



Project Summary

City & Southwest OTS2 PPP

3 March 2020



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Note: This Project Summary is a summary document and should not be relied upon for legal advice. This document is not intended for use as a substitute for the actual contracts.

PART A: PROJECT OVERVIEW

1. Introduction

This Project Summary summarises the main contracts, from a public sector perspective, for the OTS2 Public Private Partnership (**OTS2 PPP**). The OTS2 PPP is a key component of the Sydney Metro City & Southwest project (**Project**).

This document has been prepared by Sydney Metro (ABN 12 354 063 515) (**Sydney Metro**) in accordance with the public disclosure requirements of the New South Wales Government's *NSW Public Private Partnerships Guidelines 2017*.

Sydney Metro as a statutory authority came into effect in 2018 under Part 3D of the *Transport Administration Act 1988* (NSW). It is a NSW Government agency and is part of the NSW Transport cluster, with a principal objective of working across government to lead the delivery of a world-class metro rail system focused on customers and great local places, driving the state's economic growth well into the future as a result. Prior to this, Sydney Metro was part of Transport for NSW (ABN 18 804 239 602) (**Transport for NSW**).

This document should not be relied upon for legal advice and is not intended for use as a substitute for the contracts. It is based on the contracts as at 7 December 2019. Subsequent amendments of, or additions to, the contracts are not reflected in this document.

The defined terms used in this document are provided in the Glossary in Appendix A to this document.

2. Project history and strategic need

Sydney's Rail Future (2012) identified an extension of Sydney Metro Northwest from Chatswood to Bankstown via the Sydney CBD. This involves the development of the Sydney Metro City & Southwest Line, including a second harbour rail crossing connecting to a new CBD rail line, and the conversion of the T3 Bankstown Line between Bankstown and Sydenham to metro operations.

In June 2014, the NSW Government announced the Rebuilding NSW initiative, which would provide \$20 billion from leasing the state's electricity businesses to invest in infrastructure (**Rebuilding NSW**).

In November 2014, the Premier identified the Project as a strategic priority for consideration in the State Infrastructure Strategy Update (2014) (**State Infrastructure Strategy Update**), which prioritised the allocation of funds from Rebuilding NSW. A preliminary business case was submitted to Infrastructure NSW setting out the case for the investment, project definition, strategic options to expand the scope, project benefits and an initial delivery strategy for the Project.

In January 2017, the Chatswood to Sydenham section of the Project received project approval to deliver 16.5 kilometres of new metro rail, including 15.5 kilometres of new twin railway tunnels under Sydney Harbour and the Sydney CBD.

Pressure on Sydney's transport network is anticipated to increase over the next 15 years as a result of significant growth in the city's population and employment. Sydney will require infrastructure support to adapt and respond to this increased demand. The rail network approaching Sydney's CBD is nearing capacity and by 2036 it is expected that demand on the T3 Bankstown Line will exceed capacity. In the absence of intervention, the result is that a number of customers will not be able to board trains and there will be major impacts on the reliability of services.

The Project is forecast to create a 60% increase in the capacity of Sydney's wider rail network by 2036. The Project will deliver two additional tracks through the CBD on a new standalone metro system, enabling ultimate capacity for a metro train every two minutes in each direction under the city. The removal of the T3 Bankstown Line from the City Circle will provide more train paths through the City Circle for other suburban lines. The new CBD metro stations are expected to relieve crowding at existing stations.

Infrastructure NSW concluded in the State Infrastructure Strategy Update that the Project had strategic merit, as it would benefit Sydney Metro Northwest users by removing interchange at Chatswood and would provide significant relief for the T1 North Shore, Northern & Western Line and the City Circle, as well as to crowded Sydney CBD stations. It would also deliver significantly improved capacity and performance across the wider rail network. As a result, in November 2014 the NSW Government reserved \$7 billion from Rebuilding NSW for the Project.



Figure 2-1: Train under Sydney Harbour artist impression

3. Project description

3.1 General

The Sydney Metro City & Southwest includes the following two components:

- (a) Chatswood to Sydenham: new 15.5 kilometre twin tunnels from Chatswood, under Sydney Harbour through the Sydney CBD to Sydenham, with new stations being delivered at Crows Nest, Victoria Cross, Barangaroo, Martin Place, Pitt Street and Waterloo along with new underground platforms at Central Station
- (b) Sydenham to Bankstown: upgrading and converting the T3 Bankstown Line to metro standards between Sydenham and Bankstown with all stations to be fully accessible with lifts and level access between platforms and trains

The OTS2 PPP is a key component of the Project and will deliver the core rail systems for the Sydney Metro City & Southwest, integrate the new line with the Metro North West Line and provide the operations and maintenance for the Sydney Metro, the standalone 66 kilometre metro line from Tallawong to Bankstown.

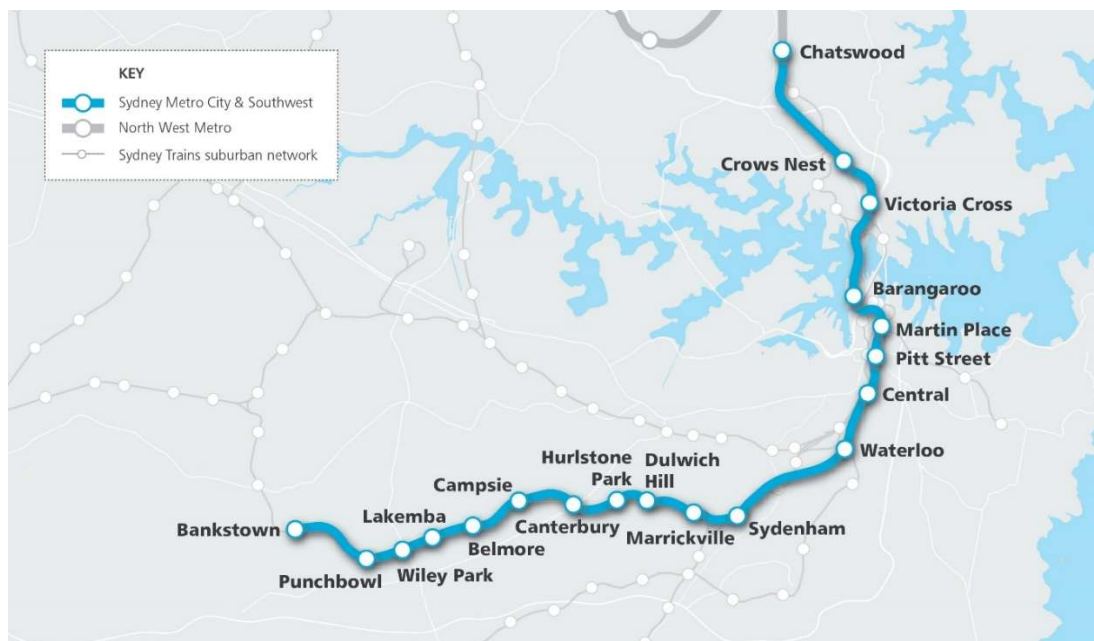


Figure 3-1: Sydney Metro City & Southwest route

From the north west, metro rail is being extended under Sydney Harbour, through new underground city stations and beyond to the south west. In 2024, Sydney will have 31 metro railway stations and a 66km standalone metro railway system.

All Sydney Metro trains will operate initially as six-car trains, with a design capacity for 1,152 customers. Trains can be increased to eight carriages with capacity of 1,539,

providing a capacity of 46,170 passengers per hour per direction (at an ultimate capacity frequency of 30 trains per hour in each direction).

When services on Sydney Metro City & Southwest start in 2024, there will be a train every four minutes in the peak in each direction, with an ability to grow capacity in the future. Specific additional train set and expansion options for the State have been agreed as part of the OTS2 PPP.

Off-peak services will operate every 10 minutes (six trains per hour per direction). This will be supplemented with additional trains between Sydenham and Chatswood during the weekday inter-peak period (Monday to Saturday from approximately 9.30 am–3 pm). Services will operate for 21 to 22 hours a day. There will be ultimate capacity for a metro train every two minutes in each direction under the city. Stations along the T3 Bankstown Line currently have a train every six to 15 minutes in the morning peak.

The Project will deliver:

- an air-conditioned metro train every four minutes in the peak;
- fully accessible stations including lifts;
- improved CCTV surveillance, platform screen doors, platforms level with train floors, minimal gaps between platforms and trains;
- new or upgraded concourses and new station entries;
- improved station interchange facilities;
- all trains stopping at all local stations – no waiting for the right train;
- less time spent waiting due to higher frequency services;
- safe and efficient connections during the peak and non-peak periods between key centres along the T3 Bankstown Line;
- reduced travel times to key employment and education precincts;
- new, direct and fast services to Martin Place, Barangaroo, North Sydney, Chatswood and Macquarie Park; and
- interchanges to other rail services at Sydenham, Central and Martin Place.



Figure 3-2: Hurlstone Park Station artist impression

3.2 Project objectives

The Project has been developed to help meet the Australian and NSW Government's strategic planning and policy goals. These objectives will ensure that the Project addresses critical national and state priorities and will help shape the development of the metro network during future stages of development.

The Project objectives are to:

- improve the quality of the transport experience for customers;
- provide a transport system that is able to satisfy long-term demand;
- grow public transport patronage and mode share;
- support the global economic corridor;
- serve and stimulate urban development;
- improve the resilience of the transport network;
- improve the efficiency and cost effectiveness of the public transport system; and
- implement a feasible solution recognising impacts, constraints and delivery risk.

In support of the Project objectives, the objectives of the OTS2 PPP are:

- to deliver world class metro services which will provide customers with a safe, high quality, reliable, efficient and affordable public transport solution and meet the specified performance requirements;
- to provide a customer experience with:
 - a fully-integrated transport solution with convenient and seamless connections between transport modes;
 - high quality stations, station precincts and trains which are safe, easy to use, and highly accessible;
 - high quality and reliable information, and intuitive and clear wayfinding and signage consistent with the Sydney Metro brand; and
 - retailing and services close to stations, integration with adjacent land uses, environmentally friendly transport interchange facilities, and car parking;
- to develop a long term, collaborative working relationship between Sydney Metro and OpCo2 and OpCo2 contractors;
- to design, deliver, test and commission, and operate a safe metro system, including the development of an effective safety culture;
- to set new benchmarks for the future development and operation of Sydney's transport network;
- to provide a holistic approach to design, construction, operations and asset management throughout the duration of the contract;
- that OpCo2 will engage with the community and implement proactive stakeholder and community liaison strategies to minimise disruption and develop community ownership of the Sydney Metro;
- that OpCo2 will deliver sustainable social and environmental outcomes by minimising energy use and maximising sustainability, minimising impacts on the environment, and promoting workforce development;
- that OpCo2 will deliver a sound financing strategy for the OTS2 PPP which provides value for money to the State, and a robust and financially sustainable business for the operation of the Sydney Metro;
- to deliver the OTS2 PPP without impacting on the delivery or operations of Sydney Metro Northwest; and

- to integrate the operation of Sydney Metro Northwest and the Sydney Metro City on and from the OTS Incorporation Date.

3.3 Major contracts

The Project is being delivered in the following major contract packages in line with the below Project Delivery Strategy which Sydney Metro has developed through engagement with industry.

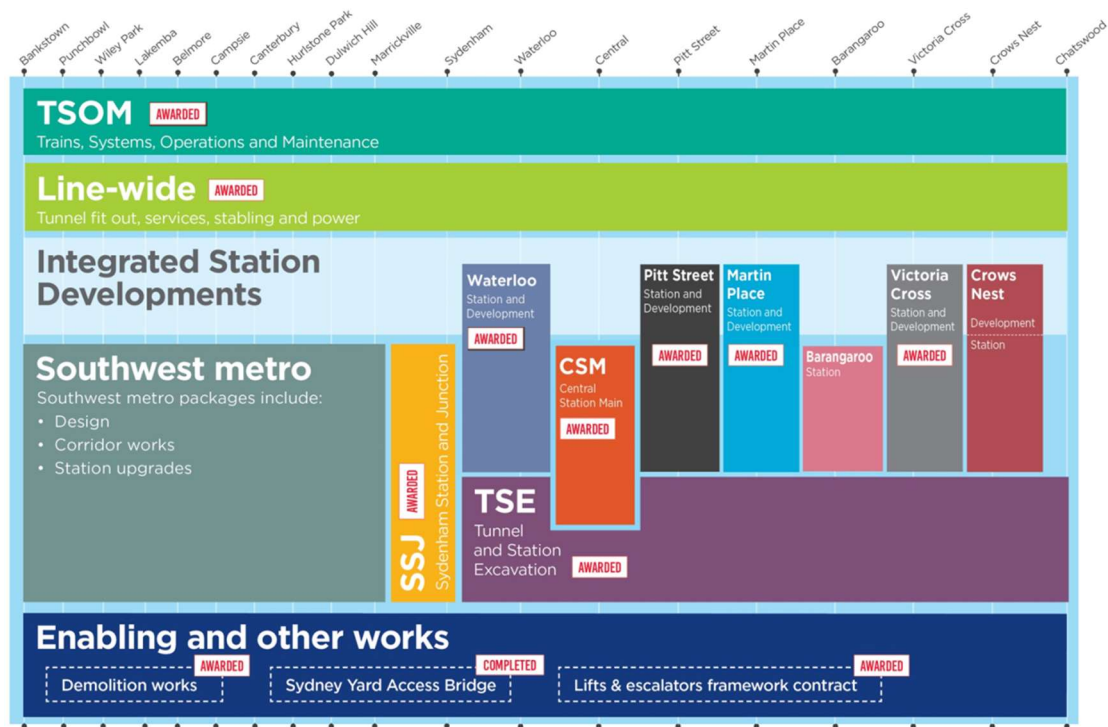


Figure 3-3: Project Delivery Strategy

(a) TSOM package

This package is the "Trains, Systems and Operations and Maintenance" package and is also known as the OTS2 PPP which is the basis of this Project Summary. This package has been procured by Sydney Metro as an augmentation to the North West Rail Link - Operations, Trains and Systems Public Private Partnership (**OTS PPP**) and comprises the operation and maintenance of the full 66km, 31 station metro line from Tallawong to Bankstown and the procurement and delivery of 23 metro trains (with an option for additional trains) and core rail and communication systems.

The principal contract for the OTS2 PPP is the "OTS2 Project Deed" between Sydney Metro and NRT CSW Pty Ltd (ACN 635 509 036) in its personal capacity and in its capacity as trustee of the NRT CSW Unit Trust (**OpCo2**) dated 21 November 2019 (**OTS2 Project Deed**).

The OTS2 PPP will be delivered in two phases under the OTS2 Project Deed:

- **Phase 1** relates to the OTS2 Works to be delivered in a greenfield environment with respect to the Chatswood to Sydenham component; and
- **Phase 2** relates to the OTS2 Works to be delivered in a brownfield environment with respect to the Sydenham to Bankstown component.

Parts B and C of this document summarise the key aspects of this package.

Each of the packages referred to in paragraphs (b) to (i) below is a "**Foundation Infrastructure Works**" package and have been, or will be, procured by Sydney Metro separately to the OTS2 PPP.



Figure 3-4: New metro train and platform screen doors

(b) Line-wide package

The line-wide package comprises the following permanent physical works to be delivered under the contract titled "Sydney Metro City & Southwest Line-wide Works Incentivised Target Cost Contract" between Sydney Metro and the unincorporated joint venture between CPB Contractors Pty Limited (ABN 98 000 893 667) and UGL Engineering Pty Limited (ABN 96 096 365 972) (**Line-wide Contractor**) dated 20 November 2018 (**Line-wide Contract**):

- expansion of the Sydney Metro Trains Facility at Rouse Hill to accommodate the additional trains for Sydney Metro City & Southwest;

- the construction of the Sydney Metro Trains Facility (South) and associated stabling works;
- track and tunnel services (including track-laying, drainage works, lighting, low and high voltage power supply and tunnel ventilation);
- station control systems, overhead line and traction supply; and
- electrical sub-stations.

(c) **Tunnel and Station Excavation (TSE) package**

The TSE package includes 15.5 kilometre twin railway tunnels between Chatswood and Sydenham, excavation and civil works for six new metro stations at Crows Nest, Victoria Cross, Barangaroo, Martin Place, Pitt Street and Waterloo and construction of two dive sites at Chatswood and Marrickville and a rail crossover cavern at Barangaroo.

The TSE package is being delivered under the contract titled "Sydney Metro City & Southwest Tunnel and Station Excavation Works Design and Construction Deed", between Sydney Metro and John Holland Pty Ltd (ABN 11 004 282 268), CPB Contractors Pty Ltd (ABN 98 000 893 667) and Ghella Pty Ltd (ABN 85 142 392 461) (**TSE Contractor**) dated 22 June 2017 (**TSE Deed**).

(d) **Integrated Station Developments**

The Integrated Station Development (**ISD**) packages allow for construction of the following new metro stations, with each station to be integrated with an overstation building or development:

- Crows Nest Station is being delivered under a separate construct-only contract, design services contract and overstation development contract as follows:
 - the contract titled "Professional Services Contract – Design & Technical Services Crows Nest Station" between Sydney Metro and the SMEC Australia Pty Ltd (ABN 47 065 475 149) (**Crows Nest Design Contractor**), dated 28 February 2019 for the design of Crows Nest Station (**Crows Nest Design Contract**);
 - a station contract that has yet to be awarded as at the date of this document; and
 - a contract for the overstation development is likely to be awarded at a later date;

- Victoria Cross Station is being delivered under the following contracts:
 - the contract titled "Sydney Metro City & Southwest Victoria Cross Integrated Station Development – Station Delivery Deed" between Sydney Metro and the unincorporated joint venture comprising Lendlease Building Pty Limited (ABN 97 000 098 162) and Lendlease Engineering Pty Limited (ABN 40 000 201 516) (**Victoria Cross Station Contractor**) dated 20 December 2018 (**Victoria Cross Station Contract**); and
 - the contract titled " Sydney Metro City & Southwest Victoria Cross Integrated Station Development – Over Station Development Project Delivery Agreement" between Sydney Metro and Lendlease (Victoria Cross) Pty Limited (ACN 630 332 268) as trustee for Lendlease Victoria Cross Trust (ABN 26 397 448 085) (**Victoria Cross Overstation Developer**) dated 20 December 2018 (**Victoria Cross Station Project Development Agreement**);



Figure 3-5: Victoria Cross Station artist impression

- Martin Place Station is being delivered under the following contracts:
 - the contract titled "Martin Place Metro Station Project Station Delivery Deed" between Sydney Metro and Macquarie Group Limited (ABN 94 122 169 279) (**Martin Place Station Contractor**), dated 12 September 2018 (**Martin Place Station Contract**); and
 - the contract titled "Martin Place Metro Station Project Over Station Development Project Delivery Agreement" between Sydney Metro and Macquarie Group Limited (ABN 94 122 169 279) (**Martin Place Overstation Developer**) dated 12

September 2018 (**Martin Place Station Project Development Agreement**);

- Pitt Street Station is being delivered under the following contracts:
 - the contract titled "Pitt Street Integrated Station Development Station Delivery Deed" between Sydney Metro and CPB Contractors Pty Limited (ABN 98 000 893 667) (**Pitt Street Station Contractor**), dated 16 September 2019 (**Pitt Street Station Contract**);
 - the contract titled "Pitt Street Integrated Station Development – Over Station Development Project Delivery Agreement (North OSD)" between Sydney Metro and Pitt Street Developer North Pty Ltd (ACN 635 396 824) (**Pitt Street Overstation Developer South**) dated 16 September 2019 (**Pitt Street Station Project Development Agreement (North)**); and
 - the contract titled "Pitt Street Integrated Station Development – Over Station Development Project Delivery Agreement (South OSD)" between Sydney Metro (ABN 12 354 063 515) and Pitt Street Developer South Pty Ltd (ACN 635 396 815) (**Pitt Street Overstation Developer South**) dated 16 September 2019 (**Pitt Street Station Project Development Agreement (South)**); and



Figure 3-6: Pitt Street Station North artist impression

- Waterloo Station is being delivered under the following contracts:
 - the contracts titled "Waterloo Integrated Station Development Station Delivery Deed" between Sydney Metro and John Holland Pty Limited (11 004 282 268) (**Waterloo Station Contractor**) dated 4 November 2019 (**Waterloo Station Contract**); and
 - the contract titled "Waterloo Integrated Station Development Metro Quarter Development Project Delivery Agreement" between Sydney Metro and WL Developer Pty Ltd as trustee for WL Developer Trust (ACN 637 792 288) (**Waterloo Station Overstation Developer**) dated 18 December 2019 (**Waterloo Project Delivery Agreement**).

(e) **Central Station Main Works (CSM) package**

The CSM package includes excavation and construction of the new underground Sydney Metro platforms at Central Station and a new 19-metre wide underground concourse from Chalmers Street, connecting customers to suburban rail platforms, Sydney Metro platforms and the light rail and buses. The CSM package is being delivered under the contract titled "Sydney Metro City & Southwest Central Station Main Works Incentivised Target Cost Contract" between Sydney Metro and Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000) (**CSM Contractor**) dated 6 March 2018 (**CSM Contract**).



Figure 3-7: Central Station Sydney Metro platforms artist impression

(f) **Barangaroo Station**

Barangaroo Station is being delivered under a separate construct only contract and a separate design services contract as follows:

- the contract titled "Professional Services Contract – Underground Station Design & Technical Services" between Sydney Metro and Metron T2M, a joint venture between Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289) and Mott MacDonald Pty Ltd (ABN 13 134 120 353) (**Barangaroo Design Contractor**) dated 13 March 2017 for the design of Barangaroo Station (**Barangaroo Design Contract**); and
- a station contract that has yet to be awarded as at the date of this document.

(g) **Sydenham Station and Junction (SSJ) package**

The SSJ package includes major upgrade work to the existing rail system at Sydenham to allow for the introduction of the Sydney Metro system. It also includes the reconfiguration of existing track and rail systems to segregate the T3 Bankstown Line and the goods line, installation of metro tracks and rail systems including crossover and turnback facilities.

The SSJ package is being delivered under the contract titled "Sydney Metro City & Southwest Sydenham Station and Junction Works Incentivised Target Cost Contract" between Sydney Metro and John Holland Pty Ltd (ABN 11 004 282 268) and Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000) (**SSJ Contractor**) dated 20 September 2017 (**SSJ Contract**).



Figure 3-8: Sydenham Station artist impression

(h) **Southwest Metro packages**

Delivery of the Southwest Metro works will be structured through multiple separate contract packages. The works will include bridge and non-station civil

works, station works (including upgrades), services buildings and facilities, electrical works (low voltage), cable and services routing and track and other rail infrastructure. These packages have yet to be awarded as at the date of this document.

The design of the Southwest Metro stations and railway corridor is being undertaken under the contract titled "Southwest Metro Design Services" between Sydney Metro and Metron T2M, a joint venture between Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289) and Mott MacDonald Australia Pty Ltd (ABN 13 134 120 353) (**Southwest Metro Design Contractor**), dated 1 April 2019 (**Southwest Metro Design Contract**)

(i) **Platform Screen Doors and Mechanical Gap Fillers**

Sydney Metro will procure the platform screen doors (**PSDs**) and mechanical gap fillers (**MGFs**) for the Sydney Metro Southwest under a separate contract.

Sydney Metro has entered into the contract titled "Sydney Metro City & Southwest, Southwest Metro, Mechanical Gap Fillers (MGF) and Platform Screen Doors (PSD) Product Proving Deed" with (i) Kyosan Electric manufacturing Co., Ltd; (ii) Hyundai Movex Co., Ltd and (iii) Gilgen Door Systems AG, each dated 20 January 2020 for the development of the PSDs and MGFs (each a **PSD/MGF Product Proving Deed**).

Following this, Sydney Metro intends to enter into a contract for the procurement of the PSDs and MGFs with one contractor.

(j) **Lifts & escalators**

The design, supply and installation of the lifts and escalators equipment for the Project includes 70 lifts and 130 escalators to be delivered under a framework contract titled "Sydney Metro City & Southwest Lifts and Escalators Framework Contract" between Sydney Metro and ThyssenKrupp Elevator Australia Pty Ltd (ABN 12 073 056 149) (**L&E Contractor**) dated 31 August 2018 (**L&E Contract**).

(k) **Building and management control system**

The building management and control system (**BMCS**) for the Project is being provided under a framework contract to design, supply, install test and commission the BMCS forming part of each Foundation Infrastructure Works package. The contract is titled "Sydney Metro City & Southwest Building Management and Control System Framework Contract" between Sydney Metro and Schneider Electric (Australia) Pty Ltd (ABN 42 004 969 304) (**BMCS Contractor**) dated 9 January 2019 (**BMCS Contract**).

3.4 Project timetable

The Project is due to be completed in 2024.

3.5 Main funding sources

OpCo2 is responsible for securing debt and equity finance for the OTS2 PPP. The financing structure comprises a mix of senior debt and equity (see section 5 (*Participants in the OTS2 PPP*) for details regarding the debt financing and equity parties).

In addition to the debt and equity financing, the OTS2 PPP is also funded by Sydney Metro through the State capital contribution. With regards to Sydney Metro's payment obligations, see section 15 (*Payment*) for further details.

4. Procurement

4.1 Approach overview

The OTS2 PPP has been procured through an augmentation of the OTS PPP which is being delivered under the "North West Rail Link Operations, Trains and Systems Project Deed" between Sydney Metro and NRT Pty Ltd (ACN 166 610 313) (**OpCo**) dated 15 September 2014 (**OTS Project Deed**). This augmentation to the OTS PPP includes delivery of additional trains and some key rail systems for Sydney Metro City & Southwest and their integration with Sydney Metro Northwest, as well as the operation and maintenance of the entire line from Tallawong to Bankstown.

The augmentation provisions of the competitively procured OTS Project Deed were approved by the NSW Government in 2014 and were specifically set up to allow the OTS Project Deed to be varied so that any future changes and expansion to the Sydney Metro line could be accommodated. Even though the two stages of Sydney Metro (Sydney Metro Northwest and Sydney Metro City & Southwest) are being procured under different contracts and several years apart, the augmentation provisions allowed Sydney Metro to operate as one integrated line. This means the OTS Project Deed for Sydney Metro Northwest can be varied to include elements of the design, construction, testing, commissioning, integration and operation and maintenance for Sydney Metro City and Sydney Metro Southwest. The OTS Project Deed and the augmentation provisions have been available on the Transport for NSW website since 2014 and industry was briefed about these augmentation provisions on an on-going basis as part of the Project Delivery Strategy and regular industry updates.

Upon approval by the NSW Government and Sydney Metro establishing appropriate probity arrangements with respect to the augmentation process, consistent with the augmentation provisions of the OTS Project Deed, Sydney Metro entered into the "Augmentation Framework Agreement" with OpCo, MTR Corporation (Sydney) SMCSW Pty Limited (ACN 615 158 122) (**MTR**) and Plenary Origination Pty Ltd (ACN 161 527 519) (**Plenary**) on 24 November 2016 to formally agree the initial steps in the augmentation process and Transport for NSW issued an "Augmentation Proposal Request" to OpCo on 25 November 2016. In response, OpCo submitted its initial augmentation proposal in 2017 and this was evaluated by Transport for NSW. On 7 December 2017, Transport for NSW executed the "OTS2 Commitment Deed" with OpCo, MTR and Plenary and the "Trains and CBTC Sub-Commitment Deed" with Alstom Transport Australia Pty Ltd (ABN 68 165 157 451) (**Alstom**) to formally agree the steps to be taken in the next phase of the augmentation process.

In 2018, Sydney Metro and OpCo commenced a joint procurement process for key rail and communications systems. Following this process, OpCo provided Sydney Metro with an Updated Augmentation Proposal in late 2018. On 7 December 2018, Sydney Metro executed the "OTS2 Contract Finalisation Deed" with OpCo, MTR Corporation, Plenary, Metro Trains Sydney Pty Ltd (**MTS**) and equity parties to formally agree the final steps to be taken in the augmentation process. Further,

subcontract commitment arrangements were entered into with Alstom for rolling stock and signalling, Thales Australia Limited (ABN 66 008 642 751) (**Thales**) for central control and communications, UGL Engineering Pty Ltd (ABN 96 096 365 972) (**UGL**) for radio communications, Gilgen Door Systems AG (**Gilgen**) for platform screen doors and a private financing group of equity and debt investors.

The augmentation process also included execution of the OTS2 Early Works Deed between Sydney Metro and MTR on 7 December 2018 for some early design and technical work.

In 2019, the next steps in the augmentation process included the further procurement process for the OTS rail systems scope for the Sydenham to Bankstown component of the Project and Sydney Metro received an Updated Augmentation Proposal from OpCo with respect to this aspect.

On 21 November 2019, Sydney Metro entered into the OTS2 Project Deed with OpCo2. As financial close of the OTS2 Project Deed was reached on 4 December 2019, this brought the procurement of the augmentation process to an end.

In parallel with the above process, an alternative delivery strategy was developed in the event that the augmentation did not proceed. The augmentation process did not bind Sydney Metro to any course of action until a decision was made by the NSW Government to proceed and Sydney Metro retained the right to progress an alternative delivery strategy if it was determined at any stage that the augmentation did not provide value for money.

4.2 Public interest evaluation

A multi-criteria analysis to ensure that the Project is in the public interest was drafted as part of the final business case for the Project.

As part of this, the Project was developed to address Infrastructure Australia's strategic infrastructure priorities. The final business case also considered:

- the Project's strategic goals of productivity, liveability and sustainability;
- a number of Project benefits including transport benefits, key city-building benefits and key economic benefits to Sydney and NSW; and
- customer benefits and outcomes.

4.3 Evaluation/assessment criteria

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

Table 1: Evaluation Criteria

| Evaluation Criteria |
|---|
| <p>1. Working Relationships</p> <p>The extent to which the Proponent's vision and innovative approach, including its Participants' ability to work together internally, for the OTS2 PPP and its commitment to developing and maintaining a cooperative and responsive relationship with the Principal achieves the Project objectives</p> |
| <p>2. Integrated customer focused outcomes</p> <p>The extent to which the Proponent's customer and operations solutions:</p> <ul style="list-style-type: none">(a) will deliver safe and sustainable high quality customer experience outcomes;(b) will deliver effective Stakeholder and community engagement; and(c) are compatible with the wider TfNSW network. |
| <p>3. Integrated whole of life asset management outcomes</p> <p>The extent to which the Proponent's asset management solutions:</p> <ul style="list-style-type: none">a) will ensure assets are managed and maintained on a whole of life basis consistent with the design, technical and operations solutions;b) support the delivery of consistently high levels of performance; andc) provide for assets to be handed back in an appropriate condition at the end of Term. |
| <p>4. Integrated design and technical solution</p> <p>The extent to which the Proponent's approach and design/technical solutions support the provision of a safe, integrated, proven, innovative, reliable, sustainable and high quality metro system that:</p> <ul style="list-style-type: none">a) promotes customer experience; andb) facilitates connectivity with the wider TfNSW network. |
| <p>5. Integrated delivery solution</p> <p>The extent to which Proponent's approach, including program and strategy:</p> <ul style="list-style-type: none">a) demonstrates the overall capability and capacity to deliver the Project with a high degree of certainty of achieving integrated design and optimised technical solutions; andb) demonstrates an efficient, effective and robust means of achieving phased service commencement without impacting on Sydney Metro Northwest operations. |
| <p>6. Bankstown line integration and conversion</p> <p>The extent to which the Proponent's proposal incorporates a Bankstown line integration and conversion strategy that minimises the impact on all TfNSW customers.</p> |

Evaluation Criteria

7. Commercial acceptability and risk allocation

The extent to which the Proponent's proposal:

- a) demonstrates robust, sustainable and appropriate governance, legal and commercial structures;
- b) complies with the Principal Project Agreements, as may be amended by the Principal; and
- c) demonstrates the ability to achieve execution of the OTS2 Project Deed and other Project Agreements in accordance with the Principal's preferred timeframe.

8. Financial capacity and sustainability

The extent to which Proponent's:

- a) financial capacity is demonstrated;
- b) proposed financing strategy is robust and provides the necessary security and flexibility to respond to OTS2 PPP risks; and
- c) key risk-bearing entities have appropriate financial strength.

9. Risk adjusted cost

The extent to which the Proponent's whole of life, risk-adjusted cost, taking into account the financial risks and impacts to the Principal, demonstrates value for money.

4.4 Value for money rationale

The unique nature of the sole source procurement for augmentation of Sydney Metro City & Southwest with Sydney Metro Northwest required Sydney Metro to consider a combination of the standard approach from Government procurement guidelines, the NSW PPP Guidelines and National PPP Guidelines, as well as the principles from the NSW framework for unsolicited proposals to determine the value for money approach for the assessment of the OTS2 PPP.

The following precedent documents were reviewed:

- NSW Government Procurement Policy Framework and general Government procurement guidelines;
- NSW Government Public Private Partnership Guidelines;
- National PPP guidelines, including the standard value for money drivers applicable to competitively procured projects;
- State based frameworks for unsolicited proposals and direct negotiations. This guidance is considered relevant as it pertains to situations where Government is negotiating directly with a single party and is not running a competitive procurement for some or all of the works being procured; and
- value for money guidance included in the NSW Government Public Private Partnership Guidelines (July 2017).

The OTS2 PPP value for money framework provided a basis to assess whether OpCo's augmentation proposal delivered the required outcomes and objectives in an efficient, innovative and cost-effective way, with appropriate regard to the allocation, management and mitigation of risks. The framework considered both quantifiable and non-quantifiable benefits, costs and risks. The assessment concluded that OpCo's proposal is value for money.

4.5 Public Sector Comparator

Under the NSW PPP Guidelines the development of a public sector comparator (**PSC**) is mandatory. The PSC developed for a project provides an estimate of the risk-adjusted cost of the project if it were to be designed, built and maintained by the State of NSW.

For the OTS2 PPP, an alternative delivery strategy (**ADS**) was developed and updated to reflect changes to the OTS2 PPP's scope, delivery strategy and schedule as applicable. The "Alternative Comparator" (reflecting the cost of the ADS) defines the State-procured alternative to the OTS2 PPP and was used by Sydney Metro as the ultimate quantitative value for money test. The methodology for developing the Alternative Comparator is as per standard NSW PPP guidelines for a PSC.

An assessment of the financial value for money was undertaken by comparing the net present cost (**NPC**) of the OTS2 PPP (as projected in the base case financial model (**BCFM**)) against the cost of the TSOM package as delivered under the ADS, as projected in the Alternative Comparator. This assessment was an extensive and comprehensive evaluation process overseen by senior officers from TfNSW, Sydney Metro, NSW Treasury and independent subject matter experts.

The financial value for money analysis of the OTS2 PPP at financial close indicates a forecast saving of \$185.7m in NPC terms to the State delivering the OTS2 Project as a PPP compared to the Alternative Comparator, as reflected in the table below.

Table 2: Financial value for money comparison

| NPC (A\$ million) | OTS2 PPP | Alternative Comparator | Delta (SMCSW – Alternative Comparator) |
|--------------------|----------|------------------------|--|
| Total OTS2 PPP NPC | 3,911.2 | 4,096.9 | (185.7) |

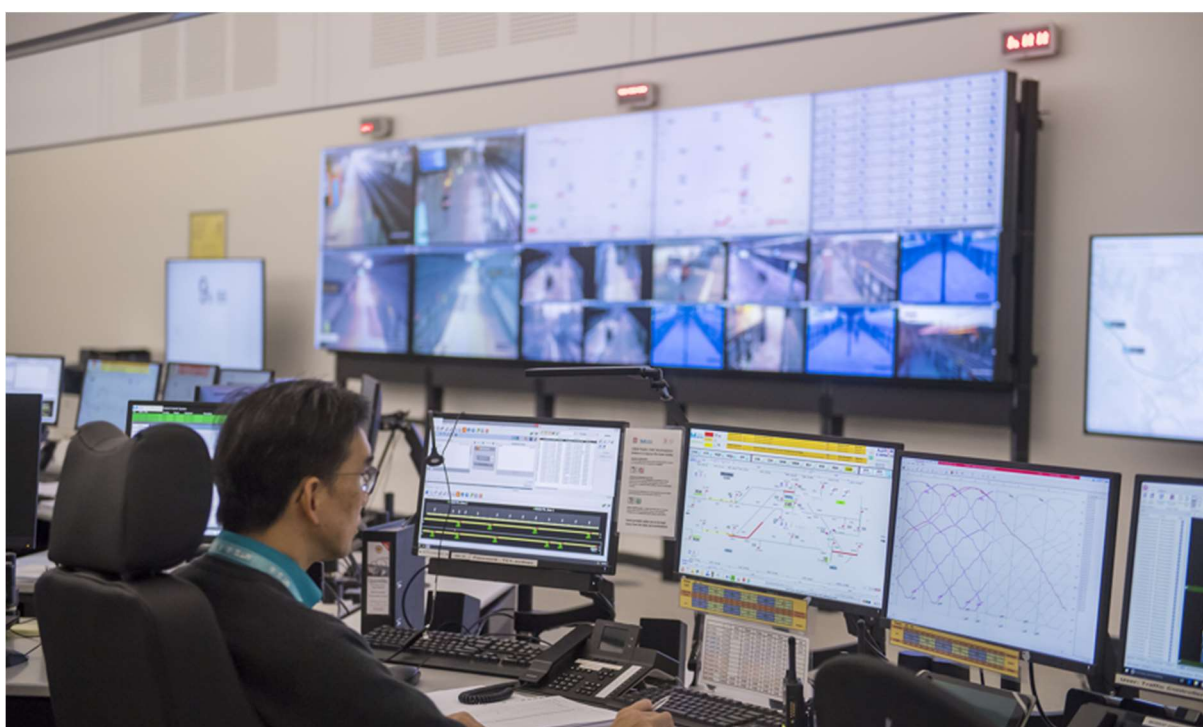


Figure 4-1: Northwest Operations Control Centre

The Quantitative Risk Assessment (**QRA**) procedure set out in section 9 (*Risk allocation*) was also carried out with respect to the ADS.

PART B: CONTRACTUAL OVERVIEW

5. Participants in the OTS2 PPP

5.1 Public sector parties to the contracts

The public sector parties to the OTS2 PPP are:

- (a) **Sydney Metro** (ABN 12 354 063 515) a New South Wales Government agency constituted by section 38 of the *Transport Administration Act* 1988 (NSW); and
- (b) the **NSW Treasurer**, for and on behalf of the State of New South Wales, who has executed a guarantee of Sydney Metro's performance of its obligations under several of the project's contracts (see section 6 (*Contractual structure*)).

5.2 Private sector parties to the contracts

The main private sector parties are:

OpCo2 group

- (a) **NRT CSW Pty Ltd** ACN 635 509 036 in its personal capacity and in its capacity as trustee of the NRT CSW Unit Trust (**OpCo2**). OpCo2 is the private sector counterparty to the OTS2 Project Deed and various other project agreements. The NRT CSW Unit Trust was established on 2 October 2019, under the NRT CSW Unit Trust Deed.
- (b) All of the shares in NRT CSW Pty Ltd, and all of the units in NRT CSW Unit Trust, are held by NRT CSW Holdings Pty Ltd (ACN 635 508 440) as the trustee of NRT CSW Holdings Unit Trust (**OpCo2 HoldCo**). NRT CSW Holdings Unit Trust was established on 2 October 2019, under the NRT CSW Holdings Unit Trust Deed.
- (c) All of the shares in NRT CSW Holdings Pty Ltd, and all of the units in NRT CSW Holding Unit Trust, are held by NRT CSW Holdings 2 Pty Ltd (ACN 635 505 092) in its own capacity and as trustee of NRT CSW Holdings 2 Unit Trust (**OpCo HoldCo 2**). NRT CSW Holdings 2 Unit Trust was established on 2 October 2019, under the NRT CSW Holdings 2 Unit Trust Deed.

OpCo2 group equity investors

On the date of financial close, 4 December 2019, the units in NRT CSW Holdings 2 Unit Trust, and the shares in NRT CSW Holdings 2 Pty Ltd were held by the following:

- (a) **MTR Corporation (UK) NRT Ltd** (Company Number 08754902), a company incorporated in the United Kingdom, a wholly owned subsidiary of MTR Corporation (UK) Ltd, and ultimately a wholly owned subsidiary of MTR Corporation Ltd, a company incorporated in Hong Kong;
- (b) **Plenary Investments (NRT) Pty Ltd** (ABN 34 609 355 277);

- (c) **LNWR Pty Ltd** (ACN 601 387 820) as trustee for the LNWR Trust;
- (d) **Marubeni NRT Investments Pty Ltd** (ACN 601 672 244), a wholly owned subsidiary of Marubeni Infrastructure Investments Pty Ltd, and ultimately owned by Marubeni Corporation and Marubeni Australia Pty Ltd; and
- (e) **CDP Infrastructures Group III Inc.**

Financing entities

Finance Co is a wholly owned subsidiary of **NRT CSW Finance Holdings Pty Ltd** (ACN 635 983 434) (**Finance HoldCo**).

At Financial Close

Figure 5-1: OpCo2 group structure

Core Contractors and Core Contractor Guarantors

The **Core Contractors** are:

- (a) MTR Corporation (Sydney) SMCSW Pty Limited (ACN 615 158 122) (**Integrator**); and
- (b) Metro Trains Sydney Pty Ltd (ACN 600 820 737) (**O&M Contractor**).

The **Core Contractor Guarantors** are:

- (a) MTR Corporation Limited (a company incorporated in Hong Kong, Hong Kong companies number 0714016) (**Integrator Guarantor**); and
- (b) MTR Corporation Limited (a company incorporated in Hong Kong, Hong Kong companies number 0714016), CCCC International Holding Limited (a company incorporated in Hong Kong, Hong Kong companies number 0248473) and CIMIC Group Limited (ACN 004 482 982) (**O&M Guarantors**).

Significant Contractors

The Significant Contractors are:

- (a) the Core Contractors (see above);
- (b) Alstom Transport Australia Pty Limited (ABN 68 165 157 451) (**Alstom Significant Contractor**);
- (c) Thales Australia Limited (ABN 66 008 642 751) (**CCS and COM Contractor**);
- (d) Gilgen Door Systems AG (UID: CHE-105-981.157) (**City Section PSD Contractor**); and
- (e) UGL Engineering Pty Ltd (ABN 96 096 365 972) (**Radio Contractor**).

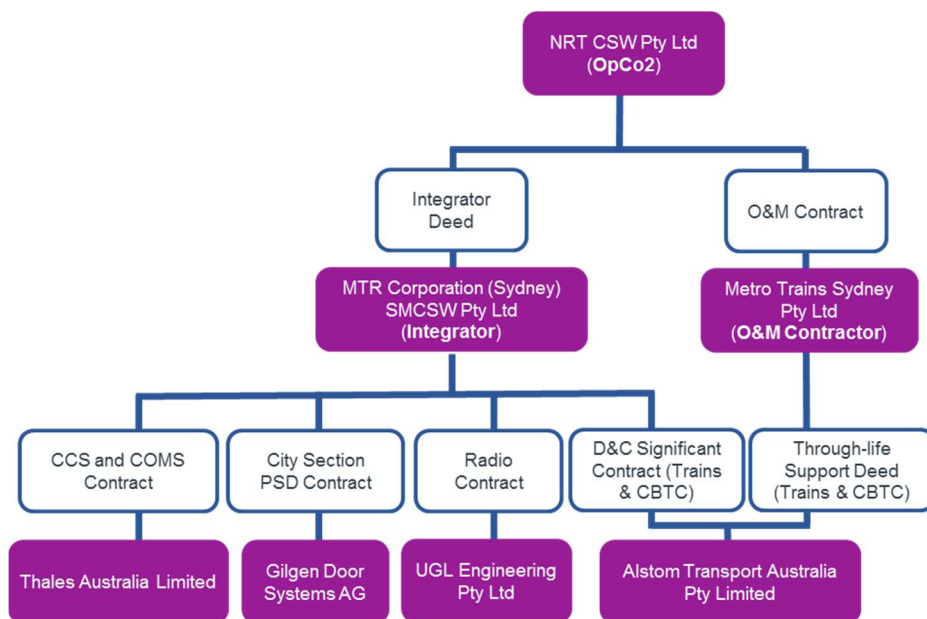


Figure 5-2: OpCo2 subcontract structure

5.3 Foundation Infrastructure Works Contractors

As at the date of this document, the following contractors have been engaged by Sydney Metro as the **Foundation Infrastructure Works Contractors** who will deliver the Foundation Infrastructure Works packages (as described in more detail in section 3 (*Project description*) above):

- **TSE Contractor** – John Holland Pty Ltd (ABN 11 004 282 268), CPB Contractors Pty Ltd (ABN 98 000 893 667) and Ghella Pty Ltd (ABN 85 142 392 461);
- **Line-wide Contractor** – CPB Contractors Pty Limited (ABN 98 000 893 667) and UGL Engineering Pty Limited (ABN 96 096 365 972);
- **CSM Contractor** – Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000);
- **Martin Place Station Contractor** – Macquarie Group Limited (ABN 94 122 169 279) and Lendlease Building Pty Limited (ABN 97 000 098 162) and Lendlease Engineering Pty Limited (ABN 40 000 201 516);
- **Victoria Cross Station Contractor** – Lendlease Building Pty Limited (ABN 97 000 098 162) and Lendlease Engineering Pty Limited (ABN 40 000 201 516);
- **Pitt Street Station Contractor** – CPB Contractors Pty Limited (ABN 98 000 893 667);
- **SSJ Contractor** – John Holland Pty Ltd (ABN 11 004 282 268) and Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000); and

- **Waterloo Station Contractor** – John Holland Pty Limited (ABN 11 004 282 268);
- **Barangaroo Station Design Contractor** – Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289) and Mott MacDonald Pty Ltd (ABN 13 134 120 353);
- **Crows Nest Station Design Contractor** – SMEC Australia Pty Ltd; and
- **Southwest Design Contractor** - Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289) and Mott MacDonald Pty Ltd (ABN 13 134 120 353).

5.4 Independent Certifiers

- (a) Advisian Pty Ltd (ABN 50 098 008 818) has been engaged by Sydney Metro to provide certification services with respect to the works being delivered under each City Station Contract and the OTS2 PPP as the "**Greenfield Independent Certifier**".
- (b) AECOM Australia Pty Limited (ABN 20 093 846 925) has been engaged by Sydney Metro to provide certification services with respect to the works being delivered under the SSJ Contract, CSM Contract and each of the Southwest Metro Contracts as the "**Brownfield Independent Certifier**".
- (c) APP Corporation Pty Limited (ABN 29 003 764 770) has been engaged by Sydney Metro to provide certification services with respect to the works being delivered under the TSE Contract.

5.5 Debt financing parties

National Australia Bank Ltd (ACN 004 044 937) has been engaged as Security Trustee (**Security Trustee**) for the project's debt financiers and has entered into, amongst others the OTS2 Syndicated Facility Agreement, the Financiers Tripartite Deed and the Security Trust Deed.

6. Contractual structure

6.1 OTS2 Project Deed

Introductory summaries of the contractual structure of the OTS2 PPP as at 4 December 2019, in so far as the contracts affect or will potentially affect public sector rights and obligations, are summarised in a simplified form in this section of the document.

The principal contract for the OTS2 PPP is the OTS2 Project Deed.

The OTS2 PPP is an augmentation to the existing OTS PPP and has been structured so that on the "OTS Incorporation Date" (which is the date of completion of Phase 1), the OTS Project Deed will fall away as a standalone document and the Sydney Metro Northwest and Sydney Metro City will be governed by the OTS2 Project Deed. The OTS2 Project Deed will also govern the on-going delivery and subsequent operation and maintenance of Sydney Metro Southwest when it is completed.

The OTS2 Project Deed comprises a "Deed of Agreement" and attached to this Deed of Agreement are 50 schedules and 22 exhibits.

The OTS2 Project Deed sets out the terms under which OpCo2 must:

- (a) finance, or procure finance for, the OTS2 PPP;
- (b) design and construct the OTS2 Works;
- (c) during the contract term, operate and maintain;
 - (i) the Sydney Metro City from the OTS Incorporation Date, which will involve integrating the existing operation of the Sydney Metro Northwest with the Sydney Metro City; and
 - (ii) the Sydney Metro, which includes Sydney Metro Southwest from the date of completion of Phase 2; and
- (d) hand the Sydney Metro back to Sydney Metro at the end of the contract term.

6.2 Debt and equity documents

OpCo2 will satisfy its obligation to finance, or procure finance for, the OTS2 PPP through:

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

In line with the *NSW Public Private Partnerships Guidelines 2017* and the express confidentiality provisions of the projects contracts (see section 31 (*Confidentiality and excluded material*)) details of the project's equity

investments in addition to section 5 (*Participants in the OTS2 PPP*) above are generally beyond the scope of this summary.

- (b) Loans to Finance Co and the securitisation of OpCo2's licence payment obligations

Finance Co, OpCo2 and Sydney Metro have entered into the "Securitisation Agreement" dated 21 November 2019 (**Securitisation Agreement**) under which Finance Co will purchase Sydney Metro's right to receive licence payments payable by OpCo2 under the OTS2 Project Deed in respect of the licensed maintenance area and additional maintained assets. In consideration for the assignment of the right to receive the licence payments, Finance Co pays Sydney Metro monthly 'receivables purchase payments'. Sydney Metro uses the 'receivables purchase payments' to fund its obligation under the OTS2 Project Deed to pay OpCo2 the 'construction payments B' (see section 15 (*Payment*)).

Finance Co will borrow the funds which it needs to pay each 'receivables purchase payment' from a syndicate of lenders under the "Sydney Metro City & Southwest - Operations, Trains and Systems 2 (OTS2) PPP Project – OTS2 Syndicated Facility Agreement" dated 21 November 2019 (**OTS2 Syndicated Facility Agreement**). Finance Co uses the licence payments it receives from OpCo2 as a result of the assignment described above to service the debt it borrows under the OTS2 Syndicated Facility Agreement.

The "**OTS2 Payment Directions Deed**" entered into by Sydney Metro, OpCo2, Finance Co and National Australia Bank Ltd (as **Agent** and **Security Trustee**) on 21 November 2019, is an ancillary document to the Securitisation Agreement 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 OpCo2 and Finance Co pursuant to which debt raised by Finance Co can be on-lent to OpCo2 outside of the securitised licence payment structure as required.

In line with the *NSW Public Private Partnerships Guidelines 2017* and the express confidentiality provisions of the projects contracts (see section 31 (*Confidentiality and excluded material*)) the details of the project's debt financing arrangements, are generally beyond the scope of this summary.

6.3 Core Contracts

OpCo2 will satisfy its obligations to design and construct the OTS2 Works and operate and maintain the Sydney Metro through:

- (a) the performance by the Integrator of its obligations to OpCo2 to design and construct the OTS2 Works, including the trains and systems under the "**Integrator Deed**" between OpCo2 and the Integrator, dated 27 November 2019; and

- (b) the performance by the O&M Contractor of its obligations to OpCo2 to operate and maintain the Sydney Metro and electronic ticketing system equipment under the "**O&M Contract**" between OpCo2 and the O&M Contractor, dated 28 November 2019.

The Integrator Deed and O&M Contract are collectively referred to as the Core Contracts.

6.4 Interface documents

- (a) The performance by each Core Contractor of their obligations to OpCo2 to cooperate and liaise with each other as set out under the "**SMCSW Interface Deed**" between OpCo2 and each Core Contractor, dated 28 November 2019. This deed resolves key subcontract interface issues such as input into design documentation and project plans, consultation, maintenance, and responsibility for approvals.
- (b) The performance by OpCo2 and OpCo of their obligations to cooperate and liaise with each other as set out under the "**SMCSW (OpCo1/OpCo2) Interface Deed**" between OpCo2 and OpCo, dated 28 November 2019. This deed sets out the terms upon which OpCo and OpCo2 agree to certain matters relating to the interface between the OTS PPP and the OTS2 PPP.
- (c) The performance by each Core Contractor of their obligations to OpCo2 and OpCo to cooperate and liaise with each other as set out under the "**SMNW Integration Works Interface Deed**" between OpCo2, OpCo and each Core Contractor, dated 28 November 2019. This deed sets out interface issues between certain activities on Sydney Metro Northwest and Sydney Metro City & Southwest prior to the OTS Incorporation Date and the performance of certain obligations of the parties related to that interface.

6.5 Significant Contracts

- (a) The performance by the Alstom Significant Contractor of its obligations to the Integrator and the O&M Contractor to design, manufacture and provide through life support for the trains and communications based train control systems under the "**OTS2 Alstom D&C Significant Contract (Trains and CBTC)**" (**Alstom D&C Significant Contract**), dated 22 November 2019 and the "**Sydney Metro - Through Life Support Deed (Trains and CBTC)**" (**Alstom TLS Significant Contract**), dated 28 November 2019.
- (b) The performance by the CCS & COM Contractor of its obligations to the Integrator to design, manufacture and provide the communications and control systems package under the "**OTS2 Significant Contract (Central Control System and Communications System)**" (**CCS & COM Contract**), dated 22 November 2019.

- (c) The performance by the City Section PSD Contractor of its obligations to the Integrator to design, manufacture and provide the platform screen doors and platform edge barriers for the Sydney Metro City under the "**City Section PSD Contract**", dated 22 November 2019.
- (d) The performance by the Radio Contractor of its obligations to the Integrator to design, manufacture and provide the radio systems package under the "**Radio Contract**", dated 22 November 2019.

The Alstom D&C Significant Contract, Alstom TLS Significant Contract, CCS and COM Contract, City Section PSD Contract and Radio Contract are collectively referred to as the **Significant Contracts**.

6.6 Guarantees

- (a) Under the "**GSF Act Deed Poll of Guarantee**" (**GSF Act Guarantee**) executed by the NSW Treasurer (on behalf of the State of NSW), in favour of OpCo2, OpCo2 HoldCo, Finance Co and the Security Trustee, dated 21 November 2019, the State of NSW provides a guarantee of Sydney Metro's obligations under certain documents (see section 29 (*Guarantees and security arrangements*) for further information).
- (b) Each Core Contractor's performance of its obligations to OpCo2 under the respective Core Contracts has been guaranteed to OpCo2 under parent company guarantees, made by the Integrator Guarantor and each O&M Guarantor. The "**Integrator Guarantee**" is dated 27 November 2019. The "**O&M Guarantee**" is made up of three separate guarantees, each dated 28 November 2019.
- (c) Similarly, each Significant Contractor's performance of its obligations to the Integrator and the O&M Contractor (as applicable) under each Significant Contract has been guaranteed by a separate guarantee:
 - (i) the Alstom Significant Contractor's performance of its obligations to the Integrator under the Alstom D&C Significant Contract has been guaranteed under the "**OTS2 Significant Contractor (Trains and CBTC) Guarantee**" (**Alstom D&C Guarantee**), dated 28 October 2019;
 - (ii) the Alstom Significant Contractor's performance of its obligations to the O&M Contractor under the Alstom TLS Significant Contract has been guaranteed under the "**TLS Significant Contractor Guarantee**" (**Alstom TLS Guarantee**), dated 28 October 2019;
 - (iii) the CCS and COM Contractor's performance of its obligations to the Integrator under the CCS and COM Contract has been guaranteed under the "**Deed of Guarantee and Indemnity**" (**CCS and COM Guarantee**), dated 20 November 2019;

- (iv) the City Section PSD Contractor's performance of its obligations to the Integrator under the City Section PSD Contract has been guaranteed under the **"OTS2 Significant Contractor Guarantee" (City Section PSD Guarantee)**, dated 26 November 2019; and
- (v) the Radio Contractor's performance of its obligations to the Integrator under the Radio Contract has been guaranteed under the **" Significant Contractor Guarantee" (City Section PSD Guarantee)**, dated 27 November 2019.

6.7 Side deeds

- (a) In the event of any default by OpCo2 under a Core Contract or where the OTS2 Project Deed is terminated, Sydney Metro will be entitled, under the **"OTS2 Integrator Deed Side Deed"**, dated 28 November 2019 and the **"OTS2 O&M Contract Side Deed"** dated 28 November 2019 (**Core Contractor Side Deeds**) to 'step-in' and effectively assume OpCo2's rights and obligations under each Core Contract.
- (b) Similarly, in the event of
 - (i) any default by the Integrator under the Alstom D&C Significant Contract, CCS & COM Contract, City Section PSD Contract or Radio Contract; or
 - (ii) any default by the O&M Contractor under the Alstom O&M Significant Contract; or
 - (iii) where the OTS2 Project Deed and the Core Contracts are terminated, Sydney Metro will be entitled under the:
 - (iv) "OTS2 Alstom D&C Significant Contract Side Deed" between Sydney Metro, the Alstom Significant Contractor and the Integrator dated 22 November 2019;
 - (v) "OTS2 Alstom O&M Significant Contract Side Deed" between Sydney Metro, the Alstom Significant Contractor and the O&M Contractor dated 28 November 2019;
 - (vi) "OTS2 Significant Contract (Central Control System and Communications System) Side Deed" between Sydney Metro, the CCS and COM Contractor, Thales and the Integrator dated 22 November 2019;
 - (vii) "OTS2 Significant Contract (City Section PSD Contract) Side Deed" between Sydney Metro, the City Section PSD Contractor, Nabtesco Corporation and the Integrator dated 26 November 2019; and

- (viii) "OTS2 Significant Contract (Radio Contract) Side Deed" between Sydney Metro, the Radio Contractor, UGL Pty Ltd (ACN 009 180 287) and the Integrator dated 26 November 2019,

(as applicable) to 'step-in' and cure the relevant default or can elect to effect a novation of the Integrator or the O&M Contractor's rights and obligations under the relevant subcontracts.

6.8 Project Cooperation and Integration Deeds

To facilitate the various interfaces associated with the Project, a number of project and cooperation deeds have been entered into, or will be entered into, between Sydney Metro, OpCo2 and various Foundation Infrastructure Works Contractors (**Project Cooperation and Integration Deeds**). These Project Cooperation and Integration Deeds record the terms on which the parties agree to cooperate with each other and integrate their respective work in order to deliver Sydney Metro City and Southwest.

6.9 IDAR Panel Agreement

The IDAR Panel Agreement between Sydney Metro and each member of the IDAR Panel, dated 11 February 2019 has been entered into to assist in the avoidance and resolving disputes under the project contracts. It sets out the rights, obligations and duties of each member of the IDAR Panel, Sydney Metro and OpCo2, who acceded to the IDAR Panel Agreement on 21 November 2019 through the execution of the IDAR Panel Agreement Accession Deed Poll.

6.10 Master Interface Protocols Deed Poll

The Sydney Metro City & Southwest Master Interface Protocols Deed Poll was executed by OpCo2 on 21 November 2019 in favour of Sydney Metro. The Integrator and the O&M Contractor also executed the Sydney Metro City & Southwest Master Interface Protocols Deed Poll in favour of Sydney Metro. This establishes protocols that set out the governance arrangements on a project-wide basis and will assist with the cooperation and coordination of activities of OpCo2 and the each of the other contractors in the delivery of the project.

6.11 Third party and stakeholder agreements

The following agreements entered into with third parties and key stakeholders are relevant to the OTS2 PPP:

- (a) the "Blacktown Council - OTS Interface Agreement", dated 10 September 2014, "Hornsby Shire Council - OTS Interface Agreement", dated 2 September 2014 and "The Hills Shire Council - OTS Interface Agreement", dated 3 September 2014, are all interface agreements have been entered into between Transport for NSW and Blacktown City Council, Hornsby Shire Council and The Hills Shire Council respectively with respect to the OTS PPP and which remain relevant to

the OTS2 PPP. These agreements create a co-operation protocol with each council and set out procedures relating to the design, review, and certification process, as well as covering areas that focus on the rectification of damage and access to land and assets; and

- (b) the "Sydney Water Interface Deed", dated 2 January 2018 was entered into between Sydney Water Incorporation (ABN 49 776 225 038) (**SWC**) and Transport for NSW and sets out the agreed process for the protection and adjustment of certain SWC assets which will be directly affected by the project works.

OpCo2 is required to comply with the obligations under these agreements, except to the extent any obligations are expressly retained by Sydney Metro.

6.12 Other documents

The "**OTS and OTS2 Incorporation Deed**" dated 21 November 2019 is required in order to give effect to the consequences of termination of the OTS Project Deed on the OTS Incorporation Date and the on-going application of the OTS2 Project Deed.

The "**OTS Project Deed Amendment Deed**" dated 21 November 2019 is required to amend various provisions of the OTS Project Deed to reflect the arrangements for the OTS2 PPP, including the amendment of the CDPD arrangements.

The performance by the Greenfield Independent Certifier of its obligation to provide independent certification of the OTS2 Works under the "**OTS2 Independent Certifier Deed**" between Sydney Metro, OpCo2 and the Greenfield Independent Certifier.

In order to set up arrangements ensuring Sydney Metro will be able to exercise its rights under the OTS2 Project Deed to obtain the source code of various computer programs used and developed by OpCo2 and its contractors, Sydney Metro and OpCo2 and the nominated escrow agent will enter into separate "**Escrow Agreements**" with Thales Australia Ltd (ABN 66 008 642 751) and the Alstom Significant Contractor.

In addition, separate "**Deeds of Assurance**" have been entered into between Sydney Metro, OpCo2 and each of Alstom Transport Australia Pty Ltd (dated 22 November 2019), Alstom Transport Technologies SAS (dated 27 November 2019) and Thales Australia Ltd (dated 22 November 2019) (together the **Licensed IP Owners**). These deeds assure Sydney Metro and any entity authorised or licensed by Sydney Metro that Sydney Metro may continue exercising its rights under the OTS2 Project Deed licence, notwithstanding any change affecting the Licensed IP Owner's direct or indirect relationship with OpCo2.

Sydney Metro and OpCo2 have established a future process by which they can work together on the project definition, development and delivery of any future augmentation that is completed. The Alstom Significant Contractor has agreed under the "**Augmentation Supply Direct Deed**", dated 22 November 2019, to grant Sydney Metro and OpCo2 certain rights in respect of Trains and CBTC in relation to an augmentation.

The "**Equity Purchase Deed**" was also entered into by Sydney Metro, OpCo2 and OpCo2 HoldCo, dated 21 November 2019. OpCo2 HoldCo is the registered holder and beneficial owner of all of the shares in the capital of NRT CSW Pty Ltd and all of the units in the NRT CSW Unit Trust (**Option Securities**). This deed, confers on Sydney Metro the right to purchase from OpCo2 HoldCo the Option Securities at certain points in time, and sets out the related terms and conditions on when this right may be exercised by Sydney Metro.

Some of Sydney Metro's rights and obligations under the OTS2 Project Deed, each Core Contractor Side Deed and each Significant Contract Side Deed are subject to restrictions or additional process requirements under the "**Financier's Tripartite Deed**" between Sydney Metro, OpCo2, Finance Co, the Security Trustee, the agent, and the account bank, dated 21 November 2019. As an example, this agreement requires Sydney Metro to notify the Security Trustee/Agent before it terminates the OTS2 Project Deed for a default by OpCo2, giving the Security Trustee an opportunity to cure the default. Priorities between Sydney Metro's charges and securities held by the projects private sector debt financiers are also governed by the Financier's Tripartite Deed.

Several charges have been entered into to secure Sydney Metro's rights relating to the OTS2 PPP. These include:

- (a) the "**Sydney Metro City & Southwest Deed of Charge – OpCo2**" (**OpCo2 Deed of Charge**) between Sydney Metro and OpCo2, dated 21 November 2019, which secures all of the obligations of OpCo2 to Sydney Metro under the project contracts by charges over the assets, undertakings and rights of OpCo2; and
- (b) the "**Sydney Metro City & Southwest Deed of Charge – Finance Co**" (**FinCo Deed of Charge**) between Sydney Metro and Finance Co, dated 28 November 2019, which secures all of the obligations of Finance Co to Sydney Metro under the Securitisation Agreement, Payments Direction Deed and Financiers Tripartite Deed by charges over any of the assets, undertakings and rights of Finance Co.

The contracts listed above, including the OTS2 Project Deed, Debt and equity documents, Core Contracts, Interface documents, Significant contracts, Guarantees, Side deeds and Other documents to which Sydney Metro is a party (amongst others) are referred to as the Principal Project Agreements throughout this document.

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

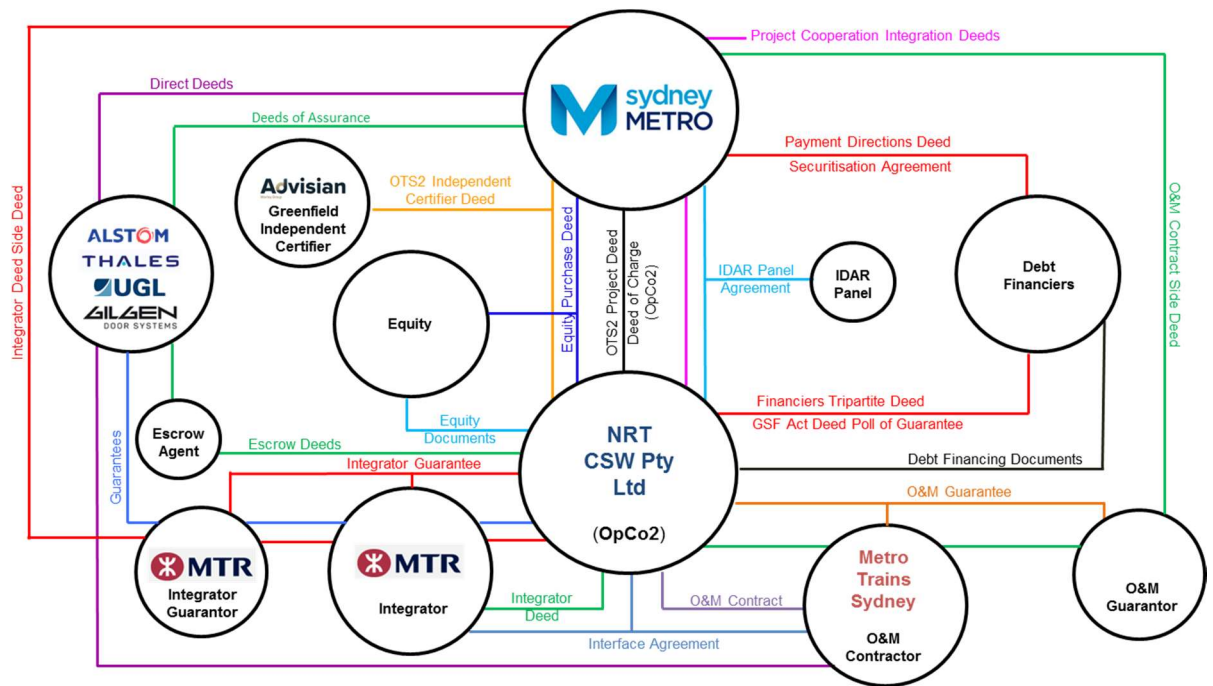


Figure 6-1: Project Agreements structure

7. Contract term

Upon execution of the OTS2 Project Deed on 21 November 2019, certain provisions of the contract took effect immediately; these are referred to as "day 1 clauses". The remaining provisions came into effect on the 4 December 2019, when all conditions precedent had been satisfied (or waived). Except for the day 1 clauses, the term of the OTS2 Project Deed commenced on 4 December 2019 and will expire on 5 May 2034 unless terminated earlier.

Sydney Metro is entitled under the OTS2 Project Deed to extend the term of the OTS2 PPP for a period of up to two years.

PART C: KEY COMMERCIAL AND CONTRACTUAL FEATURES

8. Overview of OTS2 PPP

8.11 Incorporation of Sydney Metro Northwest

The OTS2 PPP is an augmentation to the existing OTS PPP and has been structured so that on the OTS Incorporation Date (ie the date of completion of Phase 1), the OTS Project Deed will fall away as a standalone document. On the OTS Incorporation Date, the Sydney Metro Northwest and the Sydney Metro City will be integrated to form a single end to end railway and the on-going operation and maintenance of the combined Sydney Metro Northwest and Sydney Metro City as a single line will be governed by the OTS2 Project Deed, which will also govern the on-going delivery and subsequent operation and maintenance of Sydney Metro Southwest when it is completed.

A timeline diagram illustrating this is set out below.

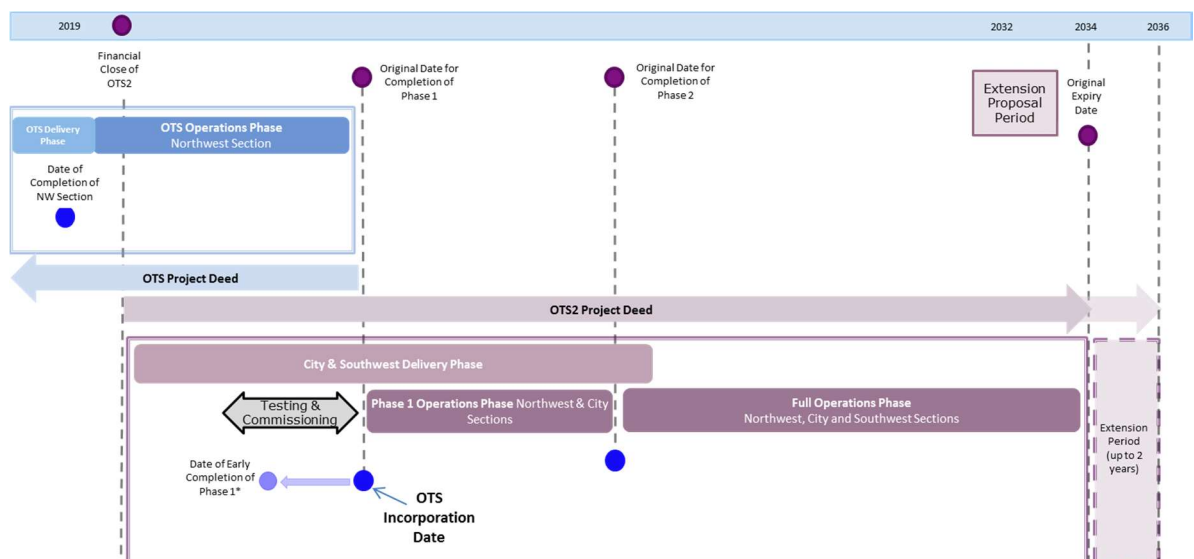


Figure 8-1: Timeline of OTS2 PPP

8.12 Phase 1 and Phase 2

The Sydney Metro City & Southwest will be delivered in two phases as distinguished under the OTS2 Project Deed. Phase 1 relates to the OTS2 Works in respect of the Sydney Metro City and Phase 2 in respect of the Sydney Metro Southwest.

8.13 Foundation Infrastructure Works

Sydney Metro must deliver the Foundation Infrastructure Works and ensure that the Foundation Infrastructure Works are delivered and handed over to OpCo2 in accordance with the Foundation Infrastructure Works Contracts.

Further detail on the Foundation Infrastructure Works regime under the OTS2 Project Deed is set out in section 16 (*Foundation Infrastructure Works*).

9. Risk allocation

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; and/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” and Sydney Metro's Quantitative Risk Analysis (QRA) Procedure (SM RM-PW-301). The QRA simulation of itemised delivery and operating risks was determined via statistical simulation using @Risk software. As discussed in section 4 (*Procurement*), 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 OTS2 Project Deed and associated documents establish the obligations of each party in managing these risks. The risk allocation arrangements for the OTS2 PPP are summarised in the table below.

Table 3: Risk allocation

| Type of risk | Description | OpCo2 | Sydney Metro |
|---|---|-----------------------|--------------------------------------|
| APPROVALS AND PLANNING This section sets out the risk allocation generally relating to land, site and planning responsibilities | | | |
| Laws | Complying with applicable laws | ✓ | ✓ (as applicable to its obligations) |
| Planning Approvals | Obtaining or modifying planning approvals | ✓ (for modifications) | ✓ |

| Type of risk | Description | OpCo2 | Sydney Metro |
|---------------|--|--------------------------------------|--|
| | | required by OpCo2) | |
| | Delay to OTS2 Works in reaching completion as a result of legal challenges to the planning approvals obtained by Sydney Metro (unless legal challenges are a result of OpCo2's non-compliance) | | ✓ |
| | Delays or additional costs to OpCo2 arising from any modification to planning approvals required by OpCo2 | ✓ | |
| | Complying with relevant planning approval conditions | ✓ | ✓ (certain conditions retained as specified) |
| | Engagement of Environmental Representative as required by the planning approvals | | ✓ |
| | Complying with the requirements of the Environmental Representative | ✓ | |
| Licences | Obtaining licences under the <i>Protection of the Environment Operations Act</i> (NSW) | ✓ (in respect of OpCo2's activities) | |
| | Complying with licences under the <i>Protection of the Environment Operations Act</i> (NSW) | ✓ | |
| Accreditation | Obtaining and maintaining accreditation for construction of the OTS2 Works – rail infrastructure manager and rolling stock operator | ✓ | ✓ |
| | Obtaining and maintaining accreditation for operation of the Sydney Metro City for testing and commissioning purposes: rail infrastructure manager and rolling stock operator | ✓ | |

| Type of risk | Description | OpCo2 | Sydney Metro |
|---|--|-------|--|
| | Maintaining accreditation for construction of Foundation Infrastructure Works until handover of each works portion to OpCo2 | | ✓ |
| | Obtaining and maintaining accreditation for passenger operations of Sydney Metro Northwest – rail infrastructure manager and rolling stock manager | ✓ | |
| Other approvals | Obtaining any other approvals and the risk of additional costs and delay associated with them | ✓ | |
| LAND, SITE AND ACCESS This section sets out the risk allocation generally relating to land and site access (other than Foundation Infrastructure Works sites) | | | |
| Site availability | Acquire agreed site and make it available to OpCo2 at the agreed time and specified condition during the term | | ✓ |
| | Availability of the Sydney Metro site to OpCo2 once the site has been made available by Sydney Metro in accordance with the above | ✓ | ✓ (as per compensation events and relief events) |
| Additional land | Acquire rights to access and use land additional to that made available to OpCo2 | ✓ | |
| Site conditions | Geotechnical and other site conditions of the Sydney Metro site | ✓ | ✓ (with respect to certain assets on the Sydney Metro Southwest) |
| Information documents | Accuracy and completeness of information documents | ✓ | |
| Remediation of contamination | Management of contamination caused or disturbed by OpCo2's activities | ✓ | |

| Type of risk | Description | OpCo2 | Sydney Metro |
|--|--|--|---|
| Pre-existing contamination | Containment and/or remediation of pre-existing contamination caused by works undertaken by Sydney Metro, including Foundation Infrastructure Works | | ✓ |
| | Containment and/or remediation (if disturbed) of all other pre-existing contamination | ✓ | |
| Native title claims | Paying compensation to native title holders or risk of delay in completion | | ✓ |
| Artefacts | Discovery of artefacts delaying completion of Phase 1 of the OTS2 Works | ✓ (up to an aggregated amount over the term) | ✓ (above an aggregated amount over the term) |
| Services / utilities | Investigation, protection, relocation, provision of new and modification of utilities | ✓ | |
| | Provision of services/utilities for construction by OpCo2 | | ✓ (only as part of the Foundation Infrastructure Works site facilities) |
| | Provision of services/utilities for operations by OpCo2 (other than electricity) | ✓ | |
| | Provision of electricity for testing and commission and operations by OpCo2 | | ✓ |
| Workplace health and safety / principal contractor | Undertake role of being the principal contractor on the site for workplace health and safety purposes | ✓ (for sites handed over to its control) | |
| Community | Exceedance of noise and vibration limits, unacceptable traffic impacts/delays and other disruptions to the community during the delivery phase | ✓ | |

| Type of risk | Description | OpCo2 | Sydney Metro |
|--|---|-------|------------------------------|
| FOUNDATION INFRASTRUCTURE WORKS This section sets out the risk allocation specifically relating to access to the Foundation Infrastructure Works | | | |
| Availability of Foundation Infrastructure Works site | Availability of the Foundation Infrastructure Works site to OpCo2 at the agreed time and specified condition during the term | | ✓ |
| Foundation Infrastructure Works | Time overruns on Foundation Infrastructure Works delaying completion of the OTS2 Works | | ✓ |
| Maintenance | Maintenance of Foundation Infrastructure Works prior to handover to OpCo2 | | ✓ |
| | Maintenance of Foundation Infrastructure Works following to handover to OpCo2 | ✓ | |
| Delays in handover of Foundation Infrastructure Works | Time overruns on Foundation Infrastructure Works delaying completion of the OTS2 Works | | ✓ |
| Technical and performance requirements | Technical and performance requirements set out in the Foundation Infrastructure Works contracts are not suitable for the purposes of the OTS2 Project Deed | ✓ | |
| | Foundation Infrastructure Works are not consistent with the technical and performance requirements set out in the relevant Foundation Infrastructure Works contract | | ✓ |
| Changes in Foundation Infrastructure Works | Changes in the Foundation Infrastructure Works that materially affect the performance of the delivery activities or the operations activities or result in OpCo2 incurring additional costs | | ✓ (unless requested by OpCo) |
| Known defects in Foundation | A known defect in the Foundation Infrastructure Works that will not have an impact on OpCo2's ability to perform its | ✓ | |

| Type of risk | Description | OpCo2 | Sydney Metro |
|--|---|-------|--------------|
| Infrastructure Works | obligations under the OTS2 Project Deed during the known defects rectification period | | |
| | A known defect in the Foundation Infrastructure Works that will have an impact on OpCo2's ability to perform its obligations under the OTS2 Project Deed during the known defects rectification period | | ✓ |
| Defects in Foundation Infrastructure Works | A defect in the relevant Foundation Infrastructure Works occurs during the period Sydney Metro is responsible for defects in the Foundation Infrastructure Works and delays completion of OTS2 Works or causes OpCo2 to incur additional material costs | | ✓ |
| | A defect in the relevant Foundation Infrastructure Works occurs during the period Sydney Metro is responsible for defects in the Foundation Infrastructure Works and causes OpCo2 to incur increased costs or results in an event which triggers abatement of the service payment | | ✓ |
| | A defect in the relevant Foundation Infrastructure Works occurs during the period OpCo2 is responsible for defects in the Foundation Infrastructure Works and delays completion of OTS2 Works or causes OpCo2 to incur additional material costs | ✓ | |
| | A defect in the relevant Foundation Infrastructure Works occurs during the period OpCo2 is responsible for defects in the Foundation Infrastructure Works and causes OpCo2 to incur increased costs or results in an event which triggers abatement of the service payment | ✓ | |

| Type of risk | Description | OpCo2 | Sydney Metro |
|--|---|-------|----------------------------------|
| SYDNEY METRO NORTHWEST This section sets out the risk allocation with respect to the interface between the OTS2 PPP and the Sydney Metro Northwest | | | |
| Design interfaces | Overall management of design interfaces between Sydney Metro Northwest and the OTS2 Works (unless relating to an interface managed by Sydney Metro) | ✓ | |
| Construction interfaces | Overall management of interfaces with Sydney Metro Northwest necessary to deliver the OTS2 Works (unless relating to an interface managed by Sydney Metro) | ✓ | |
| OTS Works | Technical and performance requirements set out in the OTS Project Deed are not suitable for the purposes of the OTS2 Project Deed | ✓ | |
| | Changes in the OTS Works that materially affect the performance of the delivery activities or operations activities or result in OpCo2 incurring additional costs | ✓ | ✓ (if requested by Sydney Metro) |
| | A defect in the OTS Works delays completion of the OTS2 Works or causes OpCo to incur additional material costs (for reasons other than a risk borne by Sydney Metro) | ✓ | |
| Sydney Metro Northwest operations | Operations of the Sydney Metro Northwest delaying completion of the OTS2 Works | ✓ | |
| DESIGN, CONSTRUCTION AND COMMISSIONING This section sets out the risk allocation for the design, construction and commissioning of the OTS2 Works | | | |
| OpCo2's design | OpCo2's design does not meet the technical and performance requirements set out in the OTS2 Project Deed | ✓ | |
| Stage 1 design | Stage 1 design does not meet the technical and performance requirements set out in the OTS2 Project Deed | ✓ | |

| Type of risk | Description | OpCo2 | Sydney Metro |
|---------------------------------------|---|-------|--|
| Design interfaces | Overall management of design interfaces (unless relating to an interface managed by Sydney Metro) | ✓ | |
| | Overall management of Sydney Metro City & Southwest design interfaces | ✓ | |
| Construction interfaces | Overall management of interfaces necessary to deliver the OTS2 Works | ✓ | ✓ (if retained by the Sydney Metro) |
| OTS Works | Technical and performance requirements set out in the OTS Project Deed are not suitable for the purposes of the OTS2 Project Deed | ✓ | |
| Satisfying commissioning requirements | Testing and commissioning of the entire Sydney Metro not successfully completed | ✓ | |
| Delays in commissioning | Delays in commissioning the OTS2/jointly procured works and commencement of revenue service (other than a risk borne by Sydney Metro) | ✓ | |
| Integration | Responsibility for integration of Sydney Metro Northwest, Sydney Metro City and Sydney Metro Southwest | ✓ | ✓ (for applicable compensation event and certain agreed costs) |
| | Responsibility for integration of OTS2 Works with Foundation Infrastructure Works | ✓ | ✓ (for applicable compensation event and certain agreed costs) |

| Type of risk | Description | OpCo2 | Sydney Metro |
|--|---|-------|--------------|
| Quality | Compliance of OTS2 works with the requirements set out in the OTS2 Project Deed | ✓ | |
| Design and construction completion | Design and construction of the OTS2 works not completed on time or on budget (other than a risk borne by Sydney Metro) | ✓ | |
| OPERATIONAL – ENTIRE SYDNEY METRO This section sets out the risk allocation for operations of the Sydney Metro (which includes the Sydney Metro Northwest, Sydney Metro City and Sydney Metro Southwest following completion of Phase 1 and Phase 2) | | | |
| Operational interfaces | Managing Sydney Metro interfaces with third parties such as adjoining property owners, other transport providers, utilities etc. | ✓ | |
| Meeting performance requirements and service levels | Sydney Metro service solution or service performance does not meet performance requirements and service levels specified by Sydney Metro | ✓ | |
| Adequacy of performance requirements and service levels | Sydney Metro specified performance requirements and service levels will not be appropriate or sufficient to meet Sydney Metro's requirements | | ✓ |
| Electricity supply including interruption | Insufficient electricity supply available to the Sydney Metro during the operations phase to meet OpCo2's requirements (unless due to a specified relief event) | ✓ | |
| Public transport information | Provision of information for the Sydney Metro, and interface with Sydney Metro's systems | ✓ | |
| Ticketing system | Provision of and performance risk related to electronic ticketing system and equipment supplied on the Sydney Metro by Sydney Metro | | ✓ |
| | Ticket sales of the Sydney Metro | | ✓ |

| Type of risk | Description | OpCo2 | Sydney Metro |
|---------------------------------------|--|---------------|---------------|
| | Provision of power and communications for electronic ticketing system components and performance of any specified functions for the Sydney Metro | ✓ | |
| Revenue protection (fare enforcement) | Provision of fare enforcement functions for the Sydney Metro (e.g. inspection of tickets and issuing of infringements, prosecution of infringement notices) | | ✓ |
| | Implementation of specified ticketing or revenue protection responsibilities for the Sydney Metro to the extent specified in the OTS2 Project Deed | ✓ | |
| Safety and security | Safety and security of Sydney Metro and its customers (to the extent specified in the OTS2 Project Deed and excluding law enforcement functions) | ✓ | |
| Graffiti and vandalism risk | Responsibility for cost and disruptions caused by graffiti or vandalism within Sydney Metro areas managed by OpCo2 (other than a risk borne by Sydney Metro) | ✓ | |
| Branding and marketing | Control of branding and marketing activities for the Sydney Metro | | ✓ |
| | Conformance with Sydney Metro's branding requirements and meeting specified responsibilities | ✓ | |
| Station and interchange management | Control and management of Sydney Metro stations and interchanges (within specified boundaries) including all responsibility for asset availability, asset management, operations and cost risk (other than a risk borne by Sydney Metro) | ✓ | |
| Disruptions to passenger service | Disruptions to passenger services of the Sydney Metro | (same as OTS) | (same as OTS) |

| Type of risk | Description | OpCo2 | Sydney Metro |
|---|---|-------|------------------------|
| Customer and station KPIs | Meeting required standards with respect to customer and station management KPIs for the Sydney Metro | ✓ | |
| ASSET MANAGEMENT This section sets out the risk allocation for asset management of the Sydney Metro Northwest, Sydney Metro City and Sydney Metro Southwest | | | |
| Maintenance performance and cost | Cost of maintenance and performance of assets relative to the OTS2 Project Deed requirements | ✓ | |
| Asset condition through operations phase | Required asset condition standards are not achieved through the operations phase (for reasons other than a risk borne by Sydney Metro) | ✓ | |
| Residual life and end of term handover | Satisfying Sydney Metro's requirements for asset condition and residual design life at the end of the operations phase | ✓ | ✓ (for certain assets) |
| Defects – OTS Works | A defect in the OTS Works causes OpCo2 to incur increased costs or results in an event which triggers abatement of the service payment (for reasons other than a risk borne by Sydney Metro) | ✓ | |
| Defects – OTS2 Works | A defect in the OTS2 Works causes OpCo2 to incur increased costs or results in an event which triggers abatement of the service payment (for reasons other than a risk borne by Sydney Metro) | ✓ | |
| REVENUE AND COSTS | | | |
| Farebox revenue | Farebox revenue differs from forecast | | ✓ |
| Changes to fares | Fare setting responsibility | | ✓ |

| Type of risk | Description | OpCo2 | Sydney Metro |
|--------------------------------|--|-------|--------------|
| Changes in service levels | Changes in service levels to those specified in the OTS2 Project Deed (within certain bounds) | ✓ | |
| Escalation | Risk of inflation indices impacting on indexed costs in the service payment calculation | | ✓ |
| | Risk of annual increases in OpCo2's costs running above the specified indices | ✓ | |
| Electricity supply costs | Risk of: 1) Increases in cost per unit over an agreed index | | ✓ |
| | 2) Volume of consumption (other than resulting from a change in specified service levels) | ✓ | |
| Special events (pre-specified) | Cost of running recurring special events services as specified in the OTS2 Project Deed | ✓ | |
| Special events (unspecified) | Provision of additional services required for exceptional, non-recurring special events (e.g. major sporting events, political forums) | | ✓ |
| Commercial opportunities | Commercial opportunities within stations and advertising opportunities on the Sydney Metro Northwest | ✓ | |
| | Commercial opportunities within stations and advertising opportunities on the Sydney Metro City and the Sydney Metro Southwest | | ✓ |
| FINANCING | | | |
| Financing | Private finance of the required amount for the OTS2 Works | ✓ | |
| | Risk of reference interest rate increases: 1) Before financial close | | ✓ |

| Type of risk | Description | OpCo2 | Sydney Metro |
|---|--|-------|--------------|
| Reference interest rate risk | 2) After financial close through the delivery phase | ✓ | |
| | 3) During the operations phase | ✓ | ✓ |
| Interest rate margin (post-financial close) | Changed interest margins post financial close | ✓ | |
| Refinancing gains | Gains on refinancing of debt terms, exceeding those assumed in the base case financial model | ✓ | ✓ |
| Refinancing losses | Losses on debt refinancing | ✓ | |
| Tax | Actual tax payable by OpCo2 differs from the base case financial model | ✓ | |
| FX | FX exposure pre-OTS2 financial close for OTS2 PPP | | ✓ |
| Conditional debt pay down | Satisfaction of conditional debt pay down conditions | ✓ | |

10. General obligations

OpCo2's primary obligations under the OTS2 Project Deed are to:

- (a) finance, or procure finance for, the OTS2 PPP;
- (b) design and construct the OTS2 Works;
- (c) during the contract term, operate and maintain:
 - (i) the Sydney Metro City from the OTS Incorporation Date, which will involve integrating the existing operation of the Sydney Metro Northwest with the Sydney Metro City; and
 - (ii) the Sydney Metro to include Sydney Metro Southwest from the date of completion of Phase 2; and
- (d) hand the Sydney Metro back to Sydney Metro at the end of the contract term.

Sydney Metro's primary obligations under the OTS2 Project Deed are to:

- (a) grant OpCo2 licences to use and occupy:
 - (i) the construction site;
 - (ii) the licensed maintenance areas; and
 - (iii) specified assets which OpCo2 must maintain;
- (b) procure the design, construction and handover (as applicable) of the Foundation Infrastructure Works to OpCo2; and
- (c) make various payments to OpCo2, which are explained in more detail in section 15 (*Payment*) below.

11. Activities of Sydney Metro and OpCo2 during the construction period

11.1 OpCo2 construction works

OpCo2 is responsible for the design, construction, testing and commissioning of the OTS2 Works for the Sydney Metro City and the Sydney Metro Southwest, which comprise:

- (a) the Trains and rail systems;
- (b) the OTS2 Works for Phase 2 and the OpCo2 Systems Works;
- (c) integration requirements for the Sydney Metro Northwest;
- (d) integration requirements between the OTS2 Works and the Foundation Infrastructure Works;
- (e) communications and central control system related works at the Sydney Metro Trains Facility including expansion of the operations control centre and systems integration activities;
- (f) to the extent relevant to such works, assets, systems and deliverables, any modifications directed or approved in accordance with clause 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) of the OTS2 Project Deed; and
- (g) additional works pursuant to the exercise of a pre-agreed option pursuant to clause 31 (*Pre-Agreed Options*) of the OTS2 Project Deed, including the delivery of 14 additional trains if Sydney Metro exercises the additional trains option.

During the construction phase for each of the Sydney Metro City and the Sydney Metro Southwest OpCo2 must:

- (a) construct the OTS2 Works and the temporary works in accordance with the OTS2 Project Deed (including the scope and performance requirements (**SPR**)), the final design documentation and any modifications directed or approved by Sydney Metro;
- (b) use good workmanship and materials, which comply with the standards set out in the SPR, and which are free from defects; and
- (c) meet all sustainability requirements specified in the SPR.

OpCo2 warrants that the relevant OTS2 Works will, upon completion and during the term, be fit for their intended purpose.

11.2 Integration

As part of OpCo2's obligations as 'systems integrator' under the OTS2 Project Deed, OpCo2 must integrate the Sydney Metro Northwest, Sydney Metro City and Sydney Metro Southwest. OpCo2 must also integrate the Sydney Metro City and Sydney Metro Southwest with the Foundation Infrastructure Works. This includes all works required to achieve the requirements of completion for Phase 1 and Phase 2.

11.3 Sydney Metro construction works

Sydney Metro is responsible for the design and construction of the Foundation Infrastructure Works and has engaged (or will engage) the Foundation Infrastructure Works Contractors to design and construct the Foundation Infrastructure Works.

11.4 Laws and approvals

In performing its activities, OpCo2 must comply with all applicable laws including those relating to environmental heritage. Sydney Metro has obtained or will obtain the planning approvals required for the OTS2 PPP. Sydney Metro bears risk of any legal challenge to these planning approvals.

OpCo2 is responsible for:

- (a) obtaining all other approvals;
- (b) obtaining licences under the Protection of the Environment Operations Act 1997 (NSW);
- (c) complying with all conditions of all approvals (other than those conditions of the planning approvals which Sydney Metro has specifically agreed to comply with); and
- (d) pursuant to the project planning approval:
 - (i) providing assistance to Sydney Metro in relation to the preparation of a staging report for the staging of operations; and
 - (ii) preparing an operational environmental management plan.

11.5 Sydney Metro City & Southwest site during construction

Sydney Metro has granted to OpCo2 a non-exclusive licence to use and occupy the construction site during the delivery phase and the licensed maintenance area and additional maintained assets during the operations phase. If a 'relief event' (see section 18 (*Relief events*)) causes OpCo2 to require access to part of the construction site after the scheduled site access expiry date and an extension will not delay OpCo2 in achieving completion, Sydney Metro may extend the site access period.

Any archaeological or heritage artefacts discovered on or under the Sydney Metro City and Southwest site will, (as agreed between Sydney Metro and OpCo2) be the absolute property of Sydney Metro. OpCo2 must immediately notify Sydney Metro if any artefacts are discovered, protect them and comply with any Sydney Metro instructions, including any directions to suspend work.

11.6 Progressive handover of construction site

Sydney Metro will hand over the construction site in stages, corresponding with the program for completion of the various Foundation Infrastructure Works packages. The timeline diagram below illustrates this process.

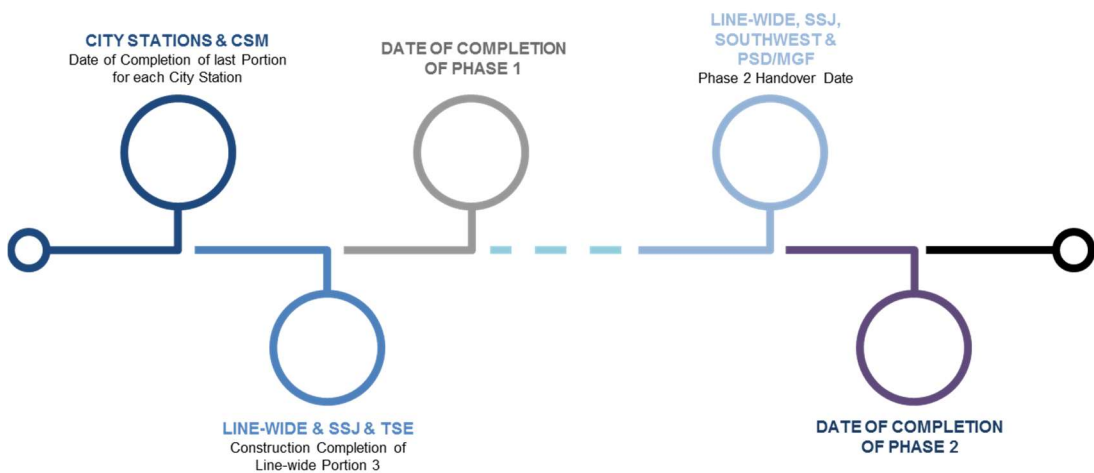


Figure 11-1: Handover diagram

The relevant independent certifier will be responsible for certifying when a portion of the Foundation Infrastructure Works has achieved completion.

If Sydney Metro fails to hand over the relevant part of the construction site to OpCo2 by the agreed date (with the relevant portions of the Foundation Infrastructure Works completed), OpCo2 will be entitled to claim a compensation event (see section 19 (*Compensation Events*)).

11.7 Early handover and interim access

Sydney Metro may at any stage initiate discussions with OpCo2 that relate to bringing forward the site access dates for various parts of the construction site.

Where a portion of the Foundation Infrastructure Works has achieved completion prior to the relevant site access date, Sydney Metro may require OpCo2 to accept handover of the portion on the earlier date, subject to Sydney Metro paying OpCo2 an agreed early handover payment.

In addition, and to maximise flexibility for both parties, if a part of the construction site is safe, clean and clear, Sydney Metro may offer access to OpCo2 on an interim basis. OpCo2 is not required to accept interim access however any failure to accept such

access may be used by Sydney Metro in assessing any delay claim submitted by OpCo2.

11.8 Time

OpCo2 is obliged to use its best endeavours to achieve completion of the OTS2 Works by the 'date for completion' as extended in accordance with the OTS2 Project Deed.

A failure by OpCo2 to use its best endeavours to achieve timely completion of Phase 1 will entitle Sydney Metro to claim general damages for breach of contract. A failure by OpCo2 to achieve timely completion of Phase 2 will entitle Sydney Metro to claim liquidated damages.

If OpCo2 is delayed in achieving completion due to a relief event (see section 18 (*Relief Events*)) OpCo2 may make a claim for an extension of time. If granted and the relevant relief event is also a compensation event, OpCo2 may also claim for compensation in respect of the net financial impact of the period of time for which the extension of time was granted.

Sydney Metro may, in lieu of granting an extension of time, elect to compensate OpCo2 for the additional negative net financial impact incurred by OpCo2 arising from not granting OpCo2 an extension of time.

If OpCo2 fails to achieve completion within 2 years after the date of completion of Phase 2, Sydney Metro will be entitled to terminate the OTS2 Project Deed (see section 21 (*Default and termination arrangements, including step-in arrangements*)). Ultimately, OpCo2 retains the risk of design and construction of the OTS2 Works not being completed on time or to budget for reasons other than a risk borne by Sydney Metro.

If OpCo2 becomes aware of a matter which will, or is likely to delay completion, it must notify Sydney Metro and prepare a corrective action plan in respect of the delay that sets out proposed actions and the time period for each action as well any additional resources or labour required. OpCo2 must take reasonable steps to avoid or minimise the effects of any delay.

OpCo2 must update the delivery program regularly to reflect changes to the program, delays, corrective action plans and any other details required by Sydney Metro.

12. Service delivery and quality requirements

12.1 Sydney Metro City & Southwest site during operations

Sydney Metro has granted to OpCo2 a non-exclusive licence to use and occupy the licensed maintenance area and additional maintained assets during the operations phase.

12.2 Operations

OpCo2 is required to operate the Sydney Metro for the term, including the operation and maintenance of trains, stations, certain station precincts, station car parks, the Sydney Metro Trains Facility and the Sydney Metro Trains Facility (South) so that they are safe, clean, remain fit for their intended purpose and comply with the set minimum operating standards developed in accordance with the SPR.

OpCo2 must operate the Sydney Metro to provide train services in accordance with an indicative timetable that must comply with contract service level requirements and provide the agreed minimum required train services including additional services for specified special events. At any time during the term either OpCo2 or Sydney Metro may request that the parties participate in a review of the activities that OpCo2 must perform in connection with the operation or asset management of the Sydney Metro, including to consider factors such as improvements to reliability and modal coordination, measures to reflect patronage demand and seasonality issues, changes in demographics, land use and infrastructure, measures to overcome identified inefficiencies, customer feedback and changes to identified special events, planned service disruptions, indicative timetables, minimum operating standards and staffing levels, as well as any other factors that Sydney Metro or OpCo2 consider relevant.

Sydney Metro may request changes to the contract service level requirements (within specified levels and at specified incremental prices) and either party may otherwise request a modification to the service levels.

OpCo2's operational responsibilities include providing real-time customer and service information, collection and protection of fare revenue, customer security, managing incidents and customer feedback.

OpCo2 must operate and maintain the Sydney Metro to minimise the occurrence of and to remove and rectify graffiti and vandalism to the trains, stations, electronic ticketing system equipment, station precincts and all other areas within the licensed maintenance areas excluding certain nominated areas for which they must monitor and report any graffiti and vandalism to Sydney Metro.

OpCo2's monthly service payment will be reduced to the extent that OpCo2 fails to meet the service level requirements. See section 15 (*Payment*) for further information regarding the calculation of the service payment.

12.3 Maintenance

OpCo2 must maintain the specified assets so that the Sydney Metro 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. OpCo2 must also rectify all defects (fair wear and tear excepted) within a reasonable time, subject to specified exceptions within the OTS2 Project Deed.

12.4 Asset management system

The asset management system includes the asset management policy, asset management strategy, asset management plan, operations and maintenance manuals and the asset maintenance standards. The system is updated prior to the date of first passenger service of Phase 1 and date of completion of Phase 1 and the date of first passenger service of Phase 2 and the Date of Completion of Phase 2 to include assets in accordance with the SPR.

12.5 Asset management plan and asset information system

OpCo2 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 assets and include a maintenance works program which describes the asset management activities for the following two year period.

OpCo2 must also provide and maintain an asset information system that:

- (a) covers all assets;
- (b) records OpCo2'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 periodic reports that allow OpCo2 and Sydney Metro to monitor asset conditions and compliance; and
- (d) at all times accurately represents the true status and condition of all assets and asset management activities.

Sydney Metro 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 OpCo2's compliance with the maintenance work program.

12.6 Asset management failure

An 'asset management failure' will occur if OpCo2 fails to comply with the maintenance works program and this failure constitutes a material non-compliance with the asset management plan. Where OpCo2 fails to remedy such failure within the required period, Sydney Metro may withhold a specified amount from the service payment each month until the failure is remedied.

12.7 Building management systems

Sydney Metro has, or will enter into, project development agreements with overstation developers for the integrated station developments. As part of this, there will be a building management system and strata management scheme entered into for each development. OpCo2 is required to comply with each building management system and strata management scheme, except to the extent any obligations are retained by Sydney Metro.

12.8 Reporting

OpCo2 must provide to Sydney Metro's representative monthly, quarterly and annual reports on the asset management activities during the operation of the Sydney Metro.

12.9 Handback audit final inspection

Prior to the original expiry date of the OTS2 Project Deed (no earlier than 30 months and no later than 6 months), Sydney Metro's representative may procure an audit of the Sydney Metro. An independent expert will inspect and assess the assets specified for handback and identify any rectification, maintenance or remediation works required. OpCo2 must carry out such works to the satisfaction of the independent expert and so as to satisfy the standards and requirements under the OTS2 Project Deed.

As soon as practicable following the end of the contract term, an independent expert will inspect and assess the Sydney Metro and notify Sydney Metro and OpCo2 of the estimated cost of making good or rectifying any failure by OpCo2. The amount notified by the expert will be a debt due from OpCo2 to Sydney Metro and Sydney Metro may deduct or set off this amount against any other amount otherwise payable to OpCo2.

If the term is extended beyond the original expiry date of 5 May 2034, OpCo2 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.

13. Government contributions/obligations and any Conditional Debt Pay Down (CDPD) obligations

13.11 Government contributions/obligations

In addition to the debt and equity financing for the OTS2 PPP, the OTS2 PPP is also funded by Sydney Metro through the State capital contribution payments. With regards to Sydney Metro's payment obligations, see section 15 (*Payment*) for further details.

13.12 Conditional Debt Pay Down (CDPD) obligations

If the CDPD conditions (see below) are met then Sydney Metro is obliged to pay an amount to OpCo2 equal to 50% of the senior debt (similar to the original OTS Project Deed position). Sydney Metro's obligation to pay the CDPD amount is subject to the following conditions precedent:

- (a) the CDPD period (being the period between the 2nd and 4th anniversary of the date of completion of Phase 2, as reduced by any agreed extension period for Phase 2) has commenced and not expired;
- (b) there is no subsisting OpCo2 event of default or OpCo2 termination event;
- (c) no OpCo2 event of default has occurred in the 6 month period immediately prior to the CDPD notice date (other than a material breach by OpCo2 of an obligation under the OTS2 Project Deed or any other project agreement to which Sydney Metro is a party, but does not include any service payment deduction);
- (d) not more than one OpCo2 event of default has occurred in the 18 month period immediately prior to the CDPD notice date (other than a material breach by OpCo2 of an obligation under the OTS2 Project Deed or any other project agreement to which Sydney Metro is a party, but does not include any service payment deduction);
- (e) no OpCo2 termination event has occurred in the 12 month period immediately prior to the CDPD notice date;
- (f) the costs of rectification of any single subsisting defect other than certain Foundation Infrastructure Works defects, Foundation Infrastructure Works structural defects or platform screen door and mechanical gap fillers systemic defect (during certain periods) or certain OTS civil works defects will not exceed a certain monetary amount;
- (g) the aggregate cost of rectification of all subsisting defects other than certain Foundation Infrastructure Works defects, Foundation Infrastructure Works structural defects or platform screen door and mechanical gap fillers systemic

defect (during certain periods) or certain OTS civil works defects will not exceed a certain monetary amount; and

- (h) no amounts have been retained from the service payment where OpCo2 fails to remedy an asset management failure within the relevant remediation period and not subsequently released (other than interest retained).

The CDPD payment date is the last day of the "Interest Period" under the facility agreement, which is at least 15 business days after the delivery of the CDPD satisfaction notice or such earlier date determined by Sydney Metro in its absolute discretion.

The period before CDPD can be satisfied can be reduced as a result of extensions of time granted for Phase 2 Change Events, provided that the reduction can never result in a period less than 180 days after the date of completion of Phase 2.

14. User fees (if applicable), including escalation

This section is not relevant to the OTS2 PPP.

15. Payment

15.1 Payments

Under the OTS2 Project Deed, Sydney Metro has obligations to make the following material payments:

- (a) service payment (monthly), monthly modifications payment (for dedicated modifications personnel), early site access and handover payments;
- (b) State capital contribution;
- (c) securitised licence payment (a payment which is the function of OpCo2's financing structure);
- (d) milestone payments;
- (e) Phase 2 construction payments (payment for the Phase 2 OTS2 Works);
- (f) collaboration payments (payments for the achievement of certain events that require OpCo2 and the relevant Foundation Infrastructure Works contractor to work together to achieve them - overall collaboration payments have been introduced as risk mitigation);
- (g) final completion payment (following the date of completion of Phase 2);
- (h) payment for option trains if the train option is exercised, including exchange rate risk exposure up to date train option is exercised; and
- (i) any other payments expressly required under the OTS2 Project Deed.

The above payments are separate to any payments that Sydney Metro has to make in respect of matters such as compensation events, Phase 2 Change Events (see definition below), modifications, etc.

It is estimated that the net present value of the financial costs of the OTS2 PPP over the term to Sydney Metro is \$3.91 billion.

15.2 Service payment mechanism

Monthly service payments will be made to OpCo2 once train services have commenced and they will cover OpCo2's cost of financing, design, construction, asset management and performance of all operations.

The service payment will be determined in accordance with the payment mechanism that is designed to incentivise OpCo2 to deliver the project's service performance requirements and includes:

- (a) a service-based payment with no demand risk, with Sydney Metro retaining revenue and the responsibility for setting fares;

- (b) a deduction regime which will reduce OpCo2's service payment if it fails to meet Key Performance Indicators (**KPIs**) based on the project's output specification;
- (c) an asset management monitoring and retention mechanism to encourage effective stewardship of all assets; and
- (d) an appropriate "bedding in" period for the abatement regime to enable OpCo2 to establish its operational performance.

15.3 Service payment calculation

More specifically, the service payment each month is comprised of:

- (a) an indexed availability fee; plus
- (b) an indexed lifecycle component; minus
- (c) an availability deduction (measured against missed train services and closed station platforms); minus
- (d) a timeliness deduction (measured against frequency of train services and total train journey time); minus
- (e) a service quality deduction (measured against the service quality KPIs described below); minus
- (f) an asset functionality deduction (measured against the asset functionality KPIs described below); minus
- (g) an energy deduction (measured against a demand usage strategy designed to minimise network demand charges); plus
- (h) a customer satisfaction payment (measured against customer satisfaction surveys); plus
- (i) an asset management adjustment (measured against compliance with the maintenance works program); plus
- (j) the floating rate amount (measured against quarterly interest rate movements); plus
- (k) the energy consumption incentive payment (measured against an annual target electricity consumption rate).

The OTS2 Project Deed also sets out a regime that allows Sydney Metro to request 'service level adjustments' (i.e. short and long-term adjustments to the service timetable, which will subsequently impact the calculation of the service payment).

15.4 Key Performance Indicators

OpCo2's performance will be assessed and measured each quarter during the operations phase) against the service quality and asset functionality KPIs set out below.

If OpCo2 fails to meet the required quality and asset functionality standards OpCo2's service payment will be reduced and calculated based on the respective KPI scores and weighting up to a maximum deduction amount.

If OpCo2's quality and asset functionality is scored below a specified service failure level for certain KPIs a further deduction percentage will be applied for that quarter.

The KPIs are set out in the table below.

Table 4: KPIs

| Service Quality KPIs | Asset Functionality KPIs |
|--|--|
| Train cleanliness, condition and graffiti | On-train environment (temperature and lighting) |
| Station cleanliness, condition and graffiti | Station environment (temperature and lighting) |
| Public areas and rail corridor cleanliness, condition and graffiti | Lift and escalator access |
| Customer information during service disruptions | Lift access for existing southwest lifts |
| Gate management | Other assets availability (CCTV, help points, passenger information display systems, announcement units, induction loops (a communication system used to assist hearing-aid users) and electronic ticketing equipment) |
| Customer satisfaction & patronage growth | |
| Complaints management | |

15.5 Final completion payment

Sydney Metro will pay OpCo2 a final completion payment upon completion of Phase 2.

15.6 Equity escrow account

OpCo2 is required to deposit into an equity escrow account the amounts in respect of the equity component relating to the Sydney Metro City of the service payment during the operations phase of Phase 1 and may only withdraw the amounts upon completion of Phase 2.

16. Foundation Infrastructure Works

As stated previously, Sydney Metro is responsible for procuring the Foundation Infrastructure Works and handing those works over to OpCo2 to integrate with the OTS2 Works to achieve completion of Phase 1, completion of Phase 2 and the operate and maintain the Sydney Metro.

16.11 Draft contracts

While a number of the Foundation Infrastructure Works Contracts have been procured as at the date of the OTS2 Project Deed, there are some Foundation Infrastructure Works Contracts that were not procured at contract close of the OTS2 PPP.

The OTS2 Project Deed therefore contains a process for Sydney Metro to provide OpCo2 with draft and final versions of the Foundation Infrastructure Works Contracts.

In certain circumstances, OpCo2 may be entitled to a modification if it is unable to provide the confirmation.

16.12 Foundation Infrastructure Works changes

Either party may propose changes to the Foundation Infrastructure Works.

Where Sydney Metro proposes a Foundation Infrastructure Works change which prevents OpCo2 from complying with its obligations under the OTS2 Project Deed, Sydney Metro is responsible for the potential time and cost risk of such changes where it decides to proceed with the proposed Foundation Infrastructure Works change instead of taking one of the other options available to it under the OTS2 Project Deed (ie withdrawing or amending the change, or issuing a modification to accommodate the change). Sydney Metro must also reimburse OpCo2 for any reasonably incurred costs in considering the relevant Foundation Infrastructure Works change.

If OpCo2 proposes a Foundation Infrastructure Works change, Sydney Metro must not unreasonably refuse to procure the Foundation Infrastructure Works change if OpCo2 agrees to pay all additional costs of Sydney Metro in connection with the Foundation Infrastructure Works change. If the change is implemented by Sydney Metro, OpCo2 warrants that those works will remain fit for the purpose of enabling OpCo2 to comply with its obligations under the OTS2 Project Deed.

There is also a process in the OTS2 Project Deed whereby Sydney Metro can require OpCo2 to accept a Foundation Infrastructure Works change.

16.13 Maintenance of Foundation Infrastructure Works

Sydney Metro is responsible for the maintenance of the Foundation Infrastructure Works prior to handover of each portion to OpCo2.

16.14 Foundation Infrastructure Works known defects

The OTS2 Project Deed requires Sydney Metro to deliver the Foundation Infrastructure Works in accordance with the Foundation Infrastructure Works Contracts. However, Sydney Metro may hand over the Foundation Infrastructure Works to OpCo2 with known defects, as listed in the relevant notice of completion.

OpCo2 must notify Sydney Metro within the specified time period from hand over if the known defect is not acceptable or will have an impact on OpCo2's ability to perform its obligations under the OTS2 Project Deed during the known defects rectification period. If Sydney Metro agrees, Sydney Metro must direct OpCo2 to carry out a modification to modify the OTS2 Works or OpCo2's activities to accommodate the impact during the known defects rectification period.

16.15 Foundation Infrastructure Works defects

Sydney Metro will be responsible for any Foundation Infrastructure Works defects which arise during specified periods depending on the Foundation Infrastructure Works package. Outside of these periods, OpCo2 will be responsible for the rectification and consequences of any Foundation Infrastructure Works defects.

OpCo2 may carry out urgent or temporary repairs to overcome any Foundation Infrastructure Works defects.

17. Change and project modification procedures

17.1 Principal initiated modifications

Sydney Metro may modify the OTS2 Project Deed requirements relating to the Sydney Metro or OpCo2's activities. Sydney Metro will compensate OpCo2 for the net financial impact of the modification and grant any relief necessary (including granting an extension of time to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a milestone date for completion or a date for acceptance).

17.2 OpCo2 initiated modifications

OpCo2 may propose a modification to the OTS2 Project Deed. Sydney Metro has absolute discretion to approve or reject the proposed modification. OpCo2 bears all risks and costs associated with a modification proposed by OpCo2 (unless otherwise agreed by Sydney Metro).

17.3 Pre-agreed options

Sydney Metro and OpCo2 have negotiated a number of pre-agreed options that have the potential to expand or reduce the scope of works for the OTS2 PPP. These include:

- (e) the pricing of a minimum level of required train services of 5 minute maximum headways running between all origin and destinations from the commencement of Phase 1 during all service periods (including weekends) except for 4 minute maximum headways during specified service periods;
- (f) the pricing of a minimum level of required train services of 5 minute maximum headways running between all origin and destinations from the commencement of the Full Operations Phase during all service periods (including weekends) except for 4 minute maximum headways during specified service periods;
- (g) early access to the tunnels from the Southern Dive to Waterloo Station and Waterloo Station;
- (h) the provision of integrated factory acceptance test for the Sydney Metro City;
- (i) the provision of waterproof cables in place of non-waterproof cables for SMTF (South) and Sydenham Station CBTC signalling;
- (j) the provision of waterproof cables in place of non-waterproof cables for Sydney Metro Southwest(excluding Sydenham Station) signalling; and
- (k) the supply of 14 additional trains.

Sydney Metro may, in its absolute discretion, at any time prior to each option's set election date, direct OpCo2 (by giving notice) to implement any pre-agreed option.

The pre-agreed options do not in any way limit Sydney Metro's right to engage other contractors, or to initiate a modification or augmentation to complete the work identified in the pre-agreed options.

17.4 Augmentation

The OTS2 Project Deed establishes a framework by which an augmentation can be discussed and potentially agreed upon by the parties. An augmentation is a continuous extension to the rail infrastructure and/or systems of the Sydney Metro to form a single, integrated operational extended metro rail line. It is distinct from a modification, which are generally variations within the scope of works contemplated by the parties.

Sydney Metro may at any time propose an augmentation to OpCo2. If Sydney Metro proposes but does not proceed with an augmentation, Sydney Metro must reimburse OpCo2 for those costs which the parties agree at the outset of the augmentation process will be reimbursed if the augmentation does not proceed.

18. Relief events

Sydney Metro recognises that there may be events out of OpCo2's control, which prevent OpCo2 from performing its obligations. The concept of relief events in the OTS2 Project Deed permits OpCo2 to claim an extension of time:

- (a) to the date for completion of Phase 1, the relevant milestone date for completion or the relevant date for acceptance for each batch of Option 1 Trains on the occurrence of certain defined events during Phase 1 of the Project; or
- (b) to the date for completion of Phase 2 on the occurrence of certain defined events during Phase 2 of the Project.

While relief events are also relevant under the OTS Project Deed, given the different phases and milestones and greater number of interfaces the risk of relief events occurring is greater under the Sydney Metro City & Southwest. For Phase 2, there is a shorter list of relief events applies (**Relief Events (Other)**) when compared to those applicable to Phase 1 (**Relief Events (PPP)**). A further distinction is made whereby OpCo2 may claim an extension of time to the date for completion of Phase 2 but will not be relieved from having to pay liquidated damages for the period of that extension (**Extension Only Relief Events**).

18.1 Relief Events (PPP)

Examples of Relief Events (PPP) included in the OTS2 Project Deed are:

- (a) a compensation event (see below for summary);
- (b) a fire, explosion, flood, storm, tempest, lightning, cyclone, hurricane, mudslide, landslide, earthquake and drought;
- (c) a terrorist act;
- (d) war (declared or undeclared), armed conflict, riot or civil commotion;
- (e) chemical or biological contamination, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (f) failure by any authority, or a provider of gas, water, sewerage, electricity or telecommunications utilities, to carry out works or provide services to the Sydney Metro 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;
- (g) any event which causes loss or damage to the OTS2 Works, the temporary works or the Sydney Metro;

- (h) any blockade or embargo other than a blockade or embargo which only affects OpCo2 and/or one or more OpCo2 contractor.
- (i) any industrial action, other than industrial action which only affects OpCo2 and/or one or more OpCo2 contractors; and
- (j) any event or occurrence which deprives OpCo2 of any access to the Sydney Metro site that it is entitled to under the OTS2 Project Deed.

18.2 Relief Events (Other)

The lists of Relief Events (Other) and Relief Events (PPP) are similar, except that some Relief Events (PPP) are not Relief Events (Other).

18.3 Extension Only Relief Events

Examples of Extension Only Relief Events included in the OTS2 Project Deed are:

- (a) fire or explosion generally (ie not resulting from flood, earthquake, terrorist act, war or chemical or biological contamination), storm, tempest, lightning, cyclone, hurricane, mudslide, landslide or drought;
- (b) failure by any authority, or a provider of gas, water, sewerage, electricity or telecommunications utilities, to carry out works or provide services to the Sydney Metro 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; and
- (c) any event which causes loss or damage to the OTS2 Works, the temporary works or the Sydney Metro.

19. Force majeure events

If a 'relief event' (other than a 'compensation event') prevents, or can reasonably be expected to prevent, OpCo2 from complying with a material part of its obligations under the OTS2 Project Deed for a continuous period exceeding 180 days 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 OTS2 Project Deed. If the parties are unable to reach agreement on such measures, either party may terminate the OTS2 Project Deed, and Sydney Metro may pay a termination payment to OpCo2.

Sydney Metro can suspend OpCo2's right to terminate, within 20 business days of receipt of OpCo2's termination notice. If Sydney Metro chooses to do this, Sydney Metro will be liable to pay OpCo2 certain payments during the period of suspension.

20. Compensation events

The OTS2 Project Deed requires Sydney Metro to compensate OpCo2 for the net financial impact of certain events. The events that trigger this right to compensation are called Compensation events, and include (but are not limited to) each of the following:

- (a) Sydney Metro breaches its obligations under the OTS2 Project Deed or any other project agreement;
- (b) court proceedings are commenced in relation to a planning approval, or a planning approval is modified, withdrawn, revoked, replaced, invalidated or suspended, except where such action is due to any event the subject of a modification to planning approvals which is at OpCo2's cost and risk;
- (c) OpCo2 or an OpCo2 contractor is required to comply with an environmental notice to the extent that it does not arise out of or in connection with any contamination for which OpCo2 is responsible;
- (d) Sydney Metro fails to give OpCo2 access to a part of the construction site on the site access date (or such earlier date as accepted by OpCo2 in accordance with the OTS2 Project Deed);
- (e) the existence, creation or variation of any easement or other arrangement burdening or benefiting the land in the construction site which has an adverse effect on OpCo2's activities;
- (f) OpCo2 is directed, ordered or required to cease to perform any of its activities (or to change the way it does so), or to provide reasonable assistance in connection with dealing with an application for a determination of native title under the Native Title Act 1993 (Cth);
- (g) Sydney Metro carries out, or directs OpCo2 to carry out, additional tests in respect of the OTS2 Works and the Sydney Metro;
- (h) the creation of an easement (or release, variation, modification or waiver of an easement); and
- (i) prior to the OTS Incorporation Date, the occurrence of a compensation event under the OTS Project Deed.

The list of OpCo2 compensation events is due to the complexity of the Sydney Metro City & Southwest and its delivery structure. OpCo2 will receive compensation from Sydney Metro for the net financial impact of the relevant compensation event (as calculated in accordance with the OTS2 Project Deed) provided OpCo2 complies with certain requirements.

The concept of net financial impact is used in various situations under the OTS2 Project Deed. As well as in relation to compensation events it is used in relation to

other matters such as Sydney Metro directed modifications and certain changes in law or policy events. The calculation of the net financial impact includes matters such as additional capital costs along with margin and preliminaries, additional operation and maintenance costs along with margin, additional professional service provider costs, a risk and opportunity amount, redundancy payments, additional bank guarantees or insurance costs and additional liability exposure, additional financing and equity costs, escalation and foreign exchange adjustments (where relevant) and also loss of revenue.

Not all of these heads of costs will be relevant in every situation (eg some heads of costs are only recoverable in respect of delivery phase impacts) and the focus is on the net financial impact so savings are taken into account (eg if there is a modification to remove scope). The net financial impact regime requires granularity in terms of breakdown of costs at the various contractor levels. Certain margins and percentages for calculating preliminaries have been pre-agreed to avoid prolonged negotiations later. There are also a number of bespoke risk sharing regimes that impact the way in which the net financial impact is calculated, such as general changes in law and project specific changes in law.

Where the claim for compensation is in connection with a delay to the delivery activities, OpCo2 is only entitled to claim compensation for loss for the period of time it has been granted an extension of time up to the new date for completion of Phase 1 or Phase 2 or the date of acceptance of a batch of Option 1 Trains (as applicable).

OpCo2 will also receive relief from being in breach of its obligations to the extent that OpCo2's non-performance is caused by the compensation event.

Prior to the OTS Incorporation Date, OpCo2 can claim a compensation event in relation to the Sydney Metro City & Southwest where it can demonstrate that a Sydney Metro Northwest compensation event will have an impact on the Sydney Metro City & Southwest. From the OTS Incorporation Date, OpCo2 can also claim a compensation event for certain existing Sydney Metro Northwest compensation events as from that point the entire Sydney Metro is being operated as a single end-to-end line.

21. Default and termination arrangements, including step-in arrangements

21.1 OpCo2 event of default (persistent breaches, frequent breaches)

Each of the following will be an 'OpCo2 event of default':

- Any failure by OpCo2 to regularly and diligently progress all the activities OpCo2 is required to perform in connection with the design and construction of the OTS2 Works (**Delivery Activities**).
- Any failure by any of the projects debt financiers and equity investors to provide all of the funding contemplated under the senior debt financing documents or the equity documents.
- Availability of train services falls below a specified level.
- Timeliness of train services falls below a specified level.
- Service quality or asset functionality falls below specified levels.
- Any failure by OpCo2 to make a due payment, if this failure is not remedied within 20 business days of a written demand from Sydney Metro.
- Any material failure by OpCo2 to comply with the asset management plan and subsequent failure to rectify it within 6 months of expiry of the set remediation period.
- Any breach by OpCo2's reporting obligations, including breach of routine reporting obligations or a material inaccuracy in an OpCo report which in either case has a material impact on Sydney Metro or government rail agencies or customers.
- Any breach by OpCo2 of the restrictions on refinancing.
- Any breach by OpCo2 of its subcontracting obligations to Sydney Metro.
- Any failure by OpCo2 or an associate to hold the required rail safety accreditations or to comply with their terms.
- Any act or omission by OpCo2, while performing OpCo2's obligations which leads ONRSR to notify OpCo2 that it proposes to suspend or cancel OpCo2's accreditation, or any failure by OpCo2 to undertake actions specified by ONRSR that could result in ONRSR suspending or revoking OpCo2's accreditation.
- Any fraudulent or false, misleading or deceptive conduct by OpCo2, or a Core Contractor in connection with the OTS2 PPP, or if the Independent Commission Against Corruption determines that OpCo2 or a Core Contractor has engaged in any corrupt conduct, collusive pricing or other similar activity.
- Any false or misleading representation or warranty by OpCo2 in the OTS2 Project Deed or any other Principal Project Agreement, if this misrepresentation or warranty has a material adverse effect on OpCo2's ability to comply with its obligations under the Project Agreements.

- If OpCo2 has not achieved Completion of Phase 1 (by the Date for Completion of Phase 1) or Completion of Phase 2 (by the Date for Completion of Phase 2).
- If OpCo2 has not achieved milestone completion of a milestone by the relevant milestone date for completion.
- If OpCo2 has not achieved the train option acceptance requirements for a batch of Option 1 Trains by the relevant date for acceptance of those Option 1 Trains.
- Any other material breach by OpCo2 of the OT2S Project Deed or any of the Principal Project Agreements (other than a breach which results in a deduction of the service payment).

If any of these OpCo2 events of default occur, Sydney Metro may issue a formal default notice. At the same time, Sydney Metro must also provide a copy of this notice to the Security Trustee/Agent under the Financier's Tripartite Deed. If the 'OpCo2 event of default' can be remedied, OpCo2 must either remedy the event within ten business days of Sydney Metro's notice or prepare and submit a draft cure plan to Sydney Metro by the same deadline, describing what OpCo2 will do to remedy the event and proposing a cure period.

If Sydney Metro accepts an OpCo2 cure plan, OpCo2 must implement the cure plan within the cure period or diligently pursue the remediation of the 'OpCo2 event of default' in other ways. Provided OpCo2 is diligently pursuing a remedy, the cure period may be extended by Sydney Metro if necessary. Sydney Metro may not unreasonably refuse OpCo2's first application for such an extension, but may refuse to consider any subsequent applications in its absolute discretion.

If an 'OpCo2 event of default' cannot be remedied, OpCo2 must submit a draft prevention plan to Sydney Metro describing what OpCo2 will do to prevent any recurrence of the event. If an OpCo2 prevention plan has been approved by Sydney Metro, OpCo2 must implement it.

If OpCo2 fails to comply with any of its obligations following a Sydney Metro notification of an 'OpCo2 event of default', as summarised above, this will constitute an 'OpCo2 termination event', see section below.

Persistent breaches

If OpCo2 breaches the same obligation more than once in any 12 month period, Sydney Metro may issue a persistent breach notice. If the relevant breach continues more than 30 business days after the notice is issued, or recurs within the 12 month period commencing 30 business days after the notice is issued, Sydney Metro may issue a final persistent breach notice.

If the relevant breach continues more than 30 business days after this final notice, or recurs three or more times within the 6 month period after the final notice, this will constitute an 'OpCo2 termination event', see section below.

Frequent breaches

Alternatively, if OpCo2 commits frequent breaches (which may be of different obligations) which, in aggregate, substantially frustrate the objects of the OTS2 Project Deed, or significantly impair Sydney Metro's ability to fulfil its statutory

objectives under the *Transport Administration Act 1988* (NSW), or have a material adverse effect on the Sydney Metro, the electronic ticketing system or customers, or in Sydney Metro's reasonable opinion indicate that OpCo2 does not intend to be bound by the OTS2 Project Deed, then Sydney Metro may issue a frequent breaches notice.

If frequent breaches continue to occur during the 12-month period commencing 30 business days after the notice, Sydney Metro may issue a final frequent breaches notice. If frequent breaches occurs in the 6 month period commencing 30 business days after the issue of a final frequent breaches notice, this will constitute an 'OpCo2 termination event', see section below.

Notwithstanding Sydney Metro exercising its rights in respect of a call-in, (where Sydney Metro may notify OpCo2 during the operations phase that it is not satisfied), an event of default, a persistent breach or frequent breaches, Sydney Metro 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.

21.2 Sydney Metro termination rights

The OTS2 Project Deed entitles Sydney Metro to terminate the OTS2 Project Deed for a number of reasons. The following is a summary of Sydney Metro's rights to terminate.

21.3 OpCo2 termination events

Each of the following is an 'OpCo2 termination event':

- (a) after the date of completion of Phase 1 the number of missed train services in a month or rolling period exceeds a specified level;
- (b) after the date of completion of Phase 1, more than a specified percentage of train services in a month exceeds the maximum train journey time by a certain level in a certain period;
- (c) after the date of completion of Phase 1, OpCo2 accrues over a certain level of service failure points over a rolling period;
- (d) Sydney Metro has issued a final persistent breach notice and the relevant breach has continued beyond a certain period or recurred on multiple occasions after the date of service of the final persistent breach notice;
- (e) Sydney Metro has issued a final frequent breaches notice and frequent breaches continue to occur at any time in a certain period commencing after the date of service of the final frequent breaches notice;
- (f) OpCo2 fails to Remedy an OpCo2 event of default (which is capable of being remedied) within the applicable cure period;

- (g) OpCo2 fails to prevent the recurrence of a OpCo2 event of default which is the subject of an approved prevention plan;
- (h) OpCo2 fails to submit, amend or implement a cure/prevention plan in accordance with the OTS2 Project Deed;
- (i) OpCo2 fails to achieve completion of phase 1 or the OTS Incorporation Date by the longstop date for Phase 1;
- (j) OpCo2 fails to achieve completion of Phase 2 by the longstop date for Phase 2;
- (k) OpCo2 abandons the OTS2 PPP;
- (l) an insolvency event occurs in relation to an OpCo2 entity;
- (m) the Office of the National Rail Safety Regulator suspends or revokes any accreditation required by OpCo2, the Integrator or the O&M Contractor (both a **Core Contractor**) to perform OpCo2's activities.
- (n) an insolvency event occurs in relation to a Core Contractor or a Core Contractor guarantor (and which, in relation to the Integrator or the Integrator guarantor, only occurs prior to the date of final completion of Phase 2) whether or not OpCo2 is then in breach of this deed, and:
 - (i) that Core Contractor or Core Contractor guarantor is not replaced within 120 business days; or
 - (ii) at any time during that period, OpCo2 is not diligently pursuing the replacement of that Core Contractor or Core Contractor guarantor (as applicable),
 by a person that:
 - (iii) satisfies the requirements of the OTS2 Project Deed; or
 - (iv) is otherwise acceptable to Sydney Metro (acting reasonably);
- (o) prior to the OTS Incorporation Date the OTS Project Deed is terminated in accordance with the termination for OpCo termination event clause in the OTS Project Deed;
- (p) OpCo2 does not effect and maintain an insurance required by the OTS2 Project Deed, and fails to do so within 10 business days after receipt of a notice from Sydney Metro directing it to do so;
- (q) OpCo2 breaches its obligations not to assign, novate or otherwise deal with its rights or obligations under any project agreement without Sydney Metro's prior approval;

- (r) OpCo2 breaches its obligations not to change ownership of any OpCo2 group member without Sydney Metro's prior written consent;
- (s) a change in control of the Integrator occurs without the Sydney Metro's approval and OpCo2 fails to either terminate the Integrator Deed and re-tender those works/services, or to take other such action as agreed with Sydney Metro;
- (t) OpCo2 breaches its obligation not to permit a change in control of the O&M Contractor without Sydney Metro's prior written consent;
- (u) a Core Contractor or the Alstom Significant Contractor is replaced by OpCo2 or a Core Contractor without Sydney Metro's approval and OpCo2 fails to:
 - (i) terminate the relevant contract and retender the works or services within 90 days after receiving a notice from Sydney Metro directing it to do so; or
 - (ii) ensure the Core Contractor terminates any contract with the replacement Alstom Significant Contractor and retenders the works or services within 90 days after receiving a notice from Sydney Metro directing it to do so;
- (v) OpCo2 or a Core Contractor ceases to hold an approval or breaches a law, and such failure or breach is (in the reasonable opinion of Sydney Metro) material to the performance of OpCo2's obligations under the OTS2 Project Deed and is not remedied within 30 days of Sydney Metro notifying OpCo2 of the failure/breach, or OpCo2 becoming aware of the failure/breach (whichever is earlier);
- (w) any project agreement is revoked, terminated or otherwise ceases to be enforceable against OpCo2 or any other party (except Sydney Metro, Transport for NSW, the State, Sydney Trains or a Foundation Infrastructure Works contractor), and it is not remedied within 30 days of OpCo2 becoming aware;
- (x) any project agreement becomes invalid, void or voidable (except where Sydney Metro, Transport for NSW, the State, Sydney Trains or a Foundation Infrastructure Works contractor has caused it to be as such), and it is not remedied within 30 days of OpCo2 becoming aware;
- (y) it is (or becomes) unlawful for OpCo2 or a Core Contractor to perform any of its obligations under the project agreements, and it is not remedied within 30 days of OpCo2 becoming aware; and
- (z) OpCo2 has not achieved the train option acceptance requirements for each option train by the longstop date for Phase 2.

21.4 Termination payment – OpCo2 termination events

If the OTS2 Project Deed is terminated by Sydney Metro as a result of an OpCo2 termination event, Sydney Metro shall pay OpCo2:

- (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 Sydney Metro to OpCo2,

less

- (b) (if an independent expert has determined the estimated fair value) the adjusted post termination service payments paid by Sydney Metro, tender costs, amounts that Sydney Metro is entitled to set off or deduct, amounts owed by OpCo2 to Sydney Metro, net gains accruing to OpCo2 in connection with the termination, insurance proceeds, amounts held in certain bank accounts, amounts paid to OpCo2 by Sydney Metro for maintenance or refurbishment which has not been carried out and the securitisation refund payment.

If the OTS2 Project Deed is terminated as a result of OpCo2's abandonment of the OTS2 PPP, OpCo2 will not receive any termination payment.

If such termination payment, or any other termination payment, is zero or a negative number, the negative number will be deemed to be zero. Sydney Metro shall have no obligation to make any payment to OpCo2 and Sydney Metro shall be released from all liability to OpCo2 for breaches and/or termination.

21.5 Sydney Metro termination events

Each of the following is a 'Principal termination event':

- (a) Sydney Metro fails to comply with its payment obligations and the failure is not remedied within 20 business days of a written demand from OpCo2;
- (b) the State expropriates, sequesters or requisitions a material part of the Sydney Metro or any equity interest; or
- (c) Sydney Metro breaches the OTS2 Project Deed which substantially frustrates or renders it impossible for OpCo2 to achieve completion of the OTS2 Works or comply with a material part of its obligations with respect to the operations activities under the OTS2 Project Deed for a continuous period of 2 months.

If a Principal termination event occurs, OpCo2 may give Sydney Metro 30 business days' notice of its intention to terminate the OTS2 Project Deed. Sydney Metro is entitled to suspend OpCo2's right to terminate for a certain period of time depending on the relevant Principal termination event or until that Principal termination event (or its effects) has been overcome. If Sydney Metro's suspension of OpCo2's right to terminate expires and the Principal termination event has not been remedied, OpCo2 may immediately terminate the OTS2 Project Deed by notice to Sydney Metro.

21.6 Voluntary termination by Sydney Metro

Sydney Metro may at any time for its sole convenience and without giving reasons terminate the OTS2 Project Deed by written notice to OpCo2 with effect from the date stated in the notice.

21.7 Termination in connection with an augmentation

Sydney Metro may terminate the OTS2 Project Deed pursuant to the voluntary termination clause in the OTS2 Project Deed if the parties are unable to reach agreement on any matters that are the subject of a proposed augmentation.

21.8 Termination payments - Principal termination events, voluntary termination and termination for augmentations

Subject to the below paragraphs, if the OTS2 Project Deed is terminated by Sydney Metro for its sole convenience or terminated as a result of a Principal termination event or in connection with an augmentation, Sydney Metro shall pay OpCo2:

- (a) an amount equal to the senior debt as at termination, an amount giving a rate of return to equity calculated based on whether the termination occurs before or post the OTS Incorporation Date, subcontractor breakage costs, amounts due and payable by Sydney Metro to OpCo2 and employee redundancy payments,

less

- (b) amounts owed by OpCo2 to Sydney Metro, net gains accruing to OpCo2 in connection with the termination, insurance proceeds, amounts held in certain bank accounts and the securitisation refund payment.

If such termination payment, or any other termination payment, is zero or a negative number, the negative number will be deemed to be zero.

21.9 Termination for an uninsurable risk or force majeure

Sydney Metro may terminate the OTS2 Project Deed following the occurrence of an uninsurable risk, if:

- (a) OpCo2 and Sydney Metro are unable to reach agreement on appropriate measures to mitigate the risk; and
- (b) the uninsurable risk causes material damage, loss or destruction to a substantial portion of the Sydney Metro or the OTS2 Works.

Alternatively, Sydney Metro or OpCo2 may terminate the OTS2 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 OTS2 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.

21.10 Termination payments - termination for an uninsurable risk or force majeure

If the OTS2 Project Deed is terminated for an uninsurable risk or force majeure, Sydney Metro shall pay OpCo2:

- (a) an amount equal to the senior debt at termination, an amount equal to a portion of the calculated equity return, amounts due and payable by Sydney Metro to OpCo2 and certain subcontractor breakage costs,

less
- (b) net gains accruing to OpCo2 in connection with the termination, amounts owed by OpCo2 to Sydney Metro, insurance proceeds, amounts held in bank accounts and the securitisation refund payment.

21.11 Cross default termination

As the Sydney Metro City & Southwest is being procured by means of an augmentation to the OTS Project Deed, the Sydney Metro Northwest and the Sydney Metro City & Southwest cannot be incorporated as a single railway if the OTS Project Deed were to be terminated. Accordingly, the OTS2 Project Deed contains cross default provisions that apply if the OTS Project Deed was terminated prior to the date of completion of Phase 1.

22. Contractual remedies available to the Crown

Should OpCo2 default on its obligations related to the OTS2 PPP, or should Sydney Metro terminate the OTS2 Project Deed, Sydney Metro will have a number of different contractual remedies available to it.

22.1 State step-in rights

Sydney Metro is entitled under the OTS2 Project Deed, Integrator Deed Side Deed and O&M Contract Side Deed, to step-in and effectively assume OpCo2's rights and obligations under the relevant agreement, see section 21 (*Default and termination arrangements, including step-in arrangements*).

22.2 Sue for breach

If OpCo2 breaches any of the Principal Project Agreements, Sydney Metro may, in addition to, or as an alternative to any of the rights or remedies available to Sydney Metro under the Principal Project Agreements, sue OpCo2 or exercise any other contractual or other legal or equitable rights it holds against OpCo2, including (if relevant and available), its rights under any bank securities and/or its rights under the OpCo2 Deed of Charge or FinCo Deed of Charge. No delay or omission by Sydney Metro in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

22.3 Enforcement of provisions

Sydney Metro may enforce provisions under the OTS2 Project Deed where OpCo2 has failed to meet certain performance standards. OpCo2 has promised that if it fails to comply with certain standards, this will result in either an adjustment to the service payment sum, see section 15 (*Payment*) for more on service payments, or an obligation to pay Sydney Metro certain lump sums calculated on the severity of the breach. OpCo2 has promised to meet the following performance standards, including:

- (a) compliance with the demand usage strategy, a strategy Sydney Metro and OpCo2 will develop as to how OpCo2 can draw electricity from connection points each month during the operations phase. If OpCo2 fails to comply, this will result in a deduction to the service payment;
- (b) compliance with the maintenance works program, a works program required under the asset management plan. If OpCo2 fails to comply this will result in Sydney Metro being able to withhold a specified amount from the service payment each month for a set period;
- (c) acceptable:
 - (i) availability and timeliness of train services;
 - (ii) quality of customer service;
 - (iii) cleanliness of trains, stations and public areas;

- (iv) temperature and lighting on trains and stations, lift and escalator access; and
 - (v) availability of CCTV, announcement equipment, and help points,
- failure to comply with these quality requirements by OpCo2 will result in an adjustment to the service payment;
- (d) timely handback of track the subject of a track possession. If OpCo2 is late in handing back the track (subject to a few limited exceptions), OpCo2 must pay specified liquidated damages to Sydney Metro; and
 - (e) minimal disruption, interference or adverse impact on Sydney Trains and Sydney Train's facilities. If OpCo2 fails to comply, OpCo2 will incur a liability for a specified amount to Sydney Metro, known as an interference payment.

22.4 Set-off rights

In certain situations, Sydney Metro is entitled to set-off from any amount due from Sydney Metro to OpCo2 under a Principal Project Agreement:

- (a) any debt or moneys owed from OpCo2 to Sydney Metro; and
- (b) any claim to money Sydney Metro makes in good faith against OpCo2 whether for damages or otherwise and whether or not the amount is disputed.

OpCo2 does not have these same set-off rights.

22.5 Bonds

In addition to the securities granted to Sydney Metro under the Deed of Charges given by OpCo2 and Finance Co, OpCo2 must give Sydney Metro an unconditional bank bond (**Handback Security Bond**), to secure the performance of OpCo2's handback obligations under the OTS2 Project Deed. This Handback Security Bond, must be provided at least 18 months before the original expiry date of 5 May 2034. If OpCo2 fails to comply with this requirement, OpCo2 will not be in breach of the OTS2 Project Deed but Sydney Metro may withhold a specified amount from each monthly service payment for up to ten months.

If the term of the project is extended (see section 7 (*Contract term*)), OpCo2 must provide an additional unconditional bank bond (**Extension Security Bond**). Failure to provide the Extension Security Bond will not be a breach of the OTS2 Project Deed but will result in the term of the OTS2 Project Deed expiring on the original expiry date of 5 May 2034.

Sydney Metro has the right to call on any bond at any time under the OTS2 Project Deed, however, Sydney Metro's right to apply the proceeds of either bonds is limited. Subject to these rights, if either of these bonds are not drawn upon, these bonds must be released by Sydney Metro as soon as practicable after receiving set final inspection notices.

23. State step-in rights

23.1 OTS2 Project Deed

Under the OTS2 Project Deed, Sydney Metro may step-in for an OpCo2 termination event and for safety-related matters. There is no specific step-in Right linked to poor performance (except to the extent the poor performance is significant enough to trigger an OpCo2 termination event or results in a safety related matter).

In relation to poor performance more generally, OpCo2 may be liable for service payment deductions. Prolonged poor performance can also trigger OpCo2 event of default and ultimately termination events.

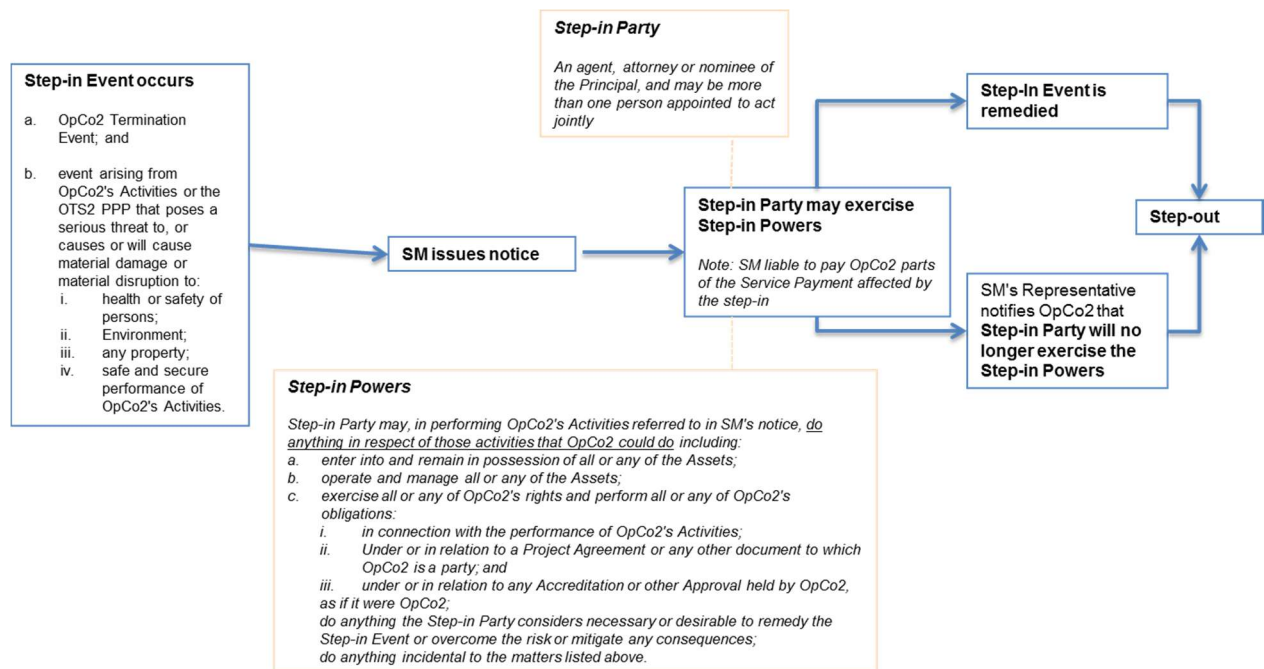


Figure 23-1: Step-in procedure under OTS2 Project Deed

24. Change in control and assignment provisions

24.1 Change in control

The OTS2 Project Deed places certain restrictions on Sydney Metro and OpCo2 in the event of a change in control.

Subject to certain limited exceptions, OpCo2 has undertaken that throughout the OTS2 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 OpCo2 group, Finance Co Group or Issuer Co Group without Sydney Metro prior written consent, which will not be unreasonably withheld. If OpCo2 does not obtain Sydney Metro consent, this will be an 'OpCo2 termination event'.

With regard to other OpCo2 contractors, OpCo2 must also obtain Sydney Metro's approval (which must not be unreasonably withheld) if a change in control has occurred in the Integrator prior to the date of final completion of Phase 2 and provide full details of the change in control so as to allow Sydney Metro to assess whether to approve of the change in control. If Sydney Metro notifies OpCo2 that it does not approve the change in control of the Integrator, OpCo2 must, within 90 days of receiving such notice, do one of the following:

- (i) terminate the Integrator Deed and re-tender those works or services; or
- (ii) take such other action as Sydney Metro may agree.

A change in control which occurs without Sydney Metro's approval and where OpCo2 fails to comply with the above measures will entitle Sydney Metro to an OpCo2 termination event.

Subject to certain limited exceptions, OpCo2 must also obtain Sydney Metro's consent (which must not be unreasonably withheld) for changes in control that relate to the O&M Contractor. If OpCo2 does not obtain Sydney Metro consent, this will be an 'OpCo2 termination event'.

24.2 Assignment

Sydney Metro may assign, novate, transfer or otherwise deal with its rights or obligations under any project agreement without OpCo2's prior approval, provided the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity (including a State owned corporation or any entity that is wholly owned or controlled by the State) supported by a guarantee from the State on terms no less favourable than those contained in the GSF Act Guarantee.

Except as expressly permitted by this deed, the Financiers Tripartite Deed or the FinCo Deed of Charge, OpCo2 must not assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under any project agreement, without Sydney Metro's prior approval.

25. Transition out provisions

Sydney Metro has the right at any time prior to the end of the term or on termination, to invite any person to perform all or part of OpCo2's obligations under the OTS2 Project Deed. As such, OpCo2 must manage OpCo2's activities in a way that a successor OpCo2 or nominee of Sydney Metro is able at any time to immediately take over the performance of OpCo2's activities without interruption.

OpCo2 must, at its own cost, do everything (both before and after expiry or termination of the term) that is reasonably required by Sydney Metro to assist a successor OpCo2 or nominee of Sydney Metro in performing OpCo2's activities, and must not do anything that materially prejudices or frustrates the transfer of the performance of OpCo2's activities.

25.1 OpCo2 employees

During the term, OpCo2's ability to vary the employment contracts of certain employees involved in the operation and maintenance of the Sydney Metro is limited, and Sydney Metro's prior approval is generally required. At the expiry of the term, Sydney Metro must procure that a successor OpCo2 makes offers of employment to these employees.

25.2 Preparation for contracting at end of term

OpCo2 must provide Sydney Metro with reasonable access to staff and to information kept by OpCo2 in connection with the project, for the purpose of Sydney Metro preparing reports in connection with any invitation to a person for the performance of OpCo2's obligations. OpCo2 must use reasonable endeavours to assist Sydney Metro in the preparation for a competitive expression of interest or tendering process.

25.3 Access

OpCo2 must, without unduly interfering with OpCo2's obligations, ensure that a successor OpCo2 or nominee of Sydney Metro has access to OpCo2's staff, assets, spares and the operations centre for the purposes of the successor OpCo2 or nominee of Sydney Metro receiving information about OpCo2's obligations and preparing to take over the performance of those obligations.

25.4 Novation and handback of documents

OpCo2 must procure the novation to Sydney Metro (or its nominee) of any agreement, sublease or licence relating to OpCo2's obligations that Sydney Metro may nominate.

OpCo2 must deliver to Sydney Metro (or its nominee) all documents and information concerning OpCo2's obligations that are required for the efficient transfer of responsibility of the performance of OpCo2's obligations, this includes project plans, design documentation, data recorded during the term, valid warranties and

guarantees, operational manuals documentation relating to intellectual property, and any other documentation specified.

26. Handover obligations

At the end of the term, OpCo2 must:

- (a) surrender and return the Sydney Metro to Sydney Metro and, to the extent it has been installed, the electronic ticketing system equipment;
- (b) transfer all of OpCo2's rights, title and interest (if any) in the relevant assets to Sydney Metro free from any security interests;
- (c) ensure that the relevant assets are in a state and condition which complies with the requirements of OTS2 Project Deed including, if completion has occurred, the handback condition (fair wear and tear excepted);
- (d) if the OTS Incorporation Date has occurred, have completed all works scheduled to be carried out under the current maintenance works program for the Sydney Metro Northwest and the Sydney Metro City;
- (e) if completion of Phase 2 has occurred, have completed all works scheduled to be carried out under the current maintenance works program for the Sydney Metro Southwest;
- (f) if the first passenger service on the Sydney Metro City has been provided, ensure that:
 - (i) all trains meet the "Level 3" requirements on the "Car Exterior Assessment Scale" and the "Car Interior Assessment Scale" as set out in the service payment calculation schedule of the OTS2 Project Deed;
 - (ii) all northwest stations and city stations meet the "Level 3" requirements on the "Station Views Assessment Scale" as set out in the service payment calculation schedule of the OTS2 Project Deed;
 - (iii) all station precincts within the Sydney Metro Northwest and the Sydney Metro City (excluding the stations), car parks within the licensed maintenance area for the Sydney Metro Northwest, additional maintained assets for the Sydney Metro Northwest and additional maintained assets for the Sydney Metro City meet the "Level 3" requirements on the "Public Area Assessment Scale" as set out in the service payment calculation schedule of the OTS2 Project Deed; and
 - (iv) the rail corridor within the Sydney Metro Northwest and the Sydney Metro City (excluding the relevant excluded presentation areas) meets the "Level 3" requirements on the "Corridor Assessment Scale" as set out in the service payment calculation schedule of the OTS2 Project Deed;
- (g) if the first passenger service on the Sydney Metro Southwest has been provided, ensure that:

- (i) all southwest stations meet the "Level 3" requirements on the "Station Views Assessment Scale" as set out in the service payment calculation schedule of the OTS2 Project Deed;
 - (ii) all station precincts within the Sydney Metro Southwest (excluding the stations), car parks within the licensed maintenance area for the Sydney Metro Southwest and additional maintained assets for the Sydney Metro Southwest meet the "Level 3" requirements on the "Public Area Assessment Scale" as set out in the service payment calculation schedule of the OTS2 Project Deed; and
 - (iii) the rail corridor within the Sydney Metro Southwest (excluding the relevant excluded presentation areas) meets the "Level 3" requirements on the "Corridor Assessment Scale" as set out in the service payment calculation schedule of the OTS2 Project Deed;
- (h) if the first passenger service on the Sydney Metro City has been provided, have completed the transfer of the asset information system database to Sydney Metro such that:
 - (i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
 - (ii) it remains fully functional and retains interface capabilities;
 - (iii) all data entry is fully up to date;
 - (iv) all data archives are included; and
 - (v) all supporting documentation is included;
- (i) deliver to Sydney Metro all and any documents and information concerning OpCo2's activities which is required for the efficient transfer of responsibility for their performance, including:
 - (i) the project documentation;
 - (ii) all data;
 - (iii) any documentation or programs required to be provided pursuant to the OTS2 Project Deed; and
 - (iv) any other documentation specified in the scope and performance requirements to the OTS2 Project Deed;
- (j) transfer all of OpCo2's rights, title and interest (if any) in any extra land held by OpCo2 at the end of the term;
- (k) in relation to:

- (i) hired moveable assets owned by any related body corporate of OpCo2 or a Core Contractor, procure the novation to Sydney Metro of any lease or hire arrangement relating to any such hired moveable asset nominated by Sydney Metro; and
 - (ii) any other hired moveable assets, use its best endeavours to procure the novation to Sydney Metro of any lease or hire arrangement relating to any such hired moveable asset nominated by Sydney Metro; and
- (l) procure the novation to Sydney Metro, or execute any document required to effect OpCo2 ceasing to be a party to, any Significant Contract, and use its best endeavours to procure the novation to Sydney Metro of, or execute any document required to effect OpCo2 ceasing to be a party to, any other subcontract, in each case relating to OpCo2's activities which Sydney Metro may nominate (in its absolute discretion), with effect from the end of the term or such other date as Sydney Metro may agree.

27. Dispute resolution

All disputes between Sydney Metro and OpCo2 arising out of the project must be resolved in accordance with the detailed procedures set out in the OTS2 Project Deed.

The dispute resolution procedure essentially involve four sequential phases: regular IDAR Panel meetings, negotiation, expert determination (for many but not all disputes which are not able to be resolved through negotiation) and arbitration. Throughout these processes both parties must continue to perform all of their obligations under the OTS2 Project Deed.

27.1 IDAR Panel

An IDAR Panel was established on 11 February 2019 by the IDAR Panel Agreement and acceded to by OpCo2 on 21 November 2019 by the execution of the IDAR Panel Agreement Accession Deed Poll. It is made up of four members, who hold regular meetings to assist Sydney Metro and OpCo2 to proactively resolve disputes by providing a non-binding forum for the parties to establish their positions and narrow the issues in dispute. Either party may refer an unresolved matter which is not yet a formal dispute to the IDAR Panel for its opinion. Referrals must be in writing to the IDAR Panel copied to the other party.

The members are required to act fairly, impartially and independently. Both Sydney Metro and OpCo2 agree not to solicit advice or consult with the IDAR Panel or a member of the IDAR Panel on matters relating to disputes which could compromise the IDAR Panel's integrity. The parties will jointly pay for the cost of the IDAR Panel. The IDAR Panel Agreement will terminate on completion unless otherwise agreed by the parties.

27.2 Dispute process

At the outset, if a dispute arises either party may give formal notice of the dispute, at which point executive negotiations will commence for a period of 20 business days. If the dispute cannot be resolved by executive negotiation, the dispute must be referred to the IDAR Panel for consultation to provide a non-binding recommendation. If the dispute is not resolved, either party may refer the dispute to an expert for a written decision and the expert has an obligation to provide this decision to the parties within 50 business days after the expert has been appointed. Expert decisions will be immediately binding, and will remain binding until overturned or otherwise changed in an amicable settlement or court judgement or arbitral award. If either party is dissatisfied with the expert's determination, it may give a notice of dissatisfaction within 10 business days after receiving the determination. If a notice of dissatisfaction is given and there is no amicable settlement, Sydney Metro may issue a notice stating that the dispute is to be determined by litigation within 5 business days of the notice of dissatisfaction. If the Sydney Metro does not elect to commence litigation, the dispute will be referred to arbitration.

If the 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.

Sydney Metro may withhold payment of that part of any amount which is the subject of a dispute and OpCo2 must continue performing obligations despite any dispute.

27.3 Project Cooperation and Integration Deeds

There are specific dispute resolution provisions under each of the Project Cooperation and Integration Deeds which are applicable in the event of a dispute between OpCo2 and Sydney Metro as to whether a defect is a Foundation Infrastructure Works Defect and a party gives a notice of dispute under the Project Cooperation and Integration Deed. Other dispute resolution processes are set out in the relevant Foundation Infrastructure Works Contract.

27.4 Disputes under related contracts

If a dispute between OpCo2 and Sydney Metro concerns matters that also arise in respect of rights and obligations of Sydney Metro and a third party under a third party agreement (a Common Dispute), then Sydney Metro may, at its discretion, require that the Common Dispute be resolved in accordance with the dispute resolution mechanism for Common Disputes. Sydney Metro must notify OpCo2 of its decision in writing to adopt this procedure within 20 business days of the Common Dispute arising.

Disputes arising between one or both of the parties and the Greenfield Independent Certifier will be resolved under the OTS2 Independent Certifier Deed and the parties shall be bound by the outcome of this dispute.

27.5 Core contract side deeds

OpCo2 must immediately inform Sydney Metro if a dispute arises under the Integrator Deed or O&M Contract.

Disputes between Sydney Metro and the relevant Core Contractor as to how the terms of the relevant Core Contract are deemed to have been amended are to be determined as if the dispute resolution process in the OTS2 Project Deed was incorporated into the relevant Integrator Deed Side Deed or OTS O&M Contract Side Deed but as if references to "OpCo2" were to the relevant Core Contractor.

27.6 Financiers Tripartite Deed

Disputes between Sydney Metro and the Security Trustee in relation to the contents of the step-in report, (which is a report produced and agreed between Sydney Metro

and the Security Trustee upon receipt of a step-in event notice) are to be resolved as if the dispute resolution process in the OTS2 Project Deed was incorporated into the Financiers Tripartite Deed but as if reference to "OpCo2" were to the Security Trustee.

There are no other dispute resolution provisions in the Financiers Tripartite Deed. Accordingly, subject to the OTS2 Project Deed, any other disputes under the Financiers Tripartite Deed are to be resolved by the Courts of NSW.

28. Insurances and reinstatement

28.1 Insurance obligations

Sydney Metro is responsible for effecting and maintaining the contract works policy, advance consequential loss policy and public liability insurance policy and must comply with various obligations in relation to them.

OpCo2 is responsible for effecting and maintaining the following insurances and must comply with various obligations in relation to them:

Delivery Phase

- (a) plant and equipment insurance;
- (b) marine cargo and marine advance consequential loss;
- (c) professional indemnity insurance;
- (d) employers' liability and workers' compensation insurance;
- (e) own damage motor vehicle insurance;
- (f) third party property damage motor vehicle insurance;
- (g) compulsory third party motor vehicle insurance;
- (h) terrorism insurance for trains and the trains manufacturing facility;

Operations Phase

- (i) industrial special risks insurance;
- (j) plant and equipment insurance;
- (k) public and products liability insurance;
- (l) professional indemnity insurance;
- (m) employers' liability and workers' compensation insurance;
- (n) own damage motor vehicle insurance;
- (o) third party property damage motor vehicle insurance;
- (p) compulsory third party motor vehicle insurance; and
- (q) terrorism insurance for trains.

28.2 Mixed fleet

As a consequence of the staged delivery of the new trains which are being procured under the OTS2 PPP, some of the new trains will be delivered by OpCo2 prior to the date of completion of Phase 1. These trains will be used by OpCo on the Sydney Metro Northwest in the period prior to completion of Phase 1. The insurance of these trains during this period will be dealt with via amendments to the insurances under the OTS Project Deed and Sydney Metro will bear the additional insurance costs.

28.3 Reinstatement

OpCo2 has general obligations to reinstate the OTS2 Works or the Sydney Metro if they are damaged. If loss, damage or destruction arises from certain events, including:

- (a) war;
- (b) ionising radiations/contamination by radioactivity;
- (c) a breach by Sydney Metro of any Principal Project Agreement;
- (d) any fraudulent, negligent or other wrongful act or omission or Wilful Misconduct of the State or Sydney Metro or their associates;
- (e) a Foundation Infrastructure Works defect, a Foundation Infrastructure Works structural defect or a PSD/MGF systemic defect subject to conditions as to whether certain time periods and where Sydney Metro has or has not taken certain actions under the deed;
- (f) an OTS civil works defect (where a modification to remedy has been issued);
- (g) an ECRL Latent Condition;
- (h) an Existing Asset Defect; or
- (i) the occurrence of a severe storm event where a certain water level results in a major service disruption and OpCo2 has demonstrated that it has complied with its flood mitigation obligations,

then Sydney Metro must pay for reinstatement to the extent insurance proceeds, if any, are insufficient. The obligation on the awarding body to pay for reinstatement in these kinds of circumstances is common, though the risks identified in paragraphs (e) to (i) above are project specific (the risks in paragraphs (f) and (g) are in the OTS Project Deed).

28.4 Insurance proceeds

Subject to the terms of the Financiers Tripartite Deed, OpCo2 must deposit all insurance proceeds received in respect of the costs of replacement, reinstatement or

indemnity value of the OTS2 Works or the Sydney Metro City & Southwest into an insurance proceeds account.

This money, with certain exceptions where the OTS2 Project Deed is terminated early, must only be applied by OpCo2 to promptly reinstate or repair the damage. If Sydney Metro requires OpCo2 to reinstate or repair the OTS2 Works or the Sydney Metro City & Southwest 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.

If insurance proceeds are applied by the Security Trustee under the Financiers Tripartite Deed towards the repayment of debt, rather than the reinstatement or repair of the damage, Sydney Metro will no longer be required to make any further 'construction payments A' or 'Phase 2 construction payments' under the OTS2 Project Deed.

28.5 Uninsurable risk

An "uninsurable risk" arises where an insurance that is required to be effected and maintained under the OTS2 Project Deed is not available in the international insurance market with any reputable insurer in respect of that risk or the insurance premium payable for insuring the risk is such a level, or the terms or conditions are such, that the risk is not generally being insured against in the international market with reputable insurers by prudent, competent and experienced providers in Australia of services similar to OpCo2's activities at the time insurance is sought or maintained.

If a risk becomes an uninsurable risk the party that is required to maintain and effect such insurance is not required to do so as long as the risk remains uninsurable. During such period, the relevant party has an obligation to approach the market on a regular basis (but no more than once every 12 months) to establish whether that risk remains uninsurable. Upon insurance becoming available, the party must effect the insurance in accordance with the OTS2 Project Deed and if the insurance is obtained by OpCo2, any adjustments to the benchmarked insurance component within the service payment made accordingly. If an uninsurable risk materialises and the risk is with respect to the contract works or public and products liability insurance policies effected by Sydney Metro, or OpCo2's industrial special risks or public and products liability insurance policies then Sydney Metro must pay to OpCo2 an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available (after deducting any deductibles) or where the risk causes material damage, loss or destruction to a substantial portion of the Sydney Metro or the OTS2 Works, terminate the OTS2 Project Deed.

29. Guarantees and security arrangements

29.1 GSF Act Guarantee

The "GSF Act Deed Poll of Guarantee" executed by the NSW Treasurer (on behalf of the State of NSW) on 21 November 2019 in favour of the Security Trustee, Finance Co, OpCo2 HoldCo and OpCo2 (**Beneficiaries**), provides a guarantee by the State of NSW to the Beneficiaries in accordance with section 6.27 of the Government Sector Finance Act 2018 (NSW), of Sydney Metro's performance of its payment obligations under the OTS2 Project Deed, Financiers Tripartite Deed, Securitisation Agreement, Payment Directions Deed, Equity Purchase Deed and any other documents approved in writing by the NSW Treasurer in the future.

29.2 O&M Guarantee

Each O&M Guarantee is an irrevocable guarantee given by each O&M Guarantor to OpCo2 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 OpCo2 against any loss arising from any failure by the O&M Contractor to perform any of its obligations.

29.3 Integrator Guarantee

The Integrator Guarantee is an irrevocable guarantee given by the Integrator Guarantor to OpCo2 to guarantee all liabilities and obligations of the Integrator that arises out of or in connection with the Integrator Deed, and to indemnify OpCo2 against any loss arising from any failure by the Integrator to perform any of its obligations.

29.4 Alstom Guarantees

The Alstom D&C Guarantee is given by the Alstom guarantor to the Integrator to guarantee the obligations of the Alstom Significant Contractor under the Alstom D&C Significant Contract.

The Alstom TLS Significant Contractor Guarantee is given by the Alstom guarantor to the O&M Contractor to guarantee the obligations of the Alstom Significant Contractor under the Sydney Metro – Through Life Support Deed (Trains and CBTC).

29.5 Significant Contractor Guarantees

Each other Significant Contractor Guarantee is an irrevocable guarantee given by each other Significant Contractor guarantor to the Integrator to guarantee all liabilities and obligations of the Significant Contractor that arise out of or in connection with the relevant Significant Contracts and to indemnify the Integrator against any loss arising from any failure by the Significant Contractor to perform any of its obligations.

30. Asset transfers

All works and assets which are affixed to the Sydney Metro City and Southwest site will become and remain the property of Sydney Metro from the time they are affixed. For example, this will include the stations, station precincts, railway track and the maintenance and stabling facilities.

OpCo2 must ensure that ownership of the moveable assets, including the trains, spares, special tools and equipment and other chattels forming part of the works (but excluding any hired assets), transfers to Sydney Metro at no cost, on the date on which OpCo2 acquires title to the relevant moveable asset, free from any security interests (other than permitted security interests).

At the end of the term OpCo2 must transfer, at no cost, all of OpCo2's rights and interests in the assets to Sydney Metro (or its nominee) free from any security interest and in a state which complies with the requirements of the OTS2 Project Deed.

31. Confidentiality and excluded material

Under their own terms all of the OTS2 PPP major contracts and associated documents to which Sydney Metro is a party, including the OTS2 Project Deed, may be publicly disclosed by Sydney Metro, provided in all cases Sydney Metro redacts any commercially sensitive information.

Each category of commercially sensitive information is summarised below.

The OTS2 Project Deed prohibits the release, except in specified circumstances, of information revealing:

- (a) OpCo2's debt financing and equity arrangements, including terms, fees and margins;
- (b) the cost structures, profit margins and intellectual property of OpCo2 and its subcontractors;
- (c) OpCo2's "base case" financial model for the OTS2 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 OpCo2;
- (f) the terms of the Core Contracts, each significant contract, the D&C guarantee, the O&M guarantee and each Core Contractor Interface Deed;
- (g) the terms of the project contracts to which Sydney Metro 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 Sydney Metro, 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.

32. 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 OTS2 PPP contracts.

APPENDIX A – GLOSSARY OF TERMS

Alstom Significant Contractor means the contractor which the Integrator and the O&M Contractor have subcontracted their obligations to design, manufacture and provide through life support for the trains and communications based train control systems.

ECRL Latent Conditions means any site conditions of the rail link from Epping to Chatswood (including associated infrastructure but excluding any system) which differs materially from what is disclosed in the information documents issued by Sydney Metro before the date of the OTS Project Deed, except to the extent such difference should have been anticipated by a prudent, competent and experienced contractor if it had done those things required by the OTS Project Deed.

Environmental Representative means any person appointed by Sydney Metro to perform the role of environmental representative.

Existing Asset Defect means any defect, deficiency, fault, error, cracking, shrinkages, structural defect, movement or subsidence whenever occurring or coming into existence and does not include any Foundation Infrastructure Works defect.

Foundation Infrastructure Works means the tunnelling works, the Central Station works, the southwest metro works and design works, the Sydenham Station & Junction works, the city stations works and design works, the line-wide works and the platform screen doors and mechanical gap fillers works.

Full Operations Phase means the period commencing on the date of first passenger service on the Sydney Metro Southwest and ending on the last day of the term.

Infrastructure NSW means the independent statutory agency established under the *Infrastructure NSW Act* (2011).

Integrator means the contractor to which OpCo2 subcontracts its obligations to carry out the OTS2 Works under the OTS2 Project Deed.

North West Rail Link means the railway line from Tallawong to Chatswood, including the rapid transit rail facility at Tallawong Road, the stations, tunnels, viaduct, bridges, landscaping, equipment, systems, track work and support structures, rolling stock and ancillary infrastructure.

O&M Contractor means the contractor to which OpCo2 subcontracts its operation and maintenance obligations under the OTS2 Project Deed.

ONRSR means the Office of the National Rail Safety Regulator constituted under the *Rail Safety National Law* (NSW).

OpCo means NRT Pty Ltd in its own capacity and as trustee of the NRT Unit Trust.

OpCo2 Systems Works means the physical works to be designed, constructed, installed and commissioned by the OpCo2 Systems contractors under the OpCo2 Systems contracts, being the following systems components of the project:

- (a) station central control systems;
- (b) radio communications;
- (c) platform screen doors on the Sydney Metro City; and
- (d) platform edge barriers on the Sydney Metro City.

Option 1 Trains means the 14 trains which OpCo2 is required to provide to Sydney Metro in accordance with the OTS2 Project Deed following the exercise of the Option 1 Trains option.

OTS Incorporation Date means the date of completion of Phase 1.

OTS Project Deed means the contract titled "North West Rail Link Operations, Trains and Systems Project Deed" between Transport for NSW and OpCo dated 15 September 2014.

OTS Works means the physical works, assets, systems and deliverables that OpCo was required to design and construct under the OTS Project Deed.

OTS2 Works means the physical works, assets, systems and deliverables that OpCo2 must design and construct under the OTS2 Project Deed.

Phase 1 means the delivery activities OpCo2 is required to perform for the Sydney Metro City.

Phase 2 means the delivery activities OpCo2 is required to perform for the Sydney Metro Southwest.

Phase 2 Change Event means certain events which will occur and may have cost and time implications for the date of completion of Phase 2.

PPP means public private partnership.

Project means the Sydney Metro City & Southwest project which will include the integration of the Sydney Metro North West Line to form a single end to end metro system from Tallawong to Bankstown and the operation and maintenance of the same.

Sydney Metro means the NSW Government agency with primary responsibility for delivering new metro rail services for Sydney and the term '**the Sydney Metro**' refers to the 66km operating line between Tallawong and Bankstown.

Sydney Metro City means the railway line from Chatswood to Sydenham including the OTS2 Works for Phase 1, the tunnelling works, the Central Station works, the Sydenham Station and Junction works (Phase 1), the city stations works and the line-wide works (Phase 1) during delivery and as constructed and the stabling facility at Marrickville, but excluding the electronic ticketing system and the over station developments.

Sydney Metro Northwest means the railway line from Tallawong to Chatswood including the OTS Works, the northwest tunnelling works and the viaduct works as constructed, but excluding the electronic ticketing system.

Sydney Metro Southwest means the railway line from Sydenham to Bankstown including the Phase 2 works, the Sydenham Station and Junction works (Phase 2), the line-wide works (Phase 2), the platform screen door and mechanical gap fillers works and the southwest metro works during delivery and as constructed, but excluding the electronic ticketing system.

Sydney Metro Trains Facility means the stabling and maintenance facility (including the operations control centre) designed and constructed by OpCo under the OTS Project Deed and includes any modifications to the facility.

Sydney Metro Trains Facility (South) means the stabling facility at Marrickville to be designed and constructed by Sydney Metro as part of the Line-wide works.

Sydney Trains means the corporation constituted by section 36(1) of the *Transport Administration Act 1988* (NSW).

Sydney's Rail Future means the publication titled "Sydney's Rail Future – Modernising Sydney's Trains" June 2012, NSW Government.

Transport for NSW means the NSW Government agency with primary responsibility for Transport coordination, policy, planning, services and infrastructure.

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