



Transport  
for NSW

# Sydney Light Rail Public Private Partnership Contract Summary



Final Contract Summary: 25 August 2015

# Contract Summary

## Sydney Light Rail Public Private Partnership

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**This report is a summary document and should not be relied upon for legal advice. This report is not intended for use as a substitute for the actual contracts.**

## Introduction

### 1. Introduction

This report summarises the "Sydney Light Rail Project Deed" between:

(a) **Transport for NSW** ABN 18 804 239 602 a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988 (NSW)*; and

(b) ALTRAC Light Rail Partnership, (**OpCo**),

dated 17 December 2014 (**SLR Project Deed**).

The SLR Project Deed is the main contract for the Sydney Light Rail Public Private Partnership (**SLR PPP**). The SLR PPP is a key component of the Sydney Light Rail project.

This report has been prepared by Transport for NSW in accordance with the public disclosure requirements of the New South Wales Government's August 2012 *NSW Public Private Partnerships Guidelines*, and its compliance with these requirements was assessed by the NSW Auditor-General prior to its tabling in Parliament.

**This report should not be relied upon for legal advice and is not intended for use as a substitute for the contracts.** This report is based on the contract as at 17 December 2014 as amended on 17 May 2015. Subsequent amendments of, or additions to, the contract are not reflected in this report.

The defined terms used in this report are provided in a Glossary in Appendix A.

### 2. History and scope of the Sydney Light Rail project

#### NSW Government transport strategy

In December 2012 the NSW Government released two key strategic plans that set the framework for improving the central Sydney transport system – the *NSW Long Term Transport Master Plan* and *Sydney's Light Rail Future – Expanding public transport, revitalising our city*. The NSW Government has also released the *Draft Metropolitan Strategy for Sydney 2031* that provides a comprehensive plan to manage growth of Sydney up to 2031.

#### Sydney's Light Rail Future

Sydney's Light Rail Future outlines a four stage process to deliver new and improved light rail services in Sydney as follows:

(c) **Stage 1 - Service integration and improvement:** integration of light rail into MyZone ticketing and 131 500 information line and website (completed in June 2012) and introduction of the Opal card on light rail to make travelling easier between modes;

(d) **Stage 2 - Modernise and extend the existing network:** construction of the 5.6 kilometre inner west extension to connect Dulwich Hill to the CBD (completed in March 2014), modern light rail fleet introduced to improve customer experience and real time information and timetable updates;

(e) **Stage 3 - Deliver a new CBD and south east service:** overhaul of CBD bus network to integrate light rail and better connect commuters and completion of light

rail connecting Circular Quay, the CBD and south east Sydney including Moore Park and the University of NSW and the pedestrianisation of George Street between Hunter Street and Bathurst Street; and

- (f) **Stage 4 – Longer term investigations:** feasibility investigations of light rail or other high capacity public transport, like Bus Rapid Transit, for additional corridors including Victoria Road, Parramatta Road, Anzac Parade to Maroubra and potentially Western Sydney, continued support to councils investigating potential light rail schemes; growing the light rail network in line with demand and integrated with new urban development and investigating potential extensions to the line such as to Malabar, Walsh Bay and Barangaroo.

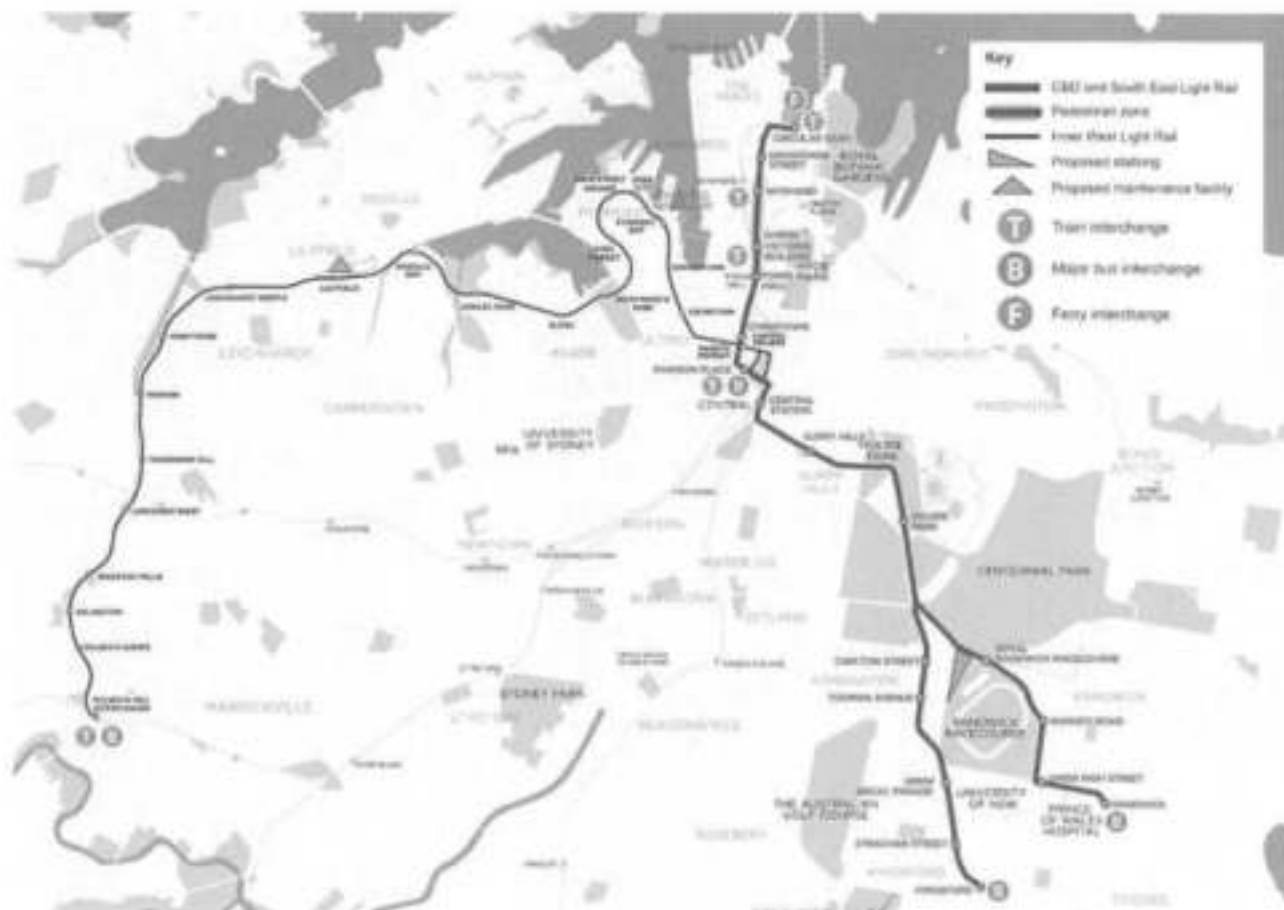
To support and enable integration of light rail into the CBD, a *Sydney City Centre Access Strategy* was also developed.

### Development of the CBD and south east Sydney light rail

The new CSELR is an initiative being undertaken as part of a comprehensive program to reform and improve Sydney's transport network. The key benefits of the CSELR are:

- (a) **unlocking of capacity in the CBD:** it is estimated that, combined with a redesign of the bus network, approximately 220 fewer buses will be required in the CBD during the morning peak;
- (b) **faster, more reliable and comfortable public transport:** the service will be a 'turn up and go' service with new light rail vehicles for the CSELR (**CSELRVs**) that provide a comfortable experience for customers. The CSELR will also be integrated with the Opal ticketing system and provide modern and accessible stops with real-time service information;
- (c) **urban renewal and improved amenity:** the CSELR will include a 1 kilometre pedestrianised zone along George Street between Hunter Street and Bathurst Street which will support future urban renewal along the route; and
- (d) **integration of the Sydney Light Rail:** the CSELR will be integrated with the IWLR.

**Figure 1:** Sydney Light Rail alignment



## The Project

The Project delivers:

- (a) conveniently located stops along the 12 kilometre route;
- (b) high frequency, 'turn up and go' services during peak periods;
- (c) additional special event services between Central Station and the Moore Park and Royal Randwick Racecourse stops;
- (d) major interchanges with ferry, heavy rail and bus services;
- (e) a fleet of electric-powered light rail vehicles (**LRVs**) with air conditioning and accessible low-floor design;
- (f) a highly reliable service with the capability to fulfill the transport needs of this area for the foreseeable future;
- (g) a pedestrian zone on George Street between Bathurst Street and Hunter Street;
- (h) wire-free operation between the intersection of George and Bathurst Streets and Circular Quay;
- (i) public domain improvements including possible new public spaces, paving, trees, lighting and street furniture;

- (j) approximately 12 substations to provide power for the LRVs; and
- (k) a stabling facility in Randwick and a maintenance depot in Rozelle.

### The Sydney Light Rail PPP procurement process

Following an extensive expression of interest evaluation process, the NSW Government announced on 14 February 2014 that the following three consortia were short-listed to move forward to the request for proposal stage for the SLR PPP. These consortia were:

- (a) Connecting Sydney – Transdev Sydney Pty Ltd, Alstom Transport Australia Pty Limited, Acciona Infrastructure Australia Pty Limited and Capella Capital Pty Limited;
- (b) SydneyConnect – Serco Australia Pty Limited, John Holland Pty Ltd and Plenary Origination Pty Ltd;
- (c) iLinQ Sydney – Keolis Australia Pty Ltd, Downer EDI Services Pty Ltd, Bombardier Transportation Australia Pty Ltd, McConnell Dowell Constructors (Aust) Pty Ltd, Balfour Beatty Australia Pty Ltd and Macquarie Capital Group Limited.

Transport for NSW released the request for proposal on 7 March 2014. On 11 July 2014, Connecting Sydney and SydneyConnect submitted proposals for the SLR PPP. iLinQ Sydney withdrew from the process and did not submit a proposal.

## 3. Evaluation criteria and weightings used in tender process

The evaluation criteria which were used to evaluate the proposals are set out in the table below.

**Table 1:** Evaluation criteria

Evaluation criteria	
Number	Description
1	<p><b>Customer focussed outcomes during operations</b></p> <p>The extent to which the proponent’s approach and operations solutions:</p> <ul style="list-style-type: none"> <li>• will deliver safe and sustainable high quality customer experience outcomes;</li> <li>• will deliver effective stakeholder and community engagement; and</li> <li>• are compatible with the wider Transport for NSW network.</li> </ul>
2	<p><b>Integrated design and optimised technical solutions</b></p> <p>The extent to which the proponent’s approach and design/technical solutions support the provision of a safe, integrated, proven, innovative, sustainable and high quality light rail system that:</p> <ul style="list-style-type: none"> <li>• promotes customer experience;</li> <li>• enhances the urban environment;</li> <li>• provides capacity for project ridership demand; and</li> <li>• facilitates connectivity with the wider Transport for NSW network.</li> </ul>
3	<p><b>Delivery solutions</b></p> <p>The extent to which the proponent’s approach, including program and strategy:</p> <ul style="list-style-type: none"> <li>• provides delivery certainty of the integrated design and optimised</li> </ul>



Evaluation criteria	
Number	Description
	<p>technical solutions, including the integration of the IWLR;</p> <ul style="list-style-type: none"> <li>• demonstrates:               <ul style="list-style-type: none"> <li>○ a commitment to safety;</li> <li>○ how the environmental and sustainability requirements will be delivered; and</li> <li>○ an understanding of effective stakeholder and community engagement;</li> </ul> </li> <li>• demonstrates an efficient and effective means of achieving service commencement;</li> <li>• minimises disruption upon adjacent residents and businesses; and</li> <li>• effectively manages impacts on the wider Transport for NSW network and existing customers.</li> </ul>
4	<p><b>Whole of life asset management</b></p> <p>The extent to which the proponent's approach and asset management solutions:</p> <ul style="list-style-type: none"> <li>• will ensure assets are managed and maintained on a whole of life basis consistent with the design, technical and operations solutions;</li> <li>• support the delivery of consistently high levels of performance; and</li> <li>• provide for assets to be handed back in an appropriate condition at the end of contract term.</li> </ul>
5	<p><b>Commercial and financial acceptability to Transport for NSW</b></p> <p>The extent to which the proponent's governance, legal and commercial structures are robust, sustainable and appropriate.</p> <p>The extent to which the proposal complies with the project agreements and the acceptability and value for money impact of proposed departures.</p> <p>The extent to which the proponent's funding solution is robust and provides the necessary security and flexibility to respond to SLR PPP risks.</p> <p>The commitment of finance and the proponent's ability to achieve contract close and financial close in accordance with Transport for NSW's timeframe.</p> <p>The financial strength of the proponent and its key risk-bearing entities.</p>
6	<p><b>Risk-adjusted cost</b></p> <p>The extent to which the proponent's whole of life, risk-adjusted cost, taking into account the financial risks and impacts to Transport for NSW, demonstrates value for money.</p>

In October 2014, following the evaluation of the proposals, Transport for NSW selected Connecting Sydney (which subsequently changed its name to ALTRAC Light Rail) as the preferred proponent for the SLR PPP. Following final negotiations with ALTRAC Light Rail, the SLR Project Deed was executed on 17 December 2014.

## 4. Cost benefit analysis

A business case for the project was prepared and a summary was published in November 2013. The business case provided a sound rationale for the SLR PPP by concluding the

CSELR and associated bus network changes would achieve the project objectives, including:

- (a) improving reliability and efficiency of travel to, from and within the CBD and suburbs to the south east of Sydney;
- (b) improving access to major destinations in the south east of Sydney, including Moore Park, the University of NSW, Royal Randwick Racecourse and the Randwick health precinct;
- (c) satisfying long term travel demand between the CBD and suburbs in south east Sydney;
- (d) increasing the use of sustainable transport modes in the CBD and suburbs in south east Sydney;
- (e) improving the overall amenity of public spaces in the CBD and suburbs in south east Sydney; and
- (f) facilitating the continued, orderly and efficient growth of urban development and economic activity within the CBD and suburbs in south east Sydney.

The substantial net benefits of the project included:

- (a) **customer benefits** – providing faster, comfortable and more reliable journeys for public transport users;
- (b) **operating benefits** – delivering a net saving in existing public transport operating costs;
- (c) **broader community benefits** – generated through a reduction in environmental and health costs (externalities) such as air pollution and noise; and
- (d) **wider economic benefits** – including sustainability benefits such as resource efficiencies and additional greenhouse gas reductions associated with urban densification and the benefits attributable to the value that people place on having a new high capacity, efficient, public transport service, even if they do not intend to use it regularly.

The cost benefit analysis in the business case determined that the project would generate a net present value of \$759 million and a benefit cost ratio of 1.4 excluding wider benefits, or a net present value of \$973 million and a benefit cost ratio of 1.5 including wider benefits.

## 5. Results of the public sector comparator

The 'Public Sector Comparator' (**PSC**) provides a hypothetical estimate of the risk adjusted cost of the project if it were to be designed, built and operated by the State. To develop the estimate, the PSC was based on a reference project developed by the State, consistent with the specified performance requirements.

The PSC performs the following central roles:

- (a) provides a benchmark for assessing the net present cost of the private sector bids;
- (b) determines whether the State is receiving financial value for money derived from the procurement of the project; and
- (c) acts as a key management tool during the procurement process.

The 'Raw PSC' is the base cost of delivering the project before any valuation of delivery and operating risks.

The 'Risk Adjusted PSC' includes an adjustment for delivery and operating risks to be transferred under private sector delivery. The value of itemised delivery and operating risks was determined via statistical simulation using risk modelling software.

The PSC used a discount rate of 5.54%, determined consistent with Infrastructure Australia's National PPP Guidelines which specify the discount rate to be the relevant jurisdiction's long-term borrowing rate, taken as the 10 year average of the 10 year NSW Treasury Corporation bond rate as advised by NSW Treasury at the commencement of procurement.

The present value of the SLR PPP was evaluated using a discount rate that included a systematic risk premium of 1.35% for service payments and 1.15% for the conditional debt pay down, in accordance with NSW Treasury policies on the assessment of complying proposals.

Table 2 provides a summary of the financial value for money analysis.

**Table 2:** Financial value for money comparison between public sector and private sector project delivery

Cost category	PSC (NPC \$m)	PPP (NPC \$m)	Difference (NPC \$m)	Difference (%)
D&C costs <sup>1</sup>	1,185.1	1,389.7	204.6	17.3%
O&M / Lifecycle cost	715.1	810.7	95.6	13.4%
<b>Total costs</b>	1,900.2	2,200.4	300.2	15.8%
Transferred risk	392.7	Included above	-	-
<b>Total NPC</b>	2,292.9	2,200.4	(92.5)	(4.0%)

The comparison of the net present cost of the PSC versus the SLR PPP shows a benefit of \$92.5 million or 4.0%.

## 6. Public interest evaluation

The public interest evaluation was initially prepared during the development of the SLR PPP procurement documentation. It was updated at several project milestones and finalised in October 2014. The evaluation considers each of the eight public interest criteria as set out in the *NSW Public Private Partnerships Guidelines 2012*. These are:

- (a) effectiveness in meeting government objectives;
- (b) achieving better value for money;

<sup>1</sup> For PSC, D&C and O&M/Lifecycle costs are shown on a raw basis (ie excluding risk adjustments)

- (c) community consultation;
- (d) consumer rights;
- (e) accountability and transparency;
- (f) public access;
- (g) health and safety; and
- (h) privacy.

The public interest evaluation concluded that there were no significant issues identified that would preclude the public private partnership procurement for the SLR project.

The Sydney Light Rail will result in positive benefits to the NSW economy, the community and stakeholders. The Sydney Light Rail is expected to deliver around \$4 billion in economic benefits and provide frequent, fast, reliable light rail services that will improve transport access to Central Station, the CBD and major destinations in south east Sydney including Moore Park and the University of NSW.

## 7. Risk sharing

The risk sharing arrangement is in accordance with Infrastructure Australia's National PPP Guidelines. The State seeks to achieve best value for money by allocating risks to the party best able to manage them. The risk allocation process results in various risks being:

- (a) retained by the State;
- (b) transferred to the private sector; or
- (c) shared between the parties.

A structured approach to the identification and analysis of potential risk and opportunities on the project was undertaken, consistent with the Australian/New Zealand Standard for Risk Management AS/NZS ISO31000.

Comprehensive risk analysis was undertaken on the project which consisted of risk identification, assessment, allocation and mitigation strategies. The Quantitative Risk Assessment (QRA) procedure undertaken was in accordance with the Australian Government Department of Infrastructure and Transport "Best Practice Cost Estimation Standard for Publicly Funded Road and Rail Construction" updated May 2011. The QRA simulation of itemised delivery and operating risks was determined via statistical simulation using risk modelling software. As discussed in section 5 (*Results of the public sector comparator*) of this report, the results of the QRA model provides a numerical estimate of the overall effect of inherent uncertainty and contingent risk of the project, when considering risks, cost and schedule simultaneously.

The SLR Project Deed and associated documents establish the obligations of each party in managing these risks. The risk sharing arrangements for the SLR PPP are summarised in Table 3.

**Table 3:** SLR PPP risk allocation

Type of Risk	Description	State	OpCo
<b>Land, Site and Planning</b>			

Type of Risk	Description	State	OpCo
Additional land	Need to acquire rights to access and use land additional to that made available to OpCo		✓
Planning approvals	Obtaining or modifying certain specified planning approvals	✓	
	Delay in reaching completion due to legal challenges to the planning approvals obtained by Transport for NSW	✓	
	Delays or additional costs to OpCo arising from any modification to planning approvals required by OpCo after financial close		✓
	The responsibility for complying with relevant planning approval conditions (per the SLR Project Deed)		✓
Licences	The responsibility for obtaining licences under the <i>Protection of the Environment Operations Act 1997 (NSW)</i>		✓
Other approvals	The responsibility to obtain any other approvals and the risk of additional costs and delay associated with them		✓
Site availability	Responsibility to acquire agreed site and make it available to OpCo at the specified time during the construction of the SLR Works	✓	
Site conditions	Geotechnical and other site conditions in respect of the SLR Works	✓	✓
Information documents	Accuracy and completeness of information documents		✓
Remediation of contamination	Management, containment and remediation of contamination caused or disturbed by OpCo's activities	✓	✓
Pre-existing contamination	Containment and/or remediation of pre-existing contamination caused by early works undertaken by Transport for NSW	✓	✓
	Containment and/or remediation of all other pre-existing contamination including that caused by land adjoining to OpCo's site	✓	✓
	Containment and/or remediation of contamination as directed by an authority (outside of those areas managed by OpCo as a part of OpCo's activities)	✓	

Type of Risk	Description	State	OpCo
Native title claims	Paying compensation to native title holders or risk of delay to completion	✓	
Artefacts	Discovery of artefacts delaying completion and causing additional costs		✓
Utility service works	Investigation, protection, relocation and modification of utilities	✓	✓
	Provision of services/utilities for construction and operations by OpCo		✓
	Compliance with utilities service agreements (incl. any treatment requirements)		✓
Temporary works	Temporary works installed are not suitable for the purposes of the SLR Project Deed		✓
WHS / principal contractor	Undertake role of being the principal contractor on the site for WHS purposes		✓
Community risks	Exceedance of noise and vibration limits, unacceptable traffic impacts/delays and other disruptions to the community during delivery		✓
Property noise attenuation measures	Noise attenuation measures to third party properties along the SLR site	✓	✓
<b>Design and Construction</b>			
Delays in handover of early works	Time overruns on early works delaying completion of the SLR Works	✓	
Suitability of early works	Early works are adequate and suitable for the SLR Works		✓
OpCo's design	Concept design does not meet the requirements of delivery Phase or operations phase		✓
Design interfaces	Overall management of design interfaces (unless relating to an interface managed by Transport for NSW)		✓
Design review	Compliance with design review process as outlined in the SLR Project Deed		✓
Construction interfaces	Overall management of interfaces necessary to deliver the SLR Works (noting the counterparties to the third party agreements will accept certain responsibilities and risks)		✓
Site access	Identification of sections within the network	✓	

Type of Risk	Description	State	OpCo
	Compliance with the agreed program of required access on a section by section basis		✓
	Compliance with the zone rental scheme which requires OpCo to pay a zone fee for the number of days OpCo exceeds the agreed occupation period		✓
<b>Testing and Commissioning and Completion</b>			
Satisfying commissioning requirements	Testing and commissioning not successfully completed (for reasons other than in relation to a risk borne by Transport for NSW)		✓
Delays in commissioning	Commissioning the SLR Works and commencement of revenue service		✓
Quality	Compliance of SLR Works with the requirements set out in the SLR Project Deed		✓
Design and construction completion	Design and construction of the SLR Works not completed on time or on budget (for reasons other than those in relation to a risk borne by Transport for NSW)		✓
<b>Inner West Light Rail (existing infrastructure and IWLR Operations)</b>			
Site access	Responsibility to acquire site area agreed via SLR Project Deed and make it available to OpCo at the specified time for IWLR operations	✓	
	Delays in obtaining accreditation to take over IWLR operations at the agreed time		✓
Service levels	Achieving IWLR performance requirements and service levels		✓
Operations	IWLR operations and maintenance (including existing staff)		✓
Infrastructure	Dilapidation or wear of existing infrastructure	✓	✓
	Defects in existing infrastructure	✓	✓
Information documents	Accuracy and completeness of information documents		✓
DDA compliance	Complete <i>Disability and Discrimination Act 1992</i> (Cth) compliance audit	✓	
	Ensure scope of work bid complies with the <i>Disability and Discrimination Act 1992</i> (Cth)		✓
<b>Operational Risks (during full operations of SLR)</b>			

Type of Risk	Description	State	OpCo
Operational interfaces	Managing interfaces with third parties such as adjoining property owners, other transport providers and utilities		✓
Meeting performance requirements and service levels	Service solution or service performance does not meet performance requirements and service levels specified by Transport for NSW (for reasons other than those in relation to a risk borne by Transport for NSW)		✓
Electricity supply including interruption	Insufficient electricity supply availability during the operations phase to meet OpCo's requirements (unless due to a specified relief event)		✓
Adequacy of performance requirements and service levels	Specified performance requirements and service levels will not be appropriate or sufficient to meet Transport for NSW's requirements	✓	
Public transport information	Provision of information for, and interface with, the Transport for NSW systems		✓
Ticketing system	Provision of, and performance risk relating to, electronic ticketing system and equipment supplied by Transport for NSW	✓	
	Provision of the legacy ticketing system from the date of revenue service until the legacy ticketing system end date		✓
	Ticket sales and ticketing responsibilities	✓	
	Provision of power and communications for the electronic ticketing system components and performance of any specified functions		✓
Safety and security	Safety and security of the Sydney Light Rail system and its customers and staff (to the extent specified in the SLR Project Deed and under rail safety legislation excluding law enforcement functions)		✓
Graffiti and vandalism risk	Responsibility for cost and disruptions caused by graffiti or vandalism during construction		✓
	Responsibility for cost and disruptions to services caused by graffiti or vandalism within areas managed by OpCo		✓
	Responsibility to remove or remediate graffiti and vandalism		✓



Type of Risk	Description	State	OpCo
	Responsibility for cost and disruptions to services caused by graffiti or vandalism outside areas managed by OpCo	✓	✓
Branding and marketing	Control of branding and marketing activities	✓	
	Conformance with Transport for NSW branding requirements and meeting specific responsibilities		✓
Stop and interchange management	Control and management of stops and interchanges (within specified boundaries), including all responsibility for asset availability, asset management, operations and cost risk		✓
Disruptions to passenger service	Disruptions to passenger services during the operations phase (for reasons other than those in relation to a risk borne by Transport for NSW)		✓
Customer and stop KPIs	Meeting required standards with respect to customer and stop management KPIs		✓
<b>Asset Management</b>			
Asset information system	Responsibility for the Sydney Light Rail asset information system		✓
Maintenance performance and cost	Cost of maintenance and performance of assets relative to the SLR Project Deed requirements		✓
Asset condition through operations phase	Required asset condition standards are not achieved through the operations phase.		✓
Residual life and end of term handover	Satisfying Transport for NSW's requirements for asset condition (IWLR and CSELR) and residual design life at the end of the contract term		✓
Defect – Early Works	A defect in early works causes OpCo to incur increased costs or results in an event which triggers abatement of the Service Payment		✓
<b>Revenue and Costs</b>			
Revenue protection (fare enforcement)	Provision of fare enforcement functions (on behalf of the State Debt Recovery Office) e.g. inspection of tickets and issuing of infringements, prosecution of infringement notices	✓	✓
	Implementation of ticketing and revenue protection responsibilities per the SLR Project		✓

Type of Risk	Description	State	OpCo
	Deed		
Farebox revenue	Farebox revenue differs from forecast	✓	
Changes to fares	Fare setting responsibility	✓	
Service Payments	Abatement regime designed to incentivise OpCo to deliver against a set of contractually defined objectives	✓	
Changes in service levels	Increasing service levels as directed by Transport for NSW within certain specified bounds at a per-service kilometre price and/or per vehicle operating hour price		✓
	Responsibility for setting service levels	✓	
	Increasing service levels as directed by Transport for NSW beyond certain specific bounds	✓	
Escalation	Risk of inflation indices impacting on indexed costs in the Service Payment calculation	✓	
	Risk of annual increases in OpCo's costs running above the specified indices		✓
Electricity supply costs	Risk of:		
	<ul style="list-style-type: none"> <li>increases in costs per unit over an agreed index during delivery</li> </ul>		✓
	<ul style="list-style-type: none"> <li>increases in cost per unit over an agreed index during operations (usage and network charges)</li> </ul>	✓	
	<ul style="list-style-type: none"> <li>volume of consumption (other than resulting from a change in specified service levels) including volume related to network charges</li> </ul>		✓
	<ul style="list-style-type: none"> <li>costs relating to metering charges, Australian energy market operator charges and any other charges</li> </ul>		✓
Special events (unspecified)	Provision of additional services required for exceptional, non-recurring special events (e.g. major sporting events, political forums)		✓

Type of Risk	Description	State	OpCo
	Cost of running recurring special events services above a level specified in the SLR Project Deed	✓	
Commercial revenue opportunities	Certain advertising and other commercial opportunities		✓
	Property and other opportunities retained by Transport for NSW	✓	
Special events (pre-specified)	Cost and provision of running recurring special events services as up to a level specified in the SLR Project Deed		✓
<b>Accreditation</b>			
Rail safety accreditation	Maintaining accreditation for operation of the IWLK until handover to OpCo	✓	
	Obtain accreditation for the SLR Works during delivery phase		✓
	Obtaining and maintaining accreditation for the operations and maintenance phase of IWLK		✓
	Obtaining and maintaining accreditation for passenger operations and maintenance of Sydney Light Rail		✓
<b>Financing</b>			
Financing	Private financing of the required financing amount for the SLR PPP		✓
Reference interest rate risk	Risk of reference interest rate increases; <ul style="list-style-type: none"> <li>before financial close</li> </ul>	✓	
	<ul style="list-style-type: none"> <li>after financial close through to 2 years post completion</li> </ul>		✓
	<ul style="list-style-type: none"> <li>during the operations phase (post 2 years of operations)</li> </ul>	✓	
Interest rate margin (post-financial close)	Changed interest margins post financial close		✓
Foreign Exchange risk	Foreign exchange rate movements <ul style="list-style-type: none"> <li>before financial close</li> </ul>	✓	
	<ul style="list-style-type: none"> <li>after financial close</li> </ul>		✓
Refinancing Losses	Losses on debt refinancing		✓

Type of Risk	Description	State	OpCo
Tax	Actual tax payable by OpCo differs from the base case financial model		✓
<b>Other Commercial Issues</b>			
Insurance	All costs and risk associated with all insurances required to design, deliver, operate and maintain CSELR and IWLR		✓
Force majeure	Force majeure event prevents OpCo from performing its obligations under the SLR Project Deed for a continuous period exceeding 180 days	✓	✓
Change in Law or NSW Government Policy	<ul style="list-style-type: none"> <li>project-specific change</li> </ul>	✓	
	<ul style="list-style-type: none"> <li>change in disability, environmental or safety laws</li> </ul>	✓	
	<ul style="list-style-type: none"> <li>general change</li> </ul>	✓	✓
Relief events	Events outside control of OpCo where OpCo is entitled to be relieved of its obligations	✓	✓
Compensation events	Events outside control of OpCo where OpCo is entitled to be relieved of its obligations and compensated for the increased costs and/or loss of revenue that it incurs	✓	

## Overview of the Sydney Light Rail PPP

### 8. Participants in the Sydney Light Rail PPP

#### Public sector parties to the contracts

The public sector parties to the SLR PPP are:

- (a) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW); and
- (b) the **NSW Treasurer**, for an on behalf of the **State of New South Wales**, who has executed a guarantee by the State of Transport for NSW's performance of its obligations under several of the project's contracts, see section 30 (*Liabilities, Indemnities and guarantees given by the Crown*) of this report.

#### Private sector parties to the contracts

The main private sector parties are:

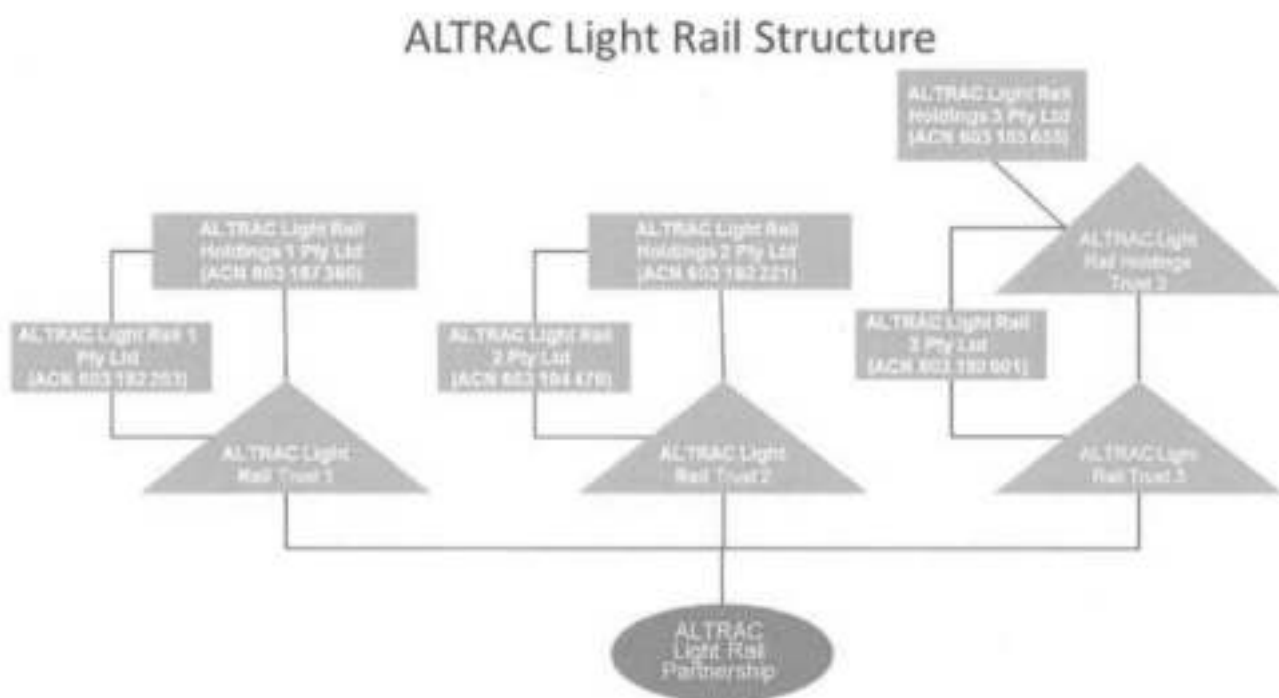
##### OpCo group

- (a) **ALTRAC Light Rail Partnership**, a partnership between:
  - (i) **ALTRAC Light Rail 1 Pty Limited** ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1;
  - (ii) **ALTRAC Light Rail 2 Pty Limited** ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2; and
  - (iii) **ALTRAC Light Rail 3 Pty Limited** ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3.
- (b) All of the units in the ALTRAC Light Rail Trust 1 are held by **ALTRAC Light Rail Holdings 1 Pty Ltd** ACN 603 167 380.
- (c) All of the units in the ALTRAC Light Rail Trust 2 are held by **ALTRAC Light Rail Holdings 2 Pty Ltd** ACN 603 192 221.
- (d) All of the units in the ALTRAC Light Rail Trust 3 are held by **ALTRAC Light Rail Holdings 3 Pty Ltd** ACN 603 185 655 in its capacity as trustee of the ALTRAC Light Rail Holdings Trust 3.

##### OpCo group equity investors

- (a) **Acciona Concesiones S.L** or one of its wholly owned subsidiaries, with a 5% ownership interest.
- (b) **FSS Trustee Corporation**, in its capacity as trustee of the First State Superannuation Scheme or one of its Associates, with a 62.5% ownership interest.
- (c) **John Laing Investments (SLR) B.V.** or one of its wholly owned subsidiaries, with an equity interest of 32.5%.

Figure 2: OpCo group structure



#### Core Contractors and Core Contractor Guarantors

- (a) **Alstom Transport Australia Pty Limited** ABN 68 165 157 451 and **Acciona Infraestructura Australia Pty Ltd** ABN 52 140 915 251 (together the **D&C Contractor**). OpCo has subcontracted its obligations to design and construct the SLR Works to the D&C Contractor under the D&C Contract on a joint and several basis. The D&C Contractor has also entered into an associated side contract with Transport for NSW.
  - (b) **Transdev Sydney Pty Ltd** ABN 34 096 046 052 (**O&M Contractor**). OpCo has subcontracted its obligations to operate and maintain the Sydney Light Rail to the O&M Contractor under the O&M Contract. The O&M Contractor has also entered into an associated side contract with Transport for NSW.
- The D&C Contractor and the O&M Contractor are collectively referred to as the **Core Contractors**.
- (c) **Acciona Infraestructuras S.A.** and **ALSTOM Transport S.A.** (each a **D&C Guarantor**) and **Transdev Australasia Pty Ltd** ABN 40 079 303 816 (**O&M Guarantor**). These guarantors have entered into parent company guarantees with OpCo to guarantee certain liabilities and obligations of each Core Contractor.

#### Independent Certifier

**APP Corporation Pty Ltd** ABN 29 003 764 770 has been jointly engaged by Transport for NSW and OpCo to carry out independent certification services in relation to the SLR Works.

#### Debt financing parties

**CBA Corporate Services (NSW) Pty Limited** ACN 072 765 434 has been engaged by OpCo as the Security Trustee and **Commonwealth Bank of Australia** ACN 123 123 124 has been engaged by OpCo as the Agent and have entered into, amongst others the Syndicated Facility Agreement, the Financiers Tripartite Deed and the Security Trust Deed.

**Astra SLR Finance Pty Limited** ACN 166 382 403 of c/- Capella Capital, is a special purpose company which was established to raise debt finance for the PPP and to securitise OpCo's licence payment obligations. The debt raised by Finance Co is contributed to OpCo by way of a securitised licence payment structure governed by the "Securitisation Agreement", see section 9.

**Finance Co** means **Astra SLR Finance Pty Limited** ACN 166 382 403.

## 9. Contractual structure of the Sydney Light Rail PPP

Introductory summaries of the contractual structure of the SLR PPP as at 17 December 2014, in so far as the contracts affect or will potentially affect public sector rights and obligations, are summarised in a simplified form below.

The principal contract is the SLR Project Deed dated 17 December 2014 between Transport for NSW and OpCo.

This contract comprises a "Deed of Agreement" and attached to this Deed of Agreement are 79 "Schedules" (including 50 "Appendices" forming part of Schedule E1), and the complete contract is described in this report simply as the SLR Project Deed.

The SLR Project Deed sets out the terms under which:

- (a) OpCo must finance, or procure finance for, the SLR PPP;
- (b) OpCo must design and construct the SLR Works and operate and maintain the IWLR and the CSELR; and
- (c) OpCo must hand the Sydney Light Rail back to Transport for NSW at the end of the contract term.

### Financing

OpCo will satisfy its obligation to finance, or procure finance for, the SLR PPP through:

#### (a) **Equity investments by the project's equity investors**

In line with the *NSW Public Private Partnerships Guidelines 2012* and the express confidentiality provisions of the contracts, see section 10 (*Confidentiality and excluded material*), the details of the equity investors' obligations are generally beyond the scope of this summary.

#### (b) **Loans to Finance Co and the securitisation of OpCo's licence payment obligations**

Finance Co, OpCo and Transport for NSW have entered into the "**Receivables Purchase Deed**" under which Finance Co will purchase Transport for NSW's right to receive licence payments payable by OpCo under the SLR Project Deed in respect of the permanent light rail corridor and the non-corridor assets. In consideration for the assignment of the right to receive the licence payments, Finance Co pays Transport for NSW monthly 'receivables purchase payments'. Transport for NSW uses the 'receivables purchase payments' to fund its obligation under the SLR Project Deed to pay OpCo - see section 17 (*Price*) of this report.

Finance Co will borrow the funds which it needs to pay each 'receivables purchase payment' from a syndicate of lenders under the "**Sydney Light Rail PPP - Syndicated Facility Agreement**" dated 13 February 2015 (**Syndicated Facility**

**Agreement**). Finance Co uses the licence payments it receives from OpCo as a result of the assignment described above to service the debt it borrows under the Syndicated Facility Agreement.

The "**Payment Directions Deed**" entered into by Transport for NSW, OpCo, Finance Co and Commonwealth Bank of Australia (as **Agent**) dated 13 February 2015, is an ancillary document to the Receivables Purchase Deed which allows the various securitisation related payments to be made directly from the original party making the payment to the end recipient, without the need for separate intervening transfers between the parties.

In addition, there are intercompany loans in place between OpCo and Finance Co pursuant to which debt raised by Finance Co can be on-lent to OpCo outside of the securitised licence payment structure as required.

In line with the *NSW Public Private Partnerships Guidelines 2012* and the express confidentiality provisions of the project's contracts - see section 10 (*Confidentiality and excluded material*) of this report - the details of the project's debt financing arrangements are generally beyond the scope of this summary.

## Design and construct and operations and maintenance

OpCo will satisfy its obligations to design and construct the SLR Works and operate and maintain the Sydney Light Rail through:

- (a) The performance by the D&C Contractor of their joint and several obligations to OpCo to design and construct the SLR Works under the "**Sydney Light Rail D&C Contract**" between OpCo and the D&C Contractor dated 17 December 2014 (**D&C Contract**).
- (b) The performance by the O&M Contractor of its obligations to OpCo to operate and maintain the Sydney Light Rail and electronic ticketing system equipment under the "**Sydney Light Rail O&M Contract**" between OpCo and the O&M Contractor dated 17 December 2014 (**O&M Contract**).

The D&C Contract and the O&M Contract are collectively referred to as the **Core Contracts**.

- (c) The performance by each Core Contractor of their obligations to OpCo to cooperate and liaise with each other as set out under the "**DCOM Interface Agreement**" between OpCo and each Core Contractor dated 17 December 2014. This deed resolves key subcontract interface issues such as input into design documentation and project plans, consultation, maintenance and responsibility for approvals.
- (d) The performance by the Independent Certifier of its obligation to provide independent certification of the SLR Works under the "**Independent Certifier Deed**" between Transport for NSW, OpCo and the Independent Certifier dated 17 December 2014.
- (e) The performance by the D&C Independent Certifier of its obligation to provide independent certification of the SLR Works under the "**D&C Independent Certifier Deed**" between OpCo, the D&C Contractor, the D&C Independent Certifier and the Security Trustee dated 13 February 2015..

## Charges

The following charges have been entered into to secure Transport for NSW's rights relating to the SLR PPP:



- (a) The "**Deed of Charge - OpCo**" between Transport for NSW and OpCo dated 17 December 2014 which secures all of the obligations of OpCo to Transport for NSW under the project contracts by charges over the assets, undertakings and rights of OpCo.
- (a) The "**Deed of Charge - Finance Co**" between Transport for NSW and Finance Co dated 17 December 2014 which secures all of the obligations of Finance Co to Transport for NSW under the Receivables Purchase Deed, Payments Direction Deed and Financiers Tripartite Deed by charges over any of the assets, undertakings and rights of Finance Co.
- (b) The "**Deed of Charge - O&M Contractor**" between Transport for NSW and the O&M Contractor dated 17 December 2014 which secures the O&M Contractor's return to OpCo of the Sydney Light Rail and any electronic ticketing system equipment and requires the O&M Contractor to transfer all of its rights, title and interests (if any) in the assets to OpCo free from any security interests. This charge is a specific security interest over Transport for NSW's assets, interests, rights and proceeds in respect of which the O&M Contractor has right to grant a charge over.

## Other

- (a) The "**Dispute Avoidance Board Agreement**" between Transport for NSW, OpCo and each DAB Member dated 12 February 2015. This agreement establishes the Dispute Avoidance Board (**DAB**) and will assist in the avoidance and effective management of disputes throughout the term of the project. It sets out the rights, obligations and duties of the each DAB Member, Transport for NSW and OpCo.
- (b) The "**Alstom CSELRV Supply Agreement**" between Transport for NSW and Alstom dated 17 December 2014. Under this agreement Transport for NSW has two options to purchase additional LRVs from Alstom and sets out the terms for those options and for the delivery of the LRVs, if exercised.
- (c) The "**Equity Purchase Deed**" was also entered into by Transport for NSW, HoldCo 1, HoldCo 2, HoldCo 3, Acciona Concesiones S.L., FSS Trustee Corporation and John Laing Investments (SLR) B.V. dated 17 December 2014. This deed confers on Transport for NSW the right to purchase the equity capital of HoldCo1, HoldCo 2 and HoldCo 3, and sets out the related terms and conditions on when this right may be exercised by Transport for NSW.
- (d) Some of Transport for NSW's rights and obligations under the SLR Project Deed and each Core Contractor Side Deed are subject to restrictions or additional process requirements under the "**Financiers Tripartite Deed**" between Transport for NSW, OpCo, Finance Co, the Security Trustee, the Agent and Commonwealth Bank of Australia dated 13 February 2015. As an example, this agreement requires Transport for NSW to notify the Security Trustee and the Agent before it terminates the SLR Project Deed for a default by OpCo, giving the Security Trustee an opportunity to cure the default. Priorities between Transport for NSW's charges and securities held by the project's private sector debt financiers are also governed by the Financiers Tripartite Deed.
- (e) The "**Escrow Agreement**" which sets up arrangements ensuring Transport for NSW will be able to exercise its rights under the SLR Project Deed to obtain the source code of various computer programs used and developed by OpCo and its contractors between Transport for NSW, OpCo, Alstom and Assurex Escrow Pty Ltd dated 12 February 2015.
- (f) In addition, separate "**Deeds of Assurance**", entered into between Transport for NSW, OpCo and Alstom Transport Australia Pty Ltd (the **Licensed IP Owner**) and between Transport for NSW, OpCo and Alstom Transport Technologies SAS (the **Licensed IP Owner**). These deeds assure Transport for NSW and any entity authorised or licensed by Transport for NSW that Transport for NSW may continue

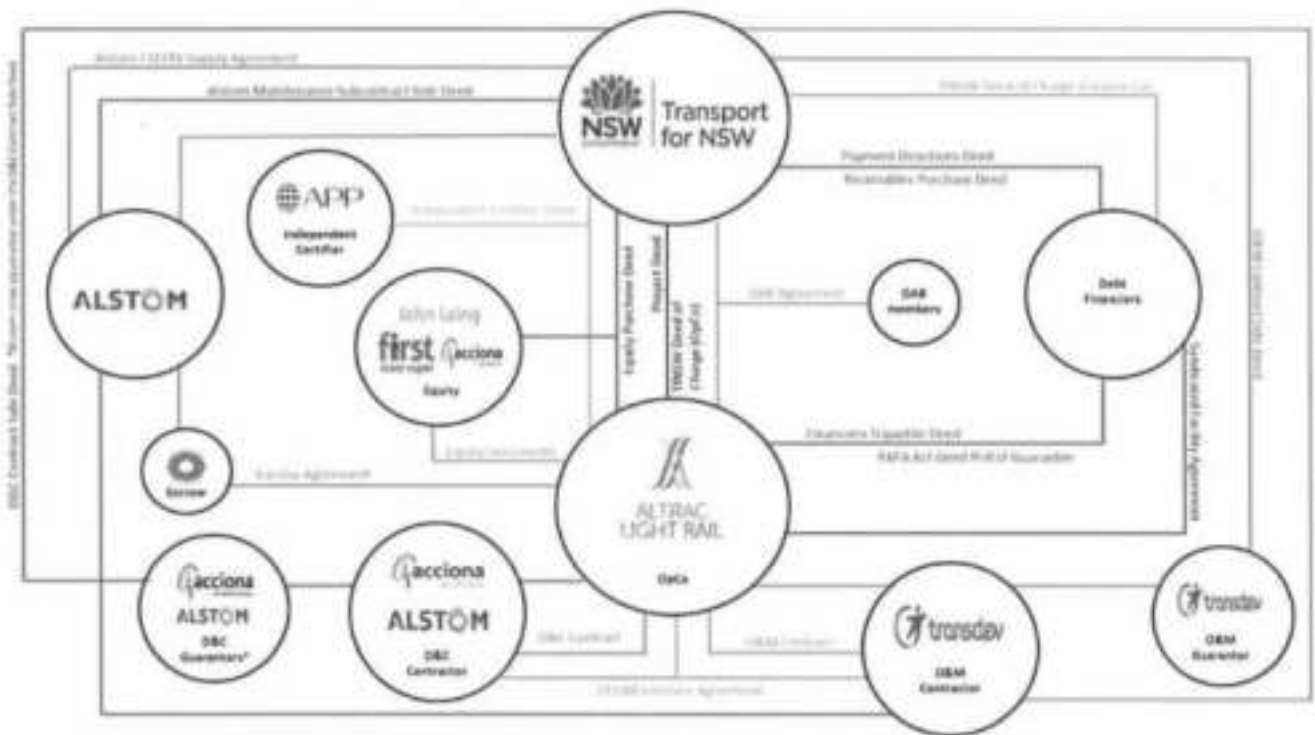
exercising its rights under the SLR Project Deed licence, notwithstanding any change affecting the Licensed IP Owner's direct or indirect relationship with OpCo.

- (g) Under the "**PAFA Act Deed Poll of Guarantee**" executed by the NSW Treasurer (on behalf of the State of NSW) in favour of OpCo and the Security Trustee dated 17 December 2014, the State of NSW provides a guarantee of Transport for NSW's obligations. See section 30 (*Liabilities, indemnities and guarantees given by the Crown*) for further information.

The contracts listed above to which Transport for NSW is a party (amongst others) are referred to as the Transport for NSW Project Agreements throughout this report.

A diagrammatic representation of the contract structure appears below and shows the main contracts only.

**Figure 2:** Contract structure



## 10. Confidentiality and excluded material

Under their own terms all of the SLR PPP major contracts and associated documents to which Transport for NSW is a party, including the SLR Project Deed, may be publicly disclosed by Transport for NSW, provided in all cases Transport for NSW redacts any commercially sensitive information.

Each category of commercially sensitive information is summarised below.

The SLR Project Deed prohibits the release, except in specified circumstances, of information revealing:

- (a) OpCo's debt financing and equity arrangements, including terms, fees and margins;

- (b) the cost structures, profit margins and intellectual property of OpCo and its subcontractors;
- (c) OpCo's "base case" financial model for the SLR PPP and the financial close protocol;
- (d) any values or monetary values, including those used to calculate the net financial impact or any termination payment;
- (e) any value, percentage, rates, fees, escalation factors or formulas used to calculate the Service Payment or any other payment to OpCo;
- (f) the terms of the Core Contracts, each significant contract, the D&C Guarantee, the O&M Guarantee and the DCOM Interface Agreement;
- (g) the terms of the project contracts to which Transport for NSW is not a party;
- (h) the terms of the projects' insurance policies;
- (i) any terms that could prejudice the legitimate business, commercial, professional or financial interests of a party to the project contracts; or
- (j) any terms where disclosure would place a party to a project contract at a substantial commercial disadvantage in projects of a similar nature.

These confidentiality restrictions do not apply, however, to any disclosures of information by Transport for NSW, the State or any public authority as required under the *Government Information (Public Access) Act 2009* (NSW) or as required to satisfy the requirements of the NSW Auditor General or parliamentary accountability.

## 11. Auditor General's function

The Auditor General's ability to carry out the audit functions under the *Public Finance and Audit Act 1983* (NSW) have not been diminished by any of the SLR PPP contracts.

## Elements of the Sydney Light Rail PPP and related agreements

### 12. Contract term and asset transfers

#### Term

Upon execution of the SLR Project Deed on 17 December 2014, certain provisions of the contract took effect immediately and these provisions are referred to as "Day 1 clauses". The remaining provisions of the contract came into effect on financial close on 25 February 2015, when all conditions precedent have been satisfied (or waived). The term of the SLR Project Deed commenced on 17 December 2014 and will expire on 16 March 2034.

Transport for NSW is entitled under the SLR Project Deed to extend the term of the SLR PPP for a period of up to two years.

#### Asset transfers

All works and assets which are affixed to the Sydney Light Rail site will become and remain the property of Transport for NSW from the time they are affixed. For example, this will include the stops, railway track and the maintenance and stabling facilities.

OpCo must ensure that ownership of the Moveable Assets, including the LRVs, spares, special tools and equipment and other chattels forming part of the works (but excluding any hired assets), transfers to Transport for NSW, at no cost, on the date on which OpCo acquires title to the relevant moveable asset, free from any security interests (other than permitted security interests).

At the end of the term OpCo must transfer, at no cost, all of OpCo's rights and interests in the assets to Transport for NSW (or its nominee) free from any security interest and in a state which complies with the requirements of the SLR Project Deed.

See section 26 (*Transfer of assets by the public sector to the contractor*) of this report for further details regarding the transfer and use of assets by OpCo and its contractors.

## 13. Primary obligations

OpCo's primary obligations under the SLR Project Deed are to:

- (a) finance or arrange for the financing of the SLR PPP;
- (b) design and construct the SLR Works;
- (c) operate and maintain the Sydney Light Rail and the electronic ticketing system during the contract term; and
- (d) hand the Sydney Light Rail back to Transport for NSW at the end of the contract term.

Transport for NSW's primary obligations under the SLR Project Deed are to:

- (a) grant OpCo licences to use and occupy:
  - (i) the construction site;
  - (ii) the permanent light rail corridor; and
  - (iii) specified assets which OpCo must maintain; and
- (b) make various payments to OpCo, which are explained in more detail in section 17 (*Price*) of this report.

## 14. Activities of Transport for NSW and OpCo during the construction period

### OpCo construction works

OpCo is responsible for the design and construction of the SLR Works, which comprise:

- (a) the CSELR, including trackwork, rail structures, rail systems, interchange facilities, terminus facilities, CSELRVs and stops;
- (b) LRV stabling facility at Randwick and a maintenance facility at Rozelle;
- (c) works on the electronic ticketing system, including all works associated with the integration of civil and cabling works, such as power supply and data communication that relates to the electronic ticketing equipment;

- (d) modification, reinstatement and improvement of local areas, including all public spaces, parks, pedestrian ways, pedal cycle paths, and roads which are in any way affected by the works undertaken by OpCo (**Local Area Works**);
- (e) works required for existing buildings and infrastructure or to property identified in the SLR Project Deed (**Property Works**);
- (f) any modification or relocation of any service, facility or item of infrastructure for the provision and measurement of water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, industrial waste disposal and electronic communication service (**Utility Service Works**);
- (g) works at Alison Road; and
- (h) property noise attenuation works.

During the construction phase OpCo must:

- (a) construct the SLR Works and the temporary works in accordance with the SLR Project Deed (including the Scope and Performance Requirements (**SPR**)), the final design documentation and any modifications directed or approved by Transport for NSW;
- (b) use workmanship of the standard set out in the SPR and which is fit for purpose;
- (c) use materials which comply with the requirements set out in the SLR Project Deed (including the SPR) and which are free from defects and are safe and fit for their intended purpose; and
- (d) meet all sustainability requirements specified in the SPR.

OpCo warrants that the SLR Works will, upon completion and thereafter at all relevant times, be safe and fit for their intended purposes.

## Laws and approvals

In performing its activities, OpCo must comply with all applicable laws including those relating to environmental heritage. Transport for NSW has obtained or will obtain the planning approvals required for the SLR PPP. Transport for NSW bears risk of any legal challenge to these planning approvals.

OpCo is responsible for:

- (a) obtaining all other approvals;
- (b) obtaining licences under the *Protection of the Environment Operations Act 1997* (NSW); and
- (c) complying with all conditions of all approvals (other than those conditions of the planning approvals which Transport for NSW has specifically agreed to comply with).

## Sydney Light Rail site

Transport for NSW has granted to OpCo a non-exclusive licence to use and occupy the construction site during the delivery phase and the permanent light rail corridor and non-corridor assets during the operations phase.

Any archaeological or heritage artefacts discovered on or under the Sydney Light Rail site will, (as agreed between Transport for NSW and OpCo) be the absolute property of Transport for NSW. OpCo must immediately notify Transport for NSW if any artefacts are

discovered, protect them and comply with any Transport for NSW instructions, including any directions to suspend work.

### Section access

Transport for NSW and OpCo have agreed a section access regime that incentivises OpCo to minimise disruption during construction. OpCo will be liable for a daily fee for each day that its occupation of a zone exceeds an agreed base occupation period. Where OpCo vacates a zone earlier, it will be entitled to a credit. OpCo's liability for daily fees and entitlement to credits are capped.

### Time

OpCo is obliged to use its best endeavours to achieve completion of the SLR Works by the 'original date for completion', being 16 March 2019. OpCo does not receive any payment (other than in respect of the IWLR) until completion is achieved.

If OpCo is delayed in achieving completion by a 'relief event' - see section 18 (*Relief events*) of this report- OpCo may make a claim for an extension of time. If granted and the relevant 'relief event' was also a 'compensation event', OpCo may claim for compensation in respect of the net financial impact of the period of time for which the extension of time was granted.

Transport for NSW may, in lieu of granting an extension of time, elect to compensate OpCo for the additional negative net financial impact incurred by OpCo arising from not granting OpCo an extension of time.

If OpCo fails to achieve completion within 2 years after the 'date for completion', Transport for NSW will be entitled to terminate the SLR Project Deed - see section 22 (*Termination rights*) of this report.

Ultimately, OpCo retains the risk of design and construction of the SLR Works not being completed on time or to budget for reasons other than a risk borne by Transport for NSW.

If OpCo becomes aware of a matter which will, or is likely to delay completion, it must notify Transport for NSW and prepare a corrective action plan in respect of the delay. OpCo must take reasonable steps to avoid or minimise the effects of any delay.

OpCo must update the delivery program regularly to reflect changes to the program, delays, corrective action plans and any other details required by Transport for NSW.

## 15. Service delivery and quality requirements

OpCo is required to operate the Sydney Light Rail for the contract term, including the operation and maintenance of LRVs, stops and the light rail maintenance and stabling facilities so that the Sydney Light Rail remains fit for its purpose at all times during the contract term.

OpCo must operate the Sydney Light Rail to provide services in accordance with the contract service level requirements and provide the minimum required services, including additional services for special events.

### Operations review

Either party, at any time, may request that the other party participates in a review of the operations activities, including to consider factors such as measures to improve and address the reliability of services, patronage demand, modal coordination and seasonality issues, measures to address material changes to intersection wait times, trends and changes in the demographics, land use and infrastructure that may impact the services,

measures to overcome any identified inefficiencies, recommendations arising from incidents and accidents, measures to address security issues or matters that affect customer safety and security, changes to minimum operating standards, contract service level requirements or staffing levels or any other factors that Transport for NSW or OpCo considers relevant.

Transport for NSW may request changes to the contract service level requirements (within specified levels) and either party may otherwise request a modification to the service levels. Transport for NSW will be required to direct a modification to services in certain circumstances including where patronage exceeds certain levels or where there is a change in traffic light priority or speed limits.

### Operational responsibilities

OpCo's operational responsibilities include:

- (a) **provision of information:** providing real-time information to Transport for NSW and customers, ensuring that current, accurate, up to date and relevant information relating to the services and the Sydney Light Rail is provided to customers and cooperating and sharing information with other public transport providers;
- (b) **ticketing, fare collection and revenue protection:** providing customers with ticketing and fare information, protection of fare revenue, issuing penalty notices for fare evasion and reporting any faults with the electronic ticketing system;
- (c) **security:** operating and maintaining a CCTV system and CCTV surveillance; and
- (d) **cleaning and presentation:** monitoring and ensuring that the light rail vehicles, stops, electronic ticketing system and assets are clean and graffiti is removed and vandalism rectified in accordance with the SLR Project Deed.

### Service Payment

OpCo's monthly Service Payment will be reduced to the extent that OpCo fails to meet the contract service level requirements. See section 17 (*Price*) of this report for further information regarding the calculation of the Service Payment.

## 16. Maintenance

OpCo must maintain the specified assets so that the Sydney Light Rail remains fit for purpose during the contract term and each asset (provided it is operated and maintained after the end of the contract term in accordance with the asset management system) is capable of remaining fit for its intended purpose throughout the design life of that asset, or in the case of a replacement or refurbished asset, the extended design life of that asset. OpCo must also rectify all defects (fair wear and tear excepted) within a reasonable time, subject to specified exceptions within the SLR Project Deed.

### Asset management plan and asset information system

OpCo must maintain the minimum specified stock of spares for the assets and prepare and update the asset management plan. The asset management plan must cover all specified assets and include a maintenance works program which describes the asset management activities for the following two year period.

OpCo must also provide and maintain an asset information system that:

- (a) covers all assets;

- (b) records OpCo's compliance with the asset management plan, including the condition of, and changes to condition of, assets and the remaining life of the assets;
- (c) is capable of producing period reports that allow OpCo and Transport for NSW to monitor asset conditions and compliance; and
- (d) at all times accurately represent the true status and condition of all assets and asset management activities.

Transport for NSW is the owner of all information held within the asset information system and may access it at any time in accordance with the SPR,

The parties will meet annually within 3 months of the end of each operating year until the end of the contract term to review OpCo's compliance with the maintenance work program.

### Asset management failure

An "asset management failure" will occur if OpCo fails to comply with the maintenance works program and this failure constitutes a material non-compliance with the asset management plan. Where OpCo fails to remedy such failure within the required period, Transport for NSW may withhold a specified amount from the Service Payment each month until the failure is remedied.

### Reporting

OpCo must provide to Transport for NSW's representative monthly, quarterly and annual reports on the asset management activities during the operation of the Sydney Light Rail,

### Handback audit and final inspection

Prior to the original expiry date of the SLR Project Deed (no earlier than 18 months and no later than 6 months), Transport for NSW's representative may procure an audit of the Sydney Light Rail. An independent expert will inspect and assess the assets specified for handback and identify any rectification, maintenance or remediation works required. OpCo must carry out such works to the satisfaction of the independent expert and so as to satisfy the standards and requirements under the SLR Project Deed.

As soon as practicable following the end of the contract term, an independent expert will inspect and assess the Sydney Light Rail and notify Transport for NSW and OpCo of the estimated cost of making good or rectifying any failure by OpCo. The amount notified by the expert will be a debt due from OpCo to Transport for NSW and Transport for NSW may deduct or set off this amount against any other amount otherwise payable to OpCo.

If the term is extended beyond the original expiry date of 16 March 2034, OpCo must ensure at this date that the specified assets are in the required state and condition and an interim inspection of the assets will be carried out.

## 17. Price

### Payment obligations

Transport for NSW must make the following payments to OpCo or, in the case of the CDPD Amount, pay Finance Co:

- (a) monthly operations and maintenance payment during the IWLR operations phase;
- (b) monthly Service Payments during the full operations phase upon completion of the CSELR;



- (c) if certain conditions have been met between year 2 and year 4 of the full operations phase, a lump sum 'conditional debt pay down' amount equal to the lesser of 50% of debt forecast outstanding and 50% of debt actually outstanding, on the payment date;
- (d) any bonus payments for early completion, if applicable; and
- (e) any pre-agreed option payments, if exercised.

It is estimated that the net present value of the Service Payments for the SLR PPP over 19.1 years is \$2,200.4 million.

### Service Payment mechanism

Monthly Service Payments will be made to OpCo once services have commenced. The Service Payments will cover OpCo's cost of financing, design, construction, asset management and performance of operations on the entire Sydney Light Rail network.

The Service Payment will be determined in accordance with the payment mechanism that is designed to incentivise OpCo to deliver the requirements of the SLR Project Deed (including the SPR) and includes:

- (a) a service-based payment with no demand risk, with Transport for NSW retaining revenue and the responsibility for setting fares;
- (b) a deduction regime which will reduce OpCo's Service Payment if it fails to meet timeliness, availability and revenue management requirements and key performance indicators (**KPIs**) based on the SLR PPP's output specification;
- (c) an appropriate "bedding in" period for the abatement regime to enable OpCo to establish its operational performance; and
- (d) incentive payments for customer satisfaction and revenue management to encourage and reward OpCo for exceptional performance.

### Service Payment calculation

The Service Payment each month is comprised of:

- (a) an indexed availability fee; plus
- (b) the benchmarked insurance component; plus
- (c) an indexed lifecycle component; minus
- (d) an availability deduction (measured against missed services); minus
- (e) a timeliness deduction (measured against frequency of services and total journey time); minus
- (f) a service quality deduction (measured against the service quality KPIs described below); minus
- (g) a revenue management deduction (measured against the service quality KPIs described below); plus
- (h) the energy amount bid (measured against the base energy volume and base network volume); minus

- (i) an energy adjustment (measured against a demand usage strategy designed to minimise network demand charges); plus
- (j) a customer satisfaction payment (measured against customer satisfaction surveys); plus
- (k) a revenue management payment; plus
- (l) an asset management adjustment (measured against compliance with the maintenance works program); plus
- (m) the floating rate amount (measured against quarterly interest rate movements) 2 years post the Date for Completion; minus
- (n) the final completion deduction amount (calculated in months where OpCo has not achieved final completion); minus
- (o) Transport for NSW's share of gross commercial revenue; minus
- (p) the ticket collection amount; and minus
- (q) the traffic signal aggregate delay amount (measured against the traffic signal delay set out in the SPR).

The SLR Project Deed also sets out a regime that allows Transport for NSW to request 'service level adjustments', being short and long-term adjustments to the services, which will subsequently impact the calculation of the Service Payment.

### Key Performance Indicators

OpCo's performance will be assessed and measured each quarter during the operations phase against the service quality KPIs set out below.

If OpCo fails to meet the required quality standards OpCo's Service Payment will be reduced and calculated based on the respective KPI scores and weighting up to a maximum deduction amount.

**Table 4:** Key performance indicators

KPI no	Service Quality KPIs	KPI weighting
1	Vehicle cleanliness, condition and graffiti	20%
2	Stop and interchange cleanliness, condition and graffiti	10%
3	Corridor cleanliness, condition and graffiti	4%
4	Customer information	10%
5	Complaints management	4%
6	Customer satisfaction survey	36%
7	Asset availability: systems at stops	6%
8	Asset availability: systems on LRVs	10%
	<b>Total</b>	<b>100%</b>

## 18. Relief Events

Transport for NSW recognises that there may be events out of OpCo's control which prevent OpCo from performing its obligations. Accordingly, the SLR Project Deed categorises each of the following as a 'relief event':

- (a) a compensation event – see section 19 (*Compensation Events*) of this report;
- (b) fire, explosion, flood, storm, lightning, hurricane, mudslide, landslide, earthquake and drought where such event of drought is declared as a state of emergency by any person having the requisite authority to do so and in each case occurring within Australia or an Alstom manufacturing country;
- (c) a terrorist act within Australia;
- (d) war, armed conflict, riot, civil commotion occurring within Australia;
- (e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel in each case occurring within Australia;
- (f) failure by any authority, or a provider of gas, water, sewerage, electricity or telecommunications utilities within Australia, to carry out works or provide services to the SLR Site which it is obliged by law (including by contract) to carry out or provide, or any interruption permitted by law (including by contract) to the carrying out or provision of those works or services within Australia, except where the failure is a breach of a third party agreement or a utility provider agreement;
- (g) any event which causes loss or damage to the Sydney Light Rail;

- (h) any blockade or embargo in each case occurring within Australia or an Alstom manufacturing country, other than a blockade or embargo which only affects OpCo and/or one or more OpCo contractors;
- (i) any industrial action within Australia, other than industrial action which only affects OpCo and/or one or more OpCo contractors;
- (j) any event or occurrence which deprives OpCo of any access to the SLR Site that it is entitled to under the SLR Project Deed;
- (k) an act or omission by Transport for NSW not being an act or omission:
  - (i) expressly permitted or allowed by the Project Agreements;
  - (ii) which is within a timeframe expressly permitted or allowed by the Project Agreements; or
  - (iii) being the exercise by Transport for NSW of any of its statutory functions or powers;
- (l) an event for which OpCo has been relieved pursuant to clause 18 of Schedule D1 (*Service Payment Regime*) of the SLR Project Deed;
- (m) in respect of the Operations Activities during the IWLR Operations Phase and during the Full Operations Phase, OpCo, acting reasonably and in a manner that would be expected of an experienced, efficient and competent operator, suspends or cancels a Service to avoid or protect against a real or apparent public danger caused by an Incident; and
- (n) certain specified relief events relating to Alstom and which affects an additional CSELRV or an option CSELRV,

except to the extent the event (or its effects):

- (o) occurs or arises as a direct or indirect result of any act or omission of OpCo or OpCo's Contractors;
- (p) occurs or arises as a direct or indirect result of a failure by OpCo to comply with its obligations under the SLR Project Deed;
- (q) occurs or arises as a direct or indirect result of any breach of the SLR Project Deed by OpCo; or
- (r) is, or ought reasonably to have been, within the control of OpCo or OpCo's Contractors.

If a 'relief event' occurs, OpCo must notify Transport for NSW within 10 business days that a relief event has occurred. Within 10 business days of giving this notice, OpCo must give Transport for NSW full particulars of the relief event including (to the extent practicable) details of the obligations which have been affected, steps taken to mitigate, and whether OpCo considers the event may also give rise to a 'force majeure event', see below.

If OpCo satisfies various notice requirements, OpCo will not be in breach of any of its obligations which are affected by the 'relief event' (other than payment obligations), but only to the extent the 'relief event' prevents OpCo from performing those obligations. OpCo must use all reasonable endeavours to mitigate the effects and, in contrast to 'compensation events', and despite the occurrence of a 'relief event', the calculation of the

Service Payment during the affected period will occur as if OpCo's obligations are continuing and the Service Payment may be deducted accordingly.

### Force majeure events

If a 'relief event' (other than a 'compensation event' or a 'relief event' described in paragraphs (b) and (h) above to the extent occurring in an Alstom Manufacturing Country):

- (a) exists or occurs, or the impacts of which exist or occur for a continuous period exceeding 180 days; and
- (b) directly causes OpCo to be unable to achieve completion or to comply with a material part of its obligations under the SLR Project Deed,

then it becomes a 'force majeure event'.

If a 'force majeure event' occurs, the parties must consult with each other in good faith to agree on appropriate measures to mitigate the effects and facilitate the continued performance of the SLR Project Deed. If the parties are unable to reach agreement on such measures, either party may terminate the SLR Project Deed and Transport for NSW may pay a termination payment to OpCo.

Transport for NSW can, within 20 business days of receipt of OpCo's termination notice, suspend OpCo's right to terminate for a maximum period of 12 months. If Transport for NSW chooses to suspend OpCo's right to terminate, Transport for NSW will be liable to pay OpCo certain payments during the period of suspension.

## 19. Compensation Events

The SLR Project Deed also requires Transport for NSW to compensate OpCo for the net financial impact of certain events. The events that trigger this right to compensation are called 'compensation events' and are each of the following:

- (a) a breach by Transport for NSW of its obligations under the SLR Project Deed or any other Project Agreement;
- (b) a legal challenge brought about by way of commencement of court proceedings in relation to a planning approval except to the extent the legal challenge was due to a modification requested by OpCo or a failure by OpCo to comply with its obligations under the SLR Project Deed;
- (c) a planning approval is modified, withdrawn, revoked or replaced except to the extent the modification, withdrawal, revocation or replacement was due to a modification requested by OpCo or a failure by OpCo to comply with its obligations under the SLR Project Deed;
- (d) the SLR Works, the temporary works, the Sydney Light Rail site or the Sydney Light Rail are damaged by another contractor engaged by Transport for NSW;
- (e) OpCo, or an OpCo Contractor, is required to comply with an environmental notice or required by any law, approval, environmental notice or otherwise to dispose of, otherwise deal with or remediate contamination, which in each case does not arise out of or in connection with any contamination for which OpCo is responsible;
- (f) Transport for NSW fails to give OpCo access to the construction site in accordance with the SLR Project Deed;

- (g) if OpCo is directed, ordered or required to cease to perform OpCo's Activities (or to change the way it does so), or to provide reasonable assistance in connection with dealing with a native title claim;
- (h) the occurrence of a compensable change in law;
- (i) the occurrence of a compensable change in NSW government policy;
- (j) a step-in party exercises all or any of the step-in powers in respect of a step-in event;
- (k) if the SLR Works, the temporary works, the Sydney Light Rail, the Sydney Light Rail site or OpCo's activities are damaged or adversely affected by any proximate work activity;
- (l) before the date of completion the occurrence of a 'utility works event';
- (m) any 'existing asset defect' occurs and such occurrence has, or is likely to have, a material impact on required services;
- (n) the discovery of hazardous coal tar pursuant to the SLR Project Deed; and
- (o) Transport for NSW cancels a connection shutdown pursuant to the SLR Project Deed and OpCo, using its best endeavours, is not able to reschedule the connection shutdown so it is not on the critical path,

except to the extent the event (or its effects):

- (p) occurs or arises as a direct or indirect result of any act or omission of OpCo or OpCo's Contractors;
- (q) occurs or arises as a direct or indirect result of a failure by OpCo to comply with its obligations under the SLR Project Deed;
- (r) occurs or arises as a direct or indirect result of any breach of the SLR Project Deed by OpCo; or
- (s) is, or ought reasonably to have been, within the control of OpCo or OpCo's Contractors.

To the extent that OpCo incurs additional costs or loss of revenue and provided it complies with certain condition precedents, OpCo will receive compensation from Transport for NSW for the net financial impact of the 'compensation event'. OpCo will also receive relief from being in breach of its obligations to the extent that OpCo's non-performance is caused by the 'compensation event' and may receive an extension of time to the 'date for completion', see section 14 (*Activities of Transport for NSW and OpCo during the construction period*) of this report.

OpCo must take all reasonable steps to mitigate the effects of any 'compensation event' and use its best endeavours to continue to perform its obligations despite the 'compensation event'.

## 20. Modifications and augmentations

### Transport for NSW initiated modifications

Transport for NSW may modify the SLR Project Deed requirements relating to the Sydney Light Rail or OpCo's activities. The SLR Project Deed gives Transport for NSW the right to require OpCo to carry out the following categories of modifications:

- (a) **Emergency modification:** any modification which Transport for NSW believes, acting reasonably is required to prevent, mitigate or repair any threat, or likely threat, to the safety of any customer or other person, prevent, mitigate or repair any cause, or likely cause, of significant damage to the Sydney Light Rail, prevent, mitigate or repair any suspension, interruption, or likely suspension or interruption, to the operation of the Sydney Light Rail, or to discharge a legislative or public duty;
- (b) **O&M Modification:** a modification that requires OpCo to operate and maintain any extension to the Sydney Light Rail designed and constructed by Transport for NSW, its associates or other contractors;
- (c) **Operations Modification:** a modification that requires OpCo to operate over, but not maintain, any extension to the Sydney Light Rail designed, constructed and maintained by Transport for NSW, its associates or other contractors;
- (d) **Expansion Modification:** a modification that extends the Sydney Light Rail by no longer than 20% of its length (such length to include parts of the Sydney Light Rail which are under construction or already contracted to be constructed whether or not construction has commenced) and requires OpCo to design, build, operate and maintain the extension contemplated; and
- (e) **LRV O&M Modification:** a modification that requires OpCo to operate and maintain additional light rail vehicles for the Sydney Light Rail purchased by Transport for NSW from a third party.

Transport for NSW will compensate OpCo for the net financial impact of the modification and grant any relief necessary.

### OpCo initiated modifications

OpCo may propose a modification to the SLR Project Deed. Transport for NSW has absolute discretion to approve or reject the proposed modification.

OpCo bears all risks and costs associated with a modification proposed by OpCo (unless otherwise agreed by Transport for NSW).

### Pre-agreed options

Transport for NSW and OpCo have negotiated the following pre-agreed options that have the potential to expand or reduce the scope of works for the SLR PPP:

- (a) **Additional CSELRVs:** Transport for NSW has the right to the following options to purchase additional CSELRVs:
  - (i) **Option 1a:** supply of two additional CSELRVs and any other associated capital costs (which may include stabling changes) as a follow-on order to the initial purchase to be exercised no later than 31 December 2016. Delivery of these additional CSELRVs will be required by the date of completion but will not form part of the completion requirements;

- (ii) **Option 1b:** supply of 4 to 16 additional CSELRVs and any other associated capital costs (which may include stabling changes) to be exercised from 1 January 2017 to 1 March 2019; and
- (iii) **Option 2:** supply of 4 to 16 additional CSELRVs and any other associated capital costs (which may include stabling changes) to be exercised from 1 March 2019 to 1 March 2024.

The CSELRV options work on an aggregate basis for Options 1b and 2 so that no more than 16 additional CSELRVs in total can be ordered.

- (b) **IWLRV option:** if Transport for NSW elects to exercise the option for up to 12 additional IWLRVs to be operated and maintained by OpCo to provide services, the parties have agreed to cooperate with each other and act in good faith in relation to the implementation of such modification.
- (c) **Anzac Parade option:** Transport for NSW has the right to exercise one of either two options in relation to traffic diversion on Anzac Parade, being:
  - (i) five lanes on Anzac Parade with temporary lane shifting on the eastern side of Anzac Parade only; or
  - (ii) five lanes on Anzac Parade with temporary lane shifting on both sides of Anzac Parade.

Either option will entitle Transport for NSW to a price reduction and the last date on which Transport for NSW may exercise either option is 30 August 2015.

## Augmentations

The SLR Project Deed establishes a framework by which an augmentation can be discussed and potentially agreed upon by the parties. It is distinct from a modification, which are generally variations within the scope of works contemplated by the parties.

Transport for NSW may at any time propose an augmentation to OpCo. If Transport for NSW proposes an augmentation to OpCo and does not proceed (which it may do so at its discretion at any time), OpCo will be entitled to costs reasonably and properly incurred as agreed by the parties in accordance with the principles set out in the SLR Project Deed. Transport for NSW has the right to terminate the SLR Project Deed or exercise the equity purchase option in circumstances where an augmentation is not agreed between the parties.

## 21. Defaults under the SLR Project Deed

### OpCo Events of Default

Each of the following will be an 'OpCo event of default':

- (a) **failure to commence revenue service:** OpCo fails to commence revenue service on the IWLR by 1 July 2015 or such later date as the parties have agreed;
- (b) **failure to progress:** OpCo fails to diligently progress the delivery activities as required;
- (c) **funding cancelled:** the obligation of a debt financier or an equity investor to provide funding under the debt financing documents or the equity documents, respectively, is cancelled due to an event of default under a debt financing document or an equity document (as applicable), or a debt financier or equity investor fails (in



whole or in part) to provide funding under the debt financing documents or the equity documents and no other debt financier or equity investor has committed to funding an equivalent amount within 10 business days;

- (d) **unacceptable availability:** availability of required services falls below a specific level;
- (e) **unacceptable timeliness:** timeliness of required services falls below a specific level;
- (f) **unacceptable quality:** service quality falls below specified levels;
- (g) **failure to pay:** OpCo fails to pay an amount that is due under any Transport for NSW Project Agreement or any Core Contract when it is due and the failure is not remedied within 10 business days (or, in the case of payment under a Core Contract, 30 business days) of a written demand from Transport for NSW;
- (h) **failure to remedy an asset management failure:** OpCo fails to remedy an asset management failure within 6 months of the expiry of the remediation period;
- (i) **failure to report:** OpCo fails to comply with its reporting obligations or a report from OpCo contains an inaccuracy which in either case has a material impact on Transport for NSW or customers;
- (j) **refinancing:** OpCo breaches its obligations in relation to refinancing;
- (k) **subcontracting:** OpCo breaches its obligations in relation to subcontracting;
- (l) **lack of or breach of accreditation:** OpCo or an OpCo Contractor fails to hold required accreditation or breaches the terms of its accreditation;
- (m) **threatened suspension or revocation of OpCo's accreditation:** ONRSR proposes to suspend or revoke OpCo's or a Core Contractor's accreditation, notifies OpCo that OpCo must improve its OpCo's activities, or OpCo fails to take action specified by ONRSR within a time period specified by ONRSR and a failure to do so within the time period specified may result in ONRSR suspending or revoking OpCo's accreditation;
- (n) **fraud:** Transport for NSW is the victim of any fraud or dishonest conduct by OpCo or a Core Contractor in connection with the SLR PPP, or the Independent Commission Against Corruption or similar public body determines that OpCo (or a Core Contractor, in performing OpCo's activities) has engaged in corrupt conduct, collusive pricing or other similar activity;
- (o) **incorrect representation or warranty:** a representation or warranty made or given by OpCo in the SLR Project Deed or any other Transport for NSW Project Agreement proves to be untrue which has a material adverse effect on OpCo's ability to comply with its obligations;
- (p) **other breach:** any other material breach by OpCo of an obligation (other than a breach which results in a Service Payment deduction) or any other Transport for NSW Project Agreement;
- (q) **restriction on change in control of O&M Contractor:** OpCo breaches its obligations in relation to change in control of the O&M Contractor; and

- (r) **illegality event:** any debt financing document or equity document is revoked, repudiated, terminated or ceases to be legal, valid and binding and enforceable against OpCo or any other person (other than Transport for NSW or the State) or any other party to a debt financing document or equity document, other than as contemplated by the debt financing documents and equity documents or becomes invalid, void or voidable in any material respect other than where Transport for NSW has caused it to be invalid, void or voidable or it becomes unlawful for OpCo or a core contractor to perform any of its material obligations under any debt financing document or equity document.

If an 'OpCo event of default' occurs, Transport for NSW may issue a formal default notice. At the same time, Transport for NSW must also provide a copy of this notice to Commonwealth Bank of Australia (as the Security Trustee/Agent) under the Financiers Tripartite Deed.

If the 'OpCo event of default' can be remedied, OpCo must either remedy the event within 10 business days of Transport for NSW's notice or prepare and submit a draft cure plan to Transport for NSW by the same deadline, describing what OpCo will do to remedy the event and proposing a cure period (which must not exceed 6 months). If Transport for NSW accepts an OpCo cure plan, OpCo must implement the cure plan within the cure period or diligently pursue the remediation of the 'OpCo event of default' in other ways. Provided OpCo is diligently pursuing a remedy, OpCo may request an extension to the cure period and Transport for NSW may not unreasonably refuse OpCo's first application for such an extension, except where the extension will result in the cure period exceeding 6 months.

If an 'OpCo event of default' cannot be remedied, OpCo must submit a draft prevention plan to Transport for NSW describing what OpCo will do to prevent any recurrence of the event. If an OpCo prevention plan has been approved by Transport for NSW, OpCo must implement it.

If OpCo fails to comply with any of its obligations following a Transport for NSW notification of an 'OpCo event of default', as summarised above, this will constitute an 'OpCo termination event' - see section 22 (*Termination rights*) of this report.

### Persistent breaches

- (a) Transport for NSW may issue a persistent breach notice if OpCo breaches the same obligation under the SLR Project Deed or any other Transport for NSW Project Agreement more than once in any 12 month period.
- (b) If the relevant breach continues beyond 30 business days or recurs within the 12 month period commencing 30 business days after the notice was issued, Transport for NSW may issue a final persistent breach notice.
- (c) If the relevant breach continues beyond 30 business days after the issue of a final persistent breach notice, or recurs three or more times within the 6 month period after the final notice was issued, this will constitute an 'OpCo termination event' - see section 22 (*Termination rights*) of this report.

### Frequent breaches

- (a) Transport for NSW may issue a frequent breaches notice if OpCo commits frequent breaches (which may be of different obligations) which, in aggregate, substantially frustrate the objects of the SLR Project Deed, significantly impair Transport for NSW's ability to fulfil its statutory objectives under the *Transport Administration Act 1988 (NSW)*, have a material adverse effect on the Sydney Light Rail, the electronic ticketing system or customers or in Transport for NSW's reasonable opinion indicate that OpCo does not intend to be bound by the SLR Project Deed.

- (b) If frequent breaches continue to occur during the 12-month period commencing 30 business days after the notice was issued, Transport for NSW may issue a final frequent breaches notice.
- (c) If frequent breaches continue to occur at any time in the 6 month period after the issue of a final frequent breaches notice, this will constitute an 'OpCo termination event', see section 22 (*Termination rights*) of this report.

Notwithstanding Transport for NSW exercising its rights in respect of a call-in, (where Transport for NSW may notify OpCo during the operations phase that it is not satisfied), an event of default, a persistent breach or frequent breaches, Transport for NSW may still enforce any other rights or remedies it has in respect of such events, including its step-in rights, security rights, termination rights and its right to sue for damages.

## 22. Termination rights

### Transport for NSW termination rights

The SLR Project Deed entitles Transport for NSW to terminate the SLR Project Deed for a number of reasons. The following is a summary of Transport for NSW's rights to terminate.

#### OpCo termination events

Each of the following is an "OpCo termination event":

- (a) **failure to commence revenue service:** OpCo has not commenced revenue service on the IWLR by 31 December 2015 or the date that is six months after such other date as the parties have agreed;
- (b) **unacceptable availability:** availability of required services falls below a specific level;
- (c) **unacceptable timeliness:** timeliness of required services falls below a specific level;
- (d) **unacceptable quality:** service quality falls below specified levels;
- (e) **persistent breach:** Transport for NSW has issued a final persistent breach notice and the relevant breach has continued beyond 30 business days or recurred 3 or more times within the 6 month period after the date of service of the notice;
- (f) **frequent breaches:** Transport for NSW has issued a final frequent breaches notice and frequent breaches continue to occur at any time in the 6 month period after the date of service of the notice;
- (g) **failure to remedy:** a failure by OpCo to remedy an 'OpCo event of default' which is capable of being remedied within the applicable cure period;
- (h) **failure to prevent:** a failure by OpCo to prevent the recurrence of an "OpCo event of default" which is the subject of an approved prevention plan;
- (i) **failure to submit, amend or implement cure/prevention plan:** OpCo fails to submit, amend or implement a cure or prevention plan;
- (j) **failure to achieve completion by longstop date:** completion has not occurred by the longstop date;

- (k) **abandonment:** OpCo abandons the SLR PPP;
- (l) **insolvency of an OpCo partner:** insolvency (of specified types) in relation to an OpCo partner;
- (m) **suspension or revocation of accreditation:** ONRSR suspends or revokes any accreditation required by OpCo or a Core Contractor;
- (n) **Equity Purchase Deed:** any seller is in material breach of its obligations under the Equity Purchase Deed;
- (o) **insolvency of contractor or guarantor:** insolvency (of specified types) in relation to a Core Contractor or a Core Contractor guarantor;
- (p) **failure to insure:** OpCo does not effect and maintain (or cause to be effected and maintained) an insurance as required by the SLR Project Deed;
- (q) **assignment etc:** OpCo breaches its obligations in relation to assignment, novation and dealing of the SLR Project Deed;
- (r) **restriction on change of ownership of OpCo:** OpCo breaches its obligations in relation to change of ownership of OpCo;
- (s) **restriction on change in control of D&C Contractor:** OpCo breaches its obligations in relation to a change in control of the D&C Contractor;
- (t) **restrictions on replacement of a significant contractor:** OpCo breaches its obligations in relation to significant contractors;
- (u) **illegality event:** the occurrence of any of the following events:
  - (i) OpCo or a Core Contractor ceases to hold an approval or breaches a law, and such failure or breach is, in the reasonable opinion of Transport for NSW, material to the performance of OpCo's obligations under the SLR Project Deed and is not remedied within 30 days of the earlier of the date on which Transport for NSW notifies OpCo of the failure or breach and the date on which OpCo becomes aware of the failure or breach;
  - (ii) any project agreement (excluding the debt financing documents, equity documents, the Alstom CSELRV Supply Agreement and the Alstom CSELRV Supply Agreement Guarantee):
    - (A) being revoked, repudiated or terminated or ceasing to be legal, valid and binding and enforceable against OpCo or any other person (other than Transport for NSW or the state) or any other party to a project agreement (excluding the debt financing documents and equity documents), other than as contemplated by the project agreements (excluding the debt financing documents and equity documents); or
    - (B) becoming invalid, void or voidable in any material respect other than where Transport for NSW has caused it to be invalid, void or voidable,

and, where the event is capable of being remedied, the event is not remedied within 30 days of the relevant event occurring; or

- (iii) it is or becomes unlawful for OpCo or a Core Contractor to perform any of its obligations under the Project Agreements, and such event is not Remedied within 30 days of the relevant event occurring; and
- (v) **failure to achieve additional CSELRV acceptance requirements by longstop date:** satisfaction of the additional acceptance requirements for CSELRVs, as certified by the independent certifier, has not occurred by the longstop date.

If OpCo becomes aware of an 'OpCo termination event', it must immediately notify Transport for NSW. Transport for NSW may then terminate the SLR Project Deed for an 'OpCo termination event' by giving a written notice that will have immediate effect.

Before Transport for NSW can issue this notice however, Transport for NSW must notify the Commonwealth Bank of Australia (as the Security Trustee/Agent), who can then exercise its rights under the Financiers Tripartite Deed to remedy the breach and discharge OpCo's or Finance Co's obligations to the same extent as if it had been done by OpCo or Finance Co.

### Termination payments – OpCo termination events

If the SLR Project Deed is terminated by Transport for NSW as a result of an 'OpCo termination event', Transport for NSW will pay OpCo:

- (a) the highest capital sum offered by a compliant tenderer (if the project has been retendered) or the estimated fair value of the project (if an independent expert has determined that value) and amounts due and payable by Transport for NSW to OpCo,

**less:**

- (b) the adjusted post termination service payments paid by Transport for NSW (if an independent expert has determined the estimated fair value), tender costs, amounts that Transport for NSW is entitled to set off or deduct, amounts owed by OpCo to Transport for NSW, any gains which have or will accrue to OpCo as a result of the termination, insurance proceeds, amounts held in certain bank accounts, amounts paid to OpCo by Transport for NSW for maintenance, refurbishment or capital replacement which has not been carried out by OpCo and the securitisation refund payment.

If the SLR Project Deed is terminated as a result of OpCo's abandonment of the SLR PPP, OpCo will not receive any termination payment.

### Transport for NSW termination events

Each of the following is a 'Transport for NSW termination event':

- (a) any failure by Transport for NSW to comply with its payment obligations under the SLR Project Deed or the Receivables Purchase Deed that is not remedied by Transport for NSW within 20 business days of a written demand from OpCo;
- (b) the State expropriates, sequesters or requisitions a material part of the Sydney Light Rail or an equity interest; and
- (c) a breach by Transport for NSW of the SLR Project Deed which substantially frustrates or renders it impossible for OpCo to achieve completion or comply with a material part of its obligations for a continuous period of two months.

If a 'Transport for NSW termination event' occurs, OpCo may give Transport for NSW 30 business days' notice that it intends to terminate the SLR Project Deed. Transport for NSW

may, in response, suspend OpCo's right to terminate by giving OpCo a notice to this effect within 30 business days of receiving OpCo's notice. If Transport for NSW takes this action:

- (a) OpCo must continue to perform its obligations under the SLR Project Deed during the suspension period, to the extent it is lawful and practicable to do so; and
- (b) Transport for NSW must, throughout the suspension period, make monthly payments to OpCo that will place OpCo in the same net after tax position it would have been in if the 'Transport for NSW termination event' had not occurred.

The suspension of OpCo's right to terminate the SLR Project Deed will continue until:

- (a) Transport for NSW notifies OpCo in writing that it is ending the suspension period;
- (b) in the case of a failure to pay, 30 business days after OpCo's termination notice;
- (c) in any other case, 24 months after OpCo's termination notice; or
- (d) when the relevant 'Transport for NSW termination event' has been remedied or its effects overcome.

If a suspension ends for any reason other than the remedying of the 'Transport for NSW termination event', or if Transport for NSW never imposes a suspension period, OpCo may immediately terminate the SLR Project Deed by giving Transport for NSW a written notice to this effect.

### Voluntary termination

Transport for NSW may terminate the SLR Project Deed at any time for its sole convenience by written notice to OpCo with effect from the date stated in the notice.

### Termination for augmentations

Transport for NSW may terminate the SLR Project Deed if OpCo fails to remedy a material breach relating to the augmentation process or if in Transport for NSW's view (acting reasonably and in good faith) it is unlikely the parties will reach agreement on the matters relating to an augmentation, including after Transport for NSW has rejected an augmentation proposal.

### Termination payments – Transport for NSW termination events, voluntary termination and termination for augmentations

If the SLR Project Deed is terminated by Transport for NSW for its sole convenience, as a result of a 'Transport for NSW termination event' or in connection with an augmentation, Transport for NSW will pay OpCo:

- (a) an amount equal to the senior debt as at termination, subcontractor breakage costs, amounts due and payable by Transport for NSW to OpCo and employee redundancy payments, which have been or will be reasonably and properly incurred as a direct result of the termination; and
- (b) if the termination date occurs prior to completion, the net present value, discounted to the date the termination payment is paid, of all dividends and other distributions, interest and principal payments forecast to be payable to equity contained in the base case financial model, using the prevailing market discount rate for availability type projects with a similar risk profile determined by an independent expert; or
- (c) if the termination date occurs after completion, the fair value of equity reasonably determined by an independent expert,

**less:**

- (d) amounts owed by OpCo to Transport for NSW, any gains which have or will accrue to OpCo as a result of the termination and not included in the termination senior debt, insurance proceeds, amounts held in certain bank accounts and the securitisation refund payment.

If either termination payment calculated above is less than the senior debt at termination, then the termination payment will be deemed to be equal to the senior debt at termination.

### Termination for uninsurable risk or force majeure

Transport for NSW may terminate the SLR Project Deed following the occurrence of an uninsurable risk, if:

- (a) OpCo and Transport for NSW are unable to reach agreement on appropriate measures to mitigate the risk; and
- (b) the uninsurable risk causes material damage, loss or destruction to the Sydney Light Rail or the SLR Works and the insurance proceeds that would have been payable had the relevant insurance continued to be available exceeds \$100 million.

Alternatively, Transport for NSW or OpCo may terminate the SLR Project Deed following the occurrence of a force majeure event, if:

- (a) the parties are unable to agree on appropriate measures to mitigate the effects of the force majeure event and facilitate the continued performance of the SLR Project Deed on or before the date falling 20 business days after the occurrence of the force majeure event; and
- (b) the force majeure event is continuing or its consequence remains such that the affected party has been or is unable to comply with a material part of its obligations.

### Termination payments - uninsurable risk or force majeure

If the SLR Project Deed is terminated for an uninsurable risk or force majeure, Transport for NSW will pay OpCo:

- (a) an amount equal to the senior debt at termination, 50% of the voluntary termination equity value, amounts due and payable by Transport for NSW to OpCo and certain subcontractor breakage costs,

**less:**

- (b) any gains which have or will accrue to OpCo as a result of the termination and not included in the termination senior debt, amounts owed by OpCo to Transport for NSW, insurance proceeds, amounts held in bank accounts and the securitisation refund payment.

If any termination payment, is zero or a negative number, the negative number will be deemed to be zero, Transport for NSW shall have no obligation to make any payment to OpCo and Transport for NSW shall be released from all liability to OpCo for breaches and/or termination.

## 23. Contractual remedies available to the Crown

Transport for NSW will have a number of different contractual remedies available to it should OpCo default on its obligations related to the SLR PPP, or should Transport for NSW terminate the SLR Project Deed.

## State step-in rights

Transport for NSW is entitled under the SLR Project Deed, D&C Contract Side Deed, O&M Contract Side Deed and Alstom Maintenance Subcontract Side Deed, to step-in and effectively assume OpCo's rights and obligations under the relevant agreement, see section 24 (*State step-in rights*) of this report.

## Indemnity

OpCo indemnifies Transport for NSW, Roads and Maritime Services, the State and other contractors (**Indemnified Party**) from and against any loss incurred by an Indemnified Party in respect of:

- (a) damage to, loss or destruction of, or loss of use of any property belonging to an Indemnified Party or any claim against an Indemnified Party in respect of any illness, personal injury or death of any person caused by, arising out of, or as a consequence of any act or omission of OpCo;
- (b) any breach or failure to comply with the terms of any project agreement by OpCo or any fraudulent, negligent or wrongful act or omission by OpCo; or
- (c) any claim by a third party against an Indemnified Party arising out of, or in any way in connection with, any breach or failure to comply with the terms of any project agreement by OpCo or any fraudulent, negligent or wrongful act or omission by OpCo.

The indemnity provided by OpCo under the SLR Project Deed is reduced and limited in circumstances agreed between the parties, including where the loss is caused by, arises out of, or in any way in connection with a breach by Transport for NSW. In addition, OpCo has no liability to an Indemnified Party in relation to consequential or indirect loss (subject to specific exceptions).

## Sue for breach

If OpCo breaches any of the Transport for NSW Project Agreements (other than a breach by OpCo of an obligation which results in a Service Payment Deduction), Transport for NSW may, in addition to, or as an alternative to any of the rights or remedies available to Transport for NSW under the Transport for NSW Project Agreements, sue OpCo or exercise any other contractual or other legal or equitable rights it holds against OpCo, including (if relevant and available) its rights under any bank securities and/or its rights under the TfNSW Deed of Charge (OpCo) or TfNSW Deed of Charge (Finance Co). Any delay or omission by Transport for NSW in the exercise of any right, power or remedy will not impair such right, power or remedy or constitute a waiver of the relevant breach.

## Civil penalty provisions

Transport for NSW may enforce civil penalty provisions for the purposes of section 38 of the *Passenger Transport Bill 1990* (NSW) where OpCo has failed to comply with certain asset management obligations and performance standards in relation to the Service Payment – see section 17 (*Price*) of this report for more detail on the Service Payment.

## Set-off rights

Transport for NSW has the right, subject to certain restrictions, to set-off or deduct any amount due from Transport for NSW to OpCo under a Transport for NSW Project Agreement:

- (a) any debt or other monies due from OpCo to Transport for NSW; and



- (b) any claim to money which Transport for NSW may make in good faith against OpCo whether for damages or otherwise and whether or not the amount is disputed.

OpCo does not have these same set-off rights.

## Bonds

In addition to the securities granted to Transport for NSW under the Deeds of Charge given by OpCo, Finance Co and the O&M Contractor, OpCo must give Transport for NSW an unconditional bond (**Handback Security Bond**) to secure the performance of OpCo's handback obligations under the SLR Project Deed. This Handback Security Bond must be provided at least 18 months before the original expiry date of 16 March 2034. If OpCo fails to comply with this requirement, OpCo will not be in breach of the SLR Project Deed but Transport for NSW may withhold a specified amount from each monthly Service Payment for up to ten months.

If the term of the SLR PPP is extended - see section 12 (*Contract term and asset transfers*) of this report - OpCo must provide an additional unconditional bond (**Extension Security Bond**). If OpCo fails to provide the Extension Security Bond this will not be a breach of the SLR Deed however Transport for NSW may elect:

- (a) to direct OpCo to implement the extension, and if the parties are unable to reach agreement either party may refer the matter to dispute resolution - see section 28 (*Dispute resolution*) of this report; or
- (b) that the term of the SLR Project Deed will expire on the original expiry date of 16 March 2034.

## Application of proceeds

Transport for NSW may only apply the proceeds of:

- (a) the Handback Security Bond (or any security withheld) towards payment of any amount due from OpCo to Transport for NSW as notified by the final inspection auditor; and
- (b) the Extension Security Bond to reimburse Transport for NSW for any loss for which OpCo is liable or payment or other moneys owing by OpCo to Transport for NSW after the original expiry date.

## Service Payment deduction

Transport for NSW has the right to deduct amounts from the Service Payment if OpCo fails to meet service requirements - see section 17 (*Price*) of this report for further detail on the Service Payment.

# 24. State step-in rights

## SLR Project Deed

Transport for NSW will have a right to step in to the role of OpCo and assume OpCo's service delivery obligations under the SLR Project Deed on the occurrence of:

- (a) an 'OpCo termination event'; or
- (b) an event or circumstance which arises out of or in connection with OpCo's activities or the SLR PPP that poses a serious threat or cause material damage or disruption to:

- (i) the health or safety of persons;
- (ii) the environment;
- (iii) any property; or
- (iv) the safe and secure performance of OpCo's activities.

On the occurrence of an event which triggers step-in rights and provided adequate notice is given in accordance with the SLR Project Deed requirements, Transport for NSW may do anything that OpCo could do in respect of OpCo's obligations including:

- (a) enter into and remain in possession of all or any of the assets;
- (b) operate and manage all or any of the assets;
- (c) exercise all or any of OpCo's rights, and perform all or any of OpCo's obligations in connection with OpCo's activities, the project agreements (other than a debt financing or equity document) or under any accreditation or approval held by OpCo, as if it were OpCo, to the exclusion of OpCo;
- (d) do anything Transport for NSW (or its nominee) considers necessary or desirable to remedy the step-in event or overcome the risk or mitigate any consequences of the step-in event; and
- (e) do anything incidental to the matters listed above.

During the step-in period, OpCo and Transport for NSW must comply with certain cooperation obligations as outlined under the SLR Project Deed.

Where Transport for NSW has exercised its step-in rights and OpCo continues to perform obligations under the SLR Project Deed which affect the calculation of the Service Payment, Transport for NSW will pay OpCo based on actual performance of those obligations and if OpCo's performance of obligations is suspended, the parts of the Service Payment affected by the step-in based on the average performance of OpCo for the 6 months immediately prior to step-in, less:

- (a) if the step-in event was an 'OpCo termination event':
  - (i) costs avoided by OpCo as a result of Transport for NSW exercising its step-in rights; and
  - (ii) the reasonable costs incurred by Transport for NSW in exercising its step-in rights; or
- (b) if the step-in event was not an 'OpCo termination event', the costs avoided by OpCo as a result of Transport for NSW exercising its step-in powers.

Transport for NSW must cease to exercise its step-in powers as soon as reasonably practicable and, in any event, upon the earlier of the step-in event being remedied or Transport for NSW notifying OpCo in writing that it will no longer exercise its step-in powers.

## D&C Contract Side Deed and O&M Contract Side Deed

Under the D&C Contract Side Deed and O&M Contract Side Deed, Transport for NSW may step-in where OpCo is in breach under the D&C Contract or O&M contract (as applicable) and take steps to remedy the default if the respective contractor has given Transport for NSW a cure notice of the default and confirmed that either:

- (a) the cure or remedy period available to the debt financiers in respect of the default event under any debt financing document has expired without a cure or remedy being achieved or the Security Trustee has notified the relevant contractor that it does not intend to cure the default; or
- (b) the relevant contractor's right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the relevant side deed is not subject to any right of the debt financiers to cure or remedy the default event.

If Transport for NSW does step-in:

- (a) OpCo obligations (other than OpCo's obligation to pay the relevant contractor) are suspended to the extent and for such period as OpCo is prevented from performing such obligations as a result of the step-in;
- (b) Transport for NSW may, after giving OpCo reasonable prior notice, cease to exercise its step-in rights once the relevant default event has been remedied; and
- (c) OpCo must compensate Transport for NSW for any reasonable loss suffered or incurred as a result of the step in.

### Alstom Maintenance Subcontract Side Deed

Under the Alstom Maintenance Subcontract Side Deed, Transport for NSW may step-in for any default by the O&M Contractor under the Maintenance Subcontract or any event or circumstance which would entitle Alstom to terminate, rescind, accept the repudiation of, or suspend any or all of Alstom's obligations under the Maintenance Subcontract, provided that Alstom has given Transport for NSW a default event notice and complied with certain conditions

If Transport for NSW does step-in:

- (a) the O&M Contractor's obligations are suspended to the extent and for such period as the O&M Contractor is prevented from performing such obligations as a result of the step-in;
- (b) Transport for NSW may, after giving the O&M Contractor reasonable prior notice, cease to exercise its step-in rights once the relevant default event has been remedied; and
- (c) the O&M Contractor must compensate Transport for NSW for any reasonable loss suffered or incurred as a result of the step in.

## 25. Transition out provisions

Transport for NSW has the right to, on or before the expiry or termination of the contract term, invite any person to perform all or part of OpCo's activities for the period commencing after expiry or termination of the contract term. As such, OpCo must manage, perform and maintain OpCo's activities in a way that an appropriately qualified and resourced step in party, successor or nominee of Transport for NSW is able at any time to immediately take over the performance of OpCo's activities without interruption.

OpCo must at its own cost, do everything (both before and after expiry or termination of the contract term) that is reasonably required by Transport for NSW to assist a successor or nominee of Transport for NSW in performing OpCo's activities, and must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer of the performance of OpCo's activities.

## Preparation for contracting at end of term

OpCo must provide Transport for NSW with reasonable access to staff and to information, books and records kept by or on behalf of OpCo in connection with the SLR PPP, for the purpose of Transport for NSW preparing reports and documents in connection with any invitation to a person for the performance of OpCo's obligations. OpCo must use reasonable endeavours to assist Transport for NSW in the preparation for, and conduct of, a fair and competitive expression of interest or tendering process.

## Access

OpCo must, without unduly interfering with OpCo's obligations, ensure that a prospective successor, successor or nominee of Transport for NSW has access to the assets, light rail maintenance and stabling facilities and certain employees for the purposes of the prospective successor, successor or nominee of Transport for NSW receiving information about OpCo's obligations and preparing to take over the performance of those obligations.

## Required employees

OpCo's ability to vary the employment contracts of certain employees involved in the operation and maintenance of the Sydney Light Rail is limited in circumstances where the variation takes effect in the 12 months prior to expiry of the term or will first take effect after the end of the contract term and Transport for NSW's prior approval is generally required. At the expiry of the contract term, Transport for NSW must procure that a successor makes offers of employment to these employees on terms which are similar to and are, on an overall basis, no less favourable than their terms of employment with OpCo (or the O&M Contractor).

## Novation

OpCo must procure the novation to Transport for NSW or its nominee of, or execute any document required to effect OpCo ceasing to be party to, any subcontract relating to OpCo's activities which Transport for NSW may nominate in its absolute discretion with effect from the end of the contract term or such other date as Transport for NSW may agree.

## Documents

OpCo must deliver to Transport for NSW or its nominee (or both if required) all and any documents and information concerning OpCo's activities which are required for the efficient transfer of responsibility for their performance, including drawings, plans, manuals, software designs, reports, computer records, specifications, calculations, design documentation, documentation relating to intellectual property, and any other documentation specified under the SPR.

## 26. Transfer of land and assets by the public sector to the contractor

### Land and fixed assets

All fixtures affixed to the Sydney Light Rail site will be owned by Transport for NSW from the time they are affixed.

Transport for NSW grants OpCo a non-exclusive licence to use and occupy the construction site, and to permit OpCo and its contractors to use and occupy the construction site, for the purpose of performing the delivery activities. This licence commences on the specified site section access date for the relevant part of the construction site or such other date

agreed between the parties, is subject to any requirements under the third party agreements, specified third party requirements and utility provider agreements and terminates on the date of completion.

Transport for NSW grants OpCo a non-exclusive licence to use and occupy the permanent light rail corridor for the IWLR from the date of revenue service on the IWLR and the permanent light rail corridor for the CSELR from the date of completion. This licence permits OpCo and its contractors to use and occupy the permanent light rail corridor for the purpose of performing the operations activities. This licence terminates at the end of the term.

### Moveable Assets

All Moveable Assets will be owned by Transport for NSW. OpCo must ensure that ownership of the Moveable Assets transfers to Transport for NSW on the date OpCo acquires title and in the case of chattels forming part of the SLR Works, no later than the date for completion.

Transport for NSW grants OpCo an exclusive licence to use the Moveable Assets for the purpose of fulfilling OpCo's obligations under the SLR Project Deed. This licence commences on the date that ownership of each Moveable Asset transfers to Transport for NSW and terminates at the end of the term.

Transport for NSW also grants to OpCo an exclusive licence to use the existing moveable assets on the IWLR for the purpose of fulfilling OpCo's obligations under the SLR Project Deed. This licence commences on the date of revenue service on the IWLR and terminates at the end of the term.

### Handback

At the end of the contract term, OpCo must transfer all of OpCo's rights, title and interest (if any) in the assets to Transport for NSW (or its nominee) free from any security interests and ensure that the assets are in a required state and condition (fair wear and tear excepted).

## 27. Change of ownership and control under the SLR Project Deed

The SLR Project Deed places certain restrictions on Transport for NSW and OpCo in the event of a change in control.

OpCo has undertaken that, save in certain permitted circumstances, throughout the SLR PPP it will not permit any direct or indirect changes to the legal or beneficial ownership of its shares or units or any related body corporate identified as a member of the OpCo group, without Transport for NSW's prior written consent, which will not be unreasonably withheld. If OpCo does not obtain Transport for NSW's consent, this will be an 'OpCo termination event' - see section 22 (*Termination rights*) of this report.

OpCo must also obtain Transport for NSW's consent for changes in control, save in certain permitted circumstances, that relate to each Core Contractor. Different consent requirements apply depending on whether it is the O&M Contractor or D&C Contractor.

OpCo is required to gain Transport for NSW's written consent prior to a change in control of the O&M Contractor. Failure to comply with this requirement will be an 'OpCo termination event' - see section 22 (*Termination rights*) of this report.

Alternatively, if a change in control of an entity that is a joint venture participant in the D&C Contractor has occurred prior to completion, OpCo must promptly notify Transport for

NSW and obtain Transport for NSW's approval. If Transport for NSW subsequently notifies OpCo that Transport for NSW does not approve the change in control, OpCo must within 60 days of receiving such notice either, terminate and re-tender the works or services, procure that the relevant entity is replaced or removed, or take such other action as agreed by Transport for NSW. Should OpCo fail to comply with these additional requirements, then this will be an 'OpCo termination event'- see section 22 (*Termination rights*) of this report.

## 28. Dispute resolution

All disputes between Transport for NSW and OpCo arising out of the SLR PPP must be resolved in accordance with the detailed procedures set out in the SLR Project Deed.

### Dispute Avoidance Board

A dispute avoidance board (**DAB**) was established prior to financial close. The DAB is made up of three members who hold regular meetings to assist Transport for NSW and OpCo to consensually resolve issues and prevent disputes. The DAB has a proactive general advisory function. Either party may refer a dispute to the DAB for its opinion in accordance with the procedure set out in the SLR Project Deed.

Each member of the DAB will be required to act fairly, impartially, honestly and independently. Transport for NSW and OpCo have agreed that they will not unilaterally communicate with the DAB or its members on matters dealing with the conduct of the work or resolution of problems. The parties will jointly pay for the cost of the DAB. The DAB Agreement will terminate on final completion unless otherwise agreed by both parties.

### Dispute process

The dispute resolution procedure essentially involves four elements: regular DAB meetings, negotiation, expert determination and arbitration. Throughout these processes both parties must continue to perform all of their obligations under the SLR Project Deed.

#### Negotiation

If a dispute arises, either party (**Party A**) may give the other party's representative (**Party B**) a letter of dispute. If the representatives are unable to resolve the dispute within 30 business days after the date on which the letter of dispute was given, either party may refer the dispute to executive negotiation.

The executive negotiators may, by agreement, meet together with the DAB or refer the dispute to one of the following alternative forms of dispute resolution:

- (a) mediation;
- (b) expert determination;
- (c) arbitration; or
- (d) the DAB for its opinion.

If the executive negotiators are unable to resolve the dispute (in whole or in part) within 30 business days after the date on which the dispute was referred to them, Party A may, if it wishes to pursue the dispute, issue Party B with a referral to arbitration.

#### Arbitration

If a dispute is referred to arbitration, the Australian Centre for International Commercial Arbitration (**ACICA**) Arbitration Rules will apply and any arbitrator will have the power to

grant any legal, equitable or statutory remedy but not punitive damages. This process aims to achieve a just, quick and cost-effective resolution of any dispute. Any award of the arbitral tribunal will be final and binding upon the parties.

#### **DAB opinion**

If a dispute is referred to the DAB, the DAB must give its opinion within 30 business days (or such other period as proposed by the DAB and agreed by the parties). Any opinion given by the DAB will be on a 'without prejudice' basis and will not be binding unless the parties agree in writing to be bound by it.

### **Disputes under Core Contracts**

OpCo must immediately inform Transport for NSW if a dispute arises under the D&C Contract or O&M Contract.

### **Disputes under related contracts**

#### **Independent Certifier Deed**

Any dispute under the Independent Certifier Deed relating to an amount in an account submitted by the Independent Certifier will be determined by the Transport for NSW representative. Any determination by the Transport for NSW representative must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings. There are no other dispute resolution provisions in the Independent Certifier Deed.

#### **Core Contract side deeds**

If there is a dispute between Transport for NSW and the relevant Core Contractor as to how the terms of the relevant Core Contract are deemed to have been amended to reflect that the SLR Project Deed is at an end, the dispute resolution process in the SLR Project Deed will be incorporated into the relevant Core Contract and references to "OpCo" would be read as if they were references to the relevant Core Contractor.

#### **Financiers Tripartite Deed**

Disputes between Transport for NSW and the Security Trustee in relation to the contents of the step-in report (which is a report produced and agreed between Transport for NSW and the Security Trustee upon receipt of a step-in event notice) may be referred for resolution in accordance with the SLR Project Deed as if the clause was incorporated into the Financiers Tripartite Deed and a reference to "OpCo" was a reference to the Security Trustee.

There are no other dispute resolution provisions in the Financiers Tripartite Deed. Accordingly and subject to the SLR Project Deed, any other disputes under the Financiers Tripartite Deed are to be resolved by the Courts of NSW.

#### **Equity Purchase Deed**

Disputes arising out of the Equity Purchase Deed must be resolved in accordance with the dispute procedures set out in the Equity Purchase Deed. The parties to the dispute must each appoint a representative to meet and discuss the matters raised in a dispute notice and genuinely make an effort to negotiate agreement on such matters. If the matter is not agreed within a 10 day period, either party may refer the outstanding matters to an expert for determination. The expert's decision, in the absence of manifest error, will be final and binding on the parties unless a party gives a notice of dissatisfaction within 10 days of the determination and refers the matter to arbitration. Any matters referred will be finally settled in accordance with the IAMA Rules for the Conduct of Commercial Arbitrations.

## 29. Insurance

### OpCo insurance requirements

OpCo must effect and maintain delivery and operations insurances for amounts and deductibles, and for the duration, as set out in the SLR Project Deed. OpCo's obligations in relation to insurances for the SLR PPP include:

- (a) not knowingly do or permit, or omit to do, anything which prejudices any insurance;
- (b) rectify anything which might prejudice any insurance;
- (c) reinstate any insurance if it lapses;
- (d) not cancel, vary or allow any insurance to lapse without prior written consent from Transport for NSW;
- (e) immediately notify Transport for NSW of any fact or circumstance, including a change, which may prejudice an insurance;
- (f) give full and true particular information to the insurer of all matters;
- (g) notify Transport for NSW of all claims and keep Transport for NSW informed of subsequent developments;
- (h) comply at all times with the terms of each insurance.

### Review and benchmarking

Transport for NSW will review the minimum sums insured and deductibles for all operations phase insurances on each anniversary of the date of completion to determine any increase or decrease. Any change will be subject to the insurance benchmarking regime.

### Insurance proceeds

Subject to the terms of the Financiers Tripartite Deed, OpCo must deposit all insurance proceeds received in respect of the costs of replacement, reinstatement or indemnity value of the SLR Works or the Sydney Light Rail into an insurance proceeds account.

This money, with certain exceptions where the SLR Project Deed is terminated early or the insurance proceeds are paid to Roads and Maritime Services, must only be applied by OpCo to promptly reinstate or repair the damage. If Transport for NSW requires OpCo to reinstate or repair the SLR Works or the Sydney Light Rail on the basis of different specifications by directing a modification, available insurance proceeds will be taken into account in calculating the net financial impact of the modification.

## 30. Liabilities, indemnities and guarantees given by the Crown

### Indemnities given by Transport for NSW

Transport for NSW has promised various indemnities under the Transport for NSW Project Agreements. These indemnities are briefly summarised below.

- (a) **Liability for reinstatement:** Transport for NSW must pay OpCo the reasonable cost of carrying out the reinstatement or repair work (to the extent insurance proceeds



are insufficient) to the extent that loss, damage or destruction arises out of war or armed conflict in each case occurring within Australia, chemical or biological contamination, ionising radiations or contamination by radioactivity in case occurring in Australia and not caused by OpCo or its contractor, a breach of any Transport for NSW Project Agreement by Transport for NSW and any fraudulent, negligent or other wrongful act or omission of the State, Transport for NSW or their associates.

- (b) **Liabilities for taxes, rates and stamp duty:** Transport for NSW will pay and indemnify OpCo and any parties to the debt financing documents against, and reimburse OpCo and any parties to the debt financing documents for, all duty (including penalty, fine, charge or interest payable) in respect of the Transport for NSW Project Agreements, debt financing documents or any document or transaction expressly contemplated by them, subject to certain exclusions.
- (c) **Liability for rates and land tax:** Transport for NSW must pay and indemnify OpCo and Finance Co against all rates and land tax in respect of the Sydney Light Rail site until the end of the contract term.
- (d) **Liability for third party software licences:** Transport for NSW must indemnify OpCo against all claims in respect of third party software licences that occur where Transport for NSW has required OpCo to assign, sub-licence or novate to Transport for NSW any rights and obligations of OpCo in respect of third party software licences. Transport for NSW will indemnify OpCo on or from the date of assignment or novation of such third party software licences.
- (e) **Liability under the Dispute Avoidance Board Agreement:** Transport for NSW and OpCo have agreed to each indemnify each DAB Member under the DAB Agreement against all claims from a person not a party to the DAB Agreement for any act or omission done in good faith and with due care and diligence.
- (f) **Liability under the City of Sydney Development Agreement:** Transport for NSW indemnifies the City of Sydney (**City**), the City's employees and elected representatives of the City from and against all third party claims brought against, suffered or incurred by the City, the City's employees or its elected representatives to the extent arising out of the use or occupation of the site by Transport for NSW or its employees or agents, the relocation, removal, modification or protection of the City's utilities, the design, construction, installation, upgrade or relocation of certain City assets or any negligent act or omission of Transport for NSW or its employees or agents in relation to, or as a consequence, of the project.

## Guarantees given by the Crown

The "**PAFA Act Deed Poll of Guarantee**" executed by the NSW Treasurer (on behalf of the State of NSW) in favour of OpCo and the Security Trustee (the **Beneficiaries**) dated 17 December 2014, provides a guarantee by the State of NSW to the Beneficiaries in accordance with section 22B of the *Public Authorities (Financial Arrangements) Act 1987* (NSW), of Transport for NSW's performance of its payment obligations under the SLR Project Deed, the Financiers Tripartite Deed, the Receivables Purchase Deed, the Payment Directions Deed, the Equity Purchase Deed and any other documents approved in writing by the NSW Treasurer in the future.

## 31. Significant guarantees and undertakings

The SLR PPP contains a number of guarantees and undertakings. Below is a brief summary of the significant guarantees between the parties.

### PAFA Act Guarantee

As mentioned in section 30 (*Liabilities, indemnities and guarantees given by the Crown*), the State guarantees the performance of Transport for NSW's payment obligations under the SLR Project Deed and other documents.

### D&C Guarantee

Each D&C guarantee is an irrevocable guarantee given by each D&C guarantor to OpCo to guarantee all liabilities and obligations of that D&C guarantor's subsidiary that arises out of or in connection with the D&C Contract, and to indemnify OpCo against any loss arising from any failure by its subsidiary to perform any of its obligations.

### O&M Guarantee

The O&M guarantee is an irrevocable guarantee given by the O&M guarantor to OpCo to guarantee all liabilities and obligations of the O&M Contractor that arise out of or in connection with the O&M Contract, and to indemnify OpCo against any loss arising from any failure by the O&M Contractor to perform any of its obligations.

## Appendix 1 Glossary of terms

**Moveable Assets** means the CSELRVs, spares, special tools and equipment, non-revenue vehicles and other chattels forming part of the SLR Works or used by OpCo or OpCo's contractors for the purpose of carrying out OpCo's activities.

**Service Payment** means the monthly availability payment made by Transport for NSW to OpCo under the SLR Project Deed.

**SLR Works** means the physical works, assets, systems and deliverables that OpCo must design and construct under the SLR Project Deed.

**Sydney's Light Rail Future** means the publication titled "Sydney's Light Rail Future – Modernising Sydney's Trains" dated June 2012 by the NSW Government.