construction or other activities carried out on or near the Land for the purposes of any Other State Project and must otherwise co-operate with any person carrying out such activities.

38. Taxes and Utility Services

38.1 General Liability for Taxes

The Concessionaire must pay, and indemnifies the SCSA against Liability for, Taxes payable by the Concessionaire in respect of this Agreement, the other Project Agreements and any transaction evidenced or contemplated by them.

38.2 Utility Services

The Concessionaire must:

- (a) subject to Clause 48.2, pay all charges (including service charges) for Utility Services to or from the Site, together with any costs charged or levied by the service provider in respect of the provision or maintenance of the infrastructure which provides or supplies those services exclusively to the Site (excluding the Reserved Facilities); and
- (b) if required by the SCSA, and if no separate meter exists for recording or metering of any of the Utility Services or substances supplied to the Land, install, or arrange for the installation of, meters at the Concessionaire's own cost and expense.

38.3 Rates and taxes

- (a) Subject to Clause 38.5, where Rates and Taxes are assessed in respect of the Site (excluding the Reserved Facilities, the Central Pass Office and the Motor Rail Office and any other area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee):
 - (i) to the extent that Rates and Taxes are separately assessed, the Concessionaire must pay the relevant Government Agency when due or

reimburse to the SCSA on demand if paid by the SCSA, all Rates and Taxes; and

- (ii) to the extent that Rates and Taxes are not separately assessed, the Concessionaire must pay the relevant Government Agency when due or reimburse to the SCSA on demand if paid by the SCSA, a proportion of the Rates and Taxes equal to the area that part of the Site bears to the total area assessed.
- (b) During the Contract Term the payment of Rates and Taxes by the Concessionaire under this Agreement will not abate for any reason.
- (c) At the end of the Contract Term, all outgoings of a recurring nature must be apportioned between the SCSA and the Concessionaire and the balance paid or received as the case may require.

38.4 Shared Utility Services

Where the infrastructure which supplies or provides any of the Utility Services referred to in Clause 38.2(a) supplies or provides those services not only to part of the Site (excluding the Reserved Facilities) but also to other land owned by or leased or licensed to the SCSA or any other Government Agency of the State, the Concessionaire must, subject to Clause 48.2, pay or reimburse the SCSA (as the case may be), a proportion of any costs charged or levied by the supplier or provider in respect of the maintenance of that infrastructure, such proportion to be calculated in accordance with the formula or formulae to be agreed by the SCSA and the Concessionaire (acting reasonably) based on principles relevant to the usage of the relevant part of the Site that include but are not limited to the following:

- (a) business mix;
- (b) utilisation;
- (c) number of outlets.

38.5 Land Tax

- (a) If after the Agreement Date the interpretation or application of the *Land Tax Act* by the Commissioner is changed (including by the publication of an Order of the type referred to in section 9(1AD) of the *Land Tax Act*) with the effect that Land Tax is payable in respect of any land or portion of land forming part of the Licensed Area or the Lease Land that prior to the Agreement Date is land or a portion of land that is exempt from Land Tax because it is vested in a public statutory authority and in accordance with the interpretation or application of the *Land Tax Act* by the Commissioner prior to the Agreement Date is not otherwise assessable or chargeable with Land Tax, the Concessionaire may give notice to that effect setting out the increased costs incurred or to be incurred by the Concessionaire as a result of the imposition of that Land Tax (a ***Land Tax Notice***) to the SCSA.
- (b) Within 30 Business Days after receipt by the SCSA of a Land Tax Notice, the SCSA and the Concessionaire must negotiate, in good faith, and use reasonable endeavours to agree on a mutually acceptable means of compensating the Concessionaire for the costs incurred or to be incurred by the Concessionaire as a result of the imposition of that Land Tax.

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- (c) If the Concessionaire and the SCSA are unable to reach agreement under Clause 38.5(b) within 45 Business Days after receipt by the SCSA of a Land Tax Notice given under Clause 38.5(a), either party may refer the dispute to an independent expert for resolution in accordance with Clause 55.2.
- (d) If the Concessionaire and the SCSA agree, or the determination of a dispute by an independent expert directs, that the Concessionaire should be compensated for costs incurred or to be incurred by the Concessionaire as a result of the imposition of Land Tax the subject of a Land Tax Notice under Clause 38.5(a), the Concessionaire will be compensated to the extent so agreed or determined (as the case may be).
- (e) The Concessionaire acknowledges and agrees that compensation (if any) to which it may be entitled pursuant to this Clause 38.5 may be provided by way of:
- (i) at the SCSA's option;
 - (A) an increase in the Core Services Payment over the balance of the Contract Term;
 - (B) a lump sum payment to be made at the time of the next Core Services Payment; or
 - (C) extending the Expiry Date of the Finance Concession Period and/or the Operating Concession Period; or
 - (ii) any other means of redress which the Concessionaire and the SCSA agree, or an independent expert determines, to be appropriate in the circumstances.
- (f) Except to the extent set out in Clause 38.5(a) and 50.2, the Concessionaire has no entitlement under this Agreement or any other Project Agreement to make any Claim against, or otherwise to be compensated by, the SCSA in respect of any Land Tax payable by the Concessionaire and this Clause 38.5 does not apply to any other circumstances in which Land Tax is or may become payable by the Concessionaire, including in respect or as a result of:
- (i) any amendment to or change in the *Land Tax Act* (other than the making of an Order under section 9(1AD) of the *Land Tax Act*);
 - (ii) any amendment to or change in the rate or duty of Land Tax under the *Land Tax Act*; and
 - (iii) any change after the Commencement Date in the use of any land or portion of land, or in the purpose or purposes for which any land or portion of land is owned, leased or occupied, as a result of which, in accordance with the interpretation or application of the *Land Tax Act* by the Commissioner at the Commencement Date, Land Tax is payable in accordance with the *Land Tax Act* at that date.
- (g) The SCSA warrants that as at the Agreement Date it is not a declared public statutory authority pursuant to section 9(1AD) of the *Land Tax Act*.
- (h) In this Clause 38.5:
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- (i) **Commissioner** has the meaning given by the Land Tax Act;
 - (ii) **Land Tax** means any duty of land tax (including any special land tax or any additional charge in respect thereof) assessed, collected or enforced under the *Land Tax Act*; and
 - (iii) **Land Tax Act** means the *Land Tax Act 1958* (Vic).

39. Goods and Services Tax (GST)

39.1 GST to be Added to Amounts Payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This Clause 39.1 does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.

39.2 Tax Invoice and Adjustment Note

Subject to Clause 39.6, no payment of any amount pursuant to Clause 39.1 is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

39.3 Liability Net of GST

Any reference in the calculation of Consideration under this Agreement to a cost, expense or other liability incurred by a party, will exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

39.4 Revenue Exclusive of GST

Any reference in this Agreement to price, value, sales, revenue or a similar amount (Revenue), will be a reference to that Revenue exclusive of GST.

39.5 Cost Exclusive of GST

Any reference in this Agreement (other than in the calculation of Consideration) to cost, expense or other similar amount (*Cost*), will be a reference to that Cost exclusive of GST.

39.6 Recipient Created Tax Invoice (RCTI) for Supplies Made by the Concessionaire

- (a) The SCSA will issue a RCTI to the Concessionaire for any Taxable Supply made by the Concessionaire to the SCSA under, by reference to or in connection with this Agreement, other than as contemplated by Clause 28.7.
- (b) Where the SCSA has issued a RCTI to the Concessionaire for a Taxable Supply made to it by the Concessionaire, the Concessionaire will not issue a Tax Invoice to the SCSA in respect of that Taxable Supply.

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- (c) The SCSA may vary those Taxable Supplies that will be subject to a RCTI under this Agreement by notifying the Concessionaire of the nature of such Taxable Supplies in writing. Such notification will constitute a variation of this Agreement.
 - (d) The SCSA acknowledges that it will be registered for GST prior to the Commencement Date. It will notify the Concessionaire if it ceases to be registered for GST.
 - (e) The Concessionaire warrants that it is registered for GST. It will notify the SCSA if it ceases to be registered for GST.

40. Payments

40.1 Payment

- (a) Subject to Clauses 28.3, 28.5 and 40.3, the SCSA must pay the Services Payment in accordance with Schedule 5, and prior to the Financial Completion Date the SCSA must pay the Indexed CCC in accordance with Part 1 of Schedule 6.
- (b) Any payment of moneys by the SCSA will not be evidence (as the case may be) that:
 - (i) the applicable Interchange Facility Works have been carried out in accordance with;
 - (ii) the Interchange Facility complies with; or
 - (iii) the applicable Services have been provided in accordance with,the Project Agreements.

40.2 Interest

If any moneys due and owing to any party under this Agreement or any other Project Agreement remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest at the Default Rate, calculated daily, will be payable thereon from, but excluding, the date upon which or of the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid.

40.3 Set Off

- (a) The SCSA may set-off or deduct from any moneys payable by the SCSA to the Concessionaire under the Project Agreements any amounts:
 - (i) for which the Concessionaire must reimburse the SCSA;
 - (ii) which the SCSA pays on the Concessionaire's behalf; or
 - (iii) which the Concessionaire owes to the SCSA (whether or not such amounts are expressed to be a debt due from the Concessionaire to the SCSA),under or in connection with the Project Agreements.

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- (b) The Concessionaire must make all payments under the Project Agreements (including all amounts to be paid or deposited by it in accordance with Schedule 5) without set-off or counterclaim and without any deduction.
 - (c) In this Clause 40.3, the term **amount** includes fees, costs, indemnities, charges, duties, penalties, expenses and liquidated or unliquidated damages.

40.4 Limitation on Payment Disputes

- (a) The Concessionaire may refer any dispute in relation to the calculation of an Abatement Amount by the SCSA (**Dispute**) for resolution in accordance with Clause 55 if, and only if:
 - (i) the Dispute is notified within 12 months after the issue of the relevant Payment Notice; and
 - (ii) the Dispute does not arise out of or in connection with the exercise by the SCSA of any discretion in relation to the accumulation of any Penalty Points by the Concessionaire, including as to the number of Penalty Points allocated by the SCSA for KPI Failures (**Excluded Dispute**), provided the SCSA has, in good faith, complied with Clause 3 of Schedule 5.
- (b) If a Dispute is not referred by the Concessionaire for resolution in accordance with Clause 40.4(a)(i) or if a Dispute is an Excluded Dispute, then the Concessionaire:
 - (i) is not entitled to make any Claim in respect of such Dispute or Excluded Dispute; and
 - (ii) releases the SCSA from any Liability in respect of such Dispute or Excluded Dispute.
- (c) If, following resolution of a Dispute under this Clause 40.4, an adjustment is agreed or determined in respect of any previous Services Payment, then that adjustment will be added to or deducted from (as the case may be) the next Services Payment after that agreement is reached or that determination is made (as the case may be).

40.5 No Prejudice

Except to the extent expressly provided otherwise, suspension of any of the Concessionaire's obligations under this Agreement or any other Project Agreement will not limit, prejudice or affect the SCSA's Power under this Agreement or any other Project Agreement to abate, deduct from, reduce, set-off or suspend payment of any amount payable by the SCSA under this Agreement or any other Project Agreement.

41. Escrow Account

41.1 Establishment of Escrow Account

- (a) The SCSA must open the Escrow Account on or prior to the Operations Commencement Date, and must immediately following the opening of the Escrow Account provide the Concessionaire with full particulars of the Escrow Account. The SCSA must establish the Escrow Account so that:

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- (i) the bank or financial institution will provide account statements for the Escrow Account to both the SCSA and the Concessionaire;
 - (ii) the SCSA is the sole signatory to the Escrow Account; and
 - (iii) interest earned on money standing to the credit of the Escrow Account will be deposited into the Escrow Account.
- (b) The Escrow Account must be an interest bearing account with an authorised deposit-taking institution (within the meaning of the *Banking Act 1959* (Cth)) which has a Required Rating or better. The money standing to the credit of the Escrow Account must, unless otherwise agreed by the parties, be on call at 24 hours' notice.

41.2 Money Paid into Escrow Account

The parties acknowledge that money standing to the credit of the Escrow Account is the property of the SCSA. The SCSA may only draw on the Escrow Account in accordance with the terms of this Agreement.

41.3 Concessionaire's Right to Reimbursement

- (a) If the Concessionaire is of the reasonable opinion that the Maintenance Works have been performed in accordance with the requirements of this Agreement (including Clause 11, as applicable to such Maintenance Works) (*Maintenance Works Completion*) then the Concessionaire may give a written notice to that effect to the SCSA (*Maintenance Works Completion Notice*).
- (b) Within 10 Business Days after receipt by the SCSA of a Maintenance Works Completion Notice in relation to Maintenance Works, the SCSA must inspect the applicable Maintenance Works and issue to the Concessionaire a notice stating:
 - (i) whether or not the SCSA is satisfied that the Maintenance Works have achieved Maintenance Works Completion; and
 - (ii) if the SCSA notifies it is not satisfied, the reasons for such opinion.
- (c) If the SCSA's notice under Clause 41.3(b)(i) states it is not satisfied that the applicable Maintenance Works has achieved Maintenance Works Completion, then the Concessionaire must:
 - (i) continue with the performance of the Maintenance Works, having regard to the SCSA's reasons stated in its notice; and
 - (ii) give such further notice required under Clause 41.3(a) as is necessary until the SCSA notifies under Clause 41.3(b) that it is satisfied that the applicable Maintenance Works have achieved Maintenance Works Completion.
- (d) If the SCSA notifies under Clause 41.3(b)(i) that it is satisfied that the applicable Maintenance Works have achieved Maintenance Works Completion, then:
 - (i) the Concessionaire may claim in writing payment of an amount equal to the Adjusted Escrow Amount referable to those Maintenance Works; and

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- (ii) subject to the Concessionaire complying with paragraph (i), the SCSA must pay the Concessionaire that amount by drawing on the Escrow Account. For the avoidance of doubt, the SCSA is not obliged to pay the Concessionaire for any costs incurred for Maintenance Works other than by drawing on the Escrow Account and in any event is obliged to pay only to the extent that there are moneys standing to the credit of the Escrow Account that do not relate to Deduction Amounts or Adjusted Deduction Amounts.
 - (e) The Concessionaire is not required to claim payment of the applicable amount for Maintenance Works in the year in which the applicable Maintenance Works achieve Maintenance Works Completion to the satisfaction of the SCSA.

41.4 SCSA to Access Escrow Account

If at any time during the Operating Phase:

- (a) the SCSA exercises any Step-in Right; or
- (b) a Termination Event occurs,

then from the date of that event until:

- (c) (in respect of the event described in Clause 41.4(a)) the earlier of the end of the Contract Term and the date on which the SCSA ceases to exercise those Step-in Rights; or
- (d) (in respect of the event described in Clause 41.4(b)) the earlier of the end of the Contract Term and the date on which the SCSA notifies the Concessionaire in writing that the SCSA has waived its rights with respect to the Termination Event,

the SCSA may draw on the Escrow Account to pay or reimburse itself for costs, up to the applicable Adjusted Escrow Amounts, incurred by or on behalf of the SCSA during that period in undertaking Maintenance Works.

41.5 Inspection at End of Contract Term

- (a) During the period of 12 months prior to the end of the Contract Term (the **Inspection Period**), the SCSA or its authorised representative will inspect the Interchange Facility and the Site and must give to the Concessionaire a written notice (the **Outstanding Matters Notice**) within 20 Business Days after the end of the Contract Term specifying:
 - (i) details of matters or things which the SCSA considers are required to be remedied, refurbished or rectified to bring:
 - (A) the Interchange Facility to the state and condition, fair wear and tear excepted (other than to the extent this would result in the design life requirements of the Project Brief not being satisfied), which complies with the requirements of the Project Brief (including Clause 19.1 of the Project Brief); and
 - (B) the Site to the state and condition which is no worse than the state and condition it was in as at the Commencement Date;

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- (ii) the amount, if any, which the SCSA considers is required to be spent to remedy, refurbish or rectify the matters or things specified in paragraph (i); and
 - (iii) details of how the amount in paragraph (ii) was calculated.
 - (b) The Concessionaire must within 10 Business Days after receiving the Outstanding Matters Notice notify the SCSA in writing that:
 - (i) it agrees with the amount set out in the Outstanding Matters Notice (the *Agreement Notice*); or
 - (ii) it disagrees with the details and/or the amount set out in the Outstanding Matters Notice, together with details of why the Concessionaire disagrees (the *Disagreement Notice*).
 - (c) If the Concessionaire gives the SCSA the Agreement Notice in accordance with Clause 41.5(b)(i), or fails to give the Disagreement Notice in accordance with Clause 41.5(b)(ii), then:
 - (i) the amount set out in the Outstanding Matters Notice will be a debt due and payable by the Concessionaire to the SCSA; and
 - (ii) without prejudicing any other rights the SCSA may have, the SCSA may draw on the Escrow Account to recover the amount set out in the Outstanding Matters Notice.
 - (d) If the Concessionaire gives the SCSA a Disagreement Notice in accordance with Clause 41.5(b)(ii), the parties will consult in good faith and endeavour to agree on the amount (if any) which is required to be spent to bring:
 - (i) the Interchange Facility to the state and condition, fair wear and tear excepted (other than to the extent this would result in the design life requirements of the Project Brief not being satisfied), which complies with the requirements of the Project Brief (including Clause 19.1 of the Project Brief); and
 - (ii) the Site to the state and condition which is no worse than the state and condition it was in as at the Commencement Date.
 - (e) If the parties, following the consultation in Clause 41.5(d):
 - (i) reach agreement as to the amount, then;
 - (A) the agreed amount will be a debt due and payable by the Concessionaire to the SCSA; and
 - (B) without prejudicing any other rights the SCSA may have, the SCSA may draw on the Escrow Account to recover the agreed amount; or
 - (ii) are unable to reach agreement as to the amount within 10 Business Days after service of the Disagreement Notice, then the matters in dispute will be determined by an independent expert pursuant to Clause 55.2, and:

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- (A) any amount, which the independent expert determines is required to be spent to bring:
- (1) the Interchange Facility to the state and condition, fair wear and tear excepted (other than to the extent this would result in the design life requirements of the Project Brief not being satisfied), which complies with the requirements of the Project Brief (including Clause 19.1 of the Project Brief); or
 - (2) the Site to the state and condition which is no worse than the state and condition it was in as at the Commencement Date,
- will be a debt due and payable by the Concessionaire to the SCSA; and
- (B) without prejudicing any other rights the SCSA may have, the SCSA may draw on the Escrow Account to recover that amount.
- (f) The Concessionaire acknowledges and agrees that the SCSA is under no obligation to apply any monies it receives pursuant to this Clause 41.5 towards the cost of bringing:
- (i) the Interchange Facility to the state and condition which complies with the requirements of the Project Brief (including Clause 19.1 of the Project Brief); or
 - (ii) the Site to the state and condition which is no worse than the state and condition it was in as at the Commencement Date.
- (g) If after:
- (i) the SCSA has recovered the amounts owing under Clause 41.5(c), Clause 41.5(e)(i) or Clause 41.5(e)(ii) (as applicable);
 - (ii) the SCSA has drawn on the Escrow Account, in respect of Maintenance Works which have not achieved Maintenance Works Completion, to recover an amount equal to the aggregate of the Adjusted Escrow Amount deposited into the Escrow Account in respect of those Maintenance Works; and
 - (iii) any set-off or deduction by the SCSA pursuant to Clause 40.3,
- there is any money remaining in the Escrow Account then:
- (iv) following expiry of this Agreement, such money must be paid by the SCSA to the Concessionaire within 10 Business Days after expiry; or
 - (v) on termination of this Agreement, such money will remain the property of the SCSA.
- (h) The SCSA will pay the Reversion Amount within 10 Business Days after:

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- (i) where the SCSA does not give an Outstanding Matters Notice in accordance with Clause 41.5(a), the Inspection Period; or
 - (ii) where the SCSA does give an Outstanding Matters Notice in accordance with Clause 41.5(a), the earlier of:
 - (A) the SCSA receiving the Agreement Notice;
 - (B) the parties reaching agreement pursuant to Clause 41.5(e)(i), or
 - (C) the independent expert's determination pursuant to Clause 41.5(e)(ii).

42. Default

42.1 Notification

If a Default occurs, the SCSA may give the Concessionaire a notice in writing specifying that the Default has occurred and the nature of the Default (the *Default Notice*).

42.2 Default capable of cure

- (a) Upon receipt of a Default Notice, if the Default is capable of being remedied or cured, the Concessionaire must promptly prepare and submit to the SCSA for its approval, a draft plan describing the actions and measures the Concessionaire will diligently pursue for the remedying or curing of the Default (*Draft Cure Plan*). A Draft Cure Plan may include a proposal, at the Concessionaire's cost and expense, to replace the applicable Sub-Contractor performing the obligations of the Concessionaire to which the Default relates with a competent and experienced person acceptable to the SCSA (acting reasonably) within the timeframe notified to the Concessionaire by the SCSA.
- (b) Within 10 Business Days after receipt of a Draft Cure Plan, the SCSA must either:
 - (i) approve the Draft Cure Plan by notifying the Concessionaire; or
 - (ii) reject the Draft Cure Plan by notifying the Concessionaire and providing reasons to the Concessionaire for its rejection.
- (c) If the SCSA approves a Draft Cure Plan pursuant to Clause 42.2(b)(i) (the *Approved Cure Plan*):
 - (i) the Concessionaire must comply with, and diligently pursue the remedy or cure of the Default in accordance with, the Approved Cure Plan; and
 - (ii) the period of time in the Approved Cure Plan to remedy or cure the Default is the cure period (the *Applicable Cure Period*).
- (d) If the Concessionaire complies with Clause 42.2(c), the Default will be deemed to have been remedied or cured.
- (e) If the SCSA rejects a Draft Cure Plan pursuant to Clause 42.2(b)(ii), the Concessionaire, in consultation in good faith with the SCSA, must amend the Draft Cure Plan to meet the requirements of the SCSA and submit the amended Draft

Cure Plan to the SCSA for its approval, in which case this Clause 42.2 will apply to the amended Draft Cure Plan as if it were originally submitted under Clause 42.2(a).

42.3 Default not capable of cure

Upon receipt of a Default Notice, if the Default is not capable of being remedied or cured, the Concessionaire must promptly and diligently comply with the reasonable requirements of the SCSA in relation to the Default.

42.4 Specific Remedies for Major Default

If a Major Default has occurred and a Default Notice has been given under Clause 42.1 in relation to that Major Default and:

- (a) if the Major Default is capable of being remedied or cured, the Concessionaire fails to comply with Clause 42.2; or
- (b) if the Major Default is not capable of being remedied or cured, the Concessionaire fails to comply with Clause 42.3,

the SCSA may exercise all or any of the following rights:

- (c) require the Concessionaire to replace the applicable Sub-Contractor performing the obligations of the Concessionaire to which the Major Default relates with a competent and experienced person acceptable to the SCSA (acting reasonably) within the timeframe notified to the Concessionaire by the SCSA, in which case the replacement of the applicable Sub-Contractor will be at the Concessionaire's cost and expense and:
 - (i) the SCSA is not obliged to increase any payment (including the Core Services Payment) payable by it under this Agreement or any other Project Agreement;
 - (ii) the Concessionaire's obligations under this Agreement or any other Project Agreement are in no way limited or changed;
 - (iii) the Concessionaire will not be relieved of any of its Liabilities under this Agreement or any other Project Agreement; and
 - (iv) the Concessionaire will not be entitled to make any Claim under this Agreement or any other Project Agreement,

as a result of or in connection with the replacement of the applicable Sub-Contractor or the implementation of those temporary measures;

- (d) exercise any rights pursuant to any security held by the SCSA; and
- (e) exercise any Step-in Rights.

42.5 General Remedies

Nothing in Clauses 42.1 to 42.4 prejudices or limits the SCSA from:

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- (a) exercising any other Power provided for or conferred on the SCSA pursuant to this Agreement or any other Project Agreement in relation to an event that is a Default; or
 - (b) suing the Concessionaire in relation to an event that is a Default or exercising any available legal or equitable rights or remedies in relation to an event that is a Default (whether under this Agreement or not).

43. Cure Periods

- (a) If the Concessionaire reasonably determines that it requires an extension to an Applicable Cure Period it may (no later than the expiration of the then Applicable Cure Period) submit in writing to the SCSA:
 - (i) evidence that the Concessionaire has diligently pursued and is continuing to diligently pursue a remedy or cure of the applicable Default in accordance with the applicable Approved Cure Plan but that the Default cannot, despite such diligence, be remedied or cured within the Applicable Cure Period; and
 - (ii) the period of time proposed by the Concessionaire to be the extended Applicable Cure Period for the applicable Approved Cure Plan.
- (b) The SCSA will not unreasonably refuse to grant an extension of the Applicable Cure Period for the applicable Approved Cure Plan if the Concessionaire satisfies the requirements of Clause 43(a).
- (c) If the SCSA grants an extension of the Applicable Cure Period in accordance with Clause 43(b), the Concessionaire must comply with the applicable Approved Cure Plan within that extended Applicable Cure Period.
- (d) The Concessionaire may only apply once for an extension of the Applicable Cure Period in respect of a particular Default, unless the SCSA otherwise agrees in writing in the SCSA's absolute discretion.

44. Termination

44.1 No Other Right to Terminate

Despite any rule of law or equity to the contrary, this Agreement may not be terminated other than in accordance with Clause 44.2 or Clause 44.5.

44.2 Termination by the SCSA Following a Termination Event

- (a) The SCSA:
 - (i) may elect to terminate this Agreement:
 - (A) following the occurrence of a Termination Event; or
 - (B) in accordance with:
 - (1) Clause 53.3(g)(ii); or

(2) Clause 53.3(g)(iii);

(ii) must terminate this Agreement in accordance with Clause 53.3(f)(iii),

in each case by notice (a *Termination Notice*) to the Concessionaire. This Agreement will terminate on the date specified in the Termination Notice (the *Termination Date*), which date must be not more than 30 Business Days after the date of the Termination Notice.

(b) This right of termination is without prejudice to and does not limit any other right of the SCSA under this Agreement (including under Clause 42, Clause 44.5 or Clause 45) or under any other Project Agreement in relation to an event that is a Default and is without prejudice to and does not limit the right of the SCSA to sue the Concessionaire for compensation for, or to exercise any other legal or equitable rights or remedies available to the SCSA in respect of, an event that is a Termination Event or an event giving rise to termination in accordance with Clause 44.2(a)(i)(B) or Clause 44.2(a)(ii).

(c) Subject to Clause 44.2(d), Clause 44.2(e), Clause 44.2(f), Clause 44.2(g) and Clause 44.2(i), within 30 Business Days after the later of:

(i) the Termination Date; and

(ii) the date (which subject to the proviso in this Clause 44.2(c) below must be not more than 3 months after the date of the Termination Notice) by which both:

(A) the matters referred to in item A of Schedule 2 are determined; and

(B) the matters referred to in items B and C of Schedule 2 are agreed between the SCSA and the Concessionaire or, failing agreement between the SCSA and the Concessionaire on any of those matters in respect of that matter or those matters, determined by an independent expert under Clause 55.2,

the SCSA must pay the Termination Payment to the Concessionaire provided that if there is a dispute between the parties with respect to any of the matters referred to in paragraph (B), the parties must refer that dispute to the independent expert who will be requested by the parties to make a determination within 20 Business Days after the date of the referral. If a dispute is so referred the SCSA will be required to pay the Termination Payment within 10 Business Days after notice of the independent expert's determination is given by the independent expert to the SCSA and the Concessionaire.

(d) If a Termination Event of the type described in:

(i) paragraph (a) of the definition of Termination Event; or

(ii) paragraph (i) of the definition of Termination Event;

occurs and as a result the SCSA elects to terminate this Agreement in accordance with Clause 44.2(a), the SCSA is not required to pay the Termination Payment to the Concessionaire.

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- (e) If the SCSA elects to terminate this Agreement in accordance with Clause 44.2(a)(i)(B)(1), the SCSA is not required to pay the Termination Payment to the Concessionaire but must pay the Concessionaire the Reinstatement Payment in accordance with Clause 53.3(g)(ii).
- (f) If the SCSA elects to terminate this Agreement in accordance with Clause 44.2(a)(i)(B)(2), the SCSA is not required to pay the Termination Payment to the Concessionaire but must pay the Concessionaire the Terrorism Reinstatement Payment in accordance with Clause 53.3(g)(iii).
- (g) If the SCSA terminates this Agreement in accordance with Clause 44.2(a)(ii), the SCSA is not required to pay the Termination Payment to the Concessionaire but must pay the Concessionaire the Outstanding Debt in accordance with Clause 53.3(f)(iii).
- (h) Nothing in this Clause 44.2 limits or affects the operation of Clauses 44.1, 44.3 or 44.4.
- (i) If this Agreement is terminated in accordance with Clause 44.2(a)(i)(A) as a result of a breach or default by the Concessionaire which was not caused or substantially caused by a breach or default by the Construction Contractor under the Construction Agreement and the Termination Payment is payable by the SCSA to the Concessionaire, the Concessionaire irrevocably directs the SCSA to pay and the SCSA must pay direct to the Construction Contractor such amount of the Termination Payment as is equal to the sum of the following amounts:
- (i) amounts which were certified for payment by the Concessionaire to the Construction Contractor under the Construction Agreement prior to the Termination Date and which at the date of payment of the Termination Payment remain unpaid; and
 - (ii) amounts representing the fair and reasonable contract value of the work performed by the Construction Contractor under the Construction Agreement which at the date of payment of the Termination Payment have not been claimed by the Construction Contractor or certified for payment by the Concessionaire to the Construction Contractor under the Construction Agreement and that, but for the early termination of this Agreement, would have been claimed and certified and become due for payment by the Concessionaire to the Construction Contractor under the Construction Agreement prior to the Termination Date,
- and to pay the remainder of the Termination Payment (if any) to the Concessionaire in accordance with Clause 44.2(c).
- (j) The Concessionaire acknowledges and agrees that :
- (i) payment by the SCSA of any Termination Payment in accordance with Clause 44.2(i) constitutes full and final satisfaction of the SCSA's obligations to pay the Termination Payment to the Concessionaire under this Agreement; and
 - (ii) if the amount payable to the Construction Contractor under Clause 44.2(i) is greater than the amount of the Termination Payment, then the SCSA has no obligation to pay any amount greater than the amount of the

Termination Payment (the *Excess Amount*) to the Construction Contractor or the Concessionaire,

and the Concessionaire releases, to the maximum extent permitted by Law, the SCSA and its Associates from all Claims and Liabilities in relation to the Excess Amount.

44.3 Consequences of Termination

Upon termination of this Agreement, the rights and obligations of the parties under this Agreement will cease except for:

- (a) any accrued rights or obligation under this Agreement;
- (b) any rights or obligations which are expressed to continue after termination of this Agreement; and
- (c) as applicable, the rights and obligations of the parties under Clause 49 and Clause 56.

44.4 Waiver

If this Agreement is lawfully terminated by the SCSA, the Concessionaire waives any right it might otherwise have to pursue a claim of restitution of any kind including a claim of unjust enrichment or quantum meruit.

44.5 SCSA's Termination Option

- (a) If the SCSA elects to terminate this Agreement pursuant to Clause 29(g)(ii), the SCSA must notify the Concessionaire of the date on which this Agreement will terminate (which must not be less than 10 Business Days or more than 30 Business Days after the date of the notice) (the *Termination Date*) and this Agreement terminates on the Termination Date. Within 10 Business Days after the later of the Termination Date and the date on which the amount of the Modification Payment is agreed by the SCSA and the Concessionaire or, failing agreement, is determined by resolution by an independent expert under Clause 55.2, the SCSA must pay to the Concessionaire the Modification Payment.
- (b) Nothing in this Clause 44.5 limits or affects the operation of Clauses 44.1 to 44.4 (each inclusive) or obliges the SCSA to pay any amount to the Concessionaire if this Agreement is terminated other than in accordance with this Clause 44.5.

45. Step-in

- (a) If:
 - (i) a Termination Event (other than a Termination Event of the type described in paragraph (c), (d) or (g) of the definition of Termination Event) occurs; or
 - (ii) the SCSA reasonably forms the opinion that unless the SCSA exercises some or all of its rights under this Clause 45, there is or is likely to be a material risk to the environment, a material risk to the health or safety of

users of the Interchange Facility or other members of the general public, or a material risk of material damage to the Interchange Facility,

the SCSA may elect, and if it so elects the Concessionaire will assist the SCSA wherever and however possible to ensure that the SCSA is able, to:

- (iii) temporarily take or assume total or partial possession, management and control of the Interchange Facility and the provision of the Services; and
- (iv) take such other steps as in the reasonable opinion of the SCSA are necessary or desirable to continue the provision of the Services as required by this Agreement or to minimise the risk to the environment, to users of the Interchange Facility, to other members of the general public or of material damage to the Interchange Facility, as applicable,

each a *Step-in Right*.

- (b) When exercising its Step-in Rights, the SCSA will use all reasonable endeavours to operate the Interchange Facility in a manner which is consistent with the operation of the Interchange Facility and with the provision of the Services as required by this Agreement.
- (c) The SCSA may exercise its Step-in Rights without prior notice to the Concessionaire but the SCSA will if reasonably practical to do so give prior notice to the Concessionaire and in any event will, as soon as practical, provide notice to the Concessionaire that it is exercising its Step-in Rights.
- (d) Subject to Clause 45(da), upon the SCSA exercising its Step-in Rights, the Concessionaire's rights under this Agreement are suspended to the extent necessary to permit the SCSA to exercise those Step-in Rights.
- (da) During any period in which the SCSA is exercising a Step-in Right as a result of an event of the type described in paragraph (ii) of Clause 45(a) (other than to the extent that a Termination Event or a Default has resulted in the exercise of a Step-in Right of the type described in paragraph (ii) of Clause 45(a), in which case Clause 45(db) will apply), the Adjusted Core Services Payment will continue to be paid to the Concessionaire in accordance with this Agreement but may be reduced by an amount reasonably determined by the SCSA representing the operating costs or other costs that will not be or reasonably need not be incurred by the Concessionaire as a result of the exercise of that Step-in Right.
- (db) If a Termination Event or a Default has resulted in the exercise of a Step-in Right under either paragraph (i) or paragraph (ii) of Clause 45(a), the Adjusted Core Services Payment, less any Abatement Amounts applicable to the relevant Termination Event or Default, will continue to be paid to the Concessionaire in accordance with this Agreement but may be reduced by an amount reasonably determined by the SCSA representing the operating costs or other costs that will not be or reasonably need not be incurred by the Concessionaire as a result of the exercise of that Step-in Right (but excluding any such costs directly referable to the relevant Termination Event or Default or in respect of which an Abatement Amount is being applied by the SCSA).
- (e) The Concessionaire:

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- (i) irrevocably appoints the SCSA, and such persons as are from time to time nominated by the SCSA, jointly and severally as its attorney with full power and authority to exercise its Step-in Rights; and
 - (ii) agrees to ratify and confirm whatever action an attorney appointed under Clause 45(e)(i) takes in accordance with that Clause.
 - (f) If the SCSA has exercised its Step-in Rights, the SCSA may cease to exercise those Step-in Rights at any time and in any event will cease to exercise those Step-in Rights as soon as:
 - (i) if the SCSA has exercised its Step-in Rights pursuant to Clause 45(a)(i), the applicable Major Default or Termination Event is cured or remedied or the SCSA ceases to pursue a cure or remedy of the relevant Major Default or Termination Event; or
 - (ii) if the SCSA has exercised its Step-in Rights pursuant to Clause 45(a)(ii), the relevant material risk is averted or overcome or, where it has materialised, its consequences have been mitigated or otherwise dealt with to the SCSA's reasonable satisfaction.
 - (g) The SCSA may elect to cease to exercise its Step-in Rights without prior notice to the Concessionaire but the SCSA will if reasonably practical to do so give prior notice to the Concessionaire and in any event will, as soon as practical, provide notice to the Concessionaire that the SCSA has ceased to exercise its Step-in Rights.
 - (h) The Concessionaire acknowledges and agrees that:
 - (i) the SCSA will not have any Liability to the Concessionaire, and the Concessionaire will not be entitled to make any Claim, arising out of or in connection with the exercise of Step-in Rights by the SCSA unless the SCSA acts negligently or in bad faith in the exercise of those rights; and
 - (ii) the SCSA is not obliged to remedy or cure any Major Default or Termination Event to overcome or mitigate any risk or risk consequences in respect of which the SCSA exercises Step-in Rights.
 - (i) Upon the SCSA ceasing to exercise any Step-in Rights pursuant to Clause 45(f):
 - (i) the Concessionaire must immediately recommence performance of the Concessionaire's obligations which were suspended pursuant to Clause 45(d); and
 - (ii) the SCSA will, at the cost and expense of the Concessionaire, give reasonable assistance to the Concessionaire to ensure that the process of the SCSA ceasing to exercise Step-in Rights and the Concessionaire recommencing to perform its obligations is effected as smoothly as possible.
 - (j) The Concessionaire releases, to the maximum extent permitted by Law, the SCSA and its Associates from all Claims and Liabilities in relation to the exercise of any Step-in Rights in accordance with this Clause 45.
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46. Force Majeure

46.1 Notification

- (a) If the Concessionaire becomes aware of any matter likely to constitute a Force Majeure Event, the Concessionaire must immediately give notice of that matter and all relevant particulars to the SCSA.
- (b) Within 5 Business Days after the occurrence of a Force Majeure Event, the Concessionaire must give to the SCSA notice containing full particulars of the Force Majeure Event including its nature and likely duration, the non-financial obligations affected by it and the nature, extent and likely duration of its effect on the Concessionaire's ability to perform those obligations (*Suspension Notice*).
- (c) Following the issue of a Suspension Notice, the Concessionaire must keep the SCSA informed at reasonable intervals, and upon the request of the SCSA, of:
 - (i) the likely duration of the applicable Force Majeure Event and of its effect on the Concessionaire's ability to perform its non-financial obligations under this Agreement;
 - (ii) the actions taken or the actions proposed to be taken by the Concessionaire to mitigate or minimise the effects of that Force Majeure Event; and
 - (iii) any other matter relevant to that Force Majeure Event or the Concessionaire's obligations affected by that Force Majeure Event.

46.2 Suspension of Obligations

- (a) Subject to Clause 46.2(b), to the extent that it is prevented or delayed by a Force Majeure Event, the Concessionaire's performance of its non-financial obligations under this Agreement will, subject to Clause 46.3, be suspended to that extent from the date the Concessionaire gives a Suspension Notice in respect of that Force Majeure Event until the Concessionaire ceases to be so prevented or delayed (*Cessation Date*).
- (b) In the case of subclauses (e), (f) and/or (g) of the definition of Force Majeure Event (subject to compliance with Clause 46.3 and subsequent compliance with Clause 46.1(c)):
 - (i) the Concessionaire must give a notice as soon as reasonably practicable after occurrence of the Force Majeure Event of that matter and all relevant particulars to the SCSA; and
 - (ii) to the extent that it is prevented or delayed by such a Force Majeure Event, the Concessionaire's performance of its non-financial obligations under this Agreement will be suspended to that extent from the time of occurrence of the Force Majeure Event until the Cessation Date.

46.3 Temporary Measures and Alternative Arrangements

During the suspension of any obligation under Clause 46.2:

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- (a) the Concessionaire must use its best endeavours (including incurring any reasonable expenditure of funds and rescheduling of manpower and resources) to remove or mitigate the preventing or delaying effect of each Force Majeure Event on the Concessionaire's performance of the applicable non-financial obligations under this Agreement; and
 - (b) the SCSA may make alternative arrangements for the performance of any suspended non-financial obligation, whether by another person or otherwise, without incurring any Liability to the Concessionaire.

46.4 Notice of Cessation of Force Majeure

The Concessionaire must give immediate notice to the SCSA of the Cessation Date and must immediately after the Cessation Date resume performance of the applicable non-financial obligations suspended as a result of the particular Force Majeure Event.

46.5 Adjustment of Core Services Payments

During the periods the Concessionaire's performance of the applicable non-financial obligations are suspended under Clause 46.2, the Adjusted Core Services Payments may be reduced by an amount reasonably determined by the SCSA representing the operating costs or other costs that will not be incurred by the Concessionaire as a result of the Force Majeure Event.

47. Restrictions on Concessionaire

47.1 Restrictions on Business

The Concessionaire must not, without the prior written consent of the SCSA, which may be given on conditions or withheld in the discretion of the SCSA, conduct any business other than implementation of the Project (including the conduct of the Concessionaire's Business).

47.2 Corporate Structure of Concessionaire

- (a) The Concessionaire must not, without the prior written consent of the SCSA:
 - (i) subject to Clause 47.2(c), permit a Change in Ownership;
 - (ii) amend, or permit to be amended, the Trust Deed or its constitution or other constituent documents; or
 - (iii) resign as Trustee or cause or permit any other person to become a substitute or replacement, or an additional, Trustee.
- (b) The Concessionaire must give the SCSA reasonable prior notice of a proposed Change in Ownership for which the consent of the SCSA is sought in accordance with paragraph (a). That notice must include full details of the proposed Change in Ownership including the acquisition of *voting power*, the change in *control* or any other event which will constitute the Change in Ownership (the *Concessionaire's Notice*).
- (c) If shares or other equity interests (including shares or units) in an entity with ultimate control of the Trust are quoted on a prescribed financial market and a

Change in Ownership occurs due to the transfer of such shares or interests on that market:

- (i) promptly after the Concessionaire becomes aware of the Change in Ownership, the Concessionaire must notify the SCSA, providing full details of the Change in Ownership including the acquisition of voting power, the change in control or any other event which has constituted the Change in Ownership (the *Concessionaire's Notice*);
 - (ii) the provisions of Clauses 47.2(d) and 47.2(e) will apply (but ignoring references to "proposed" Change in Ownership);
 - (iii) if the SCSA rejects the Change in Ownership in accordance with Clause 47.2(e), the Concessionaire (without causing there to be any other Change in Ownership as a result other than a Permitted Change in Ownership or a Change in Ownership in relation to which the Concessionaire has obtained the SCSA's prior written consent) will procure that the relevant person or persons cease to have the voting power or control or to hold the share capital or other equity interests which gave rise to that Change in Ownership within 90 days after the date on which the SCSA gives notice of its refusal to give consent to the Change in Ownership; and
 - (iv) the Change in Ownership occurring due to that transfer of shares or interests will only be a Change in Ownership for the purposes of paragraph (d) of the definition of Termination Event if the Concessionaire fails to comply with paragraph (iii).
- (d) Within 10 Business Days after the later of receipt by the SCSA of the Concessionaire's Notice and receipt by the SCSA of such further information about the proposed Change in Ownership as the SCSA reasonably requests within that 10 Business Days, the SCSA must consent or not consent to the proposed Change in Ownership, by notice to the Concessionaire.
- (e) The SCSA may only reject a proposed Change in Ownership the subject of a Concessionaire's Notice if:
- (i) the SCSA is of the reasonable opinion that:
 - (A) a person or persons acquiring or holding the voting power, the control or the share capital or other equity interests that constitutes or gives rise to the proposed Change in Ownership:
 - (1) is or are not solvent and reputable; or
 - (2) has or have an interest or duty which conflicts or may conflict in a material way with the interests of the SCSA or the State,
 - (B) the proposed Change in Ownership is against the public interest; or
 - (C) the proposed Change in Ownership would impact adversely on the ability or capacity of the Concessionaire to perform its obligations under any of the Project Agreements or the Access Agreements or

on the ability or capacity of the Operator to perform its obligations under any of the Access Agreements; or

- (ii) the Concessionaire's Notice does not comply with Clause 47.2(b) or 47.2(c) (as applicable) or the Concessionaire does not provide the further information reasonably requested by the SCSA in accordance with Clause 47.2(d).

47.3 No Amendments to Certain Documents

- (a) The Concessionaire must not, and must procure that the Operator does not, vary, amend, rescind or terminate any of the Project Agreements or the Access Agreements without the prior written consent of the SCSA.
- (b) The Concessionaire must not:
 - (i) make or permit any material variation or amendment to be made to; or
 - (ii) rescind or terminate,any of the Financing Agreements without the prior written consent of the SCSA.

47.4 VIPP Statement

- (a) The Concessionaire acknowledges and agrees that the information contained in the VIPP Statement may be provided to the responsible Government Agency of the State to be included in the register of VIPP performance and that such information may be made available to other Government Agencies of the State to be used in assessing other tender proposals for VIPP purposes.
- (b) The SCSA will monitor the Concessionaire's performance in accordance with any monitoring provisions in the VIPP Statement and measured against the VIPP outcomes set out in the VIPP Statement. The Concessionaire must allow the SCSA to have access to, and to obtain information in respect of, the Concessionaire's records from the Concessionaire's officers, employees, consultants and advisers for this purpose. The Concessionaire authorises the SCSA to obtain information from the persons, firms or corporations nominated in the VIPP Statement as to compliance with the VIPP Statement.
- (c) The SCSA will exercise its reasonable discretion in assessing the Concessionaire's performance under this Clause 47.4 and will take into account any issue raised by the Concessionaire which fairly represents a cause of failure to comply which is beyond the Concessionaire's reasonable control.

47.5 Restrictions on Assignment

Other than the granting of a Permitted Security Interest, the Concessionaire must not, and must procure that the Operator does not:

- (a) create or allow to exist any Security Interest over; or
- (b) assign, transfer, dispose of, part with possession of, create or allow any interest in, or otherwise deal with,

(in each case a *Disposal*), any of its rights or obligations under this Agreement, any other Project Agreement or any Access Agreement (as the case may be) without the prior written consent of the SCSA which may be given, given on conditions or withheld, in the discretion of the SCSA. However, in exercising its discretion in respect of any proposed assignment or transfer, the SCSA must not unreasonably withhold consent if the SCSA is satisfied that:

- (i) the proposed assignee or transferee has the financial capability to perform the relevant obligations of the Concessionaire or the Operator (as applicable) under the Project Agreements and the Access Agreements (as applicable) (the *relevant obligations*);
- (ii) where the proposed assignment or transfer relates to all of the Concessionaire's or the Operator's rights and obligations:
 - (A) the proposed assignee or transferee has the technical expertise, resources and abilities which are necessary for it to perform effectively the relevant obligations; and
 - (B) the direct or indirect consequences of the proposed assignment or transfer, if effected, would not and will not materially or adversely affect the SCSA's rights, or the SCSA's ability or capacity to exercise its rights, under any of the Project Agreements or the Interim Access Agreements; and
- (iii) where the proposed assignment or transfer relates to any part of the Concessionaire's or the Operator's rights and obligations:
 - (A) the proposed assignee or transferee and the Concessionaire or the Operator (as applicable) have the technical expertise, resources and abilities (assessed, in the case of the Concessionaire or the Operator (as applicable), on the basis that the proposed assignment or transfer has been effected) which are necessary to perform effectively their respective obligations under the Project Agreements and the Access Agreements; and
 - (B) the direct or indirect consequences of the proposed assignment or transfer would not and will not materially or adversely affect:
 - (1) the SCSA's rights, or the SCSA's ability or capacity to exercise its rights, under any of the Project Agreements or the Interim Access Agreements; or
 - (2) the ability or capacity of the Concessionaire or the Operator to fulfil its obligations under the Project Agreements and the Access Agreements;
- (iv) the proposed assignee or transferee enters into such deeds or other agreements as are reasonably required by the SCSA to ensure that the applicable obligations of the Concessionaire and the Operator under the Project Agreements and the Access Agreements are assumed by the proposed assignee or transferee for the benefit of all other parties to those Agreements; and

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- (v) the proposed assignee or transferee obtains all necessary Approvals in order to perform the applicable obligations under the Project Agreements and the Access Agreements.

47.6 Restrictions on Sale or Lease

Other than the granting of a Permitted Security Interest or in accordance with Clause 25.5 or Clause 47.7, the Concessionaire must not:

- (a) create or allow to exist any Security Interest over; or
- (b) lease, sub-lease, licence, transfer, sell, dispose of, part with possession of, create or allow any interest in, or otherwise deal with,

the whole or any part of the Licensed Area, the Lease Land or the Interchange Facility or any facilities or improvements on, in or to the Licensed Area, Lease Land or the Interchange Facility without the prior written approval of the SCSA.

47.7 Retail during Construction

- (a) At any time prior to the Financial Completion, the Concessionaire may grant a sub-licence over any part of the Licensed Area (other than an area which is the subject of an existing lease or licence from the SCSA or in respect of which a person is holding over pursuant to such lease or licence) for the purpose of a Retail Business being conducted on that part of the Licensed Area, on the same terms and conditions as a sub-lease under Clause 25.5(a) except that the term of the sub-licence must expire on the earlier of the termination of this Agreement and the Financial Completion (but in the case of a sub-licence expiring on that date, this does not prevent the Concessionaire from then granting a sub-lease under Clause 25.5).
- (b) The SCSA grants a licence to the Concessionaire (separate from the licence in Clause 9.1) for the purpose of the Concessionaire granting sub-licences under Clause 47.7(a). That licence is granted subject to Clause 9.1(a)(vi) and Clause 25.5(a).
- (c) The Concessionaire will be entitled to retain any payment made by a sub- licensee under a sub-licence referred to in this Clause 47.7.

47.8 Concessionaire to Obtain Finance

The Concessionaire will be solely responsible for obtaining and maintaining all finance, both debt and equity, for the Interchange Facility Works and the Interchange Facility.

48. Other Access and Accommodation

48.1 Other Access and Accommodation Generally

- (a) Without limiting Clause 9.1(a)(vi) or Clause 26.1(d), the Concessionaire must:
 - (i) co-operate with; and
 - (ii) give reasonable access, and ensure that the Operator gives reasonable access as required under the Access Agreements and pursuant to the

Interim Access Agreements in the Transitional Period, at all times to the Site and Interchange Facility to,

the following parties for their respective purposes:

- (A) any Train Operator, (including a Train Operator that is also a Transport Operator) or any Coach Operator that is also a Transport Operator (except Coach Operator the subject of Clause 48.1(c)(B)(1) and 48.1(c)(B)(2) or any Government Agency to enable them to provide public transport services, such access to be provided by the Concessionaire:
 - (1) for an access charge to be agreed between the SCSA and the Concessionaire from time to time based on the market rates for such access; or
 - (2) in default of such agreement, for a nominal access charge of no more than *[text deleted]* (over the entire term of that Access Agreement);
 - (B) subject to the terms of the Facility Lease, the SCSA, any Government Agency, any Transport Operator and any other person to enable them to carry out any necessary inspection of or maintenance works to roadways, equipment, plant and structures situated on, below, above or adjacent to the Interchange Facility;
 - (C) OneLink, the RCH, a Successor Ticketing Operator, their authorised representatives and any person claiming through them to enable them to design, deliver, install, test, commission, operate, manage, maintain, market and promote the OneLink AFC System and any other reasonably necessary act arising out of or in connection with the OneLink AFC System; and
 - (D) subject to the terms of the Facility Lease, VicTrack and its authorised representatives to enable them to construct, operate and maintain the equipment and infrastructure referred to in Clause 25.7(a).
- (aa) The Concessionaire must do all that is requested by the SCSA (acting reasonably) to:
- (i) ensure that all Interim Access Agreements shall be varied to provide, or in the case of GSR, if yet to be entered into shall provide, that they will not terminate on a day immediately prior to the commencement of the Facility Lease, but will continue in full force and effect until termination on the later of the date(s) when Accreditation as required by Clause 7.1(a) and (b) is obtained;
 - (ii) ensure that all Access Agreements shall be varied to provide, or in the case of CountryLink and GSR, if yet to be entered into shall provide, that they will not commence on the date on which the Facility Lease commences but will commence on the later of the date(s) when Accreditation as required by Clause 7.1(a) and (b) is obtained;

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- (iii) in the Transitional Period, at its own cost and expense, liaise, co-operate and use its best endeavours to ensure that each Access Agreement is in full force and effect as at the later of the date(s) when Accreditation as required by Clause 7.1(a) and (b) is obtained.
- (b) If at any time the SCSA believes it is necessary or desirable to do so to enable a New Franchise Operator or Successor Franchise Operator to conduct its business and operations:
- (i) the SCSA may prepare an access agreement between the Operator and the New Franchise Operator or the Successor Franchise Operator (as the case may be) pursuant to which the Operator grants access to the Interchange Facility to the New Franchise Operator or the Successor Franchise Operator (as the case may be). The draft access arrangement must be:
- (A) in the form of the Access Agreement most applicable to the services provided by the New Franchise Operator or the Successor Franchise Operator (as determined by the SCSA) and on terms and conditions substantially the same as, and which the SCSA considers, in its discretion, are not less favourable to the New Franchise Operator or Successor Franchise Operator than, the Access Agreement on which it is based; and
- (B) make provision for access to be provided by the Operator to the New Franchise Operator or the Successor Franchise Operator (as the case may be):
- (1) for an access charge to be agreed between the SCSA and the Concessionaire from time to time based on the market rates for such access; or
- (2) in default of such agreement, for a nominal access charge of no more than *[text deleted]* (over the term of that Access Agreement); and
- (C) the Concessionaire must on the request of the SCSA ensure that the Operator enters into the access agreement prepared by the SCSA pursuant to paragraph (i) with the New Franchise Operator or Successor Franchise Operator (as the case may be).
- (bb) The Concessionaire acknowledges that as at the Commencement Date CountryLink and GSR have not signed the Access Agreements referred to in paragraphs (c) and (d) of the definition of Access Agreement and the Concessionaire agrees to comply with Clause 48.1(b) as if CountryLink and GSR were each a New Franchise Operator for the purposes of that Clause.
- (c) If at any time the SCSA believes it is necessary or desirable to do so to enable a Coach Operator that is not a Coach Operator for the purposes of the Clause 48.1(a)(A) to conduct its business and operations:
- (i) the SCSA may prepare an access agreement between the Operator and the Coach Operator pursuant to which the Operator grants access to the Interchange Facility to the Coach Operator. The draft access agreement must:

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- (A) be in the form of the Access Agreement most applicable to the services provided by the Coach Operator (as determined by the SCSA) and on terms and conditions substantially the same as and which the SCSA considers, in its discretion, are not less favourable to the Coach Operator than, the Access Agreement on which it is based;
- (AA) in the case of a Coach Operator which operates a coach service from the CAD to Tullamarine Airport and a Coach Operator which operates a coach service from the CAD to Avalon Airport, not to exceed the term of that Coach Operator's Service Contract; and
- (B) provide that the Operator may levy an access charge on the Coach Operator for access pursuant to the applicable access agreement, which charge will not exceed:
- (1) in the case of a Coach Operator which operates a coach service from the CAD to Tullamarine Airport for the term of the Service Contract with that Coach Operator existing as at the GSA Effective Date an amount of *[text deleted]* per annum for bus movements and after the term of the Service Contract with that Coach Operator existing as at the GSA Effective Date, the amount agreed between the Concessionaire and the SCSA based on market rates, or in default of such agreement, the amount of *[text deleted]* (Indexed) per bus movement (provided that, after the expiry of the term of the Service Contract with that Coach Operator existing as at the GSA Effective Date, nothing in this Clause prevents the Concessionaire from agreeing with the Coach Operator to charge the Coach Operator charges for accommodation, long-term parking or other services provided);
 - (2) In the case of a Coach Operator which operates a coach service from the CAD to Avalon Airport and for the term of the Service Contract with that Coach Operator existing as at the GSA Effective Date an amount of *[text deleted]* per bus movement and after the term of the Service Contract with that Coach Operator existing as at the GSA Effective Date, the amount agreed between the Concessionaire and the SCSA based on market rates, or in default of such agreement, the amount of *[text deleted]* (Indexed) per bus movement (provided that nothing in this Clause prevents the Concessionaire from agreeing with the Coach Operator to charge the Coach Operator charges for accommodation, long-term parking or other services provided).
 - (3) in the case of any other Coach Operator that is not a Transport Operator:

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- the amount agreed between the Concessionaire and the SCSA from time to time based on market rates; or
 - in default of such agreement, for an amount of *[text deleted]* (Indexed) per bus movement,

together with any other amount to be agreed between that Coach Operator and the Concessionaire for access (other than in respect of a bus movement), accommodation, long term parking or other service provision;

- (ii) the Concessionaire must on the request of the SCSA ensure that the Operator enters into the access agreement prepared by the SCSA pursuant to paragraph (i) with the Coach Operator; and
 - (iii) if requested to do so by the SCSA (acting reasonably), the Concessionaire must permit, or must ensure that the Operator permits, a Coach Operator to have access to the Interchange Facility on terms pursuant to Clause 48.1(a)(A), 48.1(c)(B)(1), 48.1(c)(B)(2), 48.1(c)(B)(3), whichever is applicable and otherwise on the terms and conditions of the Access Agreement referred to in paragraph (i)(A) to the extent necessary to operate its passenger transport services pending the drafting and execution of the access agreement for that Coach Operator in accordance with this Clause 48.1(c).
- (d) In respect of access granted to Coach Operators to bus bays at the Interchange Facility, the Concessionaire may grant exclusive access (to one or more Coach Operators) to such bus bays available at the Interchange Facility from time to time, other than in respect of those bus bays designated for use by Transport Operators, provided that any such Access Agreements, unless otherwise agreed between the SCSA and the Concessionaire, provide that they may be terminated unilaterally by the Concessionaire upon the Concessionaire giving 6 months' notice to the Coach Operator after the SCSA makes a request to the Concessionaire for access to the relevant bus bay or bus bays for use by a Transport Operator.
 - (e) Except as otherwise expressly provided, the Concessionaire must provide, or must ensure that the Operator provides, access to the whole or any part of the Interchange Facility Works, the Interchange Facility or the Site (as the case may be) to any person nominated by the SCSA free of any charge or payment, where such access is provided under or in connection with this Agreement or any other Project Agreement.

48.2 Accommodation of Other Services Within the Interchange Facility

- (a) The Concessionaire must make available to the SCSA within the Interchange Facility, at locations agreed between the SCSA and the Concessionaire, the accommodation and related facilities described in Schedule 10.
- (b) The accommodation and related facilities to be made available by the Concessionaire pursuant to Clause 48.2(a) must be provided on the following terms

and conditions (or on such other terms and conditions as the SCSA and the Concessionaire from time to time agree):

- (i) the SCSA will not be required to pay any rent or other amount for the occupation or use of the relevant area;
- (ii) unless the applicable accommodation is identified in Schedule 10 as one of shared usage, the SCSA must pay or procure payment of all charges for the provision of Utility Services to the applicable area; and
- (iii) if the applicable accommodation is identified in Schedule 10 as one of shared usage, the Concessionaire must pay all charges for the provision of Utility Services to the applicable area.

48.3 Accommodation of Metrol

- (a) The Concessionaire acknowledges and agrees that the Metrol Train Management Facility will be relocated to an area within the Interchange Facility.
- (b) The Concessionaire must provide an area within the Interchange Facility, at a location agreed between the SCSA and the Concessionaire, to accommodate the Metrol Train Management Facility which satisfies the Metrol Facility Requirements (the *Designated Metrol Area*).
- (c) The Concessionaire may use and occupy the Designated Metrol Area until such time as the Concessionaire is requested by the SCSA to vacate that area in accordance with Clause 48.3(d).
- (d) The SCSA must give the Concessionaire not less than 12 months' prior written notice of the proposed date for the relocation of the Metrol Train Management Facility (the *Metrol Relocation Date*) to the Designated Metrol Area. The Concessionaire must ensure vacant possession of the Designated Metrol Area is available to the SCSA at least 9 months prior to the relocation of the Metrol Train Management Facility to the Designated Metrol Area.
- (e) Connex will operate the Metrol Train Management Facility and, as agreed between Connex and the Concessionaire (or, failing such agreement, as determined by an independent valuer nominated by the SCSA and appointed jointly by the SCSA, Connex and the Concessionaire) will pay the Concessionaire rental at a market rate for its occupation of the Designated Metrol Area.

49. Handover

- (a) The Concessionaire must grant a licence to any person nominated by the SCSA and take such other action and provide such other assistance as is reasonably required by the SCSA to ensure, to the extent reasonably required for the provision of the Services, an effective handover of the Interchange Facility to any Successor Operator.
- (b) The Concessionaire must operate and maintain the Interchange Facility in a way that enables any Successor Operator at any time to take over immediately the Interchange Facility as a going concern.

50. Change in Law

50.1 Change in Law Generally

Subject to Clause 50.2, the Concessionaire will bear the cost and expense of complying with any Change in Law, and any Change in Law or compliance with any Change in Law by the Concessionaire does not:

- (a) entitle the Concessionaire to make any Claim;
- (b) in any way limit or change the Concessionaire's obligations; or
- (c) relieve the Concessionaire of any Liabilities,

under or in connection with this Agreement or any other Project Agreement.

50.2 Excluded Change in Law

- (a) If the Concessionaire or the SCSA reasonably considers there has been an Excluded Change in Law, either of them may inform the other in writing of its opinion (an *Excluded Change in Law Notice*). If the Concessionaire gives that notice it must also set out in that notice:
 - (i) the effect of that Excluded Change in Law on:
 - (A) the design, construction or commissioning of the Interchange Facility Works;
 - (B) the operation or maintenance of the Interchange Facility;
 - (C) the provision of the Services;
 - (D) the performance of any of the Concessionaire's other obligations under any of the Project Agreements; and
 - (E) if applicable, the time and cost consequences, including any changes to the Scheduled Date for Practical Completion of the Principal Works, the Scheduled Date for Practical Completion of the Slab Construction Works, the Scheduled Date for Financial Completion or the Scheduled Date for Final Completion of the Excluded Change in Law;
 - (ii) in accordance with the principles set out in Clause 50.2(e), the variation (if any) proposed to the Core Services Payments as a consequence of the Excluded Change in Law together with evidence supporting that variation; and
 - (iii) any benefit which may result to the Concessionaire arising out of or in connection with the Excluded Change in Law.
- (b) Within 30 Business Days after receipt by the SCSA or the Concessionaire of an Excluded Change in Law Notice, the SCSA and the Concessionaire must negotiate, in good faith, and use reasonable endeavours to agree on a mutually acceptable

resolution to the matters set out in the Excluded Change in Law Notice having regard to:

- (i) the Project Objectives;
 - (ii) the relative investment and risks by each of them under this Agreement and the other Project Agreements;
 - (iii) any obligations to either of them owed to third parties;
 - (iv) achieving a fair and equitable result for both of them; and
 - (v) the principles set out in Clause 50.2(e).
- (c) If the Concessionaire and the SCSA are unable to reach agreement under Clause 50.2(b) within 45 Business Days after receipt by the SCSA or the Concessionaire (as applicable) of an Excluded Change in Law Notice given under Clause 50.2(a), either party may refer the dispute to an independent expert for resolution in accordance with Clause 55.2.
- (d) If the parties agree, or the determination of a dispute by an independent expert directs, that the Concessionaire should be compensated for the effects of an Excluded Change of Law, the Concessionaire will be compensated in accordance with the agreement or the determination (as the case may be).
- (e) The principles to be applied in determining the effects of an Excluded Change of Law are as follows:
- (i) Subject to paragraphs (iii), (iv) and (v) the Concessionaire will be entitled to compensation for any direct cost increases (including financing costs) in the construction of the Interchange Facility Works or in the provision of Services from the Interchange Facility resulting from an Excluded Change in Law.
 - (ii) The Concessionaire will also be entitled to compensation for any compensation payable by the Concessionaire, or any reduction in amounts payable to the Concessionaire, under any agreement relating to the Retail Business or other commercial activities at the Interchange Facility.
 - (iii) The Concessionaire will bear any increases in capital costs (including increases in financing costs) resulting from an Excluded Change in Law up to and including \$50,000 (Indexed) for all Excluded Changes in Law in any calendar year.
 - (iv) The Concessionaire will bear any increase in operating costs resulting from an Excluded Change in Law up to and including \$50,000 Indexed per annum for all Excluded Changes in Law over the Contract Term.
 - (v) If as a result of an Excluded Change in Law the Concessionaire's operating costs decrease by \$50,000 (Indexed) or more per annum, the decrease in the Concessionaire's operating costs in excess of \$50,000 (Indexed) per annum will accrue to the benefit of the SCSA by way of a decrease in the Core Services Payment per annum or otherwise as agreed between the SCSA and the Concessionaire.

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- (f) The Concessionaire acknowledges and agrees that the compensation to which it may be entitled pursuant to Clause 50.2(b) may be provided by way of:
- (i) at the SCSA's option:
 - (A) an increase in the Core Services Payment over the balance of the Contract Term; or
 - (B) a lump sum payment to be made at the time of the next Core Services Payment; or
 - (C) extending the Expiry Date of the Finance Concession Period and/or the Operating Concession Period;
 - (ii) any other means of redress which the parties agree, or an independent expert determines, to be appropriate in the circumstances, provided that prior to the Operations Commencement Date, the SCSA must consult with the Concessionaire on the selection of the compensation methods referred to in paragraphs (i)(A), (B) or (C) to ensure that funding for works associated with an Excluded Change in Law can be put in place within 20 Business Days after agreement under Clause 50.2(b) or determination by an independent expert under Clause 50.2(c), failing which the SCSA must pay compensation to the Concessionaire in accordance with the reasonable request of the Concessionaire made on the basis that the SCSA and the Concessionaire bear progressive payments for the works in the same proportion as their respective liability under this Clause 50.2.
- (g) The parties agree that:
- (i) a declaration of the Interchange Facility, the Southern Cross Station or any part of them as an Essential Service under the *Terrorism (Community Protection) Act 2003* (Vic) constitutes an Excluded Change in Law for the purposes of this Clause 50.2; and
 - (ii) despite any other provision in this Agreement, the SCSA will compensate the Concessionaire for the effects of the Interchange Facility, the Southern Cross Station or any part of them being declared an Essential Services as if the Interchange Facility, the Southern Cross Station or any part of them had been declared an Essential Service on 30 November 2005.

51. Protection of People and Property

- (a) The Concessionaire must:
- (i) provide all things and take all measures necessary to protect and ensure the safety of people and property;
 - (ii) avoid or minimise unnecessary interference with the passage of people and vehicles and the operations or activities carried out of, on or from properties adjacent to the Site;
 - (iii) minimise nuisance and prevent unreasonable noise, dust, vibration and disturbance (including preventing such matters that would affect any

property adjacent to the Site) and comply with all applicable Laws and Approvals with respect to such matters;

- (iv) unless required for purposes of public health or safety, not interfere (insofar as compliance with this Agreement permits) with the free movement of traffic (vehicular and pedestrian) into and out of, adjacent to, around, on or about the Site or block or impair access to any premises, carparks, loading bays, roads or pedestrian ways; and
 - (v) comply with all requirements of this Agreement in connection with protection of people and property.
- (b) If the Concessionaire or a Sub-Contractor or any of their respective officers, employees, agents or consultants, damage property, including but not limited to property on or adjacent to the Site, the Concessionaire must promptly make good the damage and pay any compensation which the Concessionaire is required by law to pay.
- (c) If the Concessionaire fails to comply with an obligation under this Clause 51, in addition to any other remedies of the SCSA, the SCSA may, after giving reasonable notice in writing to the Concessionaire, have the subject work carried out by other persons and the reasonable cost incurred by the SCSA will be a debt due and payable from the Concessionaire to the SCSA.

52. Concessionaire's Indemnity

52.1 Indemnity

- (a) To the maximum extent permitted by Law, the Concessionaire indemnifies and will keep the SCSA, the Rail Projects Group, the State, the DOI and the Director indemnified from and against all Claims (whether in tort or otherwise) or Liabilities (including legal costs, on a full indemnity basis) whatsoever which the SCSA or the Rail Projects Group, the State, DOI or the Director (as applicable) suffers, incurs or becomes liable or may suffer, incur or become liable (notwithstanding that any such Claims or Liabilities will have resulted from any act or thing which the Concessionaire may be authorised or obliged to do under the Project Agreements and notwithstanding that any time waiver or other indulgence has been given to the Concessionaire in respect of any of its obligations under the Project Agreements) in respect of:
- (i) any loss, injury or damage to:
 - (A) persons (including death); or
 - (B) property of any kind (including loss of use of property which has not been specifically damaged or destroyed and reasonably foreseeable economic loss directly related to property damage),to the extent it is:
 - (C) caused or contributed to by:

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- (1) the use or occupation of the Interchange Facility or the Site by or through the Concessionaire (excluding any part of the Site comprising land which forms part of Connex's leased infrastructure under Bayside Franchisee's Infrastructure Lease); or
- (2) any circumstance, condition or activity or other cause on the Interchange Facility or the Site arising from the use or occupation of the Interchange Facility or the Site by or through the Concessionaire (excluding any part of the Site comprising land which forms part of Connex's leased infrastructure under the Bayside Franchisee's Infrastructure Lease), or
- (D) sustained otherwise in connection with or incidental to:
- (1) the operation or maintenance of the Interchange Facility; or
- (2) the provision of Services from the Interchange Facility,
- and caused or contributed to by the act, omission, default or negligence of the Concessionaire or any of its Associates; or
- (ii) any breach of the Concessionaire's obligations under any of the Project Agreements,
- except to the extent that any such Claim or Liability is a consequence of:
- (iii) a fraudulent or negligent act or omission of the SCSA, the Rail Projects Group, the State, the DOI, the Director, a Franchise Operator, a New Franchise Operator, a Successor Franchise Operator or a Coach Operator which is a party to a Service Contract or breach by the SCSA of any Project Agreement or the Rail Corporations Act;
- (iv) the exercise by or on behalf of the SCSA of the reservations under Clauses 2.3 and 2.4 of the Facility Lease;
- (v) any Claim (excluding Claims in respect of personal injury (including death) or property of any kind) made by a third party against the SCSA resulting from any act which the SCSA is authorised or obliged to do under this Agreement, where the act of the SCSA was not done or undertaken as a result of a breach of the Concessionaire's obligations under this Agreement; or
- (vi) a Force Majeure Event of the type described in paragraph (b) of the definition of Force Majeure Event or an Extension Event of the type described in paragraph (g) of the definition of Extension Event.
- (b) The obligations of the Concessionaire under this Clause 52 will continue after the expiration or other termination of the Project Agreements in respect of any act, deed, matter or thing happening before such expiration or termination.
- (c) The Concessionaire is not liable to make any payment to the SCSA under this indemnity unless a claim is made in writing by the SCSA with respect to matters

arising under this Agreement (setting out in reasonable detail the nature of the claim and the amount sought, to the extent the amount can be reasonably determined) within 12 months after the existence of the claim first became known to the SCSA.

- (d) The Concessionaire further agrees to indemnify and keep indemnified:
- (i) the State of Victoria;
 - (ii) the SCSA; and
 - (iii) the Franchise Operators

against any claims, actions, demands and proceedings (including, but not limited to, litigation, arbitration, mediation and expert determination) (including reasonable costs and expenses of defending or denying same) commenced against any of them by any owner, occupier or user of any building constructed on top of the Slab Construction Works for any future or present loss and damage caused by noise or vibration from the current and future rail operations through the Southern Cross Station precinct (including without limitation the use of more powerful locomotives) due to the inadequacy of the ballast mats under the Main Goods Line as at the GSA Effective Date installed by the Concessionaire.

52.2 Release

The Concessionaire releases to the full extent permitted by Law the SCSA from all Claims and Liabilities of any kind which arise from the Concessionaire's use or occupation of the Interchange Facility or the Land or the performance of this Agreement (including any Claim made under Part 2A of the *Wrongs Act 1958 (Vic)*).

53. Risk and Liability

53.1 Risk of Loss or Damage

- (a) Subject to Clause 53.1(b) and Clause 53.3, from the Commencement Date until the end of the Contract Term, as between the SCSA and the Concessionaire, the Concessionaire will:
- (i) bear the risk of; and
 - (ii) not have any Claim against the SCSA or its Associates as a result of,
- loss or damage to or destruction of the Interchange Facility Works, the Interchange Facility, or the Site.
- (b) Clause 53.1(a) does not apply to the extent that any loss or damage is a direct consequence of any fraudulent or negligent act or omission of the SCSA or its Associates or breach by the SCSA of this Agreement unless, and to the extent that, in respect of such loss or damage the Concessionaire is entitled to and does recover under any policy of insurance required under Clause 54.

53.2 Destruction

(a) If during the Contract Term any part of the Site, the Interchange Facility Works or the Interchange Facility is wholly or substantially damaged or destroyed or becomes unfit for or incapable of use or occupation by the Concessionaire then, unless:

- (i) Clause 53.2(b) applies; or
- (ii) the damage or destruction is caused by an Uninsurable Force Majeure Event, in which case Clause 53.3 applies,

the Concessionaire must:

- (iii) promptly after the occurrence of the event causing the damage or destruction:
 - (A) give notice to the SCSA of the occurrence of the event causing the damage or destruction and, to the extent then known by the Concessionaire, details of the damage or destruction caused by it; and
 - (B) consult with each Transport Operator who will or may be affected by the damage or destruction;
- (iv) as soon as reasonably practicable after giving the notice in paragraph (iii), give further notice to the SCSA setting out details of:
 - (A) the effects (if any) of the event causing the damage or destruction on:
 - (1) as applicable, the Site, the Interchange Facility Works and the Interchange Facility;
 - (2) if that event occurs during the Design and Construction Phase, the Approved Interchange Facility Works Program including the achievement of:
 - (I) Practical Completion of the Principal Works by the Scheduled Date for Practical Completion of the Principal Works;
 - (II) Practical Completion of the Slab Construction Works by the Scheduled Date for Practical Completion of the Slab Construction Works;
 - (III) Financial Completion by the Scheduled Date for Financial Completion; or
 - (IV) Final Completion by the Scheduled Date for Final Completion.

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- (3) if that event occurs during the Operating Phase, the operation and maintenance of the Interchange Facility and the provision of the Services;
 - (4) the Concessionaire's performance of its obligations under the Project Agreements; and
 - (5) to the best knowledge of the Concessionaire after complying with paragraph (iii)(B), the business or operations of any Transport Operator; and
 - (B) to the extent then known by the Concessionaire, the time within, and the manner in, which the Concessionaire proposes to reinstate or repair the damage or destruction caused by that event;
 - (v) reinstate or repair the damage or destruction within a reasonable time after the damage or destruction occurred; and
 - (vi) apply all insurance proceeds received in respect of such damage or destruction towards the cost of reinstatement or repair of and making good the damage or destruction.
 - (b) In relation to any damage or destruction occurring on or after the Operations Commencement Date, the SCSA may, in its discretion, by notice direct the Concessionaire to not carry out its reinstatement and repair obligations under Clause 53.2(a). If such notice is given, then the Concessionaire:
 - (i) waives in favour of and for the benefit of the SCSA the Concessionaire's right to give a notice of claim to the insurer under any policy of insurance required under Clause 54.2(d);
 - (ii) must pay to the SCSA all proceeds it receives from the insurance policies required under Clause 54.2(d);
 - (iii) will be relieved of its obligations to reinstate or repair the damage or destruction to the Interchange Facility and to provide the Services to the Services Standards, to the extent reasonably determined by the SCSA in the context of the damage or destruction; and
 - (iv) the Adjusted Core Services Payment may be reduced by an amount reasonably determined by the SCSA representing the operating costs or other costs that will not or need not be incurred by the Concessionaire as a result of the damage or destruction but the Adjusted Core Services Payment will otherwise continue to be paid by the SCSA.

53.3 Damage resulting from Uninsurable Force Majeure Events

- (a) If during the Contract Term any part of the Site, the Interchange Facility Works or the Interchange Facility is damaged or destroyed or becomes unfit for or incapable of use or occupation by the Concessionaire as a result of an Uninsurable Force Majeure Event then the Concessionaire must:
 - (i) promptly after the occurrence of the Uninsurable Force Majeure Event:

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- (A) give notice to the SCSA of the occurrence of the Uninsurable Force Majeure Event and, to the extent then known by the Concessionaire, details of the damage or destruction caused by it; and
 - (B) consult with each Transport Operator who will or may be affected by the Uninsurable Force Majeure Event;
- (ii) as soon as reasonably practicable after giving the notice in paragraph (i), give further notice to the SCSA setting out details of:
- (A) the effects (if any) of the Uninsurable Force Majeure Event on:
 - (1) as applicable, the Site, the Interchange Facility Works and the Interchange Facility;
 - (2) if the Uninsurable Force Majeure Event occurs during the Design and Construction Phase, the Approved Interchange Facility Works Program including the achievement of:
 - (I) Practical Completion of the Principal Works by the Scheduled Date for Practical Completion of the Principal Works;
 - (II) Practical Completion of the Slab Construction Works by the Scheduled Date for Practical Completion of the Slab Construction Works;
 - (III) Financial Completion by the Scheduled Date for Financial Completion; or
 - (IV) Final Completion by the Scheduled Date for Final Completion.
 - (3) if the Uninsurable Force Majeure Event occurs during the Operating Phase, the operation and maintenance of the Interchange Facility and the provision of the Services;
 - (4) the Concessionaire's performance of its obligations under the Project Agreements; and
 - (5) to the best knowledge of the Concessionaire after complying with paragraph (i)(B), the business or operations of any Transport Operator;
 - (B) to the extent then known by the Concessionaire, the time within, and the manner in, which the Concessionaire proposes to reinstate or repair the damage or destruction caused by the Uninsurable Force Majeure Event;
 - (C) whether or not the Concessionaire considers it is a Terrorism Uninsurable Force Majeure Event; and

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- (D) whether in the Concessionaire's reasonable opinion the reasonable costs of reinstating or repairing the damage or destruction are:
- (1) less than \$100,000 (Indexed);
 - (2) \$100,000 (Indexed) or more but less than \$338,200,000 (Indexed); or
 - (3) \$338,200,000 (Indexed) or more,
- (the *Concessionaire's Notice*).
- (b) Within 30 Business Days after receipt of the Concessionaire's Notice, the SCSA must:
- (i) accept the Concessionaire's Notice, by notice to the Concessionaire (*Acceptance Notice*); or
 - (ii) reject the Concessionaire's Notice, by notice to the Concessionaire.
- (c) If the SCSA issues an Acceptance Notice in accordance with Clause 53.3(b)(i), the Concessionaire and the SCSA must comply with their respective obligations under Clause 53.3(f) (as applicable).
- (d) If the SCSA rejects the Concessionaire's Notice in accordance with Clause 53.3(b)(ii):
- (i) the SCSA and the Concessionaire must negotiate in good faith and use all reasonable endeavours to agree on a mutually acceptable resolution of the matters set out in the Concessionaire's Notice which are in dispute (which may include a dispute as to whether the Uninsurable Force Majeure Event is properly characterised as a Terrorism Uninsurable Force Majeure Event); and
 - (ii) if the SCSA and the Concessionaire are unable to reach agreement under paragraph (i) within 10 Business Days after the commencement of the negotiation, the SCSA and the Concessionaire jointly must refer the dispute to an independent expert for resolution in accordance with Clause 55.2. The SCSA and the Concessionaire acknowledge and agree that any decision of the independent expert will be final and binding on each of them.
- (e) For the purposes of Clause 53.3(d)(ii), the Concessionaire must at the request of the independent expert provide the independent expert with:
- (i) reasonable access to any area of the Site, the Interchange Facility Works, the Completed Interchange Facility Works or the Interchange Facility affected by the Uninsurable Force Majeure Event; and
 - (ii) such other information and assistance as the independent expert reasonably requires for the purposes of making a determination.

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- (f) If:
- (i) the Concessionaire's Notice accepted by the SCSA under Clause 53.3(b)(i) states, or the independent expert in accordance with Clause 53.3(d)(ii) determines, that the reasonable costs of reinstating or repairing the damage or destruction are less than \$100,000 (Indexed) then, subject to Clause 53.3(g), the Concessionaire must reinstate or repair the damage or destruction within a reasonable time as agreed between the SCSA and the Concessionaire, and the Concessionaire will bear the actual costs of reinstating or repairing the damage or destruction;
 - (ii) the Concessionaire's Notice accepted by the SCSA under Clause 53.3(b)(i) states, or the independent expert in accordance with Clause 53.3(d)(ii) determines, that the reasonable costs of reinstating or repairing the damage or destruction are \$100,000 (Indexed) or more but less than \$338,200,000 (Indexed) then, subject to Clause 53.3(f)(iv)(if applicable) and Clause 53.3(g):
 - (A) the Concessionaire must reinstate or repair the damage or destruction within a reasonable time as agreed between the SCSA and the Concessionaire;
 - (B) the actual costs of reinstating or repairing the damage or destruction in excess of \$100,000 (Indexed) will be borne by the SCSA; and
 - (C) in the case of the costs to be borne by the SCSA in accordance with paragraph (B), such amount will be payable by the SCSA to the Concessionaire in accordance with the reasonable request of the Concessionaire made on the basis that the SCSA and the Concessionaire bear the progressive payments for the works to reinstate or repair the damage or destruction in the same proportion as the reinstatement costs are to be borne by the SCSA and the Concessionaire in accordance with paragraph (B);
 - (iii) the Concessionaire's Notice accepted by the SCSA under Clause 53.3(b)(i) states, or the independent expert in accordance with Clause 53.3(d)(ii) determines, that the costs of reinstating or repairing the damage or destruction are \$338,200,000 (Indexed) or more then, subject to Clause 53.3(f)(iv) (if applicable), the SCSA must terminate this Agreement by notice to the Concessionaire (the *SCSA's Notice*) and:
 - (A) the SCSA must pay the Concessionaire the Outstanding Debt (as at the date of the SCSA's Notice) within 10 Business Days after the later of the giving of the SCSA's Notice and the date on which the amount of that Outstanding Debt is determined to the satisfaction of the SCSA (acting reasonably); and
 - (B) this Agreement will terminate with effect from the date specified in the SCSA's Notice (which date must be not more than 30 Business Days after the date of that notice);
 - (iv) the Concessionaire has notified the SCSA under Clause 53.3(a)(ii)(C) that the Concessionaire considers that the Uninsurable Force Majeure Event is a

Terrorism Uninsurable Force Majeure Event and the Concessionaire's Notice is accepted by the SCSA under Clause 53.3(b)(i) or the independent expert in accordance with Clause 53.3(d)(ii) determines that the Uninsurable Force Majeure Event is a Terrorism Uninsurable Force Majeure Event, then, subject to Clause 53.3(g):

- (A) the Concessionaire must reinstate or repair the damage or destruction within a reasonable time as agreed between the SCSA and the Concessionaire;
 - (B) the actual costs of reinstating or repairing the damage or destruction will be borne by the SCSA;
 - (C) in the case of the costs to be borne by the SCSA in accordance with paragraph (B), such amount will be payable by the SCSA to the Concessionaire in accordance with the reasonable request of the Concessionaire made on the basis that the SCSA and the Concessionaire bear the progressive payments for the works to reinstate or repair the damage or destruction in the same proportion as the reinstatement costs are to be borne by the SCSA and the Concessionaire in accordance with paragraph (B).
- (g) The SCSA may, in its absolute discretion, by notice (the *SCSA's Notice*) direct the Concessionaire to not carry out its obligations to reinstate or repair the damage or destruction in accordance with Clause 53.3(f)(i), Clause 53.3(f)(ii) or Clause 53.3(f)(iv) and if the SCSA's Notice is given:
- (i) with respect to damage or destruction of the type described in Clause 53.3(f)(i), the Concessionaire will be relieved of its obligations to reinstate or repair the damage or destruction to the Interchange Facility Works or the Interchange Facility and to provide the Services to the Services Standards, to the extent reasonably determined by the SCSA in the context of the damage or destruction;
 - (ii) with respect to damage or destruction of the type described in Clause 53.3(f)(ii) caused by an Uninsurable Force Majeure Event other than a Terrorism Uninsurable Force Majeure Event:
 - (A) the SCSA must pay the Concessionaire the Reinstatement Payment within 10 Business Days after giving the SCSA's Notice; and
 - (B) this Agreement will terminate with effect from the date specified in the SCSA's Notice (which date must be not more than 30 Business Days after the date of that notice);
 - (iii) with respect to damage or destruction of the type described in Clause 53.3(f)(iv) caused by a Terrorism Uninsurable Force Majeure Event:
 - (A) the SCSA must pay the Concessionaire the Terrorism Reinstatement Payment within 10 Business Days after giving the SCSA's Notice; and

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- (B) this Agreement will terminate with effect from the date specified in the SCSA's Notice (which date must be not more than 30 Business Days after the date of that notice).
- (h) The SCSA is not entitled to terminate this Agreement pursuant to paragraph (f) of the definition of Termination Event in respect of an Uninsurable Force Majeure Event if:
- (i) the SCSA has not given a SCSA Notice under Clause 53.3(g)(ii) or Clause 53.3(g)(iii); and
 - (ii) the Concessionaire is complying with its reinstatement and repair obligations under this Clause 53.3
- with respect to that Uninsurable Force Majeure Event.

53.4 Payment during Reinstatement

- (a) At any time after the Operations Commencement Date when:
- (i) Clause 53.2(a) applies;
 - (ii) the Concessionaire is complying with its obligations under Clause 53.2(a) (including giving notice to the SCSA, negotiating with insurers (as applicable) and reinstating the Interchange Facility); and
 - (iii) the SCSA has not given a notice under Clause 53.2(b),
- the Concessionaire will be relieved of its obligations to provide the Services to the Services Standards, to the extent reasonably determined by the SCSA in the context of the damage or destruction.
- (b) If Clause 53.4(a) applies, until receipt of insurance proceeds by or on behalf of the Concessionaire under the policy referred to in Clause 54.2(d)(ii), the SCSA will continue to pay the whole of the Adjusted Core Services Payment, reduced only by:
- (i) an amount reasonably determined by the SCSA representing the operating costs or other costs that will not or need not be incurred by the Concessionaire as a result of the damage or destruction; and
 - (ii) any Abatement Amount applicable for failure to comply with the Services Standards (not being Services Standards to which Clause 53.4(a) applies).
- (c) On receipt by or on behalf of the Concessionaire of the insurance proceeds referred to in Clause 53.4(b), the Concessionaire must pay or reimburse to the SCSA an amount equal to the amount of the Capital Cost Component of the Adjusted Core Services Payment paid by the SCSA under Clause 53.4(b).

53.5 Liability for Indirect or Consequential Loss

Despite any other provision of this Agreement, neither the SCSA nor any of its Associates has any Liability to the Concessionaire, nor will the Concessionaire be entitled to make any Claim, in respect of any indirect or consequential loss incurred or sustained by the

Concessionaire as a result of any act or omission of the SCSA (whether negligent or otherwise) or as a result of a breach of the Project Agreements by the SCSA. For the purpose of this Clause 53.3:

- (a) it is agreed that the following losses are not included in the term ‘indirect or consequential’: property damage or losses arising from third party claims in respect of property damage, personal injury, nervous shock or death; and
- (b) it is agreed that the following losses are included in the term ‘indirect or consequential’: loss of business opportunity and payment of liquidated sums, penalties or damages under any agreement (other than this Agreement, the Construction Agreement, the Operating Agreement, the Maintenance Agreement, the Access Agreements and the Station Retail Agreement).

54. Insurance

54.1 Insurances Until End of Defects Liability Periods

- (a) Subject to Clause 54.1(c), the Concessionaire must, at its own cost and expense, effect and maintain or cause to be effected and maintained from the Commencement Date until the end of the period in Clause 54.1(b)(i), Clause 54.1(b)(ii), Clause 54.1(b)(iii) or Clause 54.1(b)(iv) (as applicable) with insurers approved by the SCSA acting reasonably or the following insurances on the terms set out in this Clause 54:
 - (i) a professional indemnity policy in the name of the Construction Contractor for an amount of not less than \$20 million per occurrence covering, among other things, claims by the SCSA or by any other person arising out of or incidental to any negligent act or omission or for any breach of duty owed by the Concessionaire or a Sub-Contractor or consultant engaged by or on behalf of the Concessionaire in connection with their professional activities and duties with respect to the Project and, without limitation, which covers claims made under the *Trade Practices Act 1974* (Cth). The Concessionaire must ensure that those of its Sub-Contractors carrying out design in relation to the Project are similarly insured to the reasonable satisfaction of the SCSA;
 - (ii) employers’ liability and workers’ compensation insurance (including common law liability) as required under applicable Law. The Concessionaire must ensure that each of its Sub-Contractors and consultants effect and maintain equivalent such insurance in respect of any period during which they provide services in relation to the Project. To the extent permitted by Law, such insurance policy or policies must be extended to indemnify the SCSA for its statutory liability to persons employed by the Concessionaire, its Sub-Contractors and consultants;
 - (iii) motor vehicle insurance as required under applicable Law in respect of all vehicles used in or in connection with the undertaking of the Interchange Facility Works and third party property damage and injury to persons liability insurance in respect of all vehicles used in or in connection with the undertaking of the Interchange Facility Works and for an amount of not less than \$20 million per occurrence for third party property damage and for amounts not less than required by statute for injury to persons. The

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- Concessionaire must ensure that each of its Sub-Contractors and consultants effect and maintain equivalent such insurance in respect of any period during which they provide services in relation to the Project;
- (iv) a policy of insurance in respect of such of the Licensed Area (if any) as is not the subject of contract works insurance covering the Interchange Facility Works and contract works insurance covering the Interchange Facility Works, on a full reinstatement basis (including all consultants' fees and costs of removal of debris from the Site) to be maintained until Financial Completion for an amount not less than *[text deleted]*;
 - (v) between Practical Completion of the Principal Work and Practical Completion of the Slab Construction Works, contract works insurance covering the Slab Construction Works, on a full reinstatement basis (including all consultants' fees and costs of removal of debris from the Site) for an amount not less than *[text deleted]*; and
 - (vi) public/products liability insurance for an amount not less than \$250 million for any one occurrence and in the aggregate in respect of products liability, which indemnifies the SCSA, VicTrack, the Transport Operators, the Concessionaire and its Sub-Contractors for their respective rights, interests and liabilities in respect of all Liability at Law for any damage or loss occurring to any property and for injury (including death) to any person arising out of any thing done or omitted to be done in the execution or purported execution by any such party of its rights or obligations under this Agreement or any other Project Agreement and against all Claims in connection with each of them.
- (b) The Concessionaire must maintain or cause to be maintained the insurances referred to in Clause 54.1(a) until:
- (i) in the case of insurance under Clause 54.1(a)(i), 6 years after the end of the last of the Defects Liability Periods; and
 - (ii) in the case of insurance under Clause 54.1(a)(iv) until the Operations Commencement Date;
 - (iii) in the case of insurance under Clause 54.1(a)(v) until Practical Completion of the Slab Construction Works; and
 - (iv) in the case of all other insurances under Clause 54.1(a), the end of the last of the Defects Liability Periods.
- (c) The SCSA must, at the request and at the cost and expense of the Concessionaire, effect and maintain or cause to be effected and maintained with the VMIA the insurances required under Clauses 54.1(a)(iv) and (v) on the same terms set out in this Clause 54.
- (d) During the period of 45 days after the Commencement Date (the *Interim Period*), the Concessionaire will be taken to be complying with Clause 54.1(a)(iv) if it ensures that during the Interim Period the Construction Contractor maintains temporary insurance cover for the purposes of Clause 54.1(a)(iv) for an amount of not less than \$100 million in accordance with the Construction Contractor's

insurance policy with Heath Lambert Group, details of which were provided in writing to the SCSA on 24 August 2002.

- (e) The Concessionaire must ensure that it or the Construction Contractor effects the insurance required under Clause 54.1(a)(iv) on or before the expiry of the Interim Period.
- (f) The SCSA will not cancel any insurance policy which it holds with VMIA in accordance with Clause 54.1(c) without first consulting with the Concessionaire and the SCSA will use its reasonable endeavours to have the interests of the Concessionaire and the Construction Contractor noted on such policy.

54.2 Insurance from the Operations Commencement Date

Subject to Clause 54.2A, the Concessionaire must, at its own cost and expense, effect and maintain or cause to be effected and maintained, from the Operations Commencement Date until the end of the Contract Term, the following insurances with insurers approved by the SCSA (acting reasonably) on the terms set out in this Clause 54:

- (a) employers' liability and workers' compensation insurance (including common law liability) as required under any applicable Law. The Concessionaire must ensure that each of its Sub-Contractors and consultants effect and maintain equivalent insurance in respect of any period during which they provide services in relation to the Project. To the extent permitted by Law, such insurance policy or policies must be extended to indemnify the State and the SCSA for its statutory liability to persons employed by the Concessionaire, its Sub-Contractors and consultants;
- (b) motor vehicle insurance as required under applicable Law in respect of all vehicles used in or in connection with the operating and maintaining of the Interchange Facility or performing the Services and third party property damage and injury to persons liability insurance in respect of all vehicles used in or in connection with the operating and maintaining of the Interchange Facility or performing the Services and for an amount of not less than \$20 million per occurrence for third party property damage and for amounts not less than required by statute for injury to persons (as adjusted in accordance with Clause 54.11). The Concessionaire must ensure that each of its Sub-Contractors and consultants effect and maintain equivalent such insurance in respect of any period during which they provide services in relation to the Project;
- (c) public/product liability insurance for an amount of not less than \$250 million for any one occurrence for public liability and for an amount of not less than \$250 million in the aggregate in respect of products liability (adjusted in accordance with Clause 54.11) which indemnifies:
 - (i) the Concessionaire and its Sub-Contractors for their respective rights, interests and liabilities; and
 - (ii) the SCSA, VicTrack, and the Transport Operators for their respective rights, interests and liabilities but only to the extent that the SCSA, VicTrack and the Transport Operators are vicariously liable for the negligence of the Concessionaire or its Sub-Contractors.

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- (d) industrial special risks insurance in respect of the Interchange Facility (including plant and all other items comprising the Interchange Facility, such as computer and other systems) and the Lease Land:
 - (i) for an amount not less than the greater of:
 - (A) the full cost of reinstatement at the time of reinstatement (including all consultants' fees and costs of removal of debris from the Site); and
 - (B) *[text deleted]* (Indexed).
 - (ii) including business interruption insurances for an amount not less than the Capital Cost Component of the Adjusted Core Services Payment for 40 months.

54.2A Changes in Insurance

- (a) Not less than 60 Business Days prior to the Operations Commencement Date, the Concessionaire must approach 3 reputable insurers in the commercial insurance market at that time, with a view to obtaining, in accordance with the Insurance Principles, separate quotations from each insurer with respect to the annual premium costs of obtaining the insurances referred to in Clauses 54.2(c) and (d) for the first year of the Operating Phase on the terms and conditions set out in Clauses 54.2 to 54.11 (as applicable) (the *Relevant Insurances*), and must obtain all such quotations not less than 21 Business Days prior to the Operations Commencement Date.
- (b) The Concessionaire must:
 - (i) not less than 21 Business Days prior to the Operations Commencement Date, provide the SCSA with copies of each of the quotations referred to in Clause 54.2A(a), together with such documentation or information as the SCSA reasonably requires to confirm the Concessionaire's compliance with Clause 54.2A(a) in obtaining those quotations; and
 - (ii) at the same time as the copies of the quotations referred to in paragraph (i) are provided to the SCSA, notify the SCSA in writing of the Concessionaire's proposal with respect to obtaining the Relevant Insurances, including details of the Concessionaire's preferred quotation and insurer (the *Concessionaire's Notice*);
- (c) The SCSA and the Concessionaire must, not less than 17 Business Days prior to the Operations Commencement Date, meet to discuss the proposal set out in the Concessionaire's Notice and must use their best endeavours to agree on the insurer, the approach to and the cost of obtaining the Relevant Insurances.
- (d) Not used
- (e) If the SCSA and the Concessionaire fail to reach agreement on the matters referred to in Clause 54.2A(c) by a date that is not less than 12 Business Days prior to the Operations Commencement Date, the SCSA and the Concessionaire must immediately refer the matters in dispute to an independent expert for resolution in accordance with Clause 55.2. If the matter is so referred, the SCSA and the

Concessionaire must request the independent expert to make a determination by the date which is not less than 7 Business Days prior to the Operations Commencement Date.

- (f) The annual premium cost of obtaining the Relevant Insurances as agreed in accordance with Clause 54.2A(c) or determined in accordance with Clause 54.2A(e) (as the case may be) divided by 4 (the ***Insurance Cost Component***) will apply with effect from the Operations Commencement Date until such time as the Insurance Cost Component is otherwise in accordance with Clause 54.2A(l) or Clause 54.2A(q).
- (g) The Concessionaire must effect the Relevant Insurances as agreed in accordance with Clause 54.2A(c) or determined in accordance with Clause 54.2A(e) (as the case may be), and unless otherwise agreed in accordance with Clause 54.2 to 54.11 (each inclusive), with effect from the Operations Commencement Date and must provide the SCSA with evidence that the Relevant Insurances have been so effected not less than 2 Business Days prior to the Operations Commencement Date.
- (h) At any time during the Operating Phase either party may seek to demonstrate to the other party by way of written submission to that other party that:
 - (i) with respect to a particular Quarter, the annual premium cost of obtaining the Relevant Insurances divided by 4 is at least 30% greater or less than the Insurance Cost Component (Indexed) for that same Quarter as last determined in accordance with this Clause 54.2A;

provided that:

- (ii) any increase or decrease in the cost of obtaining Relevant Insurances which is attributable to the Concessionaire's performance under the Project Agreements or the insurance history (or other relevant acts or omissions of) the Concessionaire, the Operator or the Maintenance Contractor under or in relation to any existing or previous insurance policy will be disregarded for the purposes of paragraph (i),

(the ***Insurance Cost Submission***).

- (i) Within 10 Business Days after the receipt by a party (the ***receiving party***) of an Insurance Cost Submission from the other party (the ***submitting party***), the receiving party must, by notice in writing to the submitting party, either:
 - (i) accept the submitting party's Insurance Cost Submission; or
 - (ii) reject the submitting party's Insurance Cost Submission on the basis that the receiving party disagrees with the submitting party's assessment of one or more matters referred to in paragraphs (i) and (ii) of Clause 52.2A(h),

(the ***receiving party's Notice***).

- (j) Not used

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- (k) If the receiving party rejects the submitting party's Insurance Cost Submission in accordance with Clause 54.2A(i), the submitting party may refer the matters in dispute to an independent expert for resolution in accordance with Clause 55.2.
- (l) The amount of the Insurance Cost Component as at the date of the receiving party's Notice accepting the submitting party's Insurance Cost Submission or as at the date a determination is made by the independent expert under Clause 54.2A(k) (as the case may be), will be adjusted in accordance with the submitting party's Insurance Cost Submission accepted by the receiving party or as determined by the independent expert (as the case may be) and that adjusted quarterly Insurance Cost Component will be the Insurance Cost Component applicable from the commencement of the next Quarter after the date of the receiving party's Notice or the date of the independent expert's determination (as the case may be) until such time as the Insurance Cost Component is otherwise adjusted in accordance with this Clause 54.2A(l) or Clause 54.2A(q).
- (m) At any time during the Operating Phase the Concessionaire may seek to demonstrate to the SCSA by way of a written submission to the SCSA that:
- (i) any Relevant Insurance is not available to the Concessionaire on commercially reasonable terms in the commercial insurance market existing at that time; and
 - (ii) the unavailability of the Relevant Insurance as referred to in paragraph (i) is attributable to factors other than the Concessionaire's performance under the Project Agreements or the insurance history (or other relevant acts or omissions of) the Concessionaire, the Operator or the Maintenance Contractor under or in relation to any existing or previous insurance policy,
- (the *Concessionaire's Insurance Type Submission*).
- (n) Within 10 Business Days after the receipt by the SCSA of the Concessionaire's Insurance Type Submission, the SCSA must, by notice in writing to the Concessionaire, either:
- (i) accept the Concessionaire's Insurance Type Submission; or
 - (ii) reject the Concessionaire's Insurance Type Submission on the basis that the SCSA is not reasonably satisfied of one or more matters referred to in paragraphs (i) and (ii) of Clause 54.2A(m),
- (the *SCSA's Notice*).
- (o) If the SCSA accepts the Concessionaire's Insurance Type Submission in accordance with Clause 54.2A(n), the SCSA and the Concessionaire must meet within 5 Business Days after the date of the SCSA's Notice to seek to agree:
- (i) the amount of any change to the quarterly Insurance Cost Component resulting from the matters set out in the Concessionaire's Insurance Type Submission; and
 - (ii) any other changes to the Concessionaire's rights and obligations under this Agreement arising out of the unavailability of the Relevant Insurances the subject of the Concessionaire's Insurance Type Submission including , if a

risk event (other than a risk event to which Clause 53.3 applies) occurs that but for Clause 54.2A(m) would be covered by any Relevant Insurance, provision for the payment to the Concessionaire of amounts representing the insurance proceeds that would have been payable to the Concessionaire but for the unavailability of such insurance, taking into account the Insurance Principles.

- (p) If:
- (i) the SCSA rejects the Concessionaire's Insurance Type Submission in accordance with Clause 54.2A(n); or
 - (ii) the SCSA and the Concessionaire fail to reach agreement on the matters referred to in Clause 54.2(o) within 20 Business Days after the date of the meeting referred to in Clause 54.2(o),

either the SCSA or the Concessionaire may refer the matters in dispute to an independent expert for resolution in accordance with Clause 55.2.

- (q) The amount of the quarterly Insurance Cost Component as at the date agreement is reached under Clause 54.2A(o) or a determination is made under Clause 54.2A(p) (as the case may be) will be adjusted to reflect the amount of any change to the quarterly Insurance Cost Component so agreed or determined (as the case may be) and that adjusted Insurance Cost Component will be the Insurance Cost Component applicable from the commencement of the next Quarter after the date of such agreement or determination (as the case may be) until such time as the Insurance Cost Component is otherwise adjusted in accordance with this Clause 54.2A(q) or Clause 54.2A(l).

54.3 Proof of Insurance

- (a) The Concessionaire must, whenever reasonably requested in writing by the SCSA, provide evidence to the SCSA of the insurances effected and maintained by the Concessionaire under Clause 54.1 and Clause 54.2.
- (b) The Concessionaire must provide, or cause to be provided, to the SCSA a copy of each certificate of currency, renewal certificate and endorsement slip, as soon as practicable after receipt by or on behalf of the Concessionaire, and a copy of each insurance policy other than in respect of any insurances under Clause 54.1(a), which will be made available for inspection by the SCSA from time to time as reasonably required by the SCSA subject to the reasonable requirements of the Concessionaire as to confidentiality.
- (c) The SCSA must, whenever reasonably requested in writing by the Concessionaire, provide evidence to the Concessionaire of the insurances effected and maintained by the SCSA under this Clause 54.
- (d) If, after being requested in writing by the SCSA to do so, the Concessionaire fails to produce evidence of compliance with its insurance obligations under Clauses 54.1 and 54.2 to the satisfaction of the SCSA, the SCSA may effect and maintain

the insurance and pay the premiums for that insurance. Any amount paid by the SCSA will be a debt due from the Concessionaire to the SCSA.

- (e) The SCSA must keep confidential and not make or cause disclosure of any information contained in any insurance policy or endorsement slip provided by the Concessionaire to the SCSA under Clause 54.3(b) that relates to insurance effected and maintained under Clause 54.1 other than to the extent that such disclosure is for the purposes of making a claim under any such insurance policy or is disclosure within the scope of any of Clauses 59.2(a)(i),(ii) or (iv).

54.4 Notices from or to the Insurer

Except to the extent prohibited by Law, the Concessionaire must use its best endeavours to procure that each policy of insurance required to be effected by the Concessionaire in accordance with this Agreement contains provisions acceptable to the SCSA that:

- (a) with the exception of the insurance required in accordance with Clause 54.2(b), require the insurer, whenever the insurer gives to or serves upon the Concessionaire or its Sub-Contractors or consultants a notice of cancellation or other notice concerning the policy, at the same time to give to the SCSA a copy of the notice that has been given or served upon the Concessionaire or its Sub-Contractors or consultants;
- (b) with the exception of the insurance required in accordance with Clause 54.2(b), provide that a notice of claim given to the insurer by the SCSA, the Concessionaire or any of the Concessionaire's Sub-Contractors or consultants will be accepted by the insurer as a notice of claim given by the SCSA, the Concessionaire, the Sub-Contractor and the consultant; and
- (c) with the exception of the insurance required in accordance with Clause 54.2(b), require the insurer, whenever the Concessionaire fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the SCSA and the Concessionaire prior to the insurer giving any notice of cancellation or non-renewal.

54.5 Notices of Potential Claims

The Concessionaire and the SCSA must, as soon as practicable, inform the other in writing of any occurrence or incident that may give rise to a claim under a policy of insurance required by Clauses 54.1 or 54.2 and must keep the other informed of subsequent developments concerning that occurrence or the claim but only to the extent that such notification does not prejudice the rights of the Concessionaire to claim under the policy of insurance the subject of the claim.

54.6 Settlement of Claims

Upon settlement of a claim under the insurance required by Clauses 54.1 or 54.2, where the SCSA did not have an insurable interest, the Concessionaire must pass through to the SCSA the benefit of the Concessionaire's insurance where the SCSA has suffered Loss for which the Concessionaire is liable to indemnify the SCSA under this Agreement or any other Project Agreement.

54.7 Cross Liability

Wherever pursuant to this Agreement insurance is effected in more than one name, the policy of such insurance must, insofar as the policy may cover more than one insured:

- (a) provide that all insuring agreements and endorsements operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured;
- (b) provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties comprising the insured and that failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance in regard to any other insured party; and
- (c) contain a non-imputation Clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of term or condition of the policy, or any fraud or other act, omission or default by one insured does not affect another insured provided that the said acts or omissions were not made with the connivance of that other insured.

54.8 Extent of Cover

If the SCSA at any time reasonably requires the Concessionaire to:

- (a) insure against a risk not specifically provided for or contemplated under Clauses 54.1 or 54.2; or
- (b) increase the extent of or change the terms of an existing cover in relation to a risk,

it may notify the Concessionaire accordingly and request that the Concessionaire give effect to the SCSA's requirements as set out in the notice. The Concessionaire must promptly notify (and provide supporting evidence to) the SCSA of the amount (if any) of any additional premium payable to effect a request by the SCSA under this Clause. Within 10 Business Days after receipt of notification from the Concessionaire of that amount of additional premium (if any), the SCSA must inform the Concessionaire whether it requires the Concessionaire to effect that insurance cover. If the SCSA notifies the Concessionaire that the SCSA requires the Concessionaire to effect that insurance cover, the Concessionaire promptly must do so and the SCSA must reimburse the amount of the additional premium to the Concessionaire within 20 Business Days after the Concessionaire provides evidence satisfactory to the SCSA that the insurance cover has been so effected.

54.9 General Requirements

- (a) All insurances which the Concessionaire is required to effect under this Clause 54 must:
 - (i) with the exception of the insurances required by Clauses 54.1(a)(i), 54.1(a)(ii), 54.1(a)(iii), 54.1(a)(v), 54.2(a), 54.2(b) and 54.2(d), be in the names of the Concessionaire and its Sub-Contractors for their respective rights, interests and liabilities, and also in the names of the SCSA, VicTrack and the Transport Operators (as applicable) for their respective rights, interests and liabilities but only to the extent that the SCSA,

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- VicTrack and the Transport Operators are vicariously liable for the negligence of the Concessionaire or its Sub-Contractors;
- (ii) with regards to the insurance required in accordance with Clause 54.2(d), will be in the names of the Concessionaire, the Operator, the SCSA, VicTrack and VicUrban for their respective rights and interests;
 - (iii) with the exception of insurances required by Clause 54.1(a)(ii) and 54.1(a)(iii) and 54.2(a) and 54.2(b) contain such conditions, endorsements and exclusions as are reasonably required by the SCSA;
 - (iv) with the exception of insurances required by Clause 54.1(a)(ii) and 54.1(a)(iii) and 54.2(a) and 54.2(b) contain no conditions, endorsements or exclusions unless those conditions, endorsements or exclusions have been first approved in writing by the SCSA, such approval not to be unreasonably withheld;
 - (v) with the exception of insurances required by Clause 54.1(a)(ii) and 54.1(a)(iii) and 54.2(a) and 54.2(b) not be materially altered by or on behalf of the Concessionaire without the prior written approval of the SCSA; and
 - (vi) with the exception of insurances required by Clause 54.1(a)(ii) and 54.1(a)(iii) and 54.2(a) and 54.2(b) contain a provision requiring the applicable insurer to give the SCSA at least 10 Business Days prior written notice of its intention to serve a notice of cancellation on the Concessionaire in respect of the applicable policy.
- (b) The Concessionaire must not knowingly permit or suffer to be done any act, matter or thing whereby any insurance required to be effected under this Clause 54 may be vitiated or rendered void or voidable.
 - (c) The Concessionaire must pay or cause to be paid punctually all premiums and other moneys payable in respect of any policy of insurance required to be effected by the Concessionaire.
 - (d) The Concessionaire must give full, true and particular information to the relevant insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of any or all moneys thereunder.
 - (e) Before the cancellation by the Concessionaire of any insurance required to be effected under this Clause, the Concessionaire must first obtain the consent of the SCSA after having provided the SCSA with the reasons for the proposed cancellation and details of the replacement insurance which is proposed to be substituted for the policy proposed to be cancelled.
 - (f) Other than upon or following:
 - (i) the expiry or termination by the SCSA of this Agreement; or
 - (ii) notice from the SCSA pursuant to Clause 53.2(b),

the SCSA waives in favour of and for the benefit of the Concessionaire the SCSA's right to give a notice of claim to the insurer under a policy required under Clauses 54.1(a)(iv) or 54.2(d).

- (g) The SCSA and the Concessionaire must do everything reasonably required by the other or by any other person in whose name an insurance policy is effected and maintained to enable the SCSA or the Concessionaire (as the case may be) or other person to claim, and to collect or recover money due, under or in respect of any insurance policy.

54.10 Additional Requirements

The Concessionaire must comply, and must ensure that the Construction Contractor, the Operator and the Maintenance Contractor each comply, with their respective obligations to take out and maintain registration and to pay all levies required to be paid, under the *Accident Compensation Act 1995* (Vic) and the *Accident Compensation (Workcover Insurance) Act 1993* (Vic) and to take out and maintain insurances required under the *Building Act 1993* (Vic).

54.11 Indexation of amounts of cover

- (a) On 1 July 2006 and each subsequent 1 July (*adjustment date*) until the end of the Operating Phase, the amount of cover required for the insurance required in accordance with Clause 54.2(b) will be adjusted in accordance with the formula set out below and then rounded upwards or downwards to the nearest \$5 million amount:

Adjusted Insurance Cover = Payment Multiplier x AIC

where:

AIC = in respect of:

- (i) 1 July 2006, \$20 million; and
- (ii) each subsequent adjustment date, the adjusted insurance cover applicable immediately prior to the relevant adjustment date (disregarding rounding (if any) applied to that cover at the previous adjustment date).
- (b) On 1 July 2006 and each subsequent 1 July (*adjustment date*) until the end of the Operating Phase, the amount of cover required for the insurance required in accordance with Clause 54.2(c) will be adjusted in accordance with the formula set out below and then rounded upwards or downwards to the nearest \$10 million amount:

Adjusted Insurance Cover = Payment Multiplier x AIC

where:

AIC = in respect of:

- (i) 1 July 2006, \$250 million; and

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- (ii) each subsequent adjustment date, the adjusted insurance cover applicable immediately prior to the relevant adjustment date (disregarding rounding (if any) applied to that cover at the previous adjustment date).

55. Dispute Resolution

55.1 Negotiation

If there is a dispute between any of the parties relating to or arising out of this Agreement (other than a dispute to which Clause 55.2 applies), then within 5 Business Days after a party provides written notice of that dispute to the other party, senior representatives of the parties must meet and use their reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions.

55.2 Expert Determination

If this Agreement expressly provides for a dispute to be resolved in accordance with this Clause 55.2, or the parties otherwise agree that a dispute should be resolved by an independent expert, then the parties will submit to the following procedure to resolve the dispute:

- (a) the parties jointly or, if the SCSA so requires, the Concessionaire will appoint an independent expert from the Agreed List;
- (b) in the absence of appointment of an independent expert in accordance with paragraph (a) within 10 Business Days after written notice of a dispute to which this Clause 55.2 applies, the independent expert will be appointed on the application of either party by, unless otherwise agreed, the president or other senior office bearer for the time being of the Institute of Arbitrators and Mediators Australia;
- (c) the independent expert must:
 - (i) have reasonable qualifications and commercial and practical experience in the area of the dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her functions as an independent expert, he or she being required to fully disclose any such interest or duty before his or her appointment;
 - (iii) not be an employee or former employee of the Concessionaire or its Associates; and
 - (iv) not be, or have been within the 3 years prior to appointment, an employee of the State;
- (d) the independent expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit, including as to:
 - (i) fixing a time and place for hearing the dispute or receiving submissions or information from the SCSA, the Concessionaire or any other person; and
 - (ii) the form of any submissions or information required by the independent expert from the SCSA, the Concessionaire or any other person;

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- (e) the independent expert will not be bound by the rules of evidence;
 - (f) the independent expert will have the following powers:
 - (i) to inform himself or herself independently as to all matters relevant to the dispute;
 - (ii) to request and receive submissions (whether oral or in writing) or other information from the SCSA or the Concessionaire,
 - (iii) to consult with any other persons as the independent expert in his or her absolute discretion thinks fit in relation to resolving the dispute provided that such person provides to the SCSA and the Concessionaire an undertaking to keep confidential all matters coming to the person's knowledge by reason of his or her consultation with the independent expert;
 - (g) the SCSA and the Concessionaire must promptly give the independent expert all of the information, submissions and assistance which the independent expert may reasonably require;
 - (h) the independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 30 Business Days after the date of the independent expert's acceptance in writing of his or her appointment or such longer period as may be agreed between the parties;
 - (i) the independent expert's decision will be final and binding on the parties;
 - (j) the independent expert will be required to undertake to the SCSA and the Concessionaire to keep confidential all matters coming to the independent expert's knowledge by reason of his or her appointment, the performance of his or her duties and the exercise of his or her Powers; and
 - (k) unless the independent expert determines that the costs of the independent expert should be borne otherwise:
 - (i) the costs of the independent expert will be borne by the parties equally (if it is a joint appointment) or by the Concessionaire (if it is a Concessionaire appointment); and
 - (ii) the SCSA will indemnify the Concessionaire for one half of the costs of the independent expert borne by the Concessionaire pursuant to a Concessionaire appointment,

and each party will bear its own costs relating to the independent expert's decision.

55.3 Amalgamation of Disputes

The parties may by agreement permit a dispute being dealt with under this Clause 55 to be amalgamated with any other dispute or disputes between the parties.

55.4 Continue to Perform

Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

55.5 Agreed List

- (a) Each party acknowledges and agrees that each person specified in the Agreed List satisfies the criteria set out in Clause 55.2(c) and is acceptable to each party as an independent expert for the purposes of this Agreement.
- (b) Either party may propose amendments to the Agreed List from time to time. Amendments to the Agreed List may only be made with the agreement of both parties.

56. Rights and Obligations at End of Contract Term

56.1 The Interchange Facility and the Site

- (a) In addition to the rights or obligations under Clauses 49, at the end of the Contract Term the Concessionaire must:
 - (i) surrender, and return to the SCSA, the Interchange Facility and the Site; and
 - (ii) deliver to the SCSA the Plant,

including all of the Concessionaire's rights, title and interests in and to the Interchange Facility, the Site and the Plant:
 - (iii) free from any encumbrances;
 - (iv) in a state and condition which complies with the Project Brief, fair wear and tear excepted (other than to the extent this would result in the design life requirements of the Project Brief not being satisfied);
 - (v) which will, without further action by any party, immediately vest in and become the absolute property of the SCSA, and the Concessionaire will cease to have any interest in it; and
 - (vi) the Concessionaire must make the Handover Packages available to the SCSA and provide a copy of all or any part of the Handover Packages to the SCSA if requested by the SCSA.
- (b) The SCSA must pay to the Concessionaire the Reversion Amount in accordance with Clause 41.5(h).

56.2 Novation

At the end of the Contract Term, upon the request of the SCSA (in its discretion), the Concessionaire must, without any payment:

- (a) novate to the SCSA or its nominee; and

(b) do all things reasonably necessary to give effect to such novation,

any of the following agreements:

(c) the leases, sub-leases and licences referred to in Clause 25.5; and

(d) any agreement (including any supply, service or maintenance agreement) relating to the execution of the whole or any part of the Interchange Facility Works, the whole or any part of the Interchange Facility or the provision of any of the Services.

56.3 Preparation for Retendering

(a) The Concessionaire must, if requested by the SCSA, provide the SCSA and its Associates with reasonable access to the Concessionaire's officers, employees, consultants and advisers and the books, records and other material kept by or on behalf of the Concessionaire in connection with the Concessionaire's Business for the purpose of the SCSA and its Associates preparing reports or other documents in connection with any invitation to a person to tender for the right to operate and maintain the Interchange Facility and/or provide the Services after the end of the Contract Term.

(b) The Concessionaire must use reasonable endeavours to assist the SCSA in the preparation for, and the conduct of, a fair and competitive tendering process. In particular, the Concessionaire must make available to the SCSA and its Associates any information, and assist in the verification of any information (including the provision of answers to verification questions), as the SCSA or any of its Associates reasonably require in connection with the tendering process. The Concessionaire's obligations under this paragraph do not require the Concessionaire to undertake activities which will interfere unreasonably with the operation of the Concessionaire's Business, however the Concessionaire acknowledges and agrees that compliance with this paragraph will cause some disruption or interference with the operation of the Concessionaire's Business.

(c) The Concessionaire warrants to the SCSA that, to the best of the Concessionaire's knowledge and belief, all information it provides or to which it provides access under Clause 56.3(b) will be, at the time it, or access to it, is provided, true and correct in all material respects and will not be misleading, by omission or otherwise. The SCSA may not provide or purport to provide the benefit of this warranty to any other recipient of the information (other than the SCSA's Associates) and must use reasonable endeavours to ensure that the Concessionaire obtains the benefit of any disclaimer or exclusion of liability in respect of the information which the SCSA obtains or receives from the recipient of the information.

56.4 Non-frustration of transfer

The Concessionaire must not (by act or omission) do anything which avoids or materially prejudices or frustrates:

(a) the transfer as a going concern of the right to operate and maintain the Interchange Facility and/or provide the Services, to a Successor Operator; or

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- (b) a provision of a Project Agreement which is included in whole or in part for the purpose of facilitating the transfer as a going concern of the right to operate and maintain the Interchange Facility and/or provide the Services, to a Successor Operator.

56.5 Assistance in securing continuity

- (a) To facilitate the continuity of the operation and maintenance of all or any part of the Interchange Facility and/or the provision of the Services at the end of the Contract Term, the Concessionaire must do everything, both before and after the end of the Contract Term, as the SCSA may reasonably require, to assist and advise any Successor Operator or prospective Successor Operator.
- (b) Without limiting Clause 56.5(a), the Concessionaire must provide the Successor Operator or prospective Successor Operator with any records and information relating to or connected with the Interchange Facility and the Services the SCSA reasonably requests (excluding confidential financial information of the Concessionaire but including all records of the Concessionaire relating to the Concessionaire's officers, employees, consultants or advisers).
- (c) Nothing in this Clause 56.5 requires the Concessionaire to hire additional employees or consultants to assist, advise or provide records or information to a Successor Operator or prospective Successor Operator.

56.6 Access

Without limiting Clause 49, the Concessionaire must use reasonable endeavours to ensure that a Successor Operator has access to the Concessionaire's officers, employees, consultants and advisers and the Concessionaire's assets for the purpose of the Successor Operator:

- (a) receiving information in respect of the Interchange Facility or the Services; and
- (b) preparing to take over the Interchange Facility or the provision of the Services,

but only to the extent that any of the above does not interfere with the operation and maintenance of the Interchange Facility or the provision of the Services by the Concessionaire prior to the end of the Contract Term.

56.7 Other Necessary Acts or Things

The Concessionaire:

- (a) at the end of the Contract Term transfer to the SCSA registration of the business name 'Southern Cross Station', registration number B1573299B, or any other business name held by the Concessionaire containing any reference to the Southern Cross Station;
- (b) with effect on and from the end of the Contract Term, irrevocably appoints the SCSA, and such persons as are from time to time nominated by the SCSA, jointly and severally as its attorney with full power and authority to execute any transfer document, agreement or novation contemplated by this Clause 56; and

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- (c) at the end of the Contract Term must do all other acts and things necessary to give effect to any of the matters referred to in this Clause 56 in order to enable the SCSA or its nominee to be in a position to execute the Interchange Facility Works, operate and maintain the Interchange Facility and provide the Services, as the case may be.

56.8 Consequences of Expiry

Upon expiry of this Agreement, the rights and obligations of the parties under this Agreement will cease except for:

- (a) any rights or obligations accrued as a result of a Default under this Agreement;
- (b) any rights or obligations which are expressed to continue after expiry of this Agreement; and
- (c) as applicable, the rights and obligations of the parties under Clause 49 and this Clause 56.

57. Reports

57.1 Maintaining Accounting Records

- (a) The Concessionaire must keep proper books of account and all other financial and financial planning records that would be expected of a prudent and competent person undertaking similar obligations as the Concessionaire undertakes under the Project Agreements.
- (b) The Concessionaire must ensure that the Construction Contractor, the Operator and the Maintenance Contractor keep proper books of account and all other financial and financial planning records that would be expected of a prudent and competent construction contractor, operator or maintenance contractor (as the case may be).
- (c) The Concessionaire must have the financial statements of the Trust and must ensure that the Construction Contractor, Operator and Maintenance Contractor have their financial statements, audited annually.
- (d) The Concessionaire must have the Trust's, and must ensure that the Construction Contractor, the Operator and the Maintenance Contractor have their respective, books of account and records referred to in Clauses 57.1(a) and (b) respectively, available to the SCSA, or any person nominated by the SCSA, at all reasonable times for examination, audit, inspection, transcription and copying.

57.2 Providing Accounting Records

- (a) No later than by 30 April of each year during the Contract Term, the Concessionaire must:
 - (i) provide to the SCSA the annual business plan of the Trust for the following Financial Year and the budget of the Trust covering the next two Financial Years;
 - (ii) if requested by the SCSA, ensure that the Operator and the Maintenance Contractor provide to the SCSA their respective annual business plans (in

relation to the Project only) for the following Financial Year and their budgets covering the next two Financial Years (in relation to the Project only).

- (b) Within 20 Business Days after each six month period during a Financial Year, the Concessionaire must:
 - (i) provide to the SCSA for the Financial Year to date, unaudited documents (*Management Accounts*) comprising:
 - (A) a Trust profit and loss statement, cash flow statement and balance sheet;
 - (B) comment on any material variations between actual results and budget Financial Year to date; and
 - (C) details of indebtedness (whether actual or contingent) and details of changes to financing arrangements of the Trust; and
 - (ii) if requested by the SCSA, ensure that the Operator and the Maintenance Contractor provide to the SCSA their unaudited profit and loss statement, cash flow statement and balance sheet for the Financial Year to date.
- (c) No later than four months after the end of each Financial Year, the Concessionaire must:
 - (i) provide to the SCSA audited financial statements of the Trust for that Financial Year; and
 - (ii) ensure that the Operator and the Maintenance Contractor provide to the SCSA their audited financial statements for that Financial Year.

57.3 Provision of Registered Details

- (a) The Concessionaire must provide the following information to the SCSA on or before the Commencement Date and must notify the SCSA of any change to that information within 20 Business Days after the change:
 - (i) the name of the Concessionaire, the Construction Contractor, the Operator, the Maintenance Contractor and the Station Retail Operator (the *Main Contractors*);
 - (ii) each Main Contractor's business address and registered office;
 - (iii) the names of the directors, company secretary and chief executive (or equivalent) of each Main Contractor;
 - (iv) the names of each Main Contractor's auditor;
 - (v) any business name under which a Main Contractor operates; and
 - (vi) the identity of:

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- (A) all persons who have a relevant interest in 20% or more of the Units in the Trust or of the shares or stock (as to votes or paid up value) of each Main Contractor (where “relevant interest” has the meaning given in section 609 of the Corporations Act); and
 - (B) all persons who are able to control the Trust or a Main Contractor (where “control” has the meaning given to it in section 50AA of the Corporations Act).

The Concessionaire warrants the accuracy of the information given by it under this paragraph (in the case of information given under Clause 57.3(a)(vi) to the best of its knowledge and belief, having made due and diligent enquiry) as at the date the information is given.

- (b) The Concessionaire must provide to the SCSA:
 - (i) on or before the Commencement Date, a certified copy of the Trust Deed and of its constitution or other constituent documents; and
 - (ii) throughout the Contract Term, copies of each notice or circular or other document issued to Unitholders or lodged with the Australian Securities and Investments Commission or the equivalent regulatory body in its jurisdiction of incorporation or to any stock exchange on which the Trust is or has applied to be listed, in each case as soon as practicable after the document is issued, lodged or recorded by the Concessionaire as the case may be.

57.4 Further information

The Concessionaire must deliver to the SCSA any other information, records or documents and respond to any questions relating to, or connected with or to facilitate the co-ordination of public transport in Victoria or the strategic or operational planning of transport policy in Victoria as reasonably requested by, and within the period reasonably specified by, the SCSA.

58. Community and Media Relations

The Concessionaire must:

- (a) on or before the Commencement Date document, in consultation with the SCSA, and provide to the SCSA a community and media relations strategy and protocol in relation to the Project (the *Communications Strategy*) which complies with the community and media relations requirements set out in the Project Brief (including Clauses 2.15 and 15 of the Project Brief);
- (b) during the Contract Term, implement the Communications Strategy;
- (c) regularly update the Communications Strategy during the Contract Term to reflect changes to any information contained in it and otherwise in the same manner as a skilled professional person suitably qualified and experienced in the performance of obligations similar to those of the Concessionaire under the Project Agreements would do and promptly provide a copy of the updated Communications Strategy to the SCSA for approval; and

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- (d) submit to the SCSA every successive 12 month period during the Contract Term a written report, signed by the Concessionaire, which details any community and media relations issues necessary for the SCSA's consideration or issues arising out of or in connection with the Communications Strategy or its implementation.

59. Confidentiality and Disclosure

59.1 Keep Confidential

The Concessionaire and the SCSA must keep the contents of this Agreement and the other Project Agreements and all documents and information made available to it under, or in connection with, or in the course of the performance of, this Agreement or any other Project Agreement, confidential and must not disclose the same to any other person without the prior written consent of the other party.

59.2 Exceptions to Confidentiality

- (a) Clause 59.1 will not apply in the following circumstances:
- (i) any disclosure required by Law or legally binding Approval (including under Clause 59.2(d));
 - (ii) in respect of information already in the public domain (other than as a result of breach of this Clause 59);
 - (iii) any disclosure required by any applicable stock exchange listing rules;
 - (iv) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality;
 - (v) disclosure to a banker or other financial institution relevant to a party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
 - (vi) disclosure by the Concessionaire to a Related Body Corporate of the Concessionaire for that Related Body Corporate to perform its obligations under this Agreement or any other Project Agreement, if such Related Body Corporate first gives a binding covenant to the SCSA to maintain confidentiality of the disclosed information, in form and substance satisfactory to the SCSA; and
 - (vii) disclosure to a bona fide purchaser of the Concessionaire's rights in the Project or of all or part of the shares in the Concessionaire, if such purchaser first gives a binding covenant to the SCSA to maintain confidentiality of the disclosed information, in form and substance satisfactory to the SCSA.
- (b) The SCSA may, in its discretion, publish or disclose (on the internet or otherwise):
- (i) the terms and conditions of this Agreement or any other Project Agreement to which the SCSA is a party; and
 - (ii) any documents or information arising under, out of or in connection with this Agreement or any other Project Agreement to which the SCSA is a

party or relating to the performance of this Agreement or any other Project Agreement to which the SCSA is a party,

except to the extent that any documents or information described in paragraph (i) or (ii) have or has been identified by the Concessionaire as being confidential to the Concessionaire and the disclosure of such documents or information is not otherwise within the scope of Clause 59.2.

- (c) Nothing in Clause 59.2(b) operates to limit or restrict the SCSA's rights to publish or disclose (on the internet or otherwise) information relating to the Concessionaire's performance with respect to the provision of the Services to the Services Standards, including disclosure of the Quarterly Performance Report.
- (d) The Concessionaire:
 - (i) acknowledges and agrees that disclosure by the State, the SCSA or any Government Agency of the State may be required under the *Freedom of Information Act 1982 (Vic) (FOI Act)*; and
 - (ii) must, at its own cost and expense, use all reasonable endeavours to assist the SCSA in meeting its obligations under the FOI Act.

60. Notices

60.1 Notices – general

Subject to Clause 60.2, any notice, demand, consent or other communication (a *Notice*) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

- (i) to the SCSA
 - Level 15
 - 595 Collins St
 - Southern Cross Station Authority
 - Melbourne Victoria 3000

 - Attention: Chief Executive Officer
 - Southern Cross Station Authority

 - Facsimile: 03 9619 1611
- with a copy to:
 - Department of Infrastructure
 - Level 26
 - 80 Collins Street
 - Melbourne Victoria 3000

 - Attention: Deputy Secretary Capital
 - Southern Cross Station

Redevelopment

Facsimile: 03 9655 1700

(ii) to the Concessionaire:

General Manager
Civic Nexus Pty Limited

Pod B
99 Spencer Street
Docklands Victoria 3008

Attention: General Manager

Facsimile: 03 9619 1691

with a copy to:

Company Secretary
Civic Nexus Pty Limited
C/- ABN AMRO Australia Pty Limited
Level 26
88 Phillip Street
Sydney NSW 2000

Facsimile: 02 8259 5425

(c) will be taken to be duly given or made:

- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at later than 4.00pm (local time), it will be taken to have been duly given or made at the start of business on the next business day in that place.

60.2 Notices sent by email

A Notice may also be sent by email if:

- (a) the Notice is authorised by the sender in accordance with a procedure agreed between the parties, provided that, for as long as no such procedure has been agreed, unless the recipient has actual or constructive notice that the email has not been properly authorised, such authorisation will be assumed; and

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- (b) the Notice is sent to the email address specified below or the email address last notified by the intended recipient to the sender:

(i) **to SCSA:**

email address: tony.canavan@southerncrosstation.com.au

with a copy to: email address: tony.jolly@southerncrosstation.com.au

(ii) **to the Concessionaire:**

email address: philip.howe @au.abnamro.com

with a copy to: email address: geoff.daley@au.abnamro.com

60.3 Receipt of Notices sent by email

A Notice sent by email in accordance with Clause 60.2 will be taken to be duly given or made on the first to occur of:

- (a) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;
- (b) the time that the Notice enters an information system which is under the control of the recipient; and
- (c) the time that the Notice is first opened or read by an employee or officer of the recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at later than 4.00pm (local time) it will be taken to have been duly given or made at the start of business on the next business day in that place.

61. General Provisions

61.1 Entire Agreement

The Project Agreements contains the entire agreement between the parties with respect to their subject matter and supersede all prior agreements and understandings between the parties in connection with them.

61.2 Amendment

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by both parties.

61.3 Remedies cumulative

The rights, powers and remedies provided to the parties in this Agreement, are in addition to and do not, except to the extent expressly provided in this Agreement, exclude or limit, any right, power or remedy provided by Law or equity or by any agreement.

61.4 Further Assurances

Each party agrees to do all things and execute all deed, instruments, transfer or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.

61.5 No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

61.6 Costs and Stamp Duty

- (a) Subject to Clause 61.6(b), each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Agreement and any instrument executed under this Agreement must be borne by the Concessionaire.

61.7 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

61.8 Governing Law and Jurisdiction

This Agreement is governed by the laws of Victoria and with respect to any legal action or proceedings that may be brought with respect to this Agreement or any transaction contemplated by this Agreement, the Concessionaire irrevocably and unconditionally submits to and accepts, for itself and in respect of its assets, the non-exclusive jurisdiction of any of the courts of Victoria or courts of appeal from them.

61.9 Severability of Provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

61.10 Survival of Representations and Warranties

All representations and warranties in this Agreement survive the execution and delivery of this Agreement and the completion of transactions contemplated by it.

61.11 Enurement

The provisions of this Agreement will enure for the benefit of, and be binding on the parties and their respective successors and permitted substitutes and assigns and (where applicable) legal personal representatives.

61.12 No Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

61.13 No Fetter

Nothing in this Agreement will fetter or prejudice the exercise by the SCSA of any discretion or right it has under any Law or any other Project Agreement.

61.14 Survival

The rights and obligations of the parties set out in this Clause 61 and the following Clauses of this Agreement survive the expiry, or earlier termination, of this Agreement: Clauses 1, 3, 6, 9.3(e), 9.3(f) 11, 20.9, 25.3, 34.2(a), 35, 38.1, 39, 40.2, 40.3, 41.5(g) and (h), 44, 45(j), 49(a), 52, 53, 56, 59 and 60.

Schedule 1

Services Standards

1. Introduction

This schedule details the standards to which the Concessionaire must deliver Services at the Interchange Facility. Each section of this schedule sets out the scope, specific requirements and the KPIs that apply to the provision of Services.

The KPI table included for each Service details the following:

- KPI – a description of how the SCSA will assess performance of each Service;
- rectification period – being the period, if any, for the Concessionaire to resolve each incident where performance of a particular Service does not meet the applicable Services Standard;
- number of incidents to trigger penalty – being the number of individual incidents (where a Service does not meet the Services Standard) within a Quarter which have to occur for Penalty Points to be applied (noting that if a single event continues beyond the rectification period, that event cannot trigger more than one incident);
- Penalty Points – being the number or range of Penalty Points that apply to each KPI. Where a range of Penalty Points apply, the number of Penalty Points to be allocated for each incident will be determined by the SCSA within the range specified; and
- primary assessment method – being the standard method that is to be used to monitor the Concessionaire’s performance. The SCSA will have the right to use other assessment methods in addition to the primary assessment method.

2. Performance monitoring

2.1 Scope of Service

The Concessionaire will be required to develop and administer a Performance Management System (PMS) to monitor whether Services are or are not provided to the Services Standards. The SCSA may review the PMS at any time to ensure it is adequate to:

- monitor whether Services are provided to the Services Standards;
- record all incidents where Services do not comply with the Services Standards; and
- comply with the requirements of paragraph 2.2 of this Schedule 1.

2.2 Specific Service Requirements

The PMS must (as a minimum) record the following information:

- where applicable, details of Services that meet the Services Standards;
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- the details of any incidents where Services provided do not comply with the Services Standards including:
 - unique incident number (a sequential number);
 - date and time of incident and when Services return to compliance with Services Standards;
 - date and time notification received;
 - nature of the incident;
 - location of the incident;
 - how the Concessionaire became aware of the incident;
 - the name and contact details for the person notifying the incident; and
 - actions taken to remedy each incident; and
- any complaints or suggestions for improvements in Services received from the public or Transport Operators. Procedures for this must be consistent with AS4269 (or such similar Quality Standard if AS 4269 ceases to be published).

2.3 Quarterly Performance Report

The Concessionaire must prepare a Quarterly Performance Report that must be delivered to the SCSA within 15 Business Days after the end of each Quarter. The Quarterly Performance Report is to include:

- a summary of the Services which comply with the Services Standards;
- details of all incidents with respect to Services not in compliance with the Services Standards;
- a summary of complaints and suggestions received from the public and Transport Operators; and
- details of all bus and coach movements.

2.4 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
2.1	PMS is adequate to monitor whether Services are provided to the Services Standards, to record all incidents where Services do not meet Services Standards and to	N/a	1	40-75	SCSA review

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
	record any complaints and suggestions from public users and Transport Operators.				
2.2	A Quarterly Performance Report to be prepared, contains the information required, and is submitted within 20 Business Days after the end of each Quarter.	2 days	1	40-75	SCSA review

3. Administration Matters

3.1 Scope of Service

The Concessionaire must ensure that procedures are put in place to ensure staff of the Concessionaire including any officer, employee, agent, contractor, consultant or adviser (*Staff*) are aware of and comply with the operating requirements as set out in the Operating Manual and all Laws applicable to the Interchange Facility.

3.2 Specific Service Requirements

The Concessionaire must:

- undertake Staff training to ensure Staff comply with the Operating Manual, Quality Assurance Manual and Services Standards;
- ensure that Staff observe appropriate standards of personal demeanour, presentation and customer service;
- comply with and ensure compliance by Staff with all applicable Laws and codes of practice;
- provide the SCSA with a copy of the Operating Manual and update the Operating Manual in accordance with paragraph 3.3;
- provide the SCSA with a copy of the Quality Assurance Manual and update the Quality Assurance Manual in accordance with paragraph 3.4;
- comply with the procedures identified and described in the Operating Manual and Quality Assurance Manual;
- provide the SCSA with copies of the Handover Package and update the Handover Package in accordance with paragraph 3.5; and

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- provide the SCSA with a copy of the Passenger Usage report containing the information as specified in paragraph 3.6.

3.3 Operating Manual

The Concessionaire must update the Operating Manual regularly and in the same manner as a competent provider of similar services would do and promptly provide an electronic and hard copy of the updated Operating Manual to the SCSA.

Where the Concessionaire decides that the Operating Manual is not required to be updated in a 12 month period on the basis that it is already up to date, the Concessionaire must advise the SCSA in writing within 20 Business Days after the end of each 12 month period that the Operating Manual is up to date. The Operating Manual must accurately reflect the requirements of the Services Standards and the KPIs.

The Operating Manual must contain:

- plans for all processes involved in providing Services including:
 - details of the way in which the Services will be provided to the Services Standards;
 - details of the way in which the KPI will be measured and capable of verification by the SCSA; and
 - procedures for identifying and correcting incidents where Services are not provided to the Services Standards; and
- a process for storing and maintaining the operating records to ensure that these records are readily retrievable and stored in facilities which provide a suitable environment to minimise deterioration or damage and to prevent loss.

3.4 Quality Assurance Manual

The Concessionaire must update the Quality Assurance Manual regularly and in the same manner as a competent provider of similar services would do and promptly provide an electronic and hard copy of the updated Quality Assurance Manual to the SCSA.

Where the Concessionaire decides that the Quality Assurance Manual is not required to be updated in a 12 month period on the basis that it is already up to date, the Concessionaire must advise the SCSA in writing within 20 Business Days after the end of each 12 month period that the Quality Assurance Manual is up to date. The Quality Assurance Manual must accurately reflect the requirements of the Services Standards and the KPIs.

The Quality Assurance Manual must:

- comply with all requirements of Australian Standard AS/NZ ISO 9001:1994 and all other relevant Australian Standards pertaining to quality assurance;
 - be certified by a third party certification body that the manual complies with AS/NZS ISO 9001:1994;
 - detail the relevant Australian Standards which apply to each Service identified in the Services Standards;
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- include a Safety Management Plan which must contain the following details:
 - an outline of safety organisation and structure for the delivery of Services to the Services Standards;
 - the induction process for all employees and sub-contractors;
 - the specific safety responsibilities of key Concessionaire personnel;
 - the contact details of each Transport Operator's key safety personnel;
 - the responsibility allocation for all safety issues between the Concessionaire and Transport Operators;
 - the names and titles of Concessionaire personnel responsible for management of any sub-contractors or employees;
 - the safety rules and responsibilities that apply to all Staff; and
 - the Concessionaire's safety policy with respect to the operating and maintenance of the Interchange Facility; and
 - provide a process for storing and maintaining the quality assurance records so that they are readily retrievable and stored in facilities which provide a suitable environment to minimise deterioration or damage and to prevent loss.

3.5 Handover Package

The Concessionaire will be responsible for preparing and updating a Handover Package. The Handover Package is to assist the SCSA or a new operator appointed by the SCSA with assuming operations in the event that the Concessionaire or Operator ceases to operate the Interchange Facility.

The Concessionaire must update the Handover Package regularly and in the same manner as a competent provider of similar services would do and promptly provide an electronic and 2 hard copies of the updated Handover Package to the SCSA.

For each version of the Handover Package provided to the SCSA, the Concessionaire's auditor must provide written confirmation to the SCSA that the Handover Packages contain the information required by the SCSA.

Where the Concessionaire decides that the Handover Package is not required to be updated in a 6 month period on the basis that it is already up to date, the Concessionaire must advise the SCSA in writing within 20 Business Days after the end of each 6 month period that the Handover Package is up to date. The Concessionaire must also retain copies of the most recent version of the Handover Package and provide these to any new operator nominated by the SCSA.

The Handover Package must include details of:

- premises – a list of the premises leased or operated by the Concessionaire, showing the status, address, telephone number, facsimile number, responsible manager and use of each;
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- contracts – a list of all agreements, permits, licences or other documents which are material to the operation of the Concessionaire’s Business showing (as appropriate) the contact number, name, address, telephone and facsimile numbers of counterparties, contract price, value and subject matter;
 - sub-leases and other commercial arrangements – a summary of all sub-leases and commercial arrangements entered into by the Concessionaire in relation to the Interchange Facility identifying the counterparty, term of arrangement, rental, sub-lease area and summary of terms and conditions. Copies of all sub-leases and commercial arrangements should also be included;
 - systems – a list of systems used (computer and otherwise) for the maintenance and operation of the Concessionaire’s Business together with a description of the systems and master passwords where applicable;
 - daily operations – a list of any other information key to the daily operation of the Concessionaire’s Business, including:
 - the names, work and home telephone numbers of each person in possession of keys accessing the premises owned, leased or operated by the Concessionaire within the Precinct; and
 - lists of Plant and other assets owned, leased or otherwise operated by the Concessionaire material to the operation of the Concessionaire’s Business;
 - organisational structure – a detailed diagrammatical representation of the organisational structure of the Concessionaire and its Related Bodies Corporate;
 - employees – details of each employee of the Concessionaire, including:
 - names, work telephone numbers, roles and responsibilities;
 - the date on which his or her of employment began;
 - terms and conditions of employment;
 - all payments, benefits or changes to terms and conditions of employment promised to any employee
 - Interchange Facility drawings – current and accurate “as built” drawings showing all modifications and augmentations. constructed or installed during the Contract Term, showing precise locations as installed, including three sets of all drawings and documentation, and one complete set of drawings and documentation stored in labelled CD-Rom format;
 - planning and building permit correspondence – copies of all correspondence with the relevant authorities, Transport Operators, consultants, contractors, and sub-contractors pertaining to access arrangements, applications for planning permits, applications for building permits, correspondence related to subsequent building works and alterations and additions to services, and any other building or operational issues related to the Interchange Facility;
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- Plant and equipment - comprehensive set of commissioning and test data confirming that all Plant and equipment installed during the Contract Term, has been commissioned to meet the established design criteria; and
- manuals – copies of the most recent Operating Manual and Quality Assurance Manual.

3.6 Passenger Usage

The Concessionaire must provide to the SCSA within 20 Business Days after the end of each Quarter, a report containing estimates of the number of passengers and other users arriving at the Interchange Facility during the relevant Quarter (the *Estimated Passenger Usage Report*). The requirement to provide the Estimated Passenger Usage Report is in addition to the requirement to provide the Passenger and User Survey described in Clause 27.1(a).

The following estimates must be included in the Estimated Passenger Usage Report:

- the average week day number of passengers and other users arriving at the Interchange Facility per month;
- the number of passengers and other users arriving at the Interchange Facility during the peak hour per month; and
- the number of passengers and other users arriving at the Interchange Facility per month.

3.7 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
3.1	Staff training is undertaken and staff are aware of and comply with operating requirements.	N/a	1	5	SCSA review
3.2	Staff observe appropriate standards of personal demeanour, presentation and customer service.	N/a	1	5	SCSA review
3.3	The Concessionaire and staff have complied with the Operating Manual and Quality Assurance Manual, all legislation, regulations and codes of practice.	N/a	1	15-35	SCSA review
3.4	Operating Manual	N/a	1	15	SCSA review

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
	contains the information required and is updated regularly or confirmation provided that the Operating Manual is current and copies are provided to the SCSA.				
3.5	Quality Assurance Manual contains the information required and is updated regularly or confirmation provided that the Quality Assurance Manual is current and copies are provided to the SCSA.	N/a	1	15	SCSA review
3.6	Handover Package contains the information required and is updated regularly or confirmation provided that the Handover Package is current and copies are provided to the SCSA.	N/a	1	15-35	SCSA review
3.7	Estimated Passenger Usage report to be provided as specified and contains the information required by the SCSA.	N/a	1	15	SCSA review

4. Availability

4.1 Scope of Service

Subject to the terms of any Access Agreement or Interim Access Agreement, the Interchange Facility and all Services are to be available free of charge to the public and Transport Operators (except where identified) during the opening periods specified in paragraph 4.2.

4.2 Specific Service Requirements

The availability and service requirements for the whole Interchange Facility and each section of the Interchange Facility are as follows:

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- the Interchange Facility excluding Franchisee Facilities and Reserved Facilities and any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee must be open and available to the public from 30 minutes before the first transport service for the day until 30 minutes after the last transport service at the end of the day;
 - the Franchisee Facilities and Reserved Facilities are to be available 24 hours a day, 7 days a week to the users granted access to these areas;
 - Metropolitan platforms – except during Special Events which directly affect Southern Cross Station, rail platforms servicing metropolitan trains must be available and capable of clearing passengers disembarking from each train arriving at the Interchange Facility within 90 seconds of passengers having disembarked;
 - Country and interstate platforms – except during Special Events which directly affect Southern Cross Station, rail platforms servicing country and interstate trains must be available and capable of clearing passengers disembarking from each train arriving at the Interchange Facility within 120 seconds of passengers having disembarked;
 - All platforms – access for disabled passengers to and from rail platforms must be available at all times when the Interchange Facility is open to the public;
 - Concourse and public circulation areas – except during Special Events which directly affect Southern Cross Station, circulation in the Concourse and Public Circulation Areas must be at a minimum of Level of Service C for Walkways;
 - Concourse and public circulation areas – during Special Events which directly affect Southern Cross Station, circulation in the Concourse and Public Circulation Areas must be at a minimum of Level of Service D for Walkways;
 - Crowd control – except during Special Events which directly affect Southern Cross Station, circulation within the Interchange Facility, other than for the platforms and access points to the platforms (i.e. escalators and stairs), must be at a minimum of Level of Service C for Queuing. Crowd control at access points to platforms and on the platforms will be the responsibility of the rail Operators;
 - Crowd control – during Special Events which directly affect Southern Cross Station, circulation within the Interchange Facility, other than for the platforms and access points to the platforms (i.e. escalators and stairs), must be at a minimum of Level of Service D for Queuing. Crowd control at access points to platforms and on the platforms will be the responsibility of the rail Operators;
 - Taxi and private car pick up and drop off – access to the taxi and private car pick up and drop off areas, and the taxi queuing facilities, must be available at all times when the Interchange Facility is open to the public;
 - Public amenities – at least 90% of all public amenities must be functional and available to the public at all times the Interchange Facility is open to the public; and
 - Ambient conditions – ambient conditions within the Interchange Facility (excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied by a sole
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Franchisee) must be maintained to or must be capable of meeting the standards documented in Section D.4.3 of Appendix D to the Project Brief at all times the Interchange Facility is open to the public.

The relevant part of the Agreed SCSA Works provides that:

The concourse environmental conditions including External Ambient Conditions, Internal Conditions, Occupancy, Lighting, Power and Outside Air are to be provided as per:

- the letter from the SCSA to the Concessionaire and the Builder of 8 September 2004 on this matter including Section 3 Modified Table D.4.4 and the Builder's acceptance letter of 8 November 2004; and
- the Builder's letter to the SCSA dated 25 January 2005 and attached drawings M750-28, M750-27 and M750-20 showing slab heating locations and areas.

4.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
4.1	Interchange Facility, excluding Franchisee Facilities and Reserved Facilities and any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee, to be open and available to the public from 30 minutes before the first train transport service for the day until 30 minutes after the last train transport service at the end of the day except that those areas making up the bus interchange facility will be open to accommodate the requirements of any Coach Operator.	5 minutes	1	75 (per incident)	Self assessment
4.2	Except during Special Events which directly affect Southern Cross Station, rail platforms servicing metropolitan trains must be available	N/a	1	15-75	SCSA review

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
	and capable of clearing passengers disembarking from each train arriving at the Interchange Facility within 90 seconds of passengers having disembarked.				
4.3	Except during Special Events which directly affect Southern Cross Station, rail platforms servicing country and interstate trains must be available and capable of clearing passengers disembarking from each train arriving at the Interchange Facility within 120 seconds of passengers having disembarked.	N/a	1	15-75	SCSA review
4.4	Access for disabled passengers to and from rail platforms must be available at all times when the Interchange Facility is open.	5 minutes	1	15-35	Self assessment
4.5	Except during Special Events, which directly affect Southern Cross Station circulation in the Concourse and Public Circulation Areas must be at Level of Service C for Walkways or better.	N/a	1	15-75	SCSA review
4.6	During Special Events which directly affect Southern Cross Station, circulation in the Concourse and Public Circulation Areas must be at Level of Service D for Walkways or better.	N/a	1	15-75	SCSA review

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
4.7	Access to the taxi and private car pick up and drop off areas, and the taxi queuing facilities, must be available at all times when the Interchange Facility is open to the public.	15 minutes	2	20	Self assessment
4.8	At least 90% of all Public Amenities must be functional and available to the public at all times the Interchange Facility is open to the public.	15 minutes	2	20	Self assessment
4.9	<p>Ambient conditions within the Interchange Facility (excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied by a sole Franchisee) must be maintained to or must be capable of meeting the standards documented in Section D.4.3 of Appendix D to the Project Brief at all times the Facility is open to the public.</p> <p>The relevant part of the Agreed SCSA Works provides that:</p> <p>The concourse environmental conditions including External Ambient Conditions, Internal Conditions, Occupancy, Lighting, Power and Outside Air are to be provided as per:</p>	15 minutes	2	15	Self assessment

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
	<ul style="list-style-type: none"> • the letter from the SCSA to the Concessionaire and the Builder of 8 September 2004 on this matter including Section 3 Modified Table D.4.4 and the Builder's acceptance letter of 8 November 2004; and • the Builder's letter to the SCSA dated 25 January 2005 and attached drawings M750-28, M750-27 and M750-20 showing slab heating locations and areas. 				
4.10	<p>Except during Special Events which directly affect Southern Cross Station, circulation within the Interchange Facility, other than for the platforms and access points to the platforms (i.e. escalators and stairs), must be at Level of Service C for Queuing or better.</p>	N/a	1	15–75	Self assessment

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
4.11	During Special Events which directly affect Southern Cross Station, circulation within the Interchange Facility, other than for the platforms and access points to the platforms (i.e. escalators and stairs), must be at Level of Service D for Queuing or better.	N/a	1	15-75	Self assessment
4.12	Franchisee Facilities and Reserved Facilities are to be available 24 hours a day, 7 days a week to the relevant users granted access to these areas.	5 minutes	1	15-35	SCSA review

5. Repairs and Maintenance

5.1 General Scope of Service

The Concessionaire must implement an efficient, responsive, comprehensive and effective building repairs and maintenance program. This is to be based on sound technical and operational requirements and standards and is to be carried out in a manner which ensures minimal disruption and inconvenience to public users and Transport Operators.

The building repairs and maintenance program must incorporate:

- a reactive repairs and maintenance program; and
- a planned preventative maintenance program which provides a whole of life planned servicing, maintenance and/or replacement program for major Plant and equipment.

In undertaking any repairs and maintenance, the Concessionaire is obliged to notify users of the Facility at least 15 Business Days in advance of planned major maintenance or augmentation works that will cause disruption to these users.

5.2 Reactive Maintenance

The Concessionaire must provide a reactive maintenance service that ensures the safety of Interchange Facility passengers, other users and Transport Operators and minimises risk and disruption to operational activity resulting from equipment breakdowns and building damage.

The Concessionaire must ensure public safety at all times, if necessary by prompt ‘make safe’ repairs undertaken prior to full rectification of the problem, which must occur as soon as possible after any ‘make safe’ repair.

5.3 Planned Maintenance and Equipment Life Cycle Replacement

The Concessionaire must provide an Asset Management Plan (*AMP*) each year during the Operating Phase. The AMP will include the annual works plan as described in paragraph 5.3(a) (the *Annual Works Plan*) and a rolling 5 year work plan (as described in paragraph 5.3(b) (the *5 Year Work Plan*)).

The AMP must be submitted to the SCSA no later than 3 months prior to the commencement of each Financial Year of the Operating Phase.

In addition to works identified in the AMP, the Concessionaire must ensure that all servicing and maintenance process plans are regularly updated to accommodate new building and equipment, or changes to servicing requirements.

All planned maintenance must be undertaken in accordance with the AMP.

(a) Annual Works Plan

The Annual Works Plan must be a comprehensive works plan covering scheduled servicing, maintenance, refurbishment and augmentation of the Interchange Facility for the following 12 months of operations which must include the following details with respect to the work:

- its nature, scope and scale;
- its location;
- its projected timing and duration;
- a risk assessment (as appropriate);
- its estimated cost; and
- the way in which the Concessionaire intends to work with Transport Operators to manage and minimise disruption to Transport Operators, passengers and other users.

(b) 5 Year Work Plan

The 5 Year Work Plan must adopt a whole of life asset management approach. The plan must include an analysis of life cycles and identification of opportunities to optimise whole of life costs, specifically focussing on assets within the Interchange Facility impacted in the medium term. The rolling 5 Year Work Plan must include:

- current and predicted future asset condition;
 - analysis of asset life cycles;
 - analysis of historical and predicted future breakdown maintenance (as relevant);
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- cost / benefit analysis of repair compared with replacement;
- an indicative 5 year plan including the nature, scope, cost and timing of planned maintenance, refurbishment and augmentation works; and
- analysis of spare parts needed to be maintained, consistent with optimising whole of life costs.

5.3A Bourke Street Bridge Maintenance

The Concessionaire is required to maintain at its cost the Bourke Street Bridge.

The SCSA and the Concessionaire agree that a dilapidation survey in respect of the wearing surface of the Bourke Street Bridge will be completed within 7 days of the Principal Works Practical Completion Date. Any dispute in relation to the results of the dilapidation survey or its timing may be referred by either the SCSA or the Concessionaire to an independent expert in accordance with clause 55.2. After the dilapidation survey or determination of any dispute, the Concessionaire will maintain the wearing surface of the Bourke Street Bridge to the same standard in which the Bourke Street Bridge is described in the dilapidation survey or as determined by the independent expert.

5.4 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
5.1	Any equipment breakdowns, building damage, defects or any other incidents that could lead to a public safety risk must be made safe as soon as possible (including through temporary measures to ensure public health and safety) and in any event the make safe works must have commenced within 15 minutes and be completed within 60 minutes after the incident is reported or becomes known.	N/a	1	25-75 (per incident)	Self assessment
5.2	Any equipment breakdowns, building damage, defects or any other incidents that would not lead to a public safety risk or have been made safe, must be rectified as	N/a	1	25 (per incident)	Self assessment

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
	<p>soon as possible and in any event rectification works must have commenced within 24 hours after the incident is reported or becomes known and must be completed within a reasonable period having regard to the nature of the works, such period to be determined by the SCSA.</p>				
5.3	<p>The Asset Management Plan must be submitted to the SCSA three months prior to the commencement of each Financial Year.</p>	N/a	1	15	SCSA review
5.3A	<p>Maintenance of the Bourke Street Bridge.</p> <p>The SCSA and the Concessionaire agree that a dilapidation survey in respect of the wearing surface of the Bourke Street Bridge will be completed within 7 days of the Principal Works Practical Completion Date. Any dispute in relation to the results of the dilapidation survey or its timing may be referred by either the SCSA or the Concessionaire to an independent expert in accordance with clause 55.2. After the dilapidation survey or determination of any dispute, the Concessionaire will maintain the wearing surface of the Bourke Street Bridge to the same</p>	N/a	1	25	SCSA review

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
	standard in which the Bourke Street Bridge is described in the dilapidation survey or as determined by the independent expert.				
5.4	Planned maintenance (other than in respect of the Information Buttons and Duress Alarms system, and associated Closed Circuit Television installed and permanently directed on each Duress Alarm and its surroundings) must be undertaken in accordance with the Asset Management Plan unless otherwise agreed. Records of all maintenance must be kept.	1 month	1	25	SCSA review
5.5	The Concessionaire must notify Transport Operators, passengers and other users of planned major works to be undertaken at least 15 Business Days prior to the works being undertaken.	1 day	1	3	Self assessment

6. Security and Emergency Services

6.1 Scope of Service

The Concessionaire must provide a security service to ensure the safety of

- all persons within the Interchange Facility; and
- all property from theft and criminal damage.

The Concessionaire must ensure the preservation of good order within the Interchange Facility including the protection of users of the Interchange Facility against violent acts, interference, threatening behaviour and abuse.

The Concessionaire will be responsible for arranging fire, police, ambulance, building evacuation and other emergency procedures and services in line with all applicable Laws. Access and operational area requirements for emergency services will also be the responsibility of the Concessionaire.

6.2 Specific Service Requirements

The Concessionaire must:

- provide a continuous security service at the Interchange Facility 24 hours a day, 7 days a week;
- implement a documentation system at the Interchange Facility including:
 - procedures for documentation of security incidents; and
 - procedures for documentation of risk assessments.

The Concessionaire may receive several requests for assistance with respect to security issues concurrently. These requests should be prioritised, where necessary, according to an appropriate hierarchy that would include:

- protection of all persons;
- emergency situations; and
- protection of assets.

User Safety

The Concessionaire must or must ensure that any security personnel engaged by it:

- remove promptly from the Interchange Facility, or otherwise deal with, as appropriate, persons who are or who are reasonably suspected to be likely to be engaged in unlawful or offensive behaviour or other behaviour that may constitute a nuisance to users of the Interchange Facility;
 - undertake regular uniformed security patrols of the Interchange Facility to provide a high profile deterrent to unlawful or offensive behaviour or other behaviour that may constitute a nuisance to users of the Interchange Facility. Particular attention must be paid to all external doors, windows, car parking areas or other vulnerable areas. Frequency of patrols should be varied and focused on higher risk areas. Patrols should be undertaken at least once every hour, 24 hours a day, 7 days a week;
 - provide assistance in potentially violent or abusive situations involving users of the Interchange Facility or staff employing restraint within existing legal parameters. The police should be involved where appropriate;
 - investigate reports of suspicious incidents;
 - prevent intimidatory behaviour, where possible;
 - restrict access to designated areas to authorised personnel; and
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- provide a system to enable the public to report emergency and security incidents.

Security Surveillance

The Concessionaire must:

- provide comprehensive surveillance of the Interchange Facility including Closed Circuit Television (CCTV), 24 hours a day, 7 days a week including monitoring of alarms and security systems. The CCTV must be operational and monitored at all times;
- provide CCTV images to Government Agencies as required; and
- provide CCTV images to the Franchisees as required.

Emergency Services

The Concessionaire:

- must develop, maintain and test a safety and emergency plan. The safety and emergency plan should cover, but not be limited to, the following areas:
 - a process for the immediate response to calls and alarm systems;
 - contingency plans in emergency situations including: fire, escape of gas, petrochemicals; biological hazards, bomb or other security threats, major incidents, flood, lightning strike or wind storm or other inclement weather;
 - plans for the Concessionaire to act as a fire marshal and assist in the control and direction of traffic within the Site as required;
 - routine testing, at least Quarterly, of fire, security and alarms systems and maintenance of records of all tests; and
 - reporting of any water, steam, gas, oil, solvents, electrical or gas breakdowns to the Utility Service providers and process for immediate action to be taken in the interest of safety and security;
 - must ensure that all appropriate fire fighting equipment is maintained is available for immediate use;
 - must ensure that all fire fighting equipment is checked regularly, at least Quarterly, in accordance with the manufacturer's specifications and/or any applicable fire brigade recommendations or requirements;
 - must ensure that all smoke detectors and sprinkler systems are fitted in appropriate locations and are maintained so as to ensure they are properly functional;
 - must ensure that all emergency exits are not obstructed;
 - must ensure that all staff are immediately contactable while on duty by their colleagues, supervisor, switchboard, other Interchange Facility staff, SCSA personnel and Franchisee staff;
-

- must:
 - subject to the following paragraph, respond to all security incidents or matters or safety issues (**Incident**) as soon as possible and in any event no later than 5 minutes after notification of the Incident; and
 - in the event that the Incident is initiated by an Information Button or Duress Alarm, respond as soon as possible and in any event by the earlier of:
 - (a) no later than 5 minutes after a Connex Station Master Control Room staff member notifies a staff member of the Station Security Control Room of the Incident; and
 - (b) the time that the Concessionaire first becomes aware of the Incident.
- must provide a first aid service at all times that the Interchange Facility is open to public users. The first aid service must comprise:
 - a first aid room containing appropriate equipment and supplies; and
 - at least one member of staff available with an appropriate first aid qualification.

6.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
6.1	At least 80% of general public users surveyed by the SCSA* within the Interchange Facility must respond stating that they consider they are in a safe and non-threatening environment. At a minimum, user surveys will be conducted each Quarter.	N/a	N/a	3	User survey
6.2	The surveillance system (including the CCTV) must be operational at all times.	30 minutes	1	15-50 (per incident)	Self assessment
6.3	Security patrols are undertaken at least every hour, 24 hours a day, 7 days a week.	15 minutes	1	35	Self assessment

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
6.4	<p>The Concessionaire must:</p> <ul style="list-style-type: none"> • subject to the following paragraph, respond to all Incidents as soon as possible and in any event no later than 5 minutes after notification of the Incident; and • in the event that the Incident is initiated by an Information Button or Duress Alarm, respond as soon as possible and in any event by the earlier of: <ul style="list-style-type: none"> (a) no later than 5 minutes after a Connex Station Master Control Room staff member notifies a staff member of the Station Security Control Room of the Incident; and (b) the time that the Concessionaire first becomes aware of the Incident. 	N/a	1	25 (per incident)	Self assessment
6.5	The Safety and Emergency Plan must be submitted to the SCSA three months prior to the commencement of each Financial Year.	1 week	1	25	SCSA review
6.6	All safety and emergency equipment is inspected and tested at least Quarterly and regularly	24 hours	1	25	Self assessment

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
	maintained.				
6.7	The first aid service must be available at all times that the Interchange Facility is open to public users.	5 minutes	1	7	SCSA review

** Note – The SCSA will have the responsibility to conduct User surveys in accordance with accepted industry practice for sampling size and other methodology for surveys of this kind to be developed and discussed in advance with the Concessionaire.*

7. Cleaning

7.1 Scope of Service

The Concessionaire is responsible for the cleaning of all areas within the Interchange Facility, excluding within Reserved Facilities, and any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee. The Interchange Facility (excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee) must be clean and free from litter at all times. All spillages, staining and graffiti applied to any surface (for example, spray paint, but not including graffiti scratched or etched onto a surface) must be removed. It is expected that the Concessionaire will provide a level of cleanliness in the public areas (excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee) consistent with user expectations of a world class transport interchange facility.

7.2 Specific Service Requirements

At a minimum, the Concessionaire must within the Interchange Facility, excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee, conduct or must ensure that its Staff conduct:

- routine (daily) and periodic cleaning of all areas utilised by the public, staff and Transport Operators;
- periodic cleaning of all internal and external glass surfaces;
- periodic cleaning of all floors, walls and ceilings;
- regular (at least every 2 hours) cleaning of all toilet areas, sanitary ware, including replenishment of disposable items;
- periodic cleaning of all furniture, fixtures and fittings, except where specifically excluded;

- removal of graffiti applied to any surface (for example, spray paint, but not including graffiti scratched or etched onto a surface) and staining within 24 hours of identification; and
- ad hoc cleaning as required.

7.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
7.1	At least 80% of users surveyed by the SCSA* must respond stating that they consider that all public areas (excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee) are clean and tidy. At a minimum, user surveys will be conducted each Quarter.	N/a	1	3	User survey
7.2	Spillages and rubbish must be removed promptly from all areas within the Interchange Facility, excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee.	15 minutes	2	25	Self assessment
7.2A	KPI to apply to cleaning and cleaning performance in respect of all floor surfaces.	TBC	TBC	TBC	Standard to be determined pursuant to Clause 7.2A of Annexure

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
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7.3	All graffiti applied to any surface (for example, spray paint, but not including graffiti scratched or etched onto a surface) and staining excluding within Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee must be removed within 24 hours of identification.	N/a	2	7	Self assessment
7.3A	All graffiti scratched or etched onto a surface, excluding within Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee must be removed within 30 days of identification	N/a	2	7	Self-assessment
7.4	Franchisee Facilities or any part of a Franchisee Facility that is not exclusively occupied by a sole Franchisee are clean and tidy.	N/a	1	0-10	SCSA review

** Note – The SCSA will have the responsibility to conduct User surveys in accordance with accepted industry practice for sampling size and other methodology for surveys of this kind to be developed and discussed in advance with the Concessionaire.*

8. Passenger Information and Signage

8.1 Scope of Service

The Concessionaire must install and maintain prominent and readily available Information and signage throughout the Interchange Facility including:

- directional information providing clear and concise directions for public users to the major areas and services within the Interchange Facility; and
- arrival and departure times for scheduled public transport operations to and from the Interchange Facility.

8.2 Specific Service Requirements

The Concessionaire must provide and maintain:

- directional signage within the Interchange Facility (including Emergency Exit signs) including:
 - up to date and legible Interchange Facility plans at appropriate points throughout the public areas of the Interchange Facility. These plans must identify the major areas and facilities of the Interchange Facility including toilets and washrooms, retail and waiting areas, ticketing and information, and transport facilities.
 - adjacent Site plans at all exits from the Interchange Facility. These plans must be kept up to date and include the major buildings and points of interest located in the precincts surrounding the Interchange Facility and the Site;
 - signage and/or nameplates as appropriate identifying all areas, rooms and zones throughout the Interchange Facility; and
 - display facilities for printed timetable and schedule information provided by Franchisees;
- passenger information display monitors throughout the Interchange Facility, including the platforms, the Concourse and the retail areas. Monitors are to be connected to the Passenger Information Display System for metropolitan rail, non-metropolitan rail and bus services. The Passenger Information Display System is operated by the Franchisees and provides information regarding arrival and departure times for rail and bus services and emergency information;

If there is an interruption to the operation of the Passenger Information Display System, the Concessionaire must inform the Franchise Operator of the failure within 10 minutes and must liaise with the Franchise Operators to determine the cause of such failure and to mitigate disruption to passengers;

- information to be displayed on the Passenger Information Display System includes arrivals and departures and emergency information for each transport service. In relation to each transport service the information is to be provided as follows:
 - metropolitan rail services – information provided by Franchisees;
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- non-metropolitan rail services – information provided by the VLP Franchisee; and
- bus services – Concessionaire to obtain information from each bus operator.
- a public address system throughout the Interchange Facility. This will be the primary source of announcements for security and emergency events and therefore must be operational at all times. Each Franchisee must be individually provided with use of and access to the public address system to make announcements on rail platforms that they control at all times that the Interchange Facility is open to public users. In relation to making announcements on the rail platforms, the Concessionaire is to be restricted to only making emergency announcements;
- the passenger information display monitors may also be used by the Concessionaire to display other information, broadcasts and advertising (*content*), on such terms as may be agreed between the Concessionaire and the SCSA including agreement on the nature of any content and the manner in which the Concessionaire will ensure that any content will:
 - be consistent with the Services Standards and not impede, or interfere with, the operation of the Passenger Information Display System by the Franchisees for the purposes of providing information to users of the Interchange Facility;
 - be able to be interrupted at any time to broadcast security or emergency information;
 - comply with all applicable Laws and Quality Standards;
 - comply with voluntary codes of conduct established by the advertising industry; and
 - not depict subject matter which is or reasonably would be regarded as offensive.

8.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
8.1	Directional signage must be provided, maintained and available at all times.	1 week	1	7	SCSA inspection
8.2	Passenger information display monitors must be operational at all times the Interchange Facility is open to public users.	2 hours	1	15	Self assessment

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
8.3	Public address system to be fully operational at all times and use and access provided to Franchisees as appropriate.	30 minutes (provided that loud hailers or alternative equipment for making passenger announcements are available for use during that 30 minute period).	1	60 (per incident)	Self assessment

9. Baggage Handling and Traveller Assistance

9.1 Scope of Service

The Concessionaire must provide facilities and services to assist train and bus passengers with baggage handling. These facilities and services are to be available at all times while the Interchange Facility is open to public users.

9.2 Specific Service Requirements

The Concessionaire is required to provide baggage handling and movement assistance for elderly, disabled or other persons needing such assistance within the Interchange Facility.

The Concessionaire is required to provide and maintain baggage lockers (users may be charged for this service) and other services for public users as required to provide a high standard of convenience and amenity.

For all public users, the Concessionaire is to provide a lost property and baggage service.

For interstate and country train passengers the Concessionaire is required to:

- provide and maintain conveniently located self service trolley facilities for passengers including appropriate trolley return arrangements. Users may be charged for this service where trolleys are not returned to designated areas;
- respond to ad hoc and routine requests to move travellers' baggage and assist disabled, elderly and other passengers requiring assistance promptly and courteously; and
- provide central baggage check in and conveyance, loading, off-loading and collection as required.

9.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
9.1	Baggage trolleys must be available at designated locations to supply at least 90% of country and interstate users that require trolleys.	N/a	2	5	SCSA review
9.2	For country and interstate passengers, baggage handling facilities should be fully available up to 30 minutes before a departing service and for 30 minutes after an arriving service.	5 minutes	1	5	SCSA review
9.3	Baggage handling and movement assistance is available for disabled, elderly and other passengers requiring assistance at all times the Interchange Facility is open to public users.	10 minutes	1	7	SCSA review
9.4	At least 90% of baggage lockers to be available for use at all times that the Interchange Facility is open to public users.	1 day	2	3	SCSA review
9.5	For all public users, a lost property and baggage service must be available at all times that the Interchange Facility is open to public users.	10 minutes	1	7	SCSA review

10. Telecommunications

10.1 Scope of Service

The Concessionaire must provide telecommunications services to the users of the Interchange Facility.

10.2 Specific Service Requirements

The Concessionaire must provide and maintain telecommunication services capable of providing local, national and international phone connections for use by public users in suitable locations throughout the Facility. Information should be provided in different languages for non-English speaking users. Telecommunications services should also allow disabled persons (eg. hearing or visually impaired) to make phone calls.

10.3 Key Performance Indicator

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
10.1	At least 98% of all telecommunication services supplied and controlled by the Concessionaire should be available at all times.	24 hours	2	5	Self assessment

11. Food and Beverage

11.1 Scope of Service

The Concessionaire must provide food and beverage services to users of the Interchange Facility.

11.2 Specific Service Requirements

At least one food and beverage service must be available to users at all times the Interchange Facility is open to public users.

11.3 Key Performance Indicator

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
11.1	At least one food and beverage service open at all times that the Interchange Facility is open to public users.	24 hours	2	3	Self assessment

12. Car Parking

12.1 Scope of Service

The Concessionaire must ensure availability of car parking at, and vehicle access to, the Interchange Facility. Facilities for the disabled and parents with young children must also

be provided. It is necessary to ensure that users of the Interchange Facility are able to use car parks that are effectively and safely maintained and well lit and that delivery and emergency vehicles have unimpeded access to appropriate areas of the Facility when required.

The Concessionaire may charge fees for the usage of car parks.

12.2 Specific Service Requirements

The Concessionaire must:

- (a) ensure that emergency vehicles and delivery vehicles have unimpeded access to designated areas of the Site;
- (b) implement penalties, where possible, for improper parking as agreed with the SCSA and other appropriate regulatory bodies;
- (c) supply, install and maintain all traffic signs and notices within the Interchange Facility and the Site including notices indicating any parking restrictions or concessions as agreed with the SCSA;
- (d) provide and maintain all road markings and lighting within the Site to ensure safe and efficient traffic flow for private vehicles, taxis and buses; and
- (e) ensure that the carparking and other vehicle related services provided by it in accordance with paragraphs (a) to (d) (inclusive) comply with any applicable Laws, Approvals and Quality Standards.

12.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
12.1	Access to emergency areas must not be impeded.	10 minutes	1	75 (per incident)	Self assessment
12.2	Parking facility road markings, lighting and signage in parking areas to be provided and maintained in accordance with any applicable Laws, Approvals and Quality Standards.	24 hours	2	5	SCSA review

13. Energy Management

13.1 Scope of Service

The Concessionaire must ensure a safe, reliable and efficient energy supply for and to the Facility that complies with State Government policies and best practice standards.

13.2 Specific Service Requirements

The Concessionaire must:

- ensure that electricity supply is maintained 24 hours a day, 7 days a week;
- monitor energy usage and maintain accurate records for energy performance returns; and
- produce an annual energy report indicating the Concessionaire's compliance with State Government policies and best practice standards.

13.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
13.1	The electricity supply is maintained 24 hours a day, 7 days a week.	10 seconds	1	75 (per incident)	Self assessment
13.2	The Concessionaire is required to prepare an annual report identifying its compliance with Government policies and best practice environmental standards. The report must be submitted within 45 Business Days after the end of the Financial Year and conform to a template supplied and agreed with the SCSA.	2 days	1	3	SCSA review

14. Waste Management

14.1 Scope of Service

The Concessionaire must provide a waste collection and disposal service for all waste generated within and adjacent to the Interchange Facility and the Site.

14.2 Specific Service Requirements

The Concessionaire must be responsible for the routine and ad hoc collection of waste from all areas within the Interchange Facility and the Site.

The Concessionaire must also provide containers for the storage of waste and external rubbish bins throughout the Interchange Facility and the Site.

The Concessionaire must ensure that the storage of waste in all areas of the Interchange Facility and the Site is kept to a minimum and that storage methods are both secure and hygienic. Excess waste accumulation must be avoided at all times and no waste container in public areas should be more than 75% full.

14.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
14.1	Bins in all areas of the Interchange Facility and the Site (excluding within Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee) should not be more than 80% full at any time.	15 minutes	5	7	Self assessment

15. Pest Control

15.1 Scope of Service

The Concessionaire must provide a pest control system for the Interchange Facility and the Site.

15.2 Specific Service Requirement

The Concessionaire must ensure that pest and vermin control measures are implemented in accordance with occupational health and safety legislation and regulations and any other applicable laws and regulations.

15.3 Key Performance Indicator

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
15.1	Pest control measures operating in accordance with required legislation and regulations	1 week	2	5	Self assessment

16. Bus bays

16.1 Scope of Service

The Concessionaire must provide and manage the bus bays and associated booking counters and waiting areas within the Interchange Facility.

16.2 Specific Service Requirement

Whilst bus services are operating from the Interchange Facility, the Concessionaire must ensure the following:

- that the bus bays and waiting areas related to bus services are available for safe use. Access fees may be charged to Coach Operators for use of the bus bays and booking counters pursuant to Clause 48.1(c);
- that all bus movements are monitored and recorded;
- that verbal announcements are made for all bus arrivals, departures and timetable alterations based on information provided by each bus operator;
- display of bus service information including arrivals, departures and timetable alterations on the Passenger Information Display System based on information provided by each bus operator;
- that the bus operators are appropriately allocated and scheduled to bus bays; and
- that customer service and information is provided to bus users and operators.

16.3 Key Performance Indicators

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
16.1	Bus bays and waiting areas are available (subject to access charges) for safe use at all times that bus services are	1 hour	1	5	Self assessment

No	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
	operating.				
16.2	Announcements of all bus arrivals, departures and timetable alterations are made whilst bus services are operating.	5 minutes	1	15-35	Self assessment
16.3	Bus bay allocations and scheduling to be conducted to the satisfaction of the SCSA for all buses seeking use of the Interchange Facility.	N/a	1	15-35	SCSA review
16.4	Provision of customer service and information staff at all times whilst bus services are operating or a reduced level of service for times agreed with the SCSA.	1 hour	1	15	SCSA review

17 Summary of KPIs

To the extent of any inconsistency between a provision in this Clause 17 in this Schedule 1 and a provision of Clauses 1 to 16 in this Schedule 1, the provision in Clauses 1 to 16 will prevail.

[Summary starts on next page]

Summary of KPIs

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
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HIGH

Availability	4.1	Interchange Facility, excluding Franchisee Facilities and Reserved Facilities and any area exclusively occupied by the SCSA, its licensee or sub-licensee, to be open and available to the public from 30 minutes before the first train transport service for the day until 30 minutes after the last train transport service at the end of the day.	5 minutes	1	75 (per incident)	Self assessment
Availability	4.2	Except during Special Events which directly affect Southern Cross Station, rail platforms servicing metropolitan trains must be available and capable of clearing passengers disembarking from each train arriving at the Interchange Facility within 90 seconds of passengers having disembarked.	N/a	1	15-75	SCSA review
Availability	4.3	Except during Special Events which directly affect Southern Cross Station, rail platforms servicing country and interstate trains must be available and capable of clearing passengers disembarking from each train arriving at the Interchange Facility within	N/a	1	15-75	SCSA review

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		120 seconds of passengers having disembarked.				
Availability	4.5	Except during Special Events which directly affect Southern Cross Station, circulation in the Concourse and Public Circulation Areas must be at Level of Service C for Walkways or better.	N/a	1	15-75	SCSA review
Availability	4.6	During Special Events which directly affect Southern Cross Station, circulation in the concourse and public circulation areas must be at Level of Service D for Walkways or better.	N/a	1	15-75	SCSA review
Availability	4.10	Except during Special Events which directly affect Southern Cross Station, circulation within the Interchange Facility, other than for the platforms and access points to the platforms (i.e. escalators and stairs), must be at Level of Service C for Queuing or better.	N/a	1	15-75	Self assessment
Availability	4.11	During Special Events which directly affect Southern Cross Station, circulation within the Interchange Facility, other than for the platforms and access points to the platforms (i.e. escalators and stairs), must be at Level of Service D for Queuing or better.	N/a	1	15-75	Self assessment

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
Repairs and Maintenance	5.1	Any equipment breakdowns, building damage, defects or any other incidents that could lead to a public safety risk must be made safe as soon as possible (including through temporary measures to ensure public health and safety) and in any event the make safe works must have commenced within 15 minutes and be complete within 60 minutes after the incident is reported or becomes known.	N/a	1	25-75 (per incident)	Self assessment
Security and Emergency Services	6.2	The surveillance system (including the CCTV) must be operational at all times.	30 minutes	1	15-50 (per incident)	Self assessment
Passenger Information and Signage	8.3	Public address system to be fully operational at all times and use and access provided to Franchisees as appropriate.	30 minutes	1	60 (per incident)	Self assessment
Car Parking	12.1	Access to emergency areas must not be impeded.	10 minutes	1	75 (per incident)	Self assessment
Energy Management	13.1	The electricity supply is maintained 24 hours a day, 7 days a week.	10 seconds	1	75 (per incident)	Self assessment

MEDIUM

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
Performance Monitoring	2.1	PMS is adequate to monitor whether Services are provided to the Services Standards, to record all incidents where Services do not meet Services Standards and to record any complaints and suggestions from public users and Transport Operators.	N/a	1	40-75	SCSA review
Performance Monitoring	2.2	A Quarterly Performance Report to be prepared, contains the information required, and is submitted within 20 Business Days after the end of each Quarter.	2 days	1	40-75	SCSA review
Administration Matters	3.3	The Concessionaire and staff have complied with the Operating Manual and Quality Assurance Manual, all legislation, regulations and codes of practice.	N/a	1	15-35	Self assessment
Administration Matters	3.4	Operating Manual contains the information required and is updated regularly or confirmation that the Operating Manual is current and copies are provided to the SCSA.	N/a	1	15	SCSA review
Administration Matters	3.5	Quality Assurance Manual contains the information required and is updated regularly or confirmation that the Quality Assurance Manual is current and copies are provided to the SCSA.	N/a	1	15	SCSA review

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
Administration Matters	3.6	Handover Package contains the information required and is updated regularly or confirmation that the Handover Package is current and copies are provided to the SCSA.	N/a	1	15-35	SCSA review
Administration Matters	3.7	Estimated Passenger Usage report to be provided as specified and contain the information required by the SCSA.	N/a	1	15	SCSA review
Availability	4.4	Access for disabled passengers to and from rail platforms must be available at all times when the Interchange Facility is open.	5 minutes	1	15-35	Self assessment
Availability	4.7	Access to the taxi and private car pick up and drop off areas, and the taxi queuing facilities, must be available at all times when the Facility is open to the public.	15 minutes	2	20	Self assessment
Availability	4.8	At least 90% of all Public Amenities must be functional and available to the public at all times the Facility is open to the public.	15 minutes	2	20	Self assessment
Availability	4.9	Ambient conditions within the Facility (excluding Reserved Facilities, and any area exclusively occupied by the SCSA, its licensee or sub-licensee and Franchise Facility occupied by a sole Franchisee) must be maintained to the standards documented in Section D.4.3 of Appendix D to the Project	15 minutes	2	15	Self assessment

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		<p>Brief at all times the Facility is open to the public.</p> <p>The relevant part of the Agreed SCSA Works provides that:</p> <ul style="list-style-type: none"> • The concourse environmental conditions including External Ambient Conditions, Internal Conditions, Occupancy, Lighting, Power and Outside Air are to be provided as per: • the letter from the SCSA to the Concessionaire and the Builder of 8 September 2004 on this matter including Section 3 Modified Table D.4.4 and the Builder's acceptance letter of 8 November 2004; and • the Builder's letter to the SCSA dated 25 January 2005 and attached drawings M750-28, M750-27 and M750-20 showing slab heating locations and areas. 				
Availability	4.12	Franchisee Facilities and Reserved Facilities are to be available 24 hours a day, 7 days a week to the relevant users granted access to	5 minutes	1	15-35	SCSA review

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		these areas.				
Repairs and Maintenance	5.2	Any equipment breakdowns, building damage, defects or any other incidents that would not lead to a public safety risk or have been made safe, are rectified as soon as possible and in any event rectification works must have commenced within 24 hours after the incident is reported or becomes known and must be completed within a reasonable period having regard to the nature of the works, such period to be determined by the SCSA.	N/a	1	25 (per incident)	Self assessment
Repairs and Maintenance	5.3	The Asset Management Plan must be submitted to the SCSA three months prior to the commencement of each Financial Year.	N/a	1	15	SCSA review
Repairs and Maintenance	5.3A	Maintenance of the Bourke Street Bridge. The SCSA and the Concessionaire agree that a dilapidation survey in respect of the wearing surface of the Bourke Street Bridge will be completed within 7 days of the Principal Works Practical Completion Date. Any dispute in relation to the results of the dilapidation survey or its timing may be referred by either the SCSA or the Concessionaire to an independent expert in	N/a	1	25	SCSA review

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		accordance with clause 55.2. After the dilapidation survey or determination of any dispute, the Concessionaire will maintain the wearing surface of the Bourke Street Bridge to the same standard in which the Bourke Street Bridge is described in the dilapidation survey or as determined by the independent expert.				
Repairs and Maintenance	5.4	Planned maintenance (other than in respect of the Information Buttons and Duress Alarms system, and associated Closed Circuit Television installed and permanently directed on each Duress Alarm and its surroundings) must be undertaken in accordance with the Asset Management Plan unless otherwise agreed. Records of all maintenance must be kept.	1 month	1	25	SCSA review
Security and Emergency Services	6.3	Security patrols are undertaken at least every hour, 24 hours a day, 7 days a week.	15 minutes	1	35	Self assessment
Security and Emergency Services	6.4	The Concessionaire must: <ul style="list-style-type: none"> subject to the following paragraph, respond to all Incidents as soon as possible and in any event no later than 5 minutes after notification of the Incident; and 	N/a	1	25 (per incident)	Self assessment

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		<ul style="list-style-type: none"> • in the event that the Incident is initiated by an Information Button or Duress Alarm, respond as soon as possible and in any event by the earlier of: <ul style="list-style-type: none"> (a) no later than 5 minutes after a Connex Station Master Control Room staff member notifies a staff member of the Station Security Control Room of the Incident; and (b) the time that the Concessionaire first becomes aware of the Incident. 				
Security and Emergency Services	6.5	The Safety and Emergency Plan must be submitted to the SCSA three months prior to the commencement of each Financial Year.	1 week	1	25	SCSA review
Security and Emergency Services	6.6	All safety and emergency equipment is inspected and tested at least Quarterly and regularly maintained.	24 hours	1	25	Self assessment
Cleaning	7.2	Spillages and rubbish must be removed promptly from all areas within the Interchange Facility, excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-	10 minutes	2	25	Self assessment

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		lessee and any Franchisee Facility occupied by a sole Franchisee.				
Cleaning	7.2A	KPI to apply to cleaning and cleaning performance in respect to all floor surfaces	TBC	TBC	TBC	Standard to be determined pursuant to Clause 26B(f).
Passenger Information and Signage	8.2	Passenger information display monitors must be operational at all times the Interchange Facility is open to public users.	2 hours	1	15	Self assessment
Bus Bays	16.2	Announcements of all bus arrivals, departures and timetable alterations are made whilst bus services are operating.	5 minutes	1	15-35	Self assessment
Bus Bays	16.3	Bus bay allocations and scheduling to be conducted to the satisfaction of the SCSA for all buses seeking use of the Interchange Facility.	N/a	1	15-35	SCSA review
Bus Bays	16.4	Provision of customer service and information staff at all times whilst bus services are operating.	1 hour	1	15	SCSA review

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Administration Matters	3.1	Staff training is undertaken and staff are aware of and comply with operating	N/a	1	5	SCSA review
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Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		requirements.				
Administration Matters	3.2	Staff observe appropriate standards of personal demeanour, presentation and customer service.	N/a	1	5	SCSA review
Repairs and Maintenance	5.5	The Concessionaire must notify Transport Operators, passengers and other users of planned major works to be undertaken at least 15 Business Days prior to the works being undertaken.	1 day	1	3	Self assessment
Security and Emergency Services	6.1	At least 80% of general public users surveyed by the SCSA* within the Interchange Facility must respond stating that they consider they are in a safe and non-threatening environment. At a minimum, user surveys will be conducted each Quarter.	N/a	N/a	3	User survey
Security and Emergency Services	6.7	The first aid service must be available at all times that the Interchange Facility is open to public users.	5 minutes	1	7	SCSA review
Cleaning	7.1	At least 80% of users surveyed by the SCSA* must respond stating that they consider that all public areas (excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee	N/a	1	3	User survey

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		Facility occupied exclusively by a sole Franchisee) are clean and tidy. At a minimum, user surveys will be conducted each Quarter.				
Cleaning	7.3	All graffiti applied to any surface (for example, spray paint, but not including graffiti scratched or etched onto a surface) and staining excluding within Reserved Facilities, any area occupied exclusively by the SCSA its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee must be removed within 24 hours of identification.	N/a	2	7	Self assessment
Cleaning	7.3A	All graffiti scratched or etched onto a surface, excluding within Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee, must be removed within 30 days of identification.	N/a	2	7	Self assessment
Cleaning	7.4	Franchisee Facilities or any part of a Franchisee Facility that is not exclusively occupied by a sole Franchisee are clean and tidy.	N/a	1	0-10	SCSA review

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
Passenger Information and Signage	8.1	Directional signage must be provided, maintained and available at all times.	1 week	1	7	SCSA inspection
Baggage Handling and Traveller Assistance	9.1	Baggage trolleys must be available at designated locations to supply at least 90% of country and interstate users that require trolleys.	N/a	2	5	SCSA review
Baggage Handling and Traveller Assistance	9.2	For country and interstate passengers, baggage handling facilities should be fully available up to 30 minutes before a departing service and for 30 minutes after an arriving service.	5 minutes	1	5	SCSA review
Baggage Handling and Traveller Assistance	9.3	Baggage handling and movement assistance is available for disabled, elderly and other passengers requiring assistance at all times the Interchange Facility is open to public users.	10 minutes	1	7	SCSA review
Baggage Handling and Traveller Assistance	9.4	At least 90% of baggage lockers to be available for use at all times that the Interchange Facility is open to public users.	1 day	2	3	SCSA review
Baggage Handling and Traveller Assistance	9.5	For all public users, a lost property and baggage service must be available at all times that the Interchange Facility is open to public users.	10 minutes	1	7	SCSA review

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
Telecommunications	10.1	At least 98% of all telecommunication services supplied and controlled by the Concessionaire should be available at all times.	24 hours	2	5	Self assessment
Food and Beverage	11.1	At least one food and beverage service open at all times that the Interchange Facility is open to public users.	24 hours	2	3	Self assessment
Car Parking	12.2	Parking facility road markings, lighting and signage in parking areas to be provided and maintained in accordance with any applicable Laws, Approvals and Quality Standards.	24 hours	2	5	SCSA review
Energy Management	13.2	The Concessionaire is required to prepare an annual report identifying its compliance with Government policies and best practice environmental standards. The report must be submitted within 45 Business Days after the end of the Financial Year and conform to a template supplied and agreed with the SCSA.	2 days	1	3	SCSA review
Waste Management	14.1	Bins in all areas of the Interchange Facility and the Site (excluding within Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied exclusively by a sole Franchisee) should not	15 minutes	5	7	Self assessment

Service Category	No.	KPI	Rectification period	No of incidents to trigger penalty	Penalty points	Primary assessment method
		be more than 80% full at any time.				
Pest Control	15.1	Pest control measures operating in accordance with required legislation and regulations	1 week	2	5	Self assessment
Bus Bays	16.1	Bus bays, and waiting areas are available (subject to access charges) for safe use at all times that bus services are operating.	1 hour	1	5	Self assessment

** Note – The SCSA will have the responsibility to conduct User surveys in accordance with accepted industry practice for sampling size and other methodology for surveys of this kind to be developed and discussed in advance with the Concessionaire.*

Schedule 2

Termination Payments

Termination Payment or TP means:

$$TP = A - B - C$$

where:

A = the market value of the Project as at the Termination Date (as defined in Clause 44.2(a)) as between a willing seller (who is ceasing to be the Concessionaire) and a willing buyer (who is becoming the Concessionaire), determined by an independent expert in accordance with Clause 55.2 and on the basis that this Agreement and each of the other Project Agreements as existing immediately prior to the Termination Date continue in full force and effect from the Termination Date to the Expiry Date of the Operating Concession Period.

In determining A, the independent expert must:

- (a) assess the market value as if the independent expert was bidding in a public tender process for the right to operate the Interchange Facility from the Termination Date to the Expiry Date of the Operating Concession Period; and
- (b) take into account:
 - (i) the costs (if any) required to be incurred to complete the Interchange Facility Works in accordance with this Agreement and the reinstatement costs (if any) required to be incurred with respect to the Interchange Facility, to enable the Services to be provided to the Services Standards; and
 - (ii) any operating, maintenance and other costs required to be incurred to enable any new operator and/or maintainer of the Interchange Facility to perform the Concessionaire's obligations under this Agreement.

B = the costs (if any) reasonably incurred by the SCSA in engaging an independent expert and any other costs otherwise reasonably incurred by the SCSA in determining the value of A.

C = any amount owing by the Concessionaire to the SCSA under the Project Agreements as at the Termination Date.

If the amount of the Termination Payment as so determined is a negative amount, the amount of the Termination Payment will be deemed to be zero.

Schedule 3

Modification Payments

- (a) **Modification Payment** or **MP** means, for the purpose of Clause 14, the amount which is determined in accordance with the following formula:

$$MP = A + B + C + D + E + F - J$$

where:

A = the lower of:

- (a) the capital costs expended by the Concessionaire directly relating to the Interchange Facility Works up to and including the Termination Date (as defined in Clause 44.5(a)); and
- (b) the capital costs forecast to be incurred from the Agreement Date to the Scheduled Final Completion Date, having a value of *[text deleted]*, less the Independent Reviewer's determination of the capital costs to be incurred by the Concessionaire from the Termination Date in order for the Interchange Facility to achieve Final Completion;

B = the reasonable financing costs associated with A for the period from the Agreement Date to the Termination Date, to the extent such costs are not taken into account in A;

C = other reasonable establishment costs not included in A, B or F, expended by the Concessionaire or the Operator as a direct result of the Concessionaire or the Operator performing the Concessionaire's obligations in accordance with this Agreement up to the Termination Date;

D = any Third Party Costs reasonably incurred (or to be incurred) by the Concessionaire or the Operator as a direct result of the exercise of the SCSA's right under Clause 44.5, to the extent such costs are not taken into account in E, provided that:

- (i) the Concessionaire or the Operator (as applicable) uses its best endeavours to minimise the amount of such Third Party Costs; and
- (ii) in respect of any third party agreement entered into by the Concessionaire or the Operator that is for a period that exceeds 4 years and is in connection with the performance of the Concessionaire's obligations under this Agreement or the Operator's obligations under the Operating Agreement, the Third Party Costs in relation to such third party agreement will only include the Third Party Costs associated with the period of 4 years from the Termination Date unless and to the extent the SCSA has consented in writing to an exposure of Third Party Costs under that third party agreement for a longer period;

E = the amount of costs reasonably incurred by the Concessionaire as a direct result of terminating the Financing Agreements;

F = the amount of the Construction Contractor's reasonable demobilisation costs and costs reasonably incurred by the Construction Contractor as a direct result of terminating the Construction Agreement and any Construction Sub-Contracts, to the extent such costs are not taken into account in D; and

J = any amounts owing by the Concessionaire to the SCSA under the Project Agreements as at the Termination Date.

- (b) **Modification Payment** or **MP** means, for the purposes of Clauses 29 and 30, the amount which is determined in accordance with the following formula:

$$MP = M + NPV(N) + NPV(O) + NPV(T) + D - J$$

where:

Modification Payment Period means the period from the Termination Date (as defined in Clause 44.5(a)) until the Expiry Date of the Operating Concession Period.

M = the Outstanding Debt as at the Termination Date;

NPV(N) = the aggregate of each Quarterly component of amounts identified in N discounted by Z to the Termination Date;

N = the Capital Cost Component of the Adjusted Core Services Payments for the 3 years prior to the Expiry Date:

- (i) for the avoidance of doubt, without subtracting any Deduction Amounts;
- (ii) assuming the Payment Multiplier would increase by 1.006192 per Quarter for each Quarter in the Modification Payment Period; and
- (iii) assuming no abatement;

NPV(O) = the aggregate of each Quarterly component of amounts identified in O discounted by Z to the Termination Date;

O = the greater of:

- (i) \$0;
- (ii) $((P + G) \times Q) + R - (S + H)$,

where:

P = the Operating Cost Component of the Adjusted Core Services Payments that would have been payable by the SCSA to the Concessionaire for the Modification Payment Period adjusted assuming the Payment Multiplier would increase by 1.006192 per Quarter for each Quarter in the Modification Payment Period;

G = the Insurance Cost Component of the Adjusted Core Services Payment that would have been payable by the SCSA to the Concessionaire for the Modification Payment Period assuming the Payment Multiplier would

increase by 1.006192 per Quarter for each Quarter in the Modification Payment Period;

Q = the average level of abatement calculated for the Period, determined in accordance with the following formula:

Q = Total of AA for the Period / Total of XCSP for the Period; where:

(A) AA = the aggregate of the Abatement Amounts; and

(B) XCSP = the aggregate of the Adjusted Core Services Payments;

Period is the lesser of:

- (a) the 12 Quarters immediately preceding the Quarter in which the Termination Date occurs; or
- (b) the number of Quarters from the Operations Commencement Date to the end of the Quarter preceding the Quarter in which the Termination Date occurs;

R = the net earnings from Access Charges known as at the Termination Date which the Concessionaire or the Operator would have earned for the Modification Payment Period to the extent not previously recovered by the Concessionaire or the Operator;

S = the projected operating costs related to the provision of Services for the Modification Payment Period being the greater of:

- (A) the Operating Cost Component of the Adjusted Core Services Payment that would have been payable by the SCSA to the Concessionaire for the Modification Payment Period adjusted assuming the Payment Multiplier would increase by 1.006192 per Quarter for each Quarter in the Modification Payment Period; and
- (B) the projected operating costs for the Modification Payment Period based on the average of the Concessionaire's and the Operator's actual operating costs for the Period adjusted assuming the Payment Multiplier would increase by 1.006192 per Quarter for each Quarter in the Modification Payment Period;

H = the projected insurance costs related to the provision of Services for the Modification Payment Period being the greater of:

- (A) the Insurance Cost Component of the Adjusted Core Services Payment that would have been payable by the SCSA to the Concessionaire for the Modification Payment Period assuming the Payment Multiplier would increase by 1.006192 per Quarter for each Quarter in the Modification Payment Period; or
 - (B) the projected insurance costs for the Modification Payment Period based on the average of the Concessionaire's actual insurance costs for the Period prior to the Termination Date adjusted assuming the Payment Multiplier
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would increase by 1.006192 per Quarter for each Quarter in the Modification Payment Period;

NPV(T) = the aggregate of each Quarterly component of amounts identified in T discounted by Z to the Termination Date;

T = the greater of:

- (i) \$0; or
- (ii) $U - V$,

where:

U = the retail and commercial revenue currently contracted to be received by the Concessionaire or the Operator from the Station Retail Operator, including pursuant to the Station Retail Agreement, in respect of the Interchange Facility, forecast to increase by 5% per annum for the Modification Payment Period, to the extent it is not included in the amounts above or not previously recovered by the Concessionaire or the Operator; and

V = the operating costs arising out of or in connection with earning the retail and commercial revenue in U (and not already included in S) currently incurred or to be incurred by the Concessionaire or the Operator and forecast to increase by 5% per annum for the Modification Payment Period;

D = any Third Party Costs reasonably incurred (or to be incurred) by the Concessionaire or the Operator as a direct result of the exercise of the SCSA's right under Clause 44.5, provided that:

- (i) the Concessionaire or the Operator (as applicable) uses its best endeavours to minimise the amount of such Third Party Costs; and
- (ii) in respect of any third party agreement entered into by the Concessionaire or the Operator that is for a period that exceeds 4 years and is in connection with the performance of the Concessionaire's obligations under this Agreement or the Operator's obligations under the Operating Agreement, the Third Party Costs in relation to such third party agreement will only include the Third Party Costs associated with the period of 4 years from the Termination Date unless and to the extent, the SCSA has consented in writing to an exposure of Third Party Costs under that third party agreement for a longer period;

J = any amounts owing by the Concessionaire to the SCSA under the Project Agreements as at the Termination Date; and

Z = the Commonwealth Government 10 year bond rate.

Schedule 4

Modification Compensation Principles

Part 1 – General

In determining the compensation amount in respect of implementing a Modification or Service Standard Modification, the overriding consideration is that the SCSA receives value for money. To achieve this, in addition to the principles set out below, the SCSA may require open book pricing of the capital costs and/or the operating costs in respect of which compensation is sought by the Concessionaire which may, at the SCSA's discretion, be subject to review and audit by an independent person.

Part 2 – Direct Costs of Modifications

1. Compensation will reflect the direct incremental costs of implementing the Modification or Service Standard Modification as calculated in accordance with Part 2 of this Schedule 4, plus the Concessionaire's margin of 10%. The Concessionaire's direct incremental costs of implementing the Modification include its contractors' margins, preliminaries, overheads and contingency.

2. The direct incremental costs of implementing any Modification or Service Standard Modification will be calculated:

by reference to the lesser of:

- (i) the Concessionaire's and the Operator's actual direct incremental costs (with no allowance for a profit margin to the Concessionaire or the Operator) incurred or to be incurred; or
- (ii) the direct incremental costs (with no allowance for a profit margin to the Concessionaire or the Operator) that would have been incurred in an efficient and competitive market by an efficient and competent provider of similar services in a facility similar in nature and size to the Interchange Facility having regard to minimising disruption to Transport Operators and users of the Interchange Facility;

on the basis that the Concessionaire and the Operator should use all reasonable endeavours to comply with any Modification or Service Standard Modification as efficiently as possible; and

on the basis that any costs avoided (wholly or partly) by the Concessionaire or the Operator as a result of the implementation of a Modification or Service Standard Modification should be deducted from those direct incremental costs.

3. Compensation will not be payable if the Concessionaire and the Operator do not incur any direct incremental costs in implementing the Modification or Service Standard Modification.
 4. An internal rate of return of *[text deleted]* may be utilised in respect of any extra equity capital required as a result of the Modification or Service Standard Modification. Market rates for debt capital may be utilised in respect of any extra debt capital required as a result of the Modification or Service Standard Modification.
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Part 3 – Indirect Costs of Modifications

1. Compensation will not reflect any indirect costs to the Concessionaire or the Operator of implementing the Modification or Service Standard Modification except as expressly set out in this Agreement.
 2. Compensation will not reflect recovery of expenditure forgone as a result of the implementation of a Modification or Service Standard Modification.
 3. Compensation will include:
 - (a) loss of any net revenue derived by the Concessionaire or the Operator from a Retail Business operated by the Station Retail Operator or any other retail operator operating a Retail Business pursuant to a contract with the Station Retail Operator; and
 - (b) any other net revenue or receipt (including advertising, signage, car park and other commercial revenue), which is lost by the Concessionaire or the Operator as a direct result of the implementation of a Modification or Service Standard Modification.
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Schedule 5

Payment, Abatement and Bonus

1. Payment for the Services

The SCSA must, on each Services Payment Date, notify the Concessionaire of (including the calculation of) the Services Payment for the applicable Quarter and in respect of such Services Payment:

- (a) if the Adjusted Core Services Payment (*XCSP*) for that Quarter (less the Abatement Amount (*AA*) for that Quarter) is equal to or greater than the aggregate of the applicable Adjusted Escrow Amount (*XEA*) for that Quarter plus any applicable Adjusted Deduction Amount (*XDA*) for that Quarter, then the SCSA must:
 - (i) deposit directly into the Escrow Account the Adjusted Escrow Amount for that Quarter plus any Adjusted Deduction Amount for that Quarter; and
 - (ii) pay to the Concessionaire the difference between the Adjusted Core Services Payment for that Quarter (less the Abatement Amount for that Quarter) and the aggregate of the Adjusted Escrow Amount for that Quarter plus any Adjusted Deduction Amount for that Quarter; or
- (b) if the Adjusted Core Services Payment for that Quarter (less the Abatement Amount for that Quarter) is less than the aggregate of the Adjusted Escrow Amount for that Quarter plus any Adjusted Deduction Amount for that Quarter, then:
 - (i) the SCSA must deposit directly into the Escrow Account that Adjusted Core Services Payment (less that Abatement Amount); and
 - (ii) the Concessionaire must deposit directly into the Escrow Account an amount equal to the difference between:
 - (A) that Adjusted Core Services Payment (less that Abatement Amount); and
 - (B) the aggregate of the Adjusted Escrow Amount for that Quarter and any Adjusted Deduction Amount for that Quarter.

2. Abatement Amount

- (a) Subject to the provisions of this Agreement, if a Quarterly Performance Report reports the Concessionaire, in the provision of the Services, as failing to achieve or satisfy a relevant KPI (*KPI Failure*) then each KPI Failure will attract, and the Concessionaire will accumulate, the applicable Penalty Points.
 - (b) If the Concessionaire accumulates Penalty Points during a Quarter, then the Abatement Amount (*AA*) for that Quarter (which is capped at the Adjusted Core Services Payment for that Quarter) is determined in accordance with the following:
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- (i) if the APNO falls within Performance Bracket One, then the Abatement Amount is calculated as follows:

$$AA = (XCSP \times PB1 \text{ Percentage}) \times \frac{APNO}{250}$$

- (ii) if the APNO falls within Performance Bracket Two, then the Abatement Amount is calculated as follows:

$$AA = (XCSP \times PB1 \text{ Percentage}) + (XCSP \times (PB2 \text{ Percentage} - PB1 \text{ Percentage}) \times \frac{APNO - 250}{250})$$

- (iii) if the APNO falls within Performance Bracket Three, then the Abatement Amount is calculated as follows:

$$AA = (XCSP \times PB2 \text{ Percentage}) + (XCSP \times (PB3 \text{ Percentage} - PB2 \text{ Percentage}) \times \frac{APNO - 500}{250})$$

- (iv) if the APNO falls within Performance Bracket Four, then the Abatement Amount is calculated as follows:

$$AA = (XCSP \times PB3 \text{ Percentage}) + (XCSP \times (PB4 \text{ Percentage} - PB3 \text{ Percentage}) \times \frac{APNO - 750}{250})$$

- (c) Abatement pursuant to this Schedule 5 is not affected by and does not prejudice the SCSA's rights to terminate or exercise its Step-in Rights under this Agreement or any other rights under this Agreement or any other Project Agreement.

3. Enforcement of KPI regime

Subject to the provisions of this Agreement, where:

- (a) Schedule 1 specifies, in respect of a particular KPI Failure, a range of Penalty Points which may apply to that KPI Failure; and
- (b) the SCSA is given a discretion to determine the actual number of Penalty Points (within the specified range of Penalty Points) that will apply in respect of that KPI Failure,

the SCSA must, in the exercise of any such discretion, give due consideration to the following criteria:

- (c) the severity of the breach giving rise to the KPI Failure;
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- (d) the materiality of the impact of the KPI Failure;
 - (e) the efforts of the Concessionaire to remedy the breach giving rise to the KPI Failure; and
 - (f) the frequency of any previous failures to achieve or satisfy the relevant KPI by the Concessionaire (where a greater frequency will be regarded negatively by the SCSA).

4. Definitions

For the purposes of this Schedule 5 and Schedule 3:

Adjusted Core Services Payment or **XCSP** means, for any Quarter during the Operating Phase, the indexed Core Services Payment for that Quarter.

Adjusted Deduction Amount or **XDA** means, for any Quarter during the Operating Phase, the Deduction Amount for that Quarter as adjusted on the first day immediately following the end of that Quarter by multiplying that Deduction Amount by the Payment Multiplier applicable for that Quarter.

Adjusted Escrow Amount or **XEA** means, for any Quarter during the Operating Phase, the Escrow Amount for that Quarter as adjusted on the first day immediately following the end of that Quarter by multiplying that Escrow Amount by the Payment Multiplier applicable for that Quarter, and will be calculated and paid by the SCSA assuming that the Operating Phase commenced on 27 April 2005.

APNO means the number of Abatement Points for a relevant Quarter during the Operating Phase.

Core Services Payment or **CSP** means, for each Quarter of the Operating Phase the core services payment for that Quarter calculated in accordance with Schedule 6.

Payment Multiplier, in respect of a calendar quarter, is equal to:

for the first calendar quarter ending after the Commencement Date the greater of:

- (i) 1.006192; and
- (ii) $\frac{CCPI}{PCPI}$

(which, being a quarterly amount, will be adjusted to reflect the number of days from the Commencement Date to the end of the quarter)

Where:

CCPI = the most recently published CPI; and

PCPI = the CPI most recently published prior to CCPI.

- (b) for each subsequent calendar quarter:

PPM x CM

Where:

PPM = the Payment Multiplier for the previous calendar quarter.

CM = the greater of:

(i) 1.006192

(ii) CCPI

PCPI

Where:

CCPI = the most recently published CPI; and

PCPI = the most recently published CPI prior to CCPI.

PB1 Percentage = 2.5%.

PB2 Percentage = 10%.

PB3 Percentage = 40%.

PB4 Percentage = 100%.

Performance Bracket One means 1 to 250 points inclusive.

Performance Bracket Two means 251 to 500 points inclusive.

Performance Bracket Three means 501 to 750 points inclusive.

Performance Bracket Four means 751 points or more.

Services Payment or **SP** means, in respect of a Quarter during the Operating Phase, the amount for that Quarter determined in accordance with the following formula:

$$SP = \quad \quad \quad XCSP + XEA - AA$$

where:

XCSP = the Adjusted Core Services Payment for that Quarter;

XEA = the Adjusted Escrow Amount for that Quarter;

AA = any Abatement Amount for that Quarter.

Schedule 6

Core Services Payments

1. Core Service Payment Amounts – Finance Concession Period Payment Regime

- (a) The SCSA has established the CSP Escrow Account.
 - (b) Not used
 - (c) As and from the GSA Effective Date, the SCSA will commence payment of the Indexed CCC on the basis that:
 - (i) the Indexed CCC will be calculated assuming that Financial Completion had occurred on the Original Scheduled Final Completion Date;
 - (ii) on the GSA Effective Date, the SCSA must deposit into the CSP Escrow Account the Indexed CCC calculated from the Original Scheduled Final Completion Date to the end of the last Quarter immediately prior to the GSA Effective Date;
 - (iii) on each Provisional Services Payment Date, the SCSA must deposit into the CSP Escrow Account the Indexed CCC for the Quarter ending on that Provisional Services Payment Date (or in the case of the last Provisional Services Payment Date, the part of the Quarter ending on that date);
 - (iv) all amounts to be deposited in accordance with paragraph (iii) must be paid to the Concessionaire by the SCSA within 5 Business Days after notification or determination of Financial Completion has been achieved or determined in accordance with Clause 21.7;
 - (v) the SCSA must pay to the Concessionaire all interest on the funds to be deposited in accordance with paragraph (iii) at the same time payment is made by the SCSA under paragraph (iv);
 - (vi) the SCSA will cease, subject to paragraph (ix), calculating and making payments of the Indexed CCC on the Scheduled Date for Financial Completion if Financial Completion has not occurred by the Scheduled Date for Financial Completion;
 - (vii) if Financial Completion has not occurred by the Scheduled Date for Financial Completion the SCSA will have no obligation to pay the Indexed CCC or any part thereof for the period between the Scheduled Date for Financial Completion and the Financial Completion Date;
 - (viii) the SCSA will have no obligation to pay the Residual SP at any time;
 - (ix) the SCSA will re-commence payment of the Indexed CCC to the Concessionaire on the first Services Payment Date of the Operating Phase, the first payment to be calculated in relation to that period from the Financial Completion Date to the end of that Quarter, and the SCSA will
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continue making such payments until the Expiry Date of the Finance Concession Period;

- (x) the Concessionaire acknowledges and agrees that:
 - (i) the SCSA does not have any fiduciary obligations to it with respect to the monies held in the CSP Escrow Account; and
 - (ii) nothing in this Agreement gives the Concessionaire a proprietary or equitable interest in the CSP Escrow Account or any monies held in that account other than as set out in subparagraphs (iv) and (v) above; and
- (vi) the SCSA and the Concessionaire acknowledge that the payments from the CSP Escrow Account are not the subject of the assignment from the Concessionaire to the Operator referred to in Clause 7 of the Deed of Variation.

Operating Concession Period Payment Regime

- (a) Subject to paragraph (c), the SCSA will commence payment of the indexed Operating Cost Component and the Insurance Cost Component of the Core Services Payments on the first Services Payment Date of the Operating Phase, the first payment to be calculated in relation to the period from the Financial Completion Date to the end of that Quarter and the SCSA will continue making such payments until the Expiry Date of the Operating Concession Period.
- (b) "Indexed" in the above paragraph means multiplying the relevant Operating Cost Component or the Insurance Cost Component (as relevant) by the Payment Multiplier applicable for that Quarter.
- (c) Despite any other provision in this Agreement, the SCSA agrees that on the first Services Payment Date after commencement of the Operating Phase:
 - (i) subject to paragraph (d), it will pay a portion of the Core Services Payment payable on the first Services Payment Date after the commencement of the Operating Phase equal to the amount of *[text deleted]* into the CSP Escrow Account; and
 - (ii) the amount deposited in accordance with paragraph (c)(i) must be withdrawn and paid to the Concessionaire or at its direction on the first Services Payment Date after the commencement of the Operating Phase.
- (d) For the avoidance of doubt, nothing in paragraph (c) requires the SCSA to pay the Concessionaire any amount in excess of the Core Services Payment due and payable on the relevant Services Payment Date calculated in accordance with this Agreement or prevents the SCSA from exercising its right to deduct an Abatement Amount.

2. Core Service Payment Amounts – Operating Concession Period Payment Regime

- (a) The Capital Cost Component of the Core Services Payment applicable to each relevant Quarter is *[text deleted]*.
-

-
- (b) The Operating Cost Component of the Core Services Payment applicable to each Quarter of the Operating Phase is *[text deleted]* comprising an operating cost amount of *[text deleted]* plus an insurance risk premium of *[text deleted]*.
 - (c) The Insurance Cost Component of the Core Services Payment applicable to each Quarter of the Operating Phase is to be determined in accordance with Clause 54.2A.

Schedule 7**Agreed List**

1. Henry Jolson QC.
2. Jeff Sher QC.
3. Doug Meagher QC.
4. David Beach SC.

Schedule 8

Escrow Amounts

1. The schedule of Escrow Amounts applicable to each Quarter of the Operating Phase, as numbered sequentially from the Original Scheduled Final Completion Date, is shown in the following table:

Quarter No.	Amount	Quarter No.	Amount	Quarter No.	Amount
Quarter 1	<i>[text deleted]</i>	Quarter 41	<i>[text deleted]</i>	Quarter 81	<i>[text deleted]</i>
Quarter 2	<i>[text deleted]</i>	Quarter 42	<i>[text deleted]</i>	Quarter 82	<i>[text deleted]</i>
Quarter 3	<i>[text deleted]</i>	Quarter 43	<i>[text deleted]</i>	Quarter 83	<i>[text deleted]</i>
Quarter 4	<i>[text deleted]</i>	Quarter 44	<i>[text deleted]</i>	Quarter 84	<i>[text deleted]</i>
Quarter 5	<i>[text deleted]</i>	Quarter 45	<i>[text deleted]</i>	Quarter 85	<i>[text deleted]</i>
Quarter 6	<i>[text deleted]</i>	Quarter 46	<i>[text deleted]</i>	Quarter 86	<i>[text deleted]</i>
Quarter 7	<i>[text deleted]</i>	Quarter 47	<i>[text deleted]</i>	Quarter 87	<i>[text deleted]</i>
Quarter 8	<i>[text deleted]</i>	Quarter 48	<i>[text deleted]</i>	Quarter 88	<i>[text deleted]</i>
Quarter 9	<i>[text deleted]</i>	Quarter 49	<i>[text deleted]</i>	Quarter 89	<i>[text deleted]</i>
Quarter 10	<i>[text deleted]</i>	Quarter 50	<i>[text deleted]</i>	Quarter 90	<i>[text deleted]</i>
Quarter 11	<i>[text deleted]</i>	Quarter 51	<i>[text deleted]</i>	Quarter 91	<i>[text deleted]</i>
Quarter 12	<i>[text deleted]</i>	Quarter 52	<i>[text deleted]</i>	Quarter 92	<i>[text deleted]</i>
Quarter 13	<i>[text deleted]</i>	Quarter 53	<i>[text deleted]</i>	Quarter 93	<i>[text deleted]</i>
Quarter 14	<i>[text deleted]</i>	Quarter 54	<i>[text deleted]</i>	Quarter 94	<i>[text deleted]</i>
Quarter 15	<i>[text deleted]</i>	Quarter 55	<i>[text deleted]</i>	Quarter 95	<i>[text deleted]</i>
Quarter 16	<i>[text deleted]</i>	Quarter 56	<i>[text deleted]</i>	Quarter 96	<i>[text deleted]</i>
Quarter 17	<i>[text deleted]</i>	Quarter 57	<i>[text deleted]</i>	Quarter 97	<i>[text deleted]</i>
Quarter 18	<i>[text deleted]</i>	Quarter 58	<i>[text deleted]</i>	Quarter 98	<i>[text deleted]</i>
Quarter 19	<i>[text deleted]</i>	Quarter 59	<i>[text deleted]</i>	Quarter 99	<i>[text deleted]</i>
Quarter 20	<i>[text deleted]</i>	Quarter 60	<i>[text deleted]</i>	Quarter 100	<i>[text deleted]</i>

Quarter No.	Amount	Quarter No.	Amount	Quarter No.	Amount
Quarter 21	<i>[text deleted]</i>	Quarter 61	<i>[text deleted]</i>	Quarter 101	<i>[text deleted]</i>
Quarter 22	<i>[text deleted]</i>	Quarter 62	<i>[text deleted]</i>	Quarter 102	<i>[text deleted]</i>
Quarter 23	<i>[text deleted]</i>	Quarter 63	<i>[text deleted]</i>	Quarter 103	<i>[text deleted]</i>
Quarter 24	<i>[text deleted]</i>	Quarter 64	<i>[text deleted]</i>	Quarter 104	<i>[text deleted]</i>
Quarter 25	<i>[text deleted]</i>	Quarter 65	<i>[text deleted]</i>	Quarter 105	<i>[text deleted]</i>
Quarter 26	<i>[text deleted]</i>	Quarter 66	<i>[text deleted]</i>	Quarter 106	<i>[text deleted]</i>
Quarter 27	<i>[text deleted]</i>	Quarter 67	<i>[text deleted]</i>	Quarter 107	<i>[text deleted]</i>
Quarter 28	<i>[text deleted]</i>	Quarter 68	<i>[text deleted]</i>	Quarter 108	<i>[text deleted]</i>
Quarter 29	<i>[text deleted]</i>	Quarter 69	<i>[text deleted]</i>	Quarter 109	<i>[text deleted]</i>
Quarter 30	<i>[text deleted]</i>	Quarter 70	<i>[text deleted]</i>	Quarter 110	<i>[text deleted]</i>
Quarter 31	<i>[text deleted]</i>	Quarter 71	<i>[text deleted]</i>	Quarter 111	<i>[text deleted]</i>
Quarter 32	<i>[text deleted]</i>	Quarter 72	<i>[text deleted]</i>	Quarter 112	<i>[text deleted]</i>
Quarter 33	<i>[text deleted]</i>	Quarter 73	<i>[text deleted]</i>	Quarter 113	<i>[text deleted]</i>
Quarter 34	<i>[text deleted]</i>	Quarter 74	<i>[text deleted]</i>	Quarter 114	<i>[text deleted]</i>
Quarter 35	<i>[text deleted]</i>	Quarter 75	<i>[text deleted]</i>	Quarter 115	<i>[text deleted]</i>
Quarter 36	<i>[text deleted]</i>	Quarter 76	<i>[text deleted]</i>	Quarter 116	<i>[text deleted]</i>
Quarter 37	<i>[text deleted]</i>	Quarter 77	<i>[text deleted]</i>	Quarter 117	<i>[text deleted]</i>
Quarter 38	<i>[text deleted]</i>	Quarter 78	<i>[text deleted]</i>	Quarter 118	<i>[text deleted]</i>
Quarter 39	<i>[text deleted]</i>	Quarter 79	<i>[text deleted]</i>	Quarter 119	<i>[text deleted]</i>
Quarter 40	<i>[text deleted]</i>	Quarter 80	<i>[text deleted]</i>	Quarter 120	<i>[text deleted]</i>

Schedule 9

Debt Principal Outstanding

1. The amount of debt principal outstanding applicable to each month during the period from the Commencement Date to the Financial Completion Date, as numbered sequentially from the Commencement Date, is equal to the aggregate of *[text deleted]* and the sum of the amounts to be deposited into the CSP Escrow Account in accordance with Clauses 1(c)(ii) and (iii) of Schedule 6.

Month No.	Percentage	Month No.	Percentage	Month No.	Percentage
Month 1	20.34%	Month 12	43.92%	Month 23	87.73%
Month 2	21.55%	Month 13	48.47%	Month 24	93.26%
Month 3	23.69%	Month 14	52.92%	Month 25	96.99%
Month 4	24.80%	Month 15	59.18%	Month 26	99.66%
Month 5	25.97%	Month 16	63.08%	Month 27	99.83%
Month 6	27.88%	Month 17	65.95%	Month 28	99.83%
Month 7	29.31%	Month 18	71.13%	Month 29	99.83%
Month 8	30.88%	Month 19	73.93%	Month 30 and beyond	100.00%
Month 9	33.36%	Month 20	76.39%		
Month 10	36.25%	Month 21	81.40%		
Month 11	39.28%	Month 22	84.31%		

2. The amount of debt principal outstanding applicable to each Quarter of the Operating Phase, as numbered sequentially from the Operations Commencement Date, is equal to an amount of *[text deleted]* and the sum of the amounts to be deposited into the CSP Escrow Account in accordance with paragraph (c) under the heading Operating Concession Period Payment Regime set out in Schedule 6), multiplied by the percentage applicable for the Quarter as shown in the following table:

Quarter No.	Percentage	Quarter No.	Percentage	Quarter No.	Percentage
Quarter 1	100.00%	Quarter 41	98.17%	Quarter 81	64.66%

Quarter No.	Percentage	Quarter No.	Percentage	Quarter No.	Percentage
Quarter 2	100.14%	Quarter 42	97.85%	Quarter 82	63.11%
Quarter 3	100.28%	Quarter 43	97.50%	Quarter 83	61.50%
Quarter 4	100.41%	Quarter 44	97.14%	Quarter 84	59.85%
Quarter 5	100.53%	Quarter 45	96.76%	Quarter 85	58.15%
Quarter 6	100.64%	Quarter 46	96.35%	Quarter 86	56.41%
Quarter 7	100.75%	Quarter 47	95.92%	Quarter 87	54.61%
Quarter 8	100.84%	Quarter 48	95.48%	Quarter 88	52.76%
Quarter 9	100.93%	Quarter 49	95.00%	Quarter 89	50.86%
Quarter 10	101.00%	Quarter 50	94.51%	Quarter 90	48.90%
Quarter 11	101.07%	Quarter 51	93.99%	Quarter 91	46.89%
Quarter 12	101.13%	Quarter 52	93.45%	Quarter 92	44.83%
Quarter 13	101.17%	Quarter 53	92.89%	Quarter 93	42.70%
Quarter 14	101.21%	Quarter 54	92.30%	Quarter 94	40.52%
Quarter 15	101.24%	Quarter 55	91.68%	Quarter 95	38.28%
Quarter 16	101.25%	Quarter 56	91.04%	Quarter 96	35.98%
Quarter 17	101.26%	Quarter 57	90.38%	Quarter 97	33.62%
Quarter 18	101.25%	Quarter 58	89.68%	Quarter 98	31.20%
Quarter 19	101.23%	Quarter 59	88.96%	Quarter 99	28.71%
Quarter 20	101.20%	Quarter 60	88.21%	Quarter 100	26.15%
Quarter 21	101.16%	Quarter 61	87.43%	Quarter 101	23.53%
Quarter 22	101.10%	Quarter 62	86.62%	Quarter 102	20.84%
Quarter 23	101.03%	Quarter 63	85.78%	Quarter 103	18.08%
Quarter 24	100.95%	Quarter 64	84.91%	Quarter 104	15.25%
Quarter 25	100.86%	Quarter 65	84.00%	Quarter 105	12.34%
Quarter 26	100.75%	Quarter 66	83.07%	Quarter 106	9.37%

Quarter No.	Percentage	Quarter No.	Percentage	Quarter No.	Percentage
Quarter 27	100.63%	Quarter 67	82.10%	Quarter 107	6.31%
Quarter 28	100.49%	Quarter 68	81.10%	Quarter 108	3.18%
Quarter 29	100.34%	Quarter 69	80.06%	Quarter 109	0.00%
Quarter 30	100.17%	Quarter 70	78.99%	Quarter 110	0.00%
Quarter 31	99.99%	Quarter 71	77.89%	Quarter 111	0.00%
Quarter 32	99.79%	Quarter 72	76.74%	Quarter 112	0.00%
Quarter 33	99.58%	Quarter 73	75.56%	Quarter 113	0.00%
Quarter 34	99.34%	Quarter 74	74.34%	Quarter 114	0.00%
Quarter 35	99.10%	Quarter 75	73.08%	Quarter 115	0.00%
Quarter 36	98.83%	Quarter 76	71.78%	Quarter 116	0.00%
Quarter 37	99.29%	Quarter 77	70.45%	Quarter 117	0.00%
Quarter 38	99.04%	Quarter 78	69.06%	Quarter 118	0.00%
Quarter 39	98.77%	Quarter 79	67.64%	Quarter 119	0.00%
Quarter 40	98.48%	Quarter 80	66.17%	Quarter 120	0.00%

Schedule 10

SCSA Accommodation

To the extent that this Schedule 10 is inconsistent with GA7, GA7 shall prevail.

Facility Description			
Information Area	Occupant	Area Required	Further Information on requirements
Tourist and general city information and booking services facilities including information desk, brochure display area and storage area.	SCSA or nominee	40m ²	See Agreed SCSA Works and Project Brief
Travellers Aid Area			
			Further Information on requirements
Facilities for the provision of aid and assistance to travellers (eg. directional assistance, advice and first aid) including serving counters, seating, restrooms, first aid area, washrooms and staff amenities.	SCSA or nominee	224m ²	See Agreed SCSA Works and Project Brief Item number CIM 34.
SCSA Offices			
			Further Information on requirements
Office accommodation for SCSA officers and employees.	SCSA	319m ²	See Agreed SCSA Works and Project Brief Item number CIM 47.
Security Control Room/Police Room			

			Further Information on requirements
Accommodation for security personnel and police including security facility office and police control room.	Security personnel and police		
Shared usage	45m2	See Project Brief: Clause 4.13 of Appendix C and Appendix C8 – Accommodation Schedule.	
Central Pass Office			
			Further Information on requirements
Office accommodation for issuing of travel passes to persons entitled to free travel including general office, kitchenette and storage area.	SCSA or nominee		
Not shared usage	91m2	See Agreed SCSA Works and Project Brief Item number CIM 32.	
Washrooms, toilets and showers			
			Further Information on requirements
Washroom and toilet facilities for officers and employees.	SCSA and Concessionaire		

Shared usage	To be provided in accordance with the Building Code of Australia.	See Project Brief: Clause 5.1 of Appendix C and Appendix C8 – Accommodation Schedule.	
Storage			
			Further Information on requirements
General storage area for SCSA use at the Interchange Facility	SCSA and Concessionaire		
Not shared usage	To be provided as part of the general storage area in the Interchange Facility.	See Project Brief: Clause 6.4 of Appendix C and Appendix C8 – Accommodation Schedule.	
Motorail Office			
Car parking, waiting room and office accommodation to be established for use in respect of passengers using the motor rail service.			
Not shared usage			
Carparking			
			Further Information on requirements

Carparking for SCSA at the Interchange Facility (including 12 permanent carparking spaces for the SCSA)	SCSA shared usage	To be provided in accordance with Australian Standard AS2890.	See Project Brief: Clause 6.6.12 of the Project Brief and Appendix C8 – Accommodation Schedule.
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Schedule 11

Financing Costs

[text deleted] per day multiplied by the Payment Multiplier applicable for the first Quarter of the Operating Phase.

Schedule 12

Not used

Schedule 13

Approved Interchange Facility Works Program

[Start on next page]

Annexure A

Certificate of Practical Completion

Certificate of Practical Completion

To: General Manager

Civic Nexus Pty Limited
C/- ABN AMRO Australia Pty Limited
Level 27, 367 Collins Street
Melbourne, Victoria, 3000

And to: The Chief Executive Officer
Southern Cross Station Authority
Level 15
595 Collins Street

Melbourne, Victoria, 3000

The Independent Reviewer refers to the Southern Cross Station Transport Interchange Facility - Services and Development Agreement (the *Services and Development Agreement*) between the Southern Cross Station Authority and Civic Nexus Pty Limited dated 2 July 2002 as amended and restated by the Second Deed of Variation (Southern Cross Station Transport Interchange Facility – Services and Development Agreement – Civic Nexus) between the SCSA, the Concessionaire, the Construction Contractor, CN Collins Pty Ltd and CN West End Plaza Pty Ltd dated on or around 31 July 2006.

Capitalised terms used in this Certificate are as defined in the Services and Development Agreement unless otherwise stated.

In accordance with Clause 21.2 of the Services and Development Agreement, pursuant to a Practical Completion Notice dated **[insert date]** and received by the Independent Reviewer on **[insert date]**, Civic Nexus Pty Limited has given notice that it is of the reasonable opinion that the **[Principal Works/Slab Construction Works]** have reached Practical Completion.

Pursuant to Clause 21.3(a)(i) of the Services and Development Agreement the Independent Reviewer hereby certifies that the **[Principal Works/Slab Construction Works]** reached Practical Completion on **[insert date]**.

Pursuant to Clause 21.6 of the Services and Development Agreement, the Independent Reviewer identifies below the following Outstanding Items which must be remedied, addressed or completed by Civic Nexus Pty Limited in accordance with the written program for the completion of those Outstanding Items to be prepared by Civic Nexus Pty Limited in accordance with Clause 21.6 of the Services and Development Agreement:

[insert list of Outstanding Items]

Dated: **[Insert date]**

Signed:

Independent Reviewer

Southern Cross Station Redevelopment

Annexure B

Notice of Financial Completion

Notice of Financial Completion

To: General Manager

Civic Nexus Pty Limited
C/- ABN AMRO Australia Pty Limited
Level 27, 367 Collins Street
Melbourne, Victoria, 3000

The Southern Cross Station Authority refers to the Southern Cross Station Transport Interchange Facility - Services and Development Agreement (the *Services and Development Agreement*) between the Southern Cross Station Authority and Civic Nexus Pty Limited dated 2 July 2002 as amended and restated by the Second Deed of Variation (Southern Cross Station Transport Interchange Facility – Services and Development Agreement – Civic Nexus) between the SCSA, the Concessionaire, the Construction Contractor, CN Collins Pty Ltd and CN West End Plaza Pty Ltd dated on or around 31 July 2006.

Capitalised terms used in this Notice are as defined in the Services and Development Agreement unless otherwise stated.

In accordance with Clause 21.7 of the Services and Development Agreement, pursuant to a notice dated **[insert date]** and received by the Southern Cross Station Authority on **[insert date]**, Civic Nexus Pty Limited has given notice that it is of the reasonable opinion that Financial Completion has been achieved.

Pursuant to Clause 21.7(a)(i) of the Services and Development Agreement the Southern Cross Station Authority hereby certifies that the Interchange Facility Works reached Financial Completion on **[insert date]**.

The Date of Financial Completion for the purposes of the Services and Development Agreement is hereby confirmed as **[insert date]**.

Dated: **[Insert date]**

Signed:

Chief Executive Officer

Southern Cross Station Authority

Annexure C

Commissioning Tests

1. Commissioning Management

The Concessionaire is required, as part of the Quality Assurance System, to develop detailed quality plans for all activities associated with the Interchange Facility Works to ensure they are undertaken in accordance with the requirements of this Agreement and the Project Brief and are able to meet the relevant Service Standards, whilst maintaining the functionality of the Interchange Facility. Specifically, the Interchange Facility's building, plant and services will be tested and certified to determine whether those items can perform on a basis equal to or better than the standards specified in this Agreement and the Project Brief.

2. Regulatory Requirements

The Interchange Facility Works (which include the Rail Modifications and Signalling Upgrade) must be checked, tested and commissioned in accordance with all applicable Laws, Quality Standards and specifications, as set out in Appendices D and E of the Project Brief.

These include, but are not limited to:

- the *Building Control Act 1993* (Cth);
- Building Code of Australia (*BCA*), including all referenced Quality Standards;
- Victorian Building Regulations (Victoria Appendix to *BCA*);
- Health Department of Victoria's Guidelines to Control Legionnaire's Disease;
- PTC document entitled "General Criteria for Development at Railway Locations. Operations and Engineering Design and Construction Aspects. ENG-AD-STD-0001 Version 2 1998";
- current Thiess Infracore Technical Specifications;
- NEGA Technical Specifications; and
- former PTC Technical Specifications and Standards.

The Concessionaire will be responsible for complying with the requirements of all statutory authorities and/or private companies which supply services to the Site including water, sewerage, drainage, gas, electricity and telecommunications.

Annexure D

[Not used]

Annexure E

Facility Certificate of Commissioning

Facility Certificate Of Commissioning
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To: General Manager
Civic Nexus Pty Limited
C/- ABN AMRO Australia Pty Limited
Level 27, 367 Collins Street
Melbourne, Victoria, 3000

And To: The Chief Executive Officer
Southern Cross Station Authority
Level 15
595 Collins St
Melbourne, Victoria, 3000

The Independent Reviewer refers to the Southern Cross Station Transport Interchange Facility - Services and Development Agreement (the *Services and Development Agreement*) between the Southern Cross Station Authority and Civic Nexus Pty Limited dated 2 July 2002 as amended and restated by the Second Deed of Variation (Southern Cross Station Transport Interchange Facility – Services and Development Agreement – Civic Nexus) between the SCSA, the Concessionaire, the Construction Contractor, CN Collins Pty Ltd and CN West End Plaza Pty Ltd dated on or around 31 July 2006.

Capitalised terms used in this Certificate are as defined in the Services and Development Agreement unless otherwise stated.

In accordance with Clause 21.1(c) of the Services and Development Agreement the Independent Reviewer hereby certifies that all of the Commissioning Tests required for the **[Principal Works/Slab Construction Works]** have been successfully completed to the reasonable satisfaction of the Independent Reviewer.

Dated: *[Insert date]*

Signed:

Independent Reviewer

Southern Cross Station Redevelopment

Annexure F

Pro Forma Facility Lease

[Starts on next page]

Annexure G

Construction Bond

On Demand Construction Bond (Clause 6)

[Date]

TO: Southern Cross Station Authority

Level 1

Southern Cross Station

Melbourne, Victoria, 3000

(the *Beneficiary*)

Civic Nexus Pty Limited (ABN 46 097 827 819)(in its capacity as trustee of the Civic Nexus Unit Trust) (the *Concessionaire*) has entered into the Southern Cross Station Transport Interchange Facility – Services and Development Agreement with the Beneficiary in connection with the new intermodal transport interchange facility to be constructed at Southern Cross Station.

At the request of the Concessionaire, and in consideration of the Beneficiary agreeing to accept the form of this Bond:

[Name and address of Issuer] (ABN [#]) (the *Issuer*),

unconditionally and irrevocably covenants to pay to the Beneficiary on first demand by the Beneficiary substantially in the form set out in the Appendix any sum or sums which may from time to time be demanded by the Beneficiary up to an aggregate maximum of:

A\$[#].

Payment or payments under this Bond shall be made by the Issuer to the Beneficiary:

1. without reference to the Concessionaire or any agreement between the Beneficiary and the Concessionaire;
 2. notwithstanding any notice by the Concessionaire or any other person (aside from the Beneficiary) to the Issuer not to pay the whole or any part of the sum;
 3. notwithstanding anything which but for this provision might operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
-

any variation or alteration to any contract between the Beneficiary and the Concessionaire;
or

the grant to any person of any time, waiver or other indulgence, or the discharge or release
of any person; and

4. to an Australian Dollar account nominated by the Beneficiary.

This Bond expires on:

[#].

The Issuer will have no liability in respect of any claim under this Bond after that date.

This Bond is governed by the laws of Victoria.

EXECUTED as a Deed in Melbourne.

The attorney executing this Bond states that he or she has no notice of revocation or suspension of
his or her power of attorney.

Signed Sealed and Delivered for and on
behalf of [*] by its attorney in the presence
of:

Witness Signature

Attorney Signature

Print Name

Print Name

Appendix

Form of Demand

[Date]

To: *[Name and address of Issuer]*

We refer to the Construction Bond issued by you in connection with the Southern Cross Station Transport Interchange Facility – Services and Development Agreement entered into between us and Civic Nexus Pty Limited (in its capacity as trustee of the Civic Nexus Unit Trust) on [#].

We hereby demand immediate payment from you of *[\$[specify amount]*. Please arrange for immediate payment of that amount to the following account:

[Insert account details]

Southern Cross Station Authority

Annexure H

Not used

Annexure I

Original Project Brief

[Starts on next page]

Annexure J

Insurance Principles

For the purpose of Clause 54.2A(a), (h) and (i), the Relevant Insurances will be subject to the following specifications:

- the public/product liability insurance required under Clause 54.2(c) will carry an excess of \$100,000 (Indexed) for each and every claim;
- the industrial special risks insurance required under Clause 54.2(d)(i) will carry an excess of \$50,000 (Indexed) for each and every claim;
- the industrial special risks insurance required under Clause 54.2(d)(ii) will carry an excess of \$50,000 (Indexed) for each and every claim.

The policies will be subject to an aggregate annual excess of \$1,000,000.

All policies will be quoted on the basis that the premiums are paid Quarterly and the aggregate cost of the Quarterly premiums so quoted will be the annual premium cost for that calendar year for the purposes of Clause 54.2A.

Annexure K

Maintenance and Refurbishment Plan

[Starts on next page]

Year	Activities	Description	Refurbishment Obligations	Type	Comments	Additional Comments
YEARS 1 & 2	None	Warranty	Initial defect liability period is the responsibility of the Builder			Involvement by Honeywell to ensure that Leighton Contractors meet all obligations under the MSA and Construction Contract.
YEAR 3	B.1 Security	B1.1 & B1.2 CCTV, PIR Review	Partial system component replacement	Replace	or refurbish	Security software upgrades and maintenance analysis to cover CCTV and PIR Systems
YEAR 4						
YEAR 5	B.1 Security	B1 - B12 total	Partial system component replacement	Replace	or refurbish	Security maintenance analysis to cover CCTV modifications
	B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 15 Units

YEAR 6	B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 10 Units
	B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade
	B.1 Security	B1 - B12 total	Partial system component replacement	Replace	or refurbish	Security maintenance analysis to cover CCTV modifications
	B.1 Security	B.1, B2, B4 & B10 total	Partial element replacement	Replace		Security modification as required to EBI server - upgrades to hand held security monitoring devices as required.
	B.1 Security	B.12 Control equipment	Partial equipment replacement inc. Press to exits, electric latches etc	Replace		Security Allocation - for items in addition to TAM security agreement.
	B.1 Security	B.1 CPU	Access control system CPU software revision	Refurbishment		Allowance for major refurbishment of the Honeywell EBI system - to enable upgraded monitoring.
	B.1 Security	B.6 Security intercoms	Partial replacement of two bollard/external	Replace		Intercom Works and replacements as required.

		intercom			Allocation of \$25K
B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 120 Units
B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 120 Units
B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade
B.3 PIDS	B.3.4 PIDS Infrastructure		Replace	or refurbish	Upgrades and repair works to PIDS Support Infrastructures - Types 1 to 4 inclusive
YEAR 7					
K. Painting	K1-K12 All Painted surfaces	Carry our painting of high traffic and public space areas to remove wall marks and keep the aesthetic presentation of the internal wall surfaces. Full repaint of waiting areas and toilet areas.	Refurbishment		Allowance is based on full paint to Station standard acrylic paint on plasterboard and high gloss equivalent on other surfaces

YEAR 8	All works covered under TAM Agreement ¹				
YEAR 9			Partial equipment replacement of monitoring devices	Replace	Camera upgrades and general security review.
B. Security	B.5 Intruder Detection				
G. Platform Finishes	G.1		Replace line markings and safety edges	Replace	Allocation for repairs and replacements of Platform Finishes and Curbing
H. Equipment (FFE)	H.1 Chairs		Partial replacements	Replace or refurbish	
	H.3 Lockers		Partial replacements and repairs	Replace or refurbish	
	H.5 Rubbish Bins		Partial replacements	Replace or refurbish	
	H.7 Miscellaneous		Partial replacements	Replace or refurbish	
YEAR 10			Partial system component replacement	Replace or refurbish	Security maintenance analysis to cover CCTV modifications
B.1 Security	B1 - B12 total				

¹ TAM means the Total Asset Management Agreement between Civic Nexus Pty Limited and Honeywell Ltd.

	B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 20 Units
	B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 14 Units
	B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade
	G. Platform Finishes	G.10 Pavements	Miscellaneous pavement and terrazzo replacement	Replace	or refurbish	
	H. Equipment (FFE)	Equipment Repairs and allocation	Partial replacements	Replace	or refurbish	
YEAR 11	B.1 Communications	B.1.1 PABX	Upgrade of PABX - Handsets	Replace		
		B.1.2 Communications Systems	Racks/Cabling/Patch Contract refurbishment			
	B.2 Security	B.2.1 CPU	Partial access control system CPU revision	Refurbishment		
		B.2.2 CCTV system	Partial CCTV switcher system	Refurbish		

		revision	ment		
	B.2.4 Colour cameras	Replacement of up to 40 cameras	Replace		
	B.2.5 Intruder detection	Replacement of bollard/external intercom	Replace		
	B.2.7 Access control system	Major overhaul / revision of the access control and detection systems	Refurbishment		
D. Fire	D.1 Fire Alarm System	Upgrade of Fire Alarm System & EWIS Structure	Replace	or refurbish	
	D.2 Fire alarm FIP	Replacement of FIP system batteries	Replace	or refurbish	
	D.3 Extinguishers	Replacement or recharging of 15 cylinders	Replace	or refurbish	Allowance to replace.
	D.4 Sprinklers	Replacement of 24 sprinkler heads installed	Replace		Testing under TAM fire services agreement
	D. 5 Vesda	Replacement of Vesda CPU's	Replace	or refurbish	
	D. 6 Sensors	Replacement of sensors	Replace		Sensor replacement allocation by Honeywell for any costings outside normal

					hours	
		D. 9 Hose reels	Replacement of 6 hose reels/ hydrants	Replace	or refurbish	Refurbishment only and testing - replacement not required.
	E. Hydraulics	E.7, E.8, E.10 & E.12 total	Partial replacement of components	Replace		
	F. Mechanical	F5, F10, F15 & F18 total	Partial replacement of components	Replace		
YEAR 12						
	B.2 Security	B.2.1 - B2.12 total	Partial system component replacement	Replace	or refurbish	Security maintenance analysis to cover CCTV modifications
	B.2 Security	B.2.1, B.2.2, B.2.4 & B.2.10 total	Partial element replacement	Replace		Security modification as required to EBI server - upgrades to hand held security monitoring devices as required.
	B.2 Security	B.2.12 Control equipment	Partial equipment replacement inc. Press to exits, electric latches etc	Replace		Security Allocation - for items in addition to TAM security agreement.
	B.2 Security	B.2.1 CPU	Access control system CPU software revision	Refurbishment		Allowance for major refurbishment of the Honeywell EBI system - to enable upgraded monitoring.

YEAR 13	B.2 Security	B.2.6 Security intercoms	Partial replacement of two bollard/external intercom	Replace		Intercom Works and replacements as required. Allocation of \$25K
	B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 120 Units
	B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 120 Units
	B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade
	B.3 PIDS	B.3.4 PIDS Infrastructure		Replace	or refurbish	Upgrades and repair works to PIDS Support Infrastructures - Types 1 to 4 inclusive
YEAR 13	All works covered under TAM Agreement					
YEAR 14	K. Painting	K1-K12 All Painted surfaces	Carry our painting of high traffic and public space areas to remove wall marks and keep the aesthetic	Refurbishment		Allowance is based on full paint to Station standard acrylic paint on plasterboard and

YEAR 15			presentation of the internal wall surfaces. Full repaint of waiting areas and toilet areas.		high gloss equivalent on other surfaces	
	A. Electrical	A11 lighting - Ext./Stairs	Replace all faulty fittings and lamps	Replace		Do on an as required basis following full test to relevant code.
		A13 BMS	Software and/ of high level interface revision	Refurbishment		EBI Upgrade and review of relevant energy management options.
		A15 Master/Slave Clocks	PIDS Clock Structures and other Clock/Slave Systems	Refurbishment		Replacement/maintenance as required - allocation if required for full replace.
		A16 EWIS	Replacement of the EWIS system batteries	Replace	or refurbish	Battery replacement
	B.2 Security	B.2.1 - B2.12 total	Partial system component replacement	Replace	or refurbish	Security maintenance analysis to cover CCTV modifications
	B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 20 Units
	B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 15 Units

	B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade
	F. Mechanical	Upgrades of Major Systems	Partial replacement of components	Replace		
	H. Equipment (FFE)	Equipment Repairs and allocation	Partial replacements	Replace	or refurbish	
YEAR 16						
	D. Fire	D.1 Fire Alarm System	Upgrade of Fire Alarm System & EWIS Structure	Replace	or refurbish	
		D.2 Fire alarm FIP	Replacement of FIP system batteries	Replace	or refurbish	
		D.3 Extinguishers	Replacement or recharging of 15 cylinders	Replace	or refurbish	Allowance to replace.
		D.4 Sprinklers	Replacement of 24 sprinkler heads installed	Replace		Testing under TAM fire services agreement
		D. 5 Vesda	Replacement of Vesda CPU's	Replace	or refurbish	
		D. 6 Sensors	Replacement of sensors	Replace		Sensor replacement allocation by Honeywell for any costings outside normal

						hours
		D. 9 Hose reels	Replacement of 6 hose reels/ hydrants	Replace	or refurbish	Refurbishment only and testing - replacement not required.
	E. Hydraulics	All	Major replacement of components	Replace		
	G. Platform Finishes	All	Refurbishment of Platform Surfaces	Replace		Allocation for repairs and replacements of Platform Finishes and Curbing
	L. Lighting	L1. Public and office Areas	Replace fluorescent light tubes, clean fixtures and disposal of old tubes in accordance with 1999 EPA requirements	Replace		
		L2. Allexta Display and Specialist Lighting Upgrade and replacement		Replace		
YEAR 17						
	D. Fire	D.1 Fire Alarm System	All- Office & waiting areas fire services refurbishment and replacement	Replace	or refurbish	
YEAR 18	B.2 Security	B.2.1 - B2.12 total	Partial system	Replace	or refurbish	Security maintenance

		component replacement			analysis to cover CCTV modifications
B.2 Security	B.2.1, B.2.2, B.2.4 & B.2.10 total	Partial element replacement	Replace		Security modification as required to EBI server - upgrades to hand held security monitoring devices as required.
B.2 Security	B.2.12 Control equipment	Partial equipment replacement inc. Press to exits, electric latches etc	Replace		Security Allocation - for items in addition to TAM security agreement.
B.2 Security	B.2.1 CPU	Access control system CPU software revision	Refurbishment		Allowance for major refurbishment of the Honeywell EBI system - to enable upgraded monitoring.
B.2 Security	B.2.6 Security intercoms	Partial replacement of two bollard/external intercom	Replace		Intercom Works and replacements as required. Allocation of \$25K
B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 120 Units
B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 120 Units
B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and

					Control Terminal Upgrade
	B.3 PIDS	B.3.4 PIDS Infrastructure		Replace or refurbish	Upgrades and repair works to PIDS Support Infrastructures - Types 1 to 4 inclusive
	G. Platform Finishes	G.1	Replace line markings and safety edges	Replace	Allocation for repairs and replacements of Platform Finishes and Curbing
	H. Equipment (FFE)	H.1 Chairs	Partial replacements	Replace or refurbish	
		H.3 Lockers	Partial replacements and repairs	Replace or refurbish	
		H.5 Rubbish Bins	Partial replacements	Replace or refurbish	
		H.7 Miscellaneous	Partial replacements	Replace or refurbish	
YEAR 19		All works covered under TAM Agreement			
YEAR 20	A. Electrical	General electrical services	Replace and upgrade	Replace	Ensure CODE compliance
	B.1 Communications	B.1.1 PABX	Upgrade of PABX - Handsets	Replace	
		B.1.2 Communications	Racks/Cabling/Patch		

	Systems	Contract refurbishment			
B.2 Security	B.2.1 - B2.12 total	Upgrades			Security maintenance analysis to minor upgrades
B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 20 Units
B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 10 Units
B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade
C.0 Lifts & Escalators		Major refurb of all escalators and lift interiors, inclusive of controls upgrades			
F. Mechanical	Upgrades of Major Systems	Chiller/AC Units/Fans/Motors/BMS Replacements and Major refurbishment Works	Replace		
G. Platform Finishes	G.1 - G.4	Surface repairs and replacements to Station and Platform Areas. Foyer flooring	Replace		Allocation for repairs and replacements of Platform Finishes

YEAR 21	H. Equipment (FFE)	Equipment Repairs and allocation	upgrade. Partial replacements	Replace	or refurbish	
	N. PODS	Finishes refurbishment and glazing repairs.	Floor covering replacement to corridor regions, seating repairs allocation	Replace	or refurbish	
	B.1 Security	B1.1 & B1.2 CCTV, PIR Review	Partial system component replacement	Replace	or refurbish	Security software upgrades and maintenance analysis to cover CCTV and PIR Systems
	K. Painting	K1-K12 All Painted surfaces	Carry our painting of high traffic and public space areas to remove wall marks and keep the aesthetic presentation of the internal wall surfaces. Full repaint of waiting areas and toilet areas.	Refurbishment	Allowance is based on full paint to Station standard acrylic paint on plasterboard and high gloss equivalent on other surfaces	
YEAR 22	B.1 Communications	B.1.1 PABX	Upgrade of PABX - Handsets	Replace		

B.2 Security	B.1.2 Communications Systems	Racks/Cabling/Patch Contract refurbishment			
	B.2.1 CPU	Partial access control system CPU revision	Refurbishment		
	B.2.2 CCTV system	Partial CCTV switcher system revision	Refurbishment		
	B.2.4 Colour cameras	Replacement of up to 40 cameras	Replace		
	B.2.5 Intruder detection	Replacement of bollard/external intercom	Replace		
	B.2.7 Access control system	Major overhaul / revision of the access control and detection systems	Refurbishment		
	D. Fire	D.1 Fire Alarm System	Upgrade of Fire Alarm System & EWIS Structure	Replace	or refurbish
D.2 Fire alarm FIP		Replacement of FIP system batteries	Replace	or refurbish	
D.3 Extinguishers		Replacement or recharging of 15 cylinders	Replace	or refurbish	Allowance to replace.

		D.4 Sprinklers	Replacement of 24 sprinkler heads installed	Replace		Testing under TAM fire services agreement
		D. 5 Vesda	Replacement of Vesda CPU's	Replace	or refurbish	
		D. 6 Sensors	Replacement of sensors	Replace		Sensor replacement allocation by Honeywell for any costings outside normal hours
		D. 9 Hose reels	Replacement of 6 hose reels/ hydrants	Replace	or refurbish	Refurbishment only and testing - replacement not required.
	E. Hydraulics	E.7, E.8, E.10 & E.12 total	Partial replacement of components	Replace		
	F. Mechanical	F5, F10, F15 & F18 total	Partial replacement of components	Replace		
YEAR 23		All works covered under TAM Agreement				
YEAR 24	B.2 Security	B.2.1 - B2.12 total	Partial system component replacement	Replace	or refurbish	Security maintenance analysis to cover CCTV modifications

B.2 Security	B.2.1, B.2.2, B.2.4 & B.2.10 total	Partial element replacement	Replace		Security modification as required to EBI server - upgrades to hand held security monitoring devices as required.
B.2 Security	B.2.12 Control equipment	Partial equipment replacement inc. Press to exits, electric latches etc	Replace		Security Allocation - for items in addition to TAM security agreement.
B.2 Security	B.2.1 CPU	Access control system CPU software revision	Refurbishment		Allowance for major refurbishment of the Honeywell EBI system - to enable upgraded monitoring.
B.2 Security	B.2.6 Security intercoms	Partial replacement of two bollard/external intercom	Replace		Intercom Works and replacements as required. Allocation of \$25K
B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 120 Units
B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 120 Units
B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade

	B.3 PIDS	B.3.4 PIDS Infrastructure		Replace or refurbish	Upgrades and repair works to PIDS Support Infrastructures - Types 1 to 4 inclusive
YEAR 25	A. Electrical	General electrical services	Replace and upgrade	Replace	Ensure CODE compliance
	A.1	Main Switchboard	Thermographic Scan. Busbar & Switchgear maintenance and replacement.		
	A.2	Cabling	Replacements where necessary		
	A.3	Control Cubicle	Software revision in PLC		
	A.4	UPS	Testing and replacement as required by Australian Standard. Software and transducer upgrades for BAS connection.		
	A.5	Distribution Boards	Thermographic Scan & maintenance. Upgrading where required. Partial replacement of low voltage control gear		

			and interface to BAS			
A.6	Emergency Lighting		System upgrade & replacements. Replacement of Batteries, Starters and Ballasts			
A.7	Security Lighting		Replace selected No. of Metal Halide Lights in an annual period			
A.9	Lighting controllers & System		Software and high level interface of electrical systems to the BMS			
A.10	BAS		Building Automation Interface			
A.11	Master/Slave Clocks		Software upgrades & replacements. Repair and replacement of clocks			
B.2 Security	B.2.1 - B2.12 total		Partial system component replacement	Replace	or refurbish	Security maintenance analysis to cover CCTV modifications
B.3 PIDS	B.3.1 Plasma Screens		Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 15 Units

	B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 10 Units
	B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade
	F. Mechanical	Minor replacements	Chiller/AC Units/Fans/Motors/BMS Replacements and Major refurbishment Works	Replace		
YEAR 26	E. Hydraulics	E.7, E.8, E.10 & E.12 total	Partial replacement of components	Replace		
YEAR 27	E. Hydraulics	E.7, E.8, E.10 & E.12 total	Partial replacement of components	Replace		
	G. Platform Finishes	G.1	Replace line markings and safety edges	Replace		Allocation for repairs and replacements of Platform Finishes and Curbing
	H. Equipment (FFE)	H.1 Chairs	Partial replacements	Replace	or refurbish	

YEAR 28	E. Hydraulics	H.3 Lockers	Partial replacements and repairs	Replace	or refurbish
		H.5 Rubbish Bins	Partial replacements	Replace	or refurbish
		H.7 Miscellaneous	Partial replacements	Replace	or refurbish
YEAR 28	K. Painting	All hydraulics - Public Convenience Upgrades	Partial replacement of components	Replace	
		K1-K12 All Painted surfaces	Carry our painting of high traffic and public space areas to remove wall marks and keep the aesthetic presentation of the internal wall surfaces. Full repaint of waiting areas and toilet areas.	Refurbishment	Allowance is based on full paint to Station standard acrylic paint on plasterboard and high gloss equivalent on other surfaces
YEAR 29		All works covered under TAM Agreement			
YEAR 30	A. Electrical	A11 lighting - Ext./Stairs	Replace all faulty fittings and lamps	Replace	Do on an as required basis following full test to relevant code.

	A13 BMS	Software and/ of high level interface revision	Refurbishment		EBI Upgrade and review of relevant energy management options.
	A15 Master/Slave Clocks	PIDS Clock Structures and other Clock/Slave Systems	Refurbishment		Replacement/maintenance as required - allocation if required for full replace.
	A16 EWIS	Replacement of the EWIS system batteries	Replace	or refurbish	Battery replacement
B.2 Security	B.2.1 - B2.12 total	Partial system component replacement	Replace	or refurbish	Security maintenance analysis to cover CCTV modifications
B.3 PIDS	B.3.1 Plasma Screens	Partial system component replacement	Replace	or refurbish	Replacement Allocation and repair for Plasma Screens - 134 Units
B.3 PIDS	B.3.2 Small Form Factor PC's	Partial component replacement	Replace	or refurbish	Repairs and replacement of PC's driving the plasma screen circuits for PIDS - 125 Units
B.3 PIDS	B.3.3 PIDS Control System	Partial software revision	Replace	or refurbish	Honeywell Software Centre upgrades to PIDS, Server Maintenance Upgrade and Control Terminal Upgrade
B.3 PIDS	B.3.4 PIDS Control System	Screen (TCT) Upgrades	Replace		TCT Screen replacements
F. Mechanical	Upgrades of Major Systems	Chiller/AC Units/Fans/Motors/B	Replace		

		MS Replacements and Major refurbishment Works			
G. Platform Finishes	G.1 - G.4	Surface repairs and replacements to Station and Platform Areas.	Replace		Allocation for repairs and replacements of Platform Finishes
H. Equipment (FFE)	Equipment Repairs and allocation	Partial replacements	Replace	or refurbish	

Annexure L
Civic Nexus Clarifications

[text deleted]

Annexure M
Agreed GS Occupations

[Starts on next page]

Annexure N

VIPP Statement

Civic Nexus recognises the importance of maximising opportunities for Australian and Victorian suppliers to compete for Government business on the basis of best value for money for the Southern Cross Station redevelopment.

The Civic Nexus proposal for the redevelopment will provide maximum opportunity for Victorians and Australians in the areas of employment, skills technology transfer and value added activity.

The following is Civic Nexus' statement of compliance with the Victorian Industry Participation Policy (VIPPP) for this project:

1. Value Added Activity

The level of local (Australian and Victorian) value added, expressed as a percentage of the overall tender price.

Civic Nexus expects the following levels of local value added:

Consultant Services	90%
Sub-contractors	100%
Suppliers/Manufacturers	Approximately 75%. Exact percentage to be determined once specifications are available.

2. Employment

Details of actual new employment opportunities to be created and the proportion of these opportunities, which will be filled by people from the local communities involved.

Civic Nexus expects the following levels of actual new employment opportunities created and proportion filled by people from local communities:

Consultant Services:	In excess of 100 jobs, 90% local participation
Sub-contractors:	On site employment up to 600 jobs, 100% local participation.
Suppliers/Manufacturers:	Number and percentage to be determined once specifications are available

3. Skills & Technology Transfer

Identification of opportunities for increasing the skills of Victorians and the potential to undertake the innovation, research and development of technology.

Civic Nexus sees immense opportunities for skills and technology transfer on this project, from design through all aspects of the project to on-going maintenance of the operational facility.

Opportunities are envisaged in such areas as:

- Design of the facility;
- Prototype development;
- Off-site prefabrication and assembly systems;
- Construction methodologies and innovations;
- Materials handling systems
- Computer software design, programming, manufacture, installation, usage and maintenance;
- Building management systems;
- Specialist facilities management, equipment design, manufacture, usage and maintenance;
- Environmentally friendly and efficient energy systems;
- Waste minimisation;
- Natural resources conservation;
- Greenhouse gas emission minimisation;
- Skills training.

Summary

In submitting the Tender and this VIPP Statement, Civic Nexus:

- Agrees to take all reasonable steps to comply with Victorian Industry Participation Policy principles;
 - Agrees that compliance with VIPP commitments will be monitored as part of overall performance management;
 - Acknowledges that failure to comply with a VIPP Statement will be centrally recorded by the Victorian Government and performance may be taken into account when considering subsequent tenders for VIPP purposes.
-

Annexure O

[Not Used]

Annexure P

Slab Construction Works – Letter

[Starts on next page]

Annexure Q

Slab Contraction Works - Extracts of Approved Interchange Facility Program

[Starts on next page]

Annexure R

Agreed Works

Part 1 - Agreed Concessionaire Works

[Starts next page]

Part 2 - Agreed SCSA Works

[Starts next page]

Annexure S

Fair Wear and Tear Items

Item	Description	Responsibility
1	Damage to corner of Ticket Box Pods	SCSA
2	Vandalism scratch on Collins Street Façade	SCSA
3	BIF - Damage to top of wheelstops	SCSA
4	Cleaning stains on lower south side of louvres in the central area of the BIF	SCSA
5	Damage to louvre grills on the south side of the louvres in the central area of the BIF	SCSA
6	Lift 4 - Vandalism scratches on glass in the lift car.	SCSA
7	Damage of - basement Ramp from EW subway to platform 2	SCSA
8	Escalator 1-3 wall panelling south side has been scratched again at low level.	SCSA
9	Damaged bus sign #75 - hit by bus	SCSA
10	Male Toilets located adjacent to Travellers Aid, scratched mirrors and missing toilet roll holder	SCSA

Annexure T

Interim KPI Relief

No	KPI	INTERIM KPI RELIEF ALLOWANCE
3.1	Staff training is undertaken and staff are aware of and comply with operating requirements.	<p>This KPI applies:</p> <ul style="list-style-type: none"> • To the Principal Works, from Practical Completion of the Principal Works; • To the Slab Construction Works , from Practical Completion of Slab Construction Works; and • To the Deferred Works, upon completion of the Deferred Works. <p>For the purposes of this KPI, the Interim KPI Relief Period expires upon completion of the Deferred Works.</p>
4.2	Except during Special Events which directly affect Southern Cross Station, rail platforms servicing metropolitan trains must be available and capable of clearing passengers disembarking from each train arriving at the Interchange Facility within 90 seconds of passengers having disembarked.	This KPI will not apply during the Interim KPI Relief Period.
4.3	Except during Special Events which directly affect Southern Cross Station, rail platforms servicing country and interstate trains must be available and capable of clearing passengers disembarking from each train arriving at the Interchange Facility within 120 seconds of passengers having disembarked.	This KPI will not apply to platforms 13 and 14 during the Interim KPI Relief Period.
4.5	Except during Special Events, which directly affect Southern Cross Station circulation in the Concourse and Public Circulation Areas must be at Level of Service C for Walkways or better.	<p>This KPI will not apply in respect of a failure to meet this KPI as a result of the Slab Construction Works or the Deferred Works not being complete during the Interim KPI Relief Period.</p> <p>For the purposes of this KPI, the Interim KPI Relief Period expires upon completion of the Deferred Works.</p>

No	KPI	INTERIM KPI RELIEF ALLOWANCE
4.6	<p>During Special Events which directly affect Southern Cross Station, circulation in the Concourse and Public Circulation Areas must be at Level of Service D for Walkways or better.</p>	<p>This KPI will not apply in respect of a failure to meet this KPI as a result of the Slab Construction Works or the Deferred Works not being complete during the Interim KPI Relief Period.</p> <p>For the purposes of this KPI, the Interim KPI Relief Period expires upon completion of the Deferred Works.</p>
4.9	<p>Ambient conditions – ambient conditions within the Interchange Facility (excluding Reserved Facilities, any area occupied exclusively by the SCSA, its licensee, sub-licensee or sub-lessee and any Franchisee Facility occupied by a sole Franchisee) must, after Practical Completion of the Slab Construction Works, be maintained to or must be capable of meeting the standards documented in Section D.4.3 of Appendix D to the Project Brief at all times the Interchange Facility is open to the public.</p> <p>The relevant part of the Agreed SCSA Works provides that:</p> <p>The concourse environmental conditions including External Ambient Conditions, Internal Conditions, Occupancy, Lighting, Power and Outside Air are to be provided as per:</p> <ul style="list-style-type: none"> • the letter from the SCSA to the Concessionaire and the Builder of 8 September 2004 on this matter including Section 3 Modified Table D.4.4 and the Builder's acceptance letter of 8 November 2004; and • the Builder's letter to the SCSA dated 25 January 2005 and attached drawings M750-28, M750-27 and M750-20 showing slab heating locations and areas. 	<p>During the Interim KPI Relief Period, this KPI will not apply insofar as it relates to Zones 2A and 2B of the Modified Ambient Conditions Table.</p> <p>For the purposes of this KPI, the Interim KPI Relief Period expires on the Final Completion Date.</p>
6.1	<p>At least 80% of general public users surveyed by the SCSA within the</p>	<p>This KPI will not apply during the Interim KPI</p>

No	KPI	INTERIM KPI RELIEF ALLOWANCE
	Interchange Facility must respond stating that they consider they are in a safe and non-threatening environment. At a minimum, user surveys will be conducted each Quarter.	Relief Period.
6.2	The surveillance system (including the CCTV) must be operational at all times.	During the Interim KPI Relief Period, this KPI will apply only to the extent that the surveillance system (including the CCTV) has been commissioned.
7.2A	KPI to apply to cleaning and cleaning performance in respect of all floor surfaces.	This KPI will not apply during the Interim KPI Relief Period. For the purposes of this KPI, the Interim KPI Relief Period expires upon the SCSA and Concessionaire reaching agreement in accordance with Clause 26B(f).
7.3A	All graffiti scratched or etched onto a surface, excluding within Reserved Facilities, any area occupied exclusively by the SCSA, its licensee and any Franchisee Facility occupied exclusively by a sole Franchisee must be removed within 30 days of identification.	This KPI will not apply during the Interim KPI Relief Period.
7.4	Franchisee Facilities or any part of a Franchisee Facility that is not exclusively occupied by a sole Franchisee are clean and tidy.	During the Interim KPI Relief Period, this KPI applies to the extent a Franchisee is occupying a Franchisee Facility or any part of a Franchisee Facility not exclusively occupied by a sole Franchisee.
8.2	Passenger information display monitors must be operational at all times the Interchange Facility is open to public users.	During Interim KPI Relief Period, this KPI will not apply to the Metropolitan PIDs until completion of the Deferred Works, and to all other passenger information display monitors to the extent they have not been commissioned in accordance with the Project Brief or such other lesser standard determined by the SCSA. For the purposes of this KPI, the Interim KPI Relief Period expires upon completion of the Deferred Works.
9.4	At least 90% of baggage lockers to be available for use at all times that the Interchange Facility is open to public users.	During the Interim KPI Relief Period, this KPI does not apply, but during the Interim KPI Relief Period, at least 90% of the temporary baggage lockers to be available for use at all times that the Interchange Facility is open to

No	KPI	INTERIM KPI RELIEF ALLOWANCE
		public users.
12.2	Parking facility road markings, lighting and signage in parking areas to be provided and maintained in accordance with any applicable Laws, Approvals and Quality Standards.	This KPI will not apply during the Interim KPI Relief Period.

Annexure U

Deferred Works

[Starts on next page]

Annexure V

Air Quality Standards

Atmospheric Contaminant	Exposure Standard (TWA)*	Exposure Standard (STEL)*
Diesel Particulate	0.1mg/m ³	None
Carbon Monoxide	30ppm	200ppm for 15 minutes 100ppm for 30 minutes 60ppm for 60 minutes
Nitrogen Dioxide	3ppm	5ppm

*TWA: time weighted average.

*STEL: short term exposure limit.

TWA exposure standard – means the average airborne concentration of a particular substance when calculated over a normal eight-hour working day, for a five day working week.

STEL Exposure standard – means a 15 minute TWA exposure which should not be exceeded at any time during a working day even if the eight-hour TWA average is within the TWA exposure standard. Exposures at the STEL should not be longer than 15 minutes and should not be repeated more than four times per day. There should be at least 60 minutes between successive exposures at the STEL.

Annexure W

GA7

GA7.0 Document Register				
Doc No or Ref No	Revision	Phase		Title
V1205_A_02_LG_1002	N	WD		Floor Plan - Level Ground - Zone B
V1205_A_02_LG_1003	J	WD		Floor Plan - Level Ground - Zone C
V1205_A_02_LG_1004	L	WD		Floor Plan - Level Ground - Zone D
V1205_A_02_LG_1005	L	WD		Floor Plan - Level Ground - Zone E
V1205_A_02_LG_1006	J	WD		Floor Plan - Level Ground - Zone F
V1205_A_02_LG_1007	H	WD		Floor Plan - Level Ground - Zone G
V1205_A_04_LG_1001	C	WD		Reflected Ceiling Plan - Level Ground - Zone A
V1205_A_04_LG_1002	E	WD		Reflected Ceiling Plan - Level Ground - Zone B
V1205_A_04_LG_1003	C	WD		Reflected Ceiling Plan - Level Ground - Zone C
V1205_A_04_LG_1004	D	WD		Reflected Ceiling Plan - Level Ground - Zone D
V1205_A_04_LG_1005	B	WD		Reflected Ceiling Plan - Level Ground - Zone E
V1205_A_06_1001	D	WD		Sections - Sections A-A & B-B
V1205_A_06_1002	D	WD		Sections - Sections C-C & D-D
V1205_A_06_1003	B	WD		Sections - Sections E-E & F-F
V1205_A_10_1001	C	WD		Wet Area - Floor Plan - Level Ground, Level Mezzanine & Level 1
V1205_A_14_4003	D	WD		BIF - Shopfront - Level Ground Plan & Elevation & Details
V1205_A_14_4009	A	WD		BIF - Waiting Lounge - Level Ground - Plan & Elevation
V1205_A_14_4010	A	WD		BIF - Waiting Lounge - Level Ground - Plan & Elevation
V794_A_01_0001	A	WD		Key Plan - Location
V794_A_01_1001	A	WD		Key Plan - Basement Floor - Station Wide Plan
V794_A_01_1002	B	WD		Key Plan - Ground Floor - Station Wide Plan
V794_A_01_1003	B	WD		Key Plan - Mezzanine Floor - Station Wide Plan
V794_A_01_1004	B	WD		Key Plan - Level One - Station Wide Plan
V794_A_01_1005	B	WD		Key Plan - Internal Roof - Station Wide Plan
V794_A_01_1006	F	WD		Key Plan - Roof Plan - Zone A
V794_A_02_L1_0001	B	WD		Level One - Floor Plan - Zone A
V794_A_02_L1_0002	W	WD		Level One - Floor Plan - Zone B
V794_A_02_L1_0003	B	WD		Level One - Floor Plan - Zone C
V794_A_02_L1_0004	B	WD		Level One - Floor Plan - Zone D
V794_A_02_L1_2001	Q	WD		Detail Plan - First Floor
V794_A_02_L1_2004	S	WD		Detail Plan - First Floor
V794_A_02_L2_0002	P	WD		Level Two - Floor Plan - Zone B
V794_A_02_LB_0001	B	WD		Level Basement - Floor Plan - Zone A
V794_A_02_LB_0002	B	WD		Level Basement - Floor Plan - Zone B
V794_A_02_LB_0003	B	WD		Level Basement - Floor Plan - Zone C

V794_A_02_LG_0001	K	WD	Level Ground - Floor Plan - Zone A
V794_A_02_LG_0002	E	WD	Level Ground - Floor Plan - Zone B
V794_A_02_LG_0003	E	WD	Level Ground - Floor Plan - Zone C
V794_A_02_LG_0004	C	WD	Level Ground - Floor Plan - Zone D
V794_A_02_LG_0005	C	WD	Level Ground - Floor Plan - Zone E
V794_A_02_LG_0006	B	WD	Level Ground - Floor Plan - Zone F
V794_A_02_LG_0007	B	WD	Level Ground - Floor Plan - Zone G
V794_A_02_LG_0010	A	WD	Level Ground - Floor Plan - Zone 31
V794_A_02_LG_2001	X	WD	Detail Plan - Ground Floor
V794_A_02_LM_0001	B	WD	Level Mezzanine - Floor Plan - Zone A
V794_A_02_LM_0002	B	WD	Level Mezzanine - Floor Plan - Zone B
V794_A_02_LM_0003	A	WD	Level Mezzanine - Floor Plan - Zone C
V794_A_02_LM_0004	B	WD	Level Mezzanine - Floor Plan - Zone D
V794_A_02_LM_0007	A	WD	Level Mezzanine - Floor Plan - Zone G
V794_A_02_R2_0001	B	WD	Roof Plan - Zone A
V794_A_02_R2_0002	X	WD	Roof Plan - Zone B
V794_A_04_L1_0001	A	WD	Reflected Ceiling Plan - Level 1 - Zone A
V794_A_04_L1_0002	Z	WD	Reflected Ceiling Plan - Level 1 - Zone B
V794_A_04_RC_0004	A	WD	Reflected Ceiling Plan - Ground - Zone A
V794_A_04_RC_0005	A	WD	Reflected Ceiling Plan - Mezzanine - Zone A
V794_A_04_RC_0006	G	WD	Reflected Ceiling Plan - Zone A
V794_A_05_0001	J	WD	Elevations - Spencer Street & Collins Street
V794_A_05_0003	H	WD	Elevations - Bourke Street Bridge
V794_A_05_0004	A	WD	W.E.P. East Elevation - Spencer Street Elevation
V794_A_05_1001	B	WD	Platform 1-2 - Plan & Section-Elevation
V794_A_05_1002	A	WD	Platform 3-4 - Plan & Section-Elevation
V794_A_05_1003	A	WD	Platform 5-6 - Plan & Section-Elevation
V794_A_05_1004	A	WD	Platform 7-8 - Plan & Section-Elevation
V794_A_05_1005	B	WD	Platform 9-10 & 11-12 - Plans & Sections-Elevations
V794_A_05_1006	B	WD	Platform 13-14 - Plan & Section-Elevation
V794_A_06_0001	A	WD	Sections (03-16W/04-25W) - Platforms
V794_A_06_0002	A	WD	Sections (05-00W/D4-5E) - Platforms
V794_A_06_0003	A	WD	Section (01-03W) - Spencer Street Concourse
V794_A_06_0004	A	WD	Sections (02-05W/05-10W) - Bourke Street Bridge
V794_A_06_0012	A	WD	Sections (B-00N/D20S) - Platforms
V794_A_06_0013	A	WD	Sections (CA-01n/D-03s) - Collins Street Concourse
V794_A_06_0021	A	WD	Sections (C06-03W/C08-00W) - Collins Street Concourse
V794_A_06_0022	A	WD	Sections (C08-05W/C14-03W) - Collins Street Concourse
V794_A_06_0023	A	WD	Sections (CA-00N/C11-11W) - Collins Street Concourse
V794_A_06_0024	A	WD	Section (CE-09S) - Collins Street Concourse

Executed as an Agreement in Melbourne.

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

THE OFFICIAL SEAL of the **SOUTHERN CROSS STATION AUTHORITY** was affixed by authority of the Board of Directors in the presence of:

SOUTHERN CROSS
STATION AUTHORITY
OFFICIAL SEAL

John S. Taylor (Sgd)

Signature of Authorised Officer

Tony Canavan (Sgd)

Signature of Authorised Officer

JOHN S. TAYLOR

Print Name

TONY CANAVAN

Print Name

SIGNED, SEALED & DELIVERED for **CIVIC NEXUS PTY LTD** (in its capacity as trustee of the Trust) under power of attorney in the presence of:

James R. Cain (Sgd)

Signature of witness

Philip John Howe (Sgd)

Signature of attorney

JAMES R. CAIN

Name

PHILIP JOHN HOWE

Name

30 JULY 2006

Date of power of attorney
