



**Transport
for NSW**

**TANGARA TECHNOLOGY UPGRADE
SUPPLY AND SERVICES CONTRACT**

Between

Transport for NSW

[PRINCIPAL]

ABN 18 804 239 602

and

UGL Unipart Rail Services Pty Ltd

[CONTRACTOR]

ABN 49 154 895 940

CONTRACT NUMBER : IPD -19-8191

Level 5, Tower A
821 Pacific Highway
Chatswood NSW 2067

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List of Exhibits

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Date	
Parties	
1.	Transport for NSW (ABN 18 804 239 602), a corporation established by section 3C of the <i>Transport Administration Act 1988</i> (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 <i>Transport Administration Act 1988</i> (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 parties, by the Deed of Settlement and Variation, have varied, or intend to vary, the Initial TTU Contract to exclude "Portion 3" (as that term is defined in the Initial TTU Contract). The supply of "Portion 3", but not the installation, will be carried out by the Contractor under this Deed. The installation of "Portion 3" will be carried out by others.
E	The Contractor has agreed to undertake the Supply 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 Supply and Services.

Acceptance means the stage in the provision of the Equipment when the Contractor has:

- (a) carried out and passed all Tests that are required under this Deed to be carried out and passed before Acceptance;
- (b) provided the Principal's Representative with the Contractor's Certificate of Acceptance in respect of a Consist Kit or a Consumables Kit or item of Equipment; and
- (c) done everything else that it is required to do under this Deed before Acceptance of a Consist Kit, Consumables Kit or item of Equipment including those things referred to in Schedule 1.

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 8.1, except where that Variation is directed in the circumstances described in clause 10.2(d)

The valuation of entitlements to money under clauses 12.1, and 15.3 is not a Variation for the purposes of this definition of Act of Prevention.

Ad Hoc Services means any ad hoc services (other than Design Services, Commissioning Services and Inventory Management Services) to be provided by the Contractor in relation to a Consist, as directed by the Principal pursuant to clause 7.

Advance Payment has the meaning given to that term in clause 13.16(a)(i).

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 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 Supply and Services; or
- (b) use for its intended purpose a completed Consist.

Bi-lock Keys means the keys listed in Schedule 16 and issued by Sydney Trains to the Contractor.

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

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 equipment, materials and services similar to the Supply 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 Supply and Services; and
- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Supply and Services, or a delay to the Contractor achieving Delivery of a Consist Kit or a Consumables Kit by the relevant Date for Delivery in accordance with clause 12.4(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 services similar to the Supply 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 Delivery 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 Supply 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.

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 Supply 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 Supply and Services.

Commencement Date means the date determined by clause 1.6(b).

Commencement of Revenue Services or **CRS** means in respect of a Consist, the point in time when the Consist returns to normal passenger carrying services.

Commissioning Services means the services to be provided by the Contractor in relation to the commissioning of a Consist, as set out in the Statement of Works and/or as requested by the Principal pursuant to clause 7.

Completion Payment Claim has the meaning given to that term in clause 13.8.

Conditions Precedent are the conditions precedent as set out in clause 1.7.

Conditions Precedent Deadline means 30 June 2020 or such other date as agreed by the parties in writing.

Confidentiality Undertaking means a confidentiality undertaking in the form provided for in Schedule 3.

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

Consist means a set of 8 Cars.

Consist 1 means the first Consist completed by the Contractor under the Initial TTU Contract.

Consist 1 Design means the Design Documentation and "as-installed" drawings deemed to be included in Exhibit K pursuant to clause 1.11.

Consist Kit means a container of equipment and materials to be Delivered by the Contractor in respect of each Consist in accordance with this Deed.

Consumables Kit means a Production Consumables Kit or a Shop Floor Consumables Kit, or both, as the context requires.

Contamination means the presence 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,

and, for the avoidance of doubt, includes any Hazardous Material.

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 Supply and Services (whether before or after the date of this Deed) including:

- (a) all Design Documentation (if any); 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, (including an Inventory Management Plan) as developed, amended or updated from time to time in accordance with this Deed.

Contract Particulars means Schedule 1.

Contract Sum means the sum of:

- (a) the Reimbursable Costs;
- (b) the Corporate Overhead and Profit;
- (c) Inventory Management Services payment;
- (d) Design Services payment;
- (e) Commissioning Services payment;
- (f) Ad Hoc Services payment; and
- (g) the Incentive Payment,

as set out in the Payment Schedule.

Contractor's Certificate of Acceptance means a certificate from the Contractor in the form provided for in Schedule 6A certifying that Acceptance has been achieved in accordance with this Deed.

Contractor's Plant and Equipment means all plant and equipment used by the Contractor for the purposes of the Supply 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 11.5(a)(i) as being the Contractor's Representative.

Contractor's Technical Proposal means Exhibit B.

Corporate Overhead and Profit means the amount calculated by multiplying the sum of the Reimbursable Costs by 8.5%.

Date for Delivery means in respect of a Consist Kit or a Consumables Kit the date, or the last day of the period of time, specified in the Program Schedule or as otherwise notified in writing by the Principal to the Contractor for delivery of that Consist Kit or Consumables Kit, as adjusted under this Deed by an extension of time determined in accordance with the terms of this Deed or pursuant to any arbitration or any other final and binding dispute resolution procedure under clause 17.

Deed means the General Conditions, Schedules 1 to 17 and Exhibits A to L, however Exhibits B, C, E, F, G, I, J, K and L 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 17.

Deed of Disclaimer means Exhibit E.

Deed of Settlement and Variation means the document titled "Deed of Settlement, Release and Variation" between the Principal and the Contractor, dated on or about the date of this Deed.

Defect means any:

- (a) defect or deficiency in design (including the Consist 1 Design), the EBOM, materials or workmanship; or
- (b) any defect in or omission from the Equipment or any other aspect of the Supply and Services that is not in accordance with the requirements of this Deed, including non-compliances, non-conformances and non-conformities.

Delivery means:

- (a) in the case of the Equipment, the physical receipt of possession and control of the Equipment which is free of Defects from the Contractor by the

Principal, (by way of Delivery to the Delivery Point), in satisfaction of the Contractor's obligations under this Deed in respect of the Equipment; and

- (b) in the case of Services, the Services are free of Defects and have been performed in accordance with this Deed to the satisfaction of the Principal,

and Deliver and Delivered have corresponding meanings;

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 (including such prepared by the Contractor under the Initial TTU Contract) required by this Deed or necessary to be produced by the Contractor to perform the Supply and Services and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Deed.

Design Services means any design services (if any) to be provided by the Contractor in relation to a Consist, as requested by the Principal from time to time pursuant to clause 7.

Design Working Group has the meaning given to that term in clause 6.11.

Dispute has the meaning given to that term in clause 17.1.

Document means any record of information, including in electronic form, and includes:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else;
- (d) a map, plan, drawing or photograph; and
- (e) digital records, computer software, data and information.

Electronic Portal means the electronic portal or document management system (if any) referred to in a notice by the Principal's Representative under clause 18.1(a).

Engineering Bill of Materials or **EBOM** means the engineering bill of materials deemed to be included in Exhibit J pursuant to clause 1.11.

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 and/or materials, which is to be supplied by the Contractor pursuant to this Deed and installed by the Principal, Sydney Trains or others into the Cars.

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 3.3(d);
- (b) for a Variation directed in accordance with clause 8.1 or a direction by the Principal's Representative to which clause 19.1 applies;
- (c) for an extension of time to any Date for Delivery under clause 12.5; or
- (d) for payment under clause 13, including a claim under clause 13.8.

Excluded Costs means:

- (a) amounts incurred in correcting Defects, including amounts paid or payable by the Contractor for correcting Defects;
- (b) amounts (including damages) paid or payable by the Contractor by reason of any breach by the Contractor of this Deed or other wrongful act or omission by the Contractor;
- (c) amounts incurred in carrying out any replacement, making good or repair under clause [15.1] (including any deductibles under any insurances required to be effected under this Deed and any amounts paid or payable by the Contractor pursuant to an obligation under this Deed);
- (d) any on-site or off-site overheads (whether in the nature of directors' fees, salaries of corporate officers, office administration costs, travelling expenses,

superannuation contributions, rent, or any other "off-the-job" costs or otherwise whatsoever);

- (e) other amounts not properly incurred in respect of the execution of the Supply and Services or which the Deed provides are to be borne by the Contractor or to be a debt due from the Contractor to the Principal or which are payable by the Contractor to the Principal under any indemnity;
- (f) any amounts for Equipment or Services that, under this Deed, are specified to be paid under a different arrangement, including where applicable rates are included in this Deed, including for Inventory Management Services, Design Services, Ad Hoc Services, and
- (g) any other amounts stated in any other provision of this Deed to be Excluded Costs (or not be Reimbursable Costs).

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

General Conditions means clauses 1-20 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 rolling stock (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.

Incentive Payment has the meaning in Schedule 2.

Incident means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Supply 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;
 - (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 has the meaning given to it in the Initial TTU Contract.

Initial TTU Contract means the contract between the Principal and the Contractor titled Tangara Technology Upgrade Contract, contract number TPD-14-3914, dated 3 July 2015.

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.

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.

Inventory means all:

- (a) equipment, materials and deliverables procured by the Contractor to be installed by the Principal, Sydney Trains or others into Consists 2 to 55;
- (b) Principal Supplied Items; and
- (c) Equipment provided or to be provided under this Deed, as listed in the EBOM,

in the possession or under the control of the Contractor.

Inventory Management Plan means a plan developed by the Contractor for implementation of the Inventory Management Services.

Inventory Management Services means management of the Inventory by the Contractor, as set out in the Statement of Works.

KPIs means the key performance indicators set out in the Payment Schedule.

KPI Payment means the KPI payment set out in the Payment Schedule

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).

Management Plans means the plans set out in Schedule 7.

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

Notice of Acceptance means a notice, in the form of Schedule 6B, issued under clause 14.2(b)(i) by the Principal's Representative stating that the Equipment has achieved Acceptance.

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.

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, other than the Contractor and its Subcontractors.

Overhead Costs means the costs referable to the items described in Schedule 2.

Parent Company Guarantee means the deed that appears in Schedule 14.

Payment Schedule means Schedule 2.

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 Supplied Items means the items set out in Schedule 12, and includes the "Testing and Commissioning Tools" as listed in Schedule 29 of the Initial TTU Contract, and all additional Bi-lock Keys.

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 11.2,

and includes any appointee under clause 11.3.

Procurement Schedule means a procurement schedule provided by the Contractor pursuant to and in accordance with clause 5.5(d).

Production Consumables Kit means production consumables listed in the EBOM that will be included in the Production Shop Floor Consumables Kit.

Program Schedule means Exhibit L that lists the indicative Dates for Delivery of the Equipment, as developed and updated by the Principal from time to time in accordance with clause 5.5.

Progress Claim has the meaning given to that term in clause 13.2.

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 Supply and Services from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Supply and Services are performed consistently with Law in relation to work health and safety; and
- (c) address the matters specified in Schedule 1.

Quotation means a Contractor's quote for specific Ad Hoc Services and/or Design Services and/or Commissioning Services following a Request for Quotation by the Principal pursuant to clause 7.

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 decking 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 17.5.

Reimbursable Costs means:

- (a) in respect of the Supply and Services:

- (i) to the extent that the Contractor and the Principal's Representative have agreed that the Supply and Services will be subject to a fixed price, that agreed amount;
- (ii) to the extent that the Contractor and the Principal's Representative have agreed to, or this Deed sets out, a rate or schedule of rates, then the relevant rate multiplied by the relevant quantity of Supply or Services;
- (iii) otherwise, the direct costs actually and reasonably incurred and payable by or on behalf of the Contractor for the performance of the Supply and Services in accordance with this Deed;
- (iv) but excluding the any other amount stated in this Deed that are not Reimbursable Costs;
- (v) but does not include Excluded Costs.

Relevant Matters has the meaning given to that term in clause 11.13(a).

Request for Quotation means a request by the Principal for the Contractor to provide a Quotation under clause 7.

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.

Services means the:

- (a) Ad Hoc Services;
- (b) Commissioning Services;
- (c) Design Services; and
- (d) Inventory Management Services.

Schedule of Rates means Exhibit I and sections 2.4.2 and 2.4.3 of the Payment Schedule which, in respect of any Equipment, Service or item of work to be carried out, shows the rate or respective rates of payment for the execution of that Equipment, Service or item and which may also include lump sums, provisional sums, other sums, quantities and prices.

Security Interest has the meaning given to that term in clause 18.27(a).

Shop Floor Consumables Kit means the shop floor consumables that will be included in a Shop Floor Consumables Kit.

Statement of Work means the document that 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.

Supply 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 procurement, manufacture, quality control, despatch to the Warehouse Facility, Inventory and logistics management and Delivery of a Consist Kit or a Consumables Kit (or Kits) to the Principal (as applicable) of the Equipment required for the refurbishment and technological upgrade of the Cars, as stated in or reasonably ascertainable from the Statement of Work;
- (b) the provision of any special tools, materials, spare parts and software to be supplied under this Deed;
- (c) the Inventory Management Services.
- (d) the Design Services (if any);
- (e) the Commissioning Services (if any); and
- (f) the Ad Hoc Services (if any).

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

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 in respect of the Initial TTU Contract.

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

Tenderer means an entity or entities that submitted a Tender in respect of the Initial TTU Contract.

Tests or **Testing** means the Acceptance testing , being:

- (a) prior to Delivery the Principal will inspect to check that the Equipment meets the requirements of this Deed; and
- (b) the Contractor will provide the quality documentation reasonably requested by the Principal which may include factory acceptance tests as applicable.

Testing and Commissioning Tools means the items set out in Schedule 16.

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 only the Global Safety Interface Agreement between the Principal and Sydney Trains.

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

Variation Order means a written document titled "Variation Order" issued under clause 8.1.

Warehouse Facility means, for up to 5 years after the Commencement Date, the facility described in Schedule 1 and, after that time, such other warehouses, workshops or places where the Equipment is to be stored and the Inventory Management Services are to be carried out, as notified in writing by the Principal to the Contractor, which are to be:

- (a) within the Sydney metropolitan area; and
- (b) of no less quality or standard to the facility described in Schedule 1.

Warranty Period means the periods stated in Schedule 1, as extended by clause 10.6.

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 2017* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Supply and Services.

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 0 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 12.7, 12.8 and 12.9:
 - (i) any extension of time to any Date for Delivery 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 9.1(a)(iii), 11.1, 17 and 19 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 1.1) under clause 11.11;
- (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 in this Deed to "intended use" or "intended purpose" will be read as referring to the intended use or intended purpose having regard to:
 - (i) 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
 - (ii) 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 Supply and Services involving the supply of the Equipment, the supply of the 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, the Consist 1 Design and (subject to clause 6.6(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 Supply 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 Supply and Services, the Rail Corridor, and other matters affecting and affected by the Supply 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 Supply 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 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 3.2 (Subcontracts);
 - (iii) clause 3.5 (Unconditional Undertakings and Parent Company Guarantee);
 - (iv) clause 4.3 (Information Documents and Materials);
 - (v) clause 11.12 (Exchange of Information between Government Agencies);
 - (vi) clause 13.16 (Advance Payment);
 - (vii) clause 15 (Risks and Insurance);
 - (viii) clause 16 (Default or Insolvency);
 - (ix) clause 17 (Disputes);
 - (x) clause 18 (General); and
 - (xi) clause 19 (Notification of Claims),

(Day 1 Clauses) which will all commence on the date of this Deed.
- (b) The Commencement Date is the date that the Principal notifies the Contractor in writing that the Conditions Precedent are satisfied as set out in clause 1.8, (or waived in accordance with clause 1.9)
- (c) The Commencement Date does not affect the date of this Deed.

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

1.7 Conditions Precedent

The **Conditions Precedent** are:

- (a) the Principal has issued a:
 - (i) "Certificate of Completion" in respect of "Portion 1" (the Simulator Upgrade) (as those terms are defined in the Initial TTU Contract); and
 - (ii) "Certificate of Completion" in respect of "Portion 2" (Consist 1) (as those terms are defined in the Initial TTU Contract),under the Initial TTU Contract;
- (b) the Contractor has provided to the Principal, in accordance with clause 9.14 of the Initial TTU Contract the relevant Design Documentation including an engineering bill of materials and as-installed drawings in respect of "Portion 2" (as those terms are defined in the Initial TTU Contract), the Principal has notified the Contractor in writing that the Principal has not rejected that Design Documentation (including the engineering bill of materials and as-installed drawings);
- (c) execution by both parties of the Deed of Settlement and Variation;
- (d) the Contractor has provided to the Principal all unconditional undertakings as required under this Deed;
- (e) the Contractor has provided to the Principal:
 - (i) executed warranty deed polls from all Subcontractors in the form of Schedule 17; and
 - (ii) executed forms of all deeds included in the Schedules, and to the extent these already provided under the Initial TTU Contract, written confirmation by the relevant parties, by deed, that those deeds are extended to cover the Services and Equipment supplied under this Deed; and
- (f) the Contractor has provided to the Principal escrow deeds in the form of Schedule 18 of the Initial TTU Contract, executed by the Subcontractors listed in Schedule 1.

1.8 Satisfaction of Conditions Precedent

- (a) The Contractor must satisfy each Condition Precedent (or procure its waiver in accordance with clause 1.9) by the Conditions Precedent Deadline and must notify the Principal as each Condition Precedent is satisfied or waived.

- (b) When the last Condition Precedent to be satisfied has been satisfied or waived, the Principal must confirm by notice to the Contractor that every Condition Precedent has been satisfied or waived, and the date upon which the last of the Conditions Precedent was satisfied or waived.

1.9 Waiver of Conditions Precedent

A Condition Precedent is only waived if the Principal gives notice of the waiver of the Condition Precedent to the Contractor.

1.10 Failure to satisfy by the Condition Precedent Deadline

If any Condition Precedent is not satisfied (or waived in accordance with clause 1.9 by the Conditions Precedent Deadline, then:

- (a) the Principal may terminate this Deed upon giving not less than 5 Business Days' notice to the Contractor;
- (b) if the Principal terminates this Deed in accordance with clause 1.10(a) then:
 - (i) the Contractor must, within 5 Business Days of the termination, repay to the Principal the full amount of any Advance Payment made by the Principal to the Contractor:
 - (A) less the value of the Equipment that has been Delivered and Accepted;
 - (B) less the value of the Equipment reasonably ordered by the Contractor that it cannot return, provided that such Equipment is delivered to the Principal;
 - (C) and
 - (ii) if not so repaid, the Principal may have recourse to any unconditional undertaking held by it pursuant to this Deed.
 - (iii) neither party will have a Claim against the other party arising out of or in connection with this Deed or its termination, including due to the failure to satisfy (or procure the waiver of) a Condition Precedent, except in respect of antecedent breaches of the clauses listed in clause 3 and as set out in clause 1.10(b)(i) above; and
- (c) for the avoidance of doubt, nothing in this Deed, including its termination, will effect the parties rights and obligations under the initial TTU Contract.

1.11 Concept 1 Design and EBOM

If the Condition Precedent set out in clause 1.7(b) has been satisfied, the engineering bill of materials and the Consist 1 Design Documentation and as-

installed drawings referred to in clause 1.7(b) will be deemed to be inserted as Exhibit J and Exhibit K, respectively, to this Deed.

1.12 Dispute as to certificate of completion

If there is a "Dispute" between the parties under the Initial TTU Contract as to whether "Completion" has been achieved and a "Certificate of Completion" (as those terms are defined in the Initial TTU Contract) ought to be issued in respect of the matters described in clause 1.7(a), the parties agree that such dispute will be resolved as follows:

- (a) firstly, clauses 17.5 and 17.6 of this Deed will apply, in that order, immediately upon notification of the dispute by one party to the other; and
- (b) if the dispute is not resolved by senior management or executive negotiation as set out in paragraph (a) above, within 21 days of it being referred to senior management, then the dispute will be immediately referred to Expert Determination, whereby:
 - (i) the expert will be:
 - (A) the person nominated in Schedule 1; or
 - (B) if the expert nominated in Schedule 1 is unable to or refuses to determine the dispute, the parties must attempt to agree on a suitable expert without a further 7 days; or
 - (C) if the parties cannot decide on a suitable expert, the dispute will be decided by an expert nominated by the President of the Institution of Engineers Australia;
 - (ii) the rules for the expert determination will be the rules for expert determination as most recently published by the Institution of Engineers Australia; and
- (c) this clause 1.12 takes precedence over clause 15 of the Initial TTU Contract, but if this clause 1.12 fails to resolve the dispute within 60 days of the dispute being notified by one party to the other, clause 15 of the Initial TTU Contract will revert to apply to resolve the dispute, except to the extent that it would repeat any process already carried out under this clause 1.12.

1.13 Staged procurement

- (a) Despite anything to the contrary in this Deed, as at the Commencement Date, the Contractor is authorised under this Deed only to procure and Deliver Consists Kits and Production and Consumables Kits for Consist 2 to 30 and, subject to clause 1.13(b), is not to procure or Deliver any additional Consist Kits Production and Consumables Kits.

- (b) The Principal may, in its sole option, before the date that is 154 days before Delivery of the Consist Kit for Consist 32, notify the Contractor in writing that the Principal requires the balance of the Consist Kits or Production and Consumables Kits, or any part thereof, to be Delivered following which, the Contractor must Deliver those additional Consist Kits as ordered by the Principal, in accordance with this Deed, including the Program Schedule.

2. Nature of Deed

2.1 Performance and Payment

The Principal shall pay the Contractor in accordance with the Payment Schedule.

2.2 Application of Statement of Works and Contractor's Technical Proposal

Despite anything else in this Deed, the Statement of Works and the Contractor's Technical Proposal apply only to the extent they apply to the Supply and Services.

3. Contractor's Obligations

3.1 General

The Contractor:

- (a) must execute the Supply and Services in accordance with this Deed;
- (b) warrants that the Consist 1 Design, is fit and adequate for its intended purpose;
- (c) warrants that the Engineering Bill of Materials is fit and adequate for its intended purpose;
- (d) warrants that the Supply and Services will be, and will at all relevant times remain, fit for its intended purpose;
- (e) 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, Principal Supplied Items where any specific manufacturer's product is specified in the Statement of Work (or elsewhere), the 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 the specification of that manufacturer's product; and

- (B) remains liable for complying with all its obligations under this Deed, including the obligations referred to at clauses 3.1(a), 3.1(b) and 3.1(f); and
 - (C) the 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
- (f) 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 Supply and Services and its obligations under this Deed.

3.2 Subcontracts

- (a) Subject to clause 3.2(b) the Contractor has or 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; and
 - (B) in respect of the parts of the Supply and Services described in Schedule 1, enter into a Subcontract with one of the persons listed in Schedule 1; and
 - (C) ensure that the Subcontractors described in Schedule 1 are available to, and do, provide the Supply and Services, when and as requested by the Principal;
 - (ii) must ensure that, if any Law, including in the State or Territory in which the Supply and Services are carried out (as the case may be), requires 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;
 - (iii) 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
 - (iv) 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;
 - (D) remains in place at least 6 years from the date of the last Consist to reach CRS; and
 - (ii) is obliged under the relevant Subcontract to comply with clause 15.5(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 Supply and Services despite subcontracting the carrying out of any part of the Supply 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 Supply 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), the works, goods or services being provided under the Subcontract and the prices.
- (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
 - (B) in respect of the categories of work set out in Schedule 1 (regardless of subcontract price),
 executes a deed in the form of Schedule 13 and provides this to the Principal's Representative within 7 days of being engaged by the Contractor.
- (g) Despite anything to the contrary in this Deed, prior to entering into any new subcontract or supply agreement with any third party in respect of any Equipment or Services, the Contractor must use its best endeavours to obtain a minimum of 3 quotes and present the quotes to the Principal's Representative for approval in writing by the Principal's Representative to enter into the subcontract and the Contractor may not enter into any subcontractors without such approval.

3.3 Compliance with Law

- (a) Subject to clause 3.3(c)(i), the Contractor must, in carrying out the Supply and Services:

- (i) to the extent relevant to the Supply and Services, 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 Supply and Services conform and comply with (subject to clause 3.3(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 3.3(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 8.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 8.3.
- 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 Supply and Services, except for those Authority Approvals specified in Schedule 8;
- (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 3.3(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 8;
- (iv) in respect of any:
 - (A) Authority Approvals which are to be obtained by the Principal or Sydney Trains after the date of this Deed; or
 - (B) conditions and requirements of Authority Approvals which pursuant to Schedule 8 are to be satisfied or fulfilled by the Principal or Sydney Trains,

provide the Principal or Sydney Trains with such reasonable assistance as may be reasonably required by the Principal or Sydney Trains to enable the Principal or Sydney Trains 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 3.3(c)(i), prepare all associated studies and reports required because of the design of the Cars proposed by the Contractor; and
- (d) Where there is a Change in Law:

- (i) if either party wishes this clause 3.3(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 3.3(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 Supply 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; and
- (ii) 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 3.3(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 Supply 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 8.2(a) after which relevant adjustments will be made under clause 8.3.
- (g) Other than as set out in clause 3.3(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.

3.4 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 Supply and Services; or
 - (ii) will perform the Supply 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 Supply 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 Supply and Services, within the time requested.

3.5 Unconditional Undertakings and Parent Company Guarantee

- (a) Without limiting clause 3.5(d), or clause 3.5, the unconditional undertakings to be provided under this clause 3.5 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:

- (i) one unconditional undertaking for an amount equivalent to the amount of the Advance Payment (or a number of unconditional undertakings, as agreed between the parties, adding up to that amount);
 - (ii) one unconditional undertaking for an amount equivalent to the amount of the Mobilisation Payment;
 - (iii) two unconditional undertakings as follows:
 - (A) one for an amount of \$ [REDACTED]; and
 - (B) one for an amount of \$ [REDACTED];
 - (iv) each in the form of Schedule 9;
 - (v) each in favour of the Principal;
 - (vi) each issued by an Institution approved by the Principal that maintains the Required Rating; and
 - (vii) 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 3.5(b).
- (d) Subject to its rights to have recourse to the unconditional undertakings, and subject to clauses 3.5(h), 16.9 and 16.11, the Principal must:
- (i) within 2 years after CRS of the Consist in respect of the last Consist Kit to reach Acceptance, release so much of the unconditional undertakings provided by the Contractor under clause 3.5(b)(i) 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 10.6) apply;
 - (ii) within 28 days after Acceptance of Consist Kit 28, release the unconditional undertaking provided by the Contractor under clause 3.5(b)(iii)(A);
 - (iii) within 28 days after the expiry of the last Warranty period to expire, release the balance of the unconditional undertakings provided by the Contractor under clause 3.5(b)(iii)(B) as may be then held by the Principal;

- (iv) when the value of the Contractor's entitlements to be paid under this Deed equals or exceeds the amount of an unconditional undertaking provided by the Contractor pursuant to clause 3.5(b)(i), the Principal shall release the relevant unconditional undertaking; and
 - (v) within 28 days after Delivery of the Consist Kit for Consist 30 the Principal will release the unconditional undertaking provided by the Contractor under clause 3.5(b)(ii).
- (e) The Principal:
 - (i) may have recourse to any of the unconditional undertakings provided under this clause 3.5 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 3.5(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 3.5 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 3.5 or receiving payment under any such unconditional undertaking; or
 - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 3.5.
- (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 clause 16 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 Supply and Services whether for damages (including liquidated damages) or otherwise.

3.6 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 Supply and Services;

- (B) has not made any allowance in the Contract Sum on account of a contract, arrangement or understanding of a kind referred to in clause 3.6(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 3.6(a)(ii)(A); and
 - (iii) acknowledges that it is aware that the Principal entered this Deed in reliance upon the warranties in clauses 3.6(a)(i) and 3.6(a)(ii).
- (b) The Principal and the Contractor agree that if any matter warranted in clauses 3.6(a)(i) or 3.6(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 16.3, 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 3.6(a)(ii)(A) or 3.6(a)(ii)(C).

3.7 Third Party Agreements

- (a) The Contractor:
 - (i) acknowledges that the Principal has entered or will enter into the Third Party Agreements;
 - (ii) must:
 - (A) to the extent relevant to the Supply and Services, unless 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;
 - (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 3.7(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 Supply 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 to the extent relevant to the Supply and Services and the other terms of this Deed, the Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the Principal on the same terms and conditions as the acknowledgement, 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 acknowledgement, 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 Supply 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 3.7; 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 3.7(b)(ii)(A).

3.8 Incident Management

The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Supply 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.

4. Warehouse Facility

4.1 Warehouse Facility

- (a) The Contractor acknowledges and agrees that:
 - (i) it is responsible for ensuring it has access to a Warehouse Facility approved by the Principal (in its sole and absolute discretion), for the purposes of performing the Supply and Services in accordance with this Deed; and
 - (ii) it is responsible for the storage of, and the inventory control and management of the Equipment at the Warehouse Facility.

4.2 Condition of Cars

- (a) Subject to, and without limiting, any entitlement of the Contractor arising from any Configuration Changes in accordance with clause 4.2A, the Principal does not warrant, guarantee, make any representation or assume any duty of care with respect to the condition of the Cars into which the Equipment will be installed.
- (b) The Contractor acknowledges and warrants that:

- (i) it will not place any reliance upon Consist 1 as representing the condition of all of the Cars upon which the Supply 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 4.2.
- (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 conditions in a Car which differ from:
- (i) the condition of the Cars comprising Consist 1; 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 Consist 1; and
 - (ii) the risk that the condition of the Cars may differ from:
 - (A) the condition of the Cars comprising Consist 1; or
 - (B) the condition of the Cars assumed by the Contractor.

4.2A Material Configuration Differences

Notwithstanding any other provision of this Deed:

- (a) in the event that the configuration of the Cars (comprising Consists 2 to 55 inclusive) is materially different from that of the Cars in Consist 1 (Configuration Change), any changes that are required to modify either:
 - (i) the configuration of the particular Consist; or
 - (ii) the Design or the Equipment,
 shall be outside of the scope of the Supply and Services but may be added by the Principal as Ad Hoc Services or Design Services;
- (b) the choice of appropriate method of ensuring alignment between the configuration of a particular Consist and the Consist 1 Design, as described in sub-clauses 4.2A(a)(i) and 4.2A(a)(ii) will be at the discretion of the Principal;
- (c) prior to any obligation to provide any such Ad Hoc Services or Design Services under clause 4.2A(a), the Contractor is to be notified by the Principal of the details of any concern or issue with the integration of the Equipment with the particular Consist and provided with a reasonable

opportunity to inspect the Equipment and the Consist to determine whether there is a Defect or a Configuration Change and the appropriate work that may be required; and

- (d) in this clause 4.2A, “materially different” means any difference in the configuration of the particular Cars from the configuration of the Cars in Consist 1 that requires a change to the Design or the Equipment or otherwise a change to the Consist to ensure compatibility between the Equipment and the Consist, so that when subsequently installed, the Equipment will be functional, compliant with all requirements of this Deed, and fit for its intended purpose as stated in or reasonably ascertainable from this Deed.

4.3 Information Documents and Materials

Subject to, and without limiting, any entitlement of the Contractor arising from any Configuration Changes in accordance with clause 4.2A:

- (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 10. Whether or not any Information Documents and Materials or any part thereof form an Exhibit to this Deed, the Contractor acknowledges that:
 - (i) the Information Documents and Materials or part thereof do not form part of this Deed and that clause 4.3(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 4.3(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 4.3(c)(i) and 4.3(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 4.3(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 4.3(b) and 4.3(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 0; 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.

4.4 Principal's Right to Access and Inspect

- (a) Subject to clause 4.6, 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 Warehouse Facility; and
 - (B) any other workshops, places or areas where the Supply and Services are being stored or carried out; and
 - (ii) provide the Principal and the Principal's Representative with every reasonable facility necessary for the Inspection of the Supply 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 Supply 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 Supply 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 6.1 or clause 9.1) 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.

4.5 Waste Disposal

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. 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 4.5.

4.6 Principal not in Control

The Contractor and Principal acknowledge that nothing in this Deed including the right to inspect pursuant to clause 4.4 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 Supply and Services or the Warehouse 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.

5. Compliance

5.1 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 Supply 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.

5.2 Statement of Work

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

5.3 Environmental Management

The Contractor must hold and maintain an environmental management system that complies with the requirements of the Statement of Work for so long as any Works and Services are carried out.

5.4 WHS Management

The Contractor must:

- (a) hold and maintain an WHS management system for so long as any Supply 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 Supply 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 Supply 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.

5.5 Program Schedule

- (a) The Principal may update the Program Schedule from time to time and provide the updated Program Schedule to the Contractor.
- (b) The Contractor must Deliver the Equipment in accordance with the Program Schedule or as otherwise notified in writing by the Principal to the Contractor from time to time.
- (c) The Contractor must not Deliver any Equipment earlier than as requested by the Principal in the Program Schedule or as otherwise notified in writing to the Contractor by the Principal from time to time.
- (d) The Contractor must, within 10 Business Days of the Commencement Date and at monthly intervals until Delivery of the last Consist Kit or Consumables Kit to be Delivered, prepare and provide to the Contractor a Procurement Schedule which must include the procurement steps and lead times (including the dates Equipment becomes Inventory) necessary for Deliver the Equipment by the specified Dates for Delivery set out in the most recent Program Schedule.
- (e) The Principal may update the Program Schedule from time to time, including, without consent from the Contractor, delay any Date for Delivery included in the Program Schedule. Despite anything to the contrary in this Deed, the

- Principal must not bring forward any Date for Delivery included in the Program Schedule without the Contractor's agreement in writing.
- (f) If the Principal updates the Program Schedule, the Contractor must also update the Procurement Schedule accordingly.
 - (g) The Contractor must not purchase and deliver Equipment into Inventory ahead of when Inventory is required under the approved Procurement Schedule. The Contractor acknowledges that the Principal has no obligation to pay, and will not pay, for Inventory prior to the time payment is otherwise due under this Deed.
 - (h) The Contractor must submit a report each month to the Principal or at any other time requested by the Principal setting out the procurement and Delivery status of each item of Equipment identified in the Program Schedule and the Procurement Schedule.
 - (i) If compliance with a Program Schedule updated by the Principal under clause 5.5(a) 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 compliance with a Program Schedule updated by the Principal was necessary because of a failure by the Contractor to comply with its obligations under this Deed, in which case the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim.

5.6 No Relief from Obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this Deed (including under clause 10 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 Program Schedule;
- (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.

5.7 Engineering Authorisation

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

The Principal authorises:

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

5.8 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 Supply 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) cooperate fully with the ASA in the performance of the ASA's functions;
 - (ii) 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;
 - (iii) comply with the directions, instructions and requirements issued by the ASA;
 - (iv) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;

- (v) 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
 - (vi) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable 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.

5.9 Contractor's Management Plans

- (a) The Contractor must ensure that all Management Plans (including the Contract Management Plan) are prepared in accordance with the Statement of Work (to the extent relevant to the Supply and Services) and are provided to the Principal prior to the date of this Deed.
- (a) The requirements set out in the 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.
- (b) Despite the content of the 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 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 Management Plans in performing the Supply and Services and that such use and reliance will not affect any of its obligations under this Deed.

6. Design and Design Documentation

6.1 Application of clause

Clauses 6.2(a), 6.3, 6.4, 6.5 and 6.11 apply only to the extent Design Services are carried out by the Contractor.

6.2 Contractor's Design Obligations

The Contractor:

- (a) must as part of the Supply and Services prepare and complete any 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 Consist 1 Design, the Statement of Work and the Contractor's Technical Proposal;
 - (ii) it remains responsible for ensuring that the Supply and Services will satisfy the requirements of this Deed despite the Contractor's Technical Proposal;
 - (iii) the completed design of the Supply and Services as represented in the Design Documentation will:
 - (A) satisfy the requirements of the Consist 1 Design, 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 in accordance with the completed design prepared in respect of the Supply and Services will satisfy the requirements of the Statement of Work, the Contractor's Technical Proposal and the other requirements of this Deed.

6.3 Design Documentation

- (a) The Contractor must submit all Design Documentation progressively to the Principal's Representative in accordance with the Contract Management Plan and the requirements of clause 11.11.
- (b) The Contractor must upon each submission of the Design Documentation to the Principal's Representative for review 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 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.

6.4 Review of Design Documentation, Meetings, and Presentations

- (a) All Design Documentation must be submitted to the Principal's Representative.
- (b) Clause 11.11 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) At each design presentation referred to in clause 6.4(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), 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.

- (f) 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.

6.5 Copies of Design Documentation

- (a) The Contractor must, in accordance with clause 6.3, 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.

6.6 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 Supply 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 Initial TTU Contract.

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 Supply 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.

6.7 Consist 1 Design and EBOM

Subject to, and without limiting, any entitlement of the Contractor arising from any Configuration Changes in accordance with clause 4.2A:

- (a) The Contractor acknowledges that prior to the date of this Deed it prepared the Consist 1 Design and the EBOM.
- (b) The Contractor warrants that it has reviewed the Consist 1 Design and the EBOM and that the Consist 1 Design and the EBOM are suitable, appropriate and adequate for the purposes for which the Supply and Services are intended and the requirements of the Principal for the Supply and Services, including as stated in, or reasonably inferred from, this Deed.
- (c) 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 Consist 1 Design and/or the EBOM in performing the Supply and Services and that such use and reliance will not affect any of its obligations under this Deed.
- (d) If any changes are required to be made to the Consist 1 Design or to the EBOM to ensure that the Consist 1 Design and the EBOM properly represent the "as-installed" Consist 1, such changes must be made by the Contractor at the Contractor's cost and risk.
- (e) If any Equipment is required to be added to the EBOM, and/or to any a Consist Kit to ensure that:
 - (i) both the EBOM, and the Consist Kit properly represent the "as-installed" Consist 1; or
 - (ii) the Consist Kit contains all the Equipment listed in the EBOM, then those items of Equipment are to be added to the EBOM and/or the Consist Kit by the Contractor, at the Contractor's cost and risk.
- (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 complying with its obligations under this clause 6.7.

6.8 Ownership of Contract Documentation and Methods of Working

- (a) Subject to clause 6.8(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 Supply and Services and for the purpose of installing, operating, maintaining, servicing, modifying, upgrading, repairing, refurbishing, overhauling, rebuilding, testing, monitoring the performance of, or performing additions or alterations to, the 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 Supply 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 Supply 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 6.8(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 Supply and Services;
 - (B) which arises immediately upon the creation of the Contract Documentation;
 - (C) which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the 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 6.7(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 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 6.8(c).

6.9 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.

6.10 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 Supply and Services or the Contract Documentation.
- (b) For the purposes of clause 6.10(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 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.

6.11 Design Working Group

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.

7. Other Services

- (a) The Principal may, by issuing a Request for Quotation to the Contractor, request the Contractor to submit a quotation for the cost of providing Ad Hoc Services, Design Services and/or Commissioning Services under this Deed, in the form of:

- (i) a fixed-lump sum price (where appropriate calculated by applying the relevant rates in the Schedule of Rates;
 - (ii) rates and prices which must be the same as in the Schedule of Rates; or
 - (iii) a combination of (i) and (ii) above.
- (b) Within seven (7) days of receiving the Request for Quotation (or such other time stated in the Request for Quotation, or agreed between the parties in writing), the Contractor must submit a Quotation to the Principal for the Ad Hoc Services, Design Services and/or Commissioning Services identified in the Request for Quotation.
- (c) A Quotation submitted by the Contractor must include all details reasonably requested of the Contractor in the Quotation, and shall be valid for sixty (60) days (or such longer time as agreed by the Contractor).
- (d) If the Principal accepts the Quotation, it shall issue a Variation Order, with the resulting Variation, for the purposes of clause 8.3 valued according to the Quotation.

8. Variations

8.1 Proposed Variations

At any time prior to completion by the Principal or its nominee of the installation of the Equipment into the Cars (but without limiting clauses 10 and 15.3) 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) an estimate of any proposed Reimbursable Cost that the Contractor would claim in respect of the proposed Variation (other than those costs referred to in clause 8.1(b)) with details of how the amount has been calculated; and
- (b) the expected effect that the proposed Variation would have on the Program Schedule, and the Contractor achieving Delivery of any Equipment by the relevant Date for Delivery 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 12.10 arising from that extension of time.

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

8.2 Variation Orders

- (a) The Principal's Representative may at any time prior to the CRS of the last Consist to reach CRS (but without limiting clauses 10 and 15.3) 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 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 8.3(b); or
 - (iii) the Variation is to be carried out as daywork and any adjustment to the Contract Sum will be determined under clause 8.6.
- (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 Delivery) 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 arising out of a Variation directed under clause 8.2(a) will be dealt with under clause 12 and not this clause 8. The valuation of a Variation under clause 8.3 will exclude any amount for costs incurred by the Contractor as a result of any delay caused by the Variation.

8.3 Valuation

Subject to clauses 10.4, 17 and 19, 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 8.2(a)(i) applies, the agreed amount as specified in the Variation Order; or
- (b) to the extent that clause 8.2(a)(ii) applies:
 - (i) subject to sub-paragraph (iii) and the remainder of this clause 8.3(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 2; and
 - (B) any other applicable data in this Deed;
 - (ii) subject to sub-paragraph (iii) and the remainder of this clause 8.3(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 8.3(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.

8.4 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any equipment, work or services from the Supply 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 Supply 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 8.3; and
- (d) the adjustment (if any) to the Date for Delivery will be assessed in accordance with clause 12.8.

8.5 Daywork

- (a) If the Contractor is given a direction under clause 8.2(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 8.5(a)(ii) must be recorded.

8.6 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 2;
 - (ii) where the rates in Schedule 2 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 8.6(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 2 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.

8.7 Contractor's Entitlements

This clause 8 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 8 otherwise than in accordance with the terms of this Deed.

8.8 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; and
- (e) the expected effect on the Program Schedule and any Date for Delivery.

8.9 Determination by Principal's Representative

If the Contractor makes a request in accordance with clause 8.8, 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.

8.10 Variation Approved by the Principal's Representative

If the Principal's Representative issues a written notice under clause 8.9 approving the Contractor's request under clause 8.8:

- (a) unless otherwise agreed in the notice given under clause 8.9, 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 8.9(b); and
- (c) the Contractor will be responsible for ensuring that all aspects of the Supply 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 8.9 approving the Contractor's request under clause 8.8, no Variation will arise out of that request, and the Contractor must at all times:

- (d) continue to carry out the Supply and Services; and
- (e) otherwise comply with its obligations under this Deed.

8.11 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 19.1; or
 - (iv) Claim, the notice referred to in clause 19.2.

- (b) If the Contractor issues a notice under clauses 8.11(a)(iii) or 8.11(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 8.11(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 8.11(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 17.2;
 - (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 8.11(b)(iii), in which case the Contractor must:
 - (A) issue a notice of dispute under clause 17.2; and
 - (B) not comply with the direction unless and until:
 - (1) the Dispute is settled or determined under clause 17; 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 8.11(b)(iv).

9. Manufacturing, and Delivery Obligations

9.1 General manufacturing and Delivery obligations

- (a) The Contractor must manufacture and supply the Equipment in accordance with:
 - (i) subject to clause 1.4, the Consist 1 Design, the Statement of Work and the Contractor's Technical Proposal;
 - (ii) Design Documentation (if any) that has been prepared by the Contractor in accordance with the requirements of this Deed;

- (iii) any direction of the Principal's Representative given or purported to be given under a provision of this Deed; and
 - (iv) the other requirements of this Deed (including any performance guarantees or other performance levels or performance requirements stated in this Deed).
- (b) The Contractor warrants that each component of the Equipment will:
 - (i) upon Delivery, be fit for their intended purposes;
 - (ii) remain at all relevant times fit for their intended purposes; and
 - (iii) if manufactured and installed in accordance with the Consist 1 Design will result in the Consist being and remaining at all relevant times fit for its intended purpose
- (c) 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 under this Deed or prior and not rejected by the Principal's Representative under clause 11.11, then, unless otherwise directed by the Principal's Representative, the requirements of this Deed will prevail.
 - (i)

9.2 All Work Included

Except in respect of any Principal Supplied Items and 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 Supply and Services, whether or not expressly mentioned in this Deed.

9.3 Principal Supplied Items

- (a) The Contractor must return to the Principal all Principal Supplied Items and the Testing and Commissioning Tools issued by the Principal to the Contractor under the Initial TTU Contract:
 - (i) within 28 days of the Commencement Date;

- (ii) in respect of Testing and Commissioning Tools, promptly after the Testing and Commissioning Tools is no longer required by the Contractor;
 - (iii) in the same condition, subject to fair wear and tear, as the Principal Supplied Items were in when issued by the Principal to the Contractor;
 - (iv) at its own cost;
 - (v) at the respective places referred to in Schedule 12; and
 - (vi) by the respective dates referred to in Schedule 12.
- (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 12 if:
 - (1) a Principal Supplied Item is not made available by the relevant date set out in Schedule 12; or
 - (2) the Principal Supplied Item is not fit for its intended purpose and causes a delay in the achievement of Acceptance; 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) the Contractor must at its own cost and risk, transport each Principal Supplied Items from the respective place referred to in Schedule 12 to the Warehouse Facility; and
 - (iii) the *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligations under clause 9.3(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items.
- (c) If any of the Principal Supplied Items or Testing and Commissioning Tools are damaged when returned to the Principal, the Principal may, acting reasonably:
- (i) direct the Contractor to repair or replace the damaged item;
 - (ii) itself have the relevant damaged item repaired or replaced;
 - (iii) do neither (i) or (ii) and accept the damaged item,

in which case:

(iv) in the case of paragraph (ii) the Principal's cost of repair or replacement, as applicable; or

(v) in the case of (iii) the loss in value to the Principal,

will be a debt due and payable by the Contractor to the Principal.

10. Defects and Warranty Period

10.1 Defects Liability

Subject to clause 10.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative. For the avoidance of doubt, the Contractor shall not be liable under this clause 10 or otherwise for any Defect that is caused by the Principal or any third party following Delivery, including during installation and commissioning.

10.2 Defect Notification

If at any time prior to the expiration of any Warranty Period (including for the avoidance of doubt prior to CRS of any Consist), the Principal's Representative discovers or (acting reasonably) 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 replace the item or items of Equipment;
- (c) 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;
- (d) 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;
- (e) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or
- (f) in respect of any Defect:
 - (i) to which clause 10.3(b) applies; or
 - (ii) discovered during a Warranty Period, whether or not a direction has first been given under clause 10.2(a) or 10.2(d),

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.

10.3 Rectification of Defect

- (a) If the Principal's Representative gives a notice under clause 10.2(a), 10.2(b), 10.2(d) or 10.2(d), 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 CRS 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.
- (b) If the Contractor does not comply with clause 10.3(a), 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 10.2(f) 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.
- (c) The Contractor acknowledges and agrees that:
 - (i) its obligation to rectify Defects survives the expiry of the Warranty Period where it has received a direction under clause 10.2 prior to the expiration of any Warranty Period;

- (ii) the cost incurred in removing and replacing any defective Equipment, including re-testing and commissioning, if required, will be a debt due from the Contractor to the Principal; and
- (iii) 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 10.3(c).

10.4 Claim for Variation

Where a Variation to overcome a Defect has been directed under clause 10.2(d) the Contractor will not be entitled to an extension of time to any Date for Delivery.

- (i)

10.5 Acceptance of Work

If a direction is given under clause 10.2(e), 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 diminution in the value to the Principal of the Cars shall be determined by the Principal's Representative and the diminution in the value to the Principal of the Cars shall be a debt due and payable by the Contractor to the Principal.

10.6 Extension of Warranty Period

- (a) The Principal's Representative may give the Contractor a notice under clauses 10.2(a), 10.2(b) or 10.2(d) at any time prior to the expiration of any Warranty Period.
- (b) If the Contractor:
 - (i) Rectifies or replaces a Defect (or the part notified) following receipt of a notice under clause 10.2(a) or 10.2(b);
 - (ii) completes the Variation work following receipt of a notice under clause 10.2(d); 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 10.2,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.

10.7 Defect Rectification by Other Contractor

Where the Principal's Representative advises the Contractor (under clause 10.2(f)) 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) 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 Supply 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.

10.8 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 10 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 10.2.

11. Administration

11.1 Principal's Representative

The Principal must ensure that at all times during the Warranty Periods 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
- (e) 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.

11.2 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 11.2 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.

11.3 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 11.3(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 11.3(a)(i).
- (c) All references in this Deed to the Principal's Representative include a reference to an appointee appointed under clause 11.3(a)(i).

11.4 NSW Code

The Contractor must at all times comply with, and meet any obligations imposed by the NSW Code.

11.5 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 Supply and Services at all places at which the Supply 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 11.5(b)) as a team carry out the Supply 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 Supply 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 11.5(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 11.5(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 11.5(b)(i) and 11.5(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 CRS of the last Consist to achieve CRS 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 11.5(a) or clause 11.5(b)) from the Supply and Services. The Contractor must then cease to engage that person in the Supply and Services and must appoint a replacement.
- (d) The Contractor must ensure that any person the subject of a direction under clause 11.5(c) is not again employed in the Supply and Services.

- (e) Any direction under clause 11.1 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.

11.6 Meetings

- (a) The Contractor must attend weekly project meetings and monthly senior level meetings at such place (or places) as the Principal's Representative may direct and at such other times, as may be directed in writing by the Principal's Representative and at monthly intervals after the Date of Delivery of the last Consist Kit to reach Acceptance until all Warranty Periods (including any extension under clause 10.6), 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) to review and update the Program Schedule and Procurement Schedule;
 - (ii) to identify and report any issues that are likely to impact the Program Schedule;
 - (iii) 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;
 - (iv) the consideration of corrective actions to prevent and rectify defective work;

- (v) the consideration of any other matter that the Principal's Representative or the Contractor requires; and
- (vi) review of the design of the Cars and review of the Design Documentation, if applicable.

11.7 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 11.7(b)) a written report containing the detailed information specified in the Statement of Work;
- (b) must provide for the purposes of clause 11.7(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 11.7(a);
- (d) must provide and maintain a monthly record of the status of the work and the conditions at the Warehouse Facility and other sites involved in the Supply and Services, including the resources employed and the issues affecting the progress of the Supply and Services, and provide a copy of that record to the Principal's Representative for each week's Supply 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 11.7(a).

11.8 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 Supply 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) loss or damage of the kind referred to in clause 15.10.
- (b) The Contractor must (at its own cost) respond to complaints and enquiries received regarding the Supply and Services and that of its Subcontractors in accordance with the Statement of Work.

11.9 Industrial Relations

The Contractor must in carrying out the Supply and Services:

- (a) assume sole responsibility for and manage all aspects of industrial relations for the Supply 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 Supply and Services and Other Contractors' activities; and
- (d) without limiting clause 3.3(b), comply with all the requirements of the NSW Code.

11.10 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 Supply and Services.
- (c) The Contractor must keep all the Contractor's records relating to the Supply 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 11.10.
- (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.

11.11 Submission for Review by the Principal

- (a) The Contractor must submit the Contract Management Plan, the Inventory Management Plan, the Design Documentation (if any), the documents identified in the CDRL and any other document (each of which in this clause 11.11, 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 Supply 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 Program Schedule; or
 - (B) as 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.

11.12 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.

11.13 National Greenhouse and Energy Report Act 2007 (Cth)

The Contractor acknowledges and agrees that:

- (a) if any of the Supply and Services, or the activities of any of the Contractor's personnel, in connection with the Supply 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 11.13(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 11.13, 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 11.13 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 11.13 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.

12. Time and Progress

12.1 Rate of Progress

The Contractor must:

- (a) regularly and diligently progress the Supply and Services;
- (b) proceed with the Supply and Services with due expedition and without delay; and
- (c) achieve Delivery of Equipment for each Consist by the relevant Date for Delivery.

The Contractor must not suspend the progress of the whole or any part of the Services except where permitted or required under this Deed.

Without limiting the next paragraphs of this clause 12.1, 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 Supply 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 12.1, direct in what order and at what time the various stages or parts of the Supply 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 12.1 unless the direction is in writing and expressly states that it is a direction under this clause 12.1.

If compliance with a written direction expressly stated to be pursuant to this clause 12.1 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 a failure by the Contractor to comply with its obligations under this Deed.

12.2 Importance of Delivery on Time

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 12.1; and
- (b) that a Date for Delivery will only be extended in accordance with clause 12.7 or clause 12.9, or when so determined under clause 17.

12.3 Risk and Notice of Delay

- (a) Except as expressly provided for in clause 12.7, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Supply and Services and performance of its obligations under this Deed both before and after any Date for Delivery.
- (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 Supply and Services, details of the cause and how any Date of Delivery is likely to be affected (if at all).

12.4 Entitlement to Claim Extension of Time

- (a) If the Contractor is or will be delayed on or prior to the Date for Delivery of a Consist Kit by reason of:
 - (i) an Act of Prevention;
 - (ii) a cause so described in Schedule 1,in a manner that will prevent it from achieving Delivery of a Consist Kit or item of Equipment by the relevant Date for Delivery, including if the Principal or the Principal's Representative makes an adjustment to the Program Schedule, the Contractor may claim an extension of time to the relevant Date for Delivery.

- (b) If the Contractor is, or will be, delayed after the Date for Delivery by reason of an Act of Prevention in a manner which will delay it in achieving Delivery, the Contractor may claim an extension of time to the relevant Date for Delivery.

12.5 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 Delivery, 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 Supply 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 12.6 have been met; and
 - (B) occurrence will delay it in achieving Delivery in the manner described in clause 12.4; 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 Delivery, 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.

12.6 Conditions Precedent to Extension of Time

Subject to clauses 12.13 and 12.14, it is a condition precedent to the Contractor's entitlement to an extension of time to any relevant Date for Delivery that:

- (a) the Contractor gives the notices and claims required by clauses 12.3(b) and 12.5 as required by those clauses;
- (b) the Contractor complies with any request for additional information under clause 12.5 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 Delivery of the Consist Kit, by reason of one or more of the causes set out in clause 12.4(a) in the manner described in clause 12.4(a); or
 - (ii) after the Date for Delivery of the Consist Kit, by reason of an Act of Prevention in the manner described in clause 12.4(b); and
- (e) the Contractor is not given a direction to compress under clause 12.10.

If the Contractor fails to comply with the conditions precedent in this clause 12.6:

- (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.

12.7 Extension of Time

- (a) Subject to clauses 12.7(c), 12.13, 12.14 and 12.15, if the conditions precedent in clause 12.6 have been satisfied, the relevant Date for Delivery 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 12.5; and
 - (B) provision by the Contractor of any additional information regarding the claim required under clause 12.5; or
 - (ii) where the Principal's Representative has given the Contractor a direction to compress under clause 12.10 and subsequently issued a notice under clause 12.13 withdrawing the direction to compress given under clause 12.10, the date of issue of the notice under clause 12.13.

- (b) A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Delivery, or to grant an extension of time to any Date for Delivery within the relevant 28 day period, will not cause an affected Date for Delivery 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 Delivery it would otherwise have determined under this clause 12.7 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.

12.8 Reduction in Time

If the Principal's Representative directs a Variation that omits or deletes any part of the Supply 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 Delivery; and
- (b) the relevant Dates for Delivery of a Consist Kit or an item or items of Equipment 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.

12.9 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 Delivery, or is entitled to be, or has been, granted an extension of time to any relevant Date for Delivery under clause 12.7, 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 Delivery 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 12.9 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 12.9 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 17 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert determination, arbitration or litigation proceedings).

12.10 Delay Damages

- (a) For each day by which the Date for Delivery of a Consist Kit is extended due to an act or omission of the Principal or the Principal's Representative the Contractor will be entitled to be paid the costs reasonably incurred by the Contractor, including finance costs, 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 2.
- (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 12.10 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 Supply 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 (or would have been payable) by the Principal under this clause 12.10.

12.11 Program Schedule adjustments

- (a) If the Principal or the Principal's Representative notifies the Contractor in writing of an adjustment to the Program Schedule being a delay to a Date for Delivery in respect of Equipment that the Contractor has already purchased, upon the Contractor providing the Principal with an unconditional undertaking that complies with the requirements in clauses 3.5(b)(iv) - (vi) for the full value of the payment, the Principal will, within 7 days of receipt of the above items, pay the Contractor the amount due for that Equipment notwithstanding that the Equipment has not been Delivered and, subject to clause 12.11(b),

the Contractor will continue to be responsible for the care and control of that Equipment up to the Date of Delivery.

- (b) If a Date for Delivery is delayed by more than 3 months after a bank guarantee is provided pursuant to clause 12.11(a) the Principal must take Delivery of the Equipment and, subject to the Equipment being Accepted, the Principal must return the unconditional undertaking to the Contractor.

12.12 Direction to Compress

If the Contractor makes a claim under clause 12.5, the Principal's Representative may direct the Contractor to compress the Supply 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 Delivery by the relevant Date for Delivery.

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 12.5 entitles the Contractor to an extension of time to any relevant Date for Delivery.

Where the Principal's Representative gives a direction pursuant to this clause 12.10 and the Contractor's compliance with this direction 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 a failure by the Contractor to comply with its obligations under this Deed, in which case the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim.

12.13 Withdrawal of Compression Direction

The Principal's Representative may at any time by notice in writing withdraw any direction given by it under clause 12.10, 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 12.5. Any such extension will be determined having regard to the effect which the compression of the Supply 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 12.5.

12.14 Partial Compression

If the Principal's Representative gives the Contractor a direction to compress under clause 12.10 and it only applies to part of a delay, the Contractor's entitlement to any extension of time to any relevant Date for Delivery, 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.

12.15 Compression

If the Principal's Representative gives a direction to the Contractor under clause 12.10:

- (a) whether or not the Contractor provides a cost estimate under clause 12.10, the Contractor must comply with the direction to the extent it is reasonably practicable to do so;
- (b) 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 12.

12.16 Principal's Right to Liquidated Damages not Affected

The Principal's rights to liquidated damages under clause 12.18 for a failure by the Contractor to achieve Delivery by the relevant Date for Delivery will not be affected by the Principal's Representative giving the Contractor a direction to compress under clause 12.10.

12.17 Contractor's Entitlements

This clause 12 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 12.

12.18 Liquidated Damages for Delay in reaching the relevant Date for Delivery

- (a) Subject to clause 12.19(c), if Delivery of a Consist Kit has not occurred by the date that is 3 months after the relevant Date for Delivery, the Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1 for every day after the date that is 3 months after the relevant Date for Delivery up to and including:
 - (i) the Date of Delivery of the relevant Consist Kit; or
 - (ii) the date that this Deed is terminated under clause 16, whichever is first.
- (b) The Contractor acknowledges and agrees that the liquidated damages payable under clause 12.18(a) in respect of any Consist Kit are cumulative and payable regardless of the Date for Delivery, and the Date for Delivery, of any other Consist Kit.

12.19 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 Delivery of a Consist Kit not occurring on or before the relevant Date for Delivery;
 - (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 12.18(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 12.18(a) will be recoverable from the Contractor as a debt immediately due and payable to the Principal.
- (b) If clause 12.18(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 Delivery of a Consist Kit by the relevant Date for Delivery, 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 12.18(a) had not been void, invalid or otherwise inoperative.
- (c) The Contractor's aggregate liability under clauses 12.18(a) and 12.19(c) is limited to the amount set out in Schedule 1.

12.20 Sole remedy

Despite anything else in this Deed to the contrary the Principal's right to liquidated damages as set out in this clause 12.18 is the Principal's sole remedy for damages in respect of delay.

13. Payment

13.1 Contractor's Payment Entitlements

- (a) Subject to clause 18.11 and to any other right to set-off that the Principal may have the Principal will pay the Contractor the Contract Sum calculated in accordance with the Payment Schedule, and any other amounts expressly payable by the Principal to the Contractor under this Deed.

- (b) in accordance with the procedure in this clause 13 and the Payment Schedule.
- (c) The parties acknowledge and agree that:
 - (i) there will be a benefit to the Principal if the Contractor achieves the Delivery dates required to achieve the Incentive Payment;
 - (ii) in recognition of the benefit referred to in clause 13.1(c)(i), the Principal is prepared to pay the Contractor, over and above the Contract Sum, the Incentive Payment in accordance with this clause 13.1; and
 - (iii) the Contractor will only become entitled to payment of the Incentive Payment as set out in the Payment Schedule.

13.2 Payment Claims

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 13.6; and
- (b) for the Completion Payment Claim within the time required by clause 13.8.

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) show separately the amounts (if any) claimed on account of:
 - (i) the Reimbursable Costs payable to:
 - (A) Subcontractors; and
 - (B) the Contractor;
 - (ii) the Corporate Overhead and Profit; and
 - (iii) other amounts payable under this Deed; and
- (e) set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (i) to enable the Principal's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under this Deed; and

- (ii) including any such documentation or information which the Principal's Representative may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment.

The Contractor may not include in any payment claim under this clause 13 any amount for a Claim which is barred by clause 19.6 or any other provision of this Deed.

13.3 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 13.2 or a Completion Payment Claim under clause 13.8, issue to the Contractor and the Principal a payment statement which identifies the Progress Claim or Completion 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 13.3(a):
 - (i) 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;
 - (ii) the amounts otherwise due under this Deed from:
 - (A) the Principal to the Contractor; and
 - (B) the Contractor to the Principal;
 - (iii) the amount already paid to the Contractor under the Deed; and
 - (iv) 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.
- (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 Supply 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 20(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 13.3(a) give the Principal's Representative a tax invoice (which complies with the GST Legislation) for the amount of the payment statement.

13.4 Payment

- (a) Where, pursuant to clause 13.3(b)(iv), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 13.1, 13.2, 13.6, 13.8, 16.3, 16.6(a)(i) and 18.11, 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 13.3(a).
- (b) Where, pursuant to clause 13.3(b)(iv), 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 13.3, pay the Principal the amount set out in the payment statement referred to in clause 13.3(a).

13.5 Payment on Account

A payment of moneys under clause 13.4(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.

13.6 Conditions Precedent

It is a condition precedent to the Contractor's entitlement to make a payment claim under clause 13.2, and the Principal's obligation to make a payment under clause 13.4(a), that prior to submitting the payment claim the Contractor has:

- (a) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 3.5;
- (b) submitted the initial and updated parts of the Contract Management Plan and Inventory Management Plan as required by clauses 5 and 11.11 of this Deed and the Statement of Work;
- (c) provided any report and programs required under clause 11.7;
- (d) 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 11, made out not earlier than the date of the payment claim;
- (e) effected or procured to be effected the insurances required by clauses 3.2(c) and 15.5 and (if requested) provided evidence of this to the Principal's Representative;
- (f) 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
- (g) done everything else that it is required to do under this Deed before being entitled to make a payment claim or receive payment.

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 13.2.

13.7 Payment of Employees and Subcontractors

- (a) When submitting any claim for payment, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 13.6(d).
- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 13.6(d), 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 Supply 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 13.7 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).

13.8 Completion Payment Claim

- (a) No later than 28 days after the last of the Supply and Services to be Delivered or performed, and subject to compliance with clause 13.6, 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 13.8(a)(ii).

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

- (b) The Completion Payment Claim must address all facts, matters or things arising out of, or in any way in connection with, the Supply 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.
- (c) Without limiting clause 13.9, 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 Supply 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 will be deemed to have been abandoned by the Contractor and is barred.

- (d) All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. The Contractor is not entitled to make any further Claim (not identified in the Completion Payment Claim)

whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor.

- (e) Despite clause 13.8(d), if subsequent to the lodgement by the Contractor of the Completion Payment Claim, a final determination is made under clause 17 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.
- (f) The claims and statements required under this clause 13.8 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.
- (g) Without limiting clause 13.8(f), the Contractor cannot include in any claim or statement under this clause 13.8 any Claims that are barred under this Deed including by clause 19.6.

13.9 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 Supply 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 which is given to the Principal's Representative within the time required by, and in accordance with clause 13.8; and
- (b) has not been barred under another provision of this Deed.

13.10 Audit

- (a) The Contractor must at all reasonable times (including in connection with any payment claim submitted pursuant to clause 13.2) promptly make all of its records, invoices, subcontracts, accounts and any other document of whatsoever nature as may reasonably be required by the Principal's Representative on an "open book" basis for the purpose of allowing the Principal's Representative (or a person nominated by the Principal's Representative) to verify (and, if necessary, audit) the actual cost of the Supply and Services.
- (b) The Contractor must do all acts, matters and things necessary on its part to be done to assist the Principal's Representative in verifying the actual cost of

the Supply and Services. If the Principal's Representative requires an audit to be undertaken of the Contractor's records for the purpose of verifying the actual cost of the Supply and Services, the Contractor must fully cooperate with the Principal's Representative and any person appointed for the purpose of such audit and promptly make available all documents as may reasonably be required for that purpose during normal business hours. Any cost incurred by the Contractor in connection with any such audit will not be included as an actual cost of the Supply and Services.

13.11 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.

13.12 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.

13.13 CPI Adjustment of Rates

The rates in the Schedule of Rates are fixed and firm, and not subject to adjustment or rise and fall up to 12 months after the Commencement Date.

On the day that is 12 months after the Commencement Date, and on every further anniversary of that date, each of the rates in the Schedule of Rates will be adjusted for CPI in accordance with the following formula:



**13.14 Title**

Title in all items of Equipment will pass progressively to the Principal on the earlier of payment for or Delivery of such items in accordance with this Deed. Risk in all such items remains with the Contractor in accordance with clause 15.1.

13.15 Costs Allowed by Contractor

Unless otherwise provided in this Deed, the Contractor will be wholly responsible for the payment of:

- (a) without limiting clause 20, 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 Supply and Services;
- (b) without limiting clause 20 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 Supply and Services;
- (c) any long service leave levy which may be payable in respect of the Supply 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, and warrants that all such amounts are included in the rates in the Schedule of Rates.

13.16 Advance Payment

- (a) The parties agree that the Principal will pay (and has already partly paid) an advance payment of \$ [REDACTED] (**the Advance Payment**), to the Contractor for certain Equipment to be supplied by the Contractor under this Deed, of which:
 - (i) the Principal has at the date of this Deed already paid the Contractor \$ [REDACTED] of the Advance Payment under the document titled "Second Advance Payment Deed", dated 5 April 2019; and
 - (ii) \$ [REDACTED] will be paid within the later of 5 Business days after the parties executing this Deed and the Contractor providing to the Principal the unconditional undertaking referred to in clause 3.5(b)(i).
- (b) subject to the Principal receiving the unconditional undertaking in clause 3.5(b)(ii), the Principal will pay a mobilisation payment of \$ [REDACTED] (**the Mobilisation Payment**), to the Contractor within 10 calendar days of the date the Conditions Precedent have been satisfied or waived;
- (c) , notwithstanding the Advance Payment, the Contractor's obligation to Deliver the Equipment remains to Deliver in accordance with the Program Schedule and by the relevant Dates for Delivery in accordance with this Deed.
- (d) The Principal may have recourse to any of the unconditional undertaking provided under clause 13.16(a)(ii) at any time, when any debt or other moneys due from the Contractor to the Principal is owing and not paid in respect of the Equipment the subject of the Advance Payment.
- (e) Upon all of the Equipment that is the subject of the Advance Payment achieving Acceptance under this Deed, the Principal will release to the Contractor the balance of the unconditional undertaking provided by the Contractor under clause 13.16(a)(ii).

14. Delivery and Acceptance

14.1 Contractor to Notify

- (a) The Contractor must give the Principal's Representative written notice 10 Business Days before it anticipates achieving Delivery of any Equipment.

14.2 Inspection before Acceptance

- (a) The Principal's Representative and the Contractor's Representative must, within 5 Business Days (or any longer period agreed to by the parties in writing) of receipt by the Principal's Representative of the notice referred to in clause 14.1(a), the Principal's Representative and the Contractor must jointly inspect the Equipment with the Contractor at a mutually convenient time.
- (b) Following the joint inspection under clause 14.2(a), the Principal's Representative must either:
 - (i) Accept the Equipment by signing and issuing the Notice of Acceptance to the Contractor, in which case Acceptance has been achieved; or
 - (ii) subject to clause (c), acting reasonably, reject the Equipment by signing and issuing to the Contractor the Notice of Acceptance, noting the Equipment has not been Accepted and giving reasons.
- (c) The Principal's Representative may, acting reasonably, reject any Equipment, Consist Kit or Consumables Kit if the Equipment, Consist Kit or Consumables Kit (as the case may be) is not in compliance with the requirements of this Deed.
- (d) If the Principal's Representative issues a notice under clause 14.2(b)(ii), the Contractor must continue to proceed to bring the Supply and Services in respect of the Equipment to Acceptance and thereafter when the Contractor considers it has achieved Acceptance in respect of the Equipment, the Contractor must notify the Principal's Representative in writing by means of copies of the Contractor's Certificate of Acceptance in respect of the relevant Equipment.

14.3 Deemed Acceptance

If the Contractor has given to the Principal the notice in clause 14.1 and the Principal has not, within 5 Business Days, undertaken the inspection referred to in clause 14.2 the Contractor will give the Principal a further notice requesting the Principal to carry out the inspection referred to in clause 14.2.

If the Principal has not within a further 5 Business Days from the second notice, carried out the inspection, then relevant Equipment is deemed accepted.

14.4 Unilateral Issue of Notice of Acceptance

If at any time a notice required to be given by the Contractor to the Principal's Representative under clause 14.1(a) is not given by the Contractor yet the Principal's Representative is of the opinion that Acceptance in respect of Equipment has been achieved, the Principal's Representative may at any time and for any reason in its absolute discretion, issue a Notice of Acceptance for the relevant Equipment.

14.5 Deferral of Acceptance 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 Acceptance and issue a Notice of Acceptance in respect of Equipment. In that event, the Principal's Representative will expressly endorse the Notice of Acceptance 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.

14.6 Progressive Delivery

The Contractor acknowledges that the Principal will require progressive Delivery of the Consists Kits and/or Consumables Kits.

14.7 Mode of and date and place for delivery

- (a) The Contractor, at its expense, shall deliver the Equipment on the Date for Delivery to the Delivery Point in accordance with the Program Schedule.
- (b) The Contractor must give the Principal not less than 10 Business Days' notice of each Delivery.
- (c) The Principal, or a third party engaged by the Principal, shall promptly unload the Equipment at the Delivery Point.
- (d) The Principal may amend the Program Schedule and direct the Contractor to change the Date for Delivery. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall give the Principal written notice of the reasons.
- (e) If compliance with any such directions under this subclause, except those pursuant to the Contractor's default, causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be assessed by the Principal and added to or deducted from the Contract Sum.

14.8 Transport packing

As required by the Principal, the Contractor shall be responsible to prepare the Equipment in a manner appropriate for transport to the Delivery Point. Compliance with this provision does not limit, affect or relieve the Contractor of any other obligation under this Deed.

14.9 Progressive Inspection and Testing

At any time (including during the installation of a Consist Kit) prior to CRS of a Consist in respect of a Consist Kit, the Principal's Representative may direct that any Equipment, materials or work forming part of the Supply and Services in respect of that installation be tested. The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Supply and Services as may be required. On completion of any test, the Contractor must make good any Defect identified in the Equipment or work forming part of the Supply and Services in respect of that Equipment so that it fully complies with this Deed.

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 will be a Reimbursable Cost unless:

- (a) this Deed provides that the Contractor must bear the costs;

- (b) the test shows that the material or work is not in accordance with this Deed;
or
- (c) the test is consequent upon a failure of the Contractor to comply with a requirement of this Deed.

15. Risks and Insurance

15.1 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 by or Delivery to the Contractor of the Principal Supplied Items in accordance with Schedule 12, regardless of whether that occurs before the Commencement Date; and
- (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 16 and remains with the Contractor until the Testing and Commissioning Tools are returned into the care, custody and control of the Principal.

15.1A Risk in the Equipment

Subject to the other provisions of this Deed, risk in the Equipment passes to the Principal on Delivery.

15.2 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 Supply 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 Supply 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 Supply and Services are being carried out, caused by, or arising out of, or in any way in connection with, the Supply 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 15.2 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 15.1.

15.3 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 15.1, 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 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 8.3 applied.

15.4 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 Supply 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 15.4.

15.5 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 Supply 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 the Supply 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 Supply and Services are being performed;
 - (iv) professional indemnity insurance;
 - (v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Supply 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 15.1 are in transit (including storage and transshipment) 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 Warehouse 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 Supply and 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 11.2 or 11.3), 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 15.1) 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 Supply and Services;
 - (iii) includes a cross-liability clause in accordance with clause 15.9; 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 15.5(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 15.9; 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 Supply 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 Supply 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 15.9;
 - (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.

15.6 General Insurance Policies

The Contractor must:

- (a) in respect of any insurance policy (including an insurance policy which clause 3.2(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 15.4 or 15.5;
 - (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 15.7;
- (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 3.2(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 3.2(c), 15.5 or 15.6, 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 3.2(c) and 15.5 to the satisfaction of the Principal. The rights given by this clause 15.6 are in addition to any other right.

15.7 Period of Insurance

The insurance the parties are required to have in place under this clause 15 must be maintained:

- (a) in the case of the material damage insurance and the public and products liability insurance policies required by clause 15.5, so as to provide cover until the later to occur of:
 - (i) the Contractor ceasing to be responsible under clause 15.1 for the care of anything; and
 - (ii) the expiry of the last Warranty Period to expire;
- (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 15.1; and
 - (ii) at any time it is being used in connection with the Supply 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 10.6);
 - (ii) the date upon which all Defects have been rectified in accordance with this Deed; and
 - (iii) the expiry of the last Warranty Period to expire;
- (d) in the case of professional indemnity insurance, before commencing work covered by the policy referred to in clause 15.5(e) until at least the period specified in Schedule 1 after the expiry of the last Warranty Period to expire; and
- (e) in the case of insurance required under clause 15.5(a)(vii), during the period required by any Law.

15.8 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.

15.9 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.

15.10 Loss or Damage to Property

- (a) Without limiting clauses 15.1 and 15.2, where any loss of or damage to real or personal property (other than the Supply and Services, 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 Supply 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 18.13, if the Contractor fails or cannot, or is instructed not to carry out any repair work under clause 15.10(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.

15.11 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 15 and any such amounts will be Excluded Costs.

16. Default or Insolvency

16.1 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 Supply and Services regularly and diligently in accordance with the requirements of this Deed, in breach of clause 12.1;
- (b) suspension of work, or failing to proceed with the Supply and Services with due expedition and without delay, in breach of clause 12.1;
- (c) failing to provide the security, in breach of clause 3.5;
- (d) 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 15;
- (e) failing to use the materials or standards of workmanship required by this Deed, in breach of clause 5.1;
- (f) not complying with any direction of the Principal's Representative made in accordance with this Deed, in breach of clause 11.1;
- (g) not complying with the requirements of this Deed regarding the Contract Management Plan in a material respect;
- (h) not complying with its environmental obligations under this Deed;
- (i) not complying with its obligations under this Deed regarding work health and safety;
- (j) 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 3.3; or
- (k) any other failure to comply with a material obligation under this Deed.

16.2 Contents of Notice

A written notice under clause 16.1 must:

- (a) state that it is a notice under clause 16.1;
- (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).

16.3 Rights following Notice

- (a) Upon giving a notice under clause 16.1, 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 16.1, 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.

16.4 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; or
- (b) the Contractor is in fundamental breach of this Deed as set out in clause 3.6(b),

then, whether or not the Contractor is then in breach of this Deed, the Principal may, without giving a notice under clause 16.1, exercise the right under clause 16.3(b).

16.5 Principal's Common Rights After Termination

If:

- (a) the Principal terminates this Deed under clauses 16.3(b), 16.4 or 16.8;
- (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 16.5(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 16.3(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 16.5 will survive the termination or frustration of this Deed.

16.6 Parties' Rights after Termination

Subject to clause 16.10, if the Principal terminates this Deed under clause 16.3 or clause 16.4, or if the Contractor repudiates this Deed and the Principal otherwise terminates this Deed:

- (a) the Principal will:
 - (i) subject to clause 16.6(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 13.2 or a payment statement under clause 13.3;
 - (ii) be absolutely entitled to call, convert and have recourse to any unconditional undertaking held under clause 3.5; 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 13.2 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 16.6 will survive the termination of this Deed.

16.7 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 16.3, 16.4 or 16.8; 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 16.8 and the Contractor's sole rights in such circumstances will be those set out in clause 16.9; 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 16.7 will survive the termination of this Deed.

16.8 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 Supply and Services either itself or by engaging Other Contractors.

16.9 Payment with Termination under Clause 16.8

If the Principal terminates this Deed under clause 16.8 or is deemed by clause 16.7 to have terminated this Deed under clause 16.8, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - (i) for work or Services 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 13.2 for work carried out to the date of termination;
 - (ii) the cost of plant and materials, including Inventory, reasonably ordered by the Contractor for the Supply and Services and for which it is legally bound to pay and that cannot be readily returned to the supplier for a refund/credit 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 Supply and Services and not included in any other payment by the Principal; and
 - (iv) the amount specified in Schedule 1 at the Payment Schedule, 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 3.5 when the Contractor has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 16.9 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 16.9.

This clause 16.9 will survive the termination of this Deed by the Principal under clause 16.8.

16.10 Preservation of Rights

Subject to clause 16.7, nothing in this clause 16 or that the Principal does or fails to do pursuant to this clause 16 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 18.11) which it may have where the Contractor breaches (including repudiates) this Deed.

16.11 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 16.9(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 16.9(a)(ii); and
 - (iii) the costs calculated in accordance with the terms of clause 16.9(a)(iii); and
- (b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 3.5 when the Contractor has complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 16.11 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 16.11.

Without limiting any other provision of this Deed, this clause 16.11 will survive the frustration of this Deed.

16.12 Codification of Contractor's Entitlements

This clause 16 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 16.

17. Disputes

17.1 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 Supply 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 17.

17.2 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; and
- (c) set out the position which the party believes is correct.

17.3 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, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 11.3(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 19.4, the Claim will be barred in accordance with clause 19.6.

17.4 Response to Notice of Dispute

Where a Notice of Dispute has been given in accordance with clause 17.2 then the party to whom the Notice of Dispute is addressed must within 42 days of 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.

17.5 Senior Management Negotiation

- (a) If the Dispute is not resolved within 14 days of:
 - (i) the date of receipt of the response to the Notice of Dispute pursuant to clause 17.4; or
 - (ii) if no response is received, the date specified for the provision of a response pursuant to clause 17.4,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 (the "**Senior Management Negotiation**") 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.
- (b) If appropriate in the circumstances, at or prior to the Senior Management Negotiation the parties will exchange documents critical to the resolution of the Dispute.

17.6 Executive Negotiation

- (a) If the Dispute is not resolved within 14 days of the Senior Management Negotiation under clause 17.5, either party may by notice in writing refer the Dispute to the persons described in Schedule 1 who must:
 - (i) meet and undertake genuine and good faith negotiations (the "**Executive Negotiation**") 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

- (ii) 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 Executive Negotiation the parties will exchange documents critical to the resolution of the Dispute.

17.7 Arbitration Agreement

If the dispute is not resolved within 21 days of the Executive Negotiation, the dispute must be determined by arbitration in accordance with the following clauses.

17.8 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.

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).

17.9 Survive Termination

This clause 17 will survive the termination of this Deed.

17.10 Continuation of Work

Despite the existence of a Dispute between the parties, the Contractor must:

- (a) continue to carry out the Supply and Services; and
- (b) otherwise comply with its obligations under this Deed.

17.11 Urgent Relief

Nothing in this clause 17 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

18. General

18.1 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 18.1(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 18.1(a)(ii):
 - (A) in the case of notices by the Contractor:
 - (1) without limiting clause 18.1(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 12, 13, 14, 16, 17 or 19 or concerning a claim for payment, in addition to the copy of the notice sent pursuant to clause 18.1(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 16.3, 16.4, 16.8 or 17.2, be sent to the Electronic Portal address of the intended recipient.
- (c) For the avoidance of doubt, no notice referred to in clause 18.1(b)(ii)(A)(2) shall be effective unless delivered in accordance with both clauses 18.1(b)(ii)(A)(1) and 18.1(b)(ii)(A)(2).
- (d) Subject to clause 18.1(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 18.1(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, 4 Business Days after the date of posting.
- (f) Subject to clause 18.1(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 18.1(b)(i), 18.1(b)(ii)(A)(2) or 18.1(b)(ii)(B)(1) (as applicable), which is a Business Day.
- (g) Where clause 18.1(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 18.1(d); and
 - (ii) the date determined in accordance with clause 18.1(e) or 18.1(f) (as the case may be).

18.2 Law and Jurisdiction

- (a) This Deed is governed by and will be construed according to the Laws of New South Wales.
- (b) Where clause 17.11 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 17.11; and
 - (ii) in respect of the jurisdiction referred to in clause 18.2(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.

18.3 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.

18.4 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.

18.5 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.

18.6 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.

18.7 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.

18.8 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 18.8 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.

18.9 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.

18.10 Confidentiality

- (a) Subject to clause 18.10(b), the Contractor must:
 - (i) keep confidential this Deed and any information relating to the Supply 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 Supply 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 3.5(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 3.5(g)(i) is a party or to 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 3.5(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 18.10(d).

- (f) The Contractor must not commit to marketing or promotional opportunities or develop marketing or promotional materials that relate to the Supply 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 Supply and Services without the prior written approval of the Principal's Representative.

18.11 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
- (b) 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 3.5.

18.12 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 13.4(a), this Deed is an entire contract.

18.13 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. If costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation is greater than the Principal would have paid had the Contractor performed the obligation (but did not pay), the difference 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 Supply and Services.

18.14 Unlimited Discretion

- (a) Except as expressly provided in this Deed (including in clause 18.14(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 18.14(a):
 - (i) except as expressly provided in this Deed (including in clause 18.14(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 18.14 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.

18.15 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.

18.16 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.

18.17 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 3.7(a)(ii);
- (e) 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.

18.18 Variations

This Deed may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

18.19 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.

18.20 Limit of Contractor's Liability

Subject to clause 18.22, the aggregate liability of the Contractor to the Principal under this Deed and under the Initial TTU Contract, whether arising under or in connection with this Deed, the Initial TTU Contract, 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 \$125,000,000.

This clause 18.20 will survive the termination of this Deed.

18.21 No Liability for Certain Matters

Subject to clauses 18.22, 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 18.21 will survive the termination of this Deed.

18.22 Qualification on Limitation of Liability

Clauses 18.20 and 18.21 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 3.7(b), 4.3(d), 6.8(b)(ii), 6.10(a)(ii) or 15.2 or for breach of clause 3.6;
- (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 18.22 will survive the termination of this Deed.

18.23 No Circularity

- (a) In determining:
 - (i) whether an insurance policy extends to cover this Deed in respect of any matters referred to in clauses 18.20 or 18.21 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 18.20 or 18.21,(together the **Determinable Matters**), the limitation on the Contractor's liability pursuant to clauses 18.20 or 18.21 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 18.20 or 18.21) 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 18.23(b), to:

- (i) not disregard clauses 18.20 or 18.21, 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 18.20 or 18.21 are not to be disregarded in connection with the determination of the Determinable Matters.
- (c) The parties agree that clauses 18.23(a) and 18.23(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 18.20 or 18.21 are not to be disregarded as provided in clause 18.23(a).
- (d) If for any reason in relation to a matter referred to in clauses 18.20 or 18.21:
 - (i) clauses 18.23(a) to 18.23(c) (or any of them) are unenforceable, void, voidable or illegal, clauses 18.20 and 18.21 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 18.20 and 18.21 in determining the Determinable Matters, then clauses 18.20 and 18.21 will be 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.

18.24 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 15.5(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 any arbitrator appointed in accordance with the provisions of this Deed.

The arbitrator 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 arbitration.

18.25 Prior Work

The Contractor agrees that the work in connection with the Supply and Services carried out by the Contractor prior to the date of this Deed, other than work carried out under the Initial TTU Contract, will be deemed to be governed by the provisions of this Deed and will be deemed to be part of the Supply and Services and any payments made to the Contractor by the Principal prior to the date of this Deed in respect of the Supply and Services will be treated as part payments of the amount required to be paid by the Principal under this Deed.

18.26 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

18.27 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.

18.28 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

19. Notification of Claims

19.1 Notice of Variation

If a direction by the Principal's Representative, other than a Variation Order under clause 8.1, 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 19.3(b); and
- (c) continue to carry out the Supply and Services in accordance with this Deed and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 19.1

19.2 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 Supply 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 19.3(a) and a Claim in accordance with clause 19.3(c).

19.3 Prescribed Notices

- (a) Any written notice referred to in clauses 19.1 and 19.2 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 19.1(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 19.2 must:
- (i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 19.3(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.

19.4 Submission of Claims

Claims submitted by the Contractor under clauses 19.1(b) and 19.2 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.

19.5 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 19.3(b) or 19.3(c) every 28 days after the written Claim under clause 19.1(b) or 19.2 (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.

19.6 Bar

If the Contractor fails to comply with clauses 3.3(d), 17.1, 17.2, 17.3, 19.1, 19.2, 19.3 or 19.5:

- (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.

19.7 Other Provisions Unaffected

Nothing in clauses 19.1 to 19.6 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.

20. 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 Supply 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 20(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 20 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 13.3(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 20 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 20:
- (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.

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1. Contract Particulars

Date for Delivery:

(Clause 1.1)

As set out in the Project Schedule

Delivery Point

(Clause 1.1)

Anywhere within the greater Sydney metro area, as nominated by the Principal.

Warehouse Facility

(Clause 1.1)

Auburn Heavy Maintenance Facility

Principal's Representative:

(Clause 1.1)

Richard Hudson, Project Director, Tangara Technology Upgrade

Third Party Agreements:

(Clauses 1.1 and 3.7)

Global Safety Interface Agreement between Transport for NSW and Sydney Trains, which appears in Exhibit G

Warranty Period:

(Clause 1.1)

Item	Workmanship (in Equipment) warranty period
Train Operating System	2 years
Train Communications Network	2 years
CCTV System	2 years
Passenger Information System	2 years
DVA System	2 years
Integration and General Installation Works	2 years
Simulator Upgrade	2 years
Internal Emergency Door Release	2 years
Disability Standards for Accessible Public Transport	2 years

All other Supply and Services	2 years
-------------------------------	---------

The starting date for all warranties is the date of installation.

Working days:
(Clause 1.2(m))

Monday to Friday excluding public holidays in New South Wales

Order of Precedence:
(Clause 1.4(b))

- (a) General Conditions and the Schedules; then
- (b) Consist 1 Design; then
- (c) Statement of Work; then
- (d) Appendices to the Statement of Work; then
- (e) the Exhibits not specifically stated in (b), (c) or (d).

Subcontracts:
(Clause 3.2(b)(i)(B) and 3.2(c)(i)(B))

Work/Equipment	Subcontractor	Minimum amount of professional indemnity insurance
Train operating system and event recorder		Not applicable
Train communications network		Not applicable
CCTV system		Not applicable
Passenger information system and DVA system		Not applicable

Subcontractors required to execute deed in form of Schedule 17:

\$

(Clause 3.2(f)(ii)(A))

(Clause 3.2(f)(ii)(B))

All subcontracts and consultant engagements that include an element of design.

Accredited person:

(Clause 3.4(a)(ii))

Nil - all Supply and Services are to be performed under the Accreditation of the Contractor.

Parent Company Guarantor:

(Clause 3.5(g))

- (a) UGL Pty Limited; and
- (b) Unipart Group of Companies Limited

Number of copies of Design Documentation and Documents:

(Clauses 6.5(a) and 6.5(b))

1 printed original, 3 printed copies and an electronic version on CD (in both pdf and native formats).

New Warranty Period expiry date:

(Clause 10.6(b)(v))

12 months

Contractor's Personnel:

(Clauses 11.5(a)(i) and 11.5(b)(i))

Contractor's Representative – [REDACTED]
Project Manager – [REDACTED]
Contract Manager – [REDACTED]

Full-time dedicated positions:

(Clause 11.5(b)(iii))

Project Manager – [REDACTED]

Number of copies of report:

(Clause 11.7(b))

1 printed original, 3 printed copies and an electronic version on CD (in both pdf and native formats)

Causes of delay entitling

Contractor to claim extension of time:

(Clause 12.4(a)(ii))

- a Force Majeure Event;
- a Change in Law to which clause 3.3(d) applies;
- a Change in Authority Approval in respect of

which a Variation is directed under clause 3.3(e);

- a Change in Codes and Standards in respect of which a Variation is directed under clause 3.3(b)(ii)(B);
- a strike that is industry-wide and not specific to the Contractor, the Warehouse Facility or the Supply and Services.

Liquidated damages: \$ [REDACTED] per day, per Consist Kit.
(Clause 12.18(a))

Limit of liability for liquidated damages for delay: [REDACTED] % of the Contract Sum.
(Clause 12.19(c))

Amount of Contractor's insurance:
(Clause 15.5)

- **Workers compensation insurance** as required by Law
- **Public and products liability insurance**

[REDACTED]

- **Material damage insurance**

[REDACTED]

- **Professional indemnity insurance**

[REDACTED]

- **Motor vehicle insurance**

[REDACTED]

- **Marine transit insurance**

[REDACTED]

- **Contractor's Equipment**

[REDACTED]

Period for Professional Indemnity 6 years from Acceptance of the last Consist Kit or

Insurance: (Clause 15.7(d))	performance of the last Supply and Services to be performed.						
Person in Insolvency Event: (Clause 16.4(a)(iii))	UGL Pty Limited (ABN 85 009 180 287) Level 10, 40 Miller Street, North Sydney NSW 2060 Unipart Group of Companies Limited Unipart House, Cawley, Oxford OX4 2PG Registered in England and Wales: Registered No 1994997						
Amount for termination for convenience: (Clause 16.9(a)(iv))	% of the cost determined under clause 16.9(a)(ii) and 16.9(a)(iii).						
Senior Manager for Negotiation of Disputes (Clause 17.5)	<div></div>						
Executive for Negotiation of Disputes (Clause 17.6)	Principal: Stephen Kroon Contractor: <div></div>						
Addresses: (Clause 18.1(b))	<table> <tr> <td>Principal:</td><td> Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067; Fax: 02 9200-0290 </td></tr> <tr> <td>Principal's Representative:</td><td> Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067; Fax: 02 9200-0290 </td></tr> <tr> <td>Contractor:</td><td> Level 10, 40 Miller Street, North Sydney NSW 2060 Fax 02 9330 7901 </td></tr> </table>	Principal:	Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067; Fax: 02 9200-0290	Principal's Representative:	Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067; Fax: 02 9200-0290	Contractor:	Level 10, 40 Miller Street, North Sydney NSW 2060 Fax 02 9330 7901
Principal:	Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067; Fax: 02 9200-0290						
Principal's Representative:	Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067; Fax: 02 9200-0290						
Contractor:	Level 10, 40 Miller Street, North Sydney NSW 2060 Fax 02 9330 7901						

Time for giving notices: 10 Business Days
(Clauses 19.1(a) and 19.3(a))

Time for written Claims: 20 Business Days
(Clauses 19.1(b) and 19.3(c))

2. Payment Schedule

(Clause 13)

Schedule 2 Payment Schedule

1 Introduction and Definitions

This schedule sets out the Contractor's entitlement to claim for payments under the Deed.

Term	Definition

2 Details of the Contractor's payment model

2.1 Advance Payment

Advance Payment: Within 5 Business Days of the Contractor providing an unconditional undertaking (separate to the unconditional undertaking referred to in clause 3.5(b)(i) of the General Conditions) with a value of \$ [REDACTED] the Principal will make an advance payment to the Contractor with a value of \$ [REDACTED] (excluding GST). Advance payment 1 is nominally on account of the Existing Inventory.

Mobilisation Payment: Within 5 Business Days of the Contractor providing an unconditional undertaking (~~separate to the unconditional undertaking referred to in clause 3.51.15 of the General Conditions~~) with a value of \$ [REDACTED] the Principal will make an advance payment to the Contractor with a value of \$ [REDACTED] (excluding GST). Mobilisation Payment is nominally on account of the future inventory that the Contractor is obliged to procure for inclusion in the Consist Kits and Consumables Kits.

The parties acknowledge and agree that the Advance Payment Amount for Advance Payment is an amount paid on account of the Contract Sum and, subject to the paragraph below, that an amount (to be determined by the Principal's Representative in his absolute discretion) will be retained by the Principal from claims for payment on account of the Contract Sum by the ContractorUGLU under the Deed until the amount retained equals the value of the Advance Payment Amount for Advance Payment at which point the Principal must return the unconditional undertaking with a value of \$ [REDACTED] Where the security has been provided in more than one unconditional undertaking the unconditional undertakings will be returned progressively.

The parties acknowledge and agree that the Principal will be entitled to retain any amount up to the Advance Payment Amount from claims for payment on account of the Contract Sum by the ContractorUGLU under the Deed unless an equivalent amount to that being retained has been paid by the ContractorUGLU to the Principal.

The parties acknowledge and agree that the Mobilisation Payment is an amount paid on account of the Contract Sum and that an amount (to be determined by the Principal's Representative in his absolute discretion) will be retained by the Principal from claims for payment on account of the Contract Sum pertaining to the Consist Kits after the fourth-last Consist Kit to be delivered by the ContractorUGLU under the Deed until the amount retained equals the value of the Mobilisation Payment at which point the Principal must return the unconditional undertaking with a value of \$ [REDACTED].

2.2 Payment for Existing Inventory

A preliminary report of the inventory currently held by the Contractor is listed in Section 4.1 of this document and comprises the following types of items:

- Equipment listed in the EBOM that will be incorporated into Consist Kits;
- Production consumables listed in the EBOM that will be included in the Production Consumables Kits; and
- Shop floor consumables that will be included in the single Shop Floor Consumables Kit.

Promptly upon the Completion of Portion 2 under the Contract TPD-14-3914, the Contractor must reconcile the inventory held at that time (Existing Inventory) against the (final) EBOM and the Consist 1 Design and submit a report (Existing Inventory Report) to the Principal's Representative that shows for each part number included in the payment claim:

- The value claimed for per part and the number of parts claimed with the basis of valuation;
- The reference of the part to the EBOM;
- The reference of the part to the drawing number in the Consist 1 Design.

Payment Milestone	Payment (excl. GST)
The Contractor provides the Existing Inventory Report	For each part, the Contractor will be entitled to the Reimbursable Cost for the parts multiplied by the number of parts in the Existing Inventory plus a mark-up of [REDACTED] %.

2.3 Payment for Equipment for Consist Kits and Production Consumables Kits

The Contractor will be entitled for the payment of the Consist Kits and Production Consumables Kits upon Delivery in accordance with the Program Schedule:

Payment Milestone	Payment (excl. GST)
Each Consist Kit	For each part in the Consist Kit not paid for

	by the Principal as part of the Advance Payment, or the Mobilisation Payment <u>or the Payment for Existing Inventory</u> , the Contractor will be entitled to the Reimbursable Cost for the parts (at the cost invoiced by Subcontractors plus a mark-up of %) multiplied by the number of parts in the Consist Kit.
For each Production Consumables Kit	For each part in the Production Consumables Kit not paid for by the Principal as part of the Advance Payment, or the Mobilisation Payment <u>or the Payment for Existing Inventory</u> , the Contractor will be entitled to the Reimbursable Cost for the parts (at the cost invoiced by Subcontractors plus a mark-up of %) multiplied by the number of parts in the Production Consumables Kit.

In the event that the Contractor has assembled one or more Consist Kits or Production Consumables Kits in accordance with the Program Schedule as it existed at the time of execution of the Contract and the Principal (or the Principal's installer) is not willing or able to take Delivery of the Consist Kit(s) or Production Consumables Kit(s) within three months of the date for Delivery shown in the Program Schedule as it existed at the time of execution of the Contract, the Contractor will be entitled to payment for any such Consist Kit or Production Consumables Kit.

2.4 Inventory Management Services

2.4.1 Payment model for Inventory Management Services

The Inventory Management Services commence on the ~~earlier of the~~ Commencement Date ~~or the date that TfNSW gives notice under clause 1.15.~~

The payment model for Inventory Management Services has ~~two~~three types of components; ~~for selection~~

-
-



2.4.2 Tranche 1 model for Inventory Management Services

The Tranche 1 model for Inventory Management Services contains the delivery of Consist Kit 2 through to Consist Kit 3~~10~~.

Option for 30 consists

Item	Payment (excl. GST)	Indices for Escalation
Monthly Inventory Management Services fee charged for each month where the Contractor provides Inventory Management Services under the Deed from for 6 months after the earlier of the Commencement Date and the date the Principal gives the notice under clause 1.15 (inclusive)		
Monthly Inventory Management Services fee charged for each month where the Contractor provides Inventory Management Services under the Deed from month 7 after the earlier of the Commencement Date and the date the Principal gives the notice under clause 1.15 up until the delivery of the Consist Kit for Consist 310.		

The prices above are predicated on the assumptions stated below. Where the Contractor incurs additional costs arising from the actual conditions being different to the assumed conditions, the Contractor will be entitled to a Variation for the difference, valued under clause 8.2(b):

- Consist Kits, the Production Consumables Kit and the Shop Floor Consumables Kit will be unloaded by the Installer within two hours of Delivery;
- The Contractor has access to the Auburn facility for the whole period during which the Contractor is required to provide Inventory Management Services under the Deed;
- The Contractor is not prevented from adopting a Procurement Schedule that allows the Contractor to procure and take into storage any and all Equipment required for the Consist Kits and the Production Consumables Kit when the Contractor is ready to do so.
- The Warehouse Facility has sufficient capacity to store the Consist Kits prior to Delivery in accordance with the Program Schedule.

2.4.3 Tranche 2 model for Inventory Management Services

The Tranche 2 model for Inventory Management Services contains the delivery of Consist Kits ~~324~~ through ~~554.75~~.

Option for 24.75 Consists

Item	Payment (excl. GST)	Indices for Escalation
Monthly Inventory Management Services fee charged for each month where the Contractor provides Inventory Management Services under the Deed from the day after the Delivery of the Consist Kit for Consist 310 for a further 6 months onwards		
Monthly Inventory Management Services fee charged for each month where the Contractor provides Inventory Management Services under the Deed -after the conclusion of the period stated in the above Item onwards until completion		

The prices above are predicated on the assumptions stated below. Where the Contractor incurs additional costs arising from the actual conditions being different to the assumed conditions, the Contractor will be entitled to a Variation for the difference, valued under clause 8.2(b):

- Consist Kits, the Production Consumables Kit and the Shop Floor Consumables Kit will be unloaded by the Installer within two hours of Delivery;
- The Contractor has access to the Auburn facility for the whole period during which the Contractor is required to provide Inventory Management Services under the Deed;
- The Contractor is not prevented from adopting a Procurement Schedule that allows the Contractor to procure and take into storage any and all Equipment required for the Consist Kits and the Production Consumables Kit when the Contractor is ready to do so.
- The Warehouse Facility has sufficient capacity to store the Consist Kits prior to Delivery in accordance with the Program Schedule.

2.5 Incentive Payment

The Contractor will be entitled to an Incentive Payment for on-time Delivery of the Consist Kits C2 (being the first Consist Kit delivered under the Deed) to C6 (being the fifth Consist Kit delivered under the Deed). The criteria for successful on-time Delivery is the Delivery (or in the event that the Principal or the Principal's installer is not ready to take delivery of the Consist Kit(s) the day that the Consist Kit(s) are ready for Delivery of Consist Kits C2 to C6 within 3 months from the target date of delivery (adjusted for extensions of time awarded under the term of the General Conditions). The Contractor is entitled to claim payment for the Incentive Payment within 5 days of the Delivery of Consist Kit C6 (or date where Consist Kit C6 was ready for Delivery and the Principal or the Principal's installer was not ready to accept delivery).

Payment Milestone	Target Date for Delivery	Payment (excl. GST)
Incentive Payment for on-time delivery of Consist Kit for C2		
Incentive Payment for on-time delivery of Consist Kit for C3		
Incentive Payment for on-time delivery of Consist Kit for C4		
Incentive Payment for on-time delivery of Consist Kit for C5		
Incentive Payment for on-time delivery of Consist Kit for C6		

2.6 Payment for Design Services

Design Services are priced in accordance with:

- (i) a fixed-lump sum price (where agreed by the Principal and the Contractor calculated by applying the relevant rates in the Schedule of Rates);
- (ii) rates and prices which must be the same as in the Schedule of Rates; or
- (iii) a combination of (i) and (ii) above.

The basis of using the Schedule of Rates (refer Appendix 3.2 of this document/ Exhibit I) to value the Design Services is:

- Where a resource is required – for example a design resource – and a manager for that resource is also required to supervise the resource (in this case a Design Manager), the Design Manager will also be charged at the relevant rate in the Schedule of Rates.
- Where Design Services can be performed by an employee of the Contractor at its Broadmeadow facility, there will be no minimum charge. Where Design Services require a resource or resources not available at Broadmeadow a minimum of 1 day (7.6 hours) will apply per resource for each Design Service performed.

2.7 Payment for Commissioning Services

Commissioning Services are priced in accordance with:

- (i) a fixed-lump sum price (where agreed by the Principal and the Contractor calculated by applying the relevant rates in the Schedule of Rates);
- (ii) rates and prices which must be the same as in the Schedule of Rates; or
- (iii) a combination of (i) and (ii) above.

The basis of using the Schedule of Rates (refer Appendix 3.3 of this document/ Exhibit I) to value the Commissioning Services is:

- Where a resource is required – for example a commissioning resource – and a manager for that resource is also required to supervise the resource (in this case a Commissioning Manager), the Commissioning Manager will also be charged at the relevant rate in the Schedule of Rates.
- A minimum of 1 day (7.6 hours) will apply per resource for each Commissioning Service performed.

2.8 Payment for Ad Hoc Services

Ad Hoc Services are priced in accordance with:

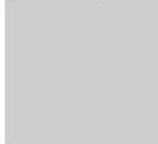
- (i) a fixed-lump sum price (where agreed by the Principal and the Contractor calculated by applying the relevant rates in the Schedule of Rates);
- (ii) rates and prices which must be the same as in the Schedule of Rates; or
- (iii) a combination of (i) and (ii) above.

The basis of using the Schedule of Rates (refer Appendix 3.4 of this document and Exhibit I) to value the Ad Hoc Services is:

- Where a resource is required – for example a resource to procure spares – and a manager for that resource is also required to supervise the resource (in this case a Procurement Manager), the Procurement Manager will also be charged at the relevant rate in the Schedule of Rates.
- A minimum of 1 day (7.6 hours) will apply per resource for each Commissioning Service performed.

3 Appendices

3.1 *Existing Inventory list for the EBOM as at May 2019*



Appendix (Existing
Inventory list) @ Secti

3.2 Schedule of Rates for Variations: Design services

Resources Title	Hourly Rate (excl. GST)	Escalation
Electrical Engineer		
Lead Electrical Engineer		
Lead Mechanical Engineer		
Mechanical Engineer		
Project Engineering Manager		
Safety Assurance Engineer		
Systems and Safety Engineer		
Engineer - Design		
Engineer - Commissioning		

Note: these rates are hourly based inclusive of Corporate overhead and profit

3.3 Schedule of Rates for Variations: Commissioning services

Resources Title	Hourly Rate (excl. GST)	Escalation
Electrical Engineer		
Mechanical Engineer		
Operations Manager		
Project Engineering Manager		
Quality Inspectors		
Quality Manager		
Safety Assurance Engineer		
Shift Delivery Manager		
T&C Manager		
Technical Labour Contractor Normal		
Technical Labour (Contractor) 1.5		
Technical Labour (Contractor) 2.0		
Trades Labour Contractor Normal		
Trades Labour Contractor 1.5		
Trades Labour Contractor 2.0		
Engineer - Commissioning		

Note: these rates are hourly based inclusive of Corporate overhead and profit

3.4 Cost Plus Schedule of Rates for Variations: Ad-hoc services

Resources Title	Hourly Rate (excl. GST)	Escalation
Commercial Manager		
Operations Manager		
Project Accountant		
Project Manager		
Quality Inspectors		
Quality Manager		
Shift Delivery Manager		
Storeman Contractor Normal		
Storeman Labour Contractor 1.5		
Storeman Labour Contractor 2.0		
Supply Chain Manager		
Trades Labour Contractor Normal		
Trades Labour Contractor 1.5		
Trades Labour Contractor 2.0		
Warehouse Manager		

Note: these rates are hourly based inclusive of Corporate overhead and profit

3. Form of Confidentiality Undertaking

(Clause 18.10(c))

To: []

We [] the engaged Consultant / Supplier / Contractor / Subcontractor body, undertake to treat as confidential all information received/generated from the [] (**Principal**) in respect of work performed by the Principal and all information generated by the Consultant / Supplier / Contractor / Subcontractor body in the course of performing the Works and Services.

The Consultant / Supplier / Contractor / Subcontractor hereby undertakes:

- (a) to disclose that information to its employees only on a need-to-know basis;
- (b) not to disclose that information to any other person without first obtaining the written consent of the Principal;
- (c) not to use that information except as necessary in connection with the Consultant / Supplier / Contractor / Subcontractor body's engagement to perform the Works and Services; and
- (d) to ensure that its employees to whom that information is disclosed will comply with (a), (b) and (c) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant / Supplier / Contractor / Subcontractor, its employees or agents) or which was already known to the Consultant / Supplier / Contractor / Subcontractor.

Any breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor and at the direction of the Principal the Consultant / Supplier / Contractor / Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant / Supplier / Contractor / Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant / Supplier / Contractor / Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated:

SIGNED for and on behalf of:

.....
(Print Company Name)

By:
(Print Name)

.....
(Signature)

in the presence of:

.....
(Print Name)

.....
(Signature)

4. Certificates of Design Compliance

(Clauses 1.1 and 6.2(b)(i))

Part 1: Contractor's Certificate of Design Compliance

CONTRACTOR'S CERTIFICATE OF DESIGN COMPLIANCE	
CONTRACTOR:	
<u>WORK PACKAGE (limit of 1 per certificate)</u>	<u>DESCRIPTION:</u>
<p>I certify that the Design Documentation for the package or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Deed (including compliance with all Codes and Standards required by the Statement of Work) and the Initial TTU Contract, and complies with the requirements of the Deed and the Initial TTU Contract.</p> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Work Package.</p> <p>NAME: _____ SIGNATURE: _____</p> <p>DATE: / /</p> <p style="text-align: center;">(Contractor's Representative)</p>	

5. Not used

(Clauses 1.1 and 9.1(d))

CONTRACTOR'S CERTIFICATE OF MANUFACTURING COMPLIANCE	
CONTRACTOR:	
<u>WORK PACKAGE (limit of 1 per certificate)</u>	<u>DESCRIPTION:</u>
<p>I certify that the procurement and manufacturing of the Work Package or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Deed and comply with the requirements of the Deed.</p> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Work Package.</p> <p>NAME: _____ SIGNATURE: _____</p> <p>DATE: / /</p> <p style="text-align: center;">(Contractor's Representative)</p>	

6. Certificates of Acceptance

(Definition of "Acceptance" in Clause 1.1 and clause 14.6)

A. Form for the Contractor's notification of Acceptance of a Kit

CONTRACTOR'S CERTIFICATE OF ACCEPTANCE
CONTRACTOR:
Description of [Consist] (limit of 1 per certificate):
<p>I certify that Acceptance of the [Consist] has been achieved in accordance with the requirements of the Deed and complies with the requirements of the Deed, subject to the register of unresolved issues attached.</p> <p>I further certify that:</p> <ul style="list-style-type: none">(a) All required documentation has been submitted.(b) All notices regarding system deficiencies have been satisfactorily closed out. <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Supply and Services.</p> <p>SIGNATURE: _____ (Contractor's Representative)</p> <p>DATE: _____</p>

B. Form for the Principal's Representative's Notice of Acceptance of a Kit

Principal's Representative's Notice of Acceptance of a Kit
Principal's Representative
I certify that this Consumables Kit/ Consist Kit is/is not Accepted for delivery by the Contractor.
<p>Signature: _____</p> <p>(Principal's Representative)</p> <p>Full name of Principal's Representative: _____</p>
Date: _____ (dd/mm/yyyy)
Principal's Representative's observations (e.g. minor omissions or defects):

7. Management Plans

(Clauses 1.1 and 5.9)

Management Plan/System
Quality Management Plan
Contract Management Plan
Project Work Health and Safety Management Plan
Inventory Management Plan
Defects Management Plan

The plans referenced above are located in the Contractor's Technical Proposal.

8. Authority Approvals

(Clauses 3.3(c))

Authority Approvals to be obtained by the Principal (clause 3.3(c)(i))

Nil, except to the extent otherwise provided in Schedule 1.

Conditions of Authority Approvals to be satisfied by the Principal (clause 3.3(c)(iv))

Nil.

9. Form of Unconditional Undertaking

(Clause 3.5(b))

This deed poll (**Undertaking**) made the day of 20

In favour of: 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**)

Given by: [] (**Institution**)

RECITALS

- A. By a deed dated [*] (**Deed**) between UGL Unipart Rail Services Pty Ltd ABN 49 154 895 940 (**Contractor**) and the Principal the Contractor agreed to carry out the Supply and Services (as defined in the Deed).
- B. Under the provisions of the Deed, the Contractor is required to provide this Undertaking to the Principal.

OPERATIVE

- 1. The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$).
- 2. The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
- 3. The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Deed or the Supply and Services or acts or things to be executed, performed and done under the Deed or by reason of any breach or breaches of the Deed by the Contractor or the Principal.
- 4. The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.

5. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll.

Signed Sealed and Delivered)

by [])

being signed sealed and)

delivered by its duly constituted) (Signature)

Attorney [])

under Power of Attorney)

No. in the presence of:)

.....
(Signature of Witness)

.....
(Name of Witness in Full)

10. Information Documents and Materials

(Clauses 1.1 and 4.3(a))

Not Used

11. Form of Statutory Declaration

(Clauses 13.6(d) and 13.7(a))

Statutory Declaration	Oaths Act (NSW) Ninth Schedule
I,	insert full name of Declarant
of	insert address
do solemnly and sincerely declare that:	
1. I am the representative of:(ABN.....) ("the Contractor) in the Office Bearer capacity of:	insert name of Contractor, and ABN if applicable insert position title of Declarant
2. The Contractor has a contract with the [.....]: ("the Contract ")	Insert name of Principal insert name of Contract
3. I personally know the facts which I have set out in this declaration.	
4. All employees who have at any time been engaged by the Contractor for work done under the Contract:	
(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and	
(b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,	
with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:	
Employee: Amount unpaid or not accrued:	insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.
.....	
.....	
.....	

5. *The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.*
6. *The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):*
 - (a) *that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors;*
 - (b) *that all their employees and subcontractors, as at the date of the making of such a declaration:*
 - (i) *have been paid all remuneration and benefits due and payable to them by; or*
 - (ii) *had accrued to their account all benefits to which they are entitled from;**the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract; and*
 - (c) *of details of any amounts due and payable or benefits due to be received or accrued described in 6(b) above which have not been paid, received or accrued,*

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

<i>Subcontractor:</i>	<i>Due amount unpaid:</i>
.....	
.....	
.....	
.....	
.....	
.....	
.....	
.....	
7. *Where a subcontractor to the Contractor has provided a declaration as in 6 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the*

insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

<i>Employee, subcontractor or supplier:</i>	<i>Amount unpaid or not accrued:</i>
-------------------------------------------------	--------------------------------------

.....	
.....	
.....	
.....	
.....	
.....	

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

8. *In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.*
9. *Attached to and forming part of this declaration, as Annexure A, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:*
 - (a) *under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;*
 - (b) *under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and*
 - (c) *under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.*
10. *I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.*
11. *All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:*
 - (a) *given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and*

(b) given by the subcontractors in their capacity as
'subcontractors' as defined in the Acts.

12. I am not aware of anything which would contradict the statements
made in the statutory declarations or written statements provided to
the Contractor by its subcontractors, as referred to in this
declaration.

And I make this solemn declaration conscientiously believing the same to be
true and by virtue of the provisions of the Oaths Act 1900 (NSW).

Declared at

thisday of

.....20

Before me:

Signature of person before whom
the declaration is made

Signature of declarant

Full name and qualifications of
person before whom the
declaration is made

And as a witness, I certify the following matters concerning the person
who made this declaration (**declarant**):

*[*strike out the text that does not supply]*

1. *I saw the face of the declarant.

OR

*I did not see the face of the declarant because the declarant was
wearing a face covering, but I am satisfied that the declarant had
a special justification for not removing the covering.

2. *I have known the declarant for at least 12 months.

OR

<p>*I confirm the declarant's identity using the following identification document:</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%; border-bottom: 1px solid black; min-height: 40px;"></div> <div style="width: 50%; text-align: center;"> <p>Identification document relied on (may be original or certified copy)</p> </div> </div>	
<p>Signature of person before whom the declaration is made</p>	
<p>Declared at</p> <p>thisday of</p> <p>.....20</p>	
<p>Before me:</p>	
<p>Signature of person before whom the declaration is made</p>	<p>Signature of declarant</p>
<p>Full name and qualifications of person before whom the declaration is made</p>	
<p>* <i>The declaration must be made before one of the following persons:</i></p> <ul style="list-style-type: none"> - <i>where the declaration is sworn within the State of New South Wales:</i> <ul style="list-style-type: none"> (i) <i>a justice of the peace of the State of New South Wales;</i> (ii) <i>a solicitor of the Supreme Court of New South Wales with a current practising certificate; or</i> (iii) <i>a notary public.</i> - <i>where the declaration is sworn in a place outside the State of New South Wales:</i> <ul style="list-style-type: none"> (i) <i>a notary public; or</i> (ii) <i>any person having authority to administer an oath in that place.</i> 	

Annexure A

SUBCONTRACTOR'S STATEMENT

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 - see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:

(Business name)

of

(Address of Subcontractor)

has entered into a contract with ABN:

(Business name of principal contractor) (Note 2)

Contract number/identifier

..... (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)

- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**
- (f) Signature Full
name.....
- (g) Position/Title Date
...../...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relation Act 1996* (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* (NSW) defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* (NSW) states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

12. Not Used

13. Form of Subcontractor Deed

(Clause 3.2(f)(ii))

THIS DEED POLL is made on, 20..... by
..... ACN..... of
..... (the **Subcontractor**).

RECITALS:

- A. **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**) has entered into a deed with UGL Unipart Rail Services Pty Ltd (ABN 49 154 895 940) (**Contractor**) for the Tangara Technology Upgrade Project (**Supply and Services**).
- B. The Subcontractor has an agreement (the **Subcontract**) with the Contractor for the execution and completion of the [] (the **Subcontract Works**) for the Supply and Services.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

1. It will comply with its obligations under the Subcontract and upon completion of the Supply and Services, the Subcontract Works will satisfy the requirements of the Subcontract.
2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
3. The Subcontractor:
 - (a) must if required by a written notice by the Principal sign a deed in the form of the attached Deed of Novation with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
4. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
5. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any

proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
7. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Contractor in respect of that breach.

PERSONS NAMED IN THE SCHEDULE TO THIS DEED POLL

Transport for NSW (ABN 18 804 239 602)

[Insert details of Sydney Trains/NSW Trains as relevant]

EXECUTED AS A DEED POLL.

Executed by *[insert name]* (ABN *[insert ABN]*) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

(Attached Deed Of Novation)

THIS DEED OF NOVATION is made on [] 20 between the following parties:

- (1) [] ACN [] of [] ("**Contractor**")
- (2) [] ACN [] of [] ("**New Contractor**"); and
- (3) [] ACN [] of [] ("**Subcontractor**").

Recitals

- A. By agreement dated [] (the "**Agreement**"), the Contractor engaged the Subcontractor to, and the Subcontractor agreed to, carry out certain works for the Contractor.
- B. Under clause 3 of the Deed Poll executed on [], which forms part of the Agreement, the Subcontractor must enter into this deed when the Principal under the Deed Poll requires it to do so.
- C. Subject to this deed, the Subcontractor agrees to accept the New Contractor in place of the Contractor for the performance of all the obligations of the Contractor and to release completely and discharge the Contractor from all of its obligations under the Agreement and from all claims and demands in respect of it.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

- 1. The Subcontractor must perform its obligations under, and be bound by, the Agreement as if the New Contractor was originally named in the Agreement as the Contractor.
- 2. The Subcontractor:
 - (a) releases and forever discharges the Contractor from its obligations under the Agreement and from all claims and demands in respect of the Agreement; and
 - (b) accepts the liability of the New Contractor in place of the liability of the Contractor in respect of the Agreement.
- 3. The New Contractor must perform all the obligations of the Contractor under, and be bound by, the Agreement as if the New Contractor were originally named in the Agreement as the Contractor.
- 4. Upon the execution and exchange of this deed:
 - (a) the Contractor must release any securities given to it by the Subcontractor in accordance with the Agreement;
 - (b) the Subcontractor must give the New Contractor security in the same form and for the same amounts as any security required by the Agreement; and

- (c) the Subcontractor must ensure that the New Contractor is appropriately noted on all relevant insurance policies as required by the Agreement.
5. The New Contractor must pay all stamp duty and any penalties in respect of this deed.
6. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

Executed by [insert name] (ABN [insert ABN]) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [insert name] (ABN [insert ABN]) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [*insert name*] (ABN [*insert
ABN*]) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

14. Parent Company Guarantee

(Clauses 1.1, 3.5(g) and 13.6(a))

Deed of Guarantee and Indemnity made at _____ on _____ 20____

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**)

[_____] ABN [_____] of [_____]
(**Guarantor**)

RECITALS

- A. The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

THIS DEED PROVIDES

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Contract means the Tangara Technology Upgrade Contract (Contract Number: TPD-14-3914) dated on or about the date of this Deed between the Principal and the Contractor.

Contractor means UGL Unipart Rail Services Pty Ltd ABN 49 154 895 940.

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any Law under which a liquidator or trustee in

bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Obligations means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Contractor and the Principal comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at approximately 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or

- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the Contract.

1.3 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 or clause is a reference to a party or clause 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) 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;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) 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; and

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.

1.4 Limitation

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Contractor under the Contract;
 - (ii) the liability of the Guarantor under this Deed in connection with a breach of the Contract by the Contractor shall not be greater than the liability of the Contractor under the Contract in respect of the breach;
 - (iii) nothing in this Deed is intended to render the Contractor and the Guarantor liable for the same loss twice for the one breach of the Contract by the Contractor;
 - (iv) the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the Contractor under the Contract;

- (v) where the Guarantor is performing any Obligation, the Guarantor will not be required to perform any such Obligation in a manner any different than that required by the Contract; and
 - (vi) payment by one of the Contractor or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment.
- (b) The limitation of liability under this clause 1.4 does not apply to liability to pay any interest in accordance with clause 7.3 of this Deed or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Obligations which arise from or would have arisen from any voided, voidable, unenforceable or irrecoverable Obligations referred to in clause 3(b) of this Deed (if those Obligations had not been voided, avoided, unenforceable or irrecoverable), subject to such liability not exceeding the liability that the Contractor would have had if the Obligations had not been voided, voidable, unenforceable or irrecoverable.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

2.2 Payment by Guarantor

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 Perform Obligations

If the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Obligations.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Contractor to perform the Obligations; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

4. Liability as guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (i) any person, whether named as a party or not, does not execute this Deed;
 - (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
 - (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) the occurrence of any Event of Default;

- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;
- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;
- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;
- (o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or

liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor; or

- (p) the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.
- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Contractor, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
- (b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or

- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security;
 - and
 - (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
 - (d) that claim is upheld or is conceded or compromised by the Principal,
- then:
- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
 - (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
 - (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

Subject to clause 1.4(a)(iv), the liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.

5.8 Claim on the Guarantor

- (a) Subject to clause 5.8(b), the Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.
- (b) The Principal agrees not to make a claim or demand for payment of Guaranteed Money against the Guarantor under this Deed unless:
 - (i) the Principal has made a written claim or demand against the Contractor for such Guaranteed Money, a copy of which the Principal gives to the Guarantor at the same time as the Principal makes the claim or demand against the Contractor, and such Guaranteed Money remains unpaid, in

whole or in part, for 10 Business Days after the claim or demand is made;
or

- (ii) an Insolvency Event has occurred in relation to the Contractor or the Guarantor.

5.9 No representation by Principal etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Contractor or any other person.

6. Representations and Warranties

6.1 General representations and warranties

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the Principal that:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law binding on it, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;
- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;

- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate to the extent they are material to the performance of the obligations of the Guarantor under this Deed.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3, provided that interest will not be payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

- (a) subject to clause 1.4(a)(iv), free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and
- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency (**Payment Currency**) other than the currency (**Agreed Currency**) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax, which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and
- (b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

8.3 Goods and Services Tax

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed (**GST Liability**) then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

9. Assignment

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.8 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.8 will only apply where the Guarantor is a foreign company (as defined in section 9 of the *Corporations Act 2001* (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Not used

10.6 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

10.7 Joinder

The arbitral tribunal has the power, on the application of any party to the arbitration, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.8 Award final and binding

Any award will be final and binding upon the parties.

11. Miscellaneous

11.1 Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others):
 - (i) to the Principal: Level 5, Tower A
Zenith Centre
821 Pacific Highway
Chatswood NSW 2067
Fax: (02) 9200 0290
 - (ii) to the Guarantor: [to be completed]
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) 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 paragraph (a), which is a Business Day.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines, provided it includes particulars of the relevant default in the due and punctual performance of the Obligations.

11.5 Entire agreement

This Deed constitutes 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; or
- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

11.6 Joint and several liability

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor 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. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

11.7 Severance

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.

11.8 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the Principal.

11.9 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 Guarantor to comply with a requirement of this Deed,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.

11.10 Consents

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

11.10A Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

11.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.12 Variations

This Deed may only be varied by a document signed by or on behalf of both the Principal and the Guarantor.

11.13 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal or the Guarantor is to be construed as doing so only to the extent permitted by law.

11.14 Counterparts

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

11.15 Confidentiality

- (a) Subject to paragraph (b), each party must keep the terms of this Deed confidential.
- (b) A party may make any disclosure in relation to this Deed:
 - (i) to a professional adviser, financial adviser, insurer, rating agency, financier or auditor if that person is obliged to keep the information disclosed confidential;
 - (ii) to the extent required to comply with any law, a requirement of a regulatory body (including any relevant stock exchange) or pursuant to administrative request or Parliamentary requirement;
 - (iii) to any of its employees or officers to whom it is necessary to disclose the information;
 - (iv) in connection with any legal or arbitral proceeding under or in relation to this Deed;
 - (v) to obtain the consent of a third party to a term of, or to an act under, this Deed;
 - (vi) to a "related body corporate", as defined in section 9 of the *Corporations Act 2001* (Cth), as long as it advises that related body corporate of the confidential nature of the terms of this Deed;
 - (vii) (in the case of the Principal) to a potential assignee provided they agree to keep the terms of this Deed confidential;
 - (viii) (in the case of the Principal) to a related agency or to its responsible Minister;
 - (ix) with the prior consent of the other party to this Deed; or
 - (x) if the information disclosed has come into the public domain through no fault of the party (or its employees, officers or related bodies corporate) making the disclosure.

Executed as a deed.

Signed for and on behalf of **TRANSPORT
FOR NSW (ABN 18 804 239 602):**

Signature of Authorised Delegate

Signature of Witness

Print Name

(block letters)

Print Name

(block letters)

Position held

Position held

[Signed, sealed and delivered for and on behalf of **Unipart Group of Companies Limited (Registered in England and Wales: Registered No 1994997)** by its attorney under a power of attorney dated 26 June 2015 in the presence of:

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney]

[OR: (delete as applicable)]

[Executed in accordance with section 127
of the *Corporations Act 2001* by **UGL**
Limited (ABN 85 009 180 287):

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full]

15. Not used

16. Testing and Commissioning Tools

(Clauses 1.1 and 15.1(b))

The items listed in the table below are the Testing and Commissioning Tools. These items will be returned by the Contractor to the Principal promptly after the date of this Deed:

S.No	Product Description	Total Qty
1	An embedded "Onboard Diagnostic Equipment tool" (ODE) case including compatible tester EVC "ODO ALSTOM", its suitable accessories, cables and SW, and the tool called "FAUST". This tool case is also commonly called "Maintenance test box".	2
2	Software programs such as: <ul style="list-style-type: none"> ○ Editor such as hyperterminal (wherever required); ○ Software of the EVC periodic tester configured for "Oscar train set"; ○ Software and drivers of the "ODE" tool; ○ TRU tools named "MultiRec SG" and "JDR_MDR" 	1
3	A "Eurobalise" programmed with a compatible message generating a message "Test&Commissioning" on the DMI screen when being crossed by the vehicle.	2
4	Profibus tester PBT4 (or equivalent).	2
5	Green Bi-lock key to operate IS-ETCS 1/IS-ETCS2, L2-INH 1/L2-INH 2 key switches and unlock/lock the ETCS cubicle enclosure.	2

17. Form of Warranty

(Clause 1.8(e)(i))

This Deed Poll is made the day of 20

To: **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 ("**Principal**")

[Add other beneficiaries as nominated by TfNSW] ("Beneficiary**").**

By: That person described in Item 1 of the Schedule ("**Warrantor**") which expression will include its successors and assigns)

Recitals

A. The Warrantor has supplied the items described in Item 2 of the Schedule ("**Equipment**") to the person described in **Item 3** of the Schedule ("**Contractor**") or the person described in Item 4 of the Schedule, a subcontractor of the Contractor ("**Subcontractor**"), for the works ("**Works**") being carried out by the Contractor under the contract described in Item 5 of the Schedule ("**Contract**") with the Principal.

B. It is a requirement of the Contract that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

Operative

1. Quality

The Warrantor:

- (a) warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

2. Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 7 of the Schedule:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

3. Warrantor to bear cost

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

4. Principal not liable

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

5. This deed poll may not be revoked

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

6. Governing Law

This deed poll is governed by the laws of the State of New South Wales.

7. Jurisdiction

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

8. Enforcement of this deed poll

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

Schedule

Item 1: Name and Address of Warrantor

Item 2: Equipment
(Recital A)

Item 3: Contractor
(Recital A)

Item 4: Subcontractor
(Recital A)

Item 5: Contract
(Recital A)

Item 6: Detailed Warranty of Warrantor
(Clause 1(b))

Item 7: Period of Years
(Clause 2)

[insert period] years from the expiry of the last "Defects Rectification Period" as defined in the General Conditions (including any extension under clause 8.6 of the General Conditions).

Executed as a deed poll.

Executed by *[insert name of Warrantor]* (ABN *[insert ABN]*) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

18. Escrow Deed

(Clause 1.7(f))

Between [Name] of [Address] (ABN [*]) (**Escrow Holder**).

and [Name] of [Address] (ABN [*]) (**Supplier**); and

and **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 (**TfNSW**).

RECITALS

- A. The Supplier has agreed to deposit with the Escrow Holder a copy of the Source Code and to allow TfNSW to access and use the Source Code under certain circumstances.
- B. The Escrow Holder agrees to deal with the Source Code Material on the terms and conditions of this agreement.

1. Interpretation

1.1 Definitions

In this agreement, unless the context otherwise indicates:

Annual Fee means the annual fees set out in section 1 of the Information Schedule.

Authority means 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 the Asset Standards Authority and the Office of the National Rail Safety Regulator).

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

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

CPI means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

Escrow Deposit Specification Form means the form set out in Schedule 2.

Establishment Fee means the establishment fee set out in section 1 of the Information Schedule.

Government Agency means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

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.

Information Schedule means Schedule 1 to this agreement.

A person is ***Insolvent*** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it has had a Controller (as that term is defined in the Corporations Act) appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (i), (ii) or (iii) above;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (i) to (vii) happens in connection with that person under the Law of any jurisdiction.

Insurance means the insurance (if any) specified in section 3 of the Information Schedule.

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.

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 Approval (being 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) including any condition or requirement under them.

Software Application means the software application to which the Source Code relates.

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 of that computer program including all technical documentation and specifications in respect of that computer program.

Source Code Material means reasonably commented Source Code for the then currently implemented version of the Software Application and all other software, information, documentation and other material described in section 2 of the Information Schedule.

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.

Tax Invoice has the same meaning as in the GST Legislation.

Taxable Supply has the same meaning as in the GST Legislation.

Update means any material update, new release, modification or new version of the computer programs or computer interfaces provided by the Supplier.

1.2 References to certain general terms

In this agreement 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 agreement 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 agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this agreement 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 agreement;
- (i) a reference to:
 - (i) a party, clause or Appendix is a reference to a party, clause or Appendix of or to this agreement; and
 - (ii) 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 agreement includes all Appendices;
- (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) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (m) a reference to "\$" is to Australian currency;
- (n) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this agreement or any part; and
- (o) 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.

1.3 Inconsistency

If there is an inconsistency between a provision in clauses 1 to 16 and a provision in the Information Schedule, then the provision in clauses 1 to 16 prevails to the extent of the inconsistency.

2. Supplier's deposit obligations

2.1 Supplier to make deposits

The Supplier must deposit the then currently implemented version of the Source Code Material, accompanied by a completed Escrow Deposit Specification Form, with the Escrow Holder:

- (a) within 7 days of the date of this agreement;
- (b) within 7 days of the issue of a Notice of Completion in respect of a Portion which incorporates computer programs or computer interfaces; and
- (c) within 7 days after any update or material change is made to the implemented version of the computer programs or computer interfaces referred to in paragraph (b).

2.2 TfNSW may test deposits

TfNSW may, after providing the Supplier with at least seven days notice, conduct tests on the Source Code Material to determine whether the Supplier has met its obligations under clause 2.1.

2.3 Escrow Holder to provide access

The Escrow Holder will provide TfNSW with access to the Source Code Material to enable testing under clause 2.2 to be carried out and will, in the presence and with the oversight of the Supplier, allow TfNSW to:

- (a) remove the Source Code Material from the custody of the Escrow Holder;
- (b) install, download or copy the Source Code Material onto such computer system or hardware as TfNSW may reasonably specify; and
- (c) analyse and conduct reasonable tests in relation to the Source Code Material as provided for under clause 2.2.

Following the testing, TfNSW will (in the presence of and with the oversight of the Supplier) ensure that all copies of the Source Code Material are deleted from the computer system or hardware referred to in clause 2.3(b), and the material referred to in clause 2.3(a) is promptly returned to the Escrow Holder.

2.4 Support to provide assistance with testing

The Supplier must, at TfNSW's request and at no charge, give TfNSW all reasonable assistance to enable TfNSW to carry out the tests referred to in clause 2.2.

2.5 Failure to deposit correct version in escrow

If testing by TfNSW reveals that the Source Code Material does not contain the correct version of the computer programs or computer interfaces, the Supplier must, at no charge, deliver a copy of the correct version of the Source Code Material to the Escrow Holder within 2 Business Days of the completion of testing.

3. Escrow Holder's obligations

3.1 Obligations

The Escrow Holder must:

- (a) accept each deposit of the Source Code Material and, subject to the terms and conditions of this agreement, hold it on behalf of the Supplier and TfNSW;
- (b) take all reasonably necessary steps to ensure the preservation, care, safe custody and security of the Source Code Material whilst it is in the possession, custody or control of the Escrow Holder;
- (c) only use, access, copy and release the Source Code Material to the extent necessary to enable the Escrow Holder to comply with its obligations under this agreement;
- (d) establish and maintain a register of deposits of the Source Code Material (**Register**) showing deposit and release dates and to whom each deposit was released;
- (e) allow the Supplier or TfNSW to examine the Register at any time during regular business hours; and
- (f) provide the Supplier or TfNSW with a copy of the Register within seven days of receiving a request to do so.

3.2 Limit on obligations

The Escrow Holder has no obligation to and is not responsible for:

- (a) verifying the nature, completeness or accuracy of Source Code Material; or
- (b) any transaction between the parties, other than the performance of the Escrow Holder's obligations under this agreement.

4. Confidentiality

The Escrow Holder must not disclose to any person:

- (a) any part of the Source Code Material;
 - (b) any information about the Source Code Material; or
 - (c) any information about this agreement,
- other than as permitted by this agreement or as required by Law.

5. Release to TfNSW

5.1 TfNSW may request release

If one of the following circumstances occurs:

- (a) the Supplier becomes insolvent;
- (b) the Supplier ceases to carry on business;

- (c) the Supplier has ceased for any reason to maintain or support the Software Application;
 - (d) the Supplier breaches the terms of this Agreement;
 - (e) or
 - (f) the Supplier assigns copyright in the Software Application to a third party,
- then TfNSW may notify the Escrow Holder and the Supplier of this event and request that the Escrow Holder release the Source Code Material to TfNSW (**TfNSW Notice**).

5.2 Supplier may dispute release

If the Supplier disputes the TfNSW Notice, then it may notify the Escrow Holder and TfNSW that it objects to release of the Source Code Material on the basis that the event relied on by TfNSW does not exist and the Supplier has provided substantial evidence to support its objection (**Supplier Objection**).

5.3 Release of Source Code Material to TfNSW

Unless otherwise ordered by a court the Escrow Holder must release the Source Code Material to TfNSW:

- (a) if no Supplier Objection is received, within 2 Business Days after the Escrow Holder receives a TfNSW Notice; or
- (b) if a Supplier Objection is received, within 7 days after the Supplier Objection is received.

5.4 Grant of licence

If the Source Code Material is released to TfNSW under this clause 5, then the Supplier grants TfNSW an irrevocable, perpetual, royalty-free, worldwide, non-exclusive licence in relation to that Source Code Material to use it for all purposes in connection with the Works and Services.

6. Release to Supplier

6.1 Release of Source Code Material to Supplier

If TfNSW has given the Escrow Holder written notice of its consent to the release of the Source Code Material to the Supplier, then the Supplier may request that the Escrow Holder release the Source Code Material to the Supplier, and the Escrow Holder must immediately release the Source Code Material to the Supplier.

6.2 No other release to Supplier is permitted

Other than as provided for in clause 6.1 and clause 7, the Escrow Holder must not release any Source Code Material to the Supplier.

7. Release by agreement or by court order

7.1 Release by agreement

Within five days after receipt of a joint notice from the Supplier and TfNSW requesting release of the Source Code Material, the Escrow Holder must release the Source Code Material in accordance with that notice.

7.2 Release by court order

Each party acknowledges that the Escrow Holder must release the Source Code Material in accordance with any court order requiring the Escrow Holder to do so.

7.3 Notice to TfNSW

The Escrow Holder must immediately notify TfNSW if it receives a court order (or any document that refers to a court order being sought) in relation to the Source Code Material.

8. Fees and charges

8.1 Payment of fees

TfNSW must pay the Establishment Fee and Annual Fee to the Escrow Holder within 30 days of TfNSW's receipt of the invoices referred to in clause 8.3.

8.2 Annual Fee subject to change

The Escrow Holder may increase the Annual Fee for any year by giving 30 days notice to TfNSW. An increase must not exceed the increase in the CPI for the previous year.

8.3 Invoices

The Escrow Holder may issue invoices as follows:

- (a) for the Establishment Fee, on or after the date of this agreement, to TfNSW;
- (b) for the Annual Fee, on or after each anniversary of the date of this agreement, to TfNSW; and
- (c) for reasonable delivery costs incurred by the Escrow Holder in releasing the Source Code Material, to the party that requested the release.

All invoices issued by the Escrow Holder must state the basis on which fees are charged and, in respect of amounts invoiced pursuant to sub-clause (c) above, must attach evidence justifying the amounts claimed.

8.4 GST inclusive prices

Unless otherwise stated, the Fees include GST, but exclude Taxes.

8.5 Taxes

TfNSW is responsible for the payment of all Taxes arising from or relating to this agreement, regardless of who they are imposed on, and indemnifies the Escrow Holder against any costs or expenses that the Escrow Holder incur as a result of TfNSW failing to meet this obligation.

9. GST

9.1 GST gross up

Subject to clauses 9.2, 9.3 and 9.4, if GST is imposed on any Taxable Supply made by a party under this agreement (**Supplying Party**), then the party receiving the Taxable Supply (**Receiving Party**) must pay, in addition to any consideration payable or to be provided under this agreement for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant Taxable Supply payable, or to be provided, by the Receiving Party under any other clause in this agreement.

9.2 Tax invoice

Payment for Taxable Supplies is conditional upon the issue of a Tax Invoice. Each Tax Invoice must provide full details of the Taxable Supply, the subject of the Tax Invoice, including any details the payer of the fee may specifically require and such other details required to ensure that it is a Tax Invoice.

9.3 Adjustment

If the amount of GST recovered by the Supplying Party from the Receiving Party differs from the amount of GST payable at law by the Supplying Party (or an entity grouped with the Supplying Party for GST purposes) in respect of the supply, the amount payable by the Receiving Party to the Supplying Party will be adjusted accordingly.

9.4 Reimbursements

Where one party (**Payer**) is liable to reimburse another party (**Payee**) for any expenditure incurred by the Payer (**Expenditure**), the amount reimbursed by the Payer shall be the GST exclusive Expenditure plus any GST payable to the Payee by the Payer pursuant to clause 9.1.

10. Ownership, risk and insurance

10.1 Acknowledgements

Each party acknowledges that:

- (a) nothing in this agreement assigns any Intellectual Property in the Source Code Material;

- (b) title in the physical media on which the Source Code Material is stored passes from the Supplier to TfNSW on release of the Source Code Material to TfNSW under clause 5 or clause 7;
- (c) if the Information Schedule requires the Escrow Holder to take out Insurance to cover loss of, or damage to, the Source Code Material or associated media, then the Escrow Holder will bear the risk of that loss or damage; and
- (d) if the Information Schedule does not require the Escrow Holder to take out Insurance to cover loss of, or damage to, the Source Code Material or associated media, then risk of that loss or damage remains with the Supplier and does not pass to the Escrow Holder.

10.2 Loss or damage to Source Code Material

Without limiting any rights or remedies that any of the parties may have, if any of the Source Code Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control:

- (a) the Escrow Holder must promptly notify each other party; and
- (b) the Supplier must provide the Escrow Holder with replacement Source Code Material within 2 Business Days or receiving such notice from the Escrow Holder.

10.3 Warranty

The Supplier warrants and represents that it has the necessary authority to comply with its obligations under this agreement (including the right to grant the licence in clause 5.4).

10.4 Act or omission of Escrow Holder

Notwithstanding any other provision of this agreement, if any of the Source Code Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control, and that loss, damage or destruction is caused by:

- (a) the Escrow Holder's breach of this agreement; or
- (b) the negligent, wilful or unlawful act or omission of the Escrow Holder,

then the Escrow Holder must, at its own expense, reimburse the Supplier for the reasonable cost of replacing the relevant part or parts of the Source Code Material.

11. Exclusions and limitations

11.1 Scope of exclusions and limitations

Nothing in this agreement excludes or limits the application of any provision of any statute (including the *Trade Practices Act 1974* (Cth) (or the *Competition and Consumer Act 2010* (Cth) when it comes into force)) where to do so would:

- (a) contravene that statute; or
- (b) cause any part of this clause to be void.

11.2 Exclusion of implied warranties

The Escrow Holder excludes all implied conditions and implied warranties (except any implied condition or implied warranty the exclusion of which would contravene any statute or cause this clause to be void) (*Implied Condition*).

11.3 Cap on liability

Subject to clause 11.4, the Escrow Holder's liability to each other party for breach of any express provision of this agreement, for any Implied Condition or for any other cause of action (including, but not limited to, negligence) is limited to refunding the unexpired portion of the Annual Fee applicable to the calendar year in which the breach occurred.

11.4 Exception

The cap on the Escrow Holder's liability in clause 11.3 does not apply to:

- (a) any breach of clause 5.3 by the Escrow Holder;
- (b) any liability of the Escrow Holder under clause 10.4; or
- (c) any claims covered by Insurance.

12. Termination

12.1 Upon insolvency

This agreement terminates immediately if the Escrow Holder becomes Insolvent.

12.2 Upon release of Source Code Material

This agreement terminates immediately if the Source Code Material is released to TfNSW or the Supplier under this agreement.

12.3 Upon provision of notice

This agreement may be terminated by:

- (a) the Escrow Holder giving 90 days written notice to the Supplier and TfNSW;
- (b) TfNSW giving 90 days written notice to the Supplier and the Escrow Holder; or
- (c) the Supplier giving 90 days written notice to TfNSW and the Escrow Holder.

12.4 By TfNSW or the Supplier

Either the Supplier or TfNSW may, by giving notice to the Escrow Holder (with a copy to TfNSW or the Supplier, as applicable), terminate this agreement with immediate effect if:

- (a) the Escrow Holder commits a material breach of this agreement; and
- (b) the breach is not remedied within 14 days of the Escrow Holder receiving a notice detailing the breach and requiring that it be rectified.

12.5 Consequences of an Escrow Holder termination event

Within 14 days after the termination of this agreement under clause 12.1, 12.3 or 12.4, the Supplier must, at the direction of TfNSW (and TfNSW must, if the Supplier so requests), enter into another agreement between the Supplier, TfNSW and a new escrow service provider in a form substantially similar to this agreement.

12.6 Return of Source Code Material on termination

- (a) If this agreement terminates for any reason other than under clause 12.2 and 12.3(b), then, unless a new escrow agreement is entered into within 14 days in accordance with clause 12.5, the Escrow Holder must, within a further 20 days, deliver the Source Code Material to TfNSW.
- (b) If this agreement terminates under clause 12.3(b), then the Escrow Holder must within 7 days deliver the Source Code Material to the Supplier.

13. Notices

- (a) Any notices contemplated by this agreement must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others):

to TfNSW:

Level 5, Tower A
Zenith Centre
821 Pacific Highway
Chatswood NSW 2067
Fax: (02) 9200 0290

to the Escrow Holder: [to be completed]

to the Supplier: [to be completed]

- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) 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 paragraph (a), which is a Business Day.

14. No assignment

A party may not assign or otherwise deal with all or any of its rights or obligations under this agreement without the written consent of the other parties.

15. General

15.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

15.2 Partial exercise of rights

If a party does not exercise a right or remedy at a given time, the party may still exercise it later.

15.3 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

15.4 Remedies cumulative

The rights and remedies provided in this agreement are in addition to other rights and remedies given by Law independently of this agreement.

15.5 Operation of Law

Rights given to the parties under this agreement and the parties' liabilities under it are not affected by anything which might otherwise affect them by Law.

15.6 Indemnities

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

Nothing in this clause 15.6 prevents any other provision of this agreement, as a matter of interpretation also surviving the termination of this agreement.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this agreement.

15.7 No partnership, joint venture or other fiduciary relationship

Nothing in this agreement will be construed or interpreted as constituting the relationship between TfNSW, the Supplier and the Escrow Holder as that of partners, joint venturers or any other fiduciary relationship.

15.8 Entire agreement

This agreement constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or
- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

15.9 Joint and several liability

- (a) The obligations of the Escrow Holder, if more than one person, under this Deed, are joint and several. Each person constituting the Escrow Holder 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.
- (b) The obligations of the Supplier, if more than one person, under this Deed, are joint and several. Each person constituting the Supplier 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.

15.10 Severance

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.

15.11 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal, the Supplier or the Escrow Holder is to be construed as doing so only to the extent permitted by Law.

15.12 Variations

This Deed may only be varied by a document signed by or on behalf of the Principal, the Supplier and the Escrow Holder.

15.13 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 agreement 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 agreement.

- (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:
 - a breach of any term of this Deed; or
 - any other failure by the Escrow Holder to comply with a requirement of this agreement,

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 agreement or failure to comply with any other requirement of this agreement.

15.14 Survival

Clauses 3.1(e) and 3.1(f) ("Obligations"), 4 ("Confidentiality"), 5.4 ("Grant of licence"), 8.4 ("GST inclusive prices"), 8.5 ("Taxes"), 9 ("GST"), 10.3 ("Warranty"), 11 ("Exclusions and limitations"), 12.5 ("Consequences of an Escrow Holder termination Event"), 12.6 ("Return of Source Code Material on termination"), 15 ("General"), 16 ("Governing law and jurisdiction") and 1 ("Interpretation") survive the termination (for any reason) of this agreement.

16. Governing law and jurisdiction

- (a) This agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

Schedule 1 to Escrow Deed - Information Schedule**17. Fees and charges**

Establishment Fee: (first year)	\$[] plus GST
Annual Fee: (first year and subsequent years) (subject to increases under clause 8.2)	\$[] plus GST

18. Source code material

- (a) The Source Code which incorporates computer programs or computer interfaces;
- (b) all documentation relating to the material referred to in (a) which a reasonably qualified programmer would require for understanding, maintaining, modifying such material; and
- (c) media on which source code will be deposited:

[insert description of media, eg CD ROM]

19. Insurance

[Insert details]

Schedule 2 to Escrow Deed - Escrow Deposit Specification Form

20. Depositor information

Company Name: _____

Technical Contact: _____

Email: _____

Telephone: _____

21. Software Application information

Product Name(s)/Version(s): _____

Modules: _____

22. Media information

Medium	Quantity	Label
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

23. Escrow deposit details

23.1 Compilation

(a) What hardware is required to compile the Software Application?

- (b) What operating system and version is used in the compilation process?

- (c) What operating system and version is used in the compilation process?

- (d) What development environment (compilers/linkers/other tools) is necessary to compile the Software Application?

- (e) List all third party libraries/components that are required to compile the software (brand name, version & supplier) and indicate which (if any) are not included in the deposit?

- (f) List all non third party libraries/components that are required to compile the software.

- (g) Detail the steps to follow to compile the source code and produce a version of the Software Application that runs.

- (h) List all of the files that are created by the compilation process and are needed to successfully run the Software Application.

23.2 Running the application

- (a) What hardware is required to successfully run the Software Application (if identical to item 3.4.1.1 please leave blank)?

- (b) What software (in addition to the operating system) is required to successfully run the Software Application?

23.3 Documentation

- (a) Please provide an overview of the technical documentation.

- (b) Please provide an overview of the user documentation.

- (c) Please include a short description on the layout of the deposit.

- (d) Please include a full directory listing of the contents of the deposit media.

23.4 General information

- (a) What are the main functions performed by the Software Application?

- (b) List the additional material (reports, databases, etc.) included with the deposit.

- (c) Is a copy of the development environment (compilers & third party software) included with the deposit?

- (d) Does your company use a formal coding convention (please provide a brief description of the convention used).

24. Remarks

25. Signature

Date: _____

Signature: _____

Name (please print): _____

For and on behalf of the Supplier

The Supplier warrants that the details set out above
are correct and complete.

Executed and delivered as a Deed in Sydney

Signed for and on behalf of **TRANSPORT
FOR NSW** (ABN 18 804 239 602):

Signature of Authorised Delegate

Signature of Witness

Print Name

(block letters)

Print Name

Position held

(block letters)

Position held

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001*
by **[* Limited]**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001*
by **[* Limited]**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

DEED EXECUTION PAGE

DATED 28 day of JUNE ~~2015~~ 2019

Executed and delivered as a Deed in Sydney

Signed for and on behalf of
TRANSPORT FOR NSW (ABN 18 804
239 602):


Signature of Witness

RICHARD HUDSON
Print Name

(block letters)

PROJECT DIRECTOR
Position held


Signature of Authorised Delegate

MARK PIGGOTT
Print Name

(block letters)

DEPUTY EXECUTIVE DIRECTOR
Position held

Signed by UGL
**Unipart Rail
Services Pty Ltd**
(ABN 49 154 895
940) under s.127(1)
of the Corporations
Act 2001


sign
Director
office (director)
Michael Degotardi
full name


sign
Director
office (director or secretary)
STUART HENRY
full name

EXHIBITS

LIST OF EXHIBITS

EXHIBIT A	-	STATEMENT OF WORK
EXHIBIT B	-	CONTRACTOR'S TECHNICAL PROPOSAL
EXHIBIT C	-	PRINCIPAL'S INSURANCE POLICIES
EXHIBIT D	-	NOT USED
EXHIBIT E	-	DEED OF DISCLAIMER
EXHIBIT F	-	ASA CHARTER
EXHIBIT G	-	THIRD PARTY AGREEMENTS
EXHIBIT H	-	ELECTRONIC FILES
EXHIBIT I	-	SCHEDULE OF RATES
EXHIBIT J	-	ENGINEERING BILL OF MATERIALS
EXHIBIT K	-	CONSIST 1 DESIGN
EXHIBIT L	-	PROGRAM SCHEDULE

Exhibit A

Statement of Work



Transport
for NSW

Tangara Technology Upgrade

Statement of Work (Ref:)

Status: DRAFT

Division: Infrastructure and Place

Version:

Desksite no:

Date of Issue:

Document Owner: Project Director, Tangara Technology Upgrade

Source:

Commercial-In-Confidence

Revision History

Rev	Date	Purpose of Issue / Nature of Revision	Prepared by	Reviewed by	Issue Authorised by
1	20/6/2019	Initial Draft			

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1 Introduction

1.1 Objectives of the Tangara Technology Upgrade

TTU_SR_3

Refurbishment and upgrade works are required on Tangara Double Deck EMU Cars operated by Sydney Trains to address component obsolescence and avoid a decline in reliability and availability of the Fleet, so that it can be used for up to 40 years.

TTU_SR_4

The responsibility for the delivery of what was originally called the Tangara Obsolescence and Reliability Project (TORP) was transferred from Sydney Trains to the Principal effective from 1st July 2013. Due to changes in the scope of the project, the project is now known as the Tangara Technology Upgrade (TTU).

TTU_SR_5

The Principal's mission is to make sure "The customer is at the centre of everything we do in transport". With this in mind, the Principal is implementing the TTU to continue to meet business and customer demands by providing a safe, efficient, reliable and modern mode of heavy rail transport. This is to be achieved by refurbishment or replacement of selected train equipment and systems on the Fleet that have been deemed to be obsolete and unreliable.

In support of this objective, the Contractor will provide the following:

- Delivery of Equipment in the form of Consist Kits;
- Provision of consumables in the form of Consumables Kits; and
- Provision of Inventory Management Services.

Where requested by the Principal, the Contractor can also provide optional services, which are not described in this Statement of Work (refer to the General Conditions for the process) and will be subject to separate scope(s) of work and pricing being agreed between the Contractor and the Principal, using the personnel rates and mark-up for overhead and profit in the Payment Schedule and in the Schedule of Rates. These optional services are:

- Design Services;
- Commissioning Services; and
- Ad Hoc Services.

1.2 Scope of Tangara Technology Upgrade

TTU_SR_7

The work packages for the TTU project as a whole are divided into 2 phases.

TTU_SR_8

Phase 1 involves the replacement of some obsolescent systems and is being delivered by means of existing resources and contracts. Phase 1 is NOT part of the Supply and Services.

TTU_SR_9

This Statement of Work (SOW) is for Phase 2 of the TTU, which comprises the Supply and Services only (with installation undertaken by the Installer).

TTU_SR_10

The Supply and Services includes:

- a. the supply of components for a new Train Operating System (TOS) to replace the obsolete Train Management System (TMS);
- b.
- c. the supply of components for a Train Communications Network (TCN);
- d. the supply of components for a Communication system including PA, Crew Intercom and Passenger Emergency Intercom (PEI);
- e. the supply of components for a Passenger Information System (PIS) including Digital Voice Announcements (DVA), Internal Destination Indicators and External Destination Indicators;
- f. the supply of components for a Closed Circuit Television (CCTV) System including storage of the recorded video;
- g. the supply of components for an Internal Emergency Door Release System (IEDR);
- h. the supply of components to make improvements for compliance with Disability Standards for Accessible Public Transport (DSAPT);
- i. the supply of components for Driver's Cab modifications to accommodate TOS, ATP, Digital Train Radio System (DTRS), PIS, CCTV and IEDR equipment in the desk or cab area and other cab changes as required to implement the new systems;
- j. the supply of components for Guard's Cab modifications as required to implement Public Address and Intercom, PIS/DVA, CCTV and IEDR systems in the cab area and other cab changes as required to implement the new systems;

1.3 Purpose of this Document

TTU_SR_13

The purpose of this document is to outline the detailed scope of the Supply and Services, the processes that the Contractor will be required to follow and other requirements.

A unique ID (e.g. **TTU_SR_21**) precedes each requirement or piece of information throughout this document and its Appendices.

1.4 Age Profile of the Fleet

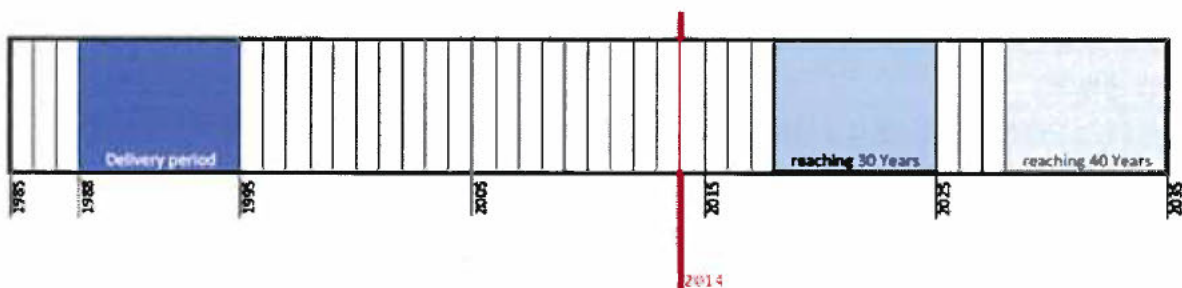


Figure 1 - Fleet delivery and age profile including 10 year extension

1.5 Background and Intended Purpose

UGL Unipart completed the Consist 1 Design under Contract TPD-14-3914. Under the Deed, the Principal and Installer will install the Equipment provided by the Contractor to upgrade Consist 2 through to Consist 55, plus spare Cars, using an integrated workforce, and the Principal and Installer will manage any future configuration changes.

The intended purpose of the Supply and Services (other than as expressly set out elsewhere in this Statement of Work) is the provision of Consist Kits to allow the Installer to install the Equipment into Cars that have the same configuration as that of the Cars in Consist 1 (prior to the upgrade of Consist 1 under Contract TPD-14-3914) to yield Consists, being Consists 2 to 55, and a spare Set and two spare Cars that, provided the Equipment is installed correctly (and that the Sets being upgraded were safe and reliable for use in the operational environment and in compliance with all Laws governing rail safety prior to being upgraded), have the same configuration as Consist 1 and that are safe and reliable for use in the operational environment and in compliance with all Laws governing rail safety.

1.6 Acronyms and Terminology

Acronym / Term	Description / Definition
AEO	Authorised Engineering Organisation as defined in the Deed
Alstom Equipment	Free supply of the ATP equipment under the Initial TTU Contract
AS	Australian Standard
ASA	TfNSW Asset Standards Authority as defined in the Deed
ATP	Automatic Train Protection
CCS	Climate Control System
CCTV	Closed Circuit Television
Consist	Means a set of 8 Cars.
Consist Kit	Means a container of equipment and materials to be delivered to TfNSW in respect of each Consist.
Consumable Kit	Means a Production Consumables Kit or a Shop Floor Consumables Kit, or both, as the context requires.
Cover	See IEDR Device Cover below
Crew Cab	Incorporates Terminal Cabs and Guards Cabs
DC	Direct Current
DMI	Driver Machine Interface
Doorway	An opening in the body-side or end of the car, usually closed off by one or more doors
DSAPT	Disability Standards for Accessible Public Transport
DTRS	Digital Train Radio System
DVA	Digital Voice Announcements

EDI	External Destination Indicator
EMU	Electrical Multiple Unit
Fleet	Tangara Fleet
HF	Human Factors
IEDR	Internal Emergency Door Release. The system which enables one passenger doorway on each side of the Vehicle (diagonally opposite) to be released from the inside for emergency egress purposes.
Installer	TfNSW or Sydney Trains
Motor Car	Non Driving cars 2, 3, 6 and 7 of the Consist
Network	Means the rail network operated by Sydney Trains upon which the Fleet operates
NZS	New Zealand Standard
Passenger Emergency Intercom (PEI)	Equipment provided to enable Passengers to alert train crew to an emergency situation and through which a communication path can be established between Passenger(s) and train crew
Passenger(s)	For design and testing purposes, Passengers must include from the 5th percentile Australian adult female to 95th percentile Australian adult male
PEI	Passenger Emergency Intercom
PIS	Passenger Information System
Production Consumables Kit	Means production consumables listed in the EBOM that will be included in the Production Shop Floor Consumables Kit.
Shop Floor Consumables Kit	Means the shop floor consumables listed in the EBOM that will be included in a Shop Floor Consumables Kit.
SIL	Safety Integrity Level
SOW	Statement Of Work
TCN	Train Communication Network
Terminal Cabs	Cabs on cars 1 and 8 of the Consist
TMS	Train Management system
TORP	Tangara Obsolescence and Reliability Project
TOS	Train Operating System
Trailer Car	Driving cars 1, 4, 5 and 8 of the Consist
TTU	Tangara Technology Upgrade
Vestibule	The area between two opposite body-side Doorways used for boarding and alighting from the Car(s)

Acronyms and terms used in this document	Meaning
Set	4 Cars (2 Trailer and 2 Motor Cars)
Part	An element defined in a Consist Kit that is a discrete (unique) part number in the Contractor's EBOM for Consist 1

2 Consist

TTU_SR_21

The Tangara Sets were originally designed to operate as a 4-Car Set. In service, they have operated as both 4-Car Sets and have been coupled together as 8-Car Consists. Following the installation of the Equipment provided as part of the Supply and Services, the Tangara trains will only operate as a Consist and will only be separated into 4-Car Sets for maintenance purposes. Crew Cabs in the centre of the Consist (Crew Cab 4 and 5) are to be upgraded as Guard's cabs but are to retain capability for those Cars to be driven from the Guard's cab in a depot environment.

TTU_SR_22

Of the existing Fleet of four hundred and thirty eight (438) non-upgraded Tangara Cars, the scope of the Supply and Services must deliver the components for the upgrade of:

- a. Fifty Four (54) 8-Car Consists;
- b. One (1) 4-Car Set able to be coupled to any other upgraded Tangara 4-Car Set to form an 8-Car Consist; and
- c. Two (2) spare control trailer Cars which will be configured by the Installer as Terminal Cabs.

3 Work Package Summary Descriptions

The design of all work packages under the Initial TTU Contract has been completed and constitutes the Consist 1 Design. For all work packages described in this section, the Contractor will supply Equipment in accordance with the Consist 1 Design and the EBOM suitable for installation into Cars that have the same configuration as that of the Cars in Consist 1 (prior to the upgrade of Consist 1 under Contract TPD-14-3914)

For the avoidance of doubt, the following elements are not part of the scope of the Supply and Services:

- Special tools and spares.
- Manufacturing services;
- Training services;
- Spare parts to assist with the Installer's installation or commissioning activities;
- Provision of engineering work instructions for the Parts;
- Ongoing provision of shop floor consumables beyond the delivery of the Shop Floor Consumables Kit; and
- A Kanban service for production consumables.
- Any parts or materials in addition to those listed in the EBOM required to allow the Installer to install the Equipment on Sets with a different configuration to Consist 1 (prior Cars in Consist 1 (prior to the upgrade of Consist 1 under Contract TPD-14-3914))"

3.1 Train Operating System

TTU_SR_29

The existing Tangara Train Management System (TMS) contains many components that are now obsolete. The requirement for this work package is to supply components to replace the existing TMS with a new Train Operating System (TOS) with the parts used in the Consist 1 Design.

3.2 Automatic Train Protection Equipment

TTU_SR_32

Automatic Train Protection (ATP) Level 1 (Alstom) equipment has been supplied by the Principal to the Contractor under the Initial TTU Contract.

The scope of this work package is for the:

- Return of the Alstom equipment; and
- Supply of additional components required to install the Alstom equipment within the Consists.

3.3 Driver's Cab Modifications

TTU_SR_35

This work package is for the supply of components required to modify the Driver's cabs and Driver's desk in Terminal End Cars to accommodate the ATP Driver Machine Interface (DMI), the TOS screen, the Communication System Interface, the Digital Train Radio System (DTRS) head unit, PIS, CCTV and IEDR equipment.

3.4 Guard's Cab Modifications

TTU_SR_39

This work package is for the supply of components required to modify the Guard's Cabs in Cars 4 and 5 of the Consist to accommodate the equipment from other work packages including TOS, Public Address and Intercom, PIS, CCTV and IEDR.

TTU_SR_40

The Contractor must supply the components to allow the Installer to make all necessary control system and desk modifications required to allow driving from Guard's Cabs for all necessary Set movements at depots.

3.5 Train Communication Network

TTU_SR_43

This work package is for the supply of components of a new Train Communications Network (TCN) to facilitate the communications between the new elements of TOS, PA, Intercom, CCTV and PIS, as well as the existing sub-systems that are capable of using Ethernet based Communications Network, such as the upgraded CCS and the upgraded Access (Doors) System.

3.6 Public Address and Intercom

TTU_SR_47

This work package is for the supply of components of a new train audio communication system, providing public address, crew intercom and passenger emergency intercom.

3.7 Passenger Information System

TTU_SR_50

This work package is for the supply of components for a Passenger Information System (PIS) made up of three elements, namely DVA, IDIs in the saloons and EDIs at the terminal ends of the Consist.

3.7.1 Digital Voice Announcements

TTU_SR_52

The requirement is for the supply of components for a Digital Voice Announcements (DVA) system that must give audible advice to passengers by automated pre-recorded messaging of the timetabled destination, route information and other announcements consistent with the Consist 1 Design.

3.7.2 Internal Destination Indicators

TTU_SR_56

The requirement is for the supply of the components for an Internal Destination Indicator system as described in the Consist 1 Design, displaying information to match the automated announcements of the DVA.

3.7.3 External Destination Indicators

TTU_SR_62

The requirement is for the supply of external visual destination indicators for the front and rear of a Consist.

3.8 Closed Circuit Television

TTU_SR_67

This work package is for the supply of components for an on-board digital Closed Circuit Television (CCTV) based around current technology components. The CCTV system is required to provide full coverage of all internal passenger areas.

3.9 Internal Emergency Door Release

TTU_SR_71

This work package is for the supply of components for a passenger initiated Internal Emergency Door Release (IEDR) system to two diagonally opposed door sets on each Car on the Tangara trains, to improve passenger safety in the event that emergency side door evacuation is required.

3.10 Improvement to Disability Standards for Accessible Public Transport Compliance

TTU_SR_75

This work package is for the supply of the components for the modification of the interior of each Car to improve Disability Standards for Accessible Public Transport (DSAPT) compliance.

TTU_SR_76

Components to be supplied for the number 2 ends of Motor Cars includes:

- a. supply of components required to make room for allocated wheelchair spaces, (equipment currently located under end saloon longitudinal seats will need to be relocated and a new under seat area and/or electrical cabinet provided to house the relocated Equipment);
- b. supply of new handrails at the allocated spaces;
- c. supply of new section of floor covering with wheelchair symbol markings for two allocated wheelchair spaces;
- d. supply of three place fold down seats at each allocated wheel chair space (six fold down seating places per Motor Car); and
- e. supply of one additional Passenger Emergency Intercom (PEI) units at each allocated wheelchair space.

TTU_SR_77

Components to be supplied for all Cars includes:

- a. supply of Priority Seats for every end saloon excepting the No.2 Ends of Trailer Cars where there are currently no seats provided;
- b. supply of Passenger Emergency Intercom (PEI) units for each DVA fitted with the new IEDR Equipment;
- c. supply of inter-Car door controls with a DSAPT compliant push button type;
- d. supply of new DSAPT compliant signage; and
- e. supply of contrasting floor markings adjacent to each inter-Car door tread.

4 Supply Scope

The Contractor will supply components for the upgrade of the 54 remaining Tangara Consists, plus one 4-Car Set and two spare Trailer Cars, in accordance with the Consist 1 Design.

The Contractor will undertake the Delivery of the Equipment required for the refurbishment and technological upgrade of the Cars, as stated in or reasonably ascertainable from the Statement of Work.

The Contractor will Deliver this Equipment in the form of:

- Consist Kits by Set type and Car type, containing Parts, delivered in accordance with the Program Schedule, that can be installed by the Installer by using the Consist 1 as-built drawings; and
- Production Consumables Kits delivered in accordance with the Program Schedule, that can be installed by the Installer by using the Consist 1 Design documents; and
- A single Shop Floor Consumables Kit.

4.1 Intended Purpose of Supply and Services (including Supply Scope)

The purpose of the Supply and Services (other than as expressly set out elsewhere in this Statement of Work) is to provide Consist Kits and Consumable Kits to allow the Installer to install the Equipment into Consists 2 to 55 inclusive, and a spare 4 Car Set and two spare Trailer Cars.

4.2 Types of Consist Kits

The Contractor will deliver six types of Consist Kits pertaining to the two types of Tangara Train Sets being upgraded, namely:

- T-Set and
- G-Set.

Each T-Set and G-Set are comprised respectively of three types of train cars which combine to make the individual sets, namely:

- Trailer car upgraded with a Driver's Cab, also referred to as a Terminal Car or Lead Car;
- Motor Car; and
- Trailer car upgraded with a Guard's Cab, also referred to as a Non-lead Car.

Together, the three types of train cars multiplied by the two types of train sets combine to form six different Consist Kits. A typical 8-car Consist is comprised of:

- 2 Lead Cars
- 4 Motor Cars and
- 2 Non-lead Cars.

4.3 The number of Consist Kits

The total number of Consist Kits is 54 x 8-Car Consists, plus material for upgrade of a 4-Car spare Set and two spare Lead Cars.

The total number of Consist Kits may consist of the following combinations:

- 2 T-Set packages resulting in one Consist;
- 1 T-Set package and 1 G-Set package resulting in one Consist;
- 2 G-Set packages resulting in one Consist.

Tangara type	Car type	Number of Cars within the Consist	EBOM reference name for the Consist Kit
T-type Scope	Lead Car (CTCA)	2 Cars in the Consist	TTU2-UGL-OP-000001 CTCA T SET GENERAL ARRANGEMENT
	Motor Car (MC)	4 Cars in the Consist	TTU2-UGL-OP-000004 MOTOR CAR GENERAL ARRANGEMENT
	Non-lead Car (CTCB)	2 Cars in the Consist	TTU2-UGL-OP-000002 CTCB T SET GENERAL ARRANGEMENT
G-type Scope	Lead Car (CTCA)	2 Cars in the Consist	TTU2-UGL-OP-000560 CTCA G SET GENERAL ARRANGEMENT
	Motor Car (MC)	4 Cars in the Consist	TTU2-UGL-OP-002382 MOTOR CAR GENERAL ARRANGEMENT
	Non-lead Car (CTCB)	2 Cars in the Consist	TTU2-UGL-OP-000562 CTCB G SET GENERAL ARRANGEMENT

4.4 Types of Consumables Kits

There are two types of Consumable Kit (with the contents described in the appendices to the Statement of Work):

- Production Consumables Kit: these kits contain Parts (such as nuts, bolts, washers, adhesive, sealant etc that are listed on the EBOM);
- Shop Floor Consumables Kit (one only): This kit contains certain consumables that are not listed on the EBOM.

4.5 Delivery of the Kits

4.5.1 Consist Kits

The Contractor will pick, pack and deliver Consist Kits to the Installer to an agreed location at a price based on the market value of the Consist Kits as determined by the appropriate experts and in accordance with the Program Schedule.

These Consist Kits will contain:

- Parts for installation (either parts from existing inventory or newly purchased parts) as listed in the EBOM;
- Consist Kit Contents List; and
- Information on the type of Set/Car that the Parts are for.

4.5.2 Consumables Kits

The Contractor will pick, pack and deliver Consumables Kits to the Installer at the Delivery Point in accordance with the Program Schedule. There are two types of Consumables Kit:

- Production Consumables Kit provided in accordance with the Program Schedule; and
- A single Shop Floor Consumables Kit provided at the commencement of the Supply and Services.

Both types of Consumables Kit will contain:

- Items for the installation of Parts (where relevant); and
- A list of these items.

The Production Consumables Kits will be delivered as bulk kits, for 54 Consists, plus material for upgrade of a 4-Car spare Set and two spare lead Trailer Cars, as per the agreed Program Schedule.

4.6 Inventory Management Services

4.6.1 Scope of Inventory Management Services

The Contractor will project manage and administer the following inventory management activities in accordance with the agreed Program Schedule:

- procure and manage the inventory required for the Consist Kits and the Consumable Kits;
- pick and pack the 54 Consist Kits, plus material for upgrade of a 4-Car spare Set and two spare lead Trailer Cars and the Consumables Kits;
- label the Consist Kits and the Consumables Kits as 'Property of TfNSW';
- manage compliance with the chain of responsibility required by the Principal in respect of weights and measures;
- store the Consist Kits and the Consumables Kits at the Warehouse Facility; and
- deliver (but not unload) the Consist Kits and the Consumable Kits to the Installer in accordance with the Program Schedule.

4.6.2 Intended Purpose of Inventory Management Services

The intended purpose of the Inventory Management Services is to allow the Contractor to pick, pack and deliver Consist Kits and Consumables Kits in a timeframe that is consistent with the Program Schedule.

4.6.3 Acceptance Process for Kits

Refer to the Supply and Services Contract.

4.6.4 Procedure for Progressive Inspection of Kits

Refer to the Supply and Services Contract.

4.6.5 Additional Services

Additional Services will be scoped and priced following receipt of a Request for Quotation from the Principal, in accordance with the procedure outlined in the Supply and Services Contract.

4.6.6 Engineering Modification Instructions / Field Modification Instructions

The Contractor will provide to the Principal within 30 calendar days the Engineering Modification Instructions (EMIs) and/or Field Modification Instructions (FMIs) for modifications to existing fixtures on the train (e.g. for the Driver's Cab, Crew Cars).

The Principal will not and will ensure that the Installer will not:

- rely on the accuracy or completeness of the EMIs and FMIs; and
- provide or allow access to the EMIs or FMIs to any other party,

5 Engineering Management

TTU_SR_85

All engineering tasks, if required for Variations, must be undertaken under the authority of an Authorised Engineering Organisation (AEO) in accordance with the ASA Requirements.

5.1 Quality Management

TTU_SR_90

The Contractor must have in place, maintain and consistently apply an "AS/NZS ISO 9001" certified quality management system in accordance with ASA Requirements.

TTU_SR_94

The Contractor must have in place, maintain and consistently apply a Quality Management Plan.

6 Prohibited Materials

The Contractor will not supply any materials that might cause environmental damage in the Consist Kits, including:

- a. asbestos;
- b. chlorofluorocarbons (CFCs);
- c. polychlorinated biphenyls (PCBs);
- d. exposed lead or Paints containing lead;
- e. chromates;
- f. cadmium; or
- g. cyanide.

Wearing parts will not contain carcinogenic agents.

The Contractor will advise the Principal in writing of the proposed use of any of these materials prior to application:

- a. ceramic fibre;
- b. rock-wool;
- c. urea formaldehyde;
- d. polyethylene foam;
- e. polyurethane foam;
- f. polyurethane rigid molding;
- g. PVC; or
- h. encapsulated lead.

7 Contract Management Requirements

7.1 General Requirements

TTU_SR_212

The Contractor must implement project management systems and controls, which ensure that:

- a. work to be completed as part of the Supply and Services is fully specified and planned;
- b. plans are developed for the completion of all tasks and requirements;
- c. controls provide clear visibility of progress toward completion of all tasks; and
- d. risks are identified and managed continuously for the term of the Supply and Services Contract.

TTU_SR_213

Project management requirements include:

- a. organisation and identification of responsibilities;
- b. project planning;
- c. schedule management;
- d. risk management;
- e. subcontract management; and
- f. reports and meetings.

7.2 Contract Management Plan

TTU_SR_216

The Contract Management Plan is the Contractor's project-specific overarching project management plan and management system that captures all other management plans and systems that the Contractor is required to develop under the Supply and Services Contract. The Contract Management Plan is to provide a framework to bring together all the management requirements for the Supply and Services into one coordinated and integrated management plan.

TTU_SR_217

The Contractor must have in place, maintain and consistently apply the Contract Management Plan to inform and direct personnel and others engaged by the Contractor about the specific work practices, resources, sequence of activities, controls and checks that are to be implemented during the performance of the Supply and Services.

TTU_SR_219

The Contract Management Plan must:

- a. explain in a systematic, coordinated and integrated structure the management method for performing the Supply and Services;
- b. define responsibilities, resources and processes for planning and performing the Supply and Services;
- c. cover all the project-specific management systems, management plans and project-specific deliverables required for the performance of the Supply and Services;

- d. cross reference each management plan required to be developed by the Contractor, through the use of a matrix or equivalent, listing its compliance with the relevant contract, conditions and requirements;
- f. identify the responsible person for developing and updating the Contract Management Plan and any other management plan;
- g. describe how the Contractor will comply with all Laws, Codes and Standards and requirements, applicable to the Supply and Services;
- h. document the interface between the Management Plans and the Contractor's corporate systems as applicable; and
- i. explain the alignment of the operating processes of the Contractor, Subcontractors and the Principal.

7.3 Defects Management Plan

TTU_SR_221

The Contractor must have in place, maintain and consistently apply a Defects Management Plan that addresses the Contractor's obligations and responsibilities relating to the management of Defects.

TTU_SR_223

The Defect Management Plan must:

- a. address all contractual requirements for managing Defects;
- b. specify the strategy for managing any Defects raised internally by the Contractor, raised by the Principal and raised by the Operator/Maintainer; and
- c. include a Defect management procedure.

7.4 Updating the Contract Management Plan and Other Management Plans

TTU_SR_227

Any proposed updates and modifications to the Contract Management Plan or other management plans must be submitted to the Principal's Representative for review.

7.5 Contractor's Project Organisation and Responsibilities

TTU_SR_229

The Contractor must establish and maintain a clearly defined management and responsibility structure. Full details of the Contractor's team to be engaged in connection with the Supply and Services, including the specific responsibilities and accountabilities of each senior member of the team, must be submitted as part of the Contract Management Plan.

TTU_SR_230

The Contractor must appoint a dedicated project manager, who will have primary responsibility for all matters relating to the Supply and Services within the Contractor's organisation. The project manager may be the Contractor's Representative.

TTU_SR_231

The Contractor must provide responsibility statements for all key persons. Responsibility statements are to provide a clear description of the scope and limits of responsibility for each key person.

8 Work Health and Safety

8.1 Project Work Health and Safety Management Plan

TTU_SR_577

The Contractor must implement a Work, Health and Safety (WHS) management system that:

- a. meets all legal obligations for the works carried out by the Contractor when on premises controlled by the Contractor as well as those controlled by Sydney Trains;
- b. implements safety culture that is consistent with that of the Principal and provides compatible interaction where the Contractor's works interact with the Principal's operations;
- c. includes Drug and Alcohol management requirements that meet the Contractor's legal responsibilities and fulfils the Principal's requirements where applicable;
- d. includes fatigue management requirements that meet the Contractor's legal responsibilities and fulfils the Principal's requirements where applicable; and
- e. includes a Project Work Health and Safety Management Plan that must document how the safety management system will be communicated to all persons associated with the Supply and Services Contract.

9 Applicable Standards

TTU_SR_778

The ASA is the custodian of all network standards relating the passenger rolling stock operating within the Transport for NSW operating environment and, in this case, the Supply and Services. These standards include ASA published standards, Sydney Trains engineering standards adopted without amendment and Australian and International standards identified as applicable to the NSW rail network. Some of these standards originated with RailCorp before the reorganisation of the NSW rail network from 1st July 2013. While these standards contain references and organisational processes that are no longer applicable in the current TfNSW organisational context, the technical requirements of these adopted standards are still valid for the TfNSW rail environment.

TTU_SR_779

For more information on the ASA management of network standards go to:

<http://www.asa.transport.nsw.gov.au/ts>

9.1 Standards Precedence

TTU_SR_781

The requirements of the ASA standards generally comply with the Australian Standards and to some extent International Standards but may contain additional requirements.

TTU_SR_782

ASA and Sydney Trains Standards must take precedence over the Australian and International Standards where there are conflicts in requirements unless otherwise advised by the Principal's Representative.

9.2 General Standards Applicable to the Project**TTU_SR_784**

All supplied components must comply with the requirements of the Law and the standards listed in this SOW as applicable.

In this SOW, unless the context otherwise requires, any reference to "standards" will be read as referring to the defined term "Codes and Standards". For the avoidance of doubt, the Contractor is not responsible for ensuring the Cars, in which the Equipment is being installed by the Installer, meet the Codes and Standards.

9.3 ASA and Sydney Trains Standards

Standard No.	Description
T HR RS 00000 ST	Minimum Operating Standards for Rolling Stock – General
T HR RS 00100 ST	Minimum Operating Standards for Rolling Stock – General Interface Standards
T HR RS 00200 ST	Minimum Operating Standards for Rolling Stock – Common Interface Requirements
T HR RS 00600 ST	Minimum Operating Standards for Rolling Stock – Multiple Unit Train Specific Interface Standards
T HR RS 00814 ST	Minimum Operating Standards for Rolling Stock – Vehicle Information Pack for Multiple Unit Trains
T HR RS 00860 ST	Minimum Operating Standards for Rolling Stock – Communications System
T HR RS 00840 ST	Minimum Operating Standards for Rolling Stock – Drivers Safety Systems
T MU AM 04001 PL	TfNSW Configuration Management Plan
TS10752	Railway Asset Product Configuration Information Requirements
TS 10765	Concessions to ASA Requirements
TS20001	System Safety Standard for New and Altered Assets
T MU AM 01001 ST	Life Cycle Costing
FE 103-99	Specification for Flammability requirements for Materials used in the Construction and Fitting out of Passenger Rolling Stock
TS 10502	AEO Authorisation Requirements
T HR RS 00117 ST	Electric Circuits and Equipment for Passenger Rolling Stock
T HR RS 00126 ST	Electronic Equipment Supplier for Passenger Rolling Stock
T HR RS 00164 ST	Cables for Passenger Rolling Stock
T HR RS 01701 ST	Mounting and Installation of Electric Equipment
T HR HF 00001 ST	Human Factors Integration – Rolling Stock
T MU HF 0001 ST	Human Factors Integration – General Requirements
T MU HF 0001 GU	AEO Guide to Human Factors Integration
T-HR-TE-01003-SP	Optical Fibre Termination, Patching and Management
T-HR-TE-01004-SP	Pre-Terminated Fibre Tails and Link Cables

T-HR-TE-41001-ST	Packet Switched Networks Wired - Local, Metropolitan, and Wide Area Networks
T-HR-TE-81001-ST	Telecommunication Equipment – Physical Interfaces and Environmental Conditions
T-HR-TE-81002-ST	Telecommunication Equipment – Network Management
T HR TE 41002 ST	Wireless Data Communication in LIPD Class Licensed Bands
T-MU-TE-81003-ST	Test Processes and Documentation for Programmable Electronic Systems and Software
T MU MD 00003 GU	Guide to Independent Safety Assessment.
T MU AM 06004 ST	Requirements Schema

9.4 Australian Standards

Standard No.	Description
AS 60529	Degrees of Protection Provided by Enclosures (IP code)
AS 60849	Sound Systems for Emergency Purposes
AS 1554	Welding of Steel Structures
AS 1664	Design of Aluminium Structures
AS 1665	Welding of Aluminium Structures
AS/NZS 3000	Wiring Rules
AS/NZS 2980	Qualification of Welders for Fusion Welding of Steels
AS/NZS 2312:2002	Guide to the Protection of Structural Steel Against Atmospheric Corrosion by the use of Protective Coatings
AS/NZS 31000:2009	Risk Management – Principles and Guidelines for Risk Assessment
AS 2080	Safety Glazing for Land Vehicles
AS 1428	Design for Access and Mobility
AS 1428.2	Design for access and mobility- Part 2: Enhanced and additional requirements—Buildings and facilities
AS 1319	Safety Signs for the Occupational Environment
AS 3905.16:1998	Quality Systems Guidelines Part 16
AS4817-2006	Project Performance Measurement
AS7501-2013 Version 1	Australian Standard – Railway Rolling Stock, Rolling Stock Compliance Certification
AS 7527.3	Australian Railway Standard - Railway Rolling Stock Event Recorders - Part 3: Passenger Rolling Stock

9.5 International Standards

Standard No.	Description
EN 12663-1 :2010	Railway Applications – Structural requirements of railway vehicle bodies. Locomotives and passenger rolling stock
EN 50155	Railway Applications – Electronic Equipment Used on Rolling Stock
EN 50153	Railway Applications – Rolling Stock – Protective Provisions Relating to Electrical Hazards
EN 50126	Railway Applications – The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS)
EN 50128	Railway Applications – Communication, Signalling and Processing Systems – Software for Railway Control and Protection Systems
EN 50264	Railway Applications – Railway Rolling Stock Power and Control Cables Having Special Fire Performance – Part 1: General Requirements
EN 50306-3:2002	Railway applications. Railway rolling stock cables having special fire performance. Thin wall. Single core and multicore cables (pairs, triples and quads) screened and thin wall sheathed
EN 50343	Railway Application – Rolling Stock – Rules for Installation of Cables
EN 61373	Railway Applications – Rolling Stock equipment – Shock and Vibration Test (a)
DIN EN 349	Minimum Gaps to Avoid Crushing Parts of the Human Body
IEC 60077-1	Railway Applications – Electric Equipment for Rolling Stock – General Service Conditions and General Rules
IEC 61133	Testing of Rolling Stock on Completion of Construction and Before Entry into Service
IEC 60077-2	Railway Applications – Electric Equipment for Rolling Stock – Electrotechnical Components – General Rules
IEC 62279	Railway Applications – Communications, Signalling and Processing Systems – Software for Railway Control and Protection Systems
ISO IEC 61076-2-101	Connectors for electronic equipment – Circular Connectors
ISO 7498	Information Technology – Open Systems Interconnections
ISO 9001:2008	Quality Management System
ISO 14040:1998	Environmental Management – Life Cycle Assessment – Principals and Framework
BS 6853	Code of Practice for Fire Precautions in the Design and Construction of Passenger Carrying Trains
BS 5760-5:1991	Reliability of Systems, Equipment and Components – Part 5 Guide to Failure Modes, Effects and Criticality and Analysis (FMEA and FMECA)
BS EN 50121-3-1	Railway Applications – Electromagnetic Compatibility: Part 3-1 Rolling Stock – Train and Complete Vehicles
BS EN 50121-3-2	Railway Applications – Electromagnetic Compatibility: Part 3-2 Rolling Stock – Apparatus

BS EN 61508-2:2010	Functional safety of Electrical/Electronic/Programmable Electronic Safety-Related Systems. Requirements for Electrical/Electrical/Programmable Electronic Safety-Related Systems
ISO/IEC 61076-2-101	Connectors for Electronic Equipment – Product Requirements – Part 2-101: Circular Connectors – Detail Specification for M12 Connectors with Screw-locking
EN 50288-2-2	Multi-element Metallic Cables used in Analogue and Digital Communication and Control Sectional Specification for Screened Cables Characterized up to 100 MHz
IEEE 1482.1	Standard for Rail Transit Vehicle Event Recorders
IEEE 802.3u	Local and Metropolitan Area Networks
IEEE 802.1X	Port-based Network Access Control
IEEE 802.3X	Ethernet Working Group
IEEE 802.3z	Gigabit Ethernet Standard
IEEE 802.3af	Information Technology – Telecommunications and Information Exchange between Systems
GMRT 2100	Structural Requirements for Railway Vehicles – Issue 5
ISO/IEC 61076-2-101	Connectors for electronic equipment – Product requirements – Part 2-101: Circular connectors – Detail specification for M12 connectors with screw-locking
GMRT 2456	Structural Requirements for Windscreens and Windows on Railway Vehicles
FRA Specification 49 CFR Part 223	Glazing for Rail Vehicles
ISO/IEC 15288:2008	Systems and Software Engineering – System Life Cycle Processes
MIL-HDBK-217E	MILITARY HANDBOOK: RELIABILITY PREDICTION OF ELECTRONIC EQUIPMENT
NF X 70-100	Analysis of Pyrolysis and Combustion Gases
FE 108-98 ver. 02 of 2013	Specification for Window Glass for Electric Passenger Rolling Stock

9.6 Discretionary Standards

Standard	Description
ISO/IEC/IEEE 29148:2011	Systems and Software Engineering – Life Cycle Processes – Requirements Engineering
ISO/IEC 26702:2007	Systems Engineering Application and Management of the Systems Engineering Processes

9.7 Other Relevant Documents

TTU_SR_794

The following documents must be complied with by the Contractor unless otherwise directed by the Principal's Representative.

Document No.	Description
OMET 200	Minimum Standards for Electric Trains
OMET 344	IEDR and PEI Alarm
EI 185	Electrical Equipment Cupboard Warning Signs
ITSR	Independent Transport Safety Regulator (ITSR) – Rail Safety Compliance Code – Data Loggers

9.8 TfNSW Standards/Procedures/Documents

Document No.	Description
2694844	TTU Project Safety Assurance Plan (TfNSW Document)
4TP-ST-068	Inspection and Test Plans – Minimum Requirements
4TP-ST-084	CAD Protocols
4TP-ST-043	Commissioning and Operational Readiness (COR) Standard
4TP-FT-227	Notice of Forthcoming Asset Handover
4TP-FT-228	Handover Certificate
4TP-PR-158	Scenario – Defect Management
4TP-PR-143	Earned Value Management using Primavera P6
9TP-PR-105	Environmental Incident Classification and Reporting
9TP-ST-020	TfNSW Project Compliance and Assurance

10 Appendices

Appendix 1: Shop Floor Consumables Kit

The table below describes the contents of the single Shop Floor Consumables Kit being provided by the Contractor.

Material	Material Description	Qty
1000460219	ADHESIVE, LOCTITE H8000, 490ML	26
1000463173	TAPE, ADH, 24x1.1MM THK, D/SIDED/VHB, 3M, 595	30
1000338845	BAR, MTL, FL, 25X3MM THK, AL, ALLOY 6060-T5	16
1000483205	HEATSHRINK, BLUE, 6.4MM, 1.2M LG	1
1000483218	HEATSHRINK, BROWN, 6.4MM, 1.2M	1
1000446982	PADLOCK, LOCKOUT, WHITE, PERSONAL CNTRCTOR	110
1000446981	PADLOCK, LOCKOUT, RED, PERSONAL, EMPLOYEE	18
1000342422	SLEEVING, BRAIDED, 19.1MM ID, BLK	30
1000258995	CONDUCTOR CONTACT PASTE, COMP, ELEC	22

Exhibit B

Contractor's Technical Proposal

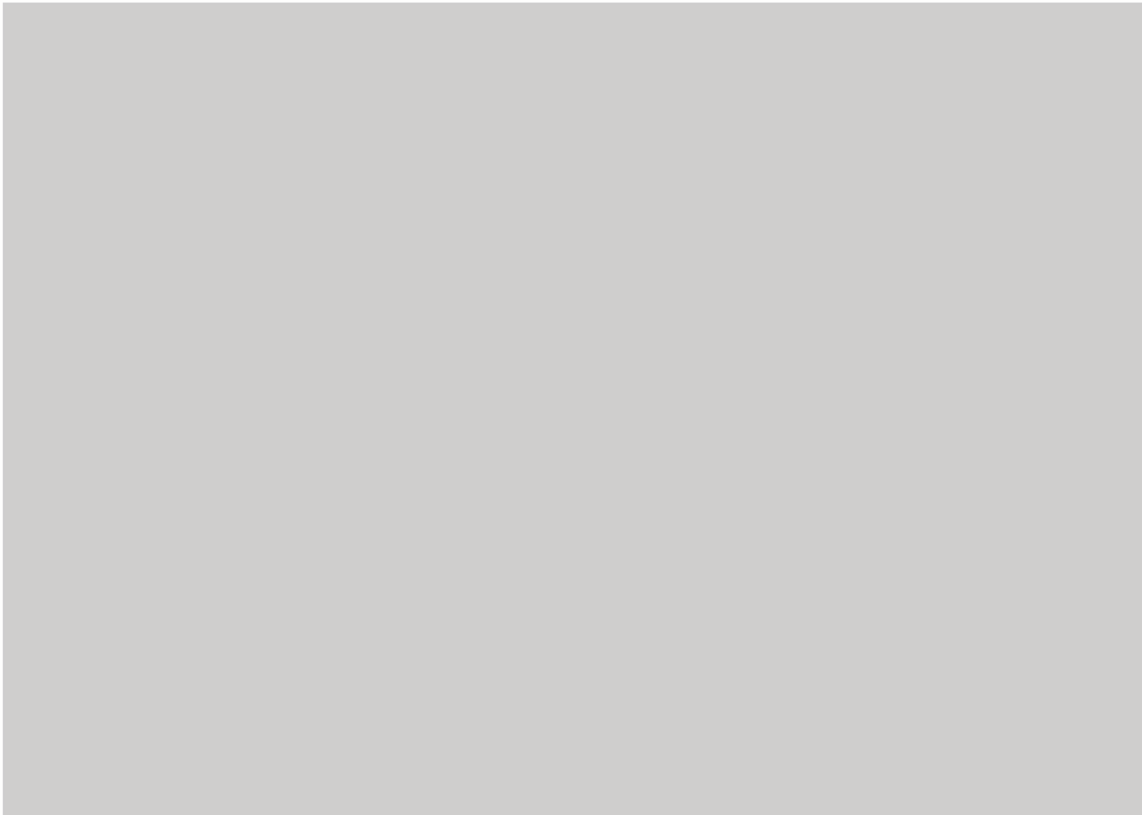


Exhibit C

Principal's Insurance Policies

Not applicable - Contractor to insure

Exhibit D

Not Used

Exhibit E

Deed of Disclaimer

TENDER SCHEDULE 9 DEED OF DISCLAIMER

To: **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency constituted under the Transport Administration Act 1998 (NSW), of Level 5 Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (**Principal**).

Recitals

- | | |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A | In July 2014 the Principal invited Expressions of Interest in relation to the Works and Services. |
| B | The Tenderer has been invited to lodge a Tender in response to the Request for Tender and otherwise to be involved in the Procurement Process contemplated by the Request for Tender. |
| C | This Deed Poll sets out certain warranties, acknowledgements and indemnities applicable to the Information Documents and Materials and the Tender Documents. |

1. Definitions and Interpretation**1.1 Definitions**

Unless otherwise specified, words and phrases used in this Deed Poll have the same meaning as that which is given to them under the Request for Tender.

In this Deed Poll:

Claim includes (without limitation) any claim, action, demand or proceeding:

- (a) under, arising out of, or in connection with, any contract which the Tenderer may enter into with the Principal in respect of the Works and Services;
- (b) arising out of, or in connection with, any task, thing or relationship connected with the Works and Services; or
- (c) otherwise at law or in equity including (without limitation):
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including (without limitation) negligent misrepresentation; or
 - (iii) for restitution, including (without limitation) restitution based on unjust enrichment.

The term "Claim" does not include a claim made against the Principal by a third party, other than a third party to whom the Tenderer disclosed the Information Documents and Materials, arising from a breach by the Principal of an obligation which the Principal owes to that third party in relation to the Information Documents and Materials.

Confidential Documents means the:

- (a) Tender Documents; and
- (b) Information Documents and Materials,

or any part thereof, to the extent that it is not publicly available (other than through a breach of this Deed Poll or any other obligation of confidentiality to the Principal.

Contract means the deed entitled Tangara Technology Upgrade Contract relating to the Works and Services that forms part of the Tender Documents and which the Principal proposes to execute with the Tenderer should the Principal accept the Tender.

Information Documents and Materials means the documents described in Schedule 1 and any further documents which are identified by the Principal as such.

Request for Tender or RFT means "Request for Tender Tangara Technology Upgrade" dated **10 November 2014** issued by the Principal to the Tenderer.

Procurement Process means the process described in the Tender Documents for procuring a Tenderer to enter into the Contract, as varied by the Principal from time to time.

Tender means the Tenderer's response to the Request for Tender.

Tender Documents means that term as it is defined in the Request for Tender.

Tenderer means **UGL Unipart Rail Services Pty Limited**.

Works and Services means that term as it is defined in the Contract.

1.2 Interpretation

Unless otherwise prescribed, in this Deed Poll:

- (a) Any reference to articles, sub-articles, paragraphs, attachments or annexes means reference to articles, sub-articles, paragraphs, attachments or annexes specified in this Deed Poll.
- (b) Any reference to this Deed Poll or any other document shall mean to include amendments or attachments thereto.
- (c) Any reference to laws, acts, ministerial regulations, notifications, rules, manuals shall mean to include revisions, amendments, incorporations or re-enactment thereof.
- (d) Headings are inserted for convenience of reference only and are not deemed a part of Deed Poll to be used in interpretations of this Deed Poll.

2. Tenderer Warranties and Acknowledgements

The Tenderer:

- (a) warrants that it has not relied upon and will not rely upon the Tender Documents as being accurate, adequate, suitable or complete for the purposes of enabling any successful Tenderer to perform its obligations under the Contract;
- (b) warrants that it has made its own independent evaluation of the Tender Documents' accuracy, adequacy, suitability and completeness for the purposes of enabling any successful Tenderer to perform its obligations under the Contract and it has based the price which it bids as part of its Tender upon its own independent evaluation;
- (c) acknowledges that:
 - (i) the rights, powers and discretions given to the Principal in the Tender Documents are not pursuant to any contract between the Principal and the Tenderer but rather are rights, powers and discretions that the Principal has as part of the Procurement Process;
 - (ii) the Principal has provided it with the Information Documents and Materials;
 - (iii) the Information Documents and Materials:
 - A. have been provided by the Principal for the information only of the Tenderer; and
 - B. do not form part of the Tender Documents and will not form part of any contract with respect to the Works and Services;
 - (iv) the Principal does not owe any duty of care to the Tenderer with respect to the Information Documents and Materials;
 - (v) to the extent that the Principal is not the author or source of any Information Documents and Materials it merely passes those documents on to the Tenderer and the Principal does not adopt the content of those documents, nor guarantee or make any other representation as to their accuracy and completeness;
 - (vi) the Principal:
 - A. is not responsible for; and
 - B. makes no representation or warranty in respect of,the contents of the Information Documents and Materials or any advice or information given by the Principal with respect to the Works and Services, the Tender Documents or the Information Documents and Materials, including the accuracy, adequacy, suitability or completeness of any

- reports, data, test results, samples, reports or geotechnical investigations, opinions, recommendations, findings or other information contained in the Information Documents and Materials;
- (vii) where any information or document is referred to and incorporated by reference in any Information Documents and Materials, the Tenderer has not relied upon any summary of the information or document which appears in any such Information Documents and Materials;
 - (viii) no representation or warranty (express or implied) has been made by the Principal (or by anyone on its behalf) to the Tenderer that the Information Documents and Materials, or any advice or information given by the Principal with respect to the Works and Services, the Tender Documents or the Information Documents and Materials are accurate, adequate, suitable or complete for any purpose connected with the Works and Services or the preparation of its Tender and the performance of any obligations which the Tenderer will be required to perform if it enters into the Contract;
 - (ix) no representation or warranty (express or implied) has been made by the Principal (or by anyone on its behalf) that the Information Documents and Materials has been independently verified for any purpose connected with the Works and Services or the preparation of the Tender; and
 - (x) it has had the opportunity during the tender period and subsequently to itself undertake and to request others to make further enquiries and investigations relating to the subject matter of the Information Documents and Materials and for this purpose has had regard to the acknowledgements, warranties and releases in this Deed Poll in undertaking its own enquiries and investigations and in requesting further enquiries and investigations;
- (d) warrants that:
- (i) it has prepared its Tender for the Works and Services and will enter into any contract with the Principal with respect to the Works and Services based on its own investigations, interpretations, deductions, information and determinations including (without limitation) its own independent evaluation of the accuracy, adequacy, suitability and completeness of the Information Documents and Materials for the purposes of the Works and Services or the preparation of its Tender; and
 - (ii) it has not in any way relied upon:
 - A. the Information Documents and Materials; or

- B. the accuracy, adequacy, suitability or completeness of the Information Documents and Materials for the purposes of preparing its Tender for the Works and Services or entering into any contract with the Principal with respect to the Works and Services;
- (e) acknowledges and agrees that:
 - (i) the Principal has provided the Information Documents and Materials to the Tenderer in reliance upon the acknowledgements and warranties contained in this Deed Poll;
 - (ii) if the Principal accepts its Tender, the Principal will be doing so and the Principal will be entering into a Contract with respect to the Works and Services in reliance upon acknowledgements and warranties contained in this Deed Poll; and
 - (iii) the Principal will not be liable to the Tenderer upon any Claim (to the extent permitted by law) arising out of or any way in connection with:
 - A. the provision of, or the purported reliance upon, or use of, the Information Documents and Materials by the Tenderer or any other person associated with the Tenderer to whom the Information Documents and Materials are disclosed by the Tenderer; or
 - B. a failure by the Principal to provide any information to the Tenderer;
- (f) warrants that it has:
 - (i) examined the Tender Documents, and any other information made available in writing by the Principal, or any other person on their behalf, to the Tenderer for the purpose of preparing the Tender (including the Information Documents and Materials);
 - (ii) examined all other relevant information available on reasonable enquiry;
 - (iii) obtained and considered all necessary information relevant to the risks, contingencies and other circumstances having an affect on the Tender;
 - (iv) satisfied itself as to the correctness and sufficiency of the Tender having regard to those risks;
 - (v) informed itself of all matters relevant to the employment of labour and all industrial matters relevant to the Works and Services;
 - (vi) examined the sites for the Works and Services and their surroundings and informed itself completely as to the conditions of the sites for the Works and Services; and

- (vii) taken such professional advice as is appropriate for projects of this type.

3. Release & Indemnity

The Tenderer:

- (a) irrevocably releases and indemnifies the Principal (and any of its officers, employees, consultants and agents) from and against:
 - (i) any Claim against them (or any of them) by, or liability of them (or any of them) to, any person; or
 - (ii) (without being limited by sub-paragraph (a)(i)) any costs, losses or damages suffered or incurred by them (or any of them),
arising out of or in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents and Materials by the Tenderer or any other person to whom the Information Documents and Materials are disclosed by the Tenderer;
 - (iv) the Information Documents and Materials:
 - A. being relied upon; or
 - B. 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 (respectively) of the Australian Consumer Law 2010 (Cth), or any equivalent provisions of State or Territory legislation),
by the Tenderer or any other person to whom the Information Documents and Materials are disclosed by the Tenderer; and
- (b) irrevocably releases and indemnifies the Principal (and any of its officers, employees, consultants and agents) from and against any Claim arising out of or in connection with any breach by the Tenderer of this Deed Poll.

4. Confidential Documents

In consideration of the Principal agreeing to provide it with Confidential Documents the Tenderer:

- (a) acknowledges and agrees that the Confidential Documents are:
 - (i) owned by the Principal; and
 - (ii) confidential and secret; and

- (b) warrants that it has not:
 - (i) copied or otherwise reproduced in any form or medium the contents of the Confidential Documents (or any part of them) or otherwise caused, permitted or allowed any Confidential Documents (or any part of them) to be copied or reproduced in any form or medium; or
 - (ii) disclosed or used, or dealt with, the contents of the Confidential Documents (or any part of them) or otherwise caused, permitted or allowed the Confidential Documents (or any part of them) to be disclosed, used or dealt with,for any purpose other than preparing its Tender; and
- (c) warrants that it will not:
 - (i) copy or otherwise reproduce in any form or medium the contents of the Confidential Documents (or any part of them) or otherwise cause, permit or allow the Confidential Documents (or any part of them) to be copied or reproduced in any form or medium; or
 - (ii) disclose or use, or deal with, the contents of the Confidential Documents (or any part of them) or otherwise cause, permit or allow the Confidential Documents (or any part of them) to be disclosed, used or dealt with;for any purpose other than:
 - (iii) where the Tenderer enters into the Contract with the Principal, as permitted by the Contract; or
 - (iv) as required by law or such other purpose as the Principal may agree to in writing.

Nothing in this clause 4 will in any way limit clause 2 of this Deed Poll.

5. Enforcement

This document operates as a Deed Poll and is enforceable against the Tenderer in accordance with its terms by the Principal.

6. Absolute Liability

The liability of the Tenderer under this Deed Poll is absolute and is not subject to the execution of this Deed Poll or any other instrument or document by any person other than the Tenderer, and is not subject to the performance of any condition precedent or subsequent.

7. Miscellaneous**7.1 Joint and Several Liability**

If the Tenderer is more than one person, each person making up the Tenderer is jointly and severally bound by the terms of this Deed Poll.

7.2 Governing Law and Jurisdiction

This Deed Poll is governed by the laws of New South Wales. The parties submit to the non exclusive jurisdiction of New South Wales.

7.3 Amendments

This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.

7.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed Poll by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed Poll.
- (b) A waiver or consent given by a party under this Deed Poll is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed Poll operates as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.

7.5 Further acts

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Deed Poll.

7.6 Consents

A consent required under this Deed Poll from the Principal may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed Poll expressly provides otherwise.

7.7 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Deed Poll:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

7.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed Poll, except for representations or inducements expressly set out in this Deed Poll.
- (b) Each party acknowledges and confirms that it does not enter into this Deed Poll in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed Poll.

7.9 Severability of provisions

Any provision of this Deed Poll that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Deed Poll nor affect the validity or enforceability of that provision in any other jurisdiction.

7.10 Counterparts

This Deed Poll may be executed in any number of counterparts and all counterparts taken together will constitute one and the same document.

Executed as a Deed Poll in accordance with section 127 of the *Corporations Act 2001* by **UGL Unipart Rail Services Pty Limited**:

by or in the presence of:



Signature of Director



Signature of Secretary/other Director

Alan Beecham

Name of Director in full

PRYCE WILLIAM JAMES

Name of Secretary/other Director

Exhibit F

ASA Charter



Transport
for NSW

Charter

Asset Standards Authority

September 2014

2378773_1

TfNSW



Charter of the Asset Standards Authority

The Charter

1. This document is the Charter of the Asset Standards Authority (**ASA**). This version of the Charter takes effect on 1 October 2014 and supersedes all previous versions.
2. The Charter identifies the ASA's objectives, functions, powers and governance. It also identifies the duties of Transport Agencies, Service Providers and Authorised Engineering Organisations (**AEOs**) in relation to the ASA.
3. The Charter operates as both an internal governance document and a method of communicating expectations and requirements to Transport for NSW and its divisions, Transport Agencies, AEOs, prospective AEOs, contractors, stakeholders and the transport industry generally.
4. Any capitalised word or phrase has a specific meaning which can be found in clause 28.

The Asset Standards Authority

5. The ASA is established within Transport for NSW.
6. The ASA is the network design and standards authority for nominated NSW Transport Assets listed in Schedule 1. It has the objectives, functions, powers and governance set out in this Charter.
7. The ASA commenced full operations on 1 July 2013.

Objectives of the Asset Standards Authority

8. The objectives of the ASA are:
 - (a) to exhibit independence, rigour and excellence in carrying out its functions;
 - (b) to promote and facilitate improvements in process efficiency, safety and performance in relation to the Asset Lifecycle of NSW Transport Assets including activities to:
 - Support TfNSW and the supply chain in creating efficiencies and realization of benefits across the asset life cycle through simplifying processes and procedures.
 - Improve the processes for engineering assurance, design approval and commissioning to support the delivery of major transport and infrastructure projects.
 - Facilitate the smooth integration of new or altered assets into existing transport networks
 - Assure system safety and network integrity.

- (c) to facilitate increased and effective private sector participation in Asset Lifecycle assurance functions;
- (d) to increase private sector participation in asset lifecycle management activities including standards development and the development of industry's capability and associated skill base of technical resources; and
- (e) to exhibit and promote the Transport for NSW values of customer focus, collaboration, efficiency, solutions, integrity, safety and reliability in carrying out its functions.

Functions of the Asset Standards Authority

9. The principal functions of the ASA are:

- (a) in relation to **network and asset standards**: to set, control, maintain, own and publish the network and asset standards for NSW Transport Assets for the Asset Lifecycle, including performance criteria and condition standards and technical maintenance standards; and
- (b) in relation to **AEOs**: to set, maintain and administer the framework for assessment, authorisation, surveillance, review and audit of organisations who provide services in relation to the Asset Lifecycle of NSW Transport Assets; and
- (c) in relation to **assurance**: to set, maintain and administer the framework for the assurance of Asset Lifecycle Services and to set, maintain and apply an assurance framework to assure ASA functions;

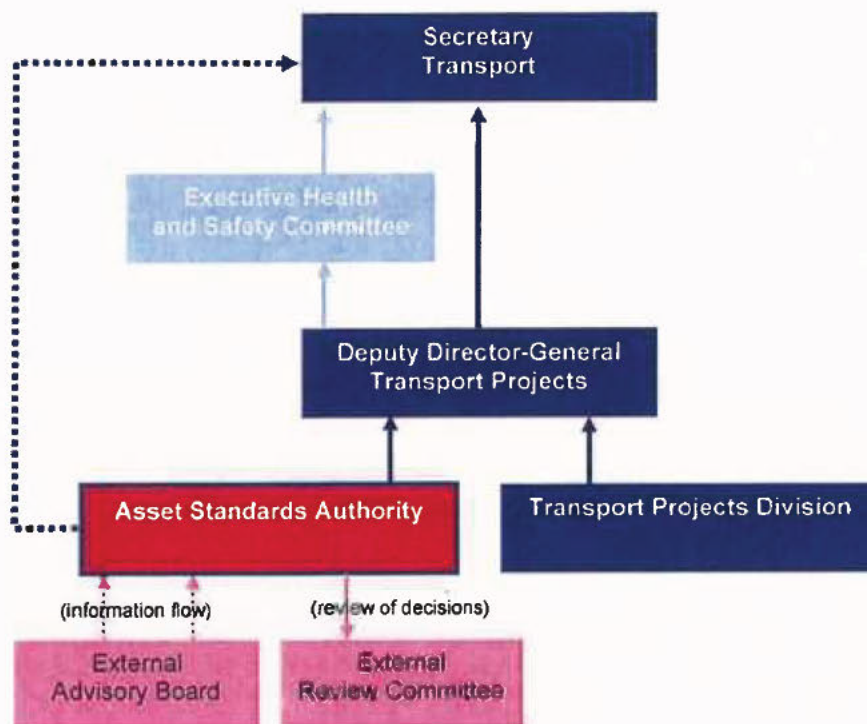
10. The other functions of the ASA include:

- (a) in relation to **asset planning**: to contribute as required to high level planning, prioritisation, design, delivery, integration and maintenance of Transport Assets by providing technical, assurance and asset management advice and setting requirements for the long term safety, operation, performance and sustainability of Transport Assets.;
- (b) in relation to **configuration control**: to set, maintain and publish the configuration control and asset assurance process for NSW Transport Assets over the Asset Lifecycle, the technical requirements for design review, design approval, asset handover and asset acceptance;
- (c) in relation to **asset stewardship**: to set the common Asset Lifecycle model, to set requirements for, and own, asset configuration data for NSW Transport Assets, to undertake reviews of AEO's maintenance and works plans to inform the TAMP planning cycle,
- (d) in relation to **audit**: to set and maintain the engineering practices framework for asset management of NSW Transport Assets, conduct audits of asset condition data, and publish an annual asset integrity report;
- (e) in relation to **asset and performance reporting**: to set, maintain and publish requirements for condition, performance and maintenance reporting for NSW Transport Assets, undertake engineering and asset management review and analysis of those reports to inform Asset Lifecycle planning, development of maintenance strategies and the development of standards;

- (f) in relation to **safety and quality**: to set and maintain the requirements for network safety assurance, report as required to regulatory bodies including the National Rail Safety Regulator, set, maintain and publish safety-related processes for human factors integration, provide subject matter expert advice including in relation to ASA Requirements and engineering governance, contribute to the development and improvement of the Transport for NSW Quality Management System (QMS) and Safety Management System (SMS) in relation to the functions of the ASA; and
 - (g) in relation to **technical capability**: to promote and contribute to the development of industry technical capability in collaboration with Transport for NSW Learning and Development, industry and academia, including by developing and publishing guidance material in relation to organisation-level competency frameworks, promoting sustainable development of technical and engineering capability, and contributing to the framework for a graduate/intern program for engineering and technical disciplines employed within Transport for NSW.
11. The outcome of the performance of the ASA's functions is the means by which the design and safety integrity of the network is maintained.

Governance

12. The ASA is a separate unit within Transport for NSW.
13. The ASA is headed by the Director of the ASA. The Director of the ASA reports to the Deputy Director-General Transport Projects. The Director of the ASA also has a 'dotted' reporting line to the Secretary.
14. The Deputy Director-General Transport Projects reports to the Transport for NSW Executive Health and Safety Committee on a quarterly basis regarding the operations of the ASA.
15. The ASA will be supported by an External Advisory Board, with private sector and industry representation. The primary role of the External Advisory Board is to provide a forum for customer and industry engagement in relation to ASA Requirements.
16. Decisions and instructions of the ASA will be reviewable in accordance with an externally published review process. Review of decisions affecting AEOs and applicants for ASA Authorisation will be conducted by an External Review Panel.
17. The review process allows for review on grounds including:
- (a) inconsistency with existing statutory or contractual requirements;
 - (b) budgetary impacts (in relation to decisions affecting Transport Agencies, AEOs and applicants for ASA Authorisation); and
 - (c) procedural fairness (in relation to decisions affecting AEOs or applicants for ASA Authorisation).
18. The governance framework for the ASA is represented diagrammatically as follows:



Implementation

19. The requirements of the ASA will be implemented principally by the following mechanisms:
- ASA Requirements will be adopted and implemented by the Transport Agencies;
 - compliance with ASA Requirements will be mandated, as relevant and appropriate, in contracts (including conditions of access to NSW Transport Assets);
 - clause 25 which relates to Transport Agencies' obligations in relation to the future procurement of services in relation to the Asset Lifecycle of NSW Transport Assets;
 - as between the ASA and any Transport Agency, the ASA has the compliance functions (including the powers of review, surveillance, audit and instruction) conferred on it by this Charter and any other compliance functions conferred on it, or mandated by direction, by the Secretary;
 - as between the ASA and any AEO, the ASA will have the rights and powers (including the powers of review, surveillance, audit and instruction) conferred on it by this Charter, the conditions of the applicable ASA Authorisation and the terms of any contract between the AEO and a Transport Agency; and
 - as between a Transport Agency and its contract counterparties, the Transport Agency will have the rights and powers conferred on it by the contract and these will include rights and powers that reinforce and require compliance with applicable ASA Requirements.

ASA decisions, audits and other functions

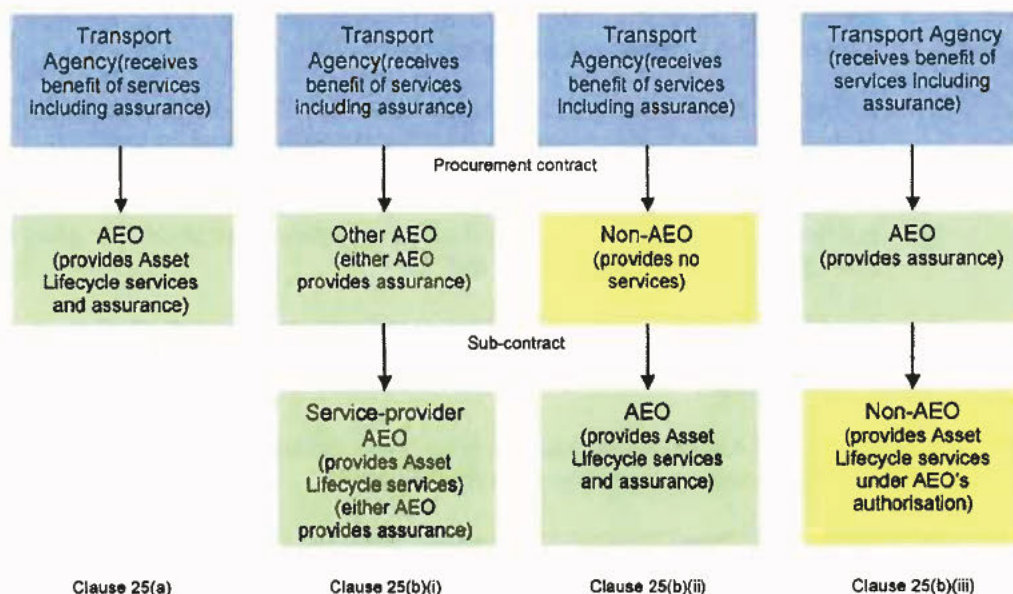
20. The ASA may, for the purposes of exercising its functions, as regards any Transport Agency:
 - (a) conduct reviews, surveillance and audits of the compliance of the Transport Agency with ASA Requirements; and
 - (b) issue instructions and specify requirements to the Transport Agency including as set out in clause 21(d) below.
21. The ASA may, for the purposes of exercising its functions, as regards any AEO (or applicant for ASA Authorisation):
 - (a) receive, assess and determine applications for ASA Authorisation, grant ASA Authorisation, and suspend or revoke ASA Authorisation;
 - (b) conduct reviews, surveillance and audits of the compliance of the AEO with the conditions of its ASA Authorisation;
 - (c) issue instructions, make decisions and exercise such other functions as are permitted by the conditions of the ASA Authorisation; and
 - (d) issue instructions to a Transport Agency requiring it to exercise applicable contractual rights and powers against the AEO, where the AEO has breached the conditions of the ASA Authorisation.
22. Where a Transport Agency is also an AEO (as applicable), the requirements of this Charter apply in addition to any conditions of the applicable ASA Authorisation.
23. It is expected that, during the ASA's establishment phase and for a subsequent transitional period, certain Divisions of Transport for NSW may, for the purpose of certain activities (including, without limit, assurance functions), be considered to be an AEO. If so, such a Division will be subject to the ASA's review, surveillance and audit functions (including as set out in clause 21(b) and 21(c) above) but only with respect to the activities for which the Division has been considered an AEO.

Duties of Transport Agencies

24. A Transport Agency must (and must also ensure that all personnel for which it is responsible):
 - (a) co-operate fully with the ASA so that the ASA can carry out its functions effectively;
 - (b) implement and comply with ASA Requirements;
 - (c) have systems in place to require and monitor that all contract counterparties, contractors and access seekers implement and comply with ASA Requirements wherever applicable (existing projects will be subject to transitional arrangements);
 - (d) provide reasonable access to premises and resources as required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;

- (e) comply with decisions, instructions and requirements issued by the ASA, subject to the internal review process;
 - (f) provide representation and collaborate with the ASA to ensure that ASA Requirements remain relevant and consistent with Transport for NSW values and industry developments;
 - (g) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions; and
 - (h) provide the ASA with any information relating to its activities or any documents or other things reasonably requested by the ASA in the exercise of its functions.
25. In relation to the future procurement of services in relation to the Asset Lifecycle of NSW Transport Assets, a Transport Agency must:
- (a) ensure that those services are primarily provided by an AEO with ASA Authorisation for the relevant services which is directly engaged by the Transport Agency. If so, the AEO is accountable for the provision of and assurance of the services; or
 - (b) only if clause 25(a) is not reasonably practicable, ensure that those services are provided by:
 - (i) an AEO with an ASA Authorisation for the relevant services (called the "service-provider AEO") engaged by another AEO engaged by the Transport Agency. If so, the service-provider AEO is accountable for the provision of and assurance of the services. The Transport Agency should ensure that, through the procurement contract, it receives the benefit of the services including the assurances. If the other AEO also has an ASA Authorisation for the relevant services, alternatively, it can be accountable for the assurance of the services; or
 - (ii) an AEO with an ASA Authorisation for the relevant services engaged by a non-AEO engaged by the Transport Agency. If so, the AEO is accountable for the provision and assurance of the services and the Transport Agency should ensure that, through the procurement contract, it receives the benefit of the services including the assurances; or
 - (iii) a non-AEO engaged by an AEO with an ASA Authorisation for the relevant services engaged by the Transport Agency. If so, the non-AEO provides the services pursuant to the AEO's ASA Authorisation and where the AEO is accountable for the provision and assurance of the services.

The options in clause 25 are represented diagrammatically below:



26. The issuing of ASA Authorisation (and any other conduct of the ASA) does not detract from a Transport Agency's role in appropriately managing any contracts it enters into, its contractors (including AEOs) and their activities.

Duties of Authorised Engineering Organisations

27. On and from 1 July 2013, an AEO must (and must also ensure that all personnel for which it is responsible):
- comply with the conditions of its ASA Authorisation;
 - co-operate fully with the ASA in the performance of the ASA's functions including in relation to the ASA Authorisation process;
 - implement and comply with ASA Requirements;
 - 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;
 - comply with decisions, instructions and requirements issued by the ASA, subject to the internal review process;
 - notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions; and
 - provide the ASA with any information relating to its activities or any documents or other things reasonably requested by the ASA in the exercise of its functions.

Definitions

28. Defined terms used in this Charter have the following meanings:

ASA Authorisation means an authorisation issued by the ASA to a legal entity (which may include a Transport Agency as applicable) 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. The issue of ASA Authorisation confers the status of "Authorised Engineering Organisation" or "AEO" on the entity.

ASA Requirements means the standards, plans, processes, procedures, instructions, requirements and guidance material (in whatever form) published externally or notified by the ASA in the exercise of its functions including (but not limited to) any:

- (a) network and asset standards (including both technical and maintenance standards);
- (b) requirements for policies and processes in relation to ASA Authorisation;
- (c) asset management plans, systems and processes;
- (d) configuration control processes;
- (e) asset and configuration data condition requirements; and
- (f) asset and condition reporting requirements.

The ASA Requirements do not include network operating standards and procedures including network rules.

Asset Lifecycle includes whole of lifecycle activities and activities that are specific to a phase or several phases during a lifecycle, and includes:

- (a) concept, feasibility and total asset planning;
- (b) design and design review;
- (c) construction, installation, fabrication and manufacture;
- (d) systems engineering and systems integration;
- (e) inspecting, testing and commissioning;
- (f) maintenance
- (g) modification; and
- (h) decommissioning, demolition and disposal,

and includes assurance of such activities including safety assurance.

Authorised Engineering Organisation or AEO means a legal entity (which may include a Transport Agency as applicable) to whom the ASA has issued an ASA Authorisation.

NSW Rail Assets means:

- (a) rail infrastructure, rolling stock, railways and railway premises as defined in the Rail Safety National Law (NSW);

- (b) the NSW rail network and rail infrastructure facilities as defined in the TA Act; and
- (c) stations, platforms, rolling stock and rolling stock maintenance facilities as referred to in the TA Act,

NSW Rail Assets includes those assets to the extent which are vested in or owned, managed, controlled, commissioned or funded by the NSW Government, a NSW Government agency or a Transport Agency, but does not include anything leased, licensed to or managed by Australian Rail Track Corporation Ltd pursuant to Part 8A of the TA Act.

Transport Assets means those assets listed in Schedule 1 which are vested in or owned, managed, controlled, commissioned or funded by the NSW Government, a NSW Government agency or a Transport Agency

Rail Safety National Law (NSW) has its meaning in the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

Transport Agencies means Transport for NSW (and each of its Divisions), Rail Corporation NSW, Sydney Trains and NSW Trains.

TA Act means the *Transport Administration Act 1988* (NSW).

Review and amendment

- 29. This Charter can only be amended by agreement between the Secretary, the Deputy Director-General Transport Projects and the Director Asset Standards Authority.
- 30. The Director Asset Standards Authority will initiate a review of the Charter annually or as required.

Signatures

Signed: _____

Name: David Stewart

Title: Secretary

Signed: _____

Name: Chris Lock

Title: Deputy Director-General,
Transport Projects

Signed: _____

Name: Jim Modrouvanos

Title: Director
Asset Standards Authority

Document control information

The current status of this document is shown below.

Title	Asset Standards Authority Charter
Version	2.0
Effective date	1 October 2014
Publisher	Transport for NSW
Authorised by	Secretary

The history of changes made to this document is shown below.

Version	Date	Author	Description
1.0	22 January 2013	JM	First Release
2.0	10 April 2014	JM	Annual Review. Amended with a new Schedule to facilitate inclusion of a broader set of transport modes. Minor clarifications including to reinforce AEO obligations.
	8 August 2014	JM	Amended to add configuration control over whole of life, updated to address Internal Audit Recommendations

Schedule 1 – Transport Assets

1. NSW Rail Assets as defined in Clause 28 of the ASA Charter comprising the following networks and/or systems
 - (a) Light Rail
 - (b) Heavy Rail - Metropolitan Rail Area
 - (c) Heavy Rail - Country Rail Network
 - (d) Rapid Transit



Exhibit G

Third Party Agreements

Interface Agreement



Global Safety Interface Agreement

Transport for NSW
ABN 18 804 239 602

Sydney Trains
ABN 38 284 779 682

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KEY DETAILS

1	Date	See Execution on page 9
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2 **Parties**

TfNSW
Name

Transport for NSW
ABN 18 804 239 602

Address

18 Lee Street Chippendale

Attention

General Manager Safety and Quality, Policy and Regulation
or such other person as may be notified by TfNSW from
time to time.

Sydney Trains
Name

Sydney Trains
ABN 38 284 779 682

Address

477 Pitt Street Sydney

Attention

Director Safety, Environment, Quality and Risk or such
other person as may be notified by Sydney Trains from time
to time.

BACKGROUND

- A The Rail Safety National Law requires Rail Transport Operators to:
- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from Railway Operations carried out by or on behalf of that Rail Transport Operator and that may be caused wholly or partly by Railway Operations carried out by or on behalf of any other Rail Transport Operator;
 - (b) manage such risks as far as reasonably practicable; and
 - (c) for the purposes of managing those risks, seek to enter into an Interface Agreement with the other Rail Transport Operator.
- B This Agreement is an Interface Agreement for the purposes of the Rail Safety National Law.
- C The parties are Rail Transport Operators who will satisfy the above requirements by applying their Safety Management Systems to manage risks in accordance with this Agreement.

TERMS

1 Interpretation

1.1 Definitions

The following words have the following meanings in this document, unless the context requires otherwise.

Business Day means a day other than a Saturday, Sunday or a public holiday as gazetted in NSW.

Contractors means any person engaged by a party to provide any works required by, or perform any obligation under, this Agreement including any further person engaged by such a person to carry out any such work or obligation.

Date of this Agreement means the date on which this Agreement has been executed by both parties.

Interface Agreement means an interface agreement required under section 106 of the Rail Safety National Law.

National Safety Regulator means the Office of the National Rail Safety Regulator established under Part 2 Division 1 of the Rail Safety National Law.

Personnel means officers, employees, agents, Contractors, and officers, employees and agents of Contractors.

Rail Safety National Law means the Rail Safety National Law (NSW) No 82a.

Rail Transport Operator has the meaning given to that term under the Rail Safety National Law.

Railway Operations has the meaning given to that term under the Rail Safety National Law.

Safety Management System means a person's safety management system which:

- (a) complies with the Rail Safety National Law;
- (b) has been accepted and approved by the National Safety Regulator for use by a person for Railway Operations for which that person holds rail safety accreditation under the Rail Safety National Law,

as amended from time to time.

1.2 Interpretation

The following apply in the interpretation of this document, unless the context requires otherwise.

- (a) A reference to this Agreement, this deed, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.
- (b) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this Agreement.
- (f) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Agreement, their substitutes and assigns.
- (h) **Includes** means includes but without limitation.
- (i) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (j) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (k) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Agreement.

- (l) A heading is for reference only. It does not affect the meaning or interpretation of this Agreement.

1.3 Schedules

Any schedule attached to this Agreement forms part of it. If there is any inconsistency between any clause of this Agreement and any provision in any schedule, the clause of this Agreement prevails.

2 Term

- (a) This Agreement commences on the Date of this Agreement and continues until it is terminated by a party under clause 2(b).
- (b) A party may terminate this Agreement by providing the other party with no less than 6 months' written notice. If a party provides a notice under this clause 2(b) that it wishes to terminate this Agreement and Interface Agreements under the Rail Safety National Law are still required between the parties, the parties must negotiate in good faith to enter into a replacement agreement for this Agreement prior to the date on which the termination of this Agreement will take effect.

3 Risks arising from Railway Operations

3.1 Identifying and assessing risks

- (a) The parties must identify and assess, so far as is reasonably practicable, risks to safety that may arise from Railway Operations carried out by or on behalf of on party, as a Rail Transport Operator, and that may be caused wholly or partly by Railway Operations carried out by or on behalf of the other party, as a Rail Transport Operator.
- (b) Unless otherwise agreed by the parties, TfNSW's Safety Management System will apply to the assessment of risk required under this clause 3.1.
- (c) The parties may agree to participate in joint risk workshops to perform their obligations under this clause 3.1.
- (d) Subject to clause 3.1(c), each party may undertake the identification and assessment of risks to safety individually or jointly through the use of risk workshops. A party may adopt a risk assessment conducted by the other party.
- (e) Each party must provide the other party with any information reasonably requested by the other party to enable the party requesting the information to perform its obligations under this clause 3.1.

3.2 Managing risks

- (a) Each party must:
 - (i) determine measures to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1 in accordance with clause 3.2(b); and
 - (ii) implement those measures for which it is responsible determined in accordance with clause 3.2(b).
- (b) Schedule 1 sets out how each party's Safety Management System will be applied to determine each party's responsibilities in respect of risks identified and assessed under clause 3.1 including:
 - (i) each party's responsibility for implementation and maintenance of the safety risk management measures;
 - (ii) where appropriate, the timetable for implementation of safety risk management measures;
 - (iii) any other details required to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1; and
 - (iv) the communication details required to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1.

3.3 Changes to risks

- (a) The parties must consult with each other regarding any planned alteration to infrastructure, operations, or circumstances which may impact on safety risks arising from their Railway Operations.
- (b) If a party becomes aware of:
 - (i) a risk that is not being managed to the extent reasonably practicable; or
 - (ii) a new safety risk;then:
 - (iii) that party must provide the other party with notice of that risk; and
 - (iv) clauses 3.1 and 3.2 will again apply.

3.4 Notification of Incidents

Each party must notify the other party in accordance with the communication requirements of that party's Safety Management System as soon as reasonably practicable after becoming aware of any safety incident or accident which is related to rail safety on the other party's Railway Operations.

3.5 Register of interface agreements

Each party must record this Agreement in that party's register of interface agreements.

4 Access

- (a) If a party, or any of its Personnel, require access to the other party's infrastructure or land for the purposes of meeting its obligations under this Agreement, the party seeking access must:
 - (i) provide the other party with details of the access sought including the locations, times and Personnel; and
 - (ii) comply, and ensure that its Personnel comply, with all relevant instructions, obligations and safety plans as advised by the other party, and/or any that parties nominee.
- (b) TfNSW must provide Sydney Trains with notice as soon as reasonably practicable if TfNSW may require a track possession to perform any of its obligations under this Agreement.
- (c) Sydney Trains must provide TfNSW with notice as soon as reasonably practicable if Sydney Trains may require a track possession to perform any of its obligations under this Agreement and that track possession impacts upon any work being carried out by or on behalf of TfNSW.

5 Dispute resolution

- (a) If a party:
 - (i) discovers any non-compliance with this Agreement;
 - (ii) otherwise wishes to raise a dispute in relation to this Agreement,(together referred to as an **Issue**)

that party must as soon as reasonably practicable, provide the other party with notice of the Issue.
- (b) If a party provides a notice under clause 5(a):
 - (i) representatives from the parties with appropriate delegations must attempt to resolve the Issue within [10] Business Days;
 - (ii) if the Issue is not resolved by the parties' representatives under clause 5(b)(i), it must referred to a representative from each party who is responsible for that party's safety operations and that representative must attempt to resolve the Issue within [5] Business Days.

6 Miscellaneous

6.1 Notices

- (a) Any notice given in connection with this Agreement must be in writing and must be addressed to that party and either:
 - (i) hand delivered to, or sent by post to, the party's registered office, principal place of business or any other address the party notifies for the service of notices;
 - (ii) sent by fax to any fax number the party notifies for the service of notices; or
 - (iii) sent by email to any email address the party notifies for the service of notices.
- (b) A notice is taken to have been given:
 - (i) in the case of being hand delivered, on the date on which it is delivered;
 - (ii) in the case of being sent by post, on the third (seventh if sent to an address in another country) day after the date of posting;
 - (iii) in the case of being sent by fax, at the time of dispatch as confirmed by a transmission report by the sending machine; and
 - (iv) in the case of delivery by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

6.2 Costs

Each party will be responsible for its own costs in complying with this Agreement.

6.3 Proportionate liability

This Agreement does not affect or derogate from the parties' rights and obligations under the Civil Liability Act 2002 (NSW) or their functions and powers under other laws.

6.4 Government authorities

If a party is reconstituted, renamed, replaced or if the powers and functions are transferred to another organisation, a reference under this Agreement to that party includes the reconstituted, renamed or replaced organisation or the organisation to which the powers of functions are transferred (as the case may be).

6.5 Variation

No provision of this Agreement nor any right conferred by such agreements can be varied except in writing signed by the parties.

6.6 Entire agreement

This Agreement:

- (a) records the entire agreement between the parties; and
- (b) supersedes all previous negotiations, understandings, representations and agreements,

in relation to the subject matter of this Agreement.

6.7 Waiver

A waiver is effective only if in writing and signed by or on behalf of the party to be bound and is effective to the extent that the party giving it expressly states in writing.

6.8 Governing law

This Agreement is governed by the law in force in New South Wales and the parties submit to the jurisdiction of its courts.



EXECUTION

Signed as a deed on

28 June

2013

SIGNED for and on behalf of **Transport for NSW** by its authorised officer in the presence of

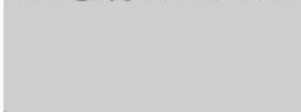


Signature of Witness

HELEN VICKERS

Name of Witness (print)

SIGNED for and on behalf of **Sydney Trains** by its authorised officer in the



Signature of Witness

RITA CARUZZA

Name of Witness (print)


Signature of Authorised Officer

Leslie Robert Wieling

Name of Authorised Officer (print)


Signature of Authorised Officer

BOB MASON

Name of Authorised Officer (print)

A/C E.

Schedule 1 - Rail Safety Interface Risks Between Sydney Trains and TfNSW

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Safety Requirements/ Standards	Safety risk associated with delivered asset cannot be demonstrated to be reduced SFAIRP	Standards used as baseline for design do not represent best/good practice (Standards out of date) CMC acceptance process not carried out adequately throughout the project lifecycle before handing over to the operator	- Network incident with safety consequences	ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101 Network Standards Governance	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Asset does not achieve an acceptable minimal safety standard	Standards incorrect/fail to define minimum safety standards	- Network incident with safety consequences	ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101 Network Standards Governance	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Fail safe modes for systems not clearly defined	Fail safe modes for systems not clearly defined in safety requirements/requirements (should be based on standards)	- System fails in an unsafe way leading to safety incident	PPD specify high level requirements in transport planning. ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				Network Standards Governance. TPD to include relevant fail safe requirements in tendering/contract/design information prior to procurement of AEO to design and construct	
Contracts	Asset does not meet end user safety requirements	<ul style="list-style-type: none"> - AEO contracted to deliver asset does not have relevant system knowledge - Design not subject to appropriate stakeholder consultation - Stakeholder/end user not included in acceptance/approval process for design choices - Asset solutions imposed on Sydney Trains - Focus on delivery against time/budget 	- Network incident with safety consequences	ASA AEO audit and surveillance process - see 4SA-ST-201 ASA Framework for AEO Assessment Audits and Surveillance audits. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. The RSC requires all parties to work collaboratively and the RSC provides for SYD Trains to have input into designs, user requirements, etc.	ST Operational Readiness Manager role to provide user input into the design process ST to notify CMC/ASA if not able to provide Safety Assurance for Operational Readiness.
	Contractor delivers substandard work	- AEO fails to adequately assure the suitability of its subcontractors	- Network incident with safety consequences	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		<ul style="list-style-type: none"> - Contractor does not adequately implement/follow its own quality management processes - AEO assumes contractor will deliver good work 		<ul style="list-style-type: none"> - including TPD Safety Requirements TfNSW Standard Requirements TSR S1 - Safety Management. TPD management of AEO via contract ASA being responsible for engineering governance through the implementation of CMC framework, development and maintenance of engineering standards and AEO assessment 	
	Sydney Trains as a Contractor/AEO to TfNSW delivers substandard work	<ul style="list-style-type: none"> - Sydney Trains fails to assure its work - Sydney Trains fails to use competent resource 	- Network incident with safety consequences	ASA AEO audit and surveillance process - see 4SA-ST-201 ASA Framework for AEO Assessment Audits and Surveillance audits. TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD management of AEO via project agreement/contract. ASA being responsible for engineering	ST will advise TfNSW of safety concerns based on past data or current operational experience. ST internal assurance processes

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				governance through the implementation of CMC framework, development and maintenance of engineering standards and AEO assessment	
	Delivered Asset does not satisfy key (but undefined) safety requirements	Asset contract specification fails to adequately address system safety requirements (safety requirements not defined)	- Unsafe Asset released into service	PPD to specify defined requirements during concept design. TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS - including TPD Safety Requirements TfNSW Standard Requirements TSR S1 - Safety Management Role of ASA in development and maintenance of engineering standard.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Consultation	Asset not correctly integrated into network	Lack of clarity as to when ASA need to be consulted on design matters (deviation from standards unclear) Process for handover and integration unclear	- Network incident with safety consequences	ASA Standards Waiver process 4SA-PR-106 Implementation of the CMC process and AEO management process	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Safety/Risk	No direct communication	- Unsafe Asset released	TPD Engineering and	ST Operational

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
	misunderstanding between parties leading to poor design choices	between Sydney Trains and AEO delivering asset (Intermediary TfNSW prevents direct communication)	into service	Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. AEO has responsibility to ensure safety risks in the system have been mitigated to SFAIRP. CMC process to check that this has been	Readiness Manager role to provide user input into the design process

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				carried out.	
Design Approval/Acceptance	Design not compliant with operating environment, configuration requirements, standards and/or waivers	Proposed risk mitigation options not accepted/approved by TfNSW	- Unsafe Asset released into service	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Design failings go unnoticed	AEO's work is not independently assured/verified (AEO)	- Unsafe Asset released into service - Latent issue released	TPD Engineering and Safety Assurance processes as per	ST will advise TfNSW of safety concerns based on past data or current

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		approves own designs) Failure of the CMC process and failure of TPD assurance process.	leading to safety incident on network	TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.	operational experience
	Sydney trains accept asset that is deficient from a safety perspective	Sydney Trains assured by TfNSW that asset is fit for purpose and safe, based on AEO's assurance (No assurance from Sydney Trains)	- Network incident with safety consequences	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS.	Sydney trains accept asset that is deficient from a safety perspective

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		Failure of the CMC process and failure of TPD assurance process.			
Construction	TfNSW rail corridor worksite incorrectly setup and/or maintained/managed	<ul style="list-style-type: none"> - Interface risks not clearly identified/evaluated before worksite setup - Worksite protection controls not in place - Ineffective communication between worksite and RMC 	<ul style="list-style-type: none"> - Unauthorised entry of train into/through worksite leading to safety incident in worksite - Unauthorised exit of works train from worksite leading to safety incident on network 	TfNSW (and it's contractors) compliance with Sydney Trains Network Rules and Procedures. TPD worksite audit and review presence. AEO audit and surveillance process.	ST Network rules and procedures for worksite protection
Commissioning	Testing does not validate all safety aspects of asset	<ul style="list-style-type: none"> - Lack of experience in developing testing and commissioning plans - Planned testing and commissioning not carried out according to the plan 	<ul style="list-style-type: none"> - Unsafe asset released into service - Safety incident on network 	ASA surveillance of AEO performing testing and commissioning. TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process. ASA configuration management process	ST will advise TfNSW of safety concerns based on past data or current operational experience
Assurance	Safety assurance aspects of project poorly undertaken including operational constraints are not clearly specified/communicated	AEO does not fully appreciate the requirements of system safety Safety and assurance requirements not	- Unsafe Asset released into service	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		adequately specified during procurement process		(QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. AEO audit and surveillance process. ASA configuration management process	
	Operational readiness requirements do not align with asset being delivered	Asset documentation does not appropriately reflect asset	<ul style="list-style-type: none"> - Safety incident on the network - Specific risks may go un-identified/mitigated 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains	ST will advise TfNSW of safety concerns based on past data or current operational experience.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.	
Delays into Service	Old trains retained in service beyond life expiry	New trains delayed delivery into service Long term asset planning does not reflect asset condition	Safety incident on network	NOTE: TfNSW is limited in controls that can be deployed in this circumstance: ST as the accredited operator/maintainer must ensure trains entering and remaining in revenue service meet minimum safety standards, not TfNSW. PPD control owner with	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				respect to long term asset planning.	
	Life expired assets required to be used beyond their design life	Delivery of asset delayed <ul style="list-style-type: none"> - AEO scope of work excludes commissioning - AEO not able to comply with ASA standards - AEO fails to deliver project on time TfNSW fails to respond in a timely manner to infrastructure/asset safety requirements Long term asset planning does not reflect asset condition	Safety incident on network	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS PPD control owner with respect to long term asset planning. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Operational Efficiency	Asset delivered has negative impact on operational efficiency/safety	<ul style="list-style-type: none"> - Design not optimised for operational efficiency/safety - Design choices do not adequately address ongoing reliability requirements of asset Long term asset planning does not reflect asset condition	<ul style="list-style-type: none"> - Failure in service leading to network disruption - Failure in service leading to safety incident 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services	ST Operational Readiness Manager role to provide user input into the design process ST will advise TfNSW of safety concerns based on past data or current operational experience.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. PPD control owner with respect to long term asset planning.	
Asset Performance	Assets considered safer/more reliable than they actually are	Asset performance incorrectly predicted through design or poor reporting	Safety incident on network	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process	
Maintenance	Maintainability not addressed within design	Failure of design process	<ul style="list-style-type: none"> - Asset unable to be maintained unless taken offline - Asset maintenance introduces unnecessary safety risk for maintenance staff - Asset not maintained to required standard but continues to be operated - safety incident occurs 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires	ST to notify TfNSW that it is not able to demonstrate operational (Maintenance) readiness

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process.	
	Asset responsibility handed over without all appropriate/necessary documentation (including safety assurance)	Failure of design process	<ul style="list-style-type: none"> - Asset unable to be operated/maintained as "intended/required" - Latent condition leading to safety incident 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the	ST unable to demonstrate Operational Readiness to CMC

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process.	
	Contracts awarded by TfNSW to parties other than Sydney Trains for maintenance/renewal of Sydney Trains operated infrastructure	Failure of third party maintenance process	<ul style="list-style-type: none"> - Network configurations falls out of synch - Latent conditions propagated leading to safety incident - Maintenance activities interfere with the safe operation of trains 	ASA configuration management process	ST will advise TfNSW of safety concerns based on past data or current operational experience
Access agreements	Access agreements influenced by TfNSW		<ul style="list-style-type: none"> - Unsafe trains/operators allowed onto network - Safety incident on network 	Access seekers must comply with minimum standards; ST as network control manager can prevent operators from accessing network if safety of operations is compromised.	Network access process managed by ST ST not to allow access without positive confirmation of suitability received from TfNSW (ASSUMED POSITION BASED ON CURRENT KNOWLEDGE)
Sydney Trains/NSW Trains (as a Rolling Stock Operator) operating on TfNSW (as a Rail Infrastructure)	Track structures/infrastructure not fit for purpose	- Ineffective maintenance regime (Minimum standards set too low)	<ul style="list-style-type: none"> - Train Collision - Train derailment - Train hits object/structure infringing kinematic 	TfNSW SMS requirements for managing safeworking and infrastructure, including:	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Maintainer) network			envelope	Rail Safeworking Standard 4TP-ST-014/2.0 Minimum Rolling Stock Requirements 4TP-ST-098/4.0 Rail Safeworking Arrangements Procedure 4TP-PR-106/2.0	
	TfNSW rail corridor worksite incorrectly setup and/or maintained/managed	<ul style="list-style-type: none"> - Interface risks not clearly identified/evaluated before worksite setup - Worksite protection controls not in place - Ineffective communication between worksite and RMC 		TfNSW (and its contractors) recognises and complies with ST Network Rules and Procedures for worksite protection. AEO audit and surveillance process.	ST Network rules and procedures for worksite protection
Emergency Response	TfNSW directly involved in emergency response coordination activities		<ul style="list-style-type: none"> - Confusion and re-prioritisation of tasks - Safety incidents escalate 	TfNSW recognition of ST incident response accountabilities	Incident response is the responsibility of ST
Decommissioning	TfNSW fails to decommission assets when required		<ul style="list-style-type: none"> - Infrastructure loses structural integrity and impacts rail safety (collapsing onto trains) - Rollingstock used beyond life leading to safety incident 	TfNSW relationship with Sydney Trains as per provisions of the Rail Services Contract. TPD Engineering and Safety Assurance processes as per	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				TfNSW SMS/TPD QMS, including that for decommissioning. NOTE: ST retains responsibility for maintenance and inspection of extant assets, including identifying condition of current operational assets and reacting accordingly by imposing CAN (Condition Affecting the Network) arrangements.	
	Re-commissioning of de-commissioned rolling stock	Delivery of asset delayed - AEO scope of work excludes commissioning - AEO not able to comply with ASA standards - AEO fails to deliver project on time TfNSW fails to respond in a timely manner to infrastructure/asset safety requirements	- Asset not fit for service - Safety incident on network	TfNSW relationship with Sydney Trains as per provisions of the Rail Services Contract TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Old trains not retired when beyond life expiry		Safety incident on network	TfNSW relationship with Sydney Trains as per	ST will advise TfNSW of safety concerns based

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				provisions of the Rail Services Contract ST as the accredited operator/maintainer must ensure trains entering and remaining in revenue service meet minimum safety standards, not TfNSW.	on past data or current operational experience
Configuration Management	Real world asset configuration out of sync with configuration register	<ul style="list-style-type: none"> - Configuration documents inadequately managed/controlled - Network configuration issues not/inadequately communicated to stakeholders - ASA too far removed from the "asset" to be able to adequately provide configuration control - Configuration Control Board (CCB) fails to provide traceability and assurance to TfNSW that all configuration changes within the responsibility of the CCB have been properly managed - Contracts awarded by 	<ul style="list-style-type: none"> - Unsafe (incorrectly integrated) asset released into service leading to safety incident - Latent conditions propagated leading to safety incident 	ASA Configuration Management control process. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		TfNSW to parties other than Sydney Trains for maintenance/renewal of Sydney Trains operated infrastructure			
	Governance arrangements for systems integration and configuration control not adhered to by all relevant parties/stakeholders		- Unsafe asset released into service	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA Configuration Management control process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Software configuration inadequately managed/controlled		<ul style="list-style-type: none"> - Software release leads to system failure leading to operational impact - Software release results in unsafe operation of asset leading to safety incident - Software update cannot be rolled back in event release fails leading to operational impact 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA to ensure standards reflect current requirements. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Configuration Management Committee (CMC) influenced by government to deliver/release assets on time		- Unsafe assets released into service leading to safety incident	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA Configuration Management control	ST is to assist development of CMC assurance evidence

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				process	
Compatibility	Procured rolling stock out of gauge for network (too big or too small)	Delivered Asset does not satisfy key (but undefined) safety requirements	<ul style="list-style-type: none"> - Infrastructure damaged - Gap between rollingstock and platforms too big 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Rolling stock not compatible with network systems	Delivered Asset does not satisfy key (but undefined) safety requirements	<ul style="list-style-type: none"> - Rolling stock fails to trip track circuits - Rolling stock cannot be integrated with ATP - Rolling stock cannot be integrated with comms systems (voice and data) 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Asset incompatible with network	Project integration fails to address all relevant interfaces	<ul style="list-style-type: none"> - Safety systems compromised - Automated systems need to be manually overridden 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process. ASA Configuration Management control process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Organisational Functions	Safety function of TfNSW/Sydney Trains not clearly defined		<ul style="list-style-type: none"> - Critical safety functions/responsibilities not undertaken - Safety Incident on network 	Rail Services Contract, Safety Interface agreement and project agreements stipulate the various accountabilities	Safety functions identified within Rail Service Contract. Safety function and responsibilities identified

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
					within the ST SMS ST accredited as an Rail Operator
Funding	Failure to adequately fund MPM programme		<ul style="list-style-type: none"> - Asset maintenance/renewal compromised - Safety incident on network 	<p>Rail Services Contract retains mechanisms for ST to notify of safety concerns.</p> <p>The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.</p> <p>ASA inputs to Sydney Train's Technical Maintenance Plans.</p>	ST retains ability to notify TfNSW of problems or significant flaws based on past data or current operational experience.
Competence	Lack of assurance that staff are competent	<ul style="list-style-type: none"> - Line managers remote to training delivery Lack of ST understanding (as the informed purchaser) of the competence 	Safety incident on network	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		requirements for staff. - Sydney trains assumes TfNSW responsible for training/competency		Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program design and monitoring delivery and effectiveness.	within Safety Risk Register)
	Poor quality training	- Training delivered by resources who do not meet Trainer/Assessor requirements - Rail safety training outsourced - Trainers not following quality process	Safety incident on network	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				<p>the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes assurance functions built within it, to:</p> <ul style="list-style-type: none"> - Capturing Trainer/ Assessor competence requirements (including currency) - Ensuring rostered /brokered resources meet requirements(internal and external) - identify and address sub-standard training delivery. 	
	Rail safety worker competence system does not align with Sydney Trains competency requirement	ST competency requirements are not clear/provided to inform RSW competence system.	<ul style="list-style-type: none"> - Safety incident on network - Increase in human error 	<p>TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services).</p> <p>The TfNSW Quality Training Management</p>	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, RSW competence system design and monitoring delivery and effectiveness.	
	Competency programme only focuses on initial training requirement	- ST competency requirements are not clear/provided to inform RSW competence system.	- Safety incident on network	<p>TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services).</p> <p>The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet</p>	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program design and monitoring delivery and effectiveness.	
	Refresher training not triggered by competency system	- ST competency requirements are not clear/provided to inform RSW competence system.	- Rail Safety Worker competency erodes over time - Safety incident	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				design and monitoring delivery and effectiveness.	
	Sydney Trains assumes all Rail Safety Worker card holders are competent (including contractors) and they are not	<ul style="list-style-type: none"> - Rail Safety Worker Cards qualifies person as competent without reference to the supporting system - Card issued incorrectly 	Card holder uses authorisation but not competent leading to safety incident	<p>TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services).</p> <p>The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify the business rules for the issuing of Rail Safety Worker cards and monitoring delivery and effectiveness.</p>	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms as defined within Safety Risk Register
Timetable	Standard working timetable not compatible	- Existing network weaknesses	- Safety incident on network due to more	TfNSW, timetable change process as	ST to provide inputs to and comments on the

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
	with network assets	Increase in / improvement to services	customers at different locations - Increased asset utilisation in places	articulated in the Rail Services Contract (Schedule 8) specifies requirements for review of timetable changes and roles and responsibilities for TfNSW and ST.	Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, Asset maintainability and safety integrity view. ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.
	Standard working timetable increases traffic throughput	Existing network limitations and constraints Increase in / improvement to services	- Increased asset utilisation in places - Increased network congestion in places	TfNSW timetable change process as articulated in the Rail Services Contract (Schedule 8) specifies requirements for review of timetable changes and roles and responsibilities for TfNSW and ST.	ST to provide inputs to and comments on the Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, Asset maintainability and safety integrity view. ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Fleet allocation	Train fleets inappropriately assigned to Sydney Trains	<ul style="list-style-type: none"> - Existing fleet limitations and constraints - Introduction of new fleet to services - Reallocation of fleet to services 	<ul style="list-style-type: none"> - Fleet not compatible with network and/or operating model - Safety incident on network 	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The ST RSC requires all parties to work collaboratively to resolve issues and requires ST to notify TfNSW of any material issues. The intent of the RSC is to resolve any issues collaboratively. If a dispute arises, both parties will follow the dispute resolution process outlined in the RSC.</p>	<p>ST to provide inputs to and comments on the Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, asset maintainability and safety integrity view. ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.</p>

Exhibit H

Electronic Files

1. DISC

This Exhibit H contains the CD-ROMs entitled:

Tangara Technology Upgrade Project
Contract No. TPD-14-3914
Exhibit H - Electronic Files

2. ELECTRONIC FILES

The electronic files included on the CD-ROMs identified in section 1 above are identified in the Table below:

Schedules to Deed

Title	Electronic File Reference
Schedule 16 - Information Documents and Materials	CD-ROM 1
Schedule 23 - TTU 8 Car Consist – Draft Accelerated Schedule – Project Shop – 22 May 2015	CD-ROM 1

Exhibit A - Statement of Work

Title	Electronic File Reference
Section 18.3 ASA & Sydney Trains Standards	CD-ROM 1
Section 18.7 Other Relevant Documents	CD-ROM 1
Section 18.8 TfNSW Standards/Procedures/Documents	CD-ROM 1
Section 18.9 DTRS On-Train Installation Documents and Diagrams	CD-ROM 1

Exhibit A - Statement of Work Appendix B

Title	Electronic File Reference
Section 13.1 Design, Installation and Test documents and diagrams	CD-ROM 1
Section 13.2 Components diagrams	CD-ROM 1
Section 14 Marked up ATP Documents for 8-Car Consists	CD-ROM 1

Exhibit B - Contractor's Technical Proposal

Title	Electronic File Reference
Tender Schedule 16.5 - Management Plans	CD-ROM 2

Exhibit I

Schedule of Rates

Schedule of Rates for Variations: Design services

Resources Title	Hourly Rate (excl. GST)	Escalation
Electrical Engineer		
Lead Electrical Engineer		
Lead Mechanical Engineer		
Mechanical Engineer		
Project Engineering Manager		
Safety Assurance Engineer		
Systems and Safety Engineer		
Engineer - Design		
Engineer - Commissioning		

Note: these rates are hourly based inclusive of Corporate overhead and profit

Schedule of Rates for Variations: Commissioning services

Resources Title	Hourly Rate (excl. GST)	Escalation
Electrical Engineer		
Mechanical Engineer		
Operations Manager		
Project Engineering Manager		
Quality Inspectors		
Quality Manager		
Safety Assurance Engineer		
Shift Delivery Manager		
T&C Manager		
Technical Labour Contractor Normal		
Technical Labour (Contractor) 1.5		
Technical Labour (Contractor) 2.0		
Trades Labour Contractor Normal		
Trades Labour Contractor 1.5		
Trades Labour Contractor 2.0		
Engineer - Commissioning		

Note: these rates are hourly based inclusive of Corporate overhead and profit

Cost Plus Schedule of Rates for Variations: Ad-hoc services

Resources Title	Hourly Rate (excl. GST)	Escalation
Commercial Manager		
Operations Manager		
Project Accountant		
Project Manager		
Quality Inspectors		
Quality Manager		
Shift Delivery Manager		
Storeman Contractor Normal		
Storeman Labour Contractor 1.5		
Storeman Labour Contractor 2.0		
Supply Chain Manager		
Trades Labour Contractor Normal		
Trades Labour Contractor 1.5		
Trades Labour Contractor 2.0		
Warehouse Manager		

Note: these rates are hourly based inclusive of Corporate overhead and profit

Exhibit J

Engineering Bill of Materials

Exhibit K

Consist 1 Design

Exhibit L

Program Schedule

