SYDNEY LIGHT RAIL ROLLING STOCK SUPPLY CONTRACT

Director General of the Department of Transport for and on behalf of Transport for New South Wales

(Purchaser)

Pyrmont Light Rail Company Pty Limited
ACN 065 183 913

(PLRC)

Construcciones y Auxiliar de Ferrocarriles S.A.
CIF A20001020

(Supplier)
Formal instrument of agreement dated 01 August 2012

Parties
Transport for New South Wales ABN 18 804 239 602 (Purchaser)
Pyrmont Light Rail Company Pty Limited ACN 065 183 913 (PLRC)
Construcciones y Auxiliar de Ferrocarriles S.A. CIF A20001020 (Supplier)

Background
A. The Purchaser wishes to procure the Equipment for the IWE.
B. The Purchaser engages the Supplier to manufacture, supply, deliver, test and commission the Equipment and perform its other obligations under the Contract on the terms set out in the Contract.

Operative provisions

1. Fundamental obligations
The parties agree to be bound by the terms of the Contract.

2. Operation of Contract
The Contract applies to all obligations of the Supplier in relation to the Equipment, whether undertaken before, on or after the Date of Contract.

3. Entire agreement
(a) The Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Contract and has no further effect.
(b) The Supplier agrees that in entering the Contract it has not relied upon any representation, warranty or inducement by the Purchaser except to the extent specified in the Contract nor is any representation, warranty or thing made or done by the Purchaser to be inferred, incorporated or implied into the Contract.
(c) Any provision of the Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of the Contract.

4. Counterparts
The Contract may be executed in counterparts.
Executed as a deed.

Signed, sealed and delivered for and on behalf of Transport for NSW ABN 18 804 239 602 by Les Wielinga, Director General of the Department of Transport but without incurring any personal liability in respect thereof in the presence of:

Signature of witness

HELEN VICKERS

Name of Witness

Signature

Leslie Robert Wielinga

Name

Executed by Pyrmont Light Rail Company Pty Limited, ACN 065 183 913 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

ARTHUR DIKOS

Full name of director

Signature of company secretary/director-

STEVEN O'GORMAN

Full name of company secretary/director

SIGNED SEALED AND DELIVERED by Construcciones y Auxiliar de Ferrocarriles S.A. CIF A20001020 by its attorney in the presence of:

Witness

Name of Witness

Attorney

Name of Attorney
Amended from
Australian Standard™

General conditions of contract for the supply of equipment without installation
This Australian Standard was prepared by Committee OB/3, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 25 July 1997 and published on 5 August 1997.

The following interests are represented on Committee OB/3:

- Association of Consulting Engineers Australia
- Australasian Railways Association
- Australian Chamber of Commerce and Industry
- Australian Procurement and Construction Council
- AUSTROADS
- Construction Industry Engineering Services Group
- Construction Policy Steering Committee
- Electricity Supply Association of Australia
- Institution of Engineers, Australia
- Institution of Professional Engineers, New Zealand
- Law Council of Australia
- Master Builders Australia
- National Construction Council / MTIA
- Process Engineers and Constructors Association
- Royal Australian Institute of Architects

This Standard was issued in draft form for comment as DR 00328.


Keeping Standards up-to-date

Standards are living documents which reflect progress in science, technology and systems. To maintain their currency, all Standards are periodically reviewed, and new editions are published. Between editions, amendments may be issued. Standards may also be withdrawn. It is important that readers assure themselves they are using a current Standard, which should include any amendments which may have been published since the Standard was purchased.

Detailed information about Standards can be found by visiting the Standards Australia web site at www.standards.com.au and looking up the relevant Standard in the on-line catalogue.

Alternatively, the printed Catalogue provides information current at 1 January each year, and the monthly magazine, The Australian Standard, has a full listing of revisions and amendments published each month.

We also welcome suggestions for improvement in our Standards, and especially encourage readers to notify us immediately of any apparent inaccuracies or ambiguities. Contact us via email at mail@standards.com.au, or write to the Chief Executive, Standards Australia International Ltd, GPO Box 5420, Sydney, NSW 2001.
This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB-003, General Conditions of Contract to supersede AS/NZS 4911:1998.

This Standard incorporates Amendment No 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as a Joint Australian/New Zealand Standard.


This Standard is for the supply of equipment, including building elements, which is purpose-built or manufactured. If installation is required, AS 4910—2002, *General conditions of contract for supply of equipment with installation* should be used.

Separable portions may be appropriate in contracts where equipment is being supplied for use at different times or stages. If so, the Items prefixed by † are to be deleted in Annexure Part A and that part of Annexure Part A entitled 'Separable Portions' is to be completed for each separable portion.

Clause 29 and subclause 6.6 marked by * are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these clauses or indicating clearly in Annexure Part C or elsewhere that they are not to apply. See paragraph i) of clause 1 on page 4 for the effect of stating changes in Annexure Part C.

**Warnings**

1) Users of this Standard are warned that clause 12 (Supplier's indemnity) does not limit the liability of parties for special, indirect or consequential losses.

   This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clause 13 (Insurance). However, optional clause 29 (General limitation of liability) allows the parties to agree to limit their liability in certain respects.

   Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

2) For the purposes of clause 11, the inclusion of Quality Assurance requirements in the Contract will require detailed clauses which have regard to the quality standard selected.

3) Users of this Standard should ensure the availability of appropriate insurances if risk in the equipment is not to pass to the Purchaser upon delivery.

4) Users of this Standard should be aware of relevant legislation relating to the sale and supply of goods in the Commonwealth of Australia, each State or Territory of Australia and New Zealand.

5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.
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1 Interpretation and construction of Contract

1.1 Definitions

In the Contract, except where the context otherwise requires:

**Accreditation** means accreditation under Part 3 of the Rail Safety Act or such other accreditation required under any regime replacing Part 3 of the Rail Safety Act;

**Alert** means a written statement:

(a) identifying the event or circumstance;
(b) identifying the actual, or likely, time and cost implications of it to the Supplier and the Purchaser;
(c) stating actions each party should take to avoid, mitigate, or take advantage of the consequences of it; and
(d) stating other information necessary to permit the Purchaser to assess the issue and make a decision about it,

where such details are reasonably available at the time of giving the Alert;

**Authorisation** means any certification, licences, consents, permits, approvals, notices or requirements of any Authority issued or notified, or required to be issued or notified, in relation to the Equipment or the Supplier's other obligations under the Contract;

**Authorised User** means any contractors, representatives, employees, lessees, licensees, customers or invitees of a party or their contractors, representatives, employees and agents;

**Authority** means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance and includes ITSR;

**Bank Bill** means a bill of exchange (as defined in the Bills of Exchange Act 1909 (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business;

**Bank Bill Rate** means, in respect of a period, the rate, expressed as a yield per cent per annum (rounded up, if necessary to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page at about 10.10 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 10.30 am, then the Bank Bill Rate will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.
Business Day means a day, other than a Saturday, Sunday or a public holiday, when banks are open for business in New South Wales or 27, 28, 29, 30 or 31 December;

Certificate of Operational Completion means a certificate in the form set out in Annexure Part S issued under Clause 21A.2(a)(i) in respect of the achievement of Operational Completion;

Change in Law means:
(a) the amendment, repeal or change of any law existing at the date of this Contract;
(b) the enactment of any new law; or
(c) a judgment of a relevant court of law which changes a binding precedent on the interpretation or application of any law, which occurs after the date of this Contract but excluding:
(d) any amendment, repeal or change of the Income Tax Assessment Act 1936 (Cth), the GST Legislation or the Income Tax Assessment Act 1997 (Cth);
(e) any amendment, repeal, change or enactment of any law which, as at the date of this Contract:
   (i) was published or of which public notice had been given; or
   (ii) a party experienced and competent in the supply of equipment similar to the Equipment would have reasonably foreseen or anticipated at the date of submission of its Tender (being 29 February 2012), in substantially the same form as the amendment, repeal, change or enactment eventuating after the date of this Contract; and
(f) any amendment, repeal, change or enactment of any law effected in response to an illegal act or omission by the Supplier (not including an act or omission which became illegal as the result of the amendment, repeal, change or enactment).

Change of Control means that a holding company of a body corporate ceases to be its holding company, or a body corporate which was not a holding company of the body corporate becomes its holding company (and holding company has the same meaning as in the Corporations Act);

Claim means any claim, action, demand or proceeding, including for an increase in the Contract Sum, for payment of money (including damages or for an EOT):
(a) under, arising out of, or in any way in connection with, the Contract;
(b) arising out of or in any way in connection with:
   (i) the work under the Contract; or
   (ii) any party's conduct prior to the Date of Contract;
(c) otherwise at law or in equity including:

(i) by statute;

(ii) in tort for negligence or otherwise, including negligent misrepresentation; or

(iii) for restitution or quantum meruit;

**Commercially Sensitive Information**

means information that discloses:

(a) the Contractor’s financing arrangements, or

(b) the Contractor’s cost structure or profit margins, or

(c) any intellectual property in which the Contractor has an interest, or

(d) any matter the disclosure of which would place the Contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.

**Communications Management Plan**

means a plan that complies with the requirements of Appendix E of the LRV Specification;

**Compensable Cause**

means:

(e) an act, default or omission of the Purchaser or the Purchaser’s employees, consultants, other contractors or agents (not being acts or omissions authorised, permitted or in accordance with the Contract); and

(f) any delay by the Purchaser or PLRC in giving the Supplier access to the Site for testing and commissioning;

**Compliance Management Plan**

means a plan that complies with the requirements of Appendix E of the LRV Specification;

**Concept Design**

means the concept design in respect of the LRV included in Annexure Part T;

**Configuration Management Plan**

means a plan that complies with the requirements of Appendix E of the LRV Specification;

**Contaminant**

means any:

(a) toxic or hazardous substance, gas, liquid or material, any dangerous goods, hazardous or special waste or discharge (other than properly and lawfully discharged sewage), or any Pollutant or any constituent of any such substance or waste in any water, soil or in the air including acid sulphate soils; and

(b) without limiting paragraph (a), substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment;

**Contract**

has the meaning in Clause 4;

**Contract Sum**

means the aggregate of the amounts set out in Annexure Part H,
as may be adjusted in accordance with the Contract;

**Controller** has the same meaning as in the Corporations Act;

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

**Critical Design Stage** means the stage in the development of the Design Documentation:

(a) the purpose of which is for the Supplier to produce the Final Design Documentation; and

(b) in which the Purchaser may review Design Documentation to determine the compliance of the proposed Design Documentation with the Contract and the Design Documentation submitted during the Preliminary Design Stage;

**Date for Delivery** means the date stated in Item 6, but if directed by the Purchaser to change the Date for Delivery under Clause 19.1(c), it means the date directed under Clause 19.1(c);

**Date for Operational Completion** means the date set out in Item 6A, but if any EOT for Operational Completion is granted by the Purchaser or allowed in any dispute resolution, it means the resulting date;

**Date of Contract** means the date which appears on the in the Formal Instrument of Agreement;

**Date of Delivery** means:

(a) the date upon which the Equipment was Delivered; or

(b) where another date is determined in any dispute resolution as the date upon which the Equipment was Delivered, that other date;

**Date of Operational Completion** means:

(a) the date certified by the Purchaser in a Certificate of Operational Completion to be the date on which Operational Completion was reached; or

(b) where another date is determined in any dispute resolution as the date on which Operational Completion was reached, that other date;

**Day** means calendar day except a Sunday, a public holiday in New South Wales or a day which has been rostered-off for the New South Wales construction industry;

**D&C Contract** means the document entitled "Sydney Light Rail Inner West Extension Design and Construction Contract" between the Purchaser and the D&C Contractor, dated on or about 31 May 2012;

**D&C Contractor** means John Holland Pty Limited ABN 11 004 282 268;

**Deed of Disclaimer** means the deed so named and executed by the Supplier on 30 November 2011;

**Defect** means any defect, deficiency, fault, non-conformance, error or omission in the Equipment or any aspect of the Equipment which is not in accordance with the requirements of the Contract;
Defects Liability Period has the meaning in Clause 22;
Deliver and Delivered have the meaning in Clause 19;
Delivery Place is stated in Item 7;
Design Documentation means all design standards, design reports, durability reports, drawings, plans, specifications and other information, samples, models, prototypes, patterns, calculations, digital records and other relevant data and the like in electronic, computer readable and written and physical forms or stored by any other means which are required by the Contract (including the LRV Specification) or necessary to be produced by the Supplier, which describe the nature, layout or performance of the Equipment;
Design Management Plan means a plan that complies with the requirements of Appendix E of the LRV Specification;
Design Review Plan means a plan that complies with the requirements of Appendix E of the LRV Specification;
Design Review Submission means a package of Design Documentation for each individual system as set out in the Design Review Work Breakdown Structure;
Design Review Work Breakdown Structure means the document of that name that complies with the requirements of Appendix E of the LRV Specification;
Design Stage means:
(a) the Preliminary Design Stage; and
(b) the Critical Design Stage;
Direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
Dispute has the meaning in Clause 28;
Dispute Resolution Board means the board consisting of Max Tonkin, Tim Sullivan and Graeme Peck (as chairperson) or their replacements, referred to in Clause 28.
DRB Agreement means the Dispute Resolution Board Agreement set out in Annexure Part V.
Environmental Management Plan means a plan that complies with the requirements of the LRV Specification;
EOT (extension of time) has the meaning in Clause 17.2;
Equipment means the goods and equipment to be supplied by the Supplier under the Contract, as described in the LRV Specification, including:
(a) 6 LRVs and any additional LRVs to be supplied pursuant to any options exercised by the Purchaser in accordance with Clause 2.3;
(b) the Insurance Spares; and
(c) the Specialist Maintenance Tools;
Escrow Agent means Assurex Escrow Pty Limited ABN 64 008 611 578;
means the agreement between the Purchaser, the Supplier, the Escrow Agent and the Technology Supplier dated on or about the Date of Contract substantially in the form of Annexure Part U;
Failure Modes, Effects and Criticality Analysis (FMECA)

Final Certificate

Final Design Documentation

Final Payment Claim

Finance Costs

Formal Instrument of Agreement

General Conditions

GIPA Act

GST

GST Legislation

Improvements

Incident Reporting and Response Plan

Industrial Relations Plan

Insolvency Event

means the document of that name that complies with the requirements of Appendix E of the LRV Specification;

has the meaning in Clause 24.4;

means Design Documentation that has progressed through each Design Stage and has not been "Rejected" by the Purchaser under Clause 6C.3;

means the final payment claim referred to in Clause 24.4;

the reasonable internal finance costs of the Supplier incurred as a result of a Compensable Cause, Suspension or Variation;

means the formal instrument of agreement to which these General Conditions are attached;

means these amended General Conditions of contract based upon AS 4911-2003;

means the Government Information (Public Access) Act 2010 (NSW) and any regulations promulgated under it;

means the tax payable on taxable supplies under the GST Legislation;

means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;

means any improvement to or modification, adaptation or development of any Purchaser Material or Supplier Material;

means a plan that complies with the requirements of Appendix E of the LRV Specification;

means a plan that complies with the requirements of Appendix E of the LRV Specification;

means, in respect of a person:

(a) an administrator being appointed to the person;

(b) the person resolving to appoint a Controller or analogous person to the person or any of the person's property;

(c) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the
person or any of the person's property; or

(d) an appointment of the kind referred to in paragraph (b) being made (whether or not following a resolution or application);

(e) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the person's property;

(f) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;

(g) an application being made to a court for an order for its winding up;

(h) an order being made, or the person passing a resolution, for its winding up;

(i) the person:

(i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or

(ii) being unable to pay its debts or otherwise insolvent;

(j) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

(k) a court or other Authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or

(l) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the Purchaser;

**Insurance Spares**

means the spare parts for the LRVs as specified in Schedule A to Annexure H;

**Intellectual Property Right**

means all present and future rights conferred by statute, common law or equity in or in relation to any patent, registered design, trademark or name, copyright, design, circuit layout, business name, invention, moral right or other protected right, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable;

**Intended Purpose**

means:

(a) to convey passengers on the LRT safely and reliably;

(b) to provide a similar or better level of passenger amenity to the Variotrams currently in operation on the LRT;

(c) to be no less reliable than the Variotrams; and
Interface Management Plan means a plan that complies with the requirements of Appendix E of the LRV Specification;

IR Guidelines means the NSW Government "Industrial Relations Management Guidelines";

Item means an Item in Annexure Part A;

ITSR means the Independent Transport Safety Regulator constituted under the Transport Administration Act 1988 (NSW);

IWE or Inner West Extension means the proposed light rail project along the route between Catherine Street, Lilyfield to Dulwich Hill using the existing freight rail line from Wattle Street, Pyrmont to Dulwich Hill as described in the LRV Specification;

IWESite means the site described in Annexure Part R;

Key Person means each individual referred to in Annexure Part N or any appointment or replacement approved by the Purchaser under Clause 15B;

Laws means:

(a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and New South Wales; and

(b) certificates, licences, consents, permits, approvals and any other binding requirements of Authorities having jurisdiction in the relevant circumstances;

Legislative Requirements includes:

(a) Laws;

(b) Acts, Ordinances, laws, regulations, by-laws, orders, awards and proclamations from any relevant jurisdiction applicable to the work under the Contract; and

(c) fees and charges payable in connection with the foregoing;

Licenced Intellectual Property means:

(a) all Intellectual Property Rights in:

(i) the Operating Instruction Manual and any other operation and maintenance manuals described in the LRV Specification;

(ii) the Training Materials;

(iii) the design of the Equipment;

(iv) the Design Documentation; and

(b) any Improvements to the Intellectual Property Rights described in paragraph (a);

Loss includes:

(a) any cost, expense, loss, damage or liability, whether direct, indirect or consequential; and
(b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty;

**LRT** means the Sydney light rail mass public transit system from Central Station, Sydney to Catherine Street, Lilyfield, and on and from the commencement of operation services of the IWE, the Inner West Extension;

**LRV** means the light rail vehicles required to be supplied under the Contract, as specified in the LRV Specification;

**LRV Delivery Plan** means a plan that complies with the requirements of Appendix E of the LRV Specification;

**LRV Livery Design** means design for the livery and colour scheme of the LRV that complies with the requirements of Appendix E of the LRV Specification;

**LRV Program** means the program set out in Annexure Part O, as may be updated in accordance with the Contract;

**LRV Specification** means the documents set out in Annexure Part E, as may be varied in accordance with the Contract;

**Maintainer** means CAF Rail Australia (ABN 15 146 694 537);

**Maintenance Contract** means the document entitled "Maintenance Contract" between the Purchaser, the Maintainer and PLRC for the maintenance of the Equipment and other light rail vehicles and signalling equipment, dated on or about the Date of Contract;

**Moral Right** means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world;

**Not Rejected** means, in respect of a Review Document, the Purchaser has issued a notice that the relevant Review Document is "Not Rejected" under Clause 6A.2(a)(ii)(A) or which is deemed "Not Rejected" under Clause 6A.2(c);

**Open Book Basis** means the provision of any pricing, costing and other information on an open book basis to enable an assessment of actual costs and profit margins, including a breakdown of all relevant preliminaries, insurances, labour, equipment, materials, subcontract costs, margins and discount rates used to calculate net present values, in a clear and transparent manner;

**Operating Instruction Manual** means the document by that name that complies with the requirements of Appendix E of the LRV Specification;

**Operational Completion** means that stage in the carrying out of the work under the Contract when the requirements set out in Annexure Part F have been satisfied;

**Operator** means Veolia Transport Sydney Pty Ltd ACN 096 046 052 and any subsequent entity fulfilling the same function;

**Operator Accreditation Deliverables** means all the deliverables required by the LRV Specification and the Not Rejected Safety Management and Accreditation Plan to enable the Operator to obtain variations to its Accreditation to test, commission and operate the LRVs;

**Payment Claim** means a payment claim submitted under Clause 24.1(a);
Payment Certificate means a payment certificate provided under Clause 24.1A;

Planning Approval means the approval dated 16 February 2011 issued by the Minister for Planning pursuant to Part 3A of the Environmental Planning and Assessment Act 1979 (NSW) in respect of the IWE and includes all documents incorporated by reference;

Pollutant includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the environment:
(a) unsafe or unfit for habitation or occupation by persons or animals;
(b) degraded in its capacity to support plant life;
(c) contaminated; or
(d) otherwise environmentally degraded;

Preliminary Design Stage means the stage in the development of the Design Documentation:
(a) the purpose of which is for the Supplier to develop the preliminary design for the Equipment; and
(b) in which the Purchaser may review Design Documentation to determine the its compliance with the LRV Specification and its consistency with the Concept Design;

Prescribed Notice has the meaning in Clause 27.1;

Project Plan means each of:
(a) the Project Risk Management Plan;
(b) the Project Risk Register;
(c) the Communications Management Plan;
(d) the Interface Management Plan;
(e) the LRV Delivery Plan;
(f) the Variation Management System;
(g) the WHS Plan;
(h) the Compliance Management Plan;
(i) the Systems Assurance Plan;
(j) the Safety Management and Accreditation Plan;
(k) the Design Management Plan;
(l) the Design Review Plan;
(m) the System Verification Review Plan;
(n) the Testing and Commissioning Plan;
(o) the Configuration Management Plan;
(p) the Technical Maintenance Plan;
(q) the Industrial Relations Plan;
(r) the Incident Reporting and Response Plan;
(s) the Environmental Management Plan; and
(t) the Training Management Plan,
described in the LRV Specification, outlines of which are set out in Annexure Part P, as updated in accordance with the Contract;

Project Risk Management Plan means a plan that complies with the requirements of Appendix E of the LRV Specification;

Project Risk Register means a register that complies with the requirements of Appendix E of the LRV Specification;
Purchaser means the party identified as such in the Formal Instrument of Agreement;
Purchaser Event of Default means any event specified in Clause 25.5;
Purchaser Insurance Policies means the insurance policies required to be effected by the Purchaser pursuant to Clause 13.1;
Purchaser Material means all information and materials (in any form or media) owned by or licensed to the Purchaser, including any Purchaser policies, manuals, drawings, specifications or technical documentation;
Purchaser's Representative means the person appointed to act for TfNSW in accordance with Clause 1C;
Purchaser's Safety Assurance Plan means the Purchaser's safety assurance plan for the IWE set out in Annexure Part Q;
Quality Management System means the quality program referred to in Clause 11.2;
Quality Guide means a description and photographs of the fit and finish for the LRVs for use in manufacture and inspection activities and which complies with the requirements of Appendix E of the LRV Specification;
Rail Safety Act means the Rail Safety Act 2008 (NSW) and regulations promulgated under that Act;
Rail Safety Interface Agreement means a safety interface agreement as defined in section 25 of the Rail Safety Act, for the purposes of Division 3 of Part 2 of the Rail Safety Act;
Related Body Corporate means the meaning given to it in the Corporations Act;
Related Documents means all documents produced, used or obtained by or on behalf of the Supplier, necessary to review, approve or understand an aspect of the work under the Contract or required by the Contract to be supplied to the Purchaser;
Relevant Standards means any international or Australian standards applicable or relevant to the Equipment and the Supplier's other obligations under the Contract, including any such standards set out in the LRV Specification or notified by the Purchaser to the Supplier in writing from time to time;
Reliability Proving Period has the meaning given in section 33 of the LRV Specification;
**Review Documents** means:
(a) the Project Plans;
(b) the Safety Cases;
(c) the Operator Accreditation Deliverables;
(d) the LRV Livery Design;
(e) the Quality Guide;
(f) the Training Materials;
(g) the Testing Materials;
(h) any revised or updated LRV Program;
(i) the Quality Management System; and
(j) any other documents identified in the Contract as being required to be submitted in accordance with Clause 6A;

**Rolling Stock Initial Defects List** means the list issued by the Purchaser under Clause 21A.4 which will list Defects of the nature described in section 1 of Annexure Part F;

**Safety Case** means each of:
(a) the Safety Case – Design and Construction;
(b) the Safety Case – Test and Commissioning; and
(c) the Safety Case – Revenue Service;

**Safety Case – Design and Construction** means the safety case that complies with the requirements of Appendices E and F of the LRV Specification and includes the System Hazard Analysis;

**Safety Case – Revenue Service** means the safety case that complies with the requirements of Appendices E and F of the LRV Specification and includes the System Hazard Analysis;

**Safety Case – Test and Commissioning** means the safety case that complies with the requirements of Appendices E and F of the LRV Specification and includes the System Hazard Analysis;

**Safety Management and Accreditation Plan** means a plan that complies with the requirements of Appendices E and F of the LRV Specification and is consistent with the Purchaser’s Safety Assurance Plan;

**Security** means security of the form contemplated by Item 12 or any other form approved by the Purchaser;

**Separate Contractor** means any person other than the Supplier and its Subcontractors engaged by the Purchaser, who carries out work in or about the IWE Site;

**Security Interest** means:
(a) a mortgage, charge, pledge, lien, hypothecation, power of attorney or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money, a notice under section 255 of the Income Tax Assessment Act 1936 (Cth), subdivision 260-A in schedule 1 of the Taxation Administration Act 1953 (Cth) or any similar legislation;
(b) any other interest or arrangement of any kind that
secures the payment of money or the performance of an obligation or which gives a creditor priority over unsecured creditors in relation to any property; or

(c) any agreement to create any of them or to allow any of them to exist;

Site means the site described in Annexure Part R;
Specialist Maintenance Tools means the special maintenance tools for the maintenance of the LRVs specified in Attachment B to Annexure H;
Stabling Facility means the stabling facility for the maintenance and stabling of light rail vehicles for the LRT located at 190 Pyrmont Street, Pyrmont NSW 2009, Australia;
Supplier's Representative means the person appointed to act for the Supplier in accordance with Clause 1C;
Supplier means the party identified as such in the Formal Instrument of Agreement;
Supplier Counterparty Details means in respect of each person other than the Purchaser who is a party to the Contract and Indemnity:
(a) a certified copy of its constitution (or other constituent documents);
(b) a certified copy of any powers of attorney under which the person executed the relevant document to which it is a party; and
(c) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations under each document to which it is a party;
Supplier Event of Default means any event specified in Clause 25.2;
Supplier Insurance Policies means the insurance policies required to be effected by the Supplier pursuant to Clause 13.2;
Supplier Material means all information and material (in any form or media) owned by or licensed to the Supplier and used by the Supplier in carrying out its obligations under the Contract, but does not include the Purchaser Material;
Supplier Termination Event means any event specified in Clause 25.3A;
Systems Assurance Plan means a plan that complies with the requirements of Appendix E of the LRV Specification;
System Hazard Analysis means the system hazard analysis that complies with the requirements of Appendix E of the LRV Specification;
System Specification means the document entitled "Ultimo Pyrmont Light Rail Transit System Specification Volume 1";
System Verification Review Plan means a plan that complies with the requirements of Appendix E of the LRV Specification;
Tax means any income tax, payroll tax, fringe benefits tax,
superannuation guarantee surcharge, stamp duty and other tax, levy, impost, duty, deduction, tax concession, fee, charge, withholding plus any interest, penalty, charge, fees or other amounts payable in respect thereof;

**Tax Invoice**

means the same as in the GST Legislation;

**Technical Maintenance Plan**

means a plan that complies with the requirements of Appendix E of the LRV Specification;

**Technology Supplier**

means Bombardier Transport Australia in respect of the Signalling Systems referred to in clause 28.2 of the LRV Specification.

**Test**

has the meaning in Clause 18 and includes examine and measure;

**Testing and Commissioning Plan**

means a plan that complies with the requirements of Appendix E of the LRV Specification;

**Testing Materials**

means:

(a) Test Specifications which comply with the requirements of Appendix E of the LRV Specification;

(b) Test Reports which comply with the requirements of Appendix E of the LRV Specification;

(c) Test Report Summary which complies with the requirements of Appendix E of the LRV Specification; and

(d) other materials, necessary to satisfy the requirements of the Not Rejected Testing and Commissioning Plan and the requirements set out in the LRV Specification;

**Test Reports**

means the document(s) of that name that comply with the requirements of Appendix E of the LRV Specification;

**Test Report Summary**

means the document of that name that complies with the requirements of Appendix E of the LRV Specification;

**Test Specifications**

means the document(s) of that name that comply with the requirements of Appendix E of the LRV Specification;

**Third Party Intellectual Property Rights**

means all third party Intellectual Property Rights incorporated into the Equipment or which the Supplier uses to carry out its other obligations under the Contract;

**Training Management Guidelines**

means the NSW Government Training Management Guidelines (February 2009);

**Training Management Plan**

means a plan that complies with the requirements of Appendix E of the LRV Specification;

**Training Materials**

means:

(a) the Operating Instruction Manual;

(b) user manuals;

(c) quick reference guides;

(d) curriculum guides;

(e) facilitator guides;
(f) workbooks;
(g) assessments;
(h) computer based desktop simulation software; and
(i) other materials,
necessary to satisfy the requirements of the Not Rejected Training Management Plan and the requirements set out in the LRV Specification;

**Variation**

has the meaning in Clause 23.1;

**Variation Management Plan**

means a plan that complies with the requirements of Appendix E of the LRV Specification;

**Variotram**

means the light rail vehicle which is used on the LRT at the Date of Contract, and like words have a corresponding meaning.

**WHS Legislation**

means legislation relating to health and safety at work including:

(a) the Work Health and Safety Act 2011 (NSW); and
(b) the Work Health and Safety Regulation 2011 (NSW);

**WHS Plan**

means the work health and safety plan prepared by the Supplier and finalised under Clause 10A.2, which must:

(a) set out in adequate detail the procedures the Supplier will implement to manage the work under the Contract from a work health and safety perspective;
(b) describe how the Supplier proposes to ensure the work under the Contract is performed consistently with Laws in relation to work health and safety; and
(c) address the matters specified in Annexure Part A;

**Wilful Default**

means

(a) a deliberate act or omission, with knowledge that the act or omission will have harmful consequences, but does not include any innocent or negligent act or omission or any other act or omission to be done in good faith; or
(b) any fraudulent or criminal conduct.

### 1.2 Rules for interpreting the Contract

In the Contract:

(a) references to a person include an individual, firm or a body, corporate or unincorporate;
(b) clause headings do not form part of, and must not be used in the interpretation of, the Contract;
(c) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
(d) measurements of physical quantities must be in SI;
(e) unless otherwise provided, prices are in the currency in Item 10(a) and payments must be made in that currency at the place in Item 10(b);
(f) the law governing the Contract, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction stated in Item 9;

(g) not used; and

(h) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

1A PLRC

Each of TfNSW, PLRC and the Supplier acknowledges that PLRC:

(a) has entered into the Contract solely in its capacity as the party with the rights to operate the Sydney Light Rail, including the right to occupy Stabling Facility and the ownership of the LRT and the ability to give access to the Stabling Facility, and for no other purpose;

(b) does not otherwise have the benefit of the undertakings and warranties given by the Supplier under this Contract; and

(c) this Contract does not create any duty, obligation or liability on the part of the Supplier to or in respect of PLRC which would not be created if PLRC was not a party to it.

1B Novation to TfNSW Nominee

The parties acknowledge that:

(a) Subject to Clause 1B(b), TfNSW may, at any time, elect to assign or novate its rights and obligations under the Contract to PLRC or any other nominee (TfNSW Nominee).

(b) If the TfNSW Nominee is not PLRC or another New South Wales Government agency, then TfNSW must obtain the prior written consent of the Supplier before appointing such nominee, which approval must not be unreasonably withheld if the proposed nominee is:

(i) reputable and has sufficient financial and operational capacity to perform the obligations of TfNSW under this Contract; and

(ii) not a competitor of the Supplier.

(c) Subject to Clause 1B(b), if TfNSW elects to assign or novate its rights and obligations under the Contract to a TfNSW Nominee:

(i) the Supplier consents to that assignment or novation;

(ii) the Supplier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to TfNSW and TfNSW Nominee) to give effect to that assignment or novation.

(d) From the date of such assignment or novation to TfNSW Nominee:

(i) Clause 1A and Clause 1B will be deleted; and

(ii) all references to "TfNSW" in the Contract will be deemed to be references to TfNSW Nominee.

1C REPRESENTATIVES

(a) The Supplier must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Contract as the Supplier’s Representative and must keep the Purchaser informed in writing of the name of that person, and of any change. If the Purchaser reasonably objects to the person appointed from time to time, the Supplier must replace that person.

(b) The Purchaser must ensure that there is a person appointed to act on behalf of the Purchaser in relation to the Contract as the Purchaser’s Representative and will advise the Supplier in writing of any limitations or qualifications to the powers of the Purchaser’s Representative. The Purchaser must keep the Supplier informed in writing of the name of
that person and of any change. The person does not act as independent certifier, assessor or valuer. The person acts only as agent of the Purchaser.

(c) The Purchaser will advise the Supplier in writing if the Purchaser's Representative delegates any of its powers to others.

2 Nature of Contract

2.1 Performance and payment

In accordance with the requirements of the Contract:

(a) the Supplier must:
   (i) manufacture, supply, Deliver, test and commission the Equipment; and
   (ii) ensure the integration of the LRVs with the LRT to enable the successful operation and maintenance of the LRVs on the LRT; and

(b) the Purchaser will, subject to the terms of the Contract:
   (i) accept the Equipment; and
   (ii) pay the Supplier the Contract Sum adjusted by any additions or deductions made pursuant to the Contract.

2.2 No adjustment

The Supplier acknowledges and agrees that the Contract Sum is not subject to any adjustment except as expressly stated in the Contract.

2.3 Option for additional Equipment

(a) The Supplier acknowledges and agrees that the Purchaser may, but is not obliged to:
   (i) at any time prior to the date which is 2 years after the Date of Operational Completion, by written notice to the Supplier, require the Supplier to supply and Deliver not less than one and not more than ten additional LRVs as set out as Option B in Annexure J and otherwise on the terms set out in the Contract
   (ii) at any time prior to the date which is 7 months after the date of the Contract, by written notice to the Supplier, require the Supplier to supply and Deliver additional LRVs as set out as Option A in Annexure J and otherwise on the terms set out in the Contract;
   (iii) at any time between the date which is 8 months after the date of the Contract and 31 December 2015, by written notice to the Supplier, require the Supplier to supply and Deliver not less than six and not more than six additional LRVs as set out as Option C in Annexure J and otherwise on the terms set out in the Contract;
   (iv) at any time prior to the date which is 8 months after the date of the Contract and 31 December 2016, by written notice to the Supplier, require the Supplier to supply and Deliver not less than six and not more than six additional LRVs (additional to any LRVs required to be supplied and Delivered pursuant to clause 2.3(a)(iii)) as set out as Option D in Annexure J and otherwise on the terms set out in the Contract; and
   (v) at any time after the Contract, by written notice to the Supplier, require the Supplier to supply and Deliver not less than four and not more than four additional LRVs as set out as Option D in Annexure J and otherwise on the terms set out in any Lease Proposal provided by the Supplier pursuant to clause 2.3(d) which has been accepted by the Purchaser.

(b) If the Purchaser issues a notice under Clause 2.3(a):
   (i) the Contract Sum will be adjusted by an amount calculated in accordance with Annexure Part J on the basis that four payments will be made in respect of any
option or options exercised under Clause 2.3(a) (other than an option exercised pursuant to Clause 2.3(a)(v)) being:

(A) 20% of the total price (determined in accordance with Annexure J) in respect of the option exercised under Clause 2.3(a) (Option Price) will be payable on the date on which the option is exercised by the Purchaser;

(B) 10% of the Option Price will be payable on Delivery of the first LRV under the option;

(C) 40% of the Option Price will be payable on Delivery of the last LRV under the option; and

(D) 30% of the Option Price will be payable on Operation Completion of the last LRV under the option;

(ii) the parties will negotiate in good faith to agree the Date for Delivery and Date for Operational Completion for each additional item of Equipment.

(c) The Supplier acknowledges and agrees that the Purchaser may, but is not obliged to within 14 days after the date of this Contract, provide the Supplier with a notice for the Supplier to provide its proposal for leasing to the Purchaser 4 light rail vehicle (Lease Proposal).

(d) Within 14 days after receiving a notice under Clause 2.3(c), the Supplier must provide the Purchaser with a Lease Proposal which:

(i) includes a draft lease agreement between the Purchaser and Supplier for leasing to the Purchaser 4 light rail vehicles for operation on the LRT for a period of 12 months with options for the Purchaser to extend the lease period for an additional 12 months (which option may be exercised more than once);

(ii) includes the pricing set out in Option E of Annexure J; and

(iii) is capable of acceptance by the Purchaser by notice in writing.

2.4 Supplier Counterparty Details and Security

(a) The Supplier must provide the Supplier Counterparty Details to the Purchaser within 10 Business Days after the date of the Contract.

(b) The Supplier must comply with Clause 2.4(a) and Clause 3.1 as a precondition to the payment of the amount referred to as being payable in connection with "Contract Execution" in Table 1 to Annexure H.

2A Maintenance contract

2A.1 No relief

The Supplier:

(a) will not be relieved from any of its obligations or liabilities under the Contract or at law; and

(b) must not in any manner whatsoever assert any defence in connection with or otherwise avoid any Claim made by the Purchaser under or pursuant to the Contract, as a result of:

(c) any failure by the Maintainer to maintain the Equipment in accordance with the Maintenance Contract;

(d) any breach of the Maintenance Contract by the Maintainer; or

(e) any act or omission (including any negligent act or omission) of the Maintainer in connection with the Maintenance Contract or the maintenance of the Equipment.
2A.2 No Claims

The Supplier releases the Purchaser from all Claims and any Loss suffered by the Supplier arising out of or in any way in connection with:

(a) any failure by the Supplier to maintain the Equipment in accordance with the Maintenance Contract;
(b) any breach of the Maintenance Contract by the Supplier; or
(c) any act or omission (including any negligent act or omission) of the Supplier in connection with the Maintenance Contract or the maintenance of the Equipment.

3 Security

3.1 Provision

The Supplier must provide Security in the amount and form required by Item 12 and in accordance with this Clause 3.

3.2 Recourse

(a) Security is provided to ensure performance of the Contract by the Contractor. The Purchaser may have recourse to the Security where:
   (i) the Supplier is in breach of any of its obligations under the Contract;
   (ii) the Supplier has failed to pay the Purchaser an amount due under the Contract; or
   (iii) the Purchaser is entitled to terminate the Contract.

(b) The Purchaser will not be liable for any Loss occasioned by any conversion of security under paragraph (a) and any such Loss will be to the account of the Supplier.

3.3 Not used

3.3A No injunction

The Supplier acknowledges that it will not at any time take steps to injunct or otherwise restrain or attempt to injunct or otherwise restrain:

(a) any issuer of any Security contemplated in this Clause 3 from paying the Purchaser pursuant to any Security; or
(b) the Purchaser from:
   (i) taking any steps to obtain payment under any Security; or
   (ii) using the moneys received under any Security.

3.4 Reduction and release

(a) Upon the issue of the Certificate of Operational Completion, the Purchaser's entitlement to Security will be reduced to the percentage or amount in Item 12(f) as applicable, and the reduction will be released and returned within 10 Business Days to the Supplier.

(b) The Purchaser's entitlement to Security in Item 12(e) will cease 10 Business Days after the later of delivery of the component of the Equipment for which that Security was provided.

(c) The Purchaser's entitlement otherwise to Security will cease 10 Business Days after the date of the Final Certificate. Upon the Purchaser's entitlement to Security ceasing, the Purchaser will release and return forthwith the Security to the Supplier.

3.5 Interest

Interest earned on Security held by the Purchaser will belong to the Purchaser.
4 Evidence of Contract
The Contract comprises the following documents:
(a) the Formal Instrument of Agreement;
(b) these amended general conditions of contract based upon AS/NZS 4911-2003 (including Annexure Part A, Annexure Part B and Annexure Part C); and
(c) Annexure Parts D to V.

5 Service of notices

5.1 How to give a notice
Unless otherwise expressly stated in the Contract, a notice, consent or other communication under this document is only effective if it is:
(a) in writing, signed by or on behalf of the person giving it;
(b) addressed to the person to whom it is to be given; and
(c) either:
   (i) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that person's address; or
   (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error.

5.2 When a notice is given
A notice, consent or other communication that complies with this clause is regarded as given and received:
(a) if it is delivered or sent by fax:
   (i) by 5.00 pm (local time in the place of receipt) on a Business Day - at the local time (in the place of receipt of that fax) which equates to the time at which the fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety; or
   (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - 9.00am on the next Business Day; and
(b) if it is sent by pre-paid mail:
   (i) within Australia - on the second Business Day after posting; or
   (ii) to or from a place outside Australia - 7 Business Days after posting.

5.3 Address for notices
A person's mail address and fax number are those set out in:
(a) for the Purchaser, Item 2;
(b) for the Supplier, Item 4,
or as the person notifies the sender.

6 Contract documents

6.1 Discrepancies
If either party discovers any inconsistency, ambiguity or discrepancy in any documents forming part of the Contract, that party must give the other party written notice of it. The Purchaser, thereupon, and upon otherwise becoming aware, will direct the Supplier as to the interpretation and construction to be followed taking into account the priority of documents specified in Clause 6.1A.
6.1A Priority of documents

The following priority of documents applies if there is any ambiguity, discrepancy or inconsistency in, or between, the documents comprising the Contract or between the Contract and the Final Design Documentation:

(a) where the ambiguity, discrepancy or inconsistency is in the documents which comprise the Contract, the following order of priority will apply:
   (i) the Contract, excluding the LRV Specification and the Project Plans set out in Annexure Part P;
   (ii) the LRV Specification; and
   (iii) the Project Plans set out in Annexure Part P;

(b) to the extent that paragraph (a) does not resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required standard or quality of the Equipment or the carrying out of the Supplier's obligations under the Contract, the Supplier must comply with the highest standard or quality specified or perform the more onerous obligation;

(c) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of Final Design Documentation, the highest standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail; and

(d) where the ambiguity, discrepancy or inconsistency is between figured and scaled dimensions, the figured dimensions will prevail.

6.2 Purchaser-supplied documents

(a) The Purchaser will supply to the Supplier the documents and number of copies thereof, both stated in Item 14.

(b) They will:
   (i) remain the Purchaser's property and be returned to the Purchaser on written demand; and
   (ii) not be used, copied nor reproduced for any purpose other than the performance of the Contract.

6.3 Supplier-supplied documents

All documents required to be submitted to the Purchaser by the Supplier must be:

(a) in English;

(b) clear and legible; and

(c) thoroughly checked prior to submission to the Purchaser.

6.4 Availability

The Supplier must make available, within 5 Business Days' notice of a request from the Purchaser, a set of the documents relevant to any significant part of the Equipment.

6.5 Confidential information

(a) Subject to paragraph (b), the Supplier must:
   (i) keep confidential the terms of the Contract, any documents supplied by or on behalf of the Purchaser, any documents produced under the Contract and any information leading to the creation of the Contract; and
   (ii) ensure that each of its officers, employees, subcontractors and consultants comply with the terms of paragraph (a)(i).
(b) The Supplier is not obliged to keep confidential any information:

(i) which is otherwise in the public domain other than by a breach of the Contract by the Supplier; or

(ii) the disclosure of which is:

(A) required by Legislative Requirements;
(B) given with the prior written consent of the Purchaser; or

(iii) given to a court in the course of proceedings to which the Supplier is a party.

6.6 Media releases and publicity

(a) The Supplier must not:

(i) disclose any information concerning the Contract for distribution through any communications media; or

(ii) make any public announcement or statement in relation to the Contract, the IWE or the Purchaser, without the Purchaser’s prior written approval.

(b) The Supplier must refer to the Purchaser any enquiries from any media concerning the Contract and must agree the wording and timing of any public announcements and statements.

6.7 Access to information and privacy

(a) The Supplier must, promptly on receiving a written request by the Purchaser, provide the Purchaser with access to all information reasonably requested by the Purchaser which relates directly to the performance by the Supplier of its obligations under the Contract.

(b) The Supplier acknowledges and agrees that the Purchaser may review, copy, retain or otherwise deal with such information to enable either of them to satisfy any of its obligations under any Legislative Requirement.

(c) The Supplier must comply with the privacy obligations of the Privacy and Personal Information Protection Act 1998 (NSW) or any Commonwealth or New South Wales legislation that replaces that Act and must assist the Purchaser in complying with that Act.

6.8 Disclosure by the Purchaser

(a) Subject to Clauses 6.2(b) to 6.8(d), the Purchaser may publish or disclose (on the internet or otherwise):

(i) the terms of the Contract; and

(ii) any document or information arising under, out of or in connection with the Contract or relating to the performance of the Contract.

(b) TNSW will consult with the Supplier before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, or any obligation to disclose this Contract under the GIPA Act, if it appears that:

(i) the information:

(A) includes 'personal information' (as that term is defined in the GIPA Act) about the Supplier or its employees;

(B) concerns the Supplier’s business, commercial, professional or financial interests; or

(C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Supplier.
(ii) the Supplier may reasonably be expected to have concerns about the disclosure of the information; and

(iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.

(c) If, following consultation between TfNSW and the Supplier, the Supplier objects to disclosure of some or all of the information, the Supplier must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 Business Days after the conclusion of the consultation process.

(d) In determining whether there is an overriding public interest against disclosure of the information, TfNSW will take into account any objection received by the Supplier.

6.9 Public Disclosure

(a) The Supplier acknowledges and agrees that the Purchaser or any Authority may be required to make disclosures regarding the Contract:

(i) under Laws, including the GIPA Act;

(ii) to a court or tribunal; and

(iii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability, including:

(A) making the Contract available to the Auditor General in accordance with the Public Finance and Audit Act 1983 (NSW) and the New South Wales Government Memorandum 2007-01 (Public Disclosure of Information arising from NSW Government Tenders and Contracts); and

(B) tabling information concerning the Contract in Parliament,

(Public Disclosure Obligations).

(b) The Supplier must, at its own cost and expense, use all reasonable endeavours to assist the Purchaser or an Authority in meeting their Public Disclosure Obligations.

6A Review documents

6A.1 Preparation and submission of Review Documents

(a) Within the time stated in Appendix E of the LRV Specification applicable to each Review Document the Supplier must prepare and submit three hard copies and one electronic copy (in native and PDF formats) of the Review Documents and any Related Documents to the Purchaser for review and comment.

(b) The Supplier must ensure that the Review Documents submitted under paragraph (a):

(i) comply with the requirements of the Contract and the LRV Specification;

(ii) are submitted in a form approved by the Purchaser;

(iii) are submitted progressively and in a timely manner in accordance with the LRV Program and any relevant Project Plan;

(iv) are submitted in a manner which, having regard to the quantum of Review Documents submitted, will allow the Purchaser a reasonable opportunity to review the Review Documents within the timeframes contemplated by the Contract; and

(v) if the relevant Review Documents are Project Plans, are consistent with the outline Project Plans set out in Annexure Part P.

6A.2 Review of Review Documents by the Purchaser

(a) The Purchaser may:
(i) review any Review Document submitted under this Clause 6A;

(ii) within 20 Business Days of the Supplier submitting the Review Document notify the Supplier that:

(A) the Review Document is "Not Rejected"; or

(B) the Review Document is "Rejected", if:

(I) in the reasonable opinion of the Purchaser, the Review Document does not comply with the requirements of LRV Specification and the Contract; or

(II) in the case of a Project Plan, the Project Plan is not consistent with the corresponding outline Project Plan (if any) set out in Annexure Part P,

and provide written reasons for the rejection.

(b) The Supplier must, within 10 Business Days (or as agreed with the Purchaser) of receipt of notice from the Purchaser that any Review Document is "Rejected" submit an amended Review Document to the Purchaser and the provisions of this Clause 6A.2 will reapply to the amended Review Document.

(c) If the Purchaser does not issue a notice under Clause 6A.2(a)(ii) within the required timeframe the relevant Review Document will be deemed to be "Not Rejected".

(d) The Purchaser's exercise (or failure to exercise) any of its rights under this Clause 6A.2 will not preclude the Purchaser from subsequently asserting that a Review Document does not comply with the requirements of the Contract (even if the Purchaser previously gave a notice under Clause 6A.2(a)(ii)(A) in respect of that Review Document).

6A.3 Updating the Review Documents

(a) The Supplier must review and if necessary, update the Review Documents:

(i) as required to take account of events or circumstances which will, or may, affect the manner in which the Supplier carries out its obligations under the Contract and continue to correct any defects in or omission from a Review Document (whether identified by the Purchaser or the Supplier);

(ii) when directed to do so by the Purchaser; and

(iii) when required by Appendix E of the LRV Specification.

(b) All updated Review Documents must be submitted for review in accordance with this Clause 6A.

(c) Without limiting the generality of Clause 6A.3(a), the Supplier must regularly review and, as necessary, revise its WHS Plan in accordance with WHS Legislation and submit an amended draft of its WHS Plan to the Purchaser in accordance with Clause 6A (to the extent applicable).

(d) Without limiting Clause 6A.3(a), the Supplier must within 30 days after the date of the Contract update the Annexures to the Contract as reasonably required by the Purchaser to remove historical references to documentation submitted with its tender.

6A.4 Compliance with Review Documents

The Supplier must:

(a) at all times comply with the Not Rejected Review Documents;

(b) ensure that its employees, agents and subcontractors comply with the Not Rejected Review Documents; and

(c) document and maintain detailed records of inspections and audits undertaken as part of any Review Document.
6A.5 No restriction on the Purchaser's rights

The Purchaser and the Supplier acknowledge and agree that:

(a) the Purchaser owes no duty to the Supplier:
   (i) to review the Review Documents for errors or compliance with the requirements of the Contract;
   (ii) in any review of any Review Document it does undertake; or
   (iii) to consult with the Supplier or to make any comments regarding any Review Document;

(b) the Purchaser's review or rejection of, or consultation or comments on, or any other Direction or act or omission with respect to the Review Documents (including any failure by the Purchaser to review, reject, consult or comment regarding any Review Document), will not lessen or otherwise affect:
   (i) the Supplier's warranties under Clause 8A.1 or any of its obligations or liabilities under the Contract or according to law; or
   (ii) the Purchaser's rights against the Supplier under the Contract or according to law; and

(c) the Purchaser's exercise of (or failure to exercise) any of its rights under Clause 6A.2 will not preclude the Purchaser from subsequently asserting that a Review Document does not comply with the requirements of the Contract (even if the Purchaser previously gave a notice under 6A.2(a)(ii)(A) in respect of that Review Document).

6A.6 No relief

(a) The Supplier will not be relieved from any of its obligations under the Contract or from any of its liabilities under the Contract or at law as a result of:
   (i) compliance by the Supplier with its obligations under this Clause 6A, including the implementation of and compliance with the Review Documents;
   (ii) any direction by the Purchaser concerning a Review Document or the Supplier's compliance with a Review Document;
   (iii) any audits or other monitoring by the Purchaser of the Supplier's compliance with the Review Documents; or
   (iv) any failure by the Purchaser, or anyone else acting on behalf of the Purchaser, to detect any non-compliance including where any failure arises from any negligence on the part of the Purchaser or any other person.

(b) The Supplier's compliance with its obligations under this Clause 6A is not evidence of compliance by the Supplier with its other obligations under the Contract and will not discharge any of the Supplier's obligations under the Contract except those set out in this Clause 6A.

6B Project review

The Supplier shall:

(a) meet monthly (or at such other times as the parties agree) with the Purchaser and any other persons whom the Purchaser nominates;

(b) discuss the report it has prepared under paragraph (c) of this Clause and such other matters as the Purchaser may from time to time require;

(c) prepare and provide the Purchaser with a written report at each meeting in accordance with paragraph (a) of this Clause, on all work health, safety and rehabilitation matters (including matters concerning or arising out of or in connection with Clause 10A), including a summary of the Supplier's compliance with WHS Legislation;
promptly and fully respond to any questions which the Purchaser asks in relation to any report; and

if it requires instructions from the Purchaser, make all necessary recommendations as to the action required.

The Purchaser shall:

before each meeting - prepare an agenda for that meeting; and

after each meeting - prepare minutes of the meeting and distribute them to all attendees of the meeting, however a resolution or communication at any meeting (or minutes recording any resolution or communication) shall not constitute a direction as defined in Clause 1.1 unless and until a separate direction is given to the Supplier in writing.

6C Design of equipment

6C.1 Supplier's obligations in relation to design

(a) The Supplier must carry out its design obligations in relation to the Equipment to a level of skill, care and diligence reasonably expected of the design and engineering profession for works of the nature of the design and manufacture of the Equipment and so that the Equipment meets the requirements of the Contract and when complete will be fit for its Intended Purpose.

(b) The Supplier must design and manufacture the Equipment in accordance with:

(i) the LRV Specification;
(ii) all Relevant Standards;
(iii) the Not Rejected Design Management Plan; and
(iv) the other requirements of the Contract, as the Purchaser may vary under Clause 23.

6C.2 Development and submission of Design Documentation

(a) The Supplier must develop, submit and complete the Design Documentation for each Design Review Submission in accordance with the requirements of the Contract, the Not Rejected LRV Program and the Not Rejected Design Management Plan.

(b) The Supplier must give the Purchaser throughout the preparation of the Design Documentation for the Equipment the opportunity to review, comment on and monitor the design performance of the Supplier in accordance with this Clause 6C.

(c) The Supplier must give the Purchaser, at each Design Stage for each Design Review Submission three hard copy and one electronic (native and PDF formats) sets of all Design Documentation and Related Documents complying with the requirements of the LRV Specification and the Not Rejected Design Management Plan relating to that Design Review Submission.

(d) The Supplier must ensure that the Design Documentation for each Design Review Submission:

(i) includes all Design Documentation that is relevant to that Design Review Submission;
(ii) is submitted in a form approved by the Purchaser;
(iii) is submitted progressively and in a timely manner in accordance with the Not Rejected LRV Program and the Not Rejected Design Management Plan; and
(iv) is submitted in a manner which, having regard to the quantum of Design Documentation submitted, will allow the Purchaser a reasonable opportunity to review the Design Documentation within the timeframes contemplated by the Contract.
(e) If a Design Review Submission submitted by the Supplier requires any Design Documentation submitted as part of a previous Design Review Submission to be amended in order to comply with the requirements of the LRV Specification and the Contract, the Supplier must submit updated versions of the affected Design Documentation as part of the Design Review Submission.

(f) The Supplier must, if required by the Purchaser:

(i) make available the appropriate design personnel to:
   (A) explain the Design Documentation; and
   (B) provide such information regarding the Design Documentation as the Purchaser reasonably requests; and

(ii) deliver design presentation workshops at times and as requested by the Purchaser and attended by all relevant personnel from the Supplier's design team to the nominees of the Supplier on the status and detail of the Design Documentation.

6C.3 Review of Design Documentation for Equipment by the Purchaser

(a) The Purchaser may (but is not obliged to) make comments to the Supplier in respect of the Design Documentation submitted by the Supplier for the Equipment.

(b) Within:

(i) during the Preliminary Design Stage, 20 Business Days; and

(ii) during the Critical Design Stage, 20 Business Days,

of receipt of Design Documentation for any Design Review Submission for any Equipment, the Purchaser must notify the Supplier that the Design Documentation is either:

(A) "Not Rejected" and that the Purchaser has no objection to the Supplier proceeding to the next Design Stage for the relevant Design Review Submission for that Equipment or commencing manufacture or installation (as applicable) of the Design Review Submission for the Equipment to which it relates;

(B) "Not Rejected Subject to Comments", during the Preliminary Design Stage only, if the Purchaser has no objection to the Supplier proceeding to the Critical Design Stage subject to the Supplier addressing to the Purchaser's satisfaction, in the Critical Design Stage, the comments made by the Purchaser; or

(C) "Rejected" if in the reasonable opinion of the Purchaser, the Design Documentation does not comply with the requirements of the Contract and provide written reasons for the rejection.

(c) If the Purchaser does not issue a notice under paragraph (b) within the required timeframe the relevant Design Documentation will be deemed to be "Not Rejected".

(d) The Supplier must, promptly and in any case no later than 10 Business Days (or as agreed with the Purchaser) of receipt of notice from the Purchaser that any Design Documentation is "Rejected", submit amended Design Documentation to the Purchaser and the process set out in this Clause 6C.3 will reapply.

(e) A Design Stage for a Design Review Submission for any Equipment will be complete when:

(i) the Supplier has submitted to the Purchaser all Design Documentation applicable to the Design Review Submission for the Equipment; and

(ii) a period of:
(A) during the Preliminary Design Stage, 20 Business Days;
(B) during the Critical Design Stage, 20 Business Days,

after the submission of that Design Documentation has expired and the Purchaser has not "Rejected" that Design Documentation.

(f) A professionally qualified engineer engaged by the Supplier must certify that the Final Design Documentation for each Design Review Submission for any Equipment is appropriate for manufacture of the Equipment to which it relates and is in accordance with the requirements of the LRV Specification and the Contract by providing the Purchaser with a certification in the form of Annexure Part G.

6C.4 Final Design Documentation

(a) Use of any Design Documentation for the purpose of manufacturing any Equipment before the Final Design Documentation is complete is at the Supplier's risk.

(b) The Supplier must not amend the Final Design Documentation unless it first submits the proposed amendments to the Purchaser, together with:

(i) a description of the amendment to the Final Design Documentation;
(ii) its reasons for seeking to amend the Final Design Documentation;
(iii) a review of safety implications (pre and post amendment);
(iv) a review on the impact of the amendment to the Final Design Documentation on:

(A) other deliverables under the Contract (including Technical Maintenance Plan, Training Materials, Systems Hazard Analysis and Failure Modes, Effects and Criticality Analysis (FMECA) and Test Specifications;

(B) the reliability of the LRVs;

(C) the number and identity of the Specialist Maintenance Tools;

(D) the number and identity of the Insurance Spares; and

(E) compatibility between LRVs and certification; and

(v) an environmental assessment of the proposed amendment to the Final Design Documentation,

and the process in Clause 6C.3 has been reapplied to the proposed amendments.

6C.5 Design change post manufacture

If the Supplier requires to modify the LRV after manufacture, it must:

(a) repeat the process in Clause 6C.5(b);

(b) issue a field modification instruction (FMI) providing a step by step guide of how the modification is to be carried out including the materials and resources required; and

(c) ensure that all as-built drawings are updated accordingly.

6C.6 Restriction on the Purchaser's rights

The Purchaser and the Supplier acknowledge and agree that:

(a) the Purchaser owes no duty to the Supplier:

(i) to review any Design Documentation for errors or compliance with the requirements of the Contract;

(ii) in any review of the Design Documentation it does undertake; or

(iii) to consult with the Supplier or to make any comments regarding any Design Documentation;

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no review or rejection of, or consultation or comments by the Purchaser or any failure by
the Purchaser to review, reject, consult or comment regarding any Design Documentation
will lessen or otherwise affect:
(i) the Supplier's warranties under Clause 8A.1 or any of its liabilities or
responsibilities under the Contract or according to law; or
(ii) the Purchaser's rights against the Supplier under the Contract or according to law;
and
(c) the Purchaser's exercise of (or failure to exercise) any of its rights under Clause 6C.3 will
not preclude the Purchaser from subsequently asserting that any Design Documentation
(including Final Design Documentation) does not comply with the requirements of the
Contract even if the Purchaser previously gave a notice under Clause 6C.3(b)(A) in
respect of that Design Documentation.

7 Assignment and subcontracting

7.1 Assignment

(a) The Supplier must not:
(i) assign, transfer, mortgage, charge, make the subject of any trust or otherwise deal
with or encumber all or any of its rights, benefits or interest in the Contract or any
obligations under it; or
(ii) procure or permit to exist any of the foregoing,
without the prior written consent of the Purchaser which must not be unreasonably
withheld if the proposed assignee or transferee:
(A) is a related entity of the Supplier and is technically and financially capable of
performing the Contract; and
(B) provides a parent company guarantee acceptable to the Purchaser.

(b) Any anticipated or actual or material Change of Control of the Supplier must be promptly
notified in writing to the Purchaser. Any Change of Control will be deemed as an
assignment in accordance with paragraph (a) above.

(c) Subject to Clause 7.1(d), the Purchaser must not assign any right, benefit or interest under
the Contract without the prior written approval of the Supplier, which must not be
unreasonably withheld if the proposed assignee or transferee is:
(i) reputable and has sufficient financial and operational capacity to perform the
obligations of TfNSW under this Contract; and
(ii) not a competitor of the Supplier.

(d) The Purchaser may assign any right, benefit or interest under the Contract without the
prior written approval of the Supplier if the assignee or transferee is PLRC or a New
South Wales Government agency.

7.2 Subcontracting

(a) The Supplier must not without the Purchaser's prior written approval:
(i) enter into a subcontract or allow a subcontractor to enter into a subcontract with a
value in excess of AUD 1 million or for any of the following subsystems
(irrespective of the value of the subcontract):
(A) brake system;
(B) propulsion (traction) system;
(C) LRV monitoring system;
(D) heating, ventilation and airconditioning system;
(E) doors system;  
(F) communications system (voice and data); and  
(G) bogies and suspension system; or  

(ii) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

(b) The subcontractors identified in Item 17 are approved for the work identified in Item 17 in relation to each such subcontractor.

(c) With a request for approval, the Supplier must provide to the Purchaser particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor.

(d) The Supplier must provide to the Purchaser other information which the Purchaser reasonably requests, including the proposed subcontract documents.

(e) The Purchaser will notify the Supplier of approval or the reasons why approval is not given. The Purchaser's approval to the subcontract may be conditional.

(f) The Supplier is liable to the Purchaser for the acts, defaults or omissions of subcontractors and employees and agents of subcontractors as if they were those of the Supplier.

(g) Approval to subcontract does not relieve the Supplier from any liability or obligation under the Contract.

8 Intellectual property rights

8.1 Warranties

The Supplier warrants that:

(a) it has appropriate licences of or title to the Licenced Intellectual Property and any other designs, materials, documents, manuals and methods of working provided by the Supplier;

(b) it has the authority to grant the Purchaser the licence to the Licenced Intellectual Property granted under Clause 8.4; and

(c) the use of the Equipment, the Design Documentation, the Licenced Intellectual Property and any other design, materials, documents and methods of working provided by or on behalf of the Supplier under the Contract will not infringe any Intellectual Property Right of any third party.

8.2 Indemnity

The Supplier indemnifies the Purchaser and is liable for all Claims and Losses which may arise from, or be incurred by reason of:

(a) any infringement, violation, alleged infringement or alleged violation of any Intellectual Property Right; or

(b) any breach of the warranties given by the Supplier under Clause 8.1,

provided that liability under this indemnity is reduced proportionately to the extent that the Purchaser or any of its agents, employees or contractors caused or contributed to the Claim or Loss.

8.3 Purchaser Material

(a) All Intellectual Property Rights in Purchaser Material is owned by the Purchaser.

(b) The Supplier assigns to the Purchaser, on creation, all Intellectual Property Rights in:
(i) Improvements of the Purchaser Material made by the Supplier, or on behalf of the Supplier by anyone other than the Purchaser; and

(ii) anything that is created or developed by the Supplier, or on behalf of the Supplier by anyone other than the Purchaser, using the Purchaser Material.

(c) The Supplier must do, and procure, any further acts needed to perfect the assignment to the Purchaser of any Intellectual Property Rights contemplated by paragraph (b).

8.4 LRV Livery Design

The Supplier assigns to the Purchaser, on creation, all Intellectual Property Rights in the LRV Livery Design. The Supplier must do, and procure, any further acts needed to perfect the assignment to the Purchaser of any Intellectual Property Rights in the LRV Livery Design.

8.5 Licence of Purchaser Material

(a) The Purchaser grants to the Supplier a non-exclusive, royalty free, non-transferable licence:

(i) to use; and

(ii) subject to the Purchaser's prior written consent, reproduce and adapt,

Purchaser Material (including Improvements) for the sole purpose of performing its obligations under the Contract.

(b) The Supplier may sublicense its rights set out in this Clause 8.5 to its subcontractors, but only for the sole purpose of the subcontractor performing its obligations under the relevant subcontract to facilitate the performance of the Supplier's obligations under the Contract.

(c) The Purchaser reserves all other rights in the Purchaser Material (and Improvements).

8.6 Rights granted to the Purchaser in Licenced Intellectual Property

(a) The Supplier grants to the Purchaser a non-exclusive, irrevocable, perpetual, transferable, royalty free licence to:

(i) use;

(ii) maintain;

(iii) repair;

(iv) service (including the supply of replacement parts);

(v) integrate other systems with;

(vi) further enhance or develop;

(vii) reproduce and adapt; and

(viii) sublicense,

the Licenced Intellectual Property for the purposes specified in or reasonably ascertainable from the LRV Specification and the Contract (including the commissioning, operation, maintenance and repair of the Equipment) without the need for consent from the Supplier or any third party.

(b) The licences granted in paragraph (a) arise in respect of each component of the Licenced Intellectual Property on the later of the Date of Contract and the date of creation of that component.

(c) The Supplier must provide to the Purchaser a copy of the licence between the Supplier and each supplier of Third Party Intellectual Property Rights.

(d) The Purchaser acknowledges that as between the Purchaser and the Supplier, the Supplier owns any Improvements to the Licenced Intellectual Property.
(e) The Purchaser must comply with reasonable directions given by the Supplier in relation to the protection or security of the Licensed Intellectual Property.

8.7 Terms of licence in respect of Licensed Intellectual Property

The licence granted under Clause 8.6(a) must:

(a) survive:

(i) fundamental breach, repudiation, rescission, frustration, suspension, termination or expiration of the Contract;

(ii) work being taken out of the hands of the Supplier under Clause 23;

(iii) any other discharge of the Contract; and

(b) be assignable by the Purchaser to any third party.

8.8 Moral rights

The Supplier must ensure that in relation to all Moral Rights that subsist in any documents or materials provided by the Supplier under the Contract the relevant author of the documents or materials consents to the Purchaser and its respective employees, agents and subcontractors:

(a) not identifying him or her as the author;

(b) making any changes (material or otherwise) to the documents or materials; and

(c) using, disclosing, reproducing, transmitting, exhibiting, communicating or publishing the documents or materials whether changes have been made to it or not, in any context and with or without any other material as the Purchaser and its respective employees, agents and contractors deems fit.

8.9 Escrow of Software

(a) The Supplier must maintain in escrow with the Escrow Agent a copy of the source code and all documentation necessary to understand and use the source code for all Software that forms part of the Licensed Intellectual Property, from the time that the licence arises in Clause 8.6 and on the terms of the Escrow Agreement.

(b) The Purchaser may, at no cost to the Purchaser, obtain the source code if:

(i) the Purchaser terminates the Contract under Clause 25.4; and

(ii) the Technology Supplier is unable or unwilling to provide ongoing support of the relevant Licensed Intellectual Property on reasonable terms.

(c) The Purchaser must return to the Escrow Agent any source code released to the Purchaser in accordance with this Clause 8.9 as soon as practical after the Purchaser no longer reasonably requires it to exercise its rights under Clause 8 and otherwise in accordance with the Escrow Agreement.

8A Representations and warranties

8A.1 Warranties in relation to the Equipment

The Supplier represents and warrants that the Equipment:

(a) on Delivery and at all relevant times will be fit for its Intended Purpose; and

(b) complies with:

(i) all Relevant Standards;

(ii) all relevant Legislative Requirements; and

(iii) the requirements of the Contract including the LRV Specification.
8A.2 Warranties in relation to suitability of LRVs and LRT
(a) The Supplier represents and warrants that other than as specified in Annexure Part V, the LRT will not require any changes, adjustments or variations to ensure that the LRVs can be used for their Intended Purpose.
(b) The Supplier acknowledges and agrees that it is not entitled to make, and the Purchaser will not be liable for, any Claim arising out of or in connection with the LRT not being suitable to enable the LRVs to be used for their Intended Purpose.

8A.3 General representations and warranties by Supplier
The Supplier represents and warrants that:
(a) it has power to execute, deliver and perform its obligations under or as contemplated by the Contract and all necessary corporate and other action has been taken to authorise such execution, delivery and performance;
(b) the Contract constitutes valid and legally binding obligations enforceable against the Supplier in accordance with its terms, subject to the availability of equitable remedies;
(c) the following will not contravene any existing applicable laws to which the Supplier is subject or any deed or arrangement binding the Supplier:
   (i) execution and delivery by the Supplier of the Contract;
   (ii) performance by the Supplier of its obligations under the Contract; and
   (iii) compliance by the Supplier with the provisions of the Contract; and
(d) it has the skill, competence, resources, commitment and experienced personnel available to undertake its obligations under the Contract.

8A.4 General representations and warranties by Purchaser
The Purchaser represents and warrants that:
(a) it has power to execute, deliver and perform its obligations under or as contemplated by the Contract and all necessary corporate and other action has been taken to authorise such execution, delivery and performance;
(b) the Contract constitutes valid and legally binding obligations enforceable against the Purchaser in accordance with its terms, subject to the availability of equitable remedies; and
(c) the following will not contravene any existing applicable laws to which the Purchaser is subject or any deed or arrangement binding the Purchaser:
   (i) execution and delivery by the Purchaser of the Contract;
   (ii) performance by the Purchaser of its obligations under the Contract; and
   (iii) compliance by the Purchaser with the provisions of the Contract.

8A.5 Non-reliance
The Supplier:
(a) warrants that it did not in any way rely upon:
   (i) any information, data, representation, statement or document made, or provided to the Supplier, by the Purchaser or anyone on behalf of the Purchaser or any other information, data, representation, statement or document for which the Purchaser is responsible or may be responsible, whether or not obtained from the Purchaser or anyone on behalf of the Purchaser (excluding notices issued or directions given by the Purchaser under the Contract); or
   (ii) the accuracy, adequacy, suitability or completeness of any information, data, representation, statement or document contemplated by paragraph (a)(i),
for the purposes of entering into the Contract; and
(b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations.

8A.6 Acknowledgement
The Supplier acknowledges and agrees that:
(a) except as expressly set out in the Contract, the Purchaser makes no representation, and gives no warranty, in respect of:
   (i) the Contract;
   (ii) any transaction or arrangement contemplated under the Contract; or
   (iii) any other matter relevant to the Supplier's decision to enter into the Contract;
(b) acknowledges that it is aware that the Purchaser has entered into the Contract relying upon the warranties, acknowledgements and agreements in this Clause 8A and in the Deed of Disclaimer; and
(c) any receipt, acceptance, review of, comment, verification, direction on, approval, consent or endorsement of any Equipment or work under the Contract (including the Design Documentation) by the Purchaser whether under Clause 6C or otherwise will not affect the Supplier's obligations and liability under the Contract.

9 Not used

10 Authorisations, legislative requirements and compliance with guidelines

10.1 Compliance
(a) The Supplier must comply with and satisfy all Legislative Requirements except those in Item 18 or directed by the Purchaser to be complied with or satisfied by or on behalf of the Purchaser.
(b) The Supplier, upon finding that a Legislative Requirement is at variance with the Contract, must promptly give the Purchaser written notice thereof.

10.2 Not used

10.3 Authorisations to be obtained by the Supplier
The Supplier must expeditiously and diligently apply for and obtain from each relevant Authority all necessary Authorisations required to undertake the work under the Contract other than the Planning Approval.

10.4 Compliance by the Supplier
Except as otherwise provided by the Contract, the Supplier must comply with all Authorisations obtained in connection with the work under the Contract.

10.5 Compliance with directions of Authorities
The Supplier must comply with all lawful directions given by any Authorities in connection with their proper consideration of the application for any Authorisations and with the work under the Contract.

10.6 Supplier to bear costs
The Supplier must bear all costs incurred in connection with obtaining and complying with the conditions of all Authorisations required to be obtained in connection with the work under the Contract other than the costs associated with obtaining the Planning Approval.
10.7 Industrial relations management

(a) The Supplier must manage all aspects of industrial relations connected with its obligations under the Contract, including compliance with the IR Guidelines, including by documenting and implementing an Industrial Relations Plan which complies with the IR Guidelines and keeping the Purchaser informed of industrial relations issues which affect or are likely to affect the performance of its obligations under the Contract.

(b) The Supplier must inform itself of all matters relevant to the employment of labour in connection with the Contract and all industrial matters relevant to the performance of its obligations under the Contract.

10A Safety and accreditation

10A.1 Protection of persons and property

(a) The Supplier must perform the work under the Contract safely and so as to protect persons and property.

(b) If the Purchaser considers there is a risk of injury to people or damage to property arising from the work under the Contract, the Purchaser may direct the Supplier to change its manner of working or to cease working and the Supplier must comply with any such direction at its cost.

10A.2 Health and safety

(a) In the Contract, unless the context otherwise indicates, in relation to any aspect of the performance of the work under the Contract that is the subject of a fitness for purpose warranty, a reference to the Intended Purpose requires, among other things, that work under the Contract, when completed, will comply with all health and safety requirements contained in the WHS Legislation.

(b) Without limiting Clause 18A.1, it is a condition precedent to the Purchaser's obligation under Clause 18A.1 to provide the Supplier with access to, or possession of, the Site that the Supplier has prepared and submitted a WHS Plan to the Purchaser pursuant to Clause 6A and the Purchaser has had the number of days set out in Annexure Part T, or if not stated in Annexure Part T as set out in the Purchaser's Project Requirements, to review the WHS Plan and has not rejected the WHS Plan.

(c) Without limiting Clause 7.2, the Supplier shall:

(i) ensure that, if any Laws, including in the State or Territory in which the work under the Contract is situated or the work under the Contract is carried out (as the case may be), require that:

(A) a person:

(I) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or

(II) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

(B) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

(ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of subparagraph (i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
(iii) if requested by the Purchaser or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Purchaser before the Supplier or subcontractor (as the case may be) commences such work.

(d) The Supplier shall carry out the work under the Contract:

(i) safely and in a manner that does not put the health and safety of persons at risk; and

(ii) in a manner that protects property.

(e) If the Purchaser reasonably considers there is a risk to the health and safety of people or damage to property arising from the work under the Contract, the Purchaser may direct the Supplier to change its manner of working or to cease working to the extent required to avoid or mitigate the risk to health and safety of people or damage to property and so as not to prejudice the Supplier’s ability to comply with WHS Legislation.

(f) In this Clause the terms ‘construction project’, ‘construction work’, ‘principal contractor’ and ‘workplace’ have the same meanings assigned to those terms under the WHS Legislation.

(g) Without limiting the Supplier’s obligations under any other provision of the Contract:

(i) the Supplier must provide prior written notice to the Purchaser in respect of and to the extent that any work under the Contract includes construction work. Upon receipt of any notice under this Clause 10A.2(g)(i), the Purchaser:

(A) engages the Supplier as the principal contractor for the work under the Contract; and

(B) authorises the Supplier to have management and control of each workplace at which the work under the Contract is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and

(ii) the Supplier accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.

and the Supplier’s engagement and authorisation as principal contractor will continue:

(iii) subject to subparagraph (iv), until the Date of Operational Completion unless sooner revoked by the Purchaser taking over work under this Contract or terminating the Contract pursuant to any provision of the Contract or according to Law; and

(iv) in respect of any rectification work under Clause 22 that is construction work, during the period any such work is carried out during the Defects Liability Period.

(h) To the extent not prohibited by law, the Supplier indemnifies the Purchaser against any damage, expense, loss or liability suffered or incurred by the Purchaser caused by the failure of the Supplier to discharge the duties imposed on a principal contractor under the WHS Legislation or otherwise comply with this Clause 10A.

(i) The Supplier shall:

(i) ensure that in carrying out the work under the Contract:

(A) it complies with all Laws and other requirements of the Contract for work health, safety and rehabilitation management;

(B) all subcontractors and consultants comply with the requirements referred to in this Clause 10A and their respective obligations under the WHS Legislation; and
(C) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

(ii) notify the Purchaser immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the work under the Contract;

(iii) institute systems to obtain regular written assurances from all subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;

(iv) provide the written assurances obtained pursuant to subparagraph (iii), together with written assurance(s) from the Supplier about the Supplier's ongoing compliance with the WHS Legislation, to the Purchaser;

(v) provide the Purchaser with a written report at each meeting in accordance with Clause 6B(c), on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in connection with, this Clause 10A), or any other relevant matters as the Purchaser may require from time to time, including a summary of the Supplier's compliance with the WHS Legislation;

(vi) cooperate with all Separate Contractors and the Purchaser to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;

(vii) exercise a duty of good faith to the Purchaser in carrying out the work under the Contract to enable the Purchaser to discharge the Purchaser's duties under the WHS Legislation;

(viii) ensure that it does not do anything or fail to do anything that would cause the Purchaser to be in breach of the WHS Legislation; and

(ix) ensure its subcontracts include provisions equivalent to the obligations of this Clause 10A (save for the engagement of the Supplier as principal contractor).

(j) Without limiting the Supplier's obligations under any other Clause of the Contract, insofar as the Supplier, in carrying out the work under the Contract, is:

(i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the Work Health and Safety Act 2011 (NSW) applies;

(ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the Work Health and Safety Act 2011 (NSW) applies;

(iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the Work Health and Safety Act 2011 (NSW) applies;

(iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the Work Health and Safety Act 2011 (NSW) applies; or

(v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the Work Health and Safety Act 2011 (NSW) applies,

the Supplier shall comply with the applicable obligations under the WHS Legislation.

(k) The failure by the Supplier to comply with any obligation under this Clause 10A will be deemed to be a substantial breach for the purposes of Clause 25.2.
10A.3 Rail Safety

(a) To the extent required by law, the Supplier must ensure that it and any Related Body Corporate and its agents, subcontractors, consultants, nominees and licensees, obtain and maintain any Accreditation under the Rail Safety Act and comply with all conditions of such Accreditation and all relevant obligations under the Rail Safety Act required to carry out its obligations under the Contract.

(b) The Supplier must provide to the Purchaser:

(i) copies of any Rail Safety Interface Agreements required by the Rail Safety Act (if any) in relation to the Equipment;

(ii) copies of all notices and all reports, documents and correspondence associated with such notices, between the Supplier and ITSR in relation to the Equipment in connection with the following requirements of the Rail Safety Act:

(A) Accreditation offences;

(B) surrender, suspension or revocation of Accreditation;

(C) variation of conditions and restriction of Accreditation including determinations of application for variation of Accreditation;

(D) notifiable occurrences, including an accident or incident associated with railway operations that may cause significant property damage, serious injury or death, or is otherwise specified in the Rail Safety Act regulations as being a 'notifiable occurrence';

(E) reports into railway accidents;

(F) improvement notices issued under section 112 of the Rail Safety Act or prohibition notices issued under section 117 of the Rail Safety Act and correspondence from the Supplier in relation to an improvement notice or prohibition notice; and

(G) any undertaking to ITSR by the Supplier.

10A.4 Operator's Accreditation variation

The Supplier acknowledges and agrees that:

(a) in order to test and operate the LRVs the Operator will be required to obtain certain variations to its Accreditation from ITSR; and

(b) it will, in good faith, cooperate with the Purchaser and the Operator and do everything reasonably necessary to enable and assist the Operator to obtain the required variations to its Accreditation from ITSR, including by:

(i) providing the Not Rejected Safety Cases and the Operator Accreditation Deliverables; and

(ii) providing all documents, drawings, specifications and other information or evidence requested for this purpose by the Purchaser or the Operator, by the relevant times for submission specified in Appendix E of the LRV Specification.

10A.5 The Purchaser's Safety Assurance Plan

The Supplier must perform its obligations under the Contract to enable the Purchaser and its employees, agents and subcontractors to implement and comply with the requirements of the Purchaser's Safety Assurance Plan.

11 Quality management

11.1 Inspection and audit of the Equipment

In respect of the Equipment, the Purchaser may:
(a) direct the Supplier to supply particulars of the mode and place of manufacture, the source of supply of materials and other components, the performance capacities and other related information; and

(b) together with any person authorised by the Purchaser, inspect such place or sources in accordance with Clause 11A.

11.2 Quality Management System

(a) The Supplier must prepare and submit to the Purchaser in accordance with Clause 6A a Quality Management System which:

(i) complies with Australian/New Zealand Standard AS/NZS ISO 9001:2008 Quality management systems – Requirements; and

(ii) makes provision for the implementation of a quality system in connection with performance by the Supplier of its obligations under the Contract which is in all respects in accordance with all Relevant Standards and the requirements of the Contract (including the LRV Specification).

(b) The Supplier must ensure that its Quality Management System is properly, fully and professionally implemented during the performance of its obligations under the Contract.

(c) The Purchaser may, on reasonable notice, inspect the Supplier's records to examine the operation and effect of the Quality Management System.

(d) The Supplier acknowledges and agrees that:

(i) the Quality Management System will be used only as an aid to achieving compliance with the Contract and to document such compliance; and

(ii) the implementation and compliance with any Quality Management System and any failure by the Purchaser to detect any Defect in the Equipment will not relieve the Supplier of any of its other obligations under the Contract.

11A Inspection and audit

11A.1 Purchaser's rights

(a) Without limiting any other provisions of the Contract, the Purchaser and any other person authorised by the Purchaser may, on 2 Business Days' notice (or without notice in the case of an emergency or threat to public safety) and at the Purchaser's cost:

(i) subject to the Supplier's reasonable safety and security constraints, enter the premises of the Supplier or any of its subcontractors for the purposes of:

(A) observing the performance of the Supplier's obligations under the Contract and monitoring compliance by the Supplier of its obligations under the Contract; and

(B) exercising any right or performing any obligation which the Purchaser has under the Contract; and

(ii) carry out an audit of the Supplier's documents and other records (other than Commercially Sensitive Information which the Supplier is not otherwise required to disclose under this Contract) it has related to the work under the Contract to the extent reasonably necessary to verify the Supplier's performance of its obligations under the Contract.

(b) The Supplier will use its best endeavours to exercise its rights under this Clause 11A.1 in a manner which does not unreasonably interfere with the performance by the Supplier of its obligations under the Contract.

11A.2 Supplier to assist

The Supplier must:
(a) give the Purchaser and any other person authorised by the Purchaser access to all records relating to the Contract to the extent necessary to enable an audit as contemplated by Clause 11A.1;

(b) allow the Purchaser and any other person authorised by the Purchaser to have access to the premises and personnel of the Supplier and any of its subcontractors to the extent necessary to carry out any inspection or audit;

(c) provide the Purchaser and any other person authorised by the Purchaser with such assistance as they may reasonably require in connection with their inspection or audit, including making documents available, at the reasonable cost of the Purchaser, and installing and operating any compatible audit software; and

(d) supply to the Purchaser and any other person authorised by the Purchaser, at the reasonable cost of the Purchaser, photocopies or electronic copies of information requested.

11A.3 No duty owed to the Supplier

The Purchaser does not owe any duty to the Supplier to inspect the work under the Contract or review any construction for errors, omissions or compliance with the requirements of the Contract and any inspection will not limit the warranties given by the Supplier under the Contract, nor alter or alleviate the obligations of the Supplier under the Contract.
13 Insurance

13.1 Insurance to be effected and maintained by the Purchaser

(a) The Purchaser will effect and maintain contract works insurance for the value of the Equipment (Purchaser Insurance Policies) from the Date of Delivery until the Date of Operational Completion;

(b) The Supplier acknowledges and agrees that, prior to the Date of Contract, it was provided with copies of the Purchaser Insurance Policies proposed to be effected by the Purchaser and:

(i) it reviewed and examined the terms of those Purchaser Insurance Policies;

(ii) it has satisfied itself as to the nature and extent of the cover provided by those Purchaser Insurance Policies;

(iii) without limiting the Supplier's obligations under the Contract, it will, if it determines to it be appropriate, take out at the Supplier's cost any insurance to:

(A) insure any risks not insured by the insurance policies; or

(B) cover any exclusions, conditions, deductibles or excesses in the Purchaser Insurance Policies; and

(iv) where it bears the risk of the relevant loss or damage, or is required to indemnify the Purchaser, agrees to pay the cost of any excess or bear the cost of any deductibles (as applicable) in relation to a claim made by any insured under the Purchaser Insurance Policies.

13.2 Insurance to be effected and maintained by the Supplier

The Supplier must effect and maintain the following insurances (Supplier Insurance Policies) on or before the Date of Contract until the Date of Operational Completion:

(a) a suitable policy against any liability, loss, claim, demand, suit or proceeding, costs and expenses arising at common law or under any statute or other legislative provision relating to workers compensation as a result of personal injury or death of any person employed by the Supplier;

(b) a public and products liability policy of insurance which covers the Purchaser and the Supplier and any subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interest which covers their liabilities to third parties and includes liability for loss of or damage to property and death of or injury to any person (other than liability which is covered by the insurance referred to in Clause 13.2(a)) for an amount in respect of any one occurrence not less than $10,000,000;

(c) a professional indemnity insurance policy for any one claim of not less than $5,000,000 with a total aggregate cover of not less than $10,000,000, covering all work undertaken by or on behalf of the Supplier with respect to the work under the Contract, to be maintained for a period of 10 years after the Date of Contract;

(d) a marine cargo insurance policy:

(i) in respect of materials, components and things which are to be used for or incorporated in the work under the Contract; and

(ii) against destruction, loss or damage; and

(e) not used;
a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased by the Supplier or its subcontractors) in connection with the carrying out of the work under the Contract;

(g) a motor vehicle insurance policy which covers third party property damage related to any motor vehicles and unregistered vehicles and plant which are used in connection with the work under the Contract; and

(h) compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with the work under the Contract.

13.3 Supplier Insurance Policies

(a) The Supplier Insurance Policies must:

(i) be effected with an insurer approved by the Purchaser; and

(ii) be for such amounts and containing such conditions, endorsements and exclusions as are acceptable to the Purchaser.

(b) The Supplier agrees to pay the cost of any excess or bear the cost of any deductibles (as applicable) in relation to a claim made under the Supplier Insurance Policies.

13.4 Copies of insurance policies to be provided to the Purchaser

The Supplier must provide, or cause to be provided to the Purchaser, a copy of each insurance policy, renewal certificate and endorsement slip of the Supplier Insurance Policies, as soon as practicable after receipt by the Supplier.

13.5 No vitiation of insurance

The Supplier and the Purchaser must not knowingly permit or suffer to be done any act, matter or thing whereby any insurance required to be effected under the Contract may be vitiated or rendered void or voidable.

13.6 Payment of premiums

The Supplier must pay or cause to be paid punctually all premiums and other moneys payable in respect of the Supplier Insurance Policies.

13.7 Disclosure

The Supplier must give full, true and particular information to the relevant insurer of all matters and things the non-disclosure of which might in any way prejudice or effect any such policy or policies of insurance or the payment of any or all moneys thereunder.

13.8 Notice to Purchaser

The Supplier must promptly notify the Purchaser of the proposed cancellation of any insurances required to be effected under the Contract and will not cancel, materially vary or allow any of the insurance policies to lapse without prior written consent of the Purchaser.

13.9 Failure to provide proof of insurance

If, after being requested in writing to do so, the Supplier fails to provide evidence of compliance with its insurance obligations under the Contract to the reasonable satisfaction of the Purchaser, without prejudice to other remedies available to the Purchaser, the Purchaser may effect and keep in force any such insurance and pay such premiums as may be necessary for the purpose and the amounts so paid will be a debt due from the Supplier to the Purchaser, which may be deducted or recovered by the Purchaser in accordance with the Contract or the Purchaser may refuse payment under the Contract until evidence of compliance with the Supplier's insurance obligations is provided to the reasonable satisfaction of the Purchaser.

13.10 Insurance claims procedures

(a) The Supplier must immediately notify the Purchaser in writing of any occurrence or incident likely to give rise to a claim under the policies referred to in the Contract (with
the exception of claims under a liability policy in respect of a liability of the Purchaser to the Supplier) or of any other matter or thing in respect of which notice should be given by the Supplier to the Purchaser in terms of those policies.

(b) In respect of any claim by the Supplier under the Purchaser Insurance Policies referred to in Clause 13.1(a), the Supplier authorises the Purchaser to, and agrees that the Purchaser will, have full control of the defence, conduct and settlement of such claim and will irrevocably instruct the insurers of the relevant Purchaser Insurance Policies accordingly. The Supplier must give all such information and assistance as may be reasonably practicable in all the circumstances and, if requested by the Purchaser, give to the Purchaser a statutory declaration as to any matters connected therewith.

(c) In respect of any claim under the Purchaser Insurance Policies referred to in Clause 13.1(a), the Supplier must procure that its agents and subcontractors authorise the Purchaser to, and agree that the Purchaser will, have full control of the defence, conduct and settlement of such of such claim and will irrevocably instruct the insurers of the relevant Purchaser Insurance Policies accordingly. The Supplier must also procure that its agents and subcontractors give all such information and assistance as may be reasonably practicable in the circumstances and, if requested by the Purchaser, give to the Purchaser a statutory declaration as to any matters connected with the claim.

(d) Notwithstanding the provisions of this Clause 13.10, the Supplier may take immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances and any such action will not prejudice the position of the Supplier under the policies of insurance in respect of any loss, destruction or damage.

13.11 Obligation to rebuild or reinstate

(a) As often (prior to the Date of Delivery) as the Equipment is partially or wholly destroyed or damaged and, if directed by the Purchaser, the Supplier must apply all insurance moneys available and (to the extent the insurance moneys are insufficient) its own moneys, to rebuilding or reinstating the Equipment or making good the damage thereto so that the Equipment, following such reinstatement, rebuilding or making good of damage, satisfies the requirements of the Contract.

(b) The Purchaser must pay to the Supplier all moneys received by the Purchaser in respect of any such insurance proceeds for the purpose of rebuilding or reinstating or making good the Equipment or any part thereof destroyed or damaged by progress payments as the work of rebuilding or restating or making good proceeds.

(c) If the Purchaser does not issue a direction contemplated by paragraph (a), then the Purchaser will be entitled to the insurance proceeds and:

(i) the Supplier will be relieved of its obligations to achieve Operational Completion to the extent its ability to achieve Operational Completion is affected by the damage or destruction; and

(ii) the Supplier’s payment entitlements will be adjusted accordingly.

13.12 Insurance moneys

All moneys in excess of $500,000 received by the Purchaser or the Supplier in settlement of any claim under the insurance policy maintained in accordance with Clause 13.1(a) must be paid into a bank account directed by the Purchaser and such moneys must be held in that account for the purposes of rebuilding, repair, or making good, as the case may be, of the Equipment. The balance of moneys and any interest accrued thereon, if any, will be credited against any moneys owing by the Supplier to the Purchaser under the provisions of the Contract.

13.13 Liability not relieved

Neither failure to comply, nor full compliance, by the Supplier with the insurance provisions of the Contract, will limit or relieve the Supplier of its liabilities and obligations under any other term of the Contract.
14 Directions
(a) Except where the Contract otherwise provides, the Purchaser may give a Direction orally but will within 5 Business Days confirm it in writing.
(b) The Supplier must comply, and ensure that its Authorised Users comply, with all lawful instructions given by the Purchaser in writing with respect to the carrying out of the Supplier's obligations.

15 Programming
15.1 Information provided by the Purchaser
(a) The Supplier must give the Purchaser reasonable advance notice of when the Supplier needs information, materials, documents or instructions from the Purchaser.
(b) The Purchaser will not be obliged to give any information, materials, documents or instructions earlier than the Purchaser should reasonably have anticipated at the Date of Contract.

15.2 LRV Program
(a) On the Date of Contract and within 10 Business Days after receipt of any notice under clause 2.3(a) and whenever the LRV Program is substantially changed, the Supplier will provide to the Purchaser an up-to-date LRV Program and any Related Documents which comply with the requirements of Clause 15.3.
(b) The Supplier must not, unless permitted under Clause 17.5, depart from a Not Rejected LRV Program.
(c) The Supplier must:
   (i) update the LRV Program no less than weekly to take account of any:
      (A) changes to the LRV Program;
      (B) delays that have occurred;
      (C) changes to the order of, or the times for, performance of the Supplier's obligations under the Contract; and
      (D) any corrective action plans implemented by the Supplier; and
   (ii) ensure that each update of the LRV Program:
      (A) shows the effect of any:
         (I) corrective action plans implemented by the Supplier; and
         (II) extensions of time granted by the Purchaser;
      (B) shows the timing for rectification of any Defects notified by the Purchaser; and
      (C) allows for the submission of Review Documents and Design Documentation in the manner and at a rate which will give the Purchaser a reasonable opportunity to review the submitted Review Documents or Design Documentation within the period specified in Clause 6A.2 and 6C.3, as applicable.
(d) Notwithstanding paragraph (b), the Purchaser may from time to time direct the Supplier to furnish to the Purchaser an updated LRV Program within the time directed by the Purchaser.

15.3 Format of the LRV Program
Each LRV Program must be in both hard copy and in an electronic version on CD in both PDF and unlocked native electronic format (with all logic links intact and nothing hidden or
protected) accompanied by all associated files so that they can be reproduced by the Purchaser using Primavera P6 as approved by the Purchaser and must show:

(a) all principal activities relating to the design, manufacture, Delivery, testing and commissioning of the Equipment;
(b) weekly time scales, their order and duration and interrelationship;
(c) networks, including critical path networks;
(d) current critical paths of, and float in, the Supplier's activities;
(e) actual versus planned progress of the Supplier's activities;
(f) if it is known, the impact, and the estimated potential impact of any delaying events or circumstances;
(g) the dates or periods for and the nature of input from or instructions or decisions required by the Purchaser, including the current critical paths of, and float in such input, instructions or decisions; and
(h) such other information as may be reasonably requested by the Purchaser or which the Supplier considers pertinent.

15.4 Purchaser directions to modify the Not Rejected LRV Program

(a) The Purchaser may from time to time in writing direct the Supplier to modify the Not Rejected LRV Program. If compliance with a modified Not Rejected LRV Program directed in writing by the Purchaser under this Clause 15.4 causes the Supplier to incur additional cost in executing its obligations under the Contract, the Supplier will first notify the Purchaser and the provisions of Clause 23 will apply as if the Purchaser had issued a Proposed Variation Notice under Clause 23.2.

(b) Modification may include a change to the order of, or the times for, performance of the Supplier's obligations under the Contract, including the design, manufacture, Delivery testing and commissioning of the Equipment.

(c) If compliance with a Direction to modify the Not Rejected LRV Program is not reasonably possible, the Supplier must notify the Purchaser in writing of the reason. The Purchaser and the Supplier will then promptly meet to discuss further modifications to the Not Rejected LRV Program which are capable of compliance and the procedures contained in this Clause 15.4 must be repeated.

15.5 Review of updated LRV Programs

All revised LRV Programs prepared by the Supplier pursuant to this Clause 15 must be submitted to the Purchaser for review in accordance with Clause 6A.

15.6 Effect of review, comments or directions

The Supplier acknowledges that any review or comments on the LRV Program, any notification that a revised LRV Program has been "Rejected" or "Not Rejected" or a Direction to modify the LRV Program by the Purchaser (except for a Direction under Clause 15.4(a)) does not alter or relieve the Supplier from the Supplier's obligations, liabilities and responsibilities under the Contract, nor does it:

(a) evidence or constitute an EOT or a Direction by the Purchaser to accelerate, disrupt, prolong or vary any, or all of the work under the Contract; and/or
(b) necessarily constitute a Variation direction.

15A Contract management

15A.1 Contract Control Group meetings

(a) The Purchaser will establish a Contract Control Group consisting of 2 senior management representatives from each of the Purchaser and the Supplier.
(b) The function of the Contract Control Group is to review the progress of the work under the Contract.

(c) The Contract Control Group must meet monthly and any other time required by the Purchaser.

(d) A representative of the Purchaser must:
   (i) convene and chair all meetings of the Contract Control Group; and
   (ii) prepare and promptly distribute minutes of meetings of the project control group to the members of the Contract Control Group.

(e) If requested by the Purchaser, a senior management representative of the Supplier must attend any Contract Control Group meeting and provide any information and assistance reasonably required by a member of the Contract Control Group.

(f) The parties must each pay all costs of their respective members and involvement in the Contract Control Group.

(g) The Contract Control Group will have no legal responsibilities. Nothing which occurs during a meeting of the Contract Control Group will:
   (i) relieve the Supplier from, or alter or affect, the Supplier's obligations and liabilities under the Contract or otherwise;
   (ii) prejudice the Purchaser's rights against the Supplier whether under the Contract or at law; or
   (iii) be construed as a direction by the Purchaser.

15A.2 Not used

15A.3 Alerts and directions by the Purchaser

(a) If the Supplier becomes aware of any actual or likely event or circumstance which has, or may have, a materially adverse effect on the Supplier's obligations under the Contract (including the financial status of the Supplier), the Supplier must give the Purchaser an Alert as soon as possible, and in any case not more than 10 Business Days after the Supplier became aware of the relevant event or circumstance.

(b) The Purchaser will issue a Direction to the Supplier in relation to what actions, if any, the Supplier must take to address the event or circumstances giving rise to the Alert.

(c) The Supplier must promptly give to the Purchaser any other information reasonably requested for the Purchaser to assess the Alert and its consequences and to make a decision.

15A.4 Monthly reports

From the Date of Contract until the Date of Operational Completion, the Supplier must, within 5 Business Days of the end of each month, submit to the Purchaser a written report in a form reasonably required by the Purchaser providing:

(a) details of the progress of the Supplier's obligations under the Contract, with a comparison to the progress planned in the Not Rejected LRV Program;

(b) details of design status, status of all deliverables under the Contract, any quality issues, safety issues, outstanding correspondence and testing and commissioning status;

(c) the Supplier's current valuation, and particulars of the valuation, of the work under the Contract completed by the Supplier;

(d) the Supplier's current estimate, and particulars of the estimate, of the percentage of the work under the Contract which have been completed;

(e) an up-to-date Not Rejected LRV Program in format required by Clause 15.3;
(f) details of any issues necessary for consideration by the Purchaser and any information required by the Purchaser;

(g) a cost report showing:
   (i) the cost of the work under the Contract up to the date of the report:
   (ii) the predicted cost of the work under the Contract required to bring the work under the Contract to Operational Completion; and
   (iii) a list of all Variations (whether proposed, claimed or approved) and the cost of those Variations;

(h) a summary of any expected delays to the work under the Contract, including any delays previously notified in accordance with Clause 17.1; and

(i) such other information as the Purchaser may reasonably require or the Purchaser considers pertinent.

15A.5 Other reports

As soon as practicable after a reasonable request from the Purchaser, the Supplier must prepare and submit to the Purchaser a written report in relation to the design, manufacture, Delivery, testing and commissioning of the Equipment requested by the Purchaser.

15B Personnel

15B.1 Key Personnel

The Supplier must:

(a) engage the Key Personnel specified in section 1 of Annexure Part N in the roles specified in section 1 of Annexure Part N;

(b) if no name has been specified for a particular position in section 1 of Annexure Part N, promptly employ in that position a person:
   (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in section 2 of Annexure Part N; and
   (ii) approved by the Purchaser (such approval not to be unreasonably withheld or delayed);

(c) subject to paragraph (d), not replace any Key Person without the prior written approval of the Purchaser; and

(d) if any Key Person dies, becomes seriously ill, or resigns from the employment of the Supplier, replace, him or her with a person:
   (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in section 2 of Annexure Part N; and
   (ii) approved by the Purchaser, which approval must not be unreasonably withheld or delayed (except in the case of the Supplier, in which case the Purchaser may withhold its approval in its absolute discretion).

15B.1 Competence management

The Supplier must:

(a) maintain management procedures to ensure that its employees are competent to undertake their respective roles and understand their obligations in respect of the work under the Contract; and

(b) ensure that its subcontractors maintain management procedures to ensure that the subcontractor's employees are competent to undertake their respective roles and understand their obligations in respect of the work under the relevant subcontract.
16 Suspension

16.1 Purchaser's suspension

The Purchaser may direct the Supplier to suspend supply or delivery of the whole or part of the Equipment for such time as the Purchaser thinks fit, if the Purchaser, acting reasonably, is of the opinion that it is necessary:

(a) because of an act, default or omission of:

   (i) the Purchaser or its employees, consultants, agents or other contractors (not being employed by the Supplier); or

   (ii) the Supplier, a subcontractor or either's employees or agents;

(b) for the protection or safety of any person or property; or

(c) to comply with a court order.

16.2 Supplier's suspension

If the Supplier wishes to suspend supply or delivery of the whole or part of the Equipment, otherwise than pursuant to Clause 25.7, the Supplier must obtain the Purchaser's prior written approval. The Purchaser may approve the suspension and may impose conditions of approval.

16.3 Recommencement

As soon as the Purchaser becomes aware that the reason for any suspension no longer exists, the Purchaser shall direct the Supplier to recommence the suspended supply or delivery as soon as reasonably practicable.

The Supplier may recommence the supply or delivery suspended pursuant to Clause 16.2 or 25.7 at any time after reasonable notice to the Purchaser.

16.4 Cost

(a) The Supplier shall bear the cost of suspension pursuant to paragraph (a)(ii) of Clause 16.1 and Clause 16.2.

(b) If the Supplier made the protection, safety or court order necessary, the Supplier shall bear the cost of suspension pursuant to paragraph (b) or (c) of Clause 16.1.

(c) If the Purchaser made the protection, safety or court order necessary, the Purchaser shall bear the cost of suspension pursuant to paragraph (b) or (c) of Clause 16.1.

(d) If the Supplier otherwise incurs more or less cost (including Finance Costs) than otherwise would have been incurred, the difference shall be assessed by the Purchaser and added to or deducted from the Contract Sum.

16.5 Effect of suspension

Suspension will not affect the Date for Operational Completion but the suspension under Clause 16.1 or Clause 25.7 may be a ground for EOT under Clause 17.3.

17 Time

17.1 Time for Delivery and Operational Completion

The Supplier must perform its obligations under the Contract so as:

(a) to achieve Delivery by the Date for Delivery; and

(b) to achieve Operational Completion by the Date for Operational Completion.

17.1 Notice of delay

When it becomes evident to the Supplier that an Event may delay the work under the Contract, the Supplier must promptly:

(a) notify the Purchaser in writing with details of the possible delay and the cause; and
(b) provide to the Purchaser a detailed corrective action plan in accordance with Clause 17.2A.

17.2A Corrective action plan

(a) Each corrective action plan which the Supplier must provide under Clause 17.1(b) must show how the Supplier proposes to avoid, mitigate, minimise or recover the consequences of the delay consistent with its obligations in Clause 17.1A.

(b) The Purchaser may, within 10 Business Days of receipt of a corrective action plan, give notice (with reasons) to the Supplier that it does not accept that implementation of the corrective action plan will enable the Supplier to avoid, mitigate or minimise the consequences of the delay, consistent with the Supplier's obligations under Clause 17.1A.

(c) If the Purchaser gives the Supplier a notice under paragraph (b), the Supplier must amend and resubmit the corrective action plan to the Purchaser within 5 Business Days after which paragraph (b) and this paragraph (c) will continue to apply until the Purchaser does not issue a notice under paragraph (b).

(d) The Supplier must comply with a corrective action plan for which the Purchaser does not issue a notice under paragraph (b).

(e) The Supplier will not be relieved of any liability or responsibility under the Contract or otherwise at law arising out of or in connection with:
   (i) any notice given by the Purchaser under paragraph (b); or
   (ii) the implementation of any corrective action plan in respect of which the Purchaser has or has not issued a notice under paragraph (b).

17.2 Claim for EOT

(a) If the Supplier is or will be delayed in reaching Operational Completion by delays caused by an Event, the Supplier must within 10 Business Days after becoming aware of the delay issue an Alert to the Purchaser.

(b) If the requirements of Clause 17.2(a) are satisfied and within 21 days after the date the Supplier provides the Alert under Clause 17.2(a), the Supplier gives the Purchaser a written claim for an extension of time to Operational Completion setting out:
   (i) the facts on which the claim is based; and
   (ii) the number of days extension to the Date for Operational Completion claimed,
the Supplier will be entitled to an EOT.

(c) The Purchaser will not be liable in connection with any Claim by the Supplier, arising out of or in any way in connection with an Event unless the Supplier gives the Purchaser the Alert required in accordance with Clause 17.2(a) and the written claim required in accordance with paragraph (b) within the times and containing the details set out in those clauses.

17.3 Grant of EOT

(a) If the Supplier is entitled to an EOT for Operational Completion under Clause 17.2, the Purchaser will, within 28 days after receipt of the claim referred to in Clause 17.2(b), grant a reasonable EOT. If the Purchaser does not grant the full EOT claimed, the Purchaser will give the Supplier notice in writing of the reasons for the approval of a lesser period than that claimed.

(b) In determining a reasonable EOT for an Event causing delay, the Purchaser will have regard to whether the Supplier has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.

(c) The Supplier will not be entitled to relief to the extent that an Event was caused by the acts or omissions of the Supplier or any Related Body Corporate, employee, agent,
subcontractors, other than acts or omissions of the Supplier or any Related Body Corporate, employee, agent or subcontractors authorised or permitted in accordance with the Contract.

(d) In determining whether the Supplier is or will be delayed in reaching Operational Completion the Purchaser will not have regard to:

(i) whether the Event causing the delay will, based on the current Not Rejected LRV Program, cause the Supplier to fail to reach Operational Completion by the Date for Operational Completion; or

(ii) whether the Supplier could, by committing extra resources or incurring extra expenditure and based on the current Not Rejected LRV Program, make up the time lost.

(e) Notwithstanding that the Supplier is not entitled to an EOT, the Purchaser may at any time and from time to time by notice in writing to the Supplier extend the time for Operational Completion for any reason by nominating a later Date for Operational Completion. The Purchaser is not required to exercise this discretion for the benefit of the Supplier. Any exercise of this discretion does not affect the parties' respective rights and obligations under clause 21A. For the avoidance of doubt if the Purchaser wants to delay Operational Completion it must issue a Variation Order under clause 23.1(a) or a Proposed Variation Notice under clause 23.2.

17.4 Mitigation
The Supplier must take all reasonable steps to reduce, mitigate, prevent or eliminate the effects of any Event including delay costs (and ensure that its subcontractors do also) and use all reasonable endeavours to continue to perform its obligations under the Contract despite the occurrence of an Event.

17.5 Liquidated damages
(a) If the Supplier fails to reach Operational Completion by the Date for Operational Completion, liquidated damages in Item 23 will be due and payable to the Purchaser for every day after the Date for Operational Completion to and including the earliest of the Date of Operational Completion or termination of the Contract.

(b) If an EOT is directed after the Supplier has paid or the Purchaser has set off liquidated damages, the Purchaser shall forthwith repay to the Supplier such of those liquidated damages as represent the days the subject of the EOT.

(c) The Supplier's liability under Clause 17.5(a) is limited to the amount stated in Item 23A.

17.6 Advanced business interruption insurance payments
To the extent that the Purchaser receives a payment under any advanced business interruption insurance with respect to any loss suffered or incurred by the Purchaser in respect of an event which delayed the Supplier in achieving Operational Completion by the Date for Operational Completion and the Supplier has not received an extension of time in respect of such event, then the Purchaser will pay the Supplier the lower of:

(a) the amount received by the Purchaser in respect of that event; and

(b) the period of the delay to Operational Completion arising from that event multiplied by the daily liquidated damages rate set out in Item 23.

17.7 Delay costs
If the Supplier has been granted an EOT under Clause 17.3 for an Event which is also a Compensable Cause, the Purchaser will, subject to Clause 17.4, be liable to the Supplier.
18  Testing and commissioning

18.1A  Access to and use of the IWE Site

(a) The obligations of the Purchaser under this Clause 18.1A are subject to the Supplier satisfying any obligation which is stated to be a condition precedent to the Purchaser's obligation to provide access to, or possession of, the IWE Site to the Supplier.

(b) The Purchaser will, on or before the expiration of the time or date stated in Item 25 of Annexure Part A, give the Supplier non-exclusive access to the IWE Site or sufficient part of the Site to enable the Supplier to carry out commissioning and installation activities in accordance with the Contract.

(c) Despite the provisions of this Clause 18.1A, if the Supplier is in breach of Clause 13.2, the Purchaser may refuse to give the Supplier use of the IWE Site or any part of the IWE Site until the Supplier has complied with the requirements of Clause 13.2.

(d) Use of the IWE Site will confer on the Supplier a right only to such use as is necessary to enable the Supplier to carry out commissioning and installation activities in accordance with the Contract.

18.1B  Provision of access to Site and Stabling Facility

(a) Subject to Clauses 18.1B(b) and (c), the Purchaser will, on or before the expiration of the times or dates stated in Annexure Part V, provide the Supplier with:

(i) non-exclusive access to the Site; and

(ii) non-exclusive access to the Stabling Facility or, if the Purchaser in its discretion elects not to give access to the Stabling Facility, an alternative facility suitable for the commissioning and installation activities of the Supplier,

to enable the Supplier to carry out commissioning and installation activities in accordance with the Contract.

(b) The Purchaser's obligations under Clause 18.1B(a) are conditional upon the Supplier having:

(i) complied with its obligations under Clause 13; and

(ii) in place a Not Rejected Testing and Commissioning Plan.

18.1C  Supplier's obligations

The Supplier acknowledges and agrees that:

(a) when entering or using the IWE Site, the Site or the Stabling Facility, it:

(i) will be responsible for the supervision and safety of its Authorised Users; and

(ii) must comply with the Purchaser's work health and safety requirements and policies notified to the Supplier from time to time; and

(b) after carrying out any activities at the IWE Site, the Site or the Stabling Facility, it will make good any damage caused by the Supplier's activities and reinstate the IWE Site, the Site and the Stabling Facility to the condition it was in prior to the Supplier commencing to carry out activities on the IWE Site, the Site or the Stabling Facility (as applicable) where such reinstatement is necessary due to damage caused by the Supplier's activities.

18.1 Testing and commissioning

(a) The parties agree that the Equipment will be tested and commissioned in accordance with:

(i) the Not Rejected Test Specifications;

(ii) the Not Rejected Testing and Commissioning Plan;
(iii) the LRV Specification; and
(iv) the Not Rejected LRV Program.

(b) The Supplier must ensure that testing and commissioning activities are carried out by appropriately qualified persons.

(c) The Supplier must give such assistance and samples and make accessible such parts of the Equipment as may be directed by the Purchaser.

(d) The Supplier acknowledges and agrees that the Operator must obtain a variation to its Accreditation prior to being able to carry out any commissioning activities on any rail track. The Supplier will comply with its obligations under Clause 10A.4 to assist the Operator to obtain the variation to the Operator's Accreditation.

18.2 Who conducts

(a) The Supplier will conduct Tests specified in the Not Rejected Testing and Commissioning Plan with assistance from the Purchaser in accordance with the Not Rejected Testing and Commissioning Plan.

(b) Subject to the Supplier complying with its obligations under Clause 19A.1, the Purchaser will supply:
   (i) drivers;
   (ii) train paths; and
   (iii) power,
   for the LRVs for the purposes of carrying out any commissioning activities on rail track, in accordance with the Not Rejected Testing and Commissioning Plan.

(c) Tests directed by the Purchaser under Clause 18.7(a) will be conducted by the person directed by the Purchaser.

18.3 Notice

(a) The Supplier must give notice of any testing and commissioning activities in accordance with the LRV Specification.

(b) If the Purchaser will conduct any testing or commissioning activities, the Purchaser must give reasonable written notice to the Supplier of the date, time and place of the test.

(c) If the other party does not attend, the test may nevertheless proceed.

(d) The Supplier acknowledges and agrees that any tests may be attended and witnessed by the Purchaser and any other person nominated by the Purchaser.

18.4 Interface

(a) The Supplier acknowledges that there may be other persons carrying out work or having access to the IWE Site, the Site and the Stabling Facility, including the Purchaser, PLRC, the D&C Contractor, at the time the Supplier is testing and commissioning the Equipment.

(b) The Supplier:
   (i) without limiting the Supplier's obligations under paragraphs (b)(ii), (b)(iii) and (b)(iv), acknowledges and agrees that the Purchaser will manage any interfaces between the Supplier and any other person on the IWE Site, the Site and the Stabling Facility;
   (ii) must comply with all directions of the Purchaser in relation to interfaces at the IWE Site, the Site and the Stabling Facility;
   (iii) must not unreasonably obstruct the D&C Contractor and any other person carrying out work at the IWE Site, Site and the Stabling Facility; and
(iv) must cooperate with the D&C Contractor and any other person carrying out work at the IWE Site, the Site and the Stabling Facility.

18.5 Completion and results

(a) On completion of the tests, the Supplier must make good the Equipment so that it fully complies with the Contract.

(b) The Test Reports and the Test Report Summary must be promptly submitted by the Supplier to the Purchaser in accordance with Clause 6A.

18.6 Costs

(a) Subject to paragraph (b), all costs of and incidental to all tests and commissioning activities which the Supplier is required to carry out under the Contract are to be borne by the Supplier and are included in the Contract Sum.

(b) If the Purchaser directs that tests be carried out in addition to those specified in the Not Rejected Testing and Commissioning Plan the costs of such tests will be allocated as follows:

(i) if the test demonstrates that the Equipment does not meet the requirements of the Contract, the cost of the relevant test will be borne by the Supplier; or

(ii) if the test demonstrates that the Equipment complies with the requirements of the Contract, the cost of the relevant test will be borne by the Purchaser.

18.7 Further testing

(a) Notwithstanding Clause 18.1, at any time before the expiry of the Defects Liability Period the Purchaser may direct that additional tests to those specified in the Not Rejected Testing and Commissioning Plan be performed on the Equipment.

(b) If at any time before the expiry of the Defects Liability Period:

(i) the Purchaser asserts that any part of the Equipment is not in accordance with the Contract; and

(ii) the Supplier requests permission to test the Equipment,

the Purchaser will provide the Supplier with reasonable access to test the Equipment at times notified in writing by the Purchaser.

18A Transit of LRVs

The Supplier must ensure that when transporting any LRV within Australia at any time, whether by road or rail:

(a) only one LRV is transported in one conveyance; and

(b) no LRVs may be coupled together.
the matters set out in clause 18B(b) must be given effect pursuant to Clause 31.9.

19 Delivery

19.1 Mode of and date and place for Delivery

(a) The Supplier, at its expense, shall Deliver the Equipment on the Date for Delivery to the Delivery Place using the mode of Delivery stated in Item 8. The Supplier must give the Purchaser reasonable advance notice of each Delivery.

(b) The party named in Item 26 shall promptly unload the Equipment at the Delivery Place. When so unloaded the Purchaser shall take delivery of the Equipment.

(c) The Purchaser may direct the Supplier to change the Date for Delivery, Delivery Place or the mode of Delivery. If the Supplier can reasonably comply with the Direction, the Supplier must do so. If the Supplier cannot reasonably comply, the Supplier must give the Purchaser written notice of the reasons.

(d) If compliance with any such Directions under this Clause 19.1, except those pursuant to the Supplier’s default, causes the Supplier to incur more or less cost than otherwise would have been incurred had the Supplier not been given the Direction, the difference will be valued as a Variation and added to or deducted from the Contract Sum in accordance with Clause 23.5.

19A Training

19A.1 Training management

(a) The Supplier must comply with the Training Management Guidelines including by implementing and complying with the Not Rejected Training Management Plan.

(b) These obligations are in addition to, but are not in substitution for, any training obligations of the Supplier under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under any Commonwealth or New South Wales law.

19A.2 Training of the Purchaser’s employees and contractors

The Supplier must provide training to the Purchaser’s employees and contractors in accordance with the requirements of:

(a) the Not Rejected Training Management Plan; and

(b) the LRV Specification.
19A.3 Development of Training Materials
The Supplier must prepare all Training Materials in accordance with:
(a) the requirements of the LRV Specification;
(b) the Not Rejected Training Management Plan; and
(c) the other requirements of the Contract.

19A.4 Submission of Training Materials
(a) The Supplier must develop, submit for review (in accordance with Clause 6A) and complete the Training Materials in accordance with the requirements of the Contract and the Not Rejected Training Management Plan.
(b) The Supplier must give the Purchaser throughout the preparation of the Training Materials the opportunity to review, comment on and monitor the performance of the Supplier in accordance with this Clause 19A.4.
(c) The Supplier must ensure that all Training Materials are:
   (i) in the form required by the Purchaser; and
   (ii) where applicable, submitted in the form of a training module.
(d) The Supplier must certify that all Training Materials are in accordance with the requirements of the LRV Specification, the Not Rejected Training Management Plan and the Contract.

19A.5 Fitness for purpose
The Supplier warrants that all Not Rejected Training Materials will at all relevant times be fit for their Intended Purpose.

20 Risk in and ownership of the Equipment
20.1 Risk in the Equipment
(a) Risk in the Equipment will pass from the Supplier to the Purchaser as stated in Item 27.
(b) Unless the Equipment is in the Supplier's possession, the Purchaser must take reasonable measures to protect the Equipment from loss or damage occurring after Delivery but before risk in the Equipment has passed to the Purchaser.

20.2 Ownership of Equipment
Ownership of, and unencumbered title in, the Equipment or any part of it will pass to the Purchaser at the time or times specified in Item 28.

21 Not used
21A Operational completion
21A.1 Notice of Operational Completion
(a) The Supplier must give the Purchaser:
   (i) at least 25 Business Days' notice of when it expects to achieve Operational Completion; and
   (ii) a request for a Certificate of Operational Completion when it believes that Operational Completion has been achieved.
(b) The Supplier may not request a Certificate of Operational Completion any earlier than 25 Business Days after the date on which the Supplier gives notice under paragraph (a)(i), except with the prior written approval of the Purchaser.
The Supplier must attach to the request under paragraph (a)(ii) evidence satisfactory to the Purchaser that the Supplier has achieved all relevant requirements for Operational Completion as set out in Annexure Part F.

21A.2 Determination of Operational Completion by the Purchaser

(a) Within 12 Business Days after receiving the request under Clause 21A.1(a)(ii) the Purchaser, acting reasonably, must either:

(i) if Operational Completion has been achieved, issue a Certificate of Operational Completion to the Supplier stating the date on which Operational Completion was achieved; or

(ii) if Operational Completion has not been achieved, either (at the discretion of the Purchaser):

(A) issue a notice to the Supplier listing the things remaining to be performed to achieve Operational Completion; or

(B) issue a written notice to the Supplier stating that Operational Completion is so far from being achieved that it is not practical to provide the list referred to in paragraph (ii)(A).

(b) If the Purchaser fails to issue a Certificate of Operational Completion under paragraph (a)(i) or a notice under paragraph (a)(ii), Operational Completion will not be deemed to have occurred but nothing in this paragraph (b) will prejudice any right of the Supplier to damages.

21A.3 Operational Completion not achieved

If a notice is issued by the Purchaser under Clause 21A.1(a)(ii) the Supplier must continue to perform its obligations under the Contract to achieve Operational Completion and Clauses 21A.1, 21A.2 and 21A.3 will reapply.

21A.4 Rolling Stock Initial Defects List

(a) The Purchaser will, at the time of issuing a Certificate of Operational Completion, issue the Rolling Stock Initial Defects List to the Supplier.

(b) As soon as possible after the Date of Operational Completion, the Supplier must rectify any Defects in the Equipment, including the Defects contained in the Rolling Stock Initial Defects List.

21A.5 No restriction

In making a determination as to whether Operational Completion has been achieved the Purchaser:

(a) will not be restricted by any notice already provided under Clause 21A.2, as applicable; and

(b) may raise any items of work as a ground for determining that Operational Completion has not been achieved.

21A.6 Effect of Certificate of Operational Completion

A Certificate of Operational Completion:

(a) does not constitute an approval by the Purchaser of the Supplier's performance of its obligations under the Contract;

(b) is not to be taken as an admission or evidence that the Equipment, or any part of the Equipment, complies with the Contract; or

(c) will not prejudice any rights or powers of the Purchaser under the Contract or otherwise according to law.
22 **Defects Liability**

(a) The Defects Liability Period stated in Item 31 will commence on the date of Operational Completion at 4.00 pm.

(b) The Supplier must carry out rectification at times notified in writing by the Purchaser and in a manner causing as little inconvenience to the users of the Equipment as is reasonably possible.

(c) During the Defects Liability Period, the Purchaser may give the Supplier a Direction to rectify a Defect which:

(i) will identify the defect and the reasonable date and/or time for completion of its rectification; and

(ii) may state a date for commencement of the rectification and whether there will be a separate Defects Liability Period therefore (not exceeding that in Item 31, commencing at 4.00 pm on the date the rectification is completed and governed by this clause).

(d) If the rectification is not commenced or completed by the stated dates and/or times, the Purchaser may have the rectification carried out by others but without prejudice to any other rights and remedies the Purchaser may have. The cost thereby incurred shall be monies due and payable to the Purchaser.

23 **Variations**

23.1 **Directing variations**

(a) Whether or not the Purchaser has issued a Proposed Variation Notice under Clause 23.2, the Purchaser, before Operational Completion, may, by written notice titled "Variation Order", direct the Supplier by written notice titled "Variation Order" to:

(i) increase or decrease the quantities of the Equipment or any part of it;

(ii) omit any part of the Equipment;

(iii) change the character, quality or performance requirements of the Equipment or of anything described in the LRV Specification or the Design Documentation pertaining to the Equipment;

(iv) change the dimensions of the Equipment or any part of it;

(v) execute additional work; and/or

(vi) demolish or remove material or work no longer required by the Purchaser.

(b) The Variation Order will also state either:

(i) the agreed amount of the Variation; or

(ii) the amount of the Variation determined under Clause 23.5.

(c) The Supplier must not vary the Equipment or the work under the Contract except as directed by the Purchaser or approved in writing under this Clause 23.1.

(d) The Supplier is bound only to execute a Variation which is within the general scope of the Contract.

23.2 **Proposed Variations**

(a) The Purchaser may give the Supplier written notice titled "Proposed Variation Notice" setting out the details of a proposed Variation which the Purchaser is considering.

(b) The Supplier must, within the reasonable period specified in the Proposed Variation Notice, provide the Purchaser with written notice in which the Supplier sets out:
(i) the effect which the Supplier anticipates that the Variation will have on the Not
Rejected LRV Program (including the Date for Delivery and the Date for
Operational Completion) and how that effect has been assessed; and

(ii) an estimate of the cost or saving (including all time-related costs, if any) of the
proposed Variation calculated in accordance with Clause 23.5; and

(iii) such other information reasonably requested by the Purchaser in the proposed
Variation Notice.

(c) The Purchaser will reimburse the Supplier for the reasonable costs of complying with the
requirements of this Clause 23.2.

(d) The Purchaser is not obliged to direct a Variation under Clause 23.1 that is the subject of
a Proposed Variation Notice.

(e) If the Supplier receives a direction or instruction from the Purchaser which, although not
stated to be a direction or instruction to carry out a Variation, the Supplier considers to be
a direction or instruction to carry out a Variation, the Supplier must:

(i) within 10 Business Days after becoming aware that the direction or instruction may
be a Variation notify the Purchaser that it considers the direction or instruction to
be a direction or instruction to carry out a Variation;

(ii) as soon as practical, but in any case not later than 20 Business Days after receipt of
the direction or instruction, provide the information required under Clause 23.3(b);
and

(iii) not commence or proceed with the direction or instruction until further direction to
do so is received from the Purchaser.

(f) If the Supplier does not comply strictly with the requirements of Clause 23.2(e), the
Supplier will not be entitled to any additional time cost for complying with the direction
or instruction.

23.3 Pricing

Unless the Purchaser and the Supplier agree upon the price for a Variation, the Variation
directed or approved by the Purchaser under Clause 23.1 will be valued under Clause 23.5.

23.4 Variations for the convenience of the Supplier

(a) If the Supplier requests the Purchaser to direct a Variation:

(i) the request must be in writing and must provide:

(A) full details of the request;
(B) the additional or reduced cost or time;
(C) any benefits that may flow to the Purchaser;
(D) the future effect on operating and maintaining the LRT;
(E) any effect on the Date for Operational Completion; and

(ii) the Purchaser may do so at its absolute discretion. The Direction must be in writing
and may be conditional. Unless the Direction provides otherwise, the Supplier will
be entitled to neither extra time nor extra money.

(b) The Purchaser is not obliged to approve a Variation requested by the Supplier.

(c) Despite anything in this Clause 23, the Purchaser will not be obliged to consider or
approve any Variation which:

(i) arises or result from any matter which should have been the subject of an Alert; and
(ii) is claimed by the Supplier more than 3 months after the relevant matter referred to in Clause 23.1 occurred.

(d) Despite anything in the Contract, the Purchaser will not be entitled to any payment of any kind in relation to any Variation except where such Variation:

(i) has been instructed by the Purchaser under Clause 23.1;

(ii) arises from a program change directed in writing by the Purchaser under Clause 15.4; or

(iii) is otherwise agreed by the parties in writing.

23.5 Valuation of Variations

(a) Where the Contract provides that a valuation will be made under this Clause 23.5 (but subject always to Clause 23.4(d)), the Purchaser must pay or allow the Supplier or the Supplier must pay or allow the Purchaser, as the case may require, an amount calculated in accordance with this Clause 23.5.

(b) Subject to Clauses 23.5(c) to 23.5(f), the Supplier must calculate the sum of the adjustment to be made to the Contract Sum in accordance with Annexure Part I.

(c) Each amount calculated in accordance with this Clause 23.5 will be calculated on the basis of:

(i) the rates set out in Annexure Part I and, if required by the Contract, applying Finance Costs; or

(ii) to the extent that an item is not in Annexure Part I, the reasonable rate for that item, directed by the Purchaser, having regard to the reasonable market rate for that item and on the assumption that the relevant parties will take reasonable and appropriate steps to reduce, mitigate, prevent or eliminate the effects of the relevant Variation.

(d) In valuing a Variation under this Clause 23.5, the overriding consideration is that the Purchaser receive value for money and that the valuation of the Variation is fair and reasonable and is calculated in a manner that is transparent and avoids any double counting.

(e) The Supplier must provide (and must use reasonable endeavours to procure that its relevant subcontractors provide) all information referred to in this Clause 23.5 on an Open Book Basis.

(f) If reasonably required by the Purchaser, the Supplier must provide (and must use reasonable endeavours to procure that its relevant subcontractors provide) the Purchaser with full access to internal cost estimation, programming, contingency and risk information used by the Supplier and its relevant subcontractors (as applicable) for their own purposes, in relation to a Variation and, to the extent the Purchaser reasonably considers the information relevant to its assessment of the impacts of the Variation, in relation to the work under the Contract generally.

24 Payment

24.1 Time for payment

(a) The Supplier may only serve a payment claim for moneys then due to the Supplier pursuant to the Contract (Payment Claim) on the Purchaser:

(i) at the times stated in Item 32;

(ii) if the Supplier has complied with its obligations in Clause 24.1(b); and

(iii) if the Supplier has complied with its obligations under Clauses 3.1 and 13.

(b) Each Payment Claim must be in the form required by the Purchaser and must include:

(i) details of the Equipment supplied and delivered;
(ii) details of other moneys then due to the Supplier pursuant to the provisions of the Contract;

(iii) a statutory declaration in the form set out in Annexure Part K; and

(iv) a description and breakdown of the works carried out up to the date of the Payment Claim, showing the value of the works performed since:
   (A) the Date of Contract; and
   (B) since the last Payment Claim was submitted;

(v) if the Supplier has carried out work as a result of a Variation directed under Clause 23:
   (A) a description and breakdown of the works carried for the Variation; and the
   (B) the value of work for the Variation up to the date of the Payment Claim;

(vi) details of any other separately identified payments due under the Contract; and

(vii) the current Not Rejected LRV Program being used by the Supplier for the performance of the work under the Contract.

(c) If the Supplier does not submit a Payment Claim in accordance with Clause 24.1(a) then the Financier's Engineer will not be obliged to undertake any assessment of that purported Payment Claim the Purchaser will not be obliged to make any payment in respect of that purported Payment Claim, until a Payment Claim has been served by the Supplier on the Purchaser that complies with Clause 24.1(a).

(d) Any Payment Claim served by the Supplier prior to the date stated at Item 32 will be invalid until that date has passed, at which point the Payment Claim will be deemed to be served on the Purchaser on the date stated at Item 32.

24.1A Payment Certificates
Subject to Clause 24.5, within 10 Business Days after receiving a Payment Claim under this clause, the Purchaser will issue a payment certificate (Payment Certificate) to the Supplier setting out the calculations employed to arrive at the amount and, if the amount is more or less than the Payment Claim rendered by the Supplier, the reasons for the difference. If the Supplier does not render a Payment Claim, the Purchaser may nevertheless issue a Payment Certificate to the Supplier pursuant to this Clause 24.1A.

24.1B Tax invoice
Within 10 Business Days of receiving a Payment Certificate under this Clause 24.1B, the Supplier must issue a tax invoice to the Purchaser for the amount certified as being payable in a Payment Certificate.

24.1C Payment
Subject to the provisions of Clause 24.7, within 30 Business Days of the end of the month in which the Purchaser receives a tax invoice for the certified amount, the Purchaser must pay to the Supplier, the amount stated in the Payment Certificate plus the applicable GST. If the Supplier does not render a tax invoice, the Purchaser may nevertheless make payment to the Supplier pursuant to this Clause 24.1C.

24.2 Not used

24.3 Effect of payment
Payment of moneys under Clause 24.1 will not be evidence that the subject Equipment complies with the Contract. Payment other than final payment will be on account only.

24.4 Final payment claim and Final Certificate
Within 20 Business Days after the expiry of the last Defects Liability Period, the Supplier must give the Purchaser a written Final Payment Claim endorsed 'Final Payment Claim' being a
Payment Claim together with all other claims whatsoever in connection with the subject matter of the Contract.

Within 30 Business Days after receipt of the Final Payment Claim, the Purchaser will issue to the Supplier a Final Certificate evidencing the moneys finally due and payable between the Purchaser and the Supplier on any account whatsoever in connection with the subject matter of the Contract.

Within 5 Business Days of receiving a Final Certificate under this Clause 24.4, the Supplier must issue a tax invoice to the Purchaser for the amount certified as being payable in the Final Certificate issued under this Clause 24.4. Within 20 Business Days of the end of the month in which the Purchaser receives a tax invoice for the certified amount, the Purchaser will pay to the Supplier, the amount stated in the Final Certificate plus the applicable GST. If the Supplier does not render a tax invoice, the Purchaser may nevertheless make payment to the Supplier pursuant to this Clause 24.4.

All claims by the Supplier, whether under Clause 24.1 or this Clause 24.4, which have not already been barred will be barred after the expiration of the period for the lodging of the Final Payment Claim.

24.5 Interest
Any late payment of amounts that are properly due and payable by either the Purchaser or the Supplier to the other under the Contract (including a previously disputed amount or an amount which is not paid due to the application of set-off by the Purchaser under Clause 24.7 if the amount set-off is determined to be incorrect) will incur simple interest at the rate stated in Item 35 from the day after the date on which the payment was due to (and including) the date of payment.

24.6 Not used

24.7 Set off
(a) The Purchaser will be entitled to set-off or deduct from any amount due from the Purchaser to the Supplier under the Contract any debt or other monies due from the Supplier to the Purchaser whether under the Contract or otherwise at law relating to the IWE.

(b) The Supplier must make all payments due to the Purchaser under the Contract without set-off or counterclaim, and without any deduction to the extent permitted by law.

(c) Nothing in this Clause 24.7 affects the Purchaser's right to recover from the Supplier the whole of the debt or any balance that remains owing after any set-off.

24.8 Payment on account
Any payment of moneys by the Purchaser to the Contract is not:

(a) evidence of the value of the Equipment or that any of the Supplier's obligations under the Contract have been satisfactorily carried out in accordance with the Contract;

(b) an admission of liability; or

(c) approval by the Purchaser of the Supplier's performance or compliance with the Contract, but is only taken to be payment on account, and will not prejudice any rights or powers of the Purchaser whether under the Contract or otherwise according to law.

24.9 No other payment
The Supplier is not entitled to, and will have no Claim against the Purchaser in respect of, any Contract Sum payments by the Purchaser to the Supplier unless expressly provided in the Contract.
24A GST

24A.1 Same meaning as GST Legislation

Words and expressions defined in the GST Legislation have the same meaning in this Clause 24A.1.

24A.2 GST payable

In addition to paying the Contract Sum and providing any other consideration under the Contract, which are exclusive of GST, the Purchaser must:

(a) pay to the Supplier an amount equal to any GST for which the Supplier is liable on any supply by the Supplier under or in connection with the Contract; and

(b) make that payment of that GST as and when the Purchaser must pay or provide the consideration for the supply or any part of it in accordance with the Contract.

24A.3 Invoice

The Supplier must issue a Tax Invoice (or an adjustment note) to the Purchaser for any supply in relation to which the Supplier may recover GST from the Purchaser under the Contract, on or before the due date for payment of the consideration for the supply or any part of it.

24A.4 Adjustments

The Supplier must refund to the Purchaser:

(a) any overpayment by the Purchaser for GST; and

(b) any refund of GST received by the Supplier for whatever reason,

in relation to the Contract within 10 Business Days of the Supplier becoming aware of the overpayment or such refund of GST is received by the Supplier, whichever is the earlier.

24A.5 GST if the Purchaser supplies the Supplier

If the Purchaser must pay GST on any supply by the Purchaser under the Contract, the Supplier must pay to the Purchaser an amount equal to that GST, and indemnify the Purchaser against that GST, in exactly the same way as the Purchaser must so do for any GST the Supplier must pay, and paragraphs 24A.1 to 24A.4 of this Clause 24A apply to that GST as if the Purchaser was the Supplier, and the Supplier was the Purchaser.

24A.6 Indemnities

(a) If a party has a claim under or in connection with the Contract for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).

(b) If a party has a claim under or in connection with the Contract whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue will be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

24A.7 Warranty by Supplier that it is registered for GST

If requested by the Purchaser, the Supplier must provide satisfactory evidence that it is registered or required to be registered for GST. The Supplier must immediately notify the Purchaser if it ceases to be registered for GST.

24A.8 Power to withhold if no ABN

The Purchaser is entitled to withhold from any payment made to the Supplier such amounts as are required for the Purchaser to comply with the provisions of the Taxation Administration Act 1953 (Cth) and related legislation.
24B Not used

25 Default and termination

25.1 Preservation of other rights

If a party breaches (including repudiates) the Contract, nothing in this Clause 25 will prejudice the right of the other party to recover damages or exercise any other right or remedy.

25.3 Purchaser's notice to remedy

A notice under Clause 25.2 must state:

(a) that it is a notice under Clause 25.2;
(b) specify the Supplier Event of Default; and
(c) require the Supplier to:

(i) if the Supplier Event of Default relates to the non-payment of moneys which are due from the Supplier to the Purchaser under the Contract, pay those moneys within 5 Business Days after the notice is given to the Supplier; or

(ii) in the case of any other Supplier Event of Default:

(A) propose a program for remedying the Supplier Event of Default which is reasonably acceptable to the Purchaser; and

(B) remedy the Supplier Event of Default by the time and date specified (being not less than 10 Business Days (and reasonable having regard to the nature of the Supplier Event of Default) after the notice is given to the Supplier).
25.4 Purchaser's rights

(a) If:
   (i) a Supplier Termination Event has occurred; or
   (ii) the Supplier fails to remedy a Supplier Event of Default by the stated date and time,

   the Purchaser may by written notice to the Supplier terminate the Contract.

(b) If the Contract is so terminated, the Purchaser may take possession of the Equipment or any part of the Equipment (including that which is in the course of manufacture or to be imported) paid for by the Purchaser, notwithstanding that it has not yet been Delivered.

25.5 Purchaser's Event of Default

(a) If the Purchaser commits a Purchaser Event of Default, the Supplier may give the Purchaser a written notice to show cause.

(b) Each of the following events is a Purchaser Event of Default:
   (i) (Failure to insure): failing to produce evidence of insurance;
   (ii) (Failure to pay): failure by the Purchaser to make a payment due and payable pursuant to the Contract; and
   (iii) (Failure to provide access) failure by the Purchaser to provide the Supplier with access to the Stabling Facility as required by this Contract for a continuous period of 24 months or longer.

25.6 Supplier's notice to show cause

A notice given under Clause 25.5 must state:

(a) that it is a notice under Clause 25.6;
(b) the alleged Purchaser Event of Default;
(c) that the Purchaser is required to show cause in writing why the Supplier should not exercise a right referred to in Clause 25.7;
(d) the date and time by which the Purchaser must show cause (which must not be less than 20 Business Days after the notice is received by the Purchaser); and
(e) the place at which cause must be shown.

25.7 Supplier's rights

(a) If the Purchaser fails to show reasonable cause by the stated date and time, the Supplier may, by written notice to the Purchaser, suspend the whole or any part of the performance of the Contract.

(b) The Supplier must remove the suspension if the Purchaser remedies the Purchaser Event of Default.
(c) The Supplier may, by written notice to the Purchaser, terminate the Contract, if within 30 Business Days of the date of suspension under this Clause 25.7 the Purchaser fails:

(i) to remedy the Purchaser Event of Default; or

(ii) if the Purchaser Event of Default is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Supplier.

(d) The Supplier will be entitled to damages reasonably incurred by reason of the suspension.

25.8 Termination

If the Contract is terminated pursuant to Clause 25.4 or 25.7, the parties' remedies, rights and liabilities will be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

25.9 Not used

25.10 Procedure on termination

Upon receipt of a notice of termination under Clause 25.4 or 25.7, the Supplier must:

(a) protect property in the possession or control of the Supplier in which the Purchaser has, or may acquire, an interest;

(b) do all things necessary to transfer to the Purchaser all of the Supplier's right, title and interest in and to the Equipment or any plant material and equipment which forms, or which is intended to form, part of the Equipment;

(c) deliver to the Purchaser the Design Documentation and other documents, information, materials and the like (in hard copy and native electronic format) produced by, or in the possession or control of, the Supplier relating to the Equipment together with the Intellectual Property Rights to enable the Purchaser (or the Purchaser's nominee) to operate, maintain and repair the Equipment without infringing any Intellectual Property Rights;

(d) assign to the Purchaser all rights and benefits under contracts with third parties; and

(e) do all things necessary in cooperation with the Purchaser and subcontractors concerned to arrange that subcontractor's contracts be novated to the Purchaser or the Purchaser's nominee; and

(f) Deliver the Equipment to the Stabling Facility, within the times directed by the Purchaser.
25.12 Not used

25.13 Indemnity for Supplier Termination Event

Where the Contract is terminated due to a Supplier Termination Event, the Supplier indemnifies the Purchaser against any Claim brought against or Loss suffered or incurred by the Purchaser in respect of the termination of the Contract including any additional cost incurred in appointing a replacement supplier including any increase in the cost of supplying alternative equipment in excess of the balance of the Contract Sum as at the date of termination.

25.14 No other termination rights

Despite any other rule of law or equity to the contrary, the Contract may not be terminated other than as provided for in the Contract.

26 Not used

27 Notification of claims

27.1 Communication of claims

The Prescribed Notice is a written notice of the general basis and quantum of the claim.

No later than 10 Business Days after the Supplier could reasonably have been aware of any Claim the Supplier must give to the Purchaser the Prescribed Notice or a notice of Dispute under Clause 28.1.

This Clause 27.1 and Clause 27.3 will not apply to any Claim, including a claim for payment (except for claims which would, other than for this Clause 27.1, have been included in the Final Payment Claim), the communication of which is required by another provision of the Contract.

The Purchaser must give to the Supplier a Prescribed Notice within 30 Business Days of becoming aware of a Claim.

27.2 Liability for failure to communicate

If the Supplier fails to comply with the provisions of Clause 27.1 or to give a notice or communicate a claim in accordance with the relevant provision of the Contract then:

(a) to the extent permitted by law, the Purchaser will not be liable for any Claim by the Supplier; and

(b) the Supplier will be absolutely barred from making any Claim against the Purchaser, arising out of or in connection with the relevant direction, fact, matter or thing (as the case may be) to which the provisions of Clause 27.1, the notice or the claim applies.

27.3 Unresolved claims

If within 20 Business Days of giving of Prescribed Notice the claim has not been resolved, the Prescribed Notice will be deemed to be a notice of Dispute under Clause 28.1.

28 Dispute resolution

28.1 Notice of dispute

(a) If a dispute or difference between the Supplier and the Purchaser arises in connection with the Contract or the subject matter of the Contract, then either party may deliver to the other party a notice of dispute (Dispute Notice).

(b) Any Dispute Notice given under Clause 28.1(a) must:

(i) be in writing;

(ii) state that it is a notice under Clause 28.1(a); and
(iii) include or be accompanied by reasonable particulars of the dispute.

(c) Unless otherwise expressly provided in the Contract, it is a condition precedent to the referral of a dispute to litigation that the parties to the dispute first follow and complete the procedures referred to in this Clause 28.

28.2 Executive negotiation

(a) Within 10 Business Days of the date of a Dispute Notice (or such longer period agreed in writing by the parties), the designated officers must meet and in good faith attempt to resolve the dispute.

(b) If a dispute is not resolved within 25 Business Days of the date of the Dispute Notice, either party may give written notice to the other party and the Dispute Resolution Board requiring that the those parts of the dispute which remain unresolved be referred to the Dispute Resolution Board in accordance with Clause 28.3.

(c) For the purposes of this Clause 28.2 the designated officers are:
   (i) in respect of the Purchaser, the person nominated in item 39 of Annexure Part A (or nominated alternative if not available); and
   (ii) in respect of the Supplier, the person nominated in item 40 of Annexure Part A (or nominated alternative if not available).

28.3 Obtaining Dispute Resolution Board's decision

(a) The Dispute Resolution Board has been constituted under the DRB Agreement. In performing its functions, the Dispute Resolution Board must comply with this Contract and the DRB Agreement.

(b) If a dispute is referred to the Dispute Resolution Board under Clause 28.2(b) the Dispute Resolution Board will be deemed to have received such reference on the date when it is received by the chairperson of the Dispute Resolution Board.

(c) Both parties must promptly make available to the Dispute Resolution Board all such additional information, access to the Site, and appropriate facilities, as the Dispute Resolution Board may require for the purposes of making a decision on the Dispute.

(d) The Dispute Resolution Board is not an arbitral tribunal.

(e) Notwithstanding anything else, to the extent permitted by law, the Dispute Resolution Board will have no power to apply or have regard to the provisions of Part 4 of the Civil Liability Act 2002 NSW.

(f) Within 56 days after receiving a reference under Clause 28.2(b), or within such other period as may be proposed by the Dispute Resolution Board and approved by both parties, the Dispute Resolution Board must give its decision in writing, which will be reasoned and must state that it is given under this Clause 28.3(f). The decision will be immediately binding on both parties, who must give effect to it unless and until it is revised in an amicable settlement or an arbitral award as described below.

(g) If either party is dissatisfied with the Dispute Resolution Board's decision, then either party may, within 28 days after receiving the decision, give notice to the other party of its dissatisfaction (Notice of Dissatisfaction).

If the Dispute Resolution Board fails to give its decision within the period of 56 days (or as otherwise approved) after receiving a reference under Clause 28.2(b), then either party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other party.

A Notice of Dissatisfaction issued under this clause must:

(i) state that it is given under this Clause 28.3(g), and
(ii) set out the matter in dispute and the reason(s) for dissatisfaction.
Except as stated in Clause 28.5, neither party will be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Clause 28.3(g).

(h) If the Dispute Resolution Board has given its decision as to a dispute, and no Notice of Dissatisfaction has been given by either party within 28 days after it received the Dispute Resolution Board's decision, then the decision will become final and binding upon both parties.

(i) Once a decision of the Dispute Resolution Board has become final and binding under paragraph (h), neither party will be entitled to challenge the decision on the basis that a member of the Dispute Resolution Board did not, at the time of making the decision, meet the criteria referred to in Part 2 of Annexure Part V.

28.4 Amicable settlement

Where a Notice of Dissatisfaction has been given under Clause 28.3(g), both parties must attempt to settle the dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, if no amicable settlement has been reached by the 56th day after the day on which the Notice of Dissatisfaction was served, the dispute will be taken to have been referred to arbitration under Clause 28.10.

28.5 Failure to comply with the Dispute Resolution Board's decision

If a party fails, within 7 days or as the parties otherwise agree in writing, to comply with the decision of the Dispute Resolution Board, then the other party may, without prejudice to any other rights it may have, refer this failure itself to arbitration under Clause 28.10. In these circumstances Clauses 28.1 to 28.3 will not apply to this reference.

28.6 Expiry of Dispute Resolution Board's appointment

If a dispute arises and there is no Dispute Resolution Board in place, whether by reason of the expiry of the Dispute Resolution Board's appointment or otherwise:

(a) Clause 28.2 will still apply, but if the dispute is not resolved within 28 days after a notice is given under Clause 28.1, the dispute will not be referred to the Dispute Resolution Board;

(b) Clauses 28.3, 28.4 and 28.5 will not apply; and

(c) the dispute may be referred directly to arbitration under Clause 28.10.

28.7 Replacement of Dispute Resolution Board member

(a) If a member of the Dispute Resolution Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:

(i) if that member is the chairperson, the remaining two members will appoint a replacement member; and

(ii) if that member is not the chairperson:

(A) if the parties have previously agreed upon one or more reserve members for the Dispute Resolution Board, and one or more such members are willing and able to act on the Dispute Resolution Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Resolution Board; or

(B) if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Resolution Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.
(b) If, within 42 days of a member declining to act or being unable to act on the Dispute Resolution Board, the member has not been replaced by a person appointed in accordance with Clause 28.7(a), either party may request the President for the time being of the Institute of Arbitrators and Mediators Australia to appoint a replacement member. This appointment will be final and conclusive.

(c) Any appointment or nomination made under Clause 28.7(a) or 28.7(b) must be made in accordance with the criteria set out in Part 2 of Annexure Part V.

(d) The parties, the remaining members and the new member must enter into a replacement dispute resolution board agreement on substantially the same terms as the DRB Agreement.

28.8 Termination of Dispute Resolution Board

The appointment of any member of the Dispute Resolution Board may be terminated by mutual agreement of both parties, but not by the Purchaser or the Supplier acting alone. Unless otherwise agreed by both parties, the DRB Agreement will terminate upon the later of:

(a) the Dispute Resolution Board having made a decision in accordance with clause 28.3 in respect of all disputes that were referred to it; or

(b) the expiration of the last Defects Liability Period.

28.9 Dispute Resolution Board's Advisory Function

(a) In addition to its functions determining disputes, the Dispute Resolution Board will have a general advisory function.

(b) Each party must provide all reasonable assistance to the Dispute Resolution Board in fulfilling its advisory function including providing all information it reasonably requests.

(c) Either party may refer any unresolved matters that are not yet a dispute to the Dispute Resolution Board for its opinion. Any such referrals must be made in writing to the chairperson of the Dispute Resolution Board and a copy simultaneously provided to the other party.

(d) For the purposes of enabling it to fulfil this function the Dispute Resolution Board will:

(i) keep itself informed as to the progress of supply, testing and commissioning of the Equipment and in particular any issues affecting the successful progression of the supply, testing and commissioning of the Equipment;

(ii) attend any Contract Control Group meetings which it is requested to attend by either party; and

(iii) provide, in writing, a recommendation for the resolution of any matter referred to it under Clause 28.9(c) within two weeks of the referral, or within a longer time if agreed between the Dispute Resolution Board, the Purchaser and the Supplier.

28.10 Arbitration

Any dispute which is referred to arbitration will be conducted before a person to be:

(a) agreed between the parties; or

(b) failing agreement within 21 days after the dispute has been referred to arbitration, appointed by the President for the time being of the Institute of Arbitrators and Mediators Australia.

28.11 Arbitration rules

To the extent that they are not inconsistent with the Contract, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators and Mediators Australia will apply to the arbitration.

The seat of the arbitration will be in Sydney, Australia.
The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of the Dispute Resolution Board under clause 28.3 that is not final and binding on the parties pursuant to clause 28.3.

Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

All aspects of the arbitration, including:
(a) any proceedings or hearings;
(b) any meetings;
(c) any submissions;
(d) any materials in the proceedings created for the purpose of the arbitration; and
(e) documents produced in the proceedings which are not otherwise in the public domain, must be kept private and confidential except:
(f) where the parties expressly agree in writing to the contrary;
(g) as required by law; or
(h) as required in order to enforce an arbitration award.

28.12 Summary relief

Subject to Clause 5.6A, nothing will prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under Clause 28 or any matter arising under the Contract.

28.13 Continue to perform

Notwithstanding the existence of a dispute, both parties must continue to perform their respective obligations under the Contract.

29 Limitation of liability and exclusion of loss

29.1 Limitation of liability

(a) Subject to paragraph (b) and Clause 29.2, the Supplier's total aggregate liability to the Purchaser for all liability arising out of or in connection with Contract whether in contract, tort (including negligence) or otherwise at law or in equity is limited to the amount stated in Item 37.

(b) Nothing in the Contract, including paragraph (a) and Clause 29.2, will limit the Supplier's liability:
29.2 Exclusion of certain loss

(a) To the extent permitted by law and subject to Clause 29.1(b), neither party is liable for Consequential Loss.

Nothing in this clause 29.2 will exclude or limit any entitlement of the Supplier in respect of a Variation.

29.3 Civil Liability Act

(a) The operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under or in relation to the Contract howsoever such rights, obligations or liabilities are sought to be enforced.
(b) Without limiting paragraph (a), the rights, obligations and liabilities of the parties under the Contract with respect to proportionate liabilities are as specified in the Contract and not otherwise, howsoever such rights, obligations or liabilities are sought to be enforced.

(c) The Supplier agrees that:

(i) in each subcontract into which it enters for the carrying out of its obligations under the Contract, it will include provisions that, to the extent permitted by law, effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities arising under or in relation to each subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and

(ii) it will require and ensure that each subcontractor will include in any further contract that it enters into with others for the carrying out of its obligations under the Contract, provisions that, to the extent permitted by law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

29.4 Survival

This Clause 29 will survive the expiry or termination of the Contract.

30 Waiver of rights

(a) A right may only be waived in writing, signed by the party giving the waiver.

(b) No conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

(c) A waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again.

(d) The exercise of a right does not prevent any further exercise of that right or of any other right.

31 General

31.1 Replacement Body

Where a reference is made to any body or authority which ceases to exist (Former Body), that reference will be to that body or authority (Replacement Body) which then serves substantially the same functions as the Former Body. Any reference to any senior office of the Former Body will be to the equivalent senior officer of the Replacement Body.

31.2 Business Day

If the day on which anything is to be done under the Contract is not a Business Day, that thing must be done no later than the next Business Day.

31.3 No bias against drafter

No provision of the Contract is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

31.4 Excluding liability

Any provision of the Contract which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by law.
31.5 Certification
For the purposes of the Contract, a copy of a document will be regarded as duly certified by the Supplier if it is certified as a true copy by a director, secretary or general manager of the Supplier.

31.6 Cost of performing obligations
Each party must perform its obligations under the Contract at its own cost, unless expressly provided otherwise.

31.7 Governing law
The Contract is governed by and must be construed according to the law applying in New South Wales.

31.8 Jurisdiction
Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with the Contract, and waives any right it might have to claim that those courts are an inconvenient forum.

31.9 Amendments
The Contract may only be varied by a deed executed by or on behalf of each party.

31.10 Waiver
(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under the Contract.

(b) A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of a term of the Contract operates as a waiver of another breach of that term or of a breach of any other term of the Contract.

31.11 Survival of certain provisions; no merger
(a) Without limiting Clause 31.18(a):

(i) Clauses 3, 5, 6.5, 6.6, 6.8, 6.9, 8, 12, 24, 24A.5, 25.10, 25.13, 27, 28, 29 and 31 (and any other clauses necessary for or incidental to the operation of these clauses), this Clause 31.11 and any other provisions which are expressed to survive termination (together, the Surviving Clauses) will survive rescission, termination or expiration of the Contract; and

(ii) if the Contract is rescinded or terminated, no party will be liable to any other party except:

(A) under the Surviving Clauses; or

(B) in respect of any breach of the Contract occurring before such rescission or termination.

(b) No right or obligation of any party will merge on completion of any transaction under the Contract. All rights and obligations under the Contract survive the execution and delivery of any transfer or other document which implements any transaction under the Contract.

31.12 Further acts and documents
Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to the Contract.
31.13 Consents
A consent required under the Contract from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless the Contract expressly provides otherwise.

31.14 No representation or reliance
(a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into the Contract, except for representations or inducements expressly set out in the Contract.

(b) Each party acknowledges and confirms that it does not enter into the Contract in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in the Contract.

31.15 Severance
If at any time any provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make the Contract enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of the Contract.

31.16 Exercise of remedies
(a) If the Supplier breaches any of its obligations under the Contract, the Purchaser may exercise any or all of the rights and powers and pursue any or all of the remedies available to the Purchaser under the Contract and/or enforce any other legal or equitable remedy available under applicable law.

(b) Each and every right, power and remedy of the Purchaser will be cumulative and in addition to any other right, power and remedy, whether under the Contract or applicable law, which may be exercised by the Purchaser and the exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy.

(c) No delay or omission by the Purchaser in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

31.17 Entire agreement
To the extent permitted by Law, in relation to its subject matter, the Contract:
(a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

(b) supersedes any prior written or other agreement of the parties.

31.18 Indemnities
(a) Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Contract.

(b) It is not necessary for a party to incur expense or to make any payment before commencing proceedings to enforce a right of indemnity conferred by the Contract.

(c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

31.19 Counterparts
The Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.
31.20 Attorneys
Each person who executes the Contract on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

31.21 Relationship between the Purchaser and the Supplier
Nothing in or contemplated by the Contract will be construed or interpreted as:
(a) constituting a relationship between the Purchaser and the Supplier, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
(b) imposing any general duty of good faith on the Purchaser to the Supplier in relation to or arising out of the Contract, other than to comply with the obligations (if any) expressly stated to be assumed by the Purchaser under the Contract on a good faith basis.

31.22 Contract documents to be in English
All documentation in computer readable or other written forms brought (whether before or after the date of the Contract) or required to be brought into existence as part of, or for the purpose of, carrying out the work under the Contract must be written in the English language.

31.23 Vienna convention

31.24 Expenses
(a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating and executing the Contract.
(b) The Supplier must pay any duty, taxes or other imposts payable in respect of the Contract or payable in connection with the performance of its obligations under the Contract.
Annexure A

ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation AS/NZS 4911-2003

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the Contract, is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>2</td>
<td>Purchaser’s address for notices</td>
</tr>
<tr>
<td></td>
<td><strong>Address:</strong> Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067</td>
</tr>
<tr>
<td></td>
<td><strong>Telephone:</strong> (02) 9200 0200 <strong>Facsimile:</strong> (02) 9200 0290</td>
</tr>
<tr>
<td></td>
<td><strong>Attention:</strong> Director Vehicles, Vessels and Rolling Stock</td>
</tr>
<tr>
<td>3</td>
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</tr>
<tr>
<td>4</td>
<td>Supplier’s address for notices</td>
</tr>
<tr>
<td></td>
<td><strong>Address:</strong> Construcciones y Auxiliar de Ferrocarriles SA (CAF). José Miguel Iturroz 26, 20200 Beasain (Spain)</td>
</tr>
<tr>
<td></td>
<td><strong>Telephone:</strong> +34 914366016</td>
</tr>
<tr>
<td></td>
<td><strong>Facsimile:</strong> +34915778244</td>
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<tr>
<td></td>
<td><strong>Attention:</strong> Iñaki Mendizabal. International Division. Area Manager</td>
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1 If applicable, delete and instead complete equivalent item in the separable portions section of the Annexure Part A.
<p>| | |</p>
<table>
<thead>
<tr>
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</table>
| 7 | Delivery Place  
(Clauses 1 and 19.1) |
| 8 | Mode of Delivery  
(Clause 19.1) |
| 9 | Governing law  
(Clause 1.2(h))  
New South Wales |
| 10 (a) | Currency  
(Clauses 1.2(g))  
Australian dollars  
If nothing stated, that of the jurisdiction where the Delivery Place is located |
| 10 (b) | Place for payments  
(Clauses 1.2(g))  
Sydney Australia  
If nothing stated, the Purchaser's address |
| 11 | Not used |
| 12 | Supplier's security  
(a) Form  
(Clause 3) |
|   | 2 unconditional and irrevocable undertakings in favour of the Purchaser each for half the amount stated in Item 12(c) below, from a bank holding an Australian banking licence with an address for service in Sydney and of a rating not less than A- by Standard and Poors (Australia) Pty Ltd or A3 by Moody's Investment Service Inc in the form of Annexure Part B or such other form approved by the Purchaser at its absolute discretion. |
|   | (b) Time for provision of security  
(Clause 3) |
|   | The Supplier must provide to the Purchaser within 14 days after the Date of Contract, the security referred to in Clause 3. |
|   | (c) Amount or maximum percentage of Contract Sum  
(Clause 3) |
|   | |
|   | (d) If retention moneys, percentage to be retained from payment of each invoice  
(Clause 3 and Clause 24.1)  
Not applicable |
|   | (e) Time for provision (except for retention moneys)  
(Clause 3)  
Additional security for components of the Equipment not delivered  
(Clauses 3.4)  
An unconditional and irrevocable undertaking in favour of the Purchaser for the value of the Equipment not yet Delivered, from a bank holding an Australian banking licence with an address for service in Sydney and of a rating not less than A- by Standard and Poors (Australia) Pty Ltd or A3 by Moody's Investment Service Inc in the form of Annexure Part B or such other form approved by the Purchaser at its absolute discretion. |
|   | (f) Supplier's security upon Operational Completion is reduced to  
(Clause 3.4) |
| 13 | Not used |

\[1\] If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A.
<table>
<thead>
<tr>
<th>14</th>
<th>Purchaser-supplied documents (Clause 6.2)</th>
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If nothing stated, 5 copies

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<tr>
<th>17</th>
<th>Subcontract work requiring approval if subcontractors differ from identified subcontractors (Clause 7.2)</th>
<th>System / subsystem</th>
<th>Subcontractor</th>
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<tbody>
<tr>
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<th>18</th>
<th>Legislative requirements, those None excepted (Clause 10.1)</th>
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<tr>
<th>23</th>
<th>Liquidated damages, rate (Clause 17.5)</th>
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<td>25</td>
<td>Date for access to Site (Clause 18.1B)</td>
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<td>26</td>
<td>Party responsible for unloading the Equipment (Clauses 19.1)</td>
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<tr>
<td>27</td>
<td>When risk in the Equipment passes (Clause 20.1)</td>
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</table>

If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A.
<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>28</td>
<td><strong>Time at which ownership of the Equipment passes to the Purchaser</strong> <em>(Clause 20.2)</em></td>
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<tr>
<td>29</td>
<td>Not used</td>
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<td>30</td>
<td>Not used</td>
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</tbody>
</table>
| 31 | (a) **Defects liability period** *(Clause 22(a))*  
(b) **Defects liability period** *(Clause 22(c)(ii))* |
| 32 | **Time for service of payment claims** *(Clause 24.1)*: Upon achievement of the milestones set out in Annexure Part H. |
| 33 | Not used |
| 34 | Not used |
| 35 | **Interest rate on overdue payments** *(Clause 24.5)*: Bank Bill Rate plus 2% |
| 36 | Not used |
| 37 | **The Supplier's liability is limited as follows** *(Clause 29)* |
| 38 | Not used |
| 39 | **Purchaser's designated officer**: Director Vehicles, Vessels and Rolling Stock *(Clause 28.2(c))* |
| 40 | **Supplier's designated officer**: Inaki Mendizabal *(Clause 28.2(c))* |

† Delete if clause 29 is deleted.
Part A
Separable Portions

- This section should be completed if the Contract provides for separable portions.
- Complete a separate page for each separable portion which should be numbered appropriate. Any balance of the Works should also be a separable portion.
SYDNEY LIGHT RAIL ROLLING
STOCK SUPPLY CONTRACT
Annexures B - V
Volume 1 of 3

Director General of the Department of Transport for and on behalf of
Transport for New South Wales
(Purchaser)

Pyrmont Light Rail Company Pty Limited
ACN 065 183 913
(PLRC)

Construcciones y Auxiliar de Ferrocarriles S.A.
CIF A20001020
(Supplier)
Part B

Approved form of unconditional undertaking
(Clause 3 - security)

At the request of .......................................................... (the Purchaser) and in consideration of

ACN .......................................................... ABN .......................................................... (the Supplier) and in consideration of

ACN .......................................................... ABN .......................................................... (the Purchaser) accepting this
undertaking in respect of the Contract for ..........................................................

.......................................................... for the supply of the Equipment.

.......................................................... ABN .......................................................... (the Financial Institution)
unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded
by the Purchaser to a maximum aggregate sum of ..................................................

.......................................................... ($.................................)

The undertaking is to continue until notification has been received from the Purchaser that the sum is no
longer required by the Purchaser or until this undertaking is returned to the Financial Institution or until
payment to the Purchaser by the Financial Institution of the whole of the sum or such part as the
Purchaser may require.

Should the Financial Institution be notified in writing, purporting to be signed by ..........................................................

.......................................................... for and on behalf of the Purchaser that the Purchaser desires payment to
be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial
Institution will make the payment or payments to the Purchaser forthwith without reference to the Supplier
and notwithstanding any notice given by the Supplier not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the
Purchaser the sum of .......................................................... ($.................................)
less any amount or amounts it may previously have paid under this undertaking or such lesser sum as
may be required and specified by the Purchaser and thereupon the liability of the Financial Institution
hereunder shall immediately cease.

Dated at. .......................................................... this. ............................................. day of. ..........................................................20
Annexure C
ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation AS/NZS 4911-2003

Part C

Not used
Annexure D
ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation
AS/NZS 4911-2003

Part D

Not Used
Requirements for Operational Completion

(Clauses 1.1)

Operational Completion will be achieved when:

1. the Equipment (other than any Equipment which is the subject of the Purchaser's exercise of the option in Clause 2.3) is in accordance with the requirements of the Contract except for minor Defects which do not:
   (a) prevent the Equipment from being capable of being used for the Intended Purpose;
   or
   (b) adversely affect the normal use of the Equipment or the public image of the Purchaser or the LRVs;

2. the Equipment (other than any Equipment which is the subject of the Purchaser's exercise of the option in Clause 2.3) has passed all tests specified in the Not Rejected Testing and Commissioning Plan as being applicable to Operational Completion and the Test Reports and Test Report Summary have been Not Rejected;

3. the LRVs have successfully completed the Reliability Proving Period in accordance with section 33 of the LRV Specification;

4. all Safety Cases and safety assurance documentation required by the Not Rejected Safety Management and Accreditation Plan for Operational Completion have been Not Rejected;

5. the relevant training requirements identified in the Not Rejected Training Management Plan have been satisfied;

6. all Training Materials have been Not Rejected;

7. all as-built drawings of the Equipment (other than any Equipment which is the subject of the Purchaser's exercise of the option in Clause 2.3) have been delivered to the Purchaser;

8. the Supplier has obtained all Authorisations (other than the Accreditation variation contemplated by Clause 10A.4) required under relevant Legislative Requirements to be issued by any Authority before the Equipment (other than any Equipment which is the subject of the Purchaser's exercise of the option in Clause 2.3) can be used for the Intended Purpose;

9. the Operator has obtained the variations to its Accreditation referred to in Clause 10A.4 from ITSR;

10. all warranties and guarantees required to be provided by manufacturers, sub-contractors and suppliers under the Contract have been so provided; and

11. the Supplier has done everything else which the Contract requires it to have done as a pre-condition to Operational Completion.
SYDNEY LIGHT RAIL ROLLING STOCK SUPPLY CONTRACT
Annexures B - V
Volume 2 of 3

Director General of the Department of Transport for and on behalf of Transport for New South Wales (Purchaser)

Pyrmont Light Rail Company Pty Limited
ACN 065 183 913
(PLRC)

Construcciones y Auxiliar de Ferrocarriles S.A.
CIF A20001020
(Supplier)
Form of Design Certification

(Clause 6C.3)

To: Director General of the Department of Transport for and on behalf of Transport for New South Wales (Purchaser)

From: Construcciones y Auxiliar de Ferrocarriles S.A. CIF A20001020 (Supplier)

In accordance with the terms of Clause 6C.3 of the contract between the Purchaser, PLRC and the Supplier dated [insert date] with respect of the manufacture and supply of the Equipment (Contract), I hereby certify that the attached Design Documentation:

(a) is appropriate for manufacturing the applicable Equipment to which it relates;
(b) complies with the requirements of the Contract including the LRV Specification; and
(c) the design is safe, so far as is reasonably practicable, consistent with the general duty under the Rail Safety Act.

Terms defined in the Contract have the same meaning in this certificate.

[Insert name of professionally qualified engineer engaged by the Supplier]

Date:
Form of Statutory Declaration
(Clause 24)

STATUTORY DECLARATION

I, .............................................. of ..........................................., do solemnly and sincerely declare as follows:

1. I am [position held in Contractor's organisation] of [insert] ABN [insert] (Contractor).


3. All subcontractors, suppliers and consultants engaged by the Contractor with respect to work under the Contract have been paid all moneys due and payable to them in respect of work carried out for or materials supplied to the Contractor.

4. Attached to and forming part of this declaration is a subcontractor's statement given by the Contractor in its capacity as subcontractor (as that term is defined in the Workers Compensation Act 1987, Pay-roll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) (Acts) which is a written statement:

   (a) under section 17SB of the Workers Compensation Act 1987 (NSW), in the form and providing the detail required by that legislation;

   (b) under Schedule 2, Section 18 of the Pay-roll Tax Act 2007 (NSW), in the form and providing the detail required by that legislation; and

   (c) under section 127 of the Industrial Relations Act 1996, in the form and providing the detail required by that legislation.

5. The matters which are contained in this declaration and the attached subcontractor's statement are true.

6. The period of the Contract covered by this declaration and the attached subcontractor's statement is from __________ to __________.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW).

Declared at __________ on __________ by ____________________________________________

Signature of person making the declaration

before me: ____________________________________________

Justice of the Peace/Solicitor of the Supreme Court of New South Wales
SUBCONTRACTOR'S STATEMENT
REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007, and s127 Industrial Relations Act 1996 where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ................................................ ABN: ................................................

(Business name)

(Address of Subcontractor)

has entered into a contract with ................................................ ABN: ........................................

(Business name of principal contractor)

Contract number/identifier. ................................................ (Note 3)

This Statement applies for work between: ....../...../...... and ...../...../...... inclusive, (Note 4)

subject of the payment claim dated: ....../...../...... (Note 5)

I................................., a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ....../...../....... (Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the Payroll Tax Act 2007, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written
Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature.......................................................... Full name..........................................................

(g) Position/Title .......................................................... Date ..........................................................
NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007 and section 127 of the Industrial Relation Act 1996. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the subcontractor) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s 127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the Industrial Relations Act 1996 states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, ifa business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.
Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

**Offences in respect of a false Statement**

In terms of s 127 of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

(a) the person is the subcontractor;
(b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
(c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s 175B of the Workers Compensation Act and Clause 18 of Schedule 2 of the Payroll Tax Act 2007 a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

**Further Information**

Annexure L

ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation AS/NZS 4911-2003

Part L

Not used
Annexure M
ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation AS/NZS 4911-2003

Part M

Not used
Annexure N
ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation
AS/NZS 4911-2003

Supplier’s Key Personnel

(Clause 15B)
<table>
<thead>
<tr>
<th>Role / Position</th>
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<th>Qualifications</th>
<th>Summary of experience</th>
<th>Years of experience</th>
<th>Employment Status</th>
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<tbody>
<tr>
<td>Contract</td>
<td>Iñaki Mendizabal</td>
<td>Industrial Engineer</td>
<td>Contract Representative for Tilting DMUs, Sardinia (Italy)</td>
<td>2007-</td>
<td>Area Manager</td>
</tr>
<tr>
<td>Representative</td>
<td></td>
<td></td>
<td>Contract Representative for Civity EMUs, Friuli Venezia Giulia Region (Italy)</td>
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<td></td>
<td></td>
<td></td>
<td>Contract Representative for Auckland EMUs, Auckland (New Zealand)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Head of</td>
<td>Antton Eguizabal</td>
<td>Industrial Engineer, PMP</td>
<td>Responsible for Quality of Hong-Kong Metro, Amsterdam Metro, and Finland EMU Projects.</td>
<td>1994-18</td>
<td>Head of International Projects</td>
</tr>
<tr>
<td>International</td>
<td></td>
<td></td>
<td>Project Manager for Washington Metro and Brussels Metro Projects</td>
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<td>Projects</td>
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<td>Head of International Projects Management Department</td>
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<td>Department</td>
<td>Francisco Martos</td>
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<td>High Speed Train (RENFE - SPAIN)</td>
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<td>Engineering</td>
<td>Josu Villar</td>
<td>Mechanical Industrial Engineering</td>
<td>AVR RENFE s/121</td>
<td>2004-2006</td>
<td>Engineering Division Manager</td>
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<td>AVGL RENFE s/120-050</td>
<td>2004-2006</td>
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<tr>
<td>Procurement Manager</td>
<td>Santiago Santos</td>
<td>Electrical Industrial Engineer</td>
<td>Metro Cars for Brussels &amp; Rome</td>
<td>Procurement Manager</td>
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<td></td>
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<td>SM4 Low Floor EMUs for Helsinki, Finland</td>
<td></td>
<td>1997-1999</td>
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<td></td>
<td></td>
<td></td>
<td>LRVs for GVB, Amsterdam, Holland</td>
<td></td>
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</tr>
<tr>
<td>Vehicles Quality</td>
<td>Aitor Etxeberria</td>
<td>Industrial</td>
<td>Metro de Caracas (VENEZUELA)</td>
<td>Project Quality Manager</td>
<td>2010-Current</td>
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<tr>
<td>Role / Position</td>
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<tr>
<td>Manager</td>
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<td>Engineer</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>High Speed Train (RENFE – SPAIN)</td>
<td>2008-2010</td>
<td>Manager</td>
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<td></td>
<td></td>
<td></td>
<td>Civia (RENFE – SPAIN)</td>
<td>2007-2008</td>
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<td>Bogies</td>
<td>Gorka Gómez</td>
<td>Industrial Engineer</td>
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<td>10 years</td>
<td>Bogies machining, painting and Final Assembly Chief</td>
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<td>machining,</td>
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<td></td>
<td>CAF Bogies. All projects</td>
<td>2008-2011</td>
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<td></td>
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<td>Final Assembly</td>
<td></td>
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<td>2007-2008</td>
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<tr>
<td>Chief</td>
<td></td>
<td></td>
<td>CIVIA EMUs and High Speed ATPRD Quality head</td>
<td>2004-2006</td>
<td></td>
</tr>
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<td></td>
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<td></td>
<td>Projects DMUs Ireland and ICE-Velaro Quality head</td>
<td>2002-2004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Besides his engineering role, he is responsible for industrialising CAF’s industrial structure of stainless steel boxes in Mexico</td>
<td>2007</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Head of Dept. Production Engineer/Dept. Management Production engineering with 31 people (and 2 Process and Tooling Dept.).</td>
<td>2002-2010</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Responsible for Logistics &amp; Subcontracting of Bogies’ Structures</td>
<td>1998-2002</td>
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</table>
SYDNEY LIGHT RAIL ROLLING STOCK SUPPLY CONTRACT
Annexures B - V
Volume 3 of 3

Director General of the Department of Transport for and on behalf of Transport for New South Wales
(Purchaser)

Pyrmont Light Rail Company Pty Limited
ACN 065 183 913
(PLRC)

Construcciones y Auxiliar de Ferrocarriles S.A.
CIF A20001020
(Supplier)
Annexure Q

ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation

AS/NZS 4911-2003

Part Q

Purchaser's Safety Assurance Plan

(Clause 10A.5)
Pyrmont Light Rail Company
Safety Assurance Plan
Sydney Light Rail Extension

November 2011

Abstract

This document is Pyrmont Light Rail Company's Safety Assurance Plan for the Sydney Light Rail Extension Project which involves design, construction, installation and handover of new infrastructure and rolling stock. This plan is to ensure overall risks associated with this project are identified and managed in a controlled way without increasing safety risk.

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<tr>
<th>Author</th>
<th>Document Number</th>
<th>Revision</th>
<th>Change No.</th>
</tr>
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<tr>
<td>Jeff Lee</td>
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<td>10141</td>
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1. INTRODUCTION

1.1 PURPOSE

The purpose of this document is to provide the Safety Assurance Plan (SAP), the scope of which covers the Reference Design development Stage to the commencement of passenger service of the Sydney Light Rail Extension (SLRE) project. It is then anticipated that subsequent plans and their implementation in relation to the resulting operating network will be managed through the rail operator’s safety management system.

1.2 SCOPE

The scope of this document covers:

- Works and deliverables from designers, manufacturers and suppliers, who design, manufacture, supply, install, commission or erect anything to be used in connection with rail infrastructure and light rail rolling stock as part of the SLRE project.
- Any goods or services procured as part of the SLRE project that ensures safety of the railway operations.

1.3 IDENTIFICATION

This document refers to contracts, tender documents and design, construction, installation and commissioning activities and deliverables which relate to the inner west extension of the current light rail system and is identified as:

- PLRC SAP – Pyrmont Light Rail Company Safety Assurance Plan.
1.4 DOCUMENT CONTEXT

PLRC, the current owner of the light rail system, has the duty to ensure safety risks associated with major change are identified, and managed in a way that the IWE and its operational implications will be implemented in a manner without increasing safety risk.

This document is PLRC's Safety Assurance Plan (SAP), the details of which, together with its implementation, are correlated to project plans for the SLRE project. This SAP will be revised as needed during the course of the project.
### 1.5 DEFINITIONS

The definitions used in this document are defined in the table below.

<table>
<thead>
<tr>
<th>Term/Acronym</th>
<th>Definition</th>
</tr>
</thead>
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<tr>
<td>ADC</td>
<td>Assumptions, Dependencies and Caveats – System interface aspects that must be managed. Assumption – supposition or best guess, an unconfirmed item or information which can be placed on someone. Dependency – information placed on someone and relies on that someone to take action before the component or system enters service. Caveat – a requirement or limitation placed on someone after the system is in operation for it to remain safe.</td>
</tr>
<tr>
<td>ESM</td>
<td>Final Acceptance – Acceptance by PLRC after the 4 week “proving period” post completion of integration testing and commissioning. Hazard Log – Details hazards and potential accidents. Describes actions to eliminate or control risks to an acceptable level. Provides traceability to other safety records. GHD – Company contracted by PLRC to produce the Reference Design for D&amp;C. IWE – Inner West Extension – This refers to the infrastructure components of the system. LRV – Light Rail Vehicle. OHLE – Overhead Line Equipment. PLRC – Pyrmont Light Rail Company. QMS – Quality Management System. Safety Requirements Specification – A comprehensive list of safety requirements (a requirement specification is typically expressed as a component, sub-system or system function or feature, with specified tolerance, to ensure the item (or feature) delivers safe operation and prevents hazardous situations or states. SAP – Safety Assurance Plan, also known as Safety Plan. SP – Safety Plan – A documented set of time scheduled activities, resources and events serving to implement the organizational structure, responsibilities, procedures, activities, capabilities and resources that together ensure that an item will satisfy given safety requirements relevant to the given contract or project. SLRE – Sydney Light Rail Extension. VTS – Veolia Transport Sydney.</td>
</tr>
</tbody>
</table>
1.6 REFERENCES

The following references are referred to by this document and/or provide input to this document specifically and/or can be used as background information.

1.6.1 REFERRED TO IN DOCUMENT

Table 2: References Used by Document

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1.6.2 PROVIDING INPUT TO DOCUMENT

Table 3: References Providing Input to Document

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<td>Engineering Safety Management (The Yellow Book) Vols 1 &amp; 2 Issue 4</td>
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<td>2</td>
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<td>ITSR - Guidance for Major Change - Guidance</td>
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<td>ITSR – Accreditation Guidance</td>
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<td>4</td>
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<td>BS EN50126 1999 Railway Applications, Specification &amp; Demonstration of Reliability, Availability, Maintainability &amp; Safety (RAMS)</td>
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</table>
2. RESPONSIBILITIES

Definitions of responsibilities associated with this SAP are described below:

*Plan Effectiveness:*

- The CEO and PLRC project team members are responsible for reviewing the effectiveness of this plan at regular intervals (or as required).

*Development and Ongoing Improvement:*

- The Safety and Systems Assurance Manager is responsible for the development and ongoing improvement of this Plan.

*Implementation:*

- The CEO in conjunction with the Project Manager is responsible for the implementation of this Plan.

*PLRC SAP Activities:*

- The CEO and PLRC project team members are responsible for aspects of the Safety Assurance Plan activities. Note that appropriately selected and qualified personnel from VTS contribute to some of the activities as required.
3. PLAN

3.1 BACKGROUND

In February 2010 as part of its Metropolitan Transport Plan, the NSW Government announced its intention to develop extensions of the Sydney Light Rail system. The plans included a project for a 5.5km extension westwards from the existing terminus at Lilyfield to Dulwich Hill. This project is now active and is known as the Sydney Light Rail Extension (SLRE).

Pyrmont Light Rail Company (PLRC), which is wholly owned by Metro Transport Sydney Pty Ltd (MTS), is the current owner of the light rail system. PLRC has entered into agreements with the NSW Government to prepare a complete proposal for the SLRE. A detailed programme for the studies and works required has been prepared by PLRC, with a view to commencing construction in 2012 and begin operating in passenger service in 2013/4. Early stage design work has commenced, and various sub-contractors are being engaged to prepare the required advice and technical studies.

The extension to Dulwich Hill will capitalise on the opportunity provided by the now disused Rozelle Goods Railway line. Preliminary feasibility studies have been carried out by GHD for the NSW Government, and an outline plan for station locations has been formed. A map of the proposed extension and existing line is shown below (Figure 1).

The SLRE project includes design and construction, supply of new rolling stock, installation, testing, handover, and operations and maintenance. Safety Assurance needs to be provided for all these activities.

3.2 INTRODUCTION

The Safety Assurance Plan (SAP) is an overall plan the scope of which covers the Reference Design development Stage to the commencement of passenger service of the Inner West Extension with new rolling stock. It is then anticipated that subsequent plans and their implementation in relation to the resulting operating network will be managed through the rail operator’s safety management system.

It is expected that a SAP will be produced by each subcontractor for the project, the subcontractor being responsible for their own parts of the rail system for which they are responsible to meet safety requirements.

This SAP and the evidence of implementation of this plan does not therefore cover details as would be typically expected in the major subcontractors’ safety plans, e.g., detailed engineering safety specifications and analysis techniques used for evaluating risks associated with the LRV communications module, or a hazard log containing detailed hazards associated with a new signalling system. This plan rather focuses on assuring risks associated with the overall development and implementation activities conducted by subcontractors for PLRC are monitored and managed in such a way that safety is controlled.
Figure 1: Map showing proposed extension and existing light rail line
The overall objectives of this plan therefore are to:

- Describe the safety related activities which are expected to be fulfilled by the contractors involved in the SLRE project.
- Propose mitigations to project process risks affecting safety through the use of contractual obligations between parties involved in the project.
- Provide explanation behind the approach to mandatory requirements or obligations for contractors, as stated in this plan.

3.3 SAFETY PLANNING STRATEGY

The details and the effective implementation of this overall project SAP is mainly subject to available information at certain critical points in the project. In addition, implementation aspects of this SAP also need to consider other facts in relation to the project, all of which in turn governs the approach to this SAP. Considerations include:

- The project involves (in this case) developing a product which is an extension to the existing rail infrastructure and involves additional new rolling stock.
- Multiple phases within the typical asset lifecycle model (Figure 2) are involved and with this particular project, all sub-phases or activities in the Acquire Phase are involved. Figure 2 describes the activities.

```
Asset Lifecycle (from the Asset Management Council of Australia)

Concept Specify Acquire Operate & Maintain Improve Dispose

Acquire

Access and control

Initiate Plan Design Verify (the design meets Specs) Construct Validate (the construction meets design) Commission
```

Figure 2: Asset Lifecycle Model
• Different subcontractors will be utilised by PLRC to
  1. Perform the architectural brief and prepare the tender documentation for the tendering process;
  2. Design and construct the Inner West Extension (IWE);
  3. Supply and maintain new rolling stock;
  4. Commission the IWE;
  5. Operate and maintain the current and extended system.

• The D&C contractor will be required to carry out all works other than rolling stock supply, and so will be responsible for integrating a variety of sub-systems.

• The major contractors will also engage and manage subcontractors to perform specialised work to support or fulfil an area within the major contractor’s overall scope of deliverables.

• The control of risks associated with the work performed by each subcontractor is dependent on the level of awareness of the risks it is responsible for controlling, and the degree to which each subcontractor accepts safety responsibilities.

• It is an assumption, and will be a contractual requirement, that each major contractor, as well as the subcontractors who they engage, will have processes in place (example, an internal management system to support or manage ESM activities) to fulfill quality, safety performance standards, and to ensure competent staff are available to deliver the work required of them. This SAP will consider differences in management systems (e.g., emphasis on what to audit and when and by whom).

• The risk management system each subcontractor utilizes will differ in accordance with the requirements of the detailed project plan and their own internal methodologies.

• Much of the mainstream engineering steps related to identifying and reducing risks, such as redundancy and protection systems, is dependent on the whether the risks come within accepted standards, including the ways of controlling and mitigating those risks. It is expected however that there will be non-standard designs and constructions involved in elements of the infrastructure and rolling stock. The details of standard and non-standard design issues are dependent on the completion of the preliminary design and architectural surveys.

Considering the points above, and because changes will arise as a result of undertaking design and construct safety activities, this SAP will be updated throughout the project.

Many issues and risks are associated with interfaces of the phases where assumed or dependent safety responsibilities for project activities are exchanged. This SAP, in particular with ESM activities and Safety Controls, focus on the risks during transition from one phase to another and the risks associated with transfer of information between contractors. Transitions involving both contractor and project phase simultaneously occur at some points in the project timeline.
3.3.1 Safety Acceptance Approach

The approach to demonstrating overall safety considers the organizational management and project considerations described above, as well as acknowledging that operational experience has been gained with an existing system. That is, the extension is to a large extent expected to be comparable, in respect to its safety related performance, with the existing system, as the application and functionality are the same. Also, where possible, activities related to the extension will utilise accepted national or international technical standards as references. Potential and actual differences between the new and existing systems shall be determined. However, the IWE will be similar to the existing system in terms of design and operation, and all essential safety systems will be extended. Therefore, safety experience and risk ranking tables from the existing system can be utilised in relation to the establishment, management and monitoring of safety targets.

3.4 INDIVIDUAL SAFETY PLAN

The D&C contractor for infrastructure and the contractor for rolling stock shall develop their own Safety Assurance Plan to identify and control risks in a systematic way. The evidence for safety can be in the form of a safety case structured in such a way to show that risks have been controlled to an acceptable level in accordance to the contractor’s safety plan. The contractor’s safety assurance plan will provide for the identification and justification of any unresolved hazards and any non-conformances with the Safety Requirements Specification and Hazards Log.

The scope and coverage of the Safety Assurance Plan should be designed to be consistent with the Yellow Book Guidance (ref A1). The safety report or safety case shall include all the parts required by EN 50129:2003 which is also reproduced in EN 50126 (ref A4). Alternative headings may be appropriate in some cases but they should cover the same topics as this structure.

3.5 SAFETY CONTROLS

3.5.1 Personnel Roles & Responsibilities

Details of the competence of originators or authors of deliverables including protocols, reports, designs, drawings and instructions and their reviewers and approvers shall be made available.

Contractors shall have procedures to review and accept the deliverables noted above. This can be established in several ways:

- organized as part of their QMS
- a matrix of responsibilities is developed for each particular project or
- documented within the deliverables

or a combination thereof.
The qualifications of the subject matter experts (SME) within each organisation conducting the detailed work and authorities taking responsibility for the accuracy, completeness and timeliness of the deliverables shall be auditable. This also includes subcontractors engaged by the major contractor. It is the responsibility of the major contractor to ensure details of sub-contractor competence, authorities and responsibilities can be evidenced by independent audit.

3.5.2 INDEPENDENT REVIEW & ACCEPTANCE OF WORK PERFORMED

The levels of approval for the entire project and project phases shall be clear and transparent. Clarity of responsibilities for approval and acceptance is best represented against the asset lifecycle model overlaid with the responsibilities of people who are doing the work; however, other suitable means to illustrate this information such as the use of an organization chart may be acceptable and shall be made available.

The nature of some deliverables requires subject experts to independently review the accuracy and completeness of the content of the work conducted. Technical assessment (as opposed to process assessment) of engineering design and construction deliverables will usually require independent engineering review. Major contractors will also provide assurance of the mechanism of review and acceptance for work conducted by the subcontractors they engage.

PLRC shall agree with the D&C organization on those deliverables that require independent review by an expert in the subject matter, prior to acceptance by PLRC. Whilst it is recognised that the D&C organization can provide evidence for compliance to the requirement for independent review, say in accordance to the draft AS7501, PLRC shall require their own SMEs to provide independent review. As an example, the following tables (Figure 3) include safety deliverables from major contractors that may require independent review. The actual titles may differ and it is expected many of these will undergo revision updates and will be subject to internal and PLRC audit at various stages. However they shall, as a whole, provide convincing evidence that safety activities were carried out as planned and safety requirements have been met in order to attain "acceptance" from PLRC (see Interim Safety Reports and Hazard Log).

GHD – examples of deliverables requiring independent review.

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Identified SME (Name &amp; Title)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety Assurance Plan</td>
<td>TBD</td>
</tr>
<tr>
<td>Safety Requirements Specifications</td>
<td>TBD</td>
</tr>
<tr>
<td>Hazard Log / ADCs</td>
<td>TBD</td>
</tr>
<tr>
<td>Safety Reports</td>
<td>TBD</td>
</tr>
</tbody>
</table>
D&C – IWE (Infrastructure) and Rolling Stock

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Identified SME (Name &amp; Title)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety Assurance Plan</td>
<td>TBD</td>
</tr>
<tr>
<td>Hazard Log</td>
<td>TBD</td>
</tr>
<tr>
<td>Critical Design Safety Assessment</td>
<td>TBD</td>
</tr>
<tr>
<td>Safety Requirements Specifications</td>
<td>TBD</td>
</tr>
<tr>
<td>Interface Specifications</td>
<td>TBD</td>
</tr>
<tr>
<td>Transfer Safety Responsibilities - ADCs</td>
<td>TBD</td>
</tr>
<tr>
<td>Integration &amp; Commissioning Test Reports</td>
<td>TBD</td>
</tr>
<tr>
<td>Configuration baselines (design and physical)</td>
<td>TBD</td>
</tr>
<tr>
<td>Audit Reports</td>
<td>TBD</td>
</tr>
<tr>
<td>Safety Reports (including safety analysis and evidence of meeting plan and safety specification requirements)</td>
<td>TBD</td>
</tr>
</tbody>
</table>

Figure 3: Examples of deliverables for independent review prior to acceptance - example

Note: The tables shall be updated in accordance with contractor project plans.

3.5.3 ACCEPTANCE OF RISKS

The deliverables shall include an identification and justification of any unresolved hazards and any non-conformances with the contractor’s Safety Requirements Specifications and Safety Assurance Plan. No responsibility shall be transferred to the next contractor (and or phase) until the accepting organization confirms in writing that it accepts the responsibility. This also is a relevant condition prior to accepting delivery of the rolling stock and at the pre-commissioning stage of the infrastructure by PLRC and the operator (VTS) with whom PLRC contracts out the operating and maintenance activities. Acceptance of unresolved hazards and ADCs (see 3.7.1) will also form part of the final completion conditions after all specification requirements related to the project have been met or waived by PLRC, and should be documented as part of the D&C’s Safety Case.

3.6 STANDARDS

Subcontractors shall reference the industry, national or international standards used. Where non standard considerations apply to the work being proposed, the contractor will ensure their safety reporting describes the justifications, verification, validation activities and consequent results for methods that do not reference a standard of design, workmanship or activity.
3.7 DELIVERABLES – MANAGEMENT OF, REVIEW AND CONTROL

The successful subcontractor that will conduct D&C activities will detail all the quality or system management controls as well as all project deliverables as part of the contractual requirements with PLRC.

The list will also include integration testing and commissioning document deliverables. The content, distribution and levels of approvals required for each deliverable shall be auditable.

When a major project phase is complete, or the completed project is handed over to the operator and maintainer, the information transferred will include:

- System description, details of interfaces and environ requirements;
- Hazards, safety features of system;
- Information for operators of equipment and LRVs;
- Instructions for operation of servicing and maintenance – appropriate maintenance practices, procedures, technical books, specifications, spares, drawings;
- Installation details;
- Design and Physical (Asset) Configuration baselines;
- Details of approval, emergency procedures, maintenance.

3.7.1 “DELIVERED ADCs”

There is the potential to introduce risks into the project at the interchange of phases, especially as one contractor completes the work and hands over to the next stage of the project. Deliverables often have assumptions and dependencies which may carry inherent risks.

Each contractor will therefore have to maintain and provide a hazard log and a register for ADCs, which are two critical deliverables that need to be accurate and complete to address all safety issues, and list residual or unmitigated risks. Each contractor or sub-contractor shall make sure that its ADC and hazard log is understood and accepted by the people who are accepting the deliverable (see Acceptance of Risks).

Again, the responsibilities of each contractor and subcontractors shall be documented against project tasks and phases so that the handover and integration points will be easily identified to facilitate communication of transferred risks. Figure 4 and figure 5 illustrate the relationships.
3.8 CONFIGURATION MANAGEMENT

Risks associated with inter-operability or compatibility with physical assets including existing rail signals, gauge, OHLE, communications) shall be identified and controlled.

Integration and compatibility issues where they affect safety must be identified in the hazard log.

The subcontractors shall have a robust system for configuration management to track changes with respect to component and system status. Records shall include

- those that describe the configuration of light rail sub-systems and system designs,
- those that describe the physical configuration of components, sub-systems and systems (parts and assets)
3.9 MAINTAINABILITY

The operator shall have up-to-date information about how the rail extension is configured with the existing system.

For infrastructure components that make up the new extension it is expected the hazard log will identify hazards that may exist:

- as a result of the way system components connect to other parts of the railway;
- at the place where the new components are located.

Maintenance specifications and maintenance manuals for the system and rolling stock shall form part of the deliverable, and tolerance built into maintenance specifications should allow for system and rolling stock degradation.

A maintenance plan shall identify routine activities needed to maintain the safety of the rolling stock and the components of the system as designed.

3.10 SYSTEM INTEGRATION

Contractual obligations will as far as possible define the boundaries of responsibilities. But there is also the necessity to ensure cooperation and clarification of responsibilities between parties to ensure successful integration of engineering sub-systems and components of the project (e.g. between track and rolling stock, rolling stock and OHLE, signaling and communications), and generally the resolution of any integration issues that arise during system verification testing and commissioning to ensure system is functional in all aspects as designed.

Installation of the system components shall be followed up by field testing of the integrated system involving operation under normal and abnormal conditions as part of the validation of the design to ensure hazards identified and associated with system operation have been controlled.

3.10.1 INTEGRATION RESPONSIBILITIES

The parties responsible for system integration will be identified to address issues or non-conformances which may present themselves during integration functional testing. In particular when a nonconformance or issue arises from integrating two or more sub-system elements of the system, including integration of rolling stock with other elements of the rail infrastructure, there shall be assignment of obligations for corrective action to a particular subcontractor. Clear identification of ownership makes for clear identification of responsibilities and accountabilities for issues.
3.10.2 **Compatibility of Current & New System**

With this in mind, the following matrix for interoperability or compatibility testing describes the approach for acceptance of the new rolling stock and new system infrastructure by PLRC (Figure 6).

![Figure 6: Compatibility testing for new system and rolling stock](image)

Testing will follow the order as follows:

1. Current rolling stock compatibility with new infrastructure
2. Current infrastructure compatibility with new rolling stock
3. New rolling stock compatibility with new infrastructure

The new infrastructure must be compatible with the existing rolling stock. The D&C contractor for the new infrastructure is responsible for all integration issues that arise from components of the system for which it designs and manufactures and installs when tested with the current rolling stock. (This includes items which required engaging other subcontractors to fulfill system component deliverables).

The new rolling stock must be compatible with the existing infrastructure. The rolling stock provider is responsible for all integration issues that arise when the rolling stock is tested on the current infrastructure. (This includes items which required engaging other subcontractors to fulfill delivery and installation of completed rolling stock).

**Note:** The infrastructure and rolling stock subcontractors will have to request and engage the current operator, VTS, to operate the LRVs and system equipment as contractor staff will not be familiar with the network and safe operational procedures, nor accredited to operate LRVs. By this stage of the project it is expected that VTS will have a variation of accreditation approval to operate within the IWE.

Once compatibility to the current infrastructure and rolling stock has been demonstrated successfully and accepted by PLRC and VTS, the new LRVs will be tested on the new section of
rail. In this situation fault or issues found in the infrastructure component will be corrected by the infrastructure provider. Fault or issues found with the rolling stock will the responsibility of the rolling stock provider.

Commissioning shall be seen as the assurance of correct functional operation leading to acceptance for unrestricted operation, not a means in which abnormal or a range of operational conditions are tested to verify individual components or validate system specifications.

3.10.3 OTHER HANDOVER ISSUES

As the extension can be considered as sharing an interface with the existing system, meetings between the D&C organization of the new rail system and those responsible for commissioning and operating the existing system will be required in order to agree on the integration testing and commissioning process, and the acceptance criteria for handover to ensure safe transition during the system change.

Activities and outcomes of the process shall include:

- Acknowledging, understanding and resolving ADCs placed on the operator;
- Dealing with any staged introduction of a component of the rail operation (e.g. signalling), where there may be multiple installation and handover phases with implementation activities in-between;
- Managing the period when the new extension is running in parallel with the existing line;
- Understanding and accepting the maintenance specification (developed by the D&C organization, and includes Maintenance Manuals, Work Instructions or Method Statements);
- Implementation of human factors and user interface safety considerations identified in the Design phase;
- Preparing generally with the impact on existing operations and maintenance.

The requirements for integration, commissioning and other handover requirements shall be accommodated for in respective contracts.

3.11 INTERIM SAFETY CASE (OR OTHER FORMS OF SAFETY EVIDENCE) & HAZARD LOG

The D&C Contractor’s Safety Case, which results from implementation of their Safety Assurance Plan, may consist of multiple documents (safety reports) to cover the topics or elements that need to be addressed. However, it must, in total, clearly demonstrate that the new infrastructure is safe to operate. Interim submissions of incomplete safety reports which together make up the Safety Case from the D&C contractor together with an accessible Hazard Log will be required. This will assist PLRC’s safety monitoring and management responsibilities before and during handover as it will allow PLRC to better:
• prepare for independent audits of progress against safety plan(s)
• plan changes in maintenance schedules and maintenance safety requirements (critical testing, any new equipment, spares required).
• monitor new risks throughout the design and construction phases for both infrastructure and rolling stock to facilitate “on-going acceptance” of the deliverables.

Before integration testing of the current rail line and LRVs with the new line and vehicles (see Compatibility of Current & New System) the contractor’s safety case shall provide safety evidence in accordance with their safety assurance plan to the satisfaction of PLRC. In the case of the rolling stock provider, the revenue service safety case (that is, the final safety case) shall be acceptable to PLRC prior to system integration testing and commissioning.

3.12 AUDIT

The D&C contractors for infrastructure and the rolling stock supplier shall provide for independent process assessment against their safety plan and technical safety assessment of deliverables. PLRC will provide an engineer to assess progress and technically assess deliverables throughout the course of design and development of the infrastructure components and of the rolling stock.

The Hazard Log shall be available for inspection by an independent Safety Auditor, and independent Assessors (PLRC engineers).

PLRC shall audit the management system of the contractors (process assessment) to ensure adequacy of EMS processes that control safety. There shall be an independent safety audit of the D&C Safety Plan towards the end of the detailed design phase.

The frequency and scope of audits is dependent on project plan details from the D&C contractor and rolling stock supplier. PLRC shall, as a result of a management system audit and review of the project plan, develop an audit program. Provisions shall be made to amend PLRC auditing frequency and scope based on the D&C and Rolling Stock programs.

At this stage however, on the basis of this version of the PLRC safety assurance plan, the audit elements are tabled below together with items that provide evidence of risk control and or risk control activities.

Table 4: Audit Activities

<table>
<thead>
<tr>
<th>PLRC Safety Plan Element</th>
<th>Evidence Considerations</th>
<th>Phase</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Safety Plans</td>
<td>Coverage of ESM activities, documentation, records; 1. Reference Design - requirements definition</td>
<td>Also Audit GHD safety plan</td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>---------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>Independent Review</td>
<td>List of deliverable and reviewer qualifications; Review and approval process and identification of deliverables requiring independent review; review reports by PLRC engineers; Intermediate Safety Reports</td>
<td>1. Tender Design</td>
<td>1. Tender Design</td>
</tr>
<tr>
<td>Personnel &amp; Skills</td>
<td>CVs; Organization Chart; Independent assessors and auditors.</td>
<td>D&amp;C Initiation</td>
<td>D&amp;C Initiation</td>
</tr>
<tr>
<td>Standards</td>
<td>Identification of areas or items not referencing standards – justification and verification / validation plans.</td>
<td>2. D&amp;C Design</td>
<td>2. D&amp;C Design, Construction and Integration / Handover</td>
</tr>
<tr>
<td>Sub-contract management</td>
<td>Supplier evaluation performed by major contractor; sub-contractor safety plan reviewed; sub-contractor identified hazards incorporated into hazard log.</td>
<td>D&amp;C Design, Construction</td>
<td>D&amp;C Design, Construction</td>
</tr>
<tr>
<td>Safety Specifications</td>
<td>List of requirements, reference to Standards, information and drawings. Risk management analysis resulting in the specifications.</td>
<td>1. Tender Design</td>
<td>1. Tender Design</td>
</tr>
<tr>
<td>Deliverables</td>
<td>List of deliverables (review and audit against internal list of expectations including safety reports and interim safety cases (reports). ADC’s and statement of residual or unmitigated risks. Hazard Log.</td>
<td>2. D&amp;C Design</td>
<td>2. D&amp;C Design, Construction and Integration / Handover</td>
</tr>
<tr>
<td>Integration &amp; Commissioning</td>
<td>Integration Plan; Commissioning Plan; Contract provisions; Maintenance Deliverables. Hazard Log.</td>
<td>D&amp;C Installation, Commissioning and Handover</td>
<td>D&amp;C Installation, Commissioning and Handover</td>
</tr>
<tr>
<td>Maintainability</td>
<td>Maintenance plans, manuals, asset configuration.</td>
<td>D&amp;C Design, Handover</td>
<td>D&amp;C Design, Handover</td>
</tr>
<tr>
<td>Hazard Log</td>
<td>Up to date; Technical Assessment throughout; Accessible throughout project by PLRC auditor and assessors</td>
<td>D&amp;C – all phases</td>
<td>D&amp;C – all phases</td>
</tr>
<tr>
<td>ADCs</td>
<td>Comprehensive and provides for effective transfer to persons having to accept and address them.</td>
<td>1. All Project phases, 2. D&amp;C sub-system &amp; system integration</td>
<td>1. All Project phases, 2. D&amp;C sub-system &amp; system integration</td>
</tr>
<tr>
<td>Contract Conditions</td>
<td>Evidence that contracts consider requirements as described in this document</td>
<td>D&amp;C Initiation</td>
<td>D&amp;C Initiation</td>
</tr>
</tbody>
</table>
3.13 RAIL SAFETY ACCREDITATIONS

All major contractors involved in the design, manufacture, supply, install, commission or operation of the rail infrastructure or new LRVs are to ensure, so far as is reasonably practicable, the safety of the work or item. Risks will be further mitigated on an organizational safety management level by having an organization accredited for the work they will manage and perform for a particular project.

The purpose of accreditation is therefore to demonstrate that for this particular SLRE project, the D&C organizations have demonstrated that they have the competence and capacity to manage the risks to safety associated with the rail work for which they will be performing. Obtaining the necessary accreditation from ITSR will be a contractual requirement for the D&C contractor. The rolling stock supplier will be required to undertake all necessary work to enable the operator to obtain an accreditation to commission and operate the new vehicles. The D&C providers shall have accreditation well prior to the construction phase as depicted in Figure 7.

PLRC has the duty to ensure safety risks associated with major change are identified, and managed in a way that the IWE and its operational implications will be implemented in a manner without increasing safety risk. VTS operates and maintains the current infrastructure and rolling stock for PLRC. As the change (IWE) is outside the scope and nature of its current accreditation, VTS will apply to ITSR for a variation of accreditation under section 55 of the Act and regulatory approval will be obtained in relation to change in scope and nature of railway operations prior to carrying out new operations. VTS will apply for a variation to its existing operations and commissioning accreditation at least six months prior to beginning the commissioning process (Figure 7). VTS will supply the staff and services required by the IWE subcontractors to operate new LRVs and new system testing (see System Integration).

![Concept] D&C Accreditation for Project Activities

<table>
<thead>
<tr>
<th>Concept</th>
<th>Design</th>
<th>Construct</th>
<th>Supply/Install</th>
<th>Commission</th>
<th>Operate / Maintain</th>
</tr>
</thead>
</table>

VTS Variation to Accreditation

Figure 7: Regulatory Activities
3.14 VERIFICATION OF SYSTEM SAFETY

The verification of safety activities and compliance to this SAP is chiefly obtained from evidence acquired from the audit activities tabled in this document and execution of subsequent audit plans after the D&C project plan has been developed. Evidence of safety controls also includes verification of risk mitigation through contractual arrangement as discussed and obligated within this plan.

A safety assurance report will be generated at the end of the commissioning phase - however interim reports will be generated for the purpose of providing project safety assurance to management, determining on-going effectiveness of the plan and for providing provisional approval to then conduct current and new system compatibility testing as described.
4. REVISION HISTORY

The revision history including change control associated with this document is contained in the table below.

Table 5: Document Revision History

<table>
<thead>
<tr>
<th>Revision</th>
<th>Change No.</th>
<th>Amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>10060</td>
<td>Initial Release into System</td>
</tr>
<tr>
<td>1</td>
<td>10118</td>
<td>1. Removed 3.14 Greenway</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Updated 3.15 Verification of System Safety to 3.14 Verification of System Safety</td>
</tr>
<tr>
<td>2</td>
<td>10141</td>
<td>Minor changes as part of a review prior to tender.</td>
</tr>
</tbody>
</table>
Part R

IWE Site and Site

(Clause 1.1)

The Site is defined by the LRT and includes all maintenance facilities, stabling, stores, offices and amenities facilities related to the operation and maintenance of the Light Rail System. Upon Commencement of IWE operations the Site incorporates the IWE Site.

The IWE Site is as defined by the IWE or Inner West Extension as detailed in the definitions.
Form of Certificate of Operational Completion
(Clause 21A.2(a)(i))

TO: The Supplier

In accordance with the Clause 21A.2(a)(i) of the contract between the Purchaser and the Supplier dated [insert date] with respect of the design and construction of LRV [Insert Number], I hereby certify that:

(a) all conditions precedent to Operational Completion have been achieved; and
(b) Operational Completion occurred on [Insert date].

Terms defined in the Contract have the same meaning in this certificate.

[Insert name of authorised representative of the Purchaser]

Date:
Annexure U
ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation AS/NZS 4911-2003

Form of Escrow Agreement (Clause 8.9)
ANNEXURE to the \section{Conclusion of Contract for the supply of Equipment without Installation ASME\textsuperscript{a} 441-2002 Form of Equipment Agreement (Clause 6.6)}
SOFTWARE ESCROW AGREEMENT

DATED:

PARTIES:

1. ASSUREX ESCROW PTY LIMITED
   ABN 64 008 611 578

2.

3. [Note to Tenderer: This is the form of escrow agreement received from Assurex. To date, no discussions have taken place between PLRC and Assurex regarding the terms of this escrow agreement. Assurex, the Tenderer, its subcontractor (that owns the relevant software) and PLRC will all be parties to this escrow agreement. PLRC will require amendments to this agreement to ensure its rights to the software under this agreement are consistent with the terms under the Contract. If the Tenderer seeks any amendments to this escrow agreement it must include such amendments in its response to Schedule 23 (Amendments to the Contract) of the RFT.]
THIS SOFTWARE ESCROW AGREEMENT is made as of

BETWEEN: ASSUREX ESCROW PTY LIMITED ABN 64 008 611 578, of Level 5, Suite 93, 330 Wattle Street, ULTIMO NSW 2007 AUSTRALIA ("Assurex") of the first part.

AND [INSERT DETAILS] ("Owner") of the second part

AND [INSERT DETAILS] ("Licensee") of the third part

WHEREAS:

A. The Owner has granted or intends to grant a licence to the Licensee to use certain computer software and related material ("Software Package").

B. Access to the Material (as defined hereunder) may be required by the Licensee.

C. Owner has agreed to deposit with Assurex a copy of the Material to enable the Licensee to obtain access to the Material in the circumstances specified in this Agreement.

NOW THIS AGREEMENT WITNESSES:

1. Definitions.

In this Agreement the following terms have the following meanings:

"Deposit Package" means the Material delivered to and held by Assurex.

"Licence Agreement" means the licence between the Owner and the Licensee pursuant to which the Licensee obtains the right to use certain elements of the Software Package.

"Material" means a copy of the source code and object code together with other documentation relating to the Software Package, including any Modifications, which may be required by the Licensee for the understanding, maintaining, modifying and correcting of the Software Package and which is not furnished by the Owner to the Licensee under the Licence Agreement.

"Modification" means a change to the Software Package provided by the Owner to the Licensee under the Licence Agreement which is designed to overcome errors or malfunctions, or designed to improve the operation of the Software Package and includes a new version of the Software Package.

"Software maintenance Agreement" means an agreement between the Owner and the Licensee pursuant to which the Owner is obliged to maintain, modify, correct or update the Software Package.

© Assurex Escrow Pty Ltd

01022011.v2
2. Appointment of Escrow Holder

Assurex is hereby appointed jointly by the Owner and the Licensee to hold the Deposit Package subject to and in accordance with the terms of this Agreement.

3. Duration

This Agreement shall remain in force until the Deposit Package is released in accordance with this Agreement or the Agreement is otherwise terminated.

4. Owner's Obligation:

(a) The Owner shall deliver to and deposit with Assurex one copy of the latest version of the Material within seven (7) days of the date of this Agreement.

(b) Whenever any Modification is made the Owner shall deliver to and deposit with Assurex as soon as practicable whatever additional Material is required to make the Deposit Package equivalent to the latest version of the Material.

5. Assurex's Obligation:

(a) Assurex shall accept custody of the Deposit Package on the date of delivery in accordance with Clause 4 of this Agreement and, subject to the terms of this Agreement, shall hold the Deposit Package on behalf of the Owner and the Licensee.

(b) Assurex shall take all reasonably necessary steps to ensure the preservation, care, safe custody and security of the Deposit Package while it is in the possession, custody or control of Assurex, including storage in a secure receptacle and in an atmosphere that does not harm the Deposit Package.

(c) Assurex shall maintain a register of all Material deposited, stored and released pursuant to this Agreement and shall promptly comply with a request by the Owner or the Licensee to be permitted to inspect the register during normal business hours, or be provided with a copy of such register.

(d) Assurex shall be under no obligation or responsibility:

(i) to determine the nature, completeness or accuracy of the Deposit Package.

(ii) for any transaction between the Owner and the Licensee, other than the performance of its obligations under this Agreement with respect to the Deposit Package.

(e) If the Deposit Package is lost, damaged or destroyed while in the possession, custody or control of Assurex, Assurex shall immediately notify the Owner and the Licensee.

(f) Unless this Agreement is terminated in accordance with clause 12 (a) (ii) the Owner shall, within 14 days of receiving notice under clause 5 (e), deposit a further copy of the Deposit Package with Assurex, and
(g) Without limitation to any other rights the Owner and the Licensee may have under this Agreement or at law, where the loss, damage or destruction of the Deposit Package is caused by a breach by Assuren of Assuren's obligations under this Agreement, Assuren must reimburse the Owner for the reasonable cost of depositing a replacement copy of the Deposit Package.

6. Confidentiality

(a) Assuren shall not make public or disclose to any person any information about this Agreement or the Deposit Package except as permitted by this Agreement or as required by law.

(b) Assuren shall not reproduce, allow or cause to be reproduced a copy of the Deposit Package or any part thereof.

(c) Assuren shall ensure that its employees observe the provisions of this Clause 6.

(d) The obligations of this Clause shall survive the termination of this Agreement.

7. Escrow Fees

(a) The Licensee shall pay Assuren for the services provided by Assuren under the Agreement as specified in Schedule 1. Such fees shall be due in full within 30 days of the receipt by the Licensee of an invoice and such payment shall be the essence of this Agreement.

(b) The Licensee must pay to Assuren any amount ("GST amount") which is payable by the Licensee on account of goods and services tax, value added tax or other tax ("GST") on any service or supply made by Assuren under this Agreement.

(c) At least 14 days before the date of payment of any GST amount, Assuren must provide to the Licensee a tax invoice complying with any legislation under which the GST is imposed.

(d) Nothing in this clause requires the Licensee to pay an amount on account of a fine, penalty, interest or other amount for which Assuren is liable as a consequence of a default of Assuren, its employees, agents or any other person acting for Assuren.

8. Verification

(a) Upon 14 days prior written notice to Assuren and the Owner, the Licensee may, in the presence of and under the supervision of the Owner, analyze and conduct tests of the Deposit Package to verify that the Deposit Package contains the latest version of the Material.

(b) The Licensee may engage an independent assessor to test the Deposit Package for verification purposes on its behalf.

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(c) Assenex shall release the Deposit Package, or a specified part thereof, to the Licensee or the independent assessor upon receipt of written notice signed by the Owner and the Licensee specifying the Material to be released and identifying the person to whom that Material may be released.

9. Intellectual Property

(2) Copyright and all other intellectual property rights in the Deposit Package shall remain with the Owner.

(b) The Owner hereby grants a licence to Assenex to deal with the Deposit Package as necessary to enable Assenex to comply with its obligations under Clause 10 of this Agreement.

10. Release of the Deposit Package

(a) Assenex shall not release, or allow access to, the Deposit Package except in accordance with the terms of this Agreement.

(b) Assenex shall release the Deposit Package to the Licensee upon written notice from the Owner.

(c) If any of the events specified in paragraphs (i) to (iii) of this Clause 10(c) occur, the Licensees may provide written notice of such events to both Assenex and the Owner. If the Owner does not, within 14 days of receiving the notice ("Objection Period"), provide to Assenex written notice objecting to the release of the Deposit Package Assenex shall release the Deposit Package to the Licensees. If the Owner gives notice objecting to the release of the Deposit Package within the Objection Period, Assenex shall provide a copy of the written objection to the Licensees. If the Licensees and the Owner cannot resolve their difference regarding the release of the Deposit Package within 24 hours, the Owner and the Licensees shall refer the matter for dispute resolution in accordance with Clause 15 and Assenex must act with respect to the Deposit Package in accordance with the determination given under that clause or as jointly directed by the Owner and the Licensees in writing.

(i) the Owner has become subject to any form of insolvency administration;

(ii) the Owner has ceased to maintain or support the Software Package in breach of its obligations under the Licence Agreement or Software Maintenance Agreement; or

(iii) the Owner ceases to carry on business.

(d) Notice by the Licensee under clause 10(c) must be in the form of a statutory declaration signed by an officer of the Licensee setting out in detail the grounds upon which release of the Deposit Package is sought. Notice by the Owner under clause 10(c) must be in the form of a statutory declaration signed by an officer of the Owner setting out in detail the grounds upon which the Owner objects to the release of the Deposit Package.

11. Licensee's Permitted Use

In the event the Deposit Package is released to the Licensee in accordance with Clause 10, the Licensee shall only be entitled to use the Deposit Package to maintain or correct the Software
Package and shall not do or allow to be done any act which is inconsistent with the Owner's intellectual property rights in the Deposit Package or the Software Package.

12. Termination

(a) This Agreement shall be jointly terminated by the Owner and the Licensee immediately if Assurex:
   (i) becomes subject to any form of insolvency administration; or
   (ii) is in breach of any obligation under this Agreement so that there is a substantial failure by Assurex to perform or observe this Agreement.

(b) Assurex may terminate this Agreement by giving 3 months written notice to the Owner and the Licensee.

(c) The Owner and the Licensee jointly terminate this Agreement by giving 30 days written notice to Assurex.

(d) Upon termination of this Agreement under this Clause 12, the Deposit Package shall be returned to the Owner or, if the Owner is no longer in existence, to such person or firm as reasonably appears to Assurex to be entitled thereto.

13. Amendments

This Agreement shall not be revoked, rescinded or modified as to any of its terms except by written agreement between the parties.

14. Governing Law

This Agreement shall be governed by and construed in accordance with the law in force in the State of New South Wales.

15. Dispute Resolution

All questions and matters in difference between the parties or between the Owner and the Licensee relating to the release of the Deposit Package shall be referred to the award and final determination of the President for the time being of The Law Society of New South Wales, or whomsoever that person shall appoint.

16. Force Majeure

Failure or omissions to carry out or to observe any of the conditions of this Agreement shall not give rise to any claim against a party or result in the breach of this Agreement if such failure or omission arises by reason of delay or inability to perform, caused by war whether declared or not, invasion, strikes, inability to obtain material, fire, storm or other severe action of the elements, accidents, government restrictions or for any other cause whether like or unlike the foregoing which are unavoidable or beyond the control of the relevant party.

17. Description / Title of Software Package

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AS/NZS 4911-2003
18. Notices

All notices under this Agreement shall be in writing and shall be deemed to have been duly delivered:

(a) upon physical delivery when delivered by hand;

(b) seven (7) calendar days after mailing if mailed by registered post; or

(c) on the next business day following transmission, when the machine on which the notice is sent reports in writing that the notice has been transmitted free from errors in transmission.

to the party to whom such notice is required to be given at the following address or other address notified in writing to the parties:

Assurex

Courier Delivery:
Suite 93, Level 5,
330 Wattle Street
ULTIMO NSW 2007
AUSTRALIA

Mail:
PO Box 8
BROADWAY NSW 2007
AUSTRALIA

Telephone: (61 2) 9211 0522
Facsimile: (61 2) 9211 5940
Attention: Legal Counsel

© Assurex Escrow Pty Ltd

Owner

Licencsee
Executed as an Agreement

SIGNED for and on behalf of
ASSUREX ESCROW PTY LIMITED
ABN 64 006 611 578
by a duly authorised representative in the presence of:

Print name - Witness
Print name
Date:

SIGNED for and on behalf of
by a duly authorised representative in the presence of:

Print name - Witness
Print name
Date:

SIGNED for and on behalf of
by a duly authorised representative in the presence of:

Print name - Witness
Print name
Date:

© Assurex Escrow Pty Ltd

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Part V

Dispute Resolution Board Agreement (Clause 28)
ANNEXURE to the Australian/New Zealand Standard General Conditions of Contract for the supply of Equipment without installation AS/NZS 4911-2003

Dispute Resolution Board Agreement dated [insert date]

Parties

Transport for New South Wales of Level 6, 18 Lee Street, Chippendale 2008 (ABN 18 804 239 602) (the Purchaser)

Construcciones y Auxiliar de Ferrocarriles S.A. of José Miguel Iturrioz 26, 20200 Beasain (Spain) (CIF A20001020) (the Supplier)

Max Tonkin of 28 Bellevue Ave Denistone NSW 2114

Tim Sullivan of PO Box 80 Oakdale NSW 2570

Graeme Peck of 6 Avona Crescent, Seaforth NSW 2092

(each a Member)

Background:

A. The Purchaser and the Supplier have entered into the Contract for the manufacture, supply, delivery, testing and commissioning of the Equipment to be operated on the Sydney Light Rail.

B. Clause 28 of the Contract provides for a dispute resolution process through the establishment and the operation of a Dispute Resolution Board to assist in resolving disputes under the Contract.

C. This agreement sets out the rights, obligations and duties of the Members, the Purchaser and the Supplier in relation to the Dispute Resolution Board and the disputes.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

Confidential Information means any Information in any way relating or pertaining to, or connected or associated with, or incidental to, the Project or the business activities of the Purchaser or the Supplier which is or has been obtained (in writing, orally or in any other form) from, or pursuant to discussions with the Purchaser or the Contract or their related body corporates, advisors or agents.

Dispute Resolution Board means the dispute resolution board formed under clause 3 of this agreement.

Information means information, correspondence, data, reports, interpretations, forecasts, processes, formulae, procedures, techniques, computer programs, records, analysis,
compilation, business plans, studies or other documents or material of whatever nature and embodied, contained, exhibited, displayed or conveyed in any form or manner (including in writing, orally, or in machine readable form, recorded or stored by or in any computer or information retrieval system, or recorded or stored by any electronic magnetic, electromagnetic or other means).

**Members** means each of the three individuals appointed to the Dispute Resolution Board in accordance with this agreement.

**Contract** means the deed between the Purchaser, the Supplier [# insert names of any other parties] dated [# insert date #].

**Project** means the project to deliver light rail vehicles for the purposes of the Sydney Light Rail.

**Rules** means the rules to be followed by the Dispute Resolution Board when determining disputes as set out in Schedule 1.

**Schedule of Fees and Disbursements** means the schedule of fees and disbursements set out in Schedule 2.

1.2 **Terms defined in the Contract**

Words and phrases defined in the Contract and used in this agreement have the meaning given to them in the Contract.

1.3 **Interpretation**

In this agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

includes in any form is not a word of limitation; and

a reference to $ or dollar is to Australian currency.

2. Agreement to Prevail

2.1 The parties agree that if there is any inconsistency between the terms of this agreement and the Contract the terms of this agreement will prevail to the extent of the inconsistency.

2.2 This agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier under this agreement, until it terminates in accordance with clause 28.8 of the Contract.

3. Formation of the Dispute Resolution Board

The parties acknowledge that the Dispute Resolution Board:

(a) has been formed; and

(b) must perform its obligations and functions under the Contract and this agreement.

4. Establishment of Procedures

(a) During the first meeting at the Site, the Dispute Resolution Board will, with the agreement of all parties, establish procedures for the conduct of its routine site visits and other matters (including procedures for discharging its advisory function under clause 28.9 of the Contract but excluding procedures for its dispute resolution role. This process will be governed by the Rules). Template procedures are included in Attachment 1 to this agreement.

(b) The Dispute Resolution Board may initiate, with the concurrence of the Purchaser and the Supplier, new procedures or modified procedures, whenever this is deemed appropriate.

(c) The parties agree to comply with the Rules in respect of any dispute referred to the Dispute Resolution Board pursuant to clause 28.2 of the Contract.

5. Dispute Resolution Board Member's Obligations

5.1 Impartiality

Each Member agrees to consider fairly and impartially the disputes and other matters referred to the Dispute Resolution Board.

5.2 Independence

Each Member agrees to act honestly and independently in the performance of its obligations under this agreement (including the consideration of facts and conditions relating to a dispute).

5.3 General Duties

Each Member agrees to carry out his or her obligations as a Member of the Dispute Resolution Board:

(a) with due care and diligence;
(b) in compliance with the Contract and this agreement; and
(c) in compliance with all applicable Laws.

### 6. Costs and fees

(a) The Purchaser and the Supplier are jointly and severally liable for the payment of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.

(b) The Purchaser and the Supplier agree as between themselves that:

(i) Purchaser will pay:

A. the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements;

B. any third party costs incurred in holding the conference referred to in clause 2 of the Rules, including any booking fee, room hire and transcript costs; and

incurred on a "retainer" basis

(ii) they will each pay one half of:

A. the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements;

B. any third party costs incurred in holding the conference referred to in clause 2 of the Rules, including any booking fee, room hire and transcript costs; and

C. incurred in connection with the resolution of a dispute referred under clause 28.2(b) of the Contract

(iii) they will each bear their own costs of and incidental to the preparation of this agreement and their participation in any decision process of the Dispute Resolution Board.

### 7. The Purchaser's Commitment and Responsibilities

Except for its participation in the Dispute Resolution Board's activities as provided in the Contract and this agreement, the Purchaser will:

(a) not solicit advice or consultation from the Dispute Resolution Board or the Members on matters dealing with:

(i) the resolution of disputes which may compromise the Dispute Resolution Board's integrity or compliance with this agreement; or

(ii) the conduct of its work under the Contract or resolution of other problems relating to the Project, other than in accordance with clause 28.9 of the Contract

(b) act in good faith towards each Member and the Dispute Resolution Board; and

(c) comply with the reasonable requests and directions of the Dispute Resolution Board.
8. **Supplier’s Commitments and Responsibilities**

Except for its participation in the Dispute Resolution Board’s activities as provided in the Contract and this agreement, the Supplier will:

(a) not solicit advice or consultation from the Dispute Resolution Board or the Members on matters dealing with:

(i) the resolution of disputes which may compromise the Dispute Resolution Board’s integrity or compliance with this agreement; or

(ii) the conduct of its work under the Contract or resolution of other problems relating to the Project, other than in accordance with Clause 28.9 of the Contract.

(b) act in good faith towards each Member and the Dispute Resolution Board; and

(c) comply with the reasonable requests and directions of the Dispute Resolution Board.

9. **Confidentiality**

In relation to all Confidential Information disclosed to the Dispute Resolution Board during the resolution of a Dispute each Member agrees:

(a) to keep that information confidential;

(b) not to disclose that information except if compelled by law to do so;

(c) not to use that information for a purpose other than the resolution of the dispute; and

(d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

10. **Conflict of Interest**

If a Member, during the term as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member’s capacity to act independently, impartially and without bias, the Member must inform the Purchaser and the Supplier and the other Members in writing immediately.

11. **Liability**

11.1 **Liability**

A Member is not liable to either the Purchaser or the Supplier for any act or omission done in good faith and with due care and diligence.

11.2 **Due Care and Diligence**

For the purpose of clause 11.1, the parties agree that the Member’s act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.
12. Indemnity

12.1 Indemnity

The Purchaser and the Supplier jointly and severally indemnify each Member against all claims from a person not a party to this agreement for any act or omission done in good faith and with due care and diligence.

12.2 Due Care and Diligence

For the purpose of clause 12.1, the parties agree that the Member’s act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

13. Termination of agreement

Subject to clause 14.2, this agreement may be terminated by mutual written agreement of the Purchaser and the Supplier.

14. Members’ Termination

14.1 Resignation

A Member may resign from the Dispute Resolution Board by providing 30 Business Days’ written notice to the other Members, the Purchaser and the Supplier.

14.2 Termination

A Member may be terminated at any time if the Purchaser and the Supplier agree to do so.

14.3 Re-Appointment

A replacement member may be appointed in accordance with clause 28.7 of the Contract. The parties and Members acknowledge that they and any new member must enter into a replacement agreement substantially similar to this agreement as a condition of a valid appointment of a replacement member under the terms of the Contract. This agreement will remain in force until a replacement to this agreement has been fully executed.

15. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of New South Wales and all parties hereby submit to the exclusive jurisdiction of the courts of New South Wales.

15.1 Relationship of the Parties

This agreement is not intended to create any partnership, agency or joint venture with respect to any one or more of the parties.

15.2 Notices

All notices must be in writing and sent to the addresses on page 1 of this agreement.
Schedule 1 - Rules for DRB Decisions

1. Written Submissions

1.1 Within 14 days after the referral of a dispute to the Dispute Resolution Board under clause 28.2 of the Contract, Party A (ie the party who gave notice under clause 28.2 of the Contract) must, in addition to any particulars provided by Party A under clause 28.2 of the Contract, give the other party and the Dispute Resolution Board a written statement of the Dispute referred to the Dispute Resolution Board; any agreed statement of facts; and a written submission, which may include witness statements, on the dispute in support of Party A's contentions.

1.2 Within 14 days after the statement in clause 1.1 is served, the other party must give Party A and the Dispute Resolution Board a written response to Party A's submissions.

1.3 If the Dispute Resolution Board considers it appropriate, Party A may reply in writing to the other party's response in clause 1.2 within the time allowed by the Dispute Resolution Board.

1.4 If the Dispute Resolution Board decides further information or documentation is required for the determination of the dispute, the Dispute Resolution Board may direct one or more parties to provide such further submissions, information or documents as the Dispute Resolution Board may require.

1.5 The Dispute Resolution Board must disclose to both parties all submissions, further submissions, information and documents received.

1.6 If a party fails to make a written submission, the Dispute Resolution Board may continue with the process.

2. Conference

2.1 Either party may, in writing, request the Dispute Resolution Board to call a conference of the parties.

2.2 If neither party requests the Dispute Resolution Board to call a conference, the chairperson of the Dispute Resolution Board may nevertheless call a conference if they think it appropriate.

2.3 Unless the parties agree otherwise, the conference will be held at the Site.

2.4 At least 5 days before the conference, the Dispute Resolution Board must inform the parties in writing of the date, venue and agenda for the conference.

2.5 The parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under clause 2.4, the Dispute Resolution Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the decision making process.

2.6 The parties:

(a) may be accompanied at a conference by legal or other advisers; and

(b) will be bound by any procedural directions as may be given by the Dispute Resolution Board in relation to the conference both before and during the course of the conference.
2.7 The conference must be held in private.

2.8 If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Resolution Board and the parties on a private and confidential basis.

3. The Decision

3.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than [56] days after referral of a dispute to the Dispute Resolution Board’s under clause 28.2 of the Contract (or such other period as the parties may agree), the Dispute Resolution Board must:

(a) determine the dispute between the parties; and
(b) notify the parties of that decision.

3.2 The decision of the Dispute Resolution Board must:

(a) be in writing stating the Dispute Resolution Board’s decision and giving reasons;
(b) be made on the basis of the submissions (if any) of the parties, the conference (if any), and the Dispute Resolution Board’s own expertise; and
(c) meet the requirements of the Contract.

3.3 If the Dispute Resolution Board’s decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Resolution Board must correct the decision.

4. Modification

These rules may be modified only by agreement of the Purchaser and the Supplier.
Schedule 2 - Fees and disbursements
SIGNED as an agreement

Signed for and on behalf of the Transport for New South Wales ABN 18 804 239 602 by its authorised signatory, in the presence of:

Signature of Witness

Full name of witness

Signed for and on behalf of the [Supplier] by its authorised signatory, in the presence of:

Signature of Witness

Full name of witness

Signed for and on behalf of the [Member] by its authorised signatory, in the presence of:

Signature of Witness

Full name of witness

Signed for and on behalf of the [Member] by its authorised signatory, in the presence of:

Signature of Witness

Full name of witness
Signed for and on behalf of the [Member] by its authorised signatory, in the presence of:

<table>
<thead>
<tr>
<th>Signature of Witness</th>
<th>Signature of authorised signatory</th>
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<tr>
<td>Full name of witness</td>
<td>Full name of authorised signatory</td>
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ATTACHMENT 1

Dispute Resolution Board General Operating Procedures

1 General

1.1 The role of the Dispute Resolution Board is to provide specialised expertise in technical and administration aspects of the Contract in order to assist the parties to the Contract in resolving disputes and other matters in a timely and equitable manner.

1.2 The parties to the Contract shall not solicit advice or consultation from the Dispute Resolution Board or its members on matters dealing with the conduct of the work or resolution of problems except in accordance with the Contract.

1.3 The Supplier will furnish to each of the Dispute Resolution Board members all documents necessary for the Dispute Resolution Board to perform its functions, including copies of all Contract documents plus periodic reports, such as progress reports, minutes of weekly or other contract control group meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Dispute Resolution Board members of disputes and other matters.

1.4 It must be clearly understood that individual Dispute Resolution Board members are not the representative of the party which appointed that representative. The entire Dispute Resolution Board must function as an objective, impartial and independent body at all times.

1.5 In order to avoid any suggestion of partiality, there should be no individual communication between Dispute Resolution Board members and employees of the parties to the Contract during the life of the Dispute Resolution Board. The parties to the Contract must direct any matters needing attention between meetings of the Dispute Resolution Board to the chair of the Dispute Resolution Board.

2 Frequency of Regular Meetings and Site Visits

2.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Resolution Board properly informed of the project circumstances will generally be agreed between the Dispute Resolution Board and the parties to the Contract.

2.2 In the case of a failure to agree between the Dispute Resolution Board and the parties to the Contract, the Dispute Resolution Board will schedule the meetings and visits as it sees fit.

2.3 The frequency of meetings of the Dispute Resolution Board should generally be not more than three monthly but this may be influenced by work progress, unusual events and the number and complexity of potential disputes.

3 Agenda for Regular Meetings

3.1 The chair will develop an agenda for each regular meeting in accordance with the requirements of the Contract.

3.2 At the conclusion of the meeting, the Dispute Resolution Board will generally inspect the Equipment and the Site in the company of representatives of both parties to the Contract. Any areas of the Equipment or Site that are or may be the subject of any potential dispute will be pointed out by the parties to the Contract.

4 Minutes of Meetings
4.1 The Purchaser will prepare minutes of the regular meetings of the Dispute Resolution Board and these draft minutes will be circulated to the Dispute Resolution Board members for comments, additions and corrections.

4.2 Minutes as amended will be adopted by the Dispute Resolution Board members at the next meeting.
Part 2 - Criteria for Members of Dispute Resolution Board

1. Criteria

Each nominee must meet the following criteria:

(a) **Experience**

   It is desirable that all Dispute Resolution Board members (DRB members) be experienced in the supply, testing and commissioning of the type of Equipment required, interpretation of project documents and resolution of construction issues or disputes.

(b) **Neutrality**

   (i) The DRB members must be neutral, act impartially and be free of any conflict of interest.

   (ii) For the purposes of this clause, the term "member" also includes the member's current primary or full-time employer, and "involved" means having a contractual relationship with either party to the Contract, or any other entity, such as a subcontractor, design professional or consultant having a role in the project.

(c) **Prohibitions and disqualifying relationship for prospective members**

   DRB members must not have:

   (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Resolution Board;

   (ii) previous employment by, or financial ties to, any party involved in the project within a period of 2 years prior to award of the Contract, except for fee-based consulting services on other projects;

   (iii) a close professional or personal relationship with any key member of any entity involved in the project which, in the judgment of either party, could suggest partiality; or

   (iv) prior involvement in the project of a nature which could compromise that member's ability to participate impartially in the Dispute Resolution Board's activities.

(d) **Prohibitions and disqualifying relationships for members**

   The following matters may be construed as a conflict of interest in respect of a member:

   (i) the member being employed within the past 2 years, including for fee-based consulting services, by any entity involved in the project except with the express approval of both parties; or

   (ii) the member entering into discussions concerning, or making an agreement with, an entity involved in the project regarding employment after the project is completed.

2. **Disclosure Statement**

   A disclosure statement for each nominee must be submitted. Each disclosure statement must include:

   (a) a resume of relevant experience;
(b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective member's primary or full time employer, to the project and with all entities involving the project, including subcontractors, design professionals and consultants; and

c) disclosure of close professional or personal relationships with any key members of any entity involved in the project.
SUMMARY: This Amendment applies to Clause 36 (a) and (c) of Annexure Part A.
Published on 30 March 2005.
Standards Australia

Standards Australia is an independent company, limited by guarantee, which prepares and publishes most of the voluntary technical and commercial standards used in Australia. These standards are developed through an open process of consultation and consensus, in which all interested parties are invited to participate. Through a Memorandum of Understanding with the Commonwealth government, Standards Australia is recognized as Australia’s peak national standards body.

Standards New Zealand

The first national Standards organization was created in New Zealand in 1932. The Standards Council of New Zealand is the national authority responsible for the production of Standards. Standards New Zealand is the trading arm of the Standards Council established under the Standards Act 1988.

Australian/New Zealand Standards

Under a Memorandum of Understanding between Standards Australia and Standards New Zealand, Australian/New Zealand Standards are prepared by committees of experts from industry, governments, consumers and other sectors. The requirements or recommendations contained in published Standards are a consensus of the views of representative interests and also take account of comments received from other sources. They reflect the latest scientific and industry experience. Australian/New Zealand Standards are kept under continuous review after publication and are updated regularly to take account of changing technology.

International Involvement

Standards Australia and Standards New Zealand are responsible for ensuring that the Australian and New Zealand viewpoints are considered in the formulation of international Standards and that the latest international experience is incorporated in national and Joint Standards. This role is vital in assisting local industry to compete in international markets. Both organizations are the national members of ISO (the International Organization for Standardization) and IEC (the International Electrotechnical Commission).

Visit our web sites

www.standards.org.au
www.standards.co.nz
www.standards.com.au