TANGARA TECHNOLOGY UPGRADE CONTRACT

Contract Number: TPD-14-3914

Between
Transport for NSW
[PRINCIPAL]
ABN 18 804 239 602

and
UGL Unipart Rail Services Pty Ltd
[CONTRACTOR]
ABN 49 154 895 940

Level 5, Tower A
821 Pacific Highway
Chatswood NSW 2067
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Parties

1. Transport for NSW (ABN 18 804 239 602), a corporation established by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (*Principal*).

2. UGL Unipart Rail Services Pty Ltd (ABN 49 154 895 940) of Level 10, 40 Miller Street, North Sydney NSW 2060 (the *Contractor*).

Recitals

A The Principal is a corporation constituted under the *Transport Administration Act 1988* (NSW), and is responsible for developing certain major railway systems and other major projects.

B The Principal is responsible for developing the Tangara Technology Upgrade Project.

C The Tangara Technology Upgrade Project comprises the refurbishment and upgrade of 446 Tangara double deck EMU cars operated by Sydney Trains to address component obsolescence and improve reliability and availability.

D The Contractor has agreed to undertake the Works and Services for the Principal in accordance with this Deed.

It is agreed as follows.

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Deed, unless the context otherwise indicates:

*Abandonment* means where the Contractor wholly or substantially abandons the performance of the Works and Services.

*Accreditation* means accreditation as referred to in Part 3, Division 4 of the Rail Safety National Law.

*Act of Prevention* means:
(a) a breach of this Deed by the Principal;

(b) any other act or omission of the Principal, the Principal's Representative except where such act or omission is expressed as not constituting an Act of Prevention pursuant to the provisions of this Deed; or

(c) a Variation the subject of a direction by the Principal's Representative under clause 6.2, except where that Variation is directed in the circumstances described in clause 8.2(c) or approved under clause 6.9(b).

The valuation of entitlements to money under clauses 8.4(a), 10.1, and 13.3 is not a Variation for the purposes of this definition of Act of Prevention.

Alstom Installation Design means the documents listed in sections 13 and 14 of Appendix B to the Statement of Work.

ASA Authorisation means an authorisation issued by the ASA to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any conditions of the authorisation.

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which (as at the date of this Deed) appears in Exhibit F.

ASA Requirements has the meaning assigned to it in the ASA Charter.

Asset Lifecycle has the meaning assigned to it in the ASA Charter.

Asset Management Information means all maintenance plans, maintenance manuals, maintenance training documentation, special tools definition, spare parts definition and support software required by Sydney Trains to allow it to perform maintenance (both scheduled and unscheduled) of each Consist and the Simulator Upgrade after Completion, including as described in section 14 of the Statement of Work.

Asset Services means the aspects of the Works and Services which relate to the Asset Lifecycle of NSW Rail Assets.

Asset Standards Authority or ASA means the unit within Transport for NSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets as defined in the ASA Charter. Information about the ASA and the network and asset standards can be found on www.asa.transport.nsw.gov.au.

Authorised Engineering Organisation or AEO means a legal entity to whom the ASA has issued an ASA Authorisation.

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public
authority, agency, Minister, statutory corporation or instrumentality (and includes ASA and ONRSR).

**Authority Approval** means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to:

(a) carry out the Works and Services; or
(b) use for its intended purpose the completed Simulator Upgrade or a completed Consist.

**Business Day** means any day other than a Saturday, Sunday, public holidays in New South Wales or 27, 28, 29, 30 or 31 December.

**Calculation Date** has the meaning given in section 9.16.1.3 of the Statement of Work.

**Car** means each single Tangara car operating on Sydney Trains' network.

**CDRL** has the meaning given in the Statement of Work.

**Change in Authority Approval** means a change:

(a) in an Authority Approval which is in existence as at the date of this Deed; and
(b) which occurs after the date of this Deed.

**Change in Codes and Standards** means a change in the Codes and Standards taking effect after the date of this Deed, excluding a change in the Codes and Standards which, as at the date of this Deed:

(a) was published or of which public notice had been given (even as a possible change in the Codes and Standards); or
(b) a party experienced and competent in the delivery of works and services similar to the Works and Services would have reasonably foreseen or anticipated,

in substantially the same form as the change in the Codes and Standards eventuating after the date of this Deed.

**Change in Law** means (if it takes effect after the date of this Deed):

(a) a change in a Law existing as at the date of this Deed (other than a change in an Authority Approval); or
(b) a new Law (other than a new Authority Approval), compliance with which:
(c) has a direct effect on the Contractor carrying out the Works and Services; and

(d) directly results in an increase or decrease in the Contractor's costs of carrying out the Works and Services, or a delay to the Contractor achieving Portion Completion of a Portion by the relevant Date for Portion Completion in accordance with clause 10.7(a),

but excludes:

(e) a change in a Law existing as at the date of this Deed in respect of Taxes or a new Law in respect of Taxes; and

(f) a change in a Law existing as at the date of this Deed or a new Law which, as at the date of this Deed:

(i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or

(ii) a party experienced and competent in the delivery of works and services similar to the Works and Services would have reasonably foreseen or anticipated,

in substantially the same form as the change in an existing Law or new Law eventuating after the date of this Deed.

Claim includes any claim for an increase in the Contract Sum, for payment of money (including damages), for an extension of time to a Date for Portion Completion or for any other form of relief:

(a) under, arising out of, or in any way in connection with, this Deed, including any direction of the Principal's Representative;

(b) arising out of, or in any way in connection with, the Works and Services or either party's conduct prior to the date of this Deed; or

(c) otherwise at Law including:

(i) under or for breach of any statute;

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

(iii) for restitution, including restitution based on unjust enrichment.
Class 1 Failure has the meaning given in section 9.16.1.3 of the Statement of Work.

Class 2 Failure has the meaning given in section 9.16.1.3 of the Statement of Work.

Codes and Standards means any standard, code, specification, guide, manual or other document (howsoever described) that:

(a) specifies requirements or standards for the performance of the Works and Services; and

(b) is referred to in the Statement of Work or elsewhere in this Deed as a standard, code, specification, guide, manual or other document with which the Contractor must comply in performing the Works and Services.

Commencement Date means the date identified in Schedule 1.

Common Dispute has the meaning given to that term in clause 15.18(a).

Completion means the stage in the execution of the Works and Services when:

(a) in relation to the Simulator Upgrade:

(i) the Works and Services in respect of the Simulator Upgrade are complete in accordance with this Deed except for minor Defects:

(A) that do not prevent the simulator the subject of the Simulator Upgrade from being reasonably capable of being used for its intended purpose;

(B) that can be rectified without prejudicing the convenient intended use of the simulator the subject of the Simulator Upgrade; and

(C) in respect of which the Contractor has reasonable grounds for not promptly rectifying;

(ii) the Contractor has:

(A) carried out and passed all Tests that:

(1) are required under this Deed to be carried out and passed before Completion; or

(2) must necessarily be carried out and passed to verify that the simulator the subject of the Simulator Upgrade is in the condition this Deed requires it to be in at Completion;

(B) without limiting clause 2.3(c)(vi), obtained all Authority Approvals that it is required under this Deed to obtain before
Completion of the Simulator Upgrade and provided such Authority Approvals to the Principal's Representative;

(C) given to the Principal's Representative all other documents and information:

(1) required for the use, training, operation, maintenance and repair of the simulator the subject of the Simulator Upgrade, including the documents and information referred to in section 14 of the Statement of Work; and

(2) that are to be handed over to the Principal's Representative before Completion of the Simulator Upgrade;

(D) complied with all performance requirements that this Deed requires to be verified before Completion of the Simulator Upgrade;

(E) trained all personnel nominated by the Principal who are required to be trained by the Contractor prior to Completion of the Simulator Upgrade, including in accordance with the requirements of section 14 of the Statement of Work;

(F) provided all tools, equipment, spare parts and software required by this Deed to be provided by the Contractor (including pursuant to section 14 of the Statement of Work), other than any tools, equipment, spare parts or software that the Principal has expressly agreed in writing may be delivered by the Contractor after Completion of the Simulator Upgrade;

(G) provided the Principal's Representative with copies of the Contractor's Certificate of Completion; and

(iii) the Contractor has done everything else that it is required to do under this Deed before Completion of the Simulator Upgrade including those things referred to in Schedule 1; and

(b) in relation to a Consist:

(i) the Works and Services in respect of the Consist are complete in accordance with this Deed except for minor Defects:

(A) that do not prevent the Consist from being reasonably capable of being used for the intended purpose of the Consist;

(B) that can be rectified without prejudicing the convenient intended use of the Consist; and
(C) in respect of which the Contractor has reasonable grounds for not promptly rectifying;

(ii) the Contractor has:

(A) carried out and passed all Tests that:

(1) are required under this Deed to be carried out and passed before Completion; or

(2) must necessarily be carried out and passed to verify that a Consist is in the condition this Deed requires the Consist (as the case may be) to be in at Completion;

(B) without limiting clause 2.3(c)(vi), obtained all Authority Approvals that it is required under this Deed to obtain before Completion of a Consist and provided such Authority Approvals to the Principal's Representative;

(C) given to the Principal's Representative all other documents and information:

(1) required for the use, operation, maintenance and repair of a Consist, including the documents and information referred to in sections 14 and 15 of the Statement of Work; and

(2) that are to be handed over to the Principal's Representative before Completion of a Consist;

(D) complied with all performance requirements that this Deed requires to be verified before Completion of a Consist;

(E) trained all personnel nominated by the Principal who are required to be trained by the Contractor prior to Completion of a Consist, including in accordance with the requirements of sections 14 and 15 of the Statement of Work;

(F) provided all tools, equipment, spare parts and software required by this Deed to be provided by the Contractor (including in accordance with section 14 of the Statement of Work), other than any tools, equipment, spare parts or software that the Principal has expressly agreed in writing may be delivered by the Contractor after Completion of a Consist; and

(G) provided the Principal's Representative with the Contractor's Certificate of Completion in respect of the relevant Consist; and
(iii) the Contractor has done everything else that it is required to do under this Deed before Completion of a Consist including those things referred to in Schedule 1.

**Completion Payment Claim** has the meaning given to that term in clause 11.8.

**Confidentiality Undertaking** means a confidentiality undertaking in the form provided for in Schedule 4.

**Configuration Control Board** means the board established by TfNSW to manage configuration changes for the Transport Projects Delivery Office of TfNSW's programs and projects in accordance with the Configuration Management Framework.

**Configuration Management Framework** means the framework established by the ASA from time to time for configuration management.

**Consist** means a set of 8 Cars.

**Contamination** means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

(a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or

(b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.

**Contract Control Group** means the group described in clause 9.7.

**Contract Documentation** means all documentation in computer readable or written forms brought into (or required to be brought into) existence as part of, or for the purpose of, performing the Works and Services (whether before or after the date of this Deed) including:

(a) all Design Documentation; and

(b) all plans, manuals, programs and other documents.

**Contract Management Plan** means the documents required to be provided and implemented by the Contractor pursuant to the Statement of Work, as developed, amended or updated from time to time in accordance with this Deed.

**Contract Particulars** means Schedule 1.
Contract Sum means the Original Contract Price increased or decreased by the amounts by which this Deed requires the Contract Sum to be increased, but which does not include the Reliability Payment.

Contractor Program means the program prepared and provided by the Contractor in accordance with clause 10.2, as developed and updated in accordance with clause 10.2 from time to time.

Contractor’s Certificate of Completion means a certificate from the Contractor in the form provided for in Schedule 7 certifying that Completion of the Simulator Upgrade or a Consist has been achieved in accordance with this Deed.

Contractor’s Certificate of Design Compliance means a certificate from the Contractor in the form provided for in Schedule 5 Part 1 certifying that the Design Documentation complies with the requirements of this Deed.

Contractor’s Certificate of Manufacturing and Installation Compliance means a certificate from the Contractor in the form provided for in Schedule 6 certifying that the manufacturing and installation of the Equipment complies with the requirements of this Deed.

Contractor’s Certificate (PDR) means a certificate from the Contractor in the form provided for in Schedule 5 Part 3.

Contractor’s Certificate (SDR) means a certificate from the Contractor in the form provided for in Schedule 5 Part 2.

Contractor’s Plant and Equipment means all plant and equipment used by the Contractor for the purposes of the Works and Services but which will not be incorporated into, or become part of, any of the Cars as part of the work performed by the Contractor under this Deed.

Contractor’s Representative means the person notified to the Principal’s Representative in accordance with clause 9.5(a)(i) as being the Contractor’s Representative.

Contractor’s Technical Proposal means Exhibit B.

Critical Design Review is the design review referred to in section 5.2.1.3 of the Statement of Work.

Critical Design Review Submission means the Contractor’s submission comprising:

(a) the Contractor’s Design Documentation to the stage of the Critical Design Review; and

(b) such other documentation and information as required by the Statement of Work (including any contract deliverable requirements set out in the
Statement of Work) or as the Principal's Representative may reasonably require to be included in the submission.

**Date for Portion Completion** means in respect of a Portion the date, or the last day of the period of time, specified in Schedule 1 for that Portion, as adjusted under this Deed by an extension of time determined by the Principal's Representative or pursuant to any expert determination, any arbitration or any other final and binding dispute resolution procedure under clause 15.

**Date of Portion Completion** means:

(a) the date of Portion Completion of a Portion, set out:

(i) in respect of Portion 1, in the Notice of Completion relating to the Simulator Upgrade;

(ii) in respect of Portion 2, in the Notice of Completion relating to the first Consist to achieve Completion;

(iii) in respect of Portion 3, in the Notice of Completion relating to the last Consist to achieve Completion; or

(b) where another date is determined in any expert determination, any arbitration or any other final and binding dispute resolution procedure under clause 15 as the date upon which Portion Completion was achieved, that date.

**Date of Final Completion** means:

(a) the date determined in accordance with clause 12.8(e)(i) as the date Final Completion was achieved; or

(b) where another date is determined in any expert determination, any arbitration or any other final and binding dispute resolution procedure under clause 15 as the date upon which Final Completion was achieved, that date.

**Deed** means the General Conditions, Schedules 1 to 29 and Exhibits A to H, however Exhibits B, C, E, F, and G only form part of this Deed to the extent necessary for the proper operation of the relevant provisions of the General Conditions and Schedules 1 to 29.

**Deed of Disclaimer** means Exhibit E.

**Defect** means any:

(a) defect or deficiency in design, materials or workmanship; or

(b) any defect in or omission from the Works and Services or any other aspect of the Works and Services that is not in accordance with the requirements of this Deed, including non-compliances, non-conformances and non-conformities.

**Delivery Point** means the location described in Schedule 1.
Design Documentation means all design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, digital records, computer software and all other relevant data) in computer readable and written forms, or stored by any other means, required by this Deed or necessary to be produced by the Contractor to perform the Works and Services and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Deed.

Design Working Group has the meaning given to that term in clause 5.11(a).

Dispute has the meaning given to that term in clause 15.1.

Electronic Portal means the electronic portal or document management system (if any) referred to in a notice by the Principal's Representative under clause 16.1(a).

Environment means components of the earth, including:

(a) land, air and water;
(b) any layer of the atmosphere;
(c) any organic or inorganic matter and any living organism;
(d) human-made or modified structures and areas; and
(e) interacting natural ecosystems that include components referred to in paragraphs (a)–(d).

Equipment means any item of equipment which is to be supplied and installed in the Cars, or as part of the Simulator Upgrade, as part of the Works and Services.

Excepted Risk means any one of:

(a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, act of terrorism, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
(b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its Subcontractors or either's employees or agents; or
(c) any other event so described in Schedule 1.

Excluded Claim means any claim:

(a) with respect to a Change in Law under clause 2.3(d);
(b) for a Variation directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 17.1 applies;
(c) for an extension of time to any Date for Portion Completion under clause 10.8; or

(d) for payment under clause 11, including a claim under clause 11.8.

**Failure** means a Class 1 Failure or a Class 2 Failure.

**Final Completion** means the stage in the execution of the Works and Services when:

(a) all Warranty Periods (including any extension under clause 8.6) have expired;

(b) the Contractor has:

(i) carried out and passed all tests which:

(A) are required under this Deed to be carried out and passed before Final Completion; or

(B) must necessarily be carried out and passed to verify that the Simulator Upgrade and each Consist is in the condition this Deed requires it to be in at Final Completion;

(ii) obtained all Authority Approvals that it is required under this Deed to obtain which:

(A) were not obtained before Completion of the last Consist to achieve Completion; or

(B) are to be obtained prior to Final Completion,

and provided such Authority Approvals to the Principal's Representative;

(iii) given to the Principal's Representative all other documents or information referred to in this Deed:

(A) which are required for the use, operation, maintenance and repair of the Cars but which were not obtained before Completion of the last Consist to achieve Completion; or

(B) which are required to be handed over to the Principal's Representative before Final Completion; and

(iv) complied with all performance requirements under this Deed that must be verified before Final Completion; and

(c) the Contractor has done everything else which it is required to do under this Deed before Final Completion.

**Final Payment Claim** has the meaning given to that term in clause 11.11.
First Statement of Outstanding Claims has the meaning given to that term in clause 11.8(b).

Force Majeure Event means earthquake, act of terrorism, act of a public enemy, war (declared or undeclared) or revolution.

General Conditions means clauses 1-18 of this Deed.

Good Industry Practice means the practices, methods, specifications, standards of safety, engineering, design, procurement, manufacturing, installation, testing, commissioning and performance which are engaged in or observed by experienced professional consultants and contractors in the international design, engineering and manufacturing industries with respect to the design, engineering, manufacturing, installation, testing and commissioning of rollingstock (including upgrades thereto) and which, with respect to any objective, may be expected, in the exercise of reasonable judgment, to accomplish the same in a manner consistent with reliability, safety, environmental protection, economy and expediency and all applicable Laws.

Greenhouse Data means all data, information, records and reports of the type that a registered corporation or any other person may be required or entitled to provide under the NGER Legislation, including as to:

(a) greenhouse gas emissions, energy production or energy consumption; and
(b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project, relating to any aspect of any Relevant Matters.

GST or Goods and Services Tax means the tax payable on taxable supplies under the GST Legislation.

GST Legislation means 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.

Hazardous Materials means any natural or artificial substance whether solid, liquid or gas (alone or in combination with any other substance) within the Cars, which is toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals.

Handback Point means the place described in Schedule 1.
**IBR** has the meaning given to it in clause 4.4A(a).

**IBR Material** has the meaning given to it in clause 4.4A(a)(vi).

**IBR Plan** has the meaning given to it in clause 4.4A(a).

**Incident** means:

(a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Works and Services including:
   (i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;
   (ii) a significant spill of Contamination;
   (iii) any fire or dangerous event;
   (iv) a security breach;
   (v) a non-compliance with an Authority Approval or Third Party Agreement; or
   (vi) any public complaint; or

(b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

(c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and

(d) “occurrences” and “notifiable occurrences” under the WHS Legislation and the Rail Safety National Law.

**Information Documents and Materials** means:

(a) the items specified in Schedule 16; and

(b) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Deed,

including anything which is expressly stated by this Deed to form part of the Information Documents and Materials.

**Insolvency Event** means when:

(a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
(b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;

(c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or

(d) in relation to a corporation any one of the following:

(i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);

(ii) the corporation enters a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;

(iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;

(iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;

(v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;

(vi) a sequestration order or winding up order is made in respect of the corporation;

(vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;

(viii) a mortgagee of any property of the corporation takes possession of that property; or

(ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

**Inspection** includes auditing, surveillance, monitoring, testing, review, examination and measuring.

**Installation Facility** means the facility described in Schedule 1 and such other workshops or places where the Works and Services are performed, as notified by the Contractor from time to time.
**Institution** means any authorised deposit taking institution holding an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth).

**Intellectual Property** means all rights in copyright, inventions (including patents and innovation patents), registered and unregistered trademarks or name, registered and registrable designs, confidential information, trade secrets, technical data and know-how, circuit layout rights, and all other protected rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

**Investigation Set** means a Set which is to be provided to the Contractor as part of the Principal Arranged Matters to enable the Contractor to prepare its Design Documentation.

**Investigation Set Delivery Point** means the location described in Schedule 1.

**Law** means:

(a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes, or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;

(b) principles of law or equity established by decisions of courts; and

(c) Authority Approvals (including any condition or requirement under them).

**NGER Legislation** means the *National Greenhouse and Energy Report Act 2007* (Cth), related regulations and legislative instruments.

**Nominated Subcontractor** means a Subcontractor identified in Schedule 1, or a Subcontractor included in a list of Subcontractors identified in Schedule 1, to whom the Contractor must subcontract the relevant Nominated Subcontract Work.

**Nominated Subcontract Work** means that supply of goods or services specified in Schedule 1 that may only be performed by the relevant Nominated Subcontractor.

**Notice of Completion** means a notice issued under clause 12.3(d)(i) by the Principal's Representative stating that Completion of the Simulator Upgrade or a Consist has been achieved.

**NSW Code** means the New South Wales Government Code of Practice for Procurement (January 2005).

**NSW Rail Assets** has the meaning assigned to it in the ASA Charter.

**NSW Trains** means the corporation by that name constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).
ONRSR means the Office of the National Rail Safety Regulator established under Part 2 Division 1 of the Rail Safety National Law.

Operational Test has the meaning given in section 10.10.2 of the Statement of Work.

Option means an option referred to in Schedule 23.

Original Contract Price means the amount set out in Schedule 1, which is, and all components of which are, exclusive of GST.

Other Contractor means any relevant Rail Transport Agency or any contractor, consultant, tradesperson or other engaged by the Principal or others to do work on a Consist or the Simulator Upgrade, other than the Contractor and its Subcontractors.

Overhead Costs means the costs referrable to the items described in Schedule 26.

Parent Company Guarantee means the deed which appears in Schedule 22.

Payment Milestone means a Payment Milestone stated in the Payment Schedule.

Payment Schedule means Schedule 2.

Portion means a part of the Works and Services, as described in Schedule 1.

Portion 1 means the part of the Works and Services described in Schedule 1.

Portion 2 means the part of the Works and Services described in Schedule 1.

Portion 3 means the part of the Works and Services described in Schedule 1.

Portion Completion means the stage in the execution of the Works and Services when:

(a) in the case of Portion 1, the Simulator Upgrade has achieved Completion;
(b) in the case of Portion 2, the first Consist has achieved Completion; and
(c) in the case of Portion 3, the last Consist has achieved Completion.

Preliminary Design Review is the design review referred to in section 5.2.1.2 of the Statement of Work.

Preliminary Design Review Submission means the Contractor's submission comprising:

(a) the Contractor's Design Documentation to the stage of the Preliminary Design Review; and
(b) such other documentation and information as required by the Statement of Work (including any contract deliverable requirements set out in the Statement of Work) or as the Principal's Representative may reasonably require to be included in the submission.

PPS Act means the Personal Property Securities Act 2009 (Cth).
**PPS Law** means:

(a) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time; and

(b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

**Principal Arranged Matters** means those matters identified in Schedule 3.

**Principal Supplied Items** means the items set out in Schedule 20.

**Principal's Representative** means:

(a) the person nominated in Schedule 1; or

(b) any other person appointed from time to time by the Principal under clause 9.2,

and includes any appointee under clause 9.3.

**Progress Claim** has the meaning given to that term in clause 11.2.

**Prohibited Subcontractor** means:

(a) any Subcontractor:

   (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or

   (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in,

   corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or

(b) any Subcontractor employing an employee in respect of whom paragraphs (a)(i) or (a)(ii) apply.

**Project Work Health and Safety Management Plan** means the plan which is required to be provided and implemented by the Contractor pursuant to the Statement of Work and which must:

(a) set out in adequate detail the procedures the Contractor will implement to manage the performance of the Works and Services from a work health and safety perspective;

(b) describe how the Contractor proposes to ensure the Works and Services are performed consistently with Law in relation to work health and safety; and

(c) address the matters specified in Schedule 1.

**Provisional Sum Work** means the work detailed as such in Schedule 1.
**RailCorp** means Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

**Rail Corridor** means the area containing the Rail Tracks, rail junctions, level crossings, station buildings, platforms, signal boxes, tunnels, bridges and other associated structures. This area is often defined by railway boundary fencing and in the absence of such fencing, is defined by a physical boundary (i.e. tunnel, building or retaining walls) or everywhere within 15 metres of the outermost rails.

**Rail Safety National Law** means the *Rail Safety National Law* (NSW), as defined in the *Rail Safety (Adoption of National Law) Act 2012* (NSW), and any associated regulations.

**Railway Track** or **Rail Track** or **Track** or **Line** means the rails fastened on sleepers or transoms and founded on ballast, bridge deck or concrete slab, associated signalling and overhead wiring components (in electrified areas).

**Rail Transport Agency** means Transport for NSW (and each of its divisions), RailCorp, Sydney Trains and NSW Trains.

**Referral Date** has the meaning given to it in clause 15.7.

**Relevant Consist** has the meaning given in section 9.16.1.3 of the Statement of Work.

**Relevant Matters** has the meaning given to that term in clause 9.17(a).

**Reliability Levels** means, for each system, the levels specified in Schedule 27.

**Reliability Payment** means the amount set out in Schedule 1, which is exclusive of GST.

**Reliability Payment Claim** has the meaning given to that term in clause 11.10(h)(ii).

**Reliability Sunset Date** means the date that is 2 years after the Date of Portion Completion of Portion 3.

**Reliability Target** is the target described in section 9.16.1.5 of the Statement of Work.

**Reliability Trials** means the reliability testing regime set out in section 9.16 of the Statement of Work for determining whether the Reliability Levels and the Reliability Target have been achieved by the Contractor.

**Required Rating** means a credit rating of at least A- by Standard and Poor’s (Australia) Pty Limited or A3 by Moody's Investors Service, Inc.

**Second Statement of Outstanding Claims** has the meaning given to that term in clause 11.11(b).
Security Interest has the meaning given to that term in clause 16.28(a).

Set means a set of 4 Cars.

Simulator Upgrade means the upgrade of the simulator which is to be undertaken by the Contractor as part of the Works and Services, which is more particularly described in the Statement of Work.

Source Code means, in respect of a computer program, the human readable code of that computer program, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all documentation necessary to operate, maintain and modify the executable code copy of that computer program including all technical documentation and specifications in respect of that computer program.

Statement of Work means the document which appears as Exhibit A to this Deed, including all Appendices thereto.

Subcontract includes an agreement for supply of goods or services (including professional services and plant hire) or both.

Subcontractor includes a consultant or a supplier of goods or services (including professional services and plant hire) or both.

Sydney Trains means the corporation by that name constituted by Part 2A of the Transport Administration (General) Regulation 2005 (NSW).

System Definition Review is the design review referred to in section 5.2.1.1 of the Statement of Work.

System Definition Review Submission means the Contractor's submission comprising:

(a) the Contractor's Design Documentation to the stage of the System Definition Review; and

(b) such other documentation and information as required by the Statement of Work (including any contract deliverable requirements set out in the Statement of Work) or as the Principal's Representative may reasonably require to be included in the submission.

System MDBF (Class 1) has the meaning given to it in section 9.16.1.3 of the Statement of Work.

System MDBF (Class 2) has the meaning given to it in section 9.16.1.3 of the Statement of Work.

Taxes means income, stamp, indirect or other taxes, levies, imposts, deductions, charges, duties (including import duty and customs duties), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether
incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

_Tender_ means the response provided by a Tenderer to the Principal's invitation to selected Tenderers to submit a tender to undertake the Works and Services.

_Tender Form_ means the tender form submitted by the Contractor as part of its Tender.

_Tender Inspection Set_ means a Set which was provided to the Contractor during the Tender period to inspect for the purposes of preparing its Tender and which will form part of the Information Documents and Materials.

_Tender Inspection Set Report_ means the report (if any) prepared by the Tenderer in respect of the condition, configuration and layout of each Tender Inspection Set.

_Tenderer_ means an entity or entities that submitted a Tender for the Works and Services.

_Tender Management Plans_ means the plans set out in Schedule 10.

_Tests_ or _Testing_ means all testing and commissioning which is required to be performed by the Contractor as set out in Statement of Work, including the Operational Test and the other tests referred to in section 10 of the Statement of Work.

_Testing and Commissioning Tools_ means the items set out in Schedule 29.

_TfNSW_ means Transport for NSW (ABN 18 804 239 602) a corporation established by section 3C of the _Transport Administration Act 1988_ (NSW).

_Third Party_ means a party to a Third Party Agreement other than the Principal.

_Third Party Agreements_ means the agreements referred to in Schedule 1 in respect of which, a copy of the agreement appears in Exhibit G.

_Train Paths_ means a period during which the Contractor has access to Rail Track for the purpose of carrying out Testing.

_Variation_ means any change or variation to the Works and Services and includes additions, increases, decreases, omissions, deletions, demolitions or removal to or from the Works or Services.

_Variation Order_ means a written document titled "Variation Order" issued under clause 6.2.

_Warranty Period_ means the periods stated in Schedule 1, as extended by clause 8.6.

_WHS_ means work health and safety.
WHS Legislation means:

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

(b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works and Services.

Work Package means each package of the Works and Services described in section 3 of the Statement of Work.

Works and Services means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Deed, including:

(a) the design, manufacture, supply, installation, testing and commissioning (as applicable) of the works, equipment and systems required for the refurbishment and technological upgrade of the Cars and the return of the upgraded Cars into service and operation, as stated in or reasonably ascertainable from the Statement of Work;

(b) the design, manufacture, supply, installation testing and commissioning (as applicable) of the works, equipment and systems required for the Simulator Upgrade; and

(c) the provision of any special tools, equipment, spare parts and software to be supplied under this Deed.

1.2 Interpretation

In this Deed unless the context otherwise requires:

(a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;

(b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";

(c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;

(d) a reference to any Authority, institute, association or body is:

(i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
(ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;

(e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) a reference to any legislation or to any section or provision of it includes:

(i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and

(ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;

(g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;

(h) headings are for convenience only and do not affect the interpretation of this Deed;

(i) a reference to:

(i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Deed; and

(ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;

(j) a reference to this Deed includes all Schedules, and (subject to clause 3.5(a) and clause 5.6) Exhibits;

(k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

(l) where under this Deed:

(i) a direction is required to be given or must be complied with;

(ii) payment of money must be made;

(iii) an unconditional undertaking must be released; or

(iv) a default must be remedied,

within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;

(m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:
(i) any extension of time to any Date for Portion Completion stated in
days; or

(ii) any reference to "day",

will include only those days indicated in Schedule 1, or otherwise approved
by the Principal's Representative, as working days;

(n) for all purposes (other than as set out in clauses 1.2(l) and 1.2(m), or where
otherwise designated as a Business Day), "day" means calendar day;

(o) a reference to $ is to Australian currency;

(p) a reference to "direction" in the definition of Claim in clause 1.1 or in any of
clauses 7.1(a)(i)(B), 9.1, 9.14(i), 15 and 17 will be read as also including
certificate, decision, demand, determination, instruction, notice, order,
rejection, request or requirement but will not include any failure to reject a
Document (as defined in clause 9.14(a)) under clause 9.14;

(q) no rule of construction applies to the disadvantage of a party on the basis
that the party put forward or drafted this Deed or any part;

(r) any reference to "information" will be read as including information,
representations, statements, data, samples, calculations, assumptions,
deductions, determinations, drawings, design, specifications, models, plans
and other documents in all forms including the electronic form in which it was
generated;

(s) any reference:

(i) in the definition of Authority Approval and Completion in clause 1.1 to
"intended use" or "intended purpose"; or

(ii) to "intended purpose", including in clauses 1.4(c), 2.1, 2.3, 4.1, 5.1,
5.6, 7.1, 7.9, 9.14 or 12.3,

will be read as referring to the intended use or intended purpose having
regard to:

(iii) the Principal's present intention that each Consist will be used as part
of a fully integrated operating railway system forming part of the
Sydney metropolitan rail network; and

(iv) any intended use or intended purpose stated in, contemplated by or
ascertainable from the terms of this Deed and any other documents
provided by the Principal to the Contractor under or pursuant to this
Deed including the requirement that each Consist will, when
completed, be safe and reliable for use in the operational
environment and in compliance with all Laws governing rail safety;
(t) in relation to any aspect of the performance of the Works and Services involving the supply and installation of Equipment, the supply and installation of Equipment shall be construed as being only in respect of those Cars within a Consist that are to be fitted with the relevant Equipment - so that, for example, in the case of Equipment only required in a driving trailing car and not a motor car, a reference to Car in this context, will be taken to be a reference to the driving trailing car; and

(u) any reference in this Deed to "the Contract" or "this Contract" will be taken to be a reference to this Deed.

1.3 Ambiguous Terms

(a) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in this Deed (including in any Exhibit), the Principal's Representative must, subject to clause 1.4, direct the interpretation of this Deed which the Contractor must follow.

(b) The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Deed.

(c) Any direction which the Principal's Representative gives in accordance with clause 1.3(a):

(i) will not relieve the Contractor from or alter its liabilities or obligations under this Deed or otherwise at Law;

(ii) will not entitle the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;

(iii) will not limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to Law; and

(iv) will, in respect of a notice given by the Contractor under clause 1.3(a), be given within 28 days of receipt of that notice.

1.4 Order of Precedence

(a) In the event of any inconsistency, ambiguity or discrepancy between the requirements of the Contractor's Technical Proposal and the requirements of the remainder of this Deed then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply.
(b) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Deed then:

(i) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the Statement of Work, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and

(ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in Schedule 1 applies.

(c) The Statement of Work and (subject to clause 5.6(b)) the Contractor’s Technical Proposal are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works and Services performed by the Contractor comply with this Deed and are fit for their intended purposes.

1.5 Authorities

(a) This Deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:

(i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or

(ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter, including any functions or powers required to be exercised by the Principal or any Rail Transport Agency pursuant to any Configuration Management Framework.

(b) Without limiting clause 1.5(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under this Deed.

(c) The Contractor:

(i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal, any Rail Transport Agency or the ASA of their respective functions and powers either as an AEO or under any legislation, the ASA Charter or the Configuration Management Framework; and
(ii) acknowledges and agrees that:

(A) there are many Authorities with jurisdiction over aspects of the Works and Services, the Rail Corridor, and other matters affecting and affected by the Works and Services;

(B) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Works and Services (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and

(C) it bears the full risk of all occurrences of the kind referred to in clause 1.5(c)(ii)(B) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.6 Associated Deeds

The Contractor must:

(a) on or before the date of this Deed, and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4(a), provide to the Principal's Representative an executed deed poll in the form set out in Schedule 24 in favour of the persons named in Schedule 1; and

(b) on or before the date of this Deed, and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4(a), provide to the Principal's Representative an executed deed poll in the form set out in Schedule 9 in favour of the persons named in Schedule 1.

1.7 Deed Commencement Date

(a) This Deed will not commence until the Commencement Date, except for the provisions contained in:

(i) clause 1 (Definitions and Interpretation);

(ii) clause 2.2 (Subcontracts);

(iii) clause 2.5 (Unconditional Undertakings and Parent Company Guarantee);

(iv) clause 3.5 (Information Documents and Materials);
(v) clause 9.16 (Exchange of Information between Government Agencies);
(vi) clause 13 (Risks and Insurance);
(vii) clause 14 (Default or Insolvency);
(viii) clause 15 (Disputes);
(ix) clause 16 (General); and
(x) clause 17 (Notification of Claims),

which will all commence on the date of this Deed.

(b) The Commencement Date does not affect the date of this Deed.

(c) For the purposes of calculating time, the days between the date of this Deed and the Commencement Date shall not be counted.

2. Contractor's Obligations

2.1 General

The Contractor:

(a) must execute the Works and Services in accordance with this Deed;
(b) warrants that the Simulator Upgrade and each Consist will upon Completion be, and will at all relevant times remain, fit for its intended purpose;
(c) warrants that the Asset Management Information, when completed, will be fit and adequate for the purpose for which it is intended;
(d) unless the context otherwise requires:
   (i) must comply with and otherwise perform all obligations in, and do all things required by, the Statement of Work and the other requirements of this Deed; and
   (ii) agrees that other than in respect of the Principal Supplied Items, where any specific manufacturer’s product is specified in the Statement of Work (or elsewhere), the:

(A) Contractor:

   (1) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the specification of that manufacturer's product; and

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remains liable for complying with all its obligations under this Deed, including the obligations referred to at clauses 2.1(a), 2.1(b), 2.1(c) and 2.1(e); and

(B) Principal makes no representation as to:

(1) the quality of the specified product;
(2) the availability of the specified product; or
(3) the creditworthiness of the manufacturer of the specified product; and

subject to the express provisions of this Deed, accepts responsibility for and the risk of all costs, damages, expenses, losses, liabilities, delays or disruption that it incurs or suffers arising out of or in any way in connection with, the performance of the Works and Services and its obligations under this Deed.

2.2 Subcontracts

(a) Subject to clause 2.2(b) the Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Deed.

(b) The Contractor:

(i) must:

(A) not enter into any Subcontract with a Prohibited Subcontractor;
(B) enter into a Subcontract with each of those Nominated Subcontractors specified in Schedule 1 in respect of the relevant Nominated Subcontract Work; and
(C) in respect of the parts of the Works and Services described in Schedule 1, enter into a Subcontract with one of the persons listed in Schedule 1.

(ii) agrees that, in respect of Nominated Subcontractors, the:

(A) Contractor:

(1) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any act or omission of a Nominated Subcontractor; and

(2) remains liable for complying with all its obligations under this Deed, including the obligations referred to at clauses 2.1(a), 2.1(b), 2.1(c) and 2.1(e); and
(B) Principal makes no representation as to any Nominated Subcontractor’s:

(1) quality of work;
(2) timeliness of work;
(3) availability to perform the relevant Nominated Subcontract Work; or
(4) creditworthiness;

(iii) must ensure that, if any Law, including in the State or Territory in which the Works and Services are carried out (as the case may be), require that:

(A) a person:

(1) be authorised or licensed 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
(2) 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 relevant Law), 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;

(iv) must not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of subparagraph (iii) are met (including any requirement to be authorised, licensed, qualified or supervised); and

(v) if requested by the Principal’s Representative or required by Law, must 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 Principal’s Representative before the Contractor or Subcontractor (as the case may be) commences such work.

(c) The Contractor must ensure that each Subcontractor referred to in Schedule 1:

(i) effects and maintains professional indemnity insurance which:
(A) covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant Subcontract;

(B) covers the Subcontractor for liability to the Principal or the Contractor for the relevant minimum amount listed in Schedule 1;

(C) unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and

(D) remains in place at least 6 years from completion of the relevant Subcontract works or professional services; and

(ii) is obliged under the relevant Subcontract to comply with clause 13.5(e)(i) and (ii) of this Deed in relation to the insurance referred to in sub-paragraph (i).

(d) The Contractor will be:

(i) fully responsible for the Works and Services despite subcontracting the carrying out of any part of the Works and Services; and

(ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Works and Services.

(e) Whenever requested by the Principal's Representative, the Contractor must give the Principal's Representative details of each of its Subcontracts, including the name and address of the Subcontractor (and its Subcontractors), and the works, goods or services being provided under the Subcontract.

(f) The Contractor must:

(i) ensure that each Subcontractor (and their Subcontractors) executes a Confidentiality Undertaking and provides this to the Principal's Representative within 7 days of the engagement of that Subcontractor; and

(ii) procure that each of its Subcontractors:

(A) engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule 1; or
in respect of the categories of work set out in Schedule 1 (regardless of subcontract price),
executes a deed in the form of Schedule 21 and provides this to the Principal's Representative within 7 days of being engaged by the Contractor.

2.3 Compliance with Law

(a) Subject to clause 2.3(c)(i), the Contractor must, in carrying out the Works and Services:

(i) ensure that the Sets and Consists, when refurbished, comply with all applicable Law;

(ii) comply with all applicable Law;

(iii) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this Deed and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;

(iv) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it;

(v) at all times conform and comply with, and ensure that the Works and Services conform and comply with (subject to clause 2.3(b)), all Codes and Standards; and

(vi) not engage in any fraud, bribery or corruption.

(b) Where there is a Change in Codes and Standards:

(i) the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:

(A) details of the Change in Codes and Standards; and

(B) an estimate of the Contractor's increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and

(ii) if a notice is given by the Contractor which complies with clause 2.3(b)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:

(A) direct the Contractor to disregard the Change in Codes and Standards; or
(B) direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 6.4.

If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards the Contractor must comply with the change and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with the change.

(c) The Contractor must:

(i) obtain all Authority Approvals required for the carrying out of the Works and Services, except for those Authority Approvals specified in Schedule 14;

(ii) prepare and submit:

(A) to each relevant Authority all applications and associated documents for the purpose of obtaining all Authority Approvals as required by clause 2.3(c)(i); and

(B) to the Principal copies of:

(1) all applications and associated documents submitted by the Contractor to any Authority;

(2) all documents provided to the Contractor by any Authority, including any Authority Approval; and

(3) any other document the Principal's Representative reasonably directs the Contractor to provide;

(iii) comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, to comply with, satisfy, carry out and fulfil, other than any conditions and requirements of an Authority Approval expressly specified as being the responsibility of the Principal in Schedule 14;

(iv) in respect of any:

(A) Authority Approvals which are to be obtained by the Principal after the date of this Deed; or

(B) conditions and requirements of Authority Approvals which pursuant to Schedule 14 are to be satisfied or fulfilled by the Principal,
provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;

(v) for the purpose of obtaining all Authority Approvals as required by clause 2.3(c)(i), prepare all associated studies and reports required because of the design of the Cars proposed by the Contractor; and

(vi) as a condition precedent to Completion of a the Simulator Upgrade and each Consist, ensure that it has:

(A) obtained all Authority Approvals it is required to obtain under this Deed; and

(B) complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Deed (including obtaining the approval of any person for anything),

including for the avoidance of doubt any Authority Approvals, conditions or requirements which must be obtained, carried out or fulfilled to enable the Principal and any Rail Transport Agency to use the Cars as modified by the Works and Services performed by the Contractor under this Deed for their intended purpose.

(d) Where there is a Change in Law:

(i) if either party wishes this clause 2.3(d)(i) to apply, then that party must, within 14 days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 2.3(d)(i) applies and containing:

(A) details of the Change in Law; and

(B) that party's estimate of any increase or decrease (as the case may be) in the Contractor's cost of carrying out the Works and Services arising out of or in any way in connection with complying with the Change in Law including sufficient information to support the estimates;

(ii) if the Contractor or the Principal's Representative gives notice under clause 2.3(d)(i):

(A) representatives of the Principal and the Contractor must meet within 28 days of a notice being given under clause 2.3(d)(i) and must negotiate and endeavour to agree to a reasonable increase or decrease (as the case may be) in the Contractor's
cost of carrying out the Works and Services arising from complying with the Change in Law;

(B) if the Principal and the Contractor reach agreement as to the reasonable increase or decrease (as the case may be) in the Contractor's cost of carrying out the Works and Services arising from complying with the Change in Law within 28 days (or such other period that the Principal and the Contractor agree upon) of a notice being given under clause 2.3(d)(i), the Principal's Representative will issue a notice setting out how the Contract Sum will be increased or decreased; and

(C) if the Principal and the Contractor do not reach agreement as to the reasonable increase or decrease (as the case may be) in the Contractor's cost of carrying out the Works and Services arising from complying with the Change in Law within 28 days (or such other period that the Principal and the Contractor agree upon) of a notice being given under clause 2.3(d)(i), the Principal's Representative will determine:

(1) for a decrease in the Contractor's costs of carrying out the Works and Services in compliance with the Change in Law, a reasonable amount as the amount of the decrease; or

(2) for an increase in the Contractor's costs of carrying out the Works and Services in compliance with the Change in Law, the amount of the increased costs reasonably incurred by the Contractor on the basis that the Contractor took all reasonable steps to mitigate those increased costs,

and the Contract Sum will be increased or decreased by that amount; and

(iii) the Contractor must comply with the Change in Law.

(e) If a Change in Authority Approval occurs which necessitates a Variation, the Contractor must:

(i) if the relevant Authority Approval was obtained by the Principal, within 14 days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or

(ii) otherwise, within 14 days of the Change in Authority Approval taking effect,
notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Variation.

(f) If the Contractor gives a notice under clause 2.3(e) and the Principal's Representative considers that the Change in Authority Approval:

(i) does necessitate a Variation;

(ii) would not have been reasonably foreseen or anticipated as at the date of this Deed by a party experienced and competent in the delivery of works and services similar to the Works and Services in substantially the same form as the Change in Authority Approval; and

(iii) does not arise out of or in any way in connection with an act or omission by the Contractor,

the Principal's Representative will direct a Variation under clause 6.2(a) after which relevant adjustments will be made under clause 6.4.

(g) Other than as set out in clause 2.3(f), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:

(i) any Change in Authority Approval;

(ii) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Deed;

(iii) a change in an Authority Approval after the date of this Deed; or

(iv) any:

(A) assumptions the Contractor makes; or

(B) failure by the Contractor to adequately satisfy itself;

as to what work methodologies might be permissible under all Authority Approvals.

2.4 Rail safety and Accreditation

(a) The Contractor warrants that it either:

(i) has, and must at all times retain, the Accreditation required for the performance of the Works and Services; or

(ii) will perform the Works and Services pursuant to the Accreditation of the person stated in Schedule 1.

(b) The Contractor must:

(i) liaise and co-operate with TfNSW, and do everything necessary to enable and assist TfNSW and any Rail Transport Agency to:
(A) maintain their respective Accreditations, including obtaining any variation to any Accreditations required as a result of the Works and Services to be performed in accordance with this Deed; and

(B) comply with their respective obligations in relation to rail safety, including under the Rail Safety National Law;

(ii) except as required by Law, not do, or omit to do, anything which may cause an Accreditation to be suspended or cancelled; and

(iii) give any Authority such access to premises and information as the Authority lawfully requests to fulfil its functions with respect to the Cars and the Works and Services, within the time requested.

2.5 Unconditional Undertakings and Parent Company Guarantee

(a) Without limiting clause 2.5(d), or clause 2.5(e), the unconditional undertakings to be provided under this clause 2.5 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Deed.

(b) The Contractor must give the Principal within 5 Business Days of the date of this Deed, three unconditional undertakings:

   (i) each for the amount of [ ] of the Original Contract Price;
   (ii) each in the form of Schedule 15;
   (iii) each in favour of the Principal;
   (iv) each issued by an Institution approved by the Principal that maintains the Required Rating; and
   (v) where required by Law, duly stamped.

(c) If the issuer of the unconditional undertakings ceases to have the Required Rating, then the Contractor must:

   (i) promptly notify the Principal of the circumstances; and
   (ii) within 20 Business Days of being requested to do so, procure the issue to the Principal of replacement unconditional undertakings that satisfy the requirements of clause 2.5(b).

(d) Subject to its rights to have recourse to the unconditional undertakings, and subject to clauses 2.5(h), 14.9 and 14.11, the Principal must:

   (i) within 7 days after the Date of Portion Completion of Portion 2, release so much of the unconditional undertakings provided by the Contractor under clause 2.5(b) as may be then held by the Principal,
so that it then holds an unconditional undertaking to the value of [redacted] of the Original Contract Price;

(ii) within 28 days after the Date of Portion Completion of the last Portion to reach Portion Completion, release so much of the unconditional undertakings provided by the Contractor under clause 2.5(b) as may be then held by the Principal, so that it then holds an unconditional undertaking to the value of [redacted] of the Original Contract Price;

(iii) within 2 years after the Date of Portion Completion of Portion 3, release so much of the unconditional undertakings provided by the Contractor under clause 2.5(b) as may be then held by the Principal, to such amount as the Principal's Representative determines to be reasonable, having regard to the work to which the remaining Warranty Periods (including any extensions under clause 8.6) apply; and

(iv) within 28 days after the Date of Final Completion, release the balance of the unconditional undertakings provided by the Contractor under clause 2.5(b) as may be then held by the Principal.

(e) The Principal:

(i) may have recourse to any of the unconditional undertakings provided under this clause 2.5 at any time;

(ii) is not obliged to pay the Contractor interest on:

(A) any unconditional undertaking; or

(B) the proceeds of any unconditional undertaking if it is converted into cash; and

(iii) does not hold the proceeds referred to in clause 2.5(e)(ii)(B) on trust for the Contractor.

(f) The Contractor must not take any steps to injunct or otherwise restrain:

(i) any issuer of any unconditional undertaking provided under this clause 2.5 from paying the Principal pursuant to the unconditional undertaking;

(ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.5 or receiving payment under any such unconditional undertaking; or
(iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.5.

(g) The Contractor must on or before the date of this Deed give the Principal:

(i) a guarantee duly executed by each person referred to in Schedule 1 in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped; and

(ii) in the case of the guarantee executed by Unipart Group of Companies Limited, a legal opinion supporting, and in respect of, the guarantee:

(A) from lawyers to Unipart Group of Companies Limited under the guarantee, authorised to practice in the place of incorporation of Unipart Group of Companies Limited, stating that the guarantee is binding and enforceable against Unipart Group of Companies Limited;

(B) in favour of the Principal; and

(C) which is in a form reasonably satisfactory to the Principal.

(h) Despite any other provision of this Deed to the contrary, where this Deed may otherwise require the Principal to release an unconditional undertaking, or this Deed is terminated by the Principal either pursuant to clauses 14 or 2.11(c) or by reason of the Contractor repudiating this Deed, (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Deed to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this Deed or the Works and Services whether for damages (including liquidated damages) or otherwise.

2.6 Collusive Arrangements

(a) The Contractor:

(i) warrants that, prior to the date of this Deed, the Contractor had no knowledge of the whole or any part of the Tender price of any other Tenderer and had not directly or indirectly communicated the Contractor’s Tender price, or any part of such Tender price, to any other Tenderer;

(ii) warrants that, except as disclosed in the Tender and as agreed with the Principal in writing, the Contractor:

(A) has not entered into any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:
(1) the Contractor will pay money to or confer any benefit upon any other Tenderer; or
(2) the Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard membership fee), as a result of entering into this Deed or providing a Tender for the Works and Services;

(B) has not made any allowance in the Original Contract Price on account of a contract, arrangement or understanding of a kind referred to in clause 2.6(a)(ii)(A); and

(C) has not and will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 2.6(a)(ii)(A); and

(iii) acknowledges that it is aware that the Principal entered this Deed in reliance upon the warranties in clauses 2.6(a)(i) and 2.6(a)(ii).

(b) The Principal and the Contractor agree that if any matter warranted in clauses 2.6(a)(i) or 2.6(a)(ii) is found not to be true or correct, in addition to any other rights that the Principal may have, the Contractor:

(i) will be in fundamental breach of this Deed (such breach going to the root of this Deed); and

(ii) without limiting the Principal’s rights under clause 14.3, must pay to the Principal as liquidated damages the sum equivalent to that allowed or paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 2.6(a)(ii)(A) or 2.6(a)(ii)(C).

2.7 Third Party Agreements

(a) The Contractor:

(i) acknowledges that the Principal has entered or will enter into the Third Party Agreements;

(ii) must:

(A) unless otherwise expressly specified in Schedule 11, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that the Principal is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
(B) comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in Schedule 11 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2.7(a)(ii)(A);

(iii) must assist the Principal in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in Schedule 11;

(iv) must comply with any reasonable directions of the Principal's Representative (who will have regard to any reasonable submissions made by the Contractor to the Principal's Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;

(v) must, where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;

(vi) must, in performing the Works and Services:

(A) ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and

(B) otherwise act consistently with the terms of the Third Party Agreement;

(vii) agrees that whenever, pursuant to the terms of a Third Party Agreement, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in Schedule 11 and the other terms of this Deed, the Contractor is deemed to make the same acknowledgment or give the same release or warranty, indemnity or covenant to the Principal on the same terms and conditions as the acknowledgment, release or warranty, indemnity or covenant made or given by the Principal under a Third Party Agreement in the same way as if the relevant terms of the acknowledgment, release or warranty, indemnity or covenant were set out in full in this Deed; and
(viii) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that the Principal similarly makes no representation to the Contractor in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Deed.

(b) The Contractor:

(i) must indemnify the Principal from and against:

(A) any claim by a Third Party against the Principal; or

(B) any liability of the Principal, to a Third Party, arising out of or in any way in connection with a Third Party Agreement to the extent that the claim or liability arises out of or in any way in connection with the Works and Services, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or liability; and

(ii) agrees that it:

(A) bears the full risk of:

(1) complying with the obligations under this clause 2.7; and

(2) any acts or omissions of Third Parties; and

(B) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the risks referred to in clause 2.7(b)(ii)(A).

2.8 Co-operation with Other Contractors

The Contractor:

(a) acknowledges that there will be a need for Other Contractors to have access to the Cars and to the Installation Facility at the same time as the Contractor is performing the Works and Services; and

(b) must at all times:

(i) permit Other Contractors access to the Installation Facility;

(ii) permit Other Contractors to execute the other work at the times agreed with the Other Contractor, or failing agreement at the times determined by the Principal’s Representative, and for this purpose
ensure they have safe, clean and clear access required by them for the purpose of carrying out their work; and

(iii) fully co-operate with Other Contractors, and do everything reasonably necessary to facilitate the execution of work by Other Contractors, including providing Other Contractors with such assistance as may be directed by the Principal's Representative.

2.9 Disputes with Other Contractors

(a) Where the Contractor has complied with all its obligations in clause 2.8, the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Other Contractor.

(b) Upon receipt of the Contractor's notice under clause 2.9(a), the Principal's Representative must:

(i) within 5 Business Days convene a meeting between the Contractor, the relevant Other Contractor and any other relevant person (as reasonably determined by Principal's Representative); and

(ii) work in good faith with the Contractor and the Other Contractor to resolve the issues or dispute.

2.10 No Claims Arising out of Other Contractor Work

The Contractor:

(a) acknowledges and agrees that:

(i) no act or omission by an Other Contractor will, whether or not it causes any delay, disruption or interference to the Works and Services, constitute an Act of Prevention; and

(ii) except where the Principal's Representative directs a Variation in circumstances where the Contractor has fully complied with clause 2.8, the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:

(A) the Other Contractors carrying out their work; or

(B) any act or omission of an Other Contractor; and

(b) warrants that the Original Contract Price and the Contractor Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clause 2.8 and this clause 2.10.

2.11 Incident Management

(a) The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Works and Services and establish
procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the Statement of Work.

(b) Should an Incident occur which:

(i) is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the Statement of Work; and

(ii) relates to rail safety, the Contractor must notify the Principal and any relevant Rail Transport Agency rail management centre or the nearest network control officer.

(c) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Deed, immediately terminate this Deed by written notice to the Contractor.

(d) Without prejudice to the Principal's other rights under this Deed, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Principal.

(e) Without prejudice to the Principal's other rights under this Deed, the Principal's Representative may issue a direction under clause 10.14(a) requiring the Contractor to suspend the carrying out of the whole or any party of the Works and Services in the event of any safety incident occurring which leads to, or had the potential to lead to, a fatality or injury to any person (including any incident which must be reported to New South Wales WorkCover Authority) or damage to the property.

The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim for any cost, expense, loss, delay, disruption or penalty arising out of or in connection with:

(i) any suspension due to a direction to suspend issued, or for a failure to issue a notice to suspend, in the circumstances set out in this clause 2.11(e); or

(ii) complying with a direction issued under clause 2.11(f).
If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.11(e), the Contractor may not recommence the Works and Services in respect of the part of the Works and Services to which the notice relates until the Principal's Representative issues a direction to the Contractor permitting the Contractor to recommence the Works and Services affected by the notice to suspend.

If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.11(e), the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.14(a) permitting the Contractor to recommence the Works and Services affected by the notice to suspend. In these circumstances the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under this clause 2.11(f) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Works and Services affected by the notice to suspend.

The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 2.11(e) due to the Contractor's, its agents' or its Subcontractors' acts or omissions in performing the Works and Services as a debt due from the Contractor to the Principal.

2.12 Working Days and Hours of Work

The Contractor must observe:

(a) all relevant Law; and

(b) any requirements of the Principal as specified in Schedule 1 or otherwise notified by the Principal's Representative from time to time, which regulate working days and hours of work.

3. Installation Facility and Principal Arranged Matters

3.1 Installation Facility

(a) The Contractor acknowledges and agrees that:

(i) it is responsible for ensuring it has access to the Installation Facility for the purposes of performing the Works and Services in accordance with this Deed;
(ii) it has informed itself completely as to:

(A) the suitability of the Installation Facility for performing the Works and Services;

(B) the nature of the work and of the plant, equipment and materials necessary for the performance of the Works and Services;

(C) the availability of the Installation Facility; and

(D) the means of access to and from, the Installation Facility,

and any failure by the Contractor to have done any of these things will not relieve the Contractor of its obligation to perform and complete the Works and Services in accordance with this Deed.

(b) Subject to clause 3.2, the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to carry out the Works and Services.

3.2 Principal Arranged Matters

(a) Subject to the terms of this Deed, the Principal must, at its own cost, supply or make available (as the context requires) the Principal Arranged Matters in accordance with Schedule 3.

(b) The Contractor acknowledges and agrees that the Principal will have no obligation to supply or make available any of the Principal Arranged Matters other than in accordance with the procedure, and no earlier than any time set out in Schedule 3, and if no procedure or time is set out in Schedule 3, no earlier than any time which is reasonably ascertainable as at the date of this Deed as being the time by which the relevant matter needs to be provided by the Principal so as to enable the Contractor to meet its obligations under this Deed provided however that in respect of the time so ascertained:

(i) the Contractor has given the Principal notice that the Principal Arranged Matters are required; and

(ii) the Contractor is ready to use the Principal Arranged Matters.

3.3 Export and Import of Investigation Set

(a) If Schedule 1 states that this clause 3.3 applies, the Contractor will be responsible for all matters necessary to transit the Investigation Set to any overseas location required by the Contractor and to return the Investigation Set to the Principal as required by this Deed (including those matters specified in clauses 11.15(a) and 11.15(b)).
(b) The Contractor must bear the cost of all matters referred to in clause 3.3(a) (including the cost of any additional transit insurance required by the Principal) and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with the matters in this clause 3.3.

3.4 Condition of Cars

(a) The Principal does not warrant, guarantee, make any representation or assume any duty of care with respect to the condition of the Cars upon which the Works and Services will be carried out.

(b) The Contractor acknowledges and warrants that:
   (i) it will not place any reliance upon the Investigation Set as representing the condition of all of the Cars upon which the Works and Services will be carried out;
   (ii) it entered into this Deed based upon its own investigations, interpretations, deductions, information and determinations; and
   (iii) it is aware that the Principal entered into this Deed relying upon the acknowledgements, warranties and matters set out in this clause 3.4.

(c) To the extent permitted by Law, the Principal is not liable to the Contractor upon any Claim arising out of or in any way in connection with the Contractor encountering conditions in a Car during the carrying out of the Works and Services which differ from:
   (i) the condition of the Cars comprising the Investigation Set; or
   (ii) the condition of the Cars assumed by the Contractor.

(d) The Contractor accepts:
   (i) all risk arising out of its use or reliance upon the Cars comprising the Investigation Set; and
   (ii) the risk that the condition of the Cars may differ from:
       (A) the condition of the Cars comprising the Investigation Set; or
       (B) the condition of the Cars assumed by the Contractor.

3.5 Information Documents and Materials

(a) Prior to the date of this Deed, the Contractor executed the Deed of Disclaimer and provided this to the Principal after which the Principal provided the Contractor with, or gave the Contractor access to, the Information Documents and Materials, including those listed in Schedule 16. Whether or not any Information Documents and Materials or any part thereof form an Exhibit to this Deed, the Contractor acknowledges that:
the Information Documents and Materials or part thereof do not form part of this Deed and that clause 3.5(c) applies to the Information Documents and Materials or part thereof; and

(ii) where Information Documents and Materials or any part thereof form an Exhibit to this Deed, they do so only for the purposes of identification of that document or part thereof.

(b) Without limiting clause 3.5(c) or the warranties or acknowledgements in the Deed of Disclaimer or the Tender Form:

(i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Deed; and

(ii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:

(A) the provision of, or the purported reliance upon, or use of the Information Documents and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed; or

(B) a failure by the Principal to provide any other information, data or documents to the Contractor.

(c) The Contractor:

(i) warrants that it did not in any way rely upon:

(A) any information, data, representation, statement or document made by, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or

(B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document, for the purposes of entering into this Deed except to the extent that any such information, statement or document forms part of this Deed;

(ii) warrants that it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations; and
(iii) acknowledges that it is aware that the Principal has entered into this
Deed relying upon the warranties, acknowledgements and
agreements in clauses 3.5(c)(i) and 3.5(c)(ii) and in the Deed of
Disclaimer and the Tender Form.

(d) The Contractor releases and indemnifies the Principal from and against:
(i) any claim against it by, or liability of it to, any person; or
(ii) (without being limited by clause 3.5(d)(i)) any costs, expenses, losses
or damages suffered or incurred by it,

arising out of or in any way in connection with:
(iii) the provision of, or the purported reliance upon, or use of the
Information Documents and Materials, as referred to in clauses 3.5(b)
and 3.5(c)(i), to or by the Contractor or any other person to whom the
Information Documents and Materials are disclosed or a failure by the
Principal to provide any information, data or documents to the
Contractor (other than any information, data or documents which the
Principal is required to provide to the Contractor by the terms of this
Deed);

(iv) any breach by the Contractor of the warranties in this clause 3.5; or
(v) the Information Documents and Materials being relied upon or
otherwise used in the preparation of any information or document,
including any information or document which is "misleading or
deceptive" or "false or misleading" within the meaning of those terms
in sections 18 and 29 of Schedule 2 of the Competition and
Consumer Act 2010 (Cth), or any equivalent provision of State or
Territory legislation.

3.6 **Principal's Right to Access and Inspect**

(a) Subject to clause 3.8, the Contractor must, at all times:

(i) give the Principal's Representative, the Principal and any person
authorised by either the Principal's Representative or the Principal
access to:

(A) the Installation Facility; and

(B) any other workshops, places or areas where the Works and
Services are being carried out; and

(ii) provide the Principal and the Principal's Representative with every
reasonable facility necessary for the Inspection of the Works and
Services, including the Contractor’s compliance with the Authority Approvals and Third Party Agreements.

(b) The Contractor acknowledges and agrees that:

(i) the Principal owes no duty or other responsibility to the Contractor to:

(A) inspect the Works and Services; or
(B) review any design or any item manufactured, supplied or installed for Defects (including errors and omissions) or compliance with the requirements of this Deed; and

(ii) no Inspection of the Works and Services or review of any design or any item manufactured, supplied or installed by the Principal or the Principal’s Representative will:

(A) relieve the Contractor from or alter its liabilities or obligations under this Deed (including its warranties under clause 5.1 or clause 7.1) or otherwise according to Law; or
(B) limit or otherwise affect the Principal’s rights against the Contractor whether under this Deed or otherwise according to Law.

(c) Any person to whom the Contractor gives access under sub-paragraph (a)(ii) must comply with the reasonable requirements of the Contractor in relation to the safety of persons and property and protection of the Environment.

3.7 Waste Disposal

(a) The Contractor must dispose of any Hazardous Material or other waste pursuant to its obligations under this Deed in accordance with all relevant Law and Authority Approvals.

(b) The Contractor must:

(i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Hazardous Material or other waste holds all relevant Authority Approvals that are necessary or desirable; and

(ii) procure and provide evidence of such Authority Approvals to the Principal’s Representative upon request.

(c) The Contractor must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Hazardous Material or other wastes and that they comply with all applicable Laws.

(d) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal.
arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an agent of the Principal have contributed to the claim, damage, expense, loss, liability, fine or penalty.

3.8 Principal not in Control
The Contractor and Principal acknowledge that nothing in this Deed including the right to inspect pursuant to clause 3.6 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:
(a) the Principal has any management or control over the Works and Services or the Installation Facility; or
(b) the Principal has any responsibility for any act or omission by the Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Authority Approvals, Third Party Agreements or this Deed.

4. Compliance

4.1 Quality of Work
The Contractor must use the materials and standard of workmanship required by this Deed, and otherwise comply with this Deed in the performance of the Works and Services. In the absence of any other requirement, the Contractor must use suitable new materials and ensure that all workmanship and materials are fit for their intended purpose.

4.2 Statement of Work
The Contractor must comply with the requirements of the Statement of Work.

4.3 Environmental Management
The Contractor must:
(a) hold and maintain an environmental management system which complies with the requirements of the Statement of Work for so long as any Works and Services are carried out;
(b) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and any applicable Statement of Work in relation to environmental management;
(c) use, and be able to demonstrate the use of, ecologically sustainable development principles in the performance of the Works and Services; and

(d) develop a project-specific environmental management plan in accordance with the requirements of the Statement of Work.

4.4 WHS Management
The Contractor must:

(a) hold and maintain an WHS management system for so long as any Works and Services are carried out that complies with the Statement of Work;

(b) as part of the Contract Management Plan, develop, document and implement a contract specific Project Work Health and Safety Management Plan in accordance with the Statement of Work;

(c) carry out the Works and Services in accordance with the Project Work Health and Safety Management Plan;

(d) create a safe working environment for ensuring the safety of all persons engaged in the performance of the Works and Services; and

(e) supervise any Subcontractor’s activities and ensure that they are complying with all relevant Law, Authority Approvals and applicable Statement of Work in relation to management of WHS issues.

4.4A Integrated Baseline Review

(a) The parties agree that they will undertake an Integrated Baseline Review (IBR) within 90 days of the Commencement Date.

The Principal and the Contractor will conduct an initial workshop within 45 days of the Commencement Date to develop a plan for the IBR (the Draft IBR Plan) which is to be submitted for the review of the Principal’s Representative under clause 9.14.

The Draft IBR Plan must address the following tasks:

(i) planning and performing the IBR;

(ii) providing an adequate number of qualified personnel to participate in the IBR;

(iii) specifying the evaluation criteria for risk areas;

(iv) documenting risk issues which are to be identified during the IBR;

(v) the process for monitoring progress on matters which are identified during the IBR as areas which require further review and the process for dealing with these matters; and
(vi) the documentation that must be provided by the Contractor for the purposes of the IBR (the **IBR Material**), which must include the Contractor Program, the Contract Management Plan and all other records and data requested by the Principal's Representative to ensure that the IBR can be performed in a way to satisfy the objective of the IBR.

The Draft IBR Plan will become the IBR Plan after the Draft IBR Plan has been submitted to the Principal's Representative under clause 9.14 and:

(vii) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(c)(iii)(C); or

(viii) the relevant period of time in clause 9.14(c)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and the Principal's Representative has not issued a notice under clause 9.14(d)(iii)).

(b) The Principal and the Contractor must then undertake the IBR in accordance with the IBR Plan.

During the IBR the Principal and the Contractor will jointly assess the IBR Material to provide the parties with as much as assurance as possible that the Contractor has provided for, and is capable of satisfying, all the requirements of the Deed (including the Statement of Work).

(c) Without limiting paragraph (b), during the IBR the parties will assess the IBR Material against the following risk areas:

(i) Technical Risk - to ensure that the technical scope of work is fully included within the IBR Materials in a way that will enable the Contractor to satisfy the requirements of the Deed (including the Statement of Work);

(ii) Schedule Risk - to ensure that all key schedule milestones are identified, and that an appropriate amount of time has been allowed in the Contractor Program for undertaking the Works and Services in accordance with the schedule objectives of the Deed. This includes an analysis of the effects of the interdependency of scheduled activities and the appropriate identification of the critical path;

(iii) Cost Risk - the ability of the Contractor to successfully execute project cost objectives, recognizing relationships of budget, resources, funding, schedule, and scope of work;
(iv) Resource Risk - to ensure the availability of adequate personnel and facilities as required for performing the defined tasks necessary to perform the Works and Services in accordance with the Contractor Program; and

(v) Management Processes Risk – to ensure that the management processes provide for an effective integration of the cost, schedule and technical issues and the interfaces resulting from these issues together with an appropriate method of monitoring the need for, and the process for implementing, baseline change control. This includes the ability of processes to establish and maintain valid, accurate, and timely performance data, including that from Subcontractors, for early visibility, and the tracking, of risks.

4.5 No Relief from Obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this Deed (including under clause 8 or otherwise according to Law) nor will the rights of the Principal whether under this Deed or otherwise according to Law be limited or otherwise affected, by:

(a) the implementation of, and compliance with, any management system or plan by the Contractor;
(b) anything arising out of or in connection with the IBR;
(c) compliance with the Contract Management Plan by the Contractor;
(d) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative;
(e) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, including where such a failure is the result of a negligent act or omission; or
(f) any Inspections arranged by the Principal's Representative under the Statement of Work or any related discussions between the Contractor's Representative and the Principal's Representative.

4.6 Engineering Authorisation

The Contractor is an AEO and its ASA Authorisation allows it to carry out the Works and Services.

The Principal authorises:

(a) the Contractor; and
(b) the Subcontractors engaged to undertake the Works and Services, to undertake the Works and Services.

4.7 ASA Compliance

(a) Not used

(b) The Contractor must (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible) comply with the conditions of the applicable ASA Authorisation.

(c) The Contractor:

(i) must hold and maintain its ASA Authorisation for so long as the Works and Services are carried out; and

(ii) must (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible) comply with the conditions of the applicable ASA Authorisation.

(d) The Contractor must (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible):

(i) implement and comply with the requirements of any ASA Requirements applicable to the Asset Services;

(ii) cooperate fully with the ASA in the performance of the ASA's functions;

(iii) provide access to premises and resources as reasonably required by the ASA, including so that it can effectively carry out its review, surveillance and audit functions;

(iv) comply with the directions, instructions and requirements issued by the ASA;

(v) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;

(vi) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and

(vii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.

(e) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of
or in connection with the requirement to obtain ASA Authorisation or the obligation to comply with the requirements of ASA and the ASA Authorisation.

4.8 Contractor's Tender Management Plans

(b) The Contractor must ensure that all management plans (including the Contract Management Plan and specific management plans) required by and prepared in accordance with the Statement of Work are based on the Tender Management Plans.

(c) The requirements set out in the Tender Management Plans are minimum requirements and the Contractor must not reduce or otherwise decrease these requirements in any management plans required under this Deed. In the event of any inconsistency, ambiguity or discrepancy between the requirements of this Deed, the higher, more onerous or rigorous requirement will apply.

(d) Despite the content of the Tender Management Plans, the Contractor acknowledges that:

(i) it remains responsible for ensuring that the management plans prepared in accordance with the Statement of Work will satisfy the requirements of this Deed; and

(ii) prior to the date of this Deed the Contractor has prepared the Tender Management Plans. The Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the Tender Management Plans in performing the Works and Services and that such use and reliance will not affect any of its obligations under this Deed.

5. Design and Design Documentation

5.1 Contractor's Design Obligations

The Contractor:

(a) must as part of the Works and Services:

(i) continue to develop the Contractor's Technical Proposal into the Design Documentation; and

(ii) prepare and complete the Design Documentation,

so that it is fit for its intended purpose and otherwise complies with the requirements of this Deed; and
(b) warrants that:

(i) it has fully and carefully reviewed the Statement of Work and the Contractor's Technical Proposal;

(ii) it remains responsible for ensuring that the Works and Services will satisfy the requirements of this Deed despite the Contractor's Technical Proposal;

(iii) the completed design of the Works and Services as represented in the Design Documentation will:

(A) satisfy the requirements of the Statement of Work, the Contractor's Technical Proposal and the other requirements of this Deed; and

(B) be and remain at all relevant times fit for their intended purposes; and

(iv) manufacture and installation in accordance with the completed design prepared in respect of the Works and Services will satisfy the requirements of the Statement of Work, the Contractor's Technical Proposal and the other requirements of this Deed.

5.2 Design Documentation

(a) The Contractor must submit all Design Documentation:

(i) progressively to the Principal's Representative in accordance with the Contract Management Plan and the requirements of clause 9.14; and

(ii) at the times set out in the Statement of Work.

(b) The Contractor must upon each submission of the Design Documentation to the Principal's Representative for review (including at the completion of the design of each Work Package) ensure that the Design Documentation is accompanied by the following documents:

(i) the Contractor's Certificate of Design Compliance;

(ii) a register of records of design verification and reviews applicable to the Work Package and other compliance records required by this Deed (all records being satisfactorily completed and signed);

(iii) a register of any outstanding design non-conformities, non-compliances and unresolved issues;

(iv) a register of deficiency notices and evidence of their close out; and

(v) a register of concessions (if any) granted for non-conforming Design Documentation.
5.3 Review of Design Documentation, Meetings, and Presentations

(a) All Design Documentation must be submitted to the Principal's Representative.

(b) Clause 9.14 applies to all Design Documentation.

(c) The Contractor must attend design coordination meetings when requested to do so by the Principal's Representative, including for the purpose of identifying, reviewing, coordinating or resolving any matters of common interest between the Contractor and Other Contractors.

(d) The Contractor must arrange and conduct comprehensive design presentations (in accordance with the Statement of Work) for the Principal (and any other persons the Principal reasonably requires) and the Principal's Representative.

(e) The Contractor must give the Principal's Representative reasonable notice of the date and time of each design presentation to be made by the Contractor in accordance with clause 5.3(d) so as to enable the Principal's Representative (and any other persons the Principal's Representative reasonably requires) to attend the design presentations.

(f) At each design presentation referred to in clause 5.3(d), the Contractor must make available sufficient members of its design team (as determined appropriately by the Contractor) and any other person reasonably requested by the Principal (or the Principal's Representative), at the cost of the Contractor, to demonstrate:

(i) the approach adopted for design, standards to be adopted, and assumptions made;

(ii) the approach to interfaces with:

(A) existing equipment, technology, systems and the surrounding environment; and

(B) Other Contractors;

(iii) the status of review of design information and documents by the relevant Authorities;

(iv) how the current proposed design incorporates the Contractor's Technical Proposal; and

(v) the interrelationship with other design elements.

(g) The Contractor will include in each design presentation such materials as are reasonably required for the Principal (and any other persons the Principal reasonably requires) and the Principal's Representative to understand and
comment on the concepts and details the subject of the design presentations.

5.4 Copies of Design Documentation

(a) The Contractor must, in accordance with clause 5.2, progressively submit to the Principal's Representative the number of copies specified in Schedule 1 of all Design Documentation, whether complete or work in progress, which it intends to use for design or manufacturing purposes.

(b) The Contractor must give the Principal's Representative the number of copies specified in Schedule 1 of all final Design Documentation.

5.5 Availability of Design Documentation

The Contractor must keep available for the use of the Principal's Representative and any person authorised by the Principal's Representative at the Installation Facility or other location approved in writing by the Principal, at least one complete set of all Design Documentation that the Contractor is entitled to use for installation purposes pursuant to clauses 5.2 and 9.14, and any related written information provided by the Principal.

5.6 Contractor's Technical Proposal

(a) The Contractor acknowledges that prior to the date of this Deed it prepared the Contractor's Technical Proposal. The Contractor agrees that it bears absolutely all risks howsoever that may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the Contractor's Technical Proposal in performing the Works and Services and that such use and reliance will not affect any of its obligations under this Deed.

(b) Without limiting paragraph (a), the parties acknowledge that the Contractor's Technical Proposal was submitted by the Contractor as part of its Tender and was used by the Principal in assessing the Tenders for the Works and Services.

The Contractor further acknowledges and agrees that:

(i) the Contractor's Technical Proposal does not impose any obligations, liabilities or responsibilities upon the Principal or the Principal's Representative with respect to the Works and Services;

(ii) the Contractor must, unless otherwise directed by the Principal's Representative, comply with the promises and undertakings given or made by the Contractor in the Contractor's Technical Proposal; and

(iii) the Contractor bears the risk of any costs, losses, damages or delay or disruption it suffers or incurs arising out of or in any way in
connection with any assumptions, projections, activities, statements, risk mitigation measures or otherwise that the Contractor may have expressly or impliedly made in the Contractor's Technical Proposal turning out to be incorrect, not eventuating or not being capable of being implemented, and any such assumptions, projections, activities, statements, risk mitigation measures or otherwise do not impose any obligation or duty upon the Principal or the Principal's Representative to assist the Contractor in these circumstances.

(c) The Contractor is responsible for, and assumes the risk of any costs, losses or damages it suffers or incurs arising out of or in any way in connection with:

(i) the undertaking of the Simulator Upgrade or the design, manufacture, supply, installation and commissioning of the Simulator Upgrade or the Cars in accordance with the Contractor's Technical Proposal costing more or taking longer than anticipated; and

(ii) any differences between the simulator in respect of which the Contractor is required to undertake the Simulator Upgrade or the Cars which the Contractor is required to design, manufacture, supply, install and commission (ignoring for this purpose any differences which are subject of a Variation Order issued under clause 6.2) and the Contractor's Technical Proposal including differences required to ensure that the Simulator Upgrade and the Cars will be fit for their intended purposes and satisfy the requirements of this Deed, irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to any of the matters set out in paragraphs (i)-(ii) above.

5.7 Ownership of Contract Documentation and Methods of Working

(a) Subject to clause 5.7(c), the Contractor hereby grants to the Principal, any Rail Transport Agency and any other relevant rail owner or operator from time to time a royalty free, irrevocable, perpetual, transferrable and worldwide licence (which includes an unlimited right to sub-licence):

(i) to use and reproduce the Intellectual Property in and in relation to the Contract Documentation prepared by the Contractor for the Works and Services and for the purpose of operating, maintaining, servicing, modifying, upgrading, repairing, refurbishing, overhauling, rebuilding, testing, monitoring the performance of, or performing additions or alterations to, the Simulator Upgrade, Cars, Sets and Consists (including to integrate other systems with the equipment and systems installed under this Deed) and for this purpose to use and reproduce
the Contract Documentation prepared by the Contractor in tenders for any such work after the date of this Deed;

(ii) which arises immediately upon the creation of the Contract Documentation; and

(iii) which survives the expiry or termination of this Deed on any basis.

(b) The Contractor:

(i) warrants and must ensure that the Contract Documentation and any methods of working do not and will not infringe any Intellectual Property;

(ii) must indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property in connection with the Works and Services or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:

(A) the Principal having provided the Contractor with material which this Deed permits the Contractor to use for the purpose of the Works and Services or the Contract Documentation; and

(B) the provision of that material to the Contractor being an infringement of a third party's Intellectual Property rights;

(iii) must ensure that all Subcontracts between the Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 5.7(a);

(iv) must obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors for design and documentation;

(v) must, where requested by the Principal's Representative, obtain such an acknowledgement from other Subcontractors;

(vi) must grant, or have any third party who owns any Intellectual Property right in the Contract Documentation grant, to the Principal a royalty free, irrevocable perpetual, transferrable and worldwide licence (which includes an unlimited right to sub-licence):

(A) to use the Contract Documentation for the completion of the Works and Services;

(B) which arises immediately upon the creation of the Contract Documentation;
which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Simulator Upgrade, Cars, Sets and Consists (including to integrate other systems with the equipment and systems installed under this Deed);

(D) which is for purposes and on terms no less favourable to the Principal than the licence granted pursuant to clause 5.7(a); and

(E) which will survive the termination of this Deed on any basis; and

(vii) must ensure that the Intellectual Property created for the purposes of this Deed is not used, adapted or reproduced other than for the purposes of this Deed without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).

(c) The Contractor may use the Alstom Installation Design for the purpose of installing the Equipment referred to in Appendix B to the Statement of Work as part of the Works and Services, but shall have no entitlement to, and must not:

(i) adapt or reproduce the Alstom Installation Design; or

(ii) use the Alstom Installation Design for any purpose other than the purpose referred to in clause 5.7(c).

5.8 Delivery Up of Contract Documentation

If this Deed is frustrated or terminated the Contractor must:

(a) immediately deliver the original and all copies of all Contract Documentation (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to the Principal; and

(b) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation.

5.9 Source Code

If requested by the Principal, the Contractor will, or will procure that the applicable third party supplier will, enter into an escrow agreement with the Principal and an escrow agent:
on terms reasonably satisfactory to the Principal (and terms generally consistent with and no more onerous on the supplier than the terms set out in the sample escrow deed set out in Schedule 18);

(b) to enable the Principal and its Subcontractors to use, maintain, support, operate and otherwise deal with the Intellectual Property in the Contract Documentation for the purposes of the Tangara Technology Upgrade Project or in any way in connection with the Tangara Technology Upgrade Project; and

(c) in respect of any and all Source Code relating to any material forming part of the Works and Services performed under this Deed.

The Principal will bear all fees and charges under any escrow deed.

5.10 Moral Rights

(a) The Contractor:

(i) warrants that the Principal's use of the Contract Documentation, or any other work provided by the Contractor under this Deed, will not infringe any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction; and

(ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction in connection with the Works and Services or the Contract Documentation.

(b) For the purposes of clause 5.10(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the simulator the subject of the Simulator Upgrade or the Cars to which the Contract Documentation or any other work provided by the Contractor under this Deed relates:

(i) with or without attribution of authorship;

(ii) in any medium; and

(iii) in any context and in any way it sees fit.

5.11 Design Working Group

(a) The Principal may require the establishment of a Design Working Group, in which event the Contractor must participate in the Design Working Group. If
the Principal does establish a Design Working Group it will comprise at least 3 nominees from each party.

(b) The objectives of the Design Working Group will be to:

(i) facilitate discussion on all design issues relating to the Simulator Upgrade or the Cars upon which the Works and Services are to be performed;

(ii) informally exchange information regarding the development of design necessary for the performance of the Works and Services including when appropriate:

(A) the manner in which and times by which the Design Documentation is to be completed;

(B) number, names and outline of the content of documentation packages which will be submitted;

(C) types of documents to be included in each package;

(D) approximate numbers of drawings to be included in each package; and

(E) names of Authorities and other persons having jurisdiction over matters which may be relevant to each package;

(iii) set direction for future design processes and schemes;

(iv) meet regularly but in any event as required to keep the Principal informed regarding the progress of the Design Documentation; and

(v) consider the Principal's feedback on the design process.

(c) It is not intended that the Design Working Group will:

(i) avoid, replace, or supplant the operation of clause 9.14; or

(ii) generate presentation materials for subsequent consideration and formal evaluation.

(d) Without limiting any other provision of this Deed, nothing which occurs during a Design Working Group meeting or as part of the process for such meetings will:

(i) relieve the Contractor of its obligations, or constitute a waiver of any of the Principal's rights, under this Deed; or

(ii) be constructed as a direction or notice by the Principal to do or not to do anything and the parties confirm that all discussions, debates, disagreements and resolutions on any matters raised at meetings of the Design Working Group are only for the purpose of satisfying the
objectives in clause 5.11(b) and will not give rise to any obligation on the part of the Contractor to comply with anything which the Principal or the Principal's advisers say or do as part of the process for such meetings.

(e) The Contractor:

(i) shall issue an agenda for each meeting of the Design Working Group and a written record of matters discussed at each such meeting; and

(ii) agrees that no such agenda or record shall be relied upon by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Deed.

(e) The Principal is entitled to invite and have all third parties (and their consultants) attend and participate in Design Working Group meetings.

6. Variations

6.1 Proposed Variations

At any time prior to the Date of Portion Completion of Portion 3 (but without limiting clauses 8 and 13.3) the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

(a) the adjustment to the Contract Sum (and change to the Payment Schedule in Schedule 2) that the Contractor would claim in respect of the proposed Variation (other than those costs referred to in clause 6.1(b)) with details of how the amount has been calculated;

(b) the expected effect that the proposed Variation would have on the Contractor Program, and the Contractor achieving Portion Completion of any Portion by the relevant Date for Portion Completion with details of how the effect has been assessed and if the proposed Variation would entitle the Contractor to an extension of time, the amount of its entitlement under clause 10.13 arising from that extension of time;

(c) a statement that the proposed Variation:

(i) does not conflict with or change the requirements of the Statement of Work or the Contractor's Technical Proposal or involve changes other than those described in the notice; or
changes the requirements of the Statement of Work or the Contractor's Technical Proposal or involves changes other than those described in the notice, in which case the Contractor must explain all the changes and effects, including providing information on the:

(A) impact on the Works and Services (including specific details of the work or services that will be affected and how and to what extent it will be affected);

(B) design criteria and how they are to be addressed;

(C) effect on relevant reports, drawings and studies;

(D) assumptions;

(E) operation and maintenance of the simulator the subject of the Simulator Upgrade or the Cars and Consists;

(F) Authority Approvals and Third Party Agreements affected; and

(G) environmental and community impacts;

(d) sufficient details to allow the Principal to review the reasons, and, if desired, reconsider the need, for the Variation;

(e) where required by the Principal's Representative, the additional costs that the Contractor anticipates would be incurred by it if a direction was given under clause 10.15 to compress the performance of the Works and Services to overcome part or all of any of the delay in achieving Portion Completion of any Portion by the relevant Date for Portion Completion expected to be caused by the Variation outlined in the "Variation Proposal Request"; and

(f) any other information concerning the proposed Variation that the Principal's Representative requires.

The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

6.2 Variation Orders

(a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to the Date of Portion Completion of Portion 3 (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Variation by issuing a Variation Order, in which the Principal's Representative will state one of the following:

(i) the proposed adjustments to the Contract Sum and the Payment Schedule set out in the Contractor's notice under clause 6.1(a) are
agreed and the Contract Sum and Payment Schedule will be adjusted accordingly;

(ii) any adjustment to the Contract Sum will be determined under clause 6.4(b); or

(iii) the Variation is to be carried out as daywork and any adjustment to the Contract Sum will be determined under clause 6.7.

(b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Deed.

(c) The Contractor must comply with a Variation Order irrespective of:

(i) the nature, extent or value of the work or services the subject of the Variation;

(ii) the location or timing (including the impact on any Date for Portion Completion) of the work or services involved in the Variation;

(iii) whether or not it agrees with any or all of the terms of the Variation Order; or

(iv) any Dispute related to the Variation.

(d) The Contractor’s entitlement (if any) to an extension of time and delay costs arising out of a Variation directed under clause 6.2(a) will be dealt with under clause 10 and not this clause 6. The valuation of a Variation under clause 6.4 will exclude any amount for costs incurred by the Contractor as a result of any delay caused by the Variation.

6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 23, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Deed on the basis that the Contract Sum, the Statement of Work and the provisions of this Deed will be adjusted as set out in Schedule 23 for the relevant Option.

For the avoidance of doubt:

(a) the Principal is not under any obligation whatsoever to exercise; and

(b) the Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising, any Option.
Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

The exercise of an Option by the Principal's Representative under this clause 6.3 will not:

(c) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Deed);

(d) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Deed); or

(e) entitle the Contractor to an extension of time, whether under this Deed or otherwise according to any Law.

6.4 Valuation

Subject to clauses 6.10, 8.4, 15 and 17, the Contract Sum and the Payment Schedule will be adjusted for all Variations that have been directed by the Principal's Representative by:

(a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order; or

(b) to the extent that clause 6.2(a)(ii) applies:

(i) subject to sub-paragraph (iii) and the remainder of this clause 6.4(b), an amount in respect of the Variation to be determined by the Principal's Representative on the basis of (where applicable or where it is reasonable to use them for valuing the Variation):

(A) the prices and rates set out in Schedule 17; and

(B) any other applicable data in this Deed;

(ii) subject to sub-paragraph (iii) and the remainder of this clause 6.4(b), to the extent sub-paragraph (i) does not apply, an amount determined by the Principal's Representative on the basis of reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by the following percentage of that amount:

(A) where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule 1, which will be in total satisfaction of all the Contractor's Overhead Costs and profit; or
(B) where the adjustment to the Contract Sum is to be a decrease, the percentage set out in Schedule 1 for Overhead Costs and profit; and

(iii) subject to the remainder of this clause 6.4(b), where the Variation is in respect of the provision of spare parts, tools, equipment or specialised software, an amount determined in accordance with Schedule 1,

provided however that, where the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Contractor's entitlement under this clause 6.4(b) will not be greater than any amount set out in the Contractor's notice under clause 6.1(a).

6.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any work or services from the Works and Services:

(a) the Principal may thereafter either perform the work or services itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work or services;

(b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any work or services being omitted or deleted from the Works and Services whether or not the Principal thereafter performs this work or services itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work or services;

(c) the adjustment to the Contract Sum arising from the work or services that has been omitted or deleted will be valued in accordance with clause 6.4; and

(d) the adjustment (if any) to the Date for Portion Completion of a Portion will be assessed in accordance with clause 10.11.

6.6 Daywork

(a) If the Contractor is given a direction under clause 6.2(a)(iii) to carry out work as daywork, the Contractor must:

(i) carry out the daywork in an efficient manner; and

(ii) after the direction, each day provide the Principal's Representative with a written report in respect of that day signed by the Contractor that:

(A) records particulars of all resources used by the Contractor for the execution of the daywork; and
(B) includes those particulars reasonably required by the Principal's Representative that evidence the cost of the daywork.

(b) The Principal's Representative may direct the manner in which the matters referred to in clause 6.6(a)(ii) must be recorded.

6.7 Valuation of Daywork

In valuing the adjustment to the Contract Sum arising from any Variation that the Principal's Representative directs to be carried out as daywork, the Principal's Representative will have regard to:

(a) the amount of wages and allowances paid or payable by the Contractor for the hours reasonably worked in respect of the daywork at the rates:
   (i) set out in Schedule 17;
   (ii) where the rates in Schedule 17 do not apply, as established by the Contractor to the satisfaction of the Principal's Representative; or
   (iii) determined by the Principal's Representative;

(b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the amount determined under clause 6.7(a);

(c) the reasonable amount of hire charges and associated fuel and other operating costs in respect of additional equipment approved by the Principal's Representative for use on the work in accordance with such hiring rates and conditions as may be:
   (i) agreed between the Principal's Representative and the Contractor; or
   (ii) failing agreement, determined by the Principal's Representative;

(d) the reasonable amounts paid by the Contractor for Subcontract work, including professional fees; and

(e) the reasonable actual cost to the Contractor of all materials supplied and required for the daywork,

to which will be added to the extent that the rates set out in Schedule 17 are not already expressed to be inclusive of the Overhead Costs and profit, the relevant percentage specified in Schedule 1 of the amounts determined under subparagraphs (a) to (e), which will be in total satisfaction of all the Overhead Costs and profit.
6.8 Variations Requested by Contractor

The Contractor may, for its convenience, request the Principal's Representative to direct a Variation. Any such request must be in writing and must contain the following details of the Variation proposed:

(a) a full description of the proposed Variation;
(b) the additional or reduced cost or time involved in the Variation and any proposal for sharing any cost savings or increases with the Principal, including the amount;
(c) any benefits that would flow to the Principal;
(d) the expected effect upon the future cost of operating and maintaining the Cars;
(e) the expected effect on the various Contractor's programs, including the Contractor Program and any Date of Portion Completion; and
(f) a statement as required by clause 6.1(c).

6.9 Determination by Principal's Representative

If the Contractor makes a request in accordance with clause 6.8, the Principal's Representative may, in its absolute discretion, give a written notice to the Contractor:

(a) rejecting the request; or
(b) approving the request either conditionally or unconditionally.

The Principal's Representative will not be obliged to exercise its discretion for the benefit of the Contractor.

6.10 Variation Approved by the Principal's Representative

If the Principal's Representative issues a written notice under clause 6.9 approving the Contractor's request under clause 6.8:

(a) unless otherwise agreed in the notice given under clause 6.9, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the Variation;

(b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Sum will be reduced by the amount offered by the Contractor in its request, or such other amount as may have been agreed between the Principal's Representative and the Contractor prior to any approval under clause 6.9(b); and
the Contractor will be responsible for ensuring that all aspects of the Works and Services that are in any way affected by the Variation comply with the requirements of this Deed.

Unless and until the Principal's Representative issues a written notice under clause 6.9 approving the Contractor's request under clause 6.8, no Variation will arise out of that request, and the Contractor must at all times:

(d) continue to carry out the Works and Services; and

(e) otherwise comply with its obligations under this Deed.

6.11 Contractor's Entitlements

This clause 6 is an exhaustive code of the Contractor's rights in any way in connection with any Variation. The Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this Deed.

6.12 No Variation or Claim

(a) Where the Contractor considers that any direction:

(i) constitutes or involves a Variation; or

(ii) entitles it to make a Claim (other than an Excluded Claim),

it must, prior to complying with the direction, issue in respect of a:

(iii) Variation, the notice referred to in clause 17.1; or

(iv) Claim, the notice referred to in clause 17.2.

(b) If the Contractor issues a notice under clauses 6.12(a)(iii) or 6.12(a)(iv), the Principal may:

(i) confirm that the direction constitutes or involves a Variation, or entitles the Contractor to make a Claim (other than an Excluded Claim), by the giving of a notice under this clause 6.12(b)(i), in which case the Contractor must comply with the direction;

(ii) deny that the direction constitutes or involves a Variation, or entitles the Contractor to make a Claim (including an Excluded Claim), by the giving of a notice under this clause 6.12(b)(ii), in which case the Contractor:

(A) must comply with the direction irrespective of any Claim or Dispute in relation to the direction or any part of it; and

(B) may issue a notice of dispute under clause 15.2;
(iii) deny that the direction constitutes or involves a Variation or entitles the Contractor to make a Claim (including an Excluded Claim) by giving a notice under this clause 6.12(b)(iii), in which case the Contractor must:

(A) issue a notice of dispute under clause 15.2; and
(B) not comply with the direction unless and until:

(1) the Dispute is settled or determined under clause 15;
    and
(2) the Principal’s Representative subsequently directs the Contractor to comply with the direction or any part of it; or

(iv) withdraw the direction by giving a notice under this clause 6.12(b)(iv).

6.13 Authority Approvals for Variations

(a) Subject to clause 6.13(b), the Contractor must apply for and obtain all:

(i) necessary amendments or modifications to any existing Authority Approval; and
(ii) new Authority Approvals that may be, required for the execution of a Variation.

(b) Where the amendment or modification to any Authority Approval required for the execution of the Variation relates to any Authority Approval specified in Schedule 14, the Contractor must:

(i) carry out and provide to the Principal all surveys, investigations, reports, studies:

(A) requested by the Principal’s Representative;
(B) to the standard directed by the Principal’s Representative; and
(C) within the time directed by the Principal’s Representative; and

(ii) provide whatever other assistance and information the Principal’s Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Authority Approval.

(c) The Contractor must implement the Variation once the Authority Approvals referred to in this clause 6.13 have been amended, modified, or granted to permit the Variation to be implemented.
7. Manufacturing, Installation and Delivery Obligations

7.1 General manufacturing and installation obligations

(a) The Contractor must manufacture, supply and install the Equipment required for the Works and Services:

(i) in accordance with:

(A) subject to clause 1.4, the Statement of Work, the Contractor's Technical Proposal and any Design Documentation that has been prepared by the Contractor in accordance with the requirements of this Deed and, in respect of which:

(1) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(c)(iii)(C); or

(2) the relevant period of time in clause 9.14(c)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and the Principal's Representative has not issued a notice under clause 9.14(d)(iii));

(B) any direction of the Principal's Representative given or purported to be given under a provision of this Deed; and

(C) the other requirements of this Deed (including any performance guarantees or other performance levels or performance requirements stated in this Deed); and

(ii) so that the Simulator Upgrade and each Consist is and will remain at all relevant times fit for its intended purposes.

The Contractor warrants that each of the Simulator Upgrade and each Consist will:

(iii) upon Completion, be fit for their intended purposes; and

(iv) remain at all relevant times fit for their intended purposes.

(b) If there is any ambiguity, discrepancy or inconsistency between this Deed (including the Contractor’s Technical Proposal) and any Design Documentation which has been prepared by the Contractor and not rejected by the Principal's Representative under clause 9.14, then, unless otherwise directed by the Principal's Representative, the requirements of this Deed will prevail.
(c) At the times stated in the Statement of Work, and as a condition precedent to Completion of the Simulator Upgrade and of each Consist, the Contractor must submit to the Principal’s Representative a Contractor’s Certificate of Manufacturing and Installation Compliance, with:

(i) a register of management plans, method statements, and inspection and test plans;

(ii) a register of records of all compliance and other associated test records showing achievement of the acceptance criteria identified in the above inspection and test plans;

(iii) a register of deficiency notices; and

(iv) a register of concessions granted for non-conforming work.

7.2 All Work Included

Except in respect of any Principal Supplied Items and the Testing and Commissioning Tools the Contractor:

(a) warrants it has allowed for the provision of;

(b) must undertake and provide; and

(c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Deed, relating to the provision of,

all work, equipment, labour and materials necessary for the Works and Services, whether or not expressly mentioned in this Deed.

7.3 Provisional Sum Work

(a) For each item of Provisional Sum Work, the Principal’s Representative:

(i) may at any time:

(A) direct the Contractor to provide:

(1) a reasonable estimate of the Contractor’s costs of carrying out the Provisional Sum Work, including sufficient information to support the estimate; and

(2) details of the amount by which the Contractor proposes the Contract Sum be adjusted; and

(B) agree (or negotiate an agreement) with the Contractor in respect of its proposed adjustment to the Contract Sum under clause 7.3(a)(i)(A) for the item of Provisional Sum Work, but nothing in this clause 7.3(a)(i)(B) oblige the Principal’s Representative to agree on an adjustment to the Contract
Sum with the Contractor prior to the Principal's Representative exercising its rights under clause 7.3(a)(ii); and

(ii) will give the Contractor a direction either:

(A) requiring the Contractor to proceed with the item of Provisional Sum Work; or

(B) deleting the item of Provisional Sum Work.

(b) Where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work, the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:

(i) the amount allowed for the item of Provisional Sum Work in Schedule 1; and

(ii) either:

(A) an amount agreed between the Contractor and the Principal's Representative under clause 7.3(a)(i) or otherwise; or

(B) if they fail to agree, an amount determined by the Principal's Representative:

(1) on the basis set out in clause 6.4(b); or

(2) if the Principal's Representative directs that the item of Provisional Sum Work is to be carried out as daywork, under clause 6.7,

as if the item of Provisional Sum Work were a Variation, provided that the amount determined under this clause 7.3(b)(ii)(B) will not include the percentage referred to in clause 6.4(b)(ii)(A) but will include the relevant percentage in Schedule 1 for Overhead Costs and profit of the Contractor.

(c) Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:

(i) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Schedule 1;

(ii) the Principal may thereafter either carry out the item of Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and

(iii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with the deletion of the item of Provisional Sum Work.
7.4 Co-operation with Other Contractors

Without limiting or being limited by clause 2.8, the Contractor must:

(a) allow Other Contractors access to the Installation Facility;
(b) permit Other Contractors to carry out their work;
(c) fully co-operate with Other Contractors;
(d) carefully coordinate and interface the Works and Services with the work carried out or to be carried out by Other Contractors; and
(e) carry out the Works and Services so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.

The Principal must procure from each Other Contractor a deed poll in the form set out in Schedule 12, executed by the Other Contractor in favour of the Contractor.

7.5 As-installed drawings

The Contractor must, as a condition precedent to Completion of the Simulator Upgrade or any Consist, and as otherwise required by the Principal's Representative, submit to the Principal's Representative all as-installed drawings for the Simulator Upgrade and for the Equipment installed and the modifications performed by the Contractor under this Deed to the Cars and for any equipment required for the operation and maintenance of the Cars in such format as may be required by the Principal's Representative.

7.6 Safety

(a) The Contractor must carry out the Works and Services:

(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.

If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Works and Services, the Principal's Representative may direct the Contractor to change its manner of working or to cease working.

(b) The Contractor must:

(i) ensure that in carrying out the Works and Services:

(A) it complies with all Law (including the Rail Safety National Law and the WHS Legislation) and other requirements of this Deed for work health, safety and rehabilitation management;
(B) all Subcontractors comply with the requirements referred to in this clause 7.6 and their respective obligations under the Rail Safety National Law and the WHS Legislation; and

(C) it complies with its obligations 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 Principal’s Representative 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 Works and Services;

(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 Principal’s Representative with the written assurances obtained pursuant to subparagraph (iii), together with written assurance(s) from the Contractor about the Contractor’s ongoing compliance with the WHS Legislation;

(v) provide the Principal’s Representative with a written report at each meeting in accordance with clause 9.9, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.6), or any other relevant matters as the Principal’s Representative may require from time to time, including a summary of the Contractor’s compliance with the WHS Legislation;

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

(vii) exercise a duty of the utmost good faith to the Principal in performing the Works and Services to enable the Principal to discharge the Principal’s duties under the WHS Legislation;

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

(ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 7.6.

(c) Without limiting clause 16.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Cars, the Environment, other property or the health or safety of people.
If the action taken by the Principal is action which the Contractor was required to take under this Deed but did not take, the amount of any penalty, fine, damage, expense, cost, loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:

(i) taking the action contemplated in this clause 7.6(c); or
(ii) the Contractor's failure to take that action,
will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.

7.7 Contractor's Plant and Equipment and Materials Removal

The Contractor must not remove from the Installation Facility or the Works and Services any:

(a) significant materials or major items of Contractor's Plant and Equipment; or
(b) materials or Contractor's Plant and Equipment specified in any written notice issued by the Principal's Representative,
without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

7.8 Train Paths

All Trains Paths required by the Contractor will be organised by the Principal at no cost to the Contractor in accordance with the procedures described in Schedule 3.

7.9 Principal Supplied Items

(a) The Principal must make available the Principal Supplied Items:

(i) at its own cost;
(ii) at the respective places referred to in Schedule 20; and
(iii) by the respective date referred to in Schedule 20.

(b) The Contractor agrees that, in respect of Principal Supplied Items, the: 

(i) Contractor:

(A) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item, except under clause 10 if:

(1) a Principal Supplied Item is not made available by the relevant date set out in Schedule 20; or

(2) the Principal Supplied Item is not fit for its intended purpose and causes a delay in the achievement of Completion; and
(B) is not relieved from and remains liable for complying with, all of its obligations under this Deed, despite the Principal making available the Principal Supplied Items;

(ii) Contractor must:

(A) at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 20 to the Installation Facility; and

(B) as part of the Works and Services, incorporate each Principal Supplied Item into the Cars; and

(iii) Sale of Goods Act 1923 (NSW) does not apply to the Principal’s obligations under clause 7.9(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items.

7.10 Testing and Commissioning Tools

(a) The Principal must make available the Testing and Commissioning Tools:

(i) at its own cost;

(ii) at the respective places referred to in Schedule 29; and

(iii) by the respective date referred to in Schedule 29.

(b) The Contractor agrees that, in respect of Testing and Commissioning Tools, the:

(i) Contractor:

(A) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Testing and Commissioning Tools, except under clause 10 if:

(1) a Testing and Commissioning Tool is not made available by the relevant date set out in Schedule 29; or

(2) the Testing and Commissioning Tool is not fit for its intended purpose and causes a delay in the achievement of Completion; and

(B) is not relieved from and remains liable for complying with, all of its obligations under this Deed, despite the Principal making available the Testing and Commissioning Tools;

(ii) Contractor must:
(A) at its own cost and risk, transport each Testing and Commissioning Tool from the respective place referred to in Schedule 29 to the Installation Facility;

(B) not use the Testing and Commissioning Tools for any purpose other than the performance of the Works and Services, and

(C) return the Testing and Commissioning Tools upon completion of all Tests to the Sydney Trains Clyde warehouse or such other location notified by the Principal's Representative;

(iii) Sale of Goods Act 1923 (NSW) does not apply to the Principal's obligations under clause 7.10(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Testing and Commissioning Tools; and

(iv) the Testing and Commissioning Tools will at all times remain the property of the Principal.

8. Defects and Warranty Period

8.1 Defects Liability

Subject to clause 8.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.

Without limiting the previous paragraph, the Contractor must rectify any Defects in the Simulator Upgrade and any Consist existing at Completion as soon as possible after Completion.

8.2 Defect Notification

If at any time prior to the expiration of any Warranty Period (including for the avoidance of doubt prior to Completion of the Simulator Upgrade or any Consist), the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction identifying the Defect and doing one or more of the following:

(a) requiring the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;

(b) requiring the Contractor to investigate and report on any Defect (or any part of it) with the Contractor's proposed methods and methodologies for rectification and specifying the form of the report and the time within which this must be carried out;

(c) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out;
(d) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or

(e) in respect of any Defect:
   (i) to which clause 8.3(d) applies; or
   (ii) discovered during a Warranty Period, whether or not a direction has first been given under clause 8.2(a) or 8.2(c),

advising the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a Variation to overcome the Defect, or any part of it.

8.3 Rectification of Defect

(a) If:
   (i) a direction is given under clauses 8.2(a), 8.2(b) or 8.2(c) (subject to clause 8.3(f)); and
   (ii) the Contractor considers that the Defect referred to in the direction given under clauses 8.2(a), 8.2(b) or 8.2(c) is not a Defect,

then the Contractor must issue the notice referred to in clause 17.2 prior to complying with the direction.

(b) If the Contractor issues the notice referred to in clause 8.3(a), the Principal's Representative may:
   (i) confirm that the direction entitles the Contractor to make a Claim (other than an Excluded Claim) by the giving of a notice under this clause 8.3(b)(i), which notice will also confirm that clause 8.3(c) applies;
   (ii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(ii), which notice will also confirm that clause 8.3(c) applies, and the Contractor may issue a notice of dispute under clause 15.2;
   (iii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(iii), in which case the Contractor must:
      (A) issue a notice of dispute under clause 15.2; and
      (B) not comply with the direction unless and until:
          (1) the Dispute is settled or determined under clause 15; and
(2) the Principal’s Representative subsequently gives
notice to the Contractor that clause 8.3(c) applies; or
(iv) withdraw the direction by giving a notice under this clause 8.3(b)(iv).

(c) If the Principal’s Representative gives a notice under clause 8.2(a), 8.2(b) or
8.2(c) (where clause 8.3(a)(ii) is not applicable) or clause 8.3(b)(i), 8.3(b)(ii)
or 8.3(b)(iii)(B)(2), the Contractor must rectify the Defect (or the part of it
notified), investigate and report or carry out the Variation work (as the case
may be):

(i) within the time specified in the Principal’s Representative’s direction
which will generally be limited to the periods during which the
operational needs from time to time of any Rail Transport Agency will
allow for access to the Consists;

(ii) if after Completion of the Works and Services in respect of a Consist:

(A) at other times otherwise agreed with the Principal’s
Representative;

(B) in accordance with the requirements of any Rail Transport
Agency and any other relevant Authority;

(C) so as to minimise the impact on the use of the Consist;

(D) in a manner which causes as little inconvenience as possible
to users of the Consist or the public; and

(E) at a location notified by the Principal’s Representative; and

(iii) regardless of the existence of a Dispute as to whether the Principal’s
Representative’s notice is valid or whether the subject matter of the
notice is in fact a Defect.

(d) If the Contractor does not comply with clause 8.3(c), the Principal’s
Representative may, without prejudice to any other rights that the Principal
may have against the Contractor with respect to the Defect under this Deed
or otherwise at Law, give the Contractor a direction under clause 8.2(e) and
have the rectification or Variation work carried out at the Contractor’s
expense, and the cost of the rectification or Variation work incurred by the
Principal will be a debt due from the Contractor to the Principal.

(e) The Contractor acknowledges and agrees that:

(i) it is responsible for liaising with, and obtaining from, any Rail
Transport Agency any Train Paths or access to any premises that is
necessary for the Contractor to:

(A) rectify Defects; or
investigate and report in relation to any Defects;

(ii) due to the operational needs of any Rail Transport Agency and/or other operational needs:

(A) the Contractor, in performing the activities set out in clause 8.3(e)(i), may be obliged to work in an electrified environment;

(B) access may be limited, delayed and rescheduled from time to time;

(C) the period of access may be compressed or limited to periods of line shutdown at night, on weekends or on public holidays; and

(D) the Principal's Representative may direct the Contractor as to:

(1) the times and dates for; and

(2) the work method that must be employed in, carrying out Defect rectification works;

(iii) its obligation to rectify Defects survives the expiry of the Warranty Period where it has received a direction under clause 8.2 prior to the expiration of any Warranty Period;

(iv) any costs incurred in moving a Consist to the location notified by the Principal's Representative under clause 8.3(c)(ii)(E) will be a debt due from the Contractor to the Principal; and

(v) it will not be relieved of its liabilities or responsibilities whether under this Deed or otherwise according to Law by reason of the matters set out in this clause 8.3(e).

(f) Where a direction is given under clause 8.2(a), the Contractor will not be entitled to make a Claim against the Principal for rectifying the Defect (or the part notified) and must bear all costs, losses and expenses suffered or incurred in rectifying the Defect unless:

(i) the Principal's Representative has issued a notice under clause 8.3(b)(i); or

(ii) the Principal's Representative has issued a notice under clause 8.3(b)(ii), in which case any entitlement which the Contractor has is not affected by proceeding as directed under clause 8.3(c) before the determination of any Dispute.
8.4 Claim for Variation

Where a Variation to overcome a Defect has been directed under clause 8.2(c):

(a) the Principal's Representative will determine:

(i) the value of the Variation work in accordance with clause 6.4; and

(ii) the cost of rectifying the Defect (or the part notified), valued as if the work involved in the rectification of the Defect (or the part notified) were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applies;

(b) the Contract Sum will be adjusted by the difference between the valuations under sub-paragraphs (a)(i) and (a)(ii) as follows:

(i) if the value under sub-paragraph (a)(i) is greater than the cost under sub-paragraph (a)(ii), the Contract Sum will be increased by the difference; or

(ii) if the cost under sub-paragraph (a)(ii) is greater than the value under sub-paragraph (a)(i), the Contract Sum will be decreased by the difference; and

(c) the Contractor will not be entitled to an extension of time to any Date for Portion Completion.

8.5 Acceptance of Work

If a direction is given under clause 8.2(d):

(a) where the value to the Principal of the Cars is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified), the Contract Sum will be reduced by the amount determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Cars; or

(b) where the value to the Principal of the Cars increases because of the acceptance of the Defect (or the part notified):

(i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works and Services; and

(ii) the Contract Sum will:

(A) be reduced by the amount determined by the Principal's Representative, where that amount is negative; and
8.6 **Extension of Warranty Period**

(a) The Principal's Representative may give the Contractor a notice under clauses 8.2(a) or 8.2(c) at any time prior to the expiration of any Warranty Period.

(b) If the Contractor:

(i) rectifies a Defect (or the part notified) following receipt of a notice under clause 8.2(a);

(ii) completes the Variation work following receipt of a notice under clause 8.2(c); or

(iii) rectifies a Defect or completes a Variation to overcome a Defect in the absence of any notice from the Principal's Representative under clause 8.2,

then the relevant Warranty Period for the work required will be extended until the later of:

(iv) the date of expiry of the original Warranty Period; and

(v) the date set out in Schedule 1.

8.7 **Defect Rectification by Other Contractor**

Where the Principal's Representative advises the Contractor (under clause 8.2(e)) that an Other Contractor has or will be rectifying a Defect or any part of it, or has or will carry out a Variation to overcome the Defect or any part of it:

(a) without limiting or otherwise affecting clauses 2.8, 2.10 or 7.4, the Contractor must not impede the Other Contractor from having sufficient access to rectify the Defect or carrying out the Variation;

(b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with, the Other Contractor rectifying the Defect or carrying out the Variation, will be a debt due from the Contractor to the Principal; and

(c) the Contractor acknowledges and agrees that:

(i) no act or omission by such Other Contractor in rectifying a Defect or carrying out the Variation will, whether or not it causes any delay or disruption to the Works and Services, constitute an Act of Prevention;

(ii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
(A) the Other Contractor rectifying the Defect or carrying out a Variation to overcome the Defect; or
(B) any other act or omission of the Other Contractor; and
(iii) rectification of a Defect by an Other Contractor does not relieve the Contractor or otherwise affect any of its obligations under this Deed.

8.8 Rights Not Affected

Neither the Principal's rights, nor the Contractor's liability, whether under this Deed or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Warranty Period, will be in any way affected or limited by:
(a) the rights conferred upon the Principal or the Principal's Representative by this clause 8 or any other provision of this Deed;
(b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
(c) any notice or direction of the Principal's Representative under clause 8.2.

9. Administration

9.1 Principal's Representative

The Principal must ensure that at all times until Final Completion there is a Principal's Representative. The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Deed if exercised or made (or if it is not exercised or made) by the Principal's Representative:
(a) independently;
(b) after consultation with the Principal and its advisers; or
(c) as directed by the Principal.

Any control or influence exercised by the Principal over the Principal's Representative does not:
(d) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision. The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Deed.

Except where this Deed otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.

9.2 Replacement of the Principal's Representative

The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the Contractor of that appointment.

Any substitute Principal's Representative appointed under this clause 9.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

9.3 Delegation of Functions

(a) The Principal's Representative may:

(i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this Deed;

(ii) not appoint more than one person to exercise the same function in the same location under this Deed; and

(iii) revoke any appointment under clause 9.3(a)(i) by notice in writing to the Contractor.

(b) The Principal's Representative may continue to exercise a function under this Deed despite appointing another person to exercise the function under clause 9.3(a)(i).

(c) All references in this Deed to the Principal's Representative include a reference to an appointee appointed under clause 9.3(a)(i).

9.4 NSW Code

The Contractor must at all times comply with, and meet any obligations imposed by the NSW Code.
9.5 Contractor's Personnel

(a) The Contractor must:

(i) notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Deed is the relevant person listed in Schedule 1) and of any subsequent changes;

(ii) ensure that the Contractor's Representative is appointed and available on a full-time basis and provides due and proper supervision of the performance of the Works and Services at all places (whether at the Installation Facility or otherwise) at which the Works and Services are taking place;

(iii) provide personnel suitably qualified, knowledgeable, experienced and skilled in their roles in performing its obligations under this Deed; and

(iv) ensure that its personnel (including those referred to in clause 9.5(b)) as a team carry out the Works and Services in a manner that is professional and co-operative, and recognises the interests and needs of the public and other stakeholders in the delivery of the Works and Services.

(b) The Contractor must:

(i) either:

(A) employ the individuals nominated by the Contractor and listed in Schedule 1 in the positions specified in Schedule 1 or equivalent positions; or

(B) where no individuals are specified in Schedule 1 for a position specified in Schedule 1, submit to the Principal's Representative the names of the persons which the Contractor proposes to employ for the roles specified in Schedule 1 for the Principal's Representative's approval, such approval not to be withheld unreasonably. The Contractor must ensure that the persons nominated are suitably qualified and experienced for the relevant position;

(ii) only replace the individuals referred to in clause 9.5(b)(i):

(A) if the individual:

(1) dies;

(2) becomes unable to continue in the positions due to illness;
(3) resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the Corporations Act 2001 (Cth))); or

(4) becomes the subject of a direction under clause 9.5(c);

(B) with personnel who are of at least equivalent experience, ability, knowledge and expertise; and

(C) with the Principal's Representative's prior written approval, which will not be unreasonably withheld; and

(iii) without limiting clauses 9.5(b)(i) and 9.5(b)(ii), ensure that the:

(A) positions specified in Schedule 1 as full-time, dedicated positions are full-time, dedicated positions; and

(B) individuals who occupy the positions specified in Schedule 1 apply themselves fully to the position to the exclusion of all other work,

until Completion of the last Consist to achieve Completion or such earlier time as may be approved by the Principal's Representative.

(c) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.5(a) or clause 9.5(b)) from the Works and Services. The Contractor must then cease to engage that person in the Works and Services and must appoint a replacement.

(d) The Contractor must ensure that any person the subject of a direction under clause 9.5(c) is not again employed in the Works and Services.

(e) Any direction under clause 9.1 will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.

9.6 Meetings

(a) The Contractor must convene meetings at the Installation Facility or such other place (or places) as the Principal's Representative may direct:

(i) prior to the Date of Portion Completion of the last Portion to reach Portion Completion (including during the design period):

(A) weekly or such longer intervals; and
(B) at such other times,
as may be directed in writing by the Principal's Representative; and
(ii) at monthly intervals after the Date of Portion Completion of the last
Portion to reach Completion until all Warranty Periods (including any
extension under clause 8.6), have expired or at such other intervals
as may otherwise be agreed.

(b) The Contractor must ensure that the meetings are attended by:
(i) the Contractor's Representative (or his or her delegate); and
(ii) any other person (including any Subcontractor) required by the
Principal's Representative.

The Principal's Representative (or its delegate) will attend all meetings. The
Principal's Representative must appoint the chairperson for the meetings.

(c) The chairperson of the meetings must prepare and give the Principal's
Representative and all other persons who attended the meeting (and any
other person nominated by the Principal's Representative) minutes of the
meeting within 48 hours after the meeting. The minutes of the meeting shall
not be relied on by either party as a document constituting or evidencing the
giving or receipt of a notice required to be given under or in accordance with
this Deed.

(d) The purpose of the meetings will include:
(i) the receipt of reports on, and the review and consideration of, the
matters set out in clause 9.8;
(ii) the receipt of reports on, and the review of the status and
implementation of, the Contract Management Plan, Design
Documentation and other plans and documents prepared by the
Contractor under this Deed;
(iii) the consideration of corrective actions to prevent and rectify defective
work;
(iv) the consideration of any other matter that the Principal's
Representative requires; and
(v) review of the design of the Cars and review of the Design
Documentation.

9.7 Contract Control Group

The Contract Control Group will comprise:

(a) the Principal's Representative;
(b) the Contractor's Representative, a senior representative of the Contractor not involved in the day to day Works and Services, and any of the Contractor's key personnel nominated by the Principal's Representative;

(c) representatives of any of the Contractor's Subcontractors that the Principal's Representative reasonably requires; and

(d) any other person the Principal's Representative reasonably requires from time to time.

9.8 Contract Control Group Functions

Contract Control Group functions will include the oversight and review of, and response to, reports on:

(a) the progress of the Works and Services relative to the Contractor Program and Contractor's other programs, and the performance of the Contractor under this Deed;

(b) issues arising out of community liaison and community concerns;

(c) the Contractor's compliance or non-compliance with the Contract Management Plan and this Deed, and related and consequential issues;

(d) matters arising from the completion by the Contractor of the design of the Cars and the Design Documentation, including any proposed design changes;

(e) value engineering opportunities and potential cost savings consistent with the maintaining of quality and minimising life cycle costs;

(f) environmental management issues;

(g) safety and safety management issues;

(h) disputes that have arisen, or are likely to arise, between the Principal and the Contractor or the Principal's Representative and the Contractor; and

(i) other matters as determined or directed by the Principal's Representative.

9.9 Contract Control Group Meetings

(a) The persons nominated in clauses 9.7(b), 9.7(c) and 9.7(d) must attend all Contract Control Group meetings.

(b) Contract Control Group meetings will be held on a:

(i) monthly basis prior to the Date of Portion Completion of the last Portion to reach Portion Completion; and

(ii) quarterly basis thereafter until Final Completion, or at such other intervals as the Principal and the Contractor agree in writing.
(c) The Principal's Representative (or his or her nominee) will attend and chair the Contract Control Group meetings.

9.10 Contractor's Reporting Obligations

The Contractor:

(a) must on the fifth Business Day of each month, give the Principal's Representative (in accordance with clause 9.10(b)) a written report containing the detailed information specified in the Statement of Work;

(b) must provide for the purposes of clause 9.10(a) (unless otherwise directed by the Principal's Representative), the number and form of copies of the written report specified in Schedule 1;

(c) acknowledges that it is not entitled to make, and the Principal will not be liable upon, any Claim in the written report referred to in clause 9.10(a);

(d) must provide and maintain a daily record of the status of the work and the conditions at the Installation Facility and other sites involved in the Works and Services, including the resources employed and the issues affecting the progress of the Works and Services, and provide a copy of that record to the Principal's Representative for each week's Works and Services;

(e) must provide a current projected cash flow, each three months or as required by the Principal's Representative, including a planned versus actual cash flow comparison (including the estimated versus actual value of work completed for each calendar month); and

(f) must promptly give the Principal's Representative, when requested to do so, any information that the Principal's Representative reasonably requires (including design calculations and other design details) in respect of the matters referred to in clause 9.10(a).

9.11 Complaints and Notification

(a) The Contractor must immediately notify the Principal in writing if any:

(i) complaint is made or any proceedings are instituted or threatened;

(ii) letter of demand is issued; or

(iii) order or direction is made,

by anyone (including any Authority) against the Contractor or any of its Subcontractors or their respective employees in respect of any aspect of the carrying out of the Works and Services, including:
(iv) the Contractor's non-compliance with any Authority Approval (or any condition or requirement thereunder), any Third Party Agreement, the Contract Management Plan or any Law regarding the Environment;

(v) the implementation of the Contract Management Plan, including the Contractor's community liaison plan; or

(vi) loss or damage of the kind referred to in clause 13.10.

(b) The Contractor must (at its own cost) respond to complaints and enquiries received regarding the Works and Services and that of its Subcontractors in accordance with the Statement of Work.

9.12 Industrial Relations

The Contractor must in carrying out the Works and Services:

(a) assume sole responsibility for and manage all aspects of industrial relations for the Works and Services;

(b) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;

(c) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Works and Services and Other Contractors' activities; and

(d) without limiting clause 2.3(b), comply with all the requirements of the NSW Code.

The Contractor warrants and acknowledges that it has allowed in the Original Contract Price for all the costs and expenses involved with complying with all the requirements of this Deed relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

9.13 Document Management and Transmission

(a) The Contractor must manage and transmit documents, including using the Principal's electronic document management tool specified in the Statement of Work, in accordance with the processes, procedures and systems in the CDRL and the Contract Management Plan.

(b) Documents supplied to the Contractor will remain the property of the Principal and must be returned by the Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Works and Services.

(c) The Contractor must keep all the Contractor's records relating to the Works and Services in a secure and fire proof storage.
(d) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 9.13.

(e) The Contractor must ensure that any Contract Documentation that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:

(i) permit access to or use of a computer system by a third person not authorised by the Principal; or

(ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

9.14 Submission for Review by the Principal

(a) The Contractor must submit the Contract Management Plan, the Design Documentation, the Contractor Program, the documents identified in the CDRL, results of all Tests and any other document (each of which in this clause 9.14, will be referred to as a Document) which is required to be submitted for the review of the Principal or the Principal's Representative under a provision of this Deed:

(i) in accordance with the times stated in this Deed or where no times are stated progressively and in a timely manner to ensure that the Works and Services are commenced, progressed and completed by the times required under this Deed, and by the times or within the periods:

(A) identified in the Statement of Work for a specific Document or identified in the Contractor Program which is not rejected by the Principal's Representative; or

(B) in the absence of a time or period in the Statement of Work or in the Contractor Program, required by the Principal's Representative; and

(ii) under cover of a written notice entitled "Submit for Review", which identifies:

(A) the Document; and

(B) the provision of this Deed under which the Document is submitted.
(b) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:

(i) the Document covers, fully details and co-ordinates the whole of discrete areas of work or services so as to allow the area of work or services to be fully understood; and

(ii) the Contractor has otherwise complied with this clause 9.14, in addition to any other requirement of this Deed relating to the submission of that Document.

(c) The Principal's Representative may:

(i) direct that any Document the Contractor:

(A) previously submitted is a Document that is to be reviewed under the provisions of this clause 9.14; and

(B) is obliged to submit will be reviewed under the provisions of this clause 9.14;

(ii) after the submission of a Document that satisfies the requirements of clause 9.14(b), review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and

(iii) where a Document is submitted or resubmitted in accordance with a program that has not been rejected by the Principal's Representative:

(A) reject the Document (and state its reasons) if in its opinion:

(1) the Document (or any part) does not comply with the requirements of this Deed; or

(2) to the extent the Deed does not specify requirements for a Document, the Document (or any part) is not in accordance with Good Industry Practice or will otherwise result in Works and Services not being fit for their intended purpose;

(B) make comments on the Document, or request clarification or additional information; or

(C) notify the Contractor that it has no (or has no further) comments to make,

within relevantly, the later of:

(D) where a time or period is stated in the Statement of Work for a specific Document, that time or the expiry of that period; and

(E) 15 Business Days from submission for all other Documents.
(ca) A rejection of Design Documentation under clause 9.14(c)(iii)(A) will constitute a Variation only to the extent that those parts of the Design Documentation submitted by the Contractor pursuant to this clause 9.14 which will need to be changed by the Contractor to accommodate the reasons given by the Principal’s Representative pursuant to clause 9.14(c)(iii)(A), complied with the requirements of the Deed.

(d) If any Document is:

(i) rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal’s Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 9.14 will re-apply; or

(ii) not rejected and the Principal’s Representative responds to the submission with comments, or requests clarification or additional information,

(A) where the Document the subject of the comments or request was submitted as part of the Preliminary Design Review Submission, the Contractor may continue to develop the Document without the need to separately respond to the comments or request, provided that the comments or requests are addressed on or before Critical Design Review Submission; and

(B) otherwise, the Contractor must respond to the comments or request within 10 Business Days or such other period as may be directed by the Principal’s Representative.

If the Contractor:

(iii) responds to the Principal’s Representative’s comments or request within the period referred to in sub-paragraph (ii)(B), if the Principal’s Representative is not satisfied with the Contractor’s response, the Principal’s Representative must within 5 Business Days of receipt of the Contractor’s response notify the Contractor that it is not satisfied that the response adequately deals with the comments; or

(iv) fails to respond to the Principal’s Representative’s comments or request within the period referred to in sub-paragraph (ii)(B) or the Principal’s Representative gives a notice under clause 9.14(d)(iii):

(A) the Document will be deemed to be rejected; and

(B) clause 9.14(d)(i) will re-apply.
(e) Where the Document being submitted under clause 9.14(a) is Design Documentation, the Contractor:

(i) must where the design the subject of the Design Documentation must have Authority Approval prior to being implemented, submit evidence with the Document (to the reasonable satisfaction of the Principal's Representative) of the relevant Authority Approval; and

(ii) sequentially submit documents capable of permitting the System Definition Review, Preliminary Design Review and Critical Design Review occur in accordance with the process required by the Statement of Work.

(f) The Contractor must not amend for manufacturing and installation purposes any Document that has been submitted to the Principal's Representative and, in respect of which:

(i) in the case of Design Documentation, the Document has been reviewed in accordance with this clause 9.14 and the Contractor is permitted to use the Document; or

(ii) otherwise:

(A) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(c)(iii)(C); or

(B) the relevant period of time in clause 9.14(c)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and the Principal's Representative has not issued a notice under clause 9.14(d)(iii)),

unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 9.14 will re-apply.

(g) The Principal's Representative and the Principal do not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this Deed. Any references in this Deed to the Principal or the Principal's Representative "approving", "consenting to" or "not rejecting" any Design Documentation (or any equivalent terminology) or their use by the Principal or the Principal's Representative or the processes referred to in this Deed involving those concepts occurring during development of the Design Documentation do not relieve the Contractor from its liability under this Deed in connection with the Design Documentation.
(h) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Deed in any Document submitted.

(i) No review of, approval of, comment upon or rejection of, or failure to review, approve, or comment upon or reject, a Document prepared by the Contractor, or any other direction (including any direction given under clause 9.14(j)(iii)) by the Principal's Representative in connection with the Document, will:

(i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a Variation Order and describes the nature of the Variation in accordance with clause 6.2(a);

(ii) relieve the Contractor from or alter its liabilities or obligations, whether under this Deed or otherwise according to any Law; or

(iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to any Law.

(j) In considering, reviewing, commenting upon, or rejecting any Document, the Principal's Representative may:

(i) consult with;

(ii) take into account any views or requirements of; and

(iii) direct the Contractor to comply with the lawful requirements of, any relevant Authority.

(k) The Contractor acknowledges and agrees that:

(i) it has made allowances in the Contractor Program for the time required for:

(A) all relevant Authorities to review its design (including the Configuration Control Board);

(B) the submission, review, comment, rejection and all other design development processes contemplated by the Third Party Agreements; and

(C) obtaining asset owner's acceptance of the design as contemplated by Statement of Work; and

(ii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way connected with any delay in the design
development process as contemplated by this clause 9.14(k) or the process contemplated by the Statement of Work.

(i) The restrictions on the commencement of any part of the Works and Services in this clause 9.14 are in addition to any restrictions that exist elsewhere in this Deed, including in the Statement of Work and under any Third Party Agreement.

(m) For the purposes of calculating time under this clause 9.14 the days between 24 December and 7 January shall not be counted.

(n) Unless otherwise directed by the Principal's Representative, the Contractor must provide the number and form of copies specified in Schedule 1 of each Document which is submitted for review under this clause 9.14.

9.15 Work Method

Whether or not this Deed prescribes a particular work method or a work method is otherwise a part of this Deed or reviewed or approved (expressly or impliedly) by the Principal's Representative, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of the Principal's Representative, uses another work method will:

(a) not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and

(b) not cause this Deed to be frustrated.

9.16 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Deed.

The Contractor acknowledges that any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work.

The Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Contractor's performance under this Deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

The Contractor acknowledges and agrees that:

(a) if any of the Works and Services, or the activities of any of the Contractor's personnel, in connection with the Works and Services (the Relevant Matters) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;

(b) if, despite the operation of clause 9.17(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the Contractor;

(c) if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
   (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
   (ii) otherwise as requested by the Principal from time to time;

(d) the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;

(e) the Contractor must:
   (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 9.17, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
   (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to
any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);

(f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.17 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and

(g) nothing in this clause 9.17 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

10. Time and Progress

10.1 Rate of Progress

The Contractor must:

(a) regularly and diligently progress the Works and Services;

(b) proceed with the Works and Services with due expedition and without delay; and

(c) achieve Portion Completion of each Portion by the relevant Date for Portion Completion.

Without limiting clause 10.14(b), the Contractor must not suspend the progress of the whole or any part of Works and Services except where permitted or required under this Deed.

Without limiting the next paragraphs of this clause 10.1 or clause 10.3, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Works and Services in accordance with this Deed.

The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Deed.

The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Works and Services must be performed. If the Contractor can reasonably comply with the direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's
Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.

If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be valued as if it were a Variation except where the direction was necessary because of, or arose out of, or in any way in connection with, a failure by the Contractor to comply with its obligations under this Deed. Such costs shall be the Contractor’s sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 10.1.

10.2 The Contractor’s Programming Obligations

The Contractor:

(a) acknowledges and agrees that it has made and will make adequate allowances in the Contractor Program for:
   (i) the delays referred to in clause 10.6;
   (ii) those parts of the Works and Services that may only be performed during a Train Path; and
   (iii) the high degree of interface, interaction, and integration of the Works and Services with the adaption of, and any work being (or to be) performed by, any relevant Rail Transport Agency during Testing;

(b) must prepare and provide a Contractor Program that complies with and includes the details required by this Deed, including the Statement of Work, and any requirements of the Principal’s Representative;

(c) must submit the Contractor Program to the Principal’s Representative for its review in accordance with clause 9.14 within the earlier of:
   (i) 45 Business Days after the Commencement Date; or
   (ii) any time required by the Statement of Work;

(d) must when directed to do so by the Principal’s Representative, prepare and submit to the Principal’s Representative specific detailed programs and schedules for the Works and Services within 5 Business Days of receipt of such a direction;

(e) must update, revise and submit to the Principal’s Representative an updated Contractor Program to allow for delays to non-critical activities, extensions of time granted by the Principal’s Representative to any Date for Portion Completion, the actual progress made by the Contractor, Variations and any
other changes to the Works and Services but excluding claims for extensions of time to any Date for Portion Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative:

(i) on a monthly basis; or
(ii) whenever directed to do so by the Principal's Representative;

(f) must prepare and provide for the Principal's Representative's information only versions of all Contractor Programs prepared in accordance with clause 10.2(e) that also allow for those claims for an extension of time to any Date for Portion Completion that have been made by the Contractor in accordance with clause 10.6 but to which the Principal's Representative has not yet responded in accordance with clause 10.10;

(g) must comply with the requirements of the Principal's Representative and its other obligations under this Deed in preparing and using programs, including the requirements in clause 9.14; and

(h) must not unreasonably depart from the current version of the Contractor Program that has been submitted to the Principal's Representative for review under clause 9.14 and, in respect of which:

(i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(c)(iii)(C); or
(ii) the relevant period of time in clause 9.14(c)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(d)).

Unless otherwise directed by the Principal's Representative, for all programs and schedules provided in accordance with this clause, the Contractor must provide:

(iii) 1 colour printed A3 sized original;
(iv) 3 colour printed A3 copies; and
(v) an electronic version on CD in both pdf and unlocked native format (with all logic links intact and nothing hidden or protected) accompanied by all associated files so that they can be reproduced by the Principal's Representative using Primavera P6.
10.3 Contractor Not Relieved

Without limiting clause 9.14, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor Program) prepared by the Contractor, by the Principal's Representative in connection with the program, will:

(a) relieve the Contractor from or alter its liabilities or obligations under this Deed, including the obligations under clause 10.1;

(b) evidence or constitute the notification of a delay or claiming of or the granting of an extension of time to any Date for Portion Completion, or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Works and Services; or

(c) affect the time for the performance of the Principal's or the Principal's Representative’s obligations under this Deed.

10.4 Compression by Contractor

If the Contractor chooses to compress the Works and Services or otherwise accelerate progress:

(a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Portion Completion before any Date for Portion Completion;

(b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and

(c) the Contractor does so at its own cost and risk.

10.5 Importance of Portion Completion on Time

The Contractor acknowledges:

(a) the importance of complying with its obligations under clause 10.1; and

(b) that a Date for Portion Completion will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 15.

10.6 Risk and Notice of Delay

(a) Except as expressly provided for in clause 10.10, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Works and Services and performance of its obligations under this Deed both before and after any Date for Portion Completion.

(b) The Contractor must within 5 days of the commencement of an occurrence causing any delay, or which is likely to cause delay, give the Principal's Representative written notice of any delay or likely delay to the carrying out
of the Works and Services, details of the cause and how any Date of Portion Completion is likely to be affected (if at all).

10.7 Entitlement to Claim Extension of Time

(a) If the Contractor is or will be delayed on or prior to the Date for Portion Completion of a Portion by reason of:
   (i) an Act of Prevention;
   (ii) a cause so described in Schedule 1; or
   (iii) a direction to suspend that satisfies clause 10.14(a)(ii),

   in a manner that will prevent it from achieving Portion Completion of the Portion by the relevant Date for Portion Completion, the Contractor may claim an extension of time to the relevant Date for Portion Completion.

(b) If the Contractor is, or will be, delayed after the Date for Portion Completion of a Portion by reason of an Act of Prevention in a manner which will delay it in achieving Portion Completion of a Portion, the Contractor may claim an extension of time to the relevant Date for Portion Completion.

10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

(a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal’s Representative for an extension of time to the relevant Date for Portion Completion, which:
   (i) gives detailed particulars of the:
      (A) delay and the occurrence causing the delay; and
      (B) activities that are critical to the maintenance of progress in the execution of the Works and Services; and
   (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:
      (A) conditions precedent to an extension of time in clause 10.9 have been met; and
      (B) occurrence will delay it in achieving Portion Completion in the manner described in clause 10.7; and

(b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal’s Representative:
(i) every 28 days after the first written claim, or such other period as may be approved by the Principal’s Representative in writing, until after the end of the effects of the delay; and

(ii) containing the information required by paragraph (a).

The Principal’s Representative may, within 14 days of receiving the Contractor’s claim or further claim for an extension of time for Portion Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 14 days of receiving such request, provide the Principal’s Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

Subject to clauses 10.16 and 10.17, it is a condition precedent to the Contractor’s entitlement to an extension of time to any relevant Date for Portion Completion that:

(a) the Contractor gives the notices and claims required by clauses 10.6(b) and 10.8 as required by those clauses;

(b) the Contractor complies with any request for additional information under clause 10.8 within the time required;

(c) the cause of the delay is beyond the reasonable control of the Contractor;

(d) the Contractor is actually, or will be, delayed:

(i) on or prior to the Date for Portion Completion of the Portion, by reason of one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or

(ii) after the Date for Portion Completion of the Portion, by reason of an Act of Prevention in the manner described in clause 10.7(b); and

(e) the Contractor is not given a direction to compress under clause 10.15.

If the Contractor fails to comply with the conditions precedent in this clause 10.9:

(f) the Principal will not be liable upon any Claim by the Contractor; and

(g) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

10.10 Extension of Time

(a) Subject to clauses 10.10(c), 10.16, 10.17 and 10.18, if the conditions precedent in clause 10.9 have been satisfied, the relevant Date for Portion Completion will be extended by a reasonable period determined by the
Principal's Representative, and notified to the Principal and the Contractor within 28 days after:

(i) the latest of the:
   (A) Contractor’s written claim under clause 10.8; and
   (B) provision by the Contractor of any additional information regarding the claim required under clause 10.8; or

(ii) where the Principal's Representative has given the Contractor a direction to compress under clause 10.15 and subsequently issued a notice under clause 10.16 withdrawing the direction to compress given under clause 10.15, the date of issue of the notice under clause 10.16.

(b) A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Portion Completion, or to grant an extension of time to any Date for Portion Completion within the relevant 28 day period, will not cause an affected Date for Portion Completion to be set at large, but nothing in this paragraph will prejudice any right of the Contractor to damages.

(c) The Principal's Representative will reduce any extension of time to the relevant Date for Portion Completion it would otherwise have determined under this clause 10.10 to the extent that the Contractor:

   (i) contributed to the delay; or

   (ii) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.11 Reduction in Time

If the Principal’s Representative directs a Variation that omits or deletes any part of the Works and Services:

(a) the Contractor:

   (i) may (no later than 10 Business Days after the direction) provide whatever information it considers may assist the Principal’s Representative to determine; and

   (ii) must provide whatever programming or other information the Principal’s Representative directs (and within the time directed) so that the Principal’s Representative can determine, what (if any) adjustment should be made to the Date for Portion Completion of a Portion; and
the relevant Dates for Portion Completion of a Portion or Portions may be reduced by a reasonable period determined by the Principal's Representative having regard to the impact of the Variation and notified to the Principal and the Contractor within 20 Business Days of the date of the Variation.

10.12 Unilateral Extensions

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Portion Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Portion Completion under clause 10.10, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor and the Principal, unilaterally extend any Date for Portion Completion by any period specified in a notice to the Contractor and the Principal.

The Principal's Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 10.12 may only be exercised by the Principal's Representative, and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 15 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, arbitration or litigation proceedings).

10.13 Delay Damages

(a) For each day by which the Date for Portion Completion of a Portion is extended due to:

(i) a breach of this Deed by the Principal;

(ii) a Variation that satisfies the requirements of paragraph (c) of the definition of Act of Prevention,

the Contractor will be entitled to be paid the costs reasonably incurred by the Contractor as a direct result of the delay the subject of the extension of time, as determined by the Principal's Representative who must, where they are applicable, use the rates and prices in Schedule 1 and which will not exceed the amount specified in Schedule 1.

(b) Notwithstanding any other provision of this Deed (including any provision of this Deed entitling the Contractor to an increase in the Contract Sum for additional costs, or to the payment of additional costs), the amounts payable pursuant to this clause 10.13 will be a limitation upon the Principal's liability to the Contractor for any delay or disruption that:

(i) the Contractor encounters in carrying out the Works and Services; or
(ii) arises out of, or in any way in connection with, the breach of this Deed by the Principal,

and the Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than for the amount which is payable by the Principal under this clause 10.13.

10.14 Suspension

(a) The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Works and Services. Nothing in this clause 10.14 limits the Principal's rights under clause 2.11.

If the suspension under this clause 10.14(a) arises in the circumstances set out in clause 2.11(e), then clauses 2.11(e) and 2.11(f) will apply, otherwise where it arises as a result of:

(i) the Contractor's failure to carry out its obligations in accordance with this Deed (including under clause 4.6 or clause 4.7 or where the Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this Deed or where any process, procedure, test method, calculation, analysis or report required by this Deed has resulted in or will result in a non-conformance), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or

(ii) a cause other than the Contractor's failure to perform its obligations in accordance with this Deed:

(A) a direction to suspend under this clause 10.14(a) will entitle the Contractor to:

(1) be paid by the Principal the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Principal's Representative; and

(2) an extension of time to any relevant Date for Portion Completion where it is otherwise so entitled under clause 10.10;

(B) the Contractor must take all reasonably practicable steps possible to mitigate the extra costs incurred by it and any delay in achieving Portion Completion of any Portion as a result of the suspension; and
the Contractor will not be entitled to make, and the Principal
will not be liable upon, any Claim arising out of, or in any way
in connection with, the suspension other than as allowed
under this clause 10.14(a)(ii).

(b) The Contractor may suspend the carrying out of all or a part of the Works
and Services to avoid an Incident.

(c) The Contractor will not be entitled to make, and the Principal will not be liable
upon, any Claim arising out of or in any way in connection with a suspension
by the Contractor under clause 10.14(b).

10.15 Direction to Compress

If the Contractor makes a claim under clause 10.8, the Principal's Representative
may direct the Contractor to compress the Works and Services by taking those
measures which are necessary to overcome or minimise the extent and effects of
some or all of the delay, which may include taking the measures necessary in order
to achieve Portion Completion of a Portion by the relevant Date for Portion
Completion.

Prior to commencing any such compression the Contractor must give the Principal's
Representative an estimate of the costs of taking all such necessary measures.

The Principal's Representative may give such a direction whether or not the cause
of delay for which the Contractor has made its claim under clause 10.8 entitles the
Contractor to an extension of time to any relevant Date for Portion Completion.

10.16 Withdrawal of Compression Direction

The Principal's Representative may at any time by notice in writing withdraw any
direction given by it under clause 10.15, after which the Contractor will be entitled to
any extension of time to which it may have otherwise been entitled in respect of the
cause of delay in respect of which the Contractor made a claim under clause 10.8.
Any such extension will be determined having regard to the effect which the
compression of the Works and Services taken by the Contractor prior to the
withdrawal of the direction has had on mitigating the delay which is the subject of
the claim for an extension of time made by the Contractor under clause 10.8.

10.17 Partial Compression

If the Principal's Representative gives the Contractor a direction to compress under
clause 10.15 and it only applies to part of a delay, the Contractor's entitlement to
any extension of time to any relevant Date for Portion Completion, which it otherwise
would have had, will only be reduced to the extent to which the direction to
compress requires the Contractor to compress to overcome the delay.
10.18 Compression

If the Principal's Representative gives a direction to the Contractor under clause 10.15:

(a) whether or not the Contractor provides a cost estimate under clause 10.15, the Contractor must comply with the direction to the extent it is reasonably practicable to do so;

(b) if the Contractor would, but for the direction, have been entitled to an extension of time to the relevant Date for Portion Completion for the cause of delay in respect of which the Contractor made a claim under clause 10.8, the Contractor will, to the extent it would have been entitled to an extension of time, be entitled to be paid the lesser of:

(i) the sum of:

(A) the extra costs reasonably incurred by the Contractor (which, if the Principal's Representative gives a notice to withdraw the direction under clause 10.16 will be those extra costs incurred prior to the giving of such notice) and directly attributable to compressing the Works and Services, as determined by the Principal's Representative; and

(B) that percentage of the amount under sub-paragraph (A) stipulated in Schedule 1; and

(ii) the cost estimate (if any) provided by the Contractor pursuant to clause 10.15;

(c) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the cause of delay and the direction, other than for the amount it is entitled to under this clause 10.18.

10.19 Principal's Right to Liquidated Damages not Affected

The Principal's rights to liquidated damages under clause 12.6 for a failure by the Contractor to achieve Portion Completion of a Portion by any relevant Date for Portion Completion will not be affected by the Principal's Representative giving the Contractor a direction to compress under clause 10.15.

10.20 Contractor's Entitlements

This clause 10 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any delay, disruption or Act of Prevention and the Contractor waives all rights at Law to claim any relief from its obligations under this Deed otherwise than in accordance with this clause 10.
11. Payment

11.1 Contractor's Payment Entitlements

(a) Subject to clause 16.12 and to any other right to set-off that the Principal may have:

(i) the Principal must pay the Contractor the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed; and

(ii) where the Principal becomes liable to pay, and the Contractor becomes entitled to payment of, the Reliability Payment pursuant to clause 11.10(h), the Principal must pay the Contractor the Reliability Payment,

in accordance with the procedure in this clause 11.

(b) Neither the Contract Sum nor the Reliability Payment are subject to rise and fall.

(c) The parties acknowledge and agree that:

(i) there will be a benefit to the Principal if the Contractor achieves the Reliability Target;

(ii) in recognition of the benefit referred to in clause 11.1(c)(i), the Principal is prepared to pay the Contractor, over and above the Contract Sum, the Reliability Payment in accordance with this clause 11.1; and

(iii) the Contractor will only become entitled to payment of the Reliability Payment if the Reliability Target is achieved.

11.2 Payment Claims

For the purposes of clause 11 and except for the first Payment Milestone set out in the Payment Schedule, the Contractor will only be taken to have achieved a Payment Milestone when it has carried out and completed, in accordance with this Deed, all of the work and other things comprised in, and otherwise required for the completion of, that Payment Milestone. If the Payment Schedule so provides, a Payment Milestone will be deemed not to have been achieved before the date or period stated in the Payment Schedule for that Payment Milestone.

The Contractor is only entitled to claim payment for work comprised in a Payment Milestone when the Contractor has achieved that Payment Milestone.
The Contractor may give the Principal's Representative a claim for payment on account of the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed on the latter of:

(a) satisfaction of the conditions precedent to the Contractor's entitlement to make a payment claim set out in clause 11.6; and

(b) the following dates:

(i) prior to the time for the submission of the Completion Payment Claim, upon the 6th Business Day of each month;

(ii) for the Completion Payment Claim, within the time required by clause 11.8;

(iii) for the Reliability Payment Claim, within the time required by clause 11.10(h)(ii); and

(iv) for the Final Payment Claim, within the time required by clause 11.11.

Each claim for payment (a Progress Claim) must:

(c) generally follow the form of the Payment Schedule and be as the Principal's Representative reasonably requires; and

(d) include all the evidence reasonably required by the Principal's Representative:

(i) of any Payment Milestones which the Contractor claims to have achieved (including, where applicable, evidence of clear and unencumbered title to any items which are the subject of the payment claim); and

(ii) of any other amounts claimed.

The Contractor may not include in any payment claim under this clause 11 any amount for a Claim which is barred by clause 17.6 or any other provision of this Deed.

11.3 Payment Statements

(a) The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.8 or a Final Payment Claim under clause 11.11, assess whether the Contractor has achieved any Payment Milestone which is the subject of the Progress Claim and issue to the Contractor and the Principal a payment statement which identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and stating the amount of the payment which, in the Principal's Representative's opinion, is to be made by the
Principal to the Contractor or by the Contractor to the Principal. Where a Defect for which the Contractor is responsible becomes apparent to the Principal's Representative, the Principal's Representative may, without prejudice to any of the Contractor's other rights, take into account the estimated cost of rectifying the Defect.

(b) The Principal's Representative must also set out in any payment statement issued under clause 11.3(a):

(i) the contract value as stated in the Payment Schedule of any Payment Milestones, which the Principal's Representative considers the Contractor to have achieved to the date of the Progress Claim;

(ii) the amount (if any) the Principal directs the Principal's Representative that the Principal is entitled to retain, deduct, withhold or set-off under this Deed;

(iii) the amounts otherwise due under this Deed from:

(A) the Principal to the Contractor; and

(B) the Contractor to the Principal;

(iv) the amount already paid to the Contractor under the Deed; and

(v) the calculations employed to arrive at the amount certified to be payable and the reasons for any difference between that amount and the amount claimed by the Contractor (and if the Principal's Representative considers that the Contractor has not achieved a Payment Milestone for which the Contractor has claimed payment, the Principal's Representative must provide reasons for that opinion).

(c) The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works and Services covered by the payment statement has been satisfactorily carried out in accordance with this Deed.

(d) Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Deed.

(e) Where the Principal has notified the Contractor in accordance with clause 18(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor for the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued
by the Principal’s Representative under clause 11.3(a) give the Principal’s Representative a tax invoice (which complies with the GST Legislation) for the amount of the payment statement.

11.4 Payment

(a) Where, pursuant to clause 11.3(b)(v), the Principal’s Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.2, 11.6, 11.8, 11.11, 14.3, 14.6(a)(i) and 16.12, the Principal must, within 15 Business Days of receipt of the issue of the payment statement pay the Contractor the amount set out in the payment statement referred to in clause 11.3(a).

(b) Where, pursuant to clause 11.3(b)(v), the Principal’s Representative sets out in a payment statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal’s Representative issuing the payment statement under clause 11.3, pay the Principal the amount set out in the payment statement referred to in clause 11.3(a).

11.5 Payment on Account

A payment of moneys under clause 11.4(a) is not:

(a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Deed;

(b) an admission of liability; or

(c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this Deed,

but is only to be taken as payment on account.

11.6 Conditions Precedent

It is a condition precedent to the Contractor's entitlement to make a payment claim under clause 11.2, and the Principal's obligation to make a payment under clause 11.4(a), that prior to submitting the payment claim the Contractor has:

(a) complied with clauses 1.6, and 10.2;

(b) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.5;

(c) submitted the initial and updated parts of the Contract Management Plan as required by clauses 4 and 9.14 of this Deed and the Statement of Work;

(d) provided any report and programs required under clause 9.10;
provided the Principal's Representative with a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 19, made out not earlier than the date of the payment claim;

(f) effected or procured to be effected the insurances required by clauses 2.2(c) and 13.5 and (if requested) provided evidence of this to the Principal's Representative;

(g) provided such evidence as the Principal's Representative may require that this Deed has been properly executed by or on behalf of the Contractor and that the Contractor is bound under this Deed; and

(h) done everything else that it is required to do under this Deed before being entitled to make a payment claim or receive payment, including in respect of a Payment Milestone anything stated in the Payment Schedule as being something that must be satisfied or achieved as a requirement of that Payment Milestone.

Unless the Contractor has complied with the conditions precedent set out above the Contractor will have no entitlement to submit a payment claim under clause 11.2.

11.7 Payment of Employees and Subcontractors

(a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.6(e).

(b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.6(e), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.

(c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Works and Services, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.

(d) If the Principal receives notice of any Insolvency Event in relation to the Contractor, the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.
(e) Nothing in this clause 11.7 limits or otherwise affects the Principal’s rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

### 11.8 Completion Payment Claim

(a) No later than 28 days after the Date of Portion Completion for Portion 3, and subject to compliance with clause 11.6, the Contractor may lodge with the Principal’s Representative a payment claim marked “Completion Payment Claim” stating:

- (i) the Contract Sum;
- (ii) all payments received on account of the Contract Sum;
- (iii) the balance (if any) due to the Contractor, being the Contract Sum less the payments referred to in clause 11.8(a)(ii).

The Completion Payment Claim must be accompanied by such information as the Principal’s Representative may reasonably require.

(b) With the Completion Payment Claim, the Contractor must lodge with the Principal’s Representative a First Statement of Outstanding Claims. The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed which occurred prior to the date of submission of the Completion Payment Claim.

(c) The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Works and Services or this Deed up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.

(d) Without limiting clause 11.9, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed which occurred prior to the date of submission of the Completion Payment Claim which:

- (i) has been made;
- (ii) could have been made; or
- (iii) should have been made;
that is not included in the Completion Payment Claim or First Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.

(e) The First Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the First Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the First Statement of Outstanding Claims or the Completion Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor except as provided in clause 11.11.

(f) Despite clause 11.8(e), if subsequent to the lodgement by the Contractor of the Completion Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Completion Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.

(g) The claims and statements required under this clause 11.8 are in addition to the other notices which the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.

(h) Without limiting clause 11.8(g), the Contractor cannot include in any claim or statement under this clause 11.8 any Claims that are barred under this Deed including by clause 17.6.

11.9 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

(a) has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with clause 11.8; and

(b) has not been barred under another provision of this Deed.

11.10 Reliability

(a) Until:

(i) the date upon which the Reliability Target has been achieved;
(ii) the Reliability Sunset Date; or

(iii) the date that the Principal provides written notice of its election to end the Reliability Trial in accordance with clause 11.10(f),

(whichever is earliest to occur), the Principal will keep a record of:

(iv) all Failures occurring in relation to all Relevant Consists; and

(v) the aggregate of the distances travelled from time to time by all of the Relevant Consists.

(b) As soon as practicable after each Calculation Date, the Principal's Representative must issue to the Contractor a report entitled "Reliability Report" setting out:

(i) details of all Failures which occurred in relation to all Relevant Consists for the 6 month period that ended on the Calculation Date;

(ii) the aggregate of the distances travelled by all of the Relevant Consists for the 6 month period that ended on the Calculation Date; and

(iii) the System MDBFs (Class 1) and System MDBFs (Class 2) for the 6 month period that ended on the Calculation Date, all as calculated by the Principal's Representative in accordance with the Statement of Work.

(c) The Contractor must, within 21 days of receiving a "Reliability Report" under clause 11.10(b) issue a written notice to the Principal's Representative setting out any disagreement that the Contractor has with the "Reliability Report". The Contractor will be deemed to accept any part of a "Reliability Report" not the subject of such a written notice.

(d) If, upon receiving a "Reliability Report" issued by the Principal's Representative under clause 11.10(b), the Contractor believes that the Reliability Target has been achieved in accordance with the Statement of Work, the Contractor must, within 14 days of the issue of the "Reliability Report", issue a written notice to that effect to the Principal's Representative.

(e) Within 14 days of receiving a notice from the Contractor under clause 11.10(d), the Principal's Representative will issue a notice to the Principal and the Contractor either:

(i) stating that the Reliability Target has been achieved in accordance with the Statement of Work; or
stating that the relevant Reliability Target has not been achieved in accordance with the Statement of Work and setting out the Principal’s Representative’s reasons.

(f) If, on or before the Reliability Sunset Date, the Contractor fails to achieve the Reliability Target, then the Principal may elect in its absolute discretion to end Reliability Trials, and the Principal’s Representative must thereafter provide written notice to the Contractor of this election.

(g) If the Principal’s Representative provides the Contractor written notice electing to end Reliability Trials in accordance with clause 11.10(f), the Principal will have no liability to pay, and the Contractor will have no entitlement to payment of, the Reliability Payment.

(h) If the Principal’s Representative provides the Contractor the written notice pursuant to clause 11.10(e)(i) stating that the Reliability Target has been achieved in accordance with the Statement of Work:

(i) the Principal will become liable to pay, and the Contractor will become entitled to payment of, the Reliability Payment; and

(ii) no later than 28 days after the Principal’s Representative provides the Contractor the written notice pursuant to clause 11.10(e)(i), the Contractor may lodge with the Principal’s Representative a payment claim marked "Reliability Payment Claim", for payment of the Reliability Payment.

11.11 Final Payment Claim

(a) No later than 28 days after the expiration of the last Warranty Period, and subject to compliance with clause 11.6, the Contractor may lodge with the Principal’s Representative a payment claim marked "Final Payment Claim" stating the Contract Sum, all payments received on account of the Contract Sum and the balance, if any, due to the Contractor. The Final Payment Claim must be accompanied by such information as the Principal’s Representative may reasonably require.

(b) With the Final Payment Claim the Contractor must lodge with the Principal’s Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed which occurred prior to the date of submission of the Final Payment Claim.

(c) The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in
connection with the Works and Services or this Deed up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

(d) Without limiting clause 11.12, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed which occurred prior to the date of the Final Payment Claim which:

(i) has been made;
(ii) could have been made; or
(iii) should have been made under the paragraph above,

that is not included in the Final Payment Claim or Second Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.

(e) The Second Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the Second Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the Second Statement of Outstanding Claims or the Final Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor.

(f) Despite clause 11.11(e), if subsequent to the lodgement by the Contractor of the Final Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Final Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.

(g) The claims and statements required under this clause 11.11 are in addition to the other notices that the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.

(h) Without limiting clause 11.11(g), the Contractor cannot include in any claim or statement under this clause 11.11 any Claims that are barred under this Deed including by clause 17.6.
11.12 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

(a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.11; and

(b) has not been barred under another provision of this Deed.

11.13 Interest

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from, but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the Uniform Civil Procedure Rules 2005 (NSW). Interest will be compounded at six monthly intervals.

This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

11.14 Correction of Payment Statements

The Principal’s Representative may, in any payment statement:

(a) correct any error; and

(b) modify any assumptions or allowances made,

in any previous payment statement issued by the Principal’s Representative.

11.15 Costs Allowed by Contractor

Unless otherwise provided in this Deed, it is agreed that the Contractor has, and will be deemed to have, allowed in the Original Contract Price for and will be wholly responsible for the payment of:

(a) without limiting clause 18, all customs import duties and all tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:

(i) intended to be used for, or that are to be incorporated into, the Cars; or

(ii) otherwise used for the Works and Services;
(b) without limiting clause 18 or the generality of paragraph (a), all costs in connection with the handling and clearing through customs in all applicable jurisdictions (including Australia), of all exported and imported items required for incorporation into the Cars or for use in performing the Works and Services;

(c) any long service leave levy which may be payable in respect of the Works and Services;

(d) all royalties, licence fees and similar payments for Intellectual Property in respect of:
   (i) the items that are intended to be used for, or that are to be incorporated into, the Cars; and
   (ii) all Contract Documentation; and

(e) all fluctuations in the value of the Australian dollar against other currencies.

The Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

11.16 Title

Title in all items of Equipment will pass progressively to the Principal on the earlier of payment for or installation of such items within the Cars in accordance with this Deed. Risk in all such items remains with the Contractor in accordance with clause 13.1.

12. Completion

12.1 Progressive Inspection and Testing

At any time prior to Completion in respect of the Simulator Upgrade or any Consist, the Principal's Representative may direct that any materials or work forming part of the Works and Services in respect of the Simulator Upgrade or that Consist be tested. The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Works and Services as may be required. On completion of any test the Contractor must make good the Works and Services so that they fully comply with this Deed.

The Principal's Representative may direct that any part of the Works and Services must not be covered up or made inaccessible without the Principal's Representative's prior approval.
The tests prescribed in this Deed must be conducted by the Contractor as and when provided for in this Deed, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.

Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.

Unless otherwise stated in this Deed, before conducting a test under this Deed the Principal's Representative or the Contractor must give not less than 5 Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.

Without prejudice to any other rights or remedies under this Deed, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

Each party must promptly make the results of tests available to the other and to the Principal's Representative.

Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:

(a) this Deed provides that the Contractor must bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under clause 12.1;
(b) the test shows that the material or work is not in accordance with this Deed;
(c) the test is in respect of a part of the Works and Services or work is covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
(d) the test is consequent upon a failure of the Contractor to comply with a requirement of this Deed.

Where the extra costs are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.
12.2 Contractor to Notify

(a) The Contractor must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Simulator Upgrade or a Consist.

(b) Following the issue by the Contractor of a notice under clause 12.2(a), the Contractor must:

(i) prepare a detailed procedure for the progressive Inspection by the Principal's Representative of the Simulator Upgrade or that Consist; and

(ii) provide a draft defects management plan (without identifying any Defects) in respect of the Simulator Upgrade or that Consist.

(c) The procedure and draft defects management plan referred to in clause 12.2(b) must be submitted to the Principal's Representative and, prior to the Inspection under clause 12.3(a) must, if required by the Principal's Representative, be amended to ensure that the:

(i) procedure provides the Principal's Representative with sufficient time to properly carry out the progressive Inspection and the final Inspection which the Principal's Representative is required to undertake under clause 12.3 to determine whether Completion of the Simulator Upgrade or Consist has occurred; and

(ii) draft defects management plan fully addresses the matters the Principal's Representative directs.

12.3 Inspection before Completion

(a) The Principal's Representative and the Contractor's Representative must, within 5 Business Days of receipt by the Principal's Representative of the notice referred to in clause 12.2(a), jointly inspect the Simulator Upgrade or Consist at a mutually convenient time.

(b) Following the joint Inspection under clause 12.3(a), the Principal's Representative must issue a notice to the Principal and the Contractor either:

(i) containing a list of the items that are apparent and it believes must be completed before Completion in respect of the Simulator Upgrade or Consist is achieved; or

(ii) stating that it believes the Contractor is so far from achieving Completion in respect of the Simulator Upgrade or Consist that it is not practicable to issue a list as contemplated in clause 12.3(b)(i).
(c) When the Principal's Representative issues a notice under either clause 12.3(b)(i) or clause 12.3(b)(ii), the Contractor must continue to proceed to bring the Works and Services in respect of the Simulator Upgrade or Consist to Completion and thereafter when the Contractor considers it has achieved Completion in respect of the Simulator Upgrade or Consist, the Contractor must notify the Principal's Representative in writing by means of:

(i) in respect of the Simulator Upgrade, copies of the Contractor's Certificate of Completion in respect of the Simulator Upgrade;

(ii) in respect of a particular Consist (other than the last Consist to achieve Completion), copies of the Contractor's Certificate of Completion in respect of the relevant Consist; and

(iii) in respect of the last Consist to achieve Completion, copies of all Contractor's Certificates of Completion.

Each Contractor's Certificate of Completion must attach:

(iv) a register of all records of verification of design, construction, commissioning and handover (including procurement and Testing). All records are to be satisfactorily completed and signed;

(v) the final form of the defects management plan referred to in clause 12.2, which incorporates a register of any outstanding minor Defects and proposals for their rectification;

(vi) a register of Asset Management Information provided in accordance with the Statement of Work;

(vii) a register of deficiency notices issued, all of which are required to have been satisfactorily completed and closed out;

(viii) a register of concessions granted for non-conforming work; and

(ix) all Authority Approvals including any required for the Principal to occupy and use the Simulator Upgrade or Consist (as the case may be) for its intended purposes, in accordance with clause 2.3(c)(vi).

Thereafter the Principal's Representative and the Contractor's Representative must jointly inspect the Works and Services at a mutually convenient time.
(d) Following the joint Inspection under clause 12.3(c), the Principal's Representative must within 10 Business Days of receipt of a notice under clause 12.3(c), or of receipt of a notice under clause 12.3(e), issue a notice to the Principal and the Contractor:

(i) if Completion in respect of the Simulator Upgrade or Consist has been achieved:

(A) stating the date on which the Principal's Representative determines Completion was achieved; and

(B) where relevant to the test for Completion, containing a list of any minor Defects, of the type described in paragraph (a)(i) or (b)(i) of the definition of Completion in clause 1.1 (as relevant), that are apparent; or

(ii) if Completion in respect of the Simulator Upgrade or Consist has not been achieved:

(A) containing a list of the items that are apparent and it believes must be completed before Completion is achieved; or

(B) stating that it believes the Contractor is so far from achieving Completion that it is not practicable to issue a list as contemplated by clause 12.3(d)(ii)(A).

(e) If the Principal's Representative issues a notice under either clause 12.3(d)(ii)(A) or clause 12.3(d)(ii)(B), the Contractor must continue to proceed to bring the Works and Services in respect of the Simulator Upgrade or Consist to Completion and thereafter when it considers it has achieved Completion, the Contractor must notify the Principal's Representative by notice in writing by means of:

(i) in respect of a particular Simulator Upgrade or Consist (other than the last Consist to reach Completion), a Contractor's Certificate of Completion in respect of the relevant Simulator Upgrade or Consist; and

(ii) in respect of the last Consist to achieve Completion, copies of all Contractor's Certificates of Completion;

to which are attached the documents referred to in the second paragraph of clause 12.3(c), and after which the third paragraph of clause 12.3(c), clause 12.3(d) and this clause 12.3(e) will reapply.

12.4 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under either of clauses 12.3(c) or 12.3(e) is not given by the
Contractor yet the Principal's Representative is of the opinion that Completion in respect of the Simulator Upgrade or a Consist has been achieved, the Principal's Representative may at any time and for any reason in its absolute discretion, issue a Notice of Completion under clause 12.3(d)(i) for the Simulator Upgrade or Consist.

12.5 Handback upon Completion of Consist

The Contractor acknowledges that the Principal will require (in part) a progressive handover of the Simulator Upgrade and the Consists, and that this handover will take place by the Contractor handing over the Simulator Upgrade and each Consist once Completion has been achieved in respect of the Simulator Upgrade or Consist.

12.6 Liquidated Damages for Delay in reaching Completion

(a) Subject to clause 12.7(c), if Portion Completion of a Portion has not occurred by the Date for Portion Completion for the Portion, the Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1 for every day after the Date for Portion Completion of a Portion up to and including:

(i) the Date of Portion Completion of the relevant Portion; or
(ii) the date that this Deed is terminated under clause 14, whichever is first.

(b) The Contractor acknowledges and agrees that the liquidated damages payable under clause 12.6(a) in respect of any Portion are cumulative and payable regardless of the Date for Portion Completion, and the Date of Portion Completion, of any other Portion.

12.7 Liquidated Damages a genuine pre-Estimate

(a) The parties:

(i) agree that the amount of liquidated damages provided for in Schedule 1 constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Principal as a result of Portion Completion of a Portion not occurring on or before the relevant Date for Portion Completion;

(ii) desire to avoid the difficulties of proving damages in connection with such failure and agree that the liquidated damages payable by the Contractor in accordance with clause 12.6(a) are reasonable and do not constitute nor are they intended to be a penalty; and

(iii) agree that the amount of liquidated damages payable by the Contractor under clause 12.6(a) will be recoverable from the Contractor as a debt immediately due and payable to the Principal.
(b) If clause 12.6(a) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages as a result of the Contractor failing to achieve Portion Completion of a Portion by the relevant Date for Portion Completion, but the Contractor’s liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Contractor would have had if clause 12.6(a) had not been void, invalid or otherwise inoperative.

(c) The Contractor’s aggregate liability under clauses 12.6(a) and 12.7(b) is limited to the amount set out in Schedule 1.

12.8 Final Completion

(a) The Contractor must give the Principal’s Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.

(b) The Principal’s Representative and the Contractor’s Representative must, within 28 days before the date the Principal’s Representative expects Final Completion to occur, but no earlier than 28 days before the end of the latest Warranty Period, jointly inspect the Works and Services at a mutually convenient time.

(c) Following the joint Inspection under clause 12.8(b), the Principal’s Representative must issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.

(d) If the Principal’s Representative issues a notice under clause 12.8(c), the Contractor must continue to bring the Works and Services in respect of the Simulator Upgrade or Consist to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal’s Representative in writing by means of a Contractor’s Certificate of Final Completion in accordance with Schedule 8. Thereafter, the Principal’s Representative and the Contractor’s Representative must jointly inspect the Works and Services at a mutually convenient time.

(e) Following the joint Inspection under clause 12.8(d), the Principal’s Representative must within 21 days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue a notice to the Principal and the Contractor:

(i) if satisfied that Final Completion has been achieved, stating the date on which the Principal’s Representative determines Final Completion was achieved; or
(ii) if not satisfied that Final Completion has been achieved:

(A) containing a list of the items which it believes must be completed before Final Completion is achieved; or

(B) stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.8(e)(ii)(A).

(f) If the Principal's Representative issues a notice under clause 12.8(e)(ii)(A) or clause 12.8(e)(ii)(B), the Contractor must continue to proceed to bring the Cars to Final Completion and thereafter when it considers it has achieved Final Completion the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.8(d), clause 12.8(e) and this clause 12.8(f) will reapply.

12.9 Effect of Notice of Completion or Final Completion

A notice issued under clauses 12.3(d)(i) or 12.8(e)(i) will not:

(a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this Deed;

(b) be taken as an admission or evidence that the Simulator Upgrade or the relevant Consist complies with the requirements of this Deed; or

(c) prejudice any rights or powers of the Principal or the Principal's Representative.

12.10 Deferral of Completion Requirement

The Principal's Representative may, in its sole discretion, defer the need for the Contractor to satisfy any specified elements of the requirements of Completion and issue a Notice of Completion in respect of a Simulator Upgrade or Consist. In that event, the Principal's Representative will expressly endorse the Notice of Completion with details of the specific elements deferred and the Contractor must satisfy or achieve those elements within the time directed by the Principal's Representative.

13. Risks and Insurance

13.1 Risk

Except where it arises from an Excepted Risk, and without limiting the generality of the Contractor's obligations, risk in:

(a) the Principal Supplied Items passes to the Contractor upon collection of the Principal Supplied Items by the Contractor in accordance with Schedule 20;
(b) the Testing and Commissioning Tools passes to the Contractor upon collection of the Testing and Commissioning Tools by the Contractor in accordance with Schedule 29 and remains with the Contractor until the Testing and Commissioning Tools are returned into the care, custody and control of the Principal; and

(c) the Cars and things entrusted to the Contractor by the Principal at the Delivery Point or (where relevant) the Investigation Set Delivery Point for the purposes of carrying out the Works and Services:

(i) remains with the Contractor until delivery of the Cars and things entrusted by the Principal into the actual care, custody and control of the Principal at the Handback Point; and

(ii) reverts to the Contractor immediately upon the Cars and things entrusted by the Principal coming into the care, custody and control of the Contractor under any clause of this Deed dealing with the rectification of Defects, until such time as the Cars are returned into the care, custody and control of the Principal.

13.2 Other Risks

The Contractor must indemnify the Principal against:

(a) any loss of or damage to property of the Principal caused by, arising out of, or in any way in connection with, the Works and Services;

(b) any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons caused by, arising out of, or in any way in connection with, the Works and Services; and

(c) (without limiting or otherwise affecting paragraphs (a) or (b)) any loss or damage to existing property in or upon which the Works and Services are being carried out, caused by, or arising out of, or in any way in connection with, the Works and Services,

but the Contractor's responsibility to indemnify the Principal will be reduced proportionally to the extent that an act or omission by the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor contributed to the loss, damage, injury or death.

The indemnity in this clause 13.2 will not:

(d) exclude any other right of the Principal to be indemnified by the Contractor; or

(e) apply to the extent to which the Contractor must indemnify the Principal under clause 13.1.
13.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 13.1, the Contractor must:

(a) subject to paragraph (b), promptly replace or otherwise make good the loss or repair the damage; and

(b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with paragraph (a) to the extent directed by the Principal's Representative.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applied.

13.4 Works and Public Liability Insurance

Upon entering into this Deed, the policies of insurance included in Exhibit C will come into effect and will cover the Contractor, the Principal, the Principal's Representative and all Subcontractors employed by the Contractor in respect of the Works and Services.

This insurance is subject to the exclusions, conditions and excesses noted on the policies and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that it was provided with a copy of terms of the insurance policies in Exhibit C prior to the date of this Deed and it reviewed and examined the terms of those insurance policies and:

(a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;

(b) acknowledges that the policies of insurance included in Exhibit C do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit C; and

(c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies in Exhibit C or any insurance taken out under clause 13.4.
13.5 Contractor's Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Deed.

The Contractor must, before the Contractor commences the Works and Services or as otherwise required by this Deed:

(a) effect and have in place the following insurance with insurers of the Required Rating:

(i) material damage insurance for:

   (A) the Cars in the care, custody or control of the Contractor on the basis of the declared values specified in Schedule 1; and

   (B) the Works and Services, including all Principal Supplied Items and Testing and Commissioning Tools in the care, custody or control of the Contractor on the basis of the value specified in Schedule 1;

(ii) public and products liability insurance;

(iii) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Works and Services are being performed;

(iv) professional indemnity insurance;

(v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Works and Services, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances;

(vi) if the things the care of which the Contractor is responsible for under clause 13.1 are in transit (including storage and transhipment) from any place outside of Australia, marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Installation Facility, unpacked, inspected and confirmed as in sound condition;

(vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law;

(viii) appropriate insurance (for replacement value) in respect of all materials being or to be fabricated overseas for the Works and Services.
Services and any other insurance that the Principal may reasonably require the Contractor to obtain; and

(ix) an insurance policy covering loss or damage to the Contractor's Plant and Equipment;

(b) ensure the public and products liability insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the Law), any insurance required by sub-paragraph (a)(vii) and the insurance of the Contractor's Plant and Equipment referred to in sub-paragraph (a)(ix):

(i) are policies in the name of the Contractor which include the Principal as an additional insured, and cover the Principal, the Principal's Representative (including any appointee under clauses 9.2 or 9.3), the Contractor and all its Subcontractors, for their respective rights and interests, and their liabilities to third parties and liability to each other;

(ii) cover loss or damage to property (other than property described in clause 13.1) and the death of or injury to any person (other than liability which the Law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Works and Services;

(iii) includes a cross-liability clause in accordance with clause 13.9; and

(iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1;

(c) in relation to the material damage insurance required by clause 13.5(a)(i), ensure that the policy:

(i) is in the joint names of the Principal, the Contractor and Sydney Trains, and covers the Principal, the Principal's Representative, Sydney Trains, the Contractor and all its Subcontractors, for their respective rights and interests;

(ii) includes a cross-liability clause in accordance with clause 13.9; and

(iii) provides cover against the risks of loss, damage or destruction by all commercially insurable risks (including earthquake, fire flood, lightning, storm and tempest, theft, malicious damage and resulting loss and damage arising from faulty material, workmanship or design);

(d) ensure that any insurance policy required by sub-paragraph (a)(vii) is in place before the Works and Services covered by such policies commence;

(e) ensure the professional indemnity insurance:
(i) covers claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its Subcontractors in carrying out the Works and Services;

(ii) covers the Contractor for liability to the Principal arising from errors or omissions in:
   (A) design or documentation of the Cars; or
   (B) other professional services,
carried out by the Contractor or any of its Subcontractors; and

(iii) provide:
   (A) cover for any amount in respect of any one claim of not less than;
   (B) cover for an amount in the aggregate of not less than; and
   (C) for an excess not greater than,
the amount stated in Schedule 1;

(f) in relation to the workers compensation insurance or similar insurance:
   (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;
   (ii) ensure that each of its Subcontractors has such workers compensation insurance or similar insurance covering the Subcontractor's employees; and
   (iii) ensure it insures against liability for death of or injury to persons employed by the Contractor or its Subcontractors as required by any Law for an amount not less than the amount stated in Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law; and

(g) in relation to marine transit insurance, ensure that the policy:
   (i) is in the joint names of the Principal and Contractor, and covers the Principal, the Principal's Representative, the Contractor and all its Subcontractors, for their respective rights and interests;
   (ii) includes a cross-liability clause in accordance with clause 13.9;
   (iii) includes a delayed unpacking clause and a 50:50 clause; and
   (iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1.
13.6 General Insurance Policies

The Contractor must:

(a) in respect of any insurance policy (including an insurance policy which clause 2.2(c) of this Deed requires the Contractor to procure to be effected by a Subcontractor) which it is required to effect, or procure to be effected, pursuant to this Deed and where required by the Principal's Representative, provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 days of a request with:

(i) a certificate of currency and any other evidence (other than an original or copy of the insurance policy itself) reasonably satisfactory to the Principal's Representative demonstrating that the policy is current and in compliance with the Contractor's obligation to insure (or procure insurance), or (where relevant) a licence as a self-insurer or other proof of being a self-insurer under the Workers Compensation Act 1987 (Cth);

(ii) a reasonable opportunity during regular business hours for representatives and insurance brokers of the Principal to attend the premises at which the insurance policy is located to inspect an original or certified copy of the insurance policy; and

(iii) any other evidence (other than an original or copy of the insurance policy itself) which may be reasonably necessary to satisfy the Principal's Representative that the policy is current and complies with the requirements of this Deed;

(b) ensure that except for workers compensation or similar insurance:

(i) the Principal receives at least 30 days' notice of any cancellation or material change of any insurance policy effected under clauses 13.4 or 13.5;

(ii) a notice of claim given to the insurer by the Principal, the Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by the Principal, the Contractor and the Subcontractor; and

(iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and

(c) ensure that it:

(i) does not do anything which prejudices any insurance;
(ii) where required, rectifies anything which might prejudice any insurance;

(iii) reinstates an insurance policy if it lapses;

(iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal’s Representative except where:

(A) the Contractor has given the Principal’s Representative at least 5 Business Days’ prior written notice of the intention to cancel, vary or allow an insurance policy to lapse;

(B) the Contractor effects, or procures to be effected, alternative insurance that complies with the terms of this Deed before the insurance policy is cancelled, varied or lapses; and

(C) the Contractor does not increase the excesses and deductibles for the insurance policy during the period for which the insurance is required to be maintained under clause 13.7;

(v) immediately notifies the Principal’s Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and

(vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

If the Contractor fails to:

(d) provide a reasonable opportunity during regular business hours for representatives and insurance brokers of the Principal to attend the premises at which the insurance policy is located to inspect an original or certified copy of any insurance policy (including an insurance policy which clause 2.2(c) of this Deed requires the Contractor to procure a Subcontractor to effect) which the Contractor is required to effect together with evidence satisfactory to the Principal’s Representative that the policy is current; or

(e) effect or procure to be effected insurance which is with insurers of the Required Rating,

as required by clauses 2.2(c), 13.5 or 13.6, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.

The Principal may refuse payment until the Contractor produces evidence of compliance with its insurance obligations under clauses 2.2(c) and 13.5 to the
The rights given by this clause 13.6 are in addition to any other right.

13.7 Period of Insurance

The insurance the parties are required to have in place under this clause 13 must be maintained:

(a) in the case of the material damage insurance and the public and products liability insurance policies required by clause 13.5, so as to provide cover until the later to occur of:
   (i) the Contractor ceasing to be responsible under clause 13.1 for the care of anything; and
   (ii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;

(b) in the case of the Contractor's Plant and Equipment insurance:
   (i) until the Contractor ceases to bear the risk of loss of or damage to anything under clause 13.1; and
   (ii) at any time it is being used in connection with the Works and Services;

(c) in the case of the workers compensation insurance and motor vehicle insurances, until the latest to occur of:
   (i) the end of the last Warranty Period (including any extension under clause 8.6);
   (ii) the date upon which all Defects have been rectified in accordance with this Deed; and
   (iii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;

(d) in the case of professional indemnity insurance, before commencing work covered by the policy referred to in clause 13.5(e) until at least the period specified in Schedule 1 after the Date of Final Completion; and

(e) in the case of insurance required under clause 13.5(a)(vii), during the period required by any Law.

13.8 Notice of Potential Claim

The Contractor must:

(a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by this Deed (except for the professional indemnity insurance policy);
(b) keep the Principal informed of subsequent developments concerning the claim; and
(c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences that may give rise to a claim.

13.9 Cross Liability

Where this Deed requires insurance to be effected in joint names the party effecting the insurance must ensure that the insurance policy provides that:

(a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
(b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
(c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
(d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
(e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

13.10 Loss or Damage to Third Party Property

(a) Without limiting clauses 13.1 and 13.2, where any loss of or damage to real or personal property (other than the Works and Services, the Cars or Contractor's Plant and Equipment) occurs arising out of, or in any way in connection with, the carrying out by the Contractor of the Works and Services or a failure by the Contractor to comply with its obligations under this Deed, the Contractor must, at its cost, promptly repair any such loss or damage.
(b) Without limiting clause 16.14, if the Contractor fails to carry out any repair work under clause 13.10(a), the Principal may carry out such work and all costs, losses and damages so suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal.
(c) The Contractor must immediately notify the Principal's Representative upon receipt of any letter of demand or notice of claim from or on behalf of any third party or any writ, summons, proceedings, impending prosecution or inquest and immediately forward a copy of any such documents to the Principal's Representative.
13.11 Risk of Deductibles

The Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 13.

14. Default or Insolvency

14.1 Default

If the Contractor commits a breach of this Deed referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

(a) not commencing or not progressing the Works and Services regularly and diligently in accordance with the requirements of this Deed, in breach of clause 10.1;

(b) suspension of work, or failing to proceed with the Works and Services with due expedition and without delay, in breach of clause 10.1;

(c) failing to provide the security, in breach of clause 2.5;

(d) failing to ensure that the Principal is promptly notified if the Contractor causes or contributes to the occurrence of an Incident in accordance with clause 2.11(c);

(e) failing to provide evidence of insurance (including allowing an inspection of an original or certified copy of the insurance policy where required), in breach of clause 13;

(f) failing to use the materials or standards of workmanship required by this Deed, in breach of clause 4.1;

(g) not complying with any direction of the Principal's Representative made in accordance with this Deed, in breach of clause 9.1;

(h) not complying with the requirements of this Deed regarding the Contract Management Plan in a material respect;

(i) not complying with its environmental obligations under this Deed;

(j) not complying with its obligations under this Deed regarding work health and safety;

(k) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.3; or

(l) any other failure to comply with a material obligation under this Deed.
14.2 Contents of Notice

A written notice under clause 14.1 must:

(a) state that it is a notice under clause 14.1;

(b) specify the alleged breach;

(c) require the Contractor to remedy the breach or, where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and

(d) specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

14.3 Rights following Notice

(a) Upon giving a notice under clause 14.1, the Principal may suspend payments to the Contractor until the date upon which the Contractor remedies the breach or makes arrangements satisfactory to the Principal.

(b) If, by the time specified in a notice under clause 14.1, the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor, terminate this Deed.

14.4 Immediate Termination or Immediate Take Out

If:

(a) an Insolvency Event occurs:

(i) to the Contractor;

(ii) where the Contractor comprises more than one person, any one of those persons; or

(iii) to a person specified in Schedule 1;

(b) the Contractor is in fundamental breach of this Deed as set out in clause 2.6(b)(i);

(c) the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 2.11(c); or

(d) the Contractor's aggregate liability under clauses 12.6(a) and 12.7(b) reaches or exceeds the amount to which its aggregate liability is limited under clause 12.7(c),

then, whether or not the Contractor is then in breach of this Deed, the Principal may, without giving a notice under clause 14.1, exercise the right under clause 14.3(b).
14.5 Principal's Common Rights After Termination

If:

(a) the Principal terminates this Deed under clauses 14.3(b), 14.4 or 14.8;

(b) the Contractor repudiates this Deed and the Principal otherwise terminates this Deed; or

(c) this Deed is frustrated under the Law,

then:

(d) the Contractor:

(i) must novate to the Principal or the Principal's nominee those Subcontracts between the Contractor and its Subcontractors that the Principal directs;

(ii) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:

(A) execute, sign, seal and deliver all notices, deeds and documents; and

(B) undertake actions in the name of the Contractor, for the purposes referred to in clause 14.5(d)(i); and

(iii) must immediately hand over to the Principal's Representative all copies of:

(A) any documents provided by the Principal to the Contractor;

(B) all Contract Documentation prepared by the Contractor to the date on which the Principal exercises its rights under clause 14.3(b) (whether complete or not); and

(C) any other documents or information in existence that is to be provided to the Principal under the terms of this Deed.

This clause 14.5 will survive the termination or frustration of this Deed.

14.6 Parties' Rights after Termination

Subject to clause 14.10, if the Principal terminates this Deed under clause 14.3 or clause 14.4, or if the Contractor repudiates this Deed and the Principal otherwise terminates this Deed:

(a) the Principal will:

(i) subject to clause 14.6(b), not be obliged to make any further payments to the Contractor, including any money that is the subject of
a payment claim under clause 11.2 or a payment statement under clause 11.3;

(ii) be absolutely entitled to call, convert and have recourse to any unconditional undertaking held under clause 2.5; and

(iii) be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and

(b) the Contractor will:

(i) for work carried out prior to the date of termination, be entitled to an amount (determined by the Principal's Representative when the Principal has completed the work) that would have been payable if:

(A) this Deed had not been terminated; and

(B) the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination; and

(ii) not be entitled to claim for any further payment of money (including for damages) in respect of the termination or for any other reason.

This clause 14.6 will survive the termination of this Deed.

14.7 Contractor's Rights after Repudiation or Wrongful Termination

(a) If the Principal:

(i) repudiates this Deed and the Contractor terminates this Deed; or

(ii) wrongfully:

(A) exercises or attempts to exercise any right or power conferred on it by clauses 14.3, 14.4 or 14.8; or

(B) determines or purports to determine this Deed at common law, then the:

(iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 14.8 and the Contractor's sole rights in such circumstances will be those set out in clause 14.9; and

(iv) Contractor:

(A) will not be entitled to the payment of damages;

(B) will not be entitled to any payment on a quantum meruit basis; and

(C) waives all other rights it has to make a Claim in such circumstances.
(b) This clause 14.7 will survive the termination of this Deed.

14.8 Termination for Convenience

Without prejudice to any of the Principal’s other rights or entitlements or powers under this Deed, the Principal may:

(a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and

(b) thereafter, at the Principal’s absolute discretion complete the uncompleted part of the Works and Services either itself or by engaging Other Contractors.

14.9 Payment with Termination under Clause 14.8

If the Principal terminates this Deed under clause 14.8 or is deemed by clause 14.7 to have terminated this Deed under clause 14.8, the Contractor:

(a) will be entitled to payment of the following amounts as determined by the Principal’s Representative:

(i) for work carried out prior to the date of termination, the amount which would have been payable if this Deed had not been terminated and the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;

(ii) the cost of plant and materials reasonably ordered by the Contractor for the Works and for which it is legally bound to pay provided that:

(A) the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (a)(i); and

(B) title in the plant and materials vests in the Principal upon payment;

(iii) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Works and Services and not included in any other payment by the Principal; and

(iv) the amount specified in Schedule 1, for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (a)(ii) and (a)(iii); and

(b) must take all steps possible to mitigate the costs referred to in sub-paragraphs (a)(ii) and (a)(iii).
To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 2.5 when the Contractor has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.9 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Deed other than for the amount payable under this clause 14.9.

This clause 14.9 will survive the termination of this Deed by the Principal under clause 14.8.

14.10 Preservation of Rights

Subject to clause 14.7, nothing in this clause 14 or that the Principal does or fails to do pursuant to this clause 14 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 16.12) which it may have where the Contractor breaches (including repudiates) this Deed.

14.11 Termination by Frustration

If under the Law this Deed is frustrated the Principal will:

(a) pay the Contractor the following amounts as determined by the Principal's Representative:
   (i) an amount calculated in accordance with clause 14.9(a)(i) for work carried out prior to the date of frustration;
   (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 14.9(a)(ii); and
   (iii) the costs calculated in accordance with the terms of clause 14.9(a)(iii); and

(b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 2.5 when the Contractor has complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.11 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the frustration of this Deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Deed other than for the amount payable under this clause 14.11.

Without limiting any other provision of this Deed, this clause 14.11 will survive the frustration of this Deed.
14.12 Codification of Contractor's Entitlements

This clause 14 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

(a) cannot otherwise terminate, rescind or treat this Deed as repudiated; and
(b) waives all rights at Law to terminate, rescind or treat this Deed as repudiated,

otherwise than in accordance with this clause 14.

15. Disputes

15.1 Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed, or either party's conduct before the date of this Deed (Dispute), the Dispute must be determined in accordance with the procedure in this clause 15.

15.2 Notice of Dispute

Where such a Dispute arises, either party may give a notice in writing to the Principal's Representative and the other party (Notice of Dispute). The Notice of Dispute must:

(a) specify the Dispute;
(b) provide particulars of the party's reasons for being dissatisfied;
(c) set out the position which the party believes is correct; and
(d) in the case of a Dispute in respect of a direction of the Principal's Representative under one of the clauses referred to in Schedule 1 (a Schedule 1 Dispute), be given in accordance with clause 15.4.

15.3 Request for further particulars

Where a Notice of Dispute is given by the Contractor, if the Contractor fails to provide sufficient particulars of the Dispute to enable the Principal's Representative to properly consider the matter, then within 21 days after receipt of the Notice of Dispute the Principal's Representative may request the Contractor to provide further particulars of the Dispute.

If within 14 days after the request the Contractor has not furnished the particulars sought, and where the Dispute relates to a Schedule 1 Dispute, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 9.3(a)(i):
(a) the Contractor will be deemed to have accepted the Principal's Representative's direction as final and binding and the direction will not be capable of being challenged, opened up or reviewed in any forum; and

(b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.4 Time for Submitting Notice of Dispute Concerning Principal's Representative's Direction

The parties acknowledge that any direction by the Principal's Representative under one of the clauses referred to in Schedule 1 is an interim position only and that, without limiting the rights of the Principal's Representative under clauses 11.3 or 11.14, either party may seek to have any such direction opened up, reviewed, decided and substituted pursuant to this clause 15 by giving a Notice of Dispute to the other party and the Principal's Representative.

The Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any such direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to this clause 15 or is unreasonable (other than in accordance with the corrected determination). The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a Notice of Dispute.

If the Contractor wishes to have a direction by the Principal's Representative under one of the clauses referred to in Schedule 1 opened up, reviewed, decided and substituted, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 9.3(a)(i), the Contractor must give a Notice of Dispute in respect of the Dispute to the Principal and the Principal's Representative within 14 days of the date of the direction after which the Principal's Representative may review the Dispute and make a determination in accordance with clause 15.5.

If the Contractor fails to give such a notice to the Principal and the Principal's Representative within the time period required:

(a) the direction will be final and binding and will not be capable of being challenged, opened up or reviewed in any forum; and

(b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.
15.5 Determination of Schedule 1 Disputes by the Principal's Representative

Upon receipt of a Notice of Dispute in respect of a Schedule 1 Dispute which is given in accordance with clause 15.4, the Principal's Representative may review and make a determination in respect of the Dispute. The determination of the Principal's Representative in respect of any such Notice of Dispute:

(a) must be in writing;
(b) must be given within 21 days after the Notice of Dispute is given or where further particulars have been requested under clause 15.3, within 21 days after the further particulars have been provided to the Principal's Representative;
(c) will be substituted for the relevant direction the subject of the Notice of Dispute; and
(d) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

If the Principal's Representative fails to make a determination as required by this clause 15.5 the direction the subject of the Notice of Dispute will be deemed to be confirmed by the Principal's Representative.

15.6 Response to Notice of Dispute

Where a Notice of Dispute has been given in accordance with clause 15.2 then the party to whom the Notice of Dispute is addressed must:

(a) if the Notice of Dispute does not relate to a Schedule 1 Dispute, within 21 days of the date of:
   (i) receipt of the Notice of Dispute; or
   (ii) if any further particulars have been requested under clause 15.3, receipt of those particulars; or
(b) if the Notice of Dispute does relate to a Schedule 1 Dispute and if the direction is confirmed, or deemed to have been confirmed, by the Principal's Representative under clause 15.5, within 42 days of the receipt of the Notice of Dispute, provide a response in writing indicating whether or not it agrees with the position set out in the Notice of Dispute.

15.7 Executive Negotiation

(a) If the Dispute is not resolved within 14 days of:
the date of receipt of the response to the Notice of Dispute pursuant to clause 15.6; or

(ii) if no response is received, the date specified for the provision of a response pursuant to clause 15.6,

(the "Referral Date") either party may by notice in writing refer the Dispute to the persons described in Schedule 1 who must:

(iii) meet and undertake genuine and good faith negotiations with a view to:

(A) clarifying and narrowing the issues in dispute in the event that the Dispute is not resolved; and

(B) resolving the Dispute; and

(iv) if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

(b) If appropriate in the circumstances, at or prior to the meeting the parties will exchange documents critical to the resolution of the Dispute.

15.8 Expert Determination

If a dispute relates to a Schedule 1 Dispute and is referred for resolution under clause 15.7 and is not resolved within 21 days after the Referral Date, the dispute must be submitted to an expert determination.

The dispute will be referred to an expert determination whether or not the persons described in Schedule 1 have complied with clause 15.7(a).

15.9 The Expert

The expert determination under clause 15.8 is to be conducted by:

(a) an independent industry expert agreed by the Principal and the Contractor; or

(b) where the parties are unable to agree upon an independent industry expert within 42 days after the Referral Date or an independent industry expert appointed under this clause 15.9:

(i) is unavailable;

(ii) declines to act;

(iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
(iv) does not make a determination within the time required by clause 15.10(e),

an independent industry expert appointed by the President of the Institute of Arbitrators & Mediators Australia.

15.10 Rules of Expert Determination

(a) An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

(b) The expert determination must be made in accordance with the rules for the expert determination process included in the agreement which appears in Schedule 25 or such other rules as the parties and the expert may agree.

(c) The expert must:

(i) disclose to the parties any interest he or she has in the outcome of the determination; and

(ii) not communicate with one party to the determination without the knowledge of the other.

(d) Each party will:

(i) bear its own costs in respect of any expert determination; and

(ii) pay one-half of the expert’s costs.

(e) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within the period set out in the agreement between the parties and the expert.

15.11 Agreement with Expert

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 25 or such other terms as the parties and the expert may agree.

15.12 Determination of Expert

The determination of the expert:

(a) must be given to the parties in writing;

(b) will be:

(i) substituted for the relevant direction of the Principal's Representative; and
(ii) final and binding,
    unless a party gives a notice of appeal to the other party within 21 days of receipt of the determination; and
(c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

15.13 Arbitration Agreement

If:
(a) a notice of appeal is given under clause 15.12; or
(b) the dispute does not relate to a Schedule 1 Dispute and is not resolved within 21 days of the Referral Date,
the dispute must be determined by arbitration in accordance with the following clauses.
The dispute will be referred to arbitration whether or not the persons described in Schedule 1 have complied with clause 15.7(a).

15.14 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.
To the extent that they are not inconsistent with this Deed, 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 Sydney, Australia.
The arbitrator will have power to grant all legal, equitable and statutory remedies and, to open up, review and substitute any decision of the expert under clause 15.12 that is not final and binding on the parties pursuant to clause 15.12.
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).

15.15 Survive Termination

This clause 15 will survive the termination of this Deed.
15.16 Continuation of Work

Despite the existence of a Dispute between the parties, the Contractor must:
(a) continue to carry out the Works and Services; and
(b) otherwise comply with its obligations under this Deed.

15.17 Urgent Relief

Nothing in this clause 15 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

15.18 Disputes under Third Party Agreements

(a) A Dispute under this Deed may be concerned with matters that also arise in respect of the respective rights and obligations of the Principal and a Third Party (a Common Dispute) including where the:
   (i) Principal is in breach of a provision of this Deed to the extent such a breach is caused by a Third Party under its respective Third Party Agreement;
   (ii) Principal is entitled to obtain remedies or benefits under a Third Party Agreement referenced to a Claim by the Contractor under this Deed;
   (iii) Contractor has rights against the Principal under a warranty or indemnity or specific right of reimbursement or recovery in this Deed, and there is a corresponding warranty or indemnity or specific right of reimbursement or recovery in a Third Party Agreement; or
   (iv) Contractor has a Claim against the Principal and the Principal has a Claim against a Third Party based on the same or similar events or circumstances.

(b) In the event that there is a Common Dispute then the Principal's Representative may, in its absolute discretion, within 28 days of a Notice of Dispute, issue a direction to the Contractor stating that this clause 15.18 applies.

(c) Clauses 15.18(d) to 15.18(k) apply only in relation to Common Disputes for which the Principal's Representative has issued a direction pursuant to clause 15.18(b).

(d) In relation to the relevant Common Dispute:
   (i) clauses 15.3 to 15.14 will not apply to the resolution of that Common Dispute; and
   (ii) the Contractor acknowledges and agrees that the purpose of this clause 15.18 is:
(A) to provide the Contractor with comparable remedies and entitlements in respect of Common Disputes, and to limit the Contractor’s rights against the Principal in respect of Common Disputes by reference to the Principal’s rights and entitlements under or in connection with Third Party Agreements; and

(B) not to reduce or disentitle or otherwise affect the validity of any Claim by the Principal against a Third Party under, arising out of, or in any way in connection with the respective Third Party Agreement.

(e) In respect of the relevant Common Dispute:

(i) the Contractor’s entitlement to receive compensation from the Principal, and the Principal’s liability to pay compensation to the Contractor, will only arise at the time the relevant Common Dispute is resolved or determined;

(ii) if any compensation is payable by the Principal to the Contractor under this Deed in respect of the Common Dispute, the Contractor will have the same entitlement to recover compensation under this Deed as the Principal has to recover that compensation from a Third Party under the respective Third Party Agreement;

(iii) any rights the Contractor has against the Principal will not exceed the equivalent relief, benefit or payment to which the Principal is entitled under the relevant Third Party Agreement; and

(iv) the Principal will pass through to the Contractor the proportion of the damages or other form of relief to which the Principal is entitled:

(A) to the extent referable to the Contractor, including any liability, Claim or loss of the Contractor; and

(B) determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.

(f) The Principal agrees to:

(i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;

(ii) if it is unable to obtain the Third Party’s consent as contemplated under clause 15.18(f)(i), make on behalf of the Contractor whatever representations in respect of the Common Dispute that the Contractor reasonably requests; and

(iii) provide:
(A) regular updates to the Contractor; and

(B) whatever information and documents the Contractor reasonably requests,

as to the progress of the Common Dispute.

(g) The Principal's liability to pay the Contractor:

(i) is satisfied by payment to the Contractor in accordance with this clause 15.18; or

(ii) if the Third Party is not liable to the Principal, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:

(A) the Principal has complied with its obligations under this clause 15.18 with respect to recovery of the Principal's and the Contractor's entitlements from the Third Party; and

(B) all appeals from such determination have been exhausted.

(h) The Contractor agrees:

(i) to provide all documents, assistance, and cooperation reasonably requested by the Principal (and in the time requested by the Principal) in connection with the Common Dispute;

(ii) that where a Third Party Agreement contemplates:

(A) a dispute resolution process other than litigation (including arbitration, expert determination, mediation or any other dispute resolution process):

(1) that dispute resolution process will apply as between the Principal and the Contractor (including any rules or other terms relating to procedure); and

(2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that dispute resolution process; and

(B) litigation, the Contractor consents to the Common Dispute being consolidated with (or heard together with) that litigation; and

(iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor's rights and obligations under this Deed.
(i) The Contractor's entitlement to a remedy will not be reduced to the extent to which the Principal's entitlements under a Third Party Agreement are reduced or extinguished due to the Principal's breach or failure to comply with the Third Party Agreement or other act or omission (to the extent not caused by the Contractor).

(j) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this Deed, then the Contractor is not entitled to the same compensation under this clause 15.18.

(k) Any payment to which the Contractor is entitled under this clause 15.18 shall be paid by the Principal to the Contractor within 20 Business Days from the date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

16. General

16.1 Notices

(a) At any time and from time to time the Principal's Representative may notify the Contractor of an electronic portal or document management system to be used for the purposes of this Deed. The Principal's Representative's notice will set out:

(i) the relevant electronic portal or document management system;

(ii) the commencement date for the use of the electronic portal or document management system;

(iii) any password, login details or similar information required for the Contractor to use the electronic portal or document management system;

(iv) address details for the Principal, the Principal's Representative and the Contractor; and

(v) any other information reasonably necessary for the use and service of notices via the electronic portal or document management system.

(b) Any notices contemplated by this Deed must be in writing and must:

(i) before the date referred to in clause 16.1(a)(ii), be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); and

(ii) on and from the date referred to in clause 16.1(a)(ii):

(A) in the case of notices by the Contractor:
(1) without limiting clause 16.1(b)(ii)(A)(2), be sent to the Electronic Portal address of the Principal or the Principal's Representative (as applicable); and

(2) under clauses 10, 11, 12, 14, 15 or 17 or concerning a claim for payment, in addition to the copy of the notice sent pursuant to clause 16.1(b)(ii)(A)(1), also be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); and

(B) in the case of notices by the Principal or the Principal's Representative:

(1) be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); or

(2) except in relation to notices by the Principal under clauses 14.3, 14.4, 14.8 or 15.2, be sent to the Electronic Portal address of the intended recipient.

(c) For the avoidance of doubt, no notice referred to in clause 16.1(b)(ii)(A)(2) shall be effective unless delivered in accordance with both clauses 16.1(b)(ii)(A)(1) and 16.1(b)(ii)(A)(2).

(d) Subject to clause 16.1(g), a notice sent by the Electronic Portal will be taken to have been received on the date recorded on the notice on which it was registered on the Electronic Portal.

(e) Subject to clause 16.1(g), a notice sent by post will be taken to have been received:

(i) in the case of international post, 7 Business Days after the date of posting; and

(ii) in the case of posting within Australia, 2 Business Days after the date of posting.

(f) Subject to clause 16.1(g), a notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clause 16.1(b)(i), 16.1(b)(ii)(A)(2) or 16.1(b)(ii)(B)(1) (as applicable), which is a Business Day.
(g) Where clause 16.1(b)(ii)(A)(2) applies, the relevant notice will be taken to have been received on the later of:

(i) the date determined in accordance with clause 16.1(d); and

(ii) the date determined in accordance with clause 16.1(e) or 16.1(f) (as the case may be).

16.2 Law and Jurisdiction

(a) This Deed is governed by and will be construed according to the Laws of New South Wales.

(b) Where clause 15.17 applies:

(i) the parties irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State of New South Wales with respect to any proceedings that are permitted to be brought at any time under clause 15.17; and

(ii) in respect of the jurisdiction referred to in clause 16.2(b)(i) the parties irrevocably waive any objection they may now or in the future have to the venue of any action or proceeding, and any claim they may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

16.3 No Waiver

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Deed.

(b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.

(c) No waiver by the Principal of:

(i) a breach of any term of this Deed; or

(ii) any other failure by the Contractor to comply with a requirement of this Deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,
will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

16.4 Assignment
The Contractor cannot assign its rights or liabilities under this Deed without the prior written consent of the Principal and except on such terms and conditions as are determined in writing by the Principal.

16.5 Entire Agreement
This Deed and the Deed of Disclaimer constitute the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

(a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed and the Deed of Disclaimer; and

(b) any correspondence or other documents relating to the subject matter of this Deed and the Deed of Disclaimer that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed and the Deed of Disclaimer.

16.6 Joint and Several Liability
The obligations of the Contractor, if more than one person, under this Deed, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

16.7 Severability
If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or

(b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Deed.
16.8 Indemnities to Survive

Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.

Nothing in this clause 16.8 prevents any other provision of this Deed, as a matter of interpretation also surviving the termination of this Deed.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.

16.9 Stamp Duty and Other Fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Deed and the performance of its obligations in respect of this Deed.

16.10 Taxes

Without limiting clause 2.3 but subject to clause 18, the Contractor must pay all Taxes that may be payable in respect of the Works and Services, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Works and Services.

16.11 Confidentiality

(a) Subject to clause 16.11(b), the Contractor must:

(i) keep confidential this Deed and any information relating to the Works and Services and any discussions concerning this Deed;

(ii) not use the information referred to in sub-paragraph (a)(i) except as necessary for the performance of the Works and Services; and

(iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).

(b) The Contractor is not obliged to keep confidential any information:

(i) which is in the public domain through no default of the Contractor, UGL Rail Services Pty Ltd, Unipart Rail or a person who executes a guarantee given pursuant to clause 2.5(g)(i); or

(ii) the disclosure of which is:

(A) required by Law;

(B) consented to in writing by the Principal;

(C) given to a court in the course of proceedings to which the Contractor, UGL Rail Services Pty Ltd, Unipart Rail or a person who executes a guarantee given pursuant to clause...
2.5(g)(i) is a party or to an expert or other person appointed under this Deed or an agreed arbitrator;

(D) required by a rule of a relevant stock exchange; or

(E) made to UGL Rail Services Pty Ltd, Unipart Rail or a person who executes a guarantee given pursuant to clause 2.5(g)(i).

(c) The Contractor must:

(i) execute and submit to the Principal within 14 days of this Deed a Confidentiality Undertaking;

(ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and

(iii) ensure that each Subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.

(d) The Contractor acknowledges that the Principal may disclose this Deed (and information concerning the terms of this Deed) under or in accordance with any one or more of the following:

(i) the Government Information (Public Access) Act 2009 (NSW); and

(ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability.

(e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under clause 16.11(d).

(f) The Contractor must not commit to marketing or promotional opportunities or develop marketing or promotional materials that relate to the Works and Services, without the prior written approval of the Principal's Representative. The Contractor must not make any statement (verbal or written) or provide any photographs or illustrations on social media or to the media or government representatives regarding the Works and Services without the prior written approval of the Principal's Representative.

16.12 Right of Set-Off

The Principal may deduct from moneys otherwise due to the Contractor:

(a) any debt or other moneys due from the Contractor to the Principal; or
any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise, whether under this Deed or otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.5.

16.13 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 11.4(a), this Deed is an entire contract.

16.14 Principal May Act

(a) The Principal may, either itself or by a third party, perform an obligation under this Deed that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.

(b) Where the Principal or the Principal’s Representative is entitled under this Deed to exercise any right or power to:

(i) direct or instruct the Contractor to, or

(ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal’s Representative does exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works and Services.

16.15 Unlimited Discretion

(a) Except as expressly provided in this Deed (including in clause 16.15(c)) no procedural or substantive limitation (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this Deed.

(b) Without limiting clause 16.15(a):

(i) except as expressly provided in this Deed (including in clause 16.15(c)) neither the Principal nor the Principal's Representative will be:

(A) constrained in the manner in which it exercises; or
(B) under any obligation to exercise, any discretion, power or entitlement conferred by this Deed because of the operation of any legal doctrine which in any way limits or otherwise affects the express words used in the provision of this Deed conferring the discretion, power or entitlement; and

(ii) any approval or consent referred to in, or required under, this Deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) think fit, unless this Deed expressly provides otherwise.

(c) Nothing in this clause 16.15 will prevent the implication of a term into this Deed where the implication of the term is required to ensure that this Deed (or a part of this Deed) is not void or voidable due to uncertainty or any other legal principle.

16.16 No Partnership, Joint Venture or Other Fiduciary Relationship

Nothing in this Deed will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

16.17 Process Agent

If the Contractor is a foreign company (as defined in the Corporations Act 2001 (Cth)), the Contractor must:

(a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and

(b) obtain the process agent's consent to the appointment.

16.18 Indemnity

The Contractor must indemnify the Principal against:

(a) any liability to or claim by any other person (including any Third Party); and

(b) all costs, expenses, losses, damages, fines and penalties suffered or incurred by the Principal,

arising out of, or in any way connected with:

(c) the Contractor's breach of a term of this Deed;

(d) any obligation under any Third Party Agreement which the Contractor is obliged to perform under clause 2.7(a)(ii);
(e) the Works and Services carried out during a Train Path; or
(f) any Defect or the consequences of a Defect,
provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the liability claim, costs, losses or damages.

16.19 Variations
Subject to clause 6.3, this Deed may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

16.20 Provisions Limiting or Excluding Liability
Any provision of this Deed which seeks to limit or exclude a liability of the Principal or the Contractor is to be construed as doing so only to the extent permitted by Law.

16.21 Limit of Contractor's Liability
Subject to clause 16.23, the liability of the Contractor to the Principal, whether arising under or in connection with this Deed or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise) or on any basis in Law, is limited to the Contract Sum. This clause 16.21 will survive the termination of this Deed.

16.22 No Liability for Certain Matters
Subject to clauses 16.23 and 16.23A, the Contractor will have no liability whatsoever to the Principal for loss of use, production, profit, revenue, business, data, contract or anticipated saving or for any financing costs or increase in operating costs. This clause 16.22 will survive the termination of this Deed.

16.23 Qualification on Limitation of Liability
Clauses 16.21 and 16.22 do not apply to limit or restrict in any way:
(a) any liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;
(b) any liability for which, but for a failure by the Contractor to comply with its obligations under this Deed or under an insurance policy, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with this Deed;
(c) the Contractor's liability to indemnify the Principal under clauses 2.7(b), 3.5(d), 3.7(d), 5.7(b)(ii), 5.10(a)(ii) or 13.2 or for breach of clause 2.6.
(d) the Contractor's liability for costs, losses and damage caused by the malicious or fraudulent acts of employees of the Contractor or its Subcontractors or its agents;
(e) liability which is otherwise limited by another provision of this Deed;
(f) the Contractor's liability for Abandonment; or
(g) liability out of which by Law the Contractor cannot contract.

This clause 16.23 will survive the termination of this Deed.

16.23A Qualification on Consequential Loss

Clause 16.22 does not apply to limit or restrict in any way:

(a) the Contractor's liability to pay liquidated damages under clause 12.6(a) or general damages under clause 12.7(b); or
(b) the Contractor's liability to indemnify any Rail Transport Agency under the deed poll executed in the form of Schedule 24.

This clause 16.23A will survive the termination of this Deed.

16.24 No Circularity

(a) In determining:

(i) whether an insurance policy extends to cover this Deed in respect of any matters referred to in clauses 16.21 or 16.22 and the liability (if any) of the Contractor arising out of or in connection with the matter; or

(ii) the amount recovered or recoverable by the Contractor under an insurance policy in connection with a matter referred to in clauses 16.21 or 16.22,

(together the Determinable Matters), the limitation on the Contractor's liability pursuant to clauses 16.21 or 16.22 will be disregarded and it must be assumed that the Contractor has paid in full the amount of its liability to the Principal (unlimited by clauses 16.21 or 16.22) in a manner which entitles the Contractor to claim under the relevant insurance policy.

(b) The Contractor waives and disclaims any right or entitlement it may now or in the future have, but for this clause 16.24(b), to:

(i) not disregard clauses 16.21 or 16.22, in connection with any determination of the Determinable Matters; or

(ii) do any of the following:
(A) claim or assert (including by way of defence, counter-claim or third party proceeding); or

(B) instigate, participate in, consent to, or lend its name to, any action or proceedings of any kind under which it is claimed or asserted (including by way of defence, counter-claim or third party proceeding),

that clauses 16.21 or 16.22 are not to be disregarded in connection with the determination of the Determinable Matters.

(c) The parties agree that clauses 16.24(a) and 16.24(b) may be pleaded in bar to any claim or assertion by:

(i) the Contractor; or

(ii) any insurer;

in any Claim to the effect that clauses 16.21 or 16.22 are not to be disregarded as provided in clause 16.24(a).

(d) If for any reason in relation to a matter referred to in clauses 16.21 or 16.22:

(i) clauses 16.24(a) to 16.24(c) (or any of them) are unenforceable, void, voidable or illegal, clauses 16.21 and 16.22 will be of no force or effect and will be treated as if they were severed from, and had never been terms of, this Deed; and

(ii) the Contractor, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to have regard to, clauses 16.21 and 16.22 in determining the Determinable Matters, then clauses 16.21 and 16.22 will treated as if they were severed from and had never been terms of, this Deed and as of no force or effect whatsoever as against the person(s) who is so not obliged, or who is so entitled.

16.25 Proportionate Liability

(a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Principal and the Contractor under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether such rights,
obligations or liabilities are sought to be enforced by a claim in contract, in
tort or otherwise.

(b) To the extent permitted by Law:

(i) the Contractor must not seek to apply the provisions of Part 4 of the
Civil Liability Act 2002 (NSW) in relation to any claim by the Principal
against the Contractor (whether in contract, tort or otherwise); and

(ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW)
are applied to any claim by the Principal against the Contractor
(whether in contract, tort or otherwise), the Contractor will indemnify
the Principal against any loss, damage, cost or expense that forms
part of a claim by the Principal against the Contractor which the
Principal is not able to recover from the Contractor because of the
operation of Part 4 of the Civil Liability Act 2002 (NSW).

(c) The Contractor must:

(i) in each Subcontract into which it enters for the carrying out of the
work under this Deed or for the supply of materials or services,
include a term that (to the extent permitted by Law) excludes the
application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to
all and any rights, obligations or liabilities of either party under or in
any way in connection with each Subcontract whether such rights,
obligations or liabilities are sought to be enforced by a claim in
contract, tort or otherwise; and

(ii) require each Subcontractor or supplier of materials or services to
include, in any further contract that it enters into with a third party for
the carrying out of the work under this Deed, a term that (to the extent
permitted by Law) excludes the application of Part 4 of the Civil
Liability Act 2002 (NSW) in relation to all and any rights, obligations or
liabilities of either party under or in any way in connection with each
further agreement whether such rights, obligations or liabilities are
sought to be enforced by a claim in contract, tort or otherwise.

(d) The Contractor must ensure that all policies of insurance covering third party
liability it is required by this Deed to effect or maintain (including the
professional indemnity policy referred to in clause 13.5(a)(iv)):

(i) cover the Contractor for potential liability to the Principal assumed by
reason of the exclusion of Part 4 the Civil Liability Act 2002 (NSW);
and

(ii) do not exclude any potential liability the Contractor may have to the
Principal under or by reason of this Deed.
(e) The powers conferred and restrictions imposed on a court by Part 4 of the Civil Liability Act 2002 (NSW) are not conferred on the expert or any arbitrator appointed in accordance with the provisions of this Deed.

The expert or arbitrator (as the case may be) has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to expert determination or arbitration.

16.26 Prior Work

The Contractor agrees that the work in connection with the Works and Services carried out by the Contractor prior to the date of this Deed will be deemed to be governed by the provisions of this Deed and will be deemed to be part of the Works and Services and any payments made to the Contractor by the Principal prior to the date of this Deed in respect of the Works and Services will be treated as part payments of the amount required to be paid by the Principal under this Deed.

16.27 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

16.28 Personal Property Securities Act

(a) By signing this Deed, the Contractor acknowledges and agrees that if this Deed and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (Security Interest), the Contractor shall do anything (including amending this Deed or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:

(i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;

(ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or

(iii) enabling the Principal to exercise rights in connection with the Security Interest and this Deed.
(b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.

(c) The Contractor:

(i) acknowledges that the Security Interests created under or pursuant to this Deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);

(ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and

(iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.

(d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.

(e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

16.29 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

17. Notification of Claims

17.1 Notice of Variation

If a direction by the Principal's Representative, other than a Variation Order under clause 6.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

(a) within the time specified in Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Variation;

(b) within the time specified in Schedule 1 of giving the notice under paragraph (a), submit a written Claim to the Principal's Representative, which includes the details required by clause 17.3(b); and
17.2 Notice of Other Claims

If the Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Deed by the Principal) under, arising out of, or in any way in connection with, this Deed, the Works and Services, including anything in respect of which:

(a) it is otherwise given an express entitlement under this Deed; or
(b) this Deed expressly provides that:
   (i) specified costs are to be added to the Contract Sum; or
   (ii) the Contract Sum will be otherwise increased or adjusted,

as determined by the Principal's Representative, the Contractor must give the Principal's Representative the notice required by clause 17.3(a) and a Claim in accordance with clause 17.3(c).

17.3 Prescribed Notices

(a) Any written notice referred to in clauses 17.1 and 17.2 must:
   (i) be provided not later than the time specified in Schedule 1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
   (ii) expressly specify:
      (A) that the Contractor proposes to make a Claim; and
      (B) the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.

(b) Any written Claim referred to in clause 17.1(b) must include:
   (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
   (ii) the provisions of this Deed or other legal basis upon which the Claim is based; and
   (iii) details of the amount claimed and how it has been calculated.

(c) Any written Claim referred to in clause 17.2 must:
(i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 17.3(a); and

(ii) include:

(A) detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;

(B) the legal basis for the Claim, whether based on a term of this Deed or otherwise, and if based on a term of this Deed, clearly identifying the specific term;

(C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

(D) details of the amount claimed and how it has been calculated.

17.4 Submission of Claims

Claims submitted by the Contractor under clauses 17.1(b) and 17.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.

If within 20 Business Days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 20th Business Day.

17.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 17.3(b) or 17.3(c) every 28 days after the written Claim under clause 17.1(b) or 17.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

17.6 Bar

If the Contractor fails to comply with clauses 2.3(d), 15.1, 15.2, 15.3, 15.4, 17.1, 17.2, 17.3 or 17.5:

(a) the Principal will not be liable upon any Claim by the Contractor; and

(b) the Contractor will be absolutely barred from making any Claim against the Principal,
arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

17.7 Other Provisions Unaffected

Nothing in clauses 17.1 to 17.6 will limit the operation or effect of any other provision of this Deed that requires the Contractor to give notice to the Principal’s Representative in order to preserve an entitlement to make a Claim against the Principal.

18. General Provisions Relating to GST

(a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Deed are exclusive of GST.

(b) If GST is or becomes payable on a supply made by a party (Supplier) under or in connection with this Deed, including the Works and Services, the party providing consideration for the supply (Recipient) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.

(c) Any amount payable under clause 18(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.

(d) If any party is required under this Deed to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.

(e) Notwithstanding any other provision of this Deed, where the Recipient is the Contractor, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 18 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a tax invoice that complies with the GST Legislation in respect of that taxable supply.

(f) The parties agree that, unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this Deed:
(i) the Principal will issue to the Contractor a recipient created tax invoice (RCTI) for each taxable supply made by the Contractor to the Principal under this Deed;

(ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;

(iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and

(iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this Deed, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 11.3(e)) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect any such taxable supply.

Each party acknowledges and warrants that at the time of entering into this Deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

(g) If the GST payable in relation to a supply made by the Supplier under this Deed varies from the additional amount paid by the other party under this clause 18 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

(h) In this clause 18:

(i) terms defined in GST Legislation have the meaning given to them in GST Legislation; and

(ii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.