

# Sydney Growth Trains Project Delivery Deed - Deed of Amendment No. 1

TfNSW

RailCorp

Supplier

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Our reference 18022/80172419

# Deed of Amendment

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## Dated

## Parties

Transport for NSW ABN 18 804 239 602 (TfNSW)

Rail Corporation New South Wales ABN 59 325 778 353 (RailCorp)

Downer EDI Rail Pty Limited ABN 92 000 002 031 (Supplier)

## Background

- A. TfNSW, RailCorp and the Supplier are parties to a contract entitled "Sydney Growth Trains Project - Delivery Deed, Contract Number: ISD-16-5312A" dated 1 December 2016 (**Delivery Deed**).
- B. The parties have agreed to amend the Delivery Deed as set out in this deed.

## Operative provisions

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### 1. Definitions and interpretation

Unless otherwise expressly defined in this deed, words and expressions used in this deed have the meanings given to them in the Delivery Deed, and:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) a references to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation; and
- (j) a reference to **\$** or **dollar** is to Australian currency.

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## **2. Binding effect of this deed**

- (a) Each party acknowledges that this deed may be relied on and enforced by each other party.
- (b) This deed binds the parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of a party and any third party to whom a party's rights and obligations under the Delivery Deed are novated either in whole or in part.

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## **3. Amendments to the Delivery Deed**

### **3.1 Amendments**

The Delivery Deed is amended as set out in Schedule 1.

### **3.2 Not a Variation**

This deed itself, and the amendments to the Delivery Deed made by this deed, do not constitute a "Variation" within the meaning of clause 1.1 of the Delivery Deed.

### **3.3 No entitlement**

Except as expressly set out in this deed, the Supplier will not be entitled to make, and neither TfNSW or RailCorp will be liable upon, any Claim arising out of or in any way in connection with the subject matter of this deed.

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## **4. Miscellaneous**

### **4.1 Governing law**

This deed is governed by and must be construed according to the law governing the Delivery Deed.

### **4.2 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 any other party to give effect to this deed.

### **4.3 Expenses**

Except as otherwise provided in this deed each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed.

### **4.4 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

### **4.5 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

#### **4.6 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, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

**Executed as a deed**

**Signed sealed and delivered** for and on behalf of **Transport for NSW ABN 18 804 239 602** by its authorised delegate in the presence of:

Signature of witness

Full name of witness

Signature of authorised delegate

Name of authorised delegate

Date

**Signed sealed and delivered** for and on behalf of **Rail Corporation New South Wales ABN 59 325 778 353** by its authorised delegate in the presence of:

Signature of witness

Full name of witness

Signature of authorised delegate

Name of authorised delegate

Date

**Executed by Downer EDI Rail Pty Ltd ABN 92 000 002 031** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

## Schedule 1 - Amendments to Delivery Deed

1. In clause 1.1 the following definitions are amended as follows:

**MF Completion** ~~has the same meaning as "Completion" in the MF Works Deed~~. means that stage in the performance of the MF Works Activities when "Completion" (as defined in the MF Works Deed) of each Portion has been achieved.

**MF Works Delay Event** means that the Supplier has not achieved MF Completion in circumstances where:

- (a) the original Date for Completion for Portion 2 as set out in the MF Works Deed has passed;
- (b) the Supplier has been granted an extension of time pursuant to clause 10.10 of the MF Works Deed; and
- (c) [REDACTED]

2. In clause 1.1 the following definitions are added:

**AMS Wayside Available Date** means the date that AMS wayside equipment is commissioned and available for the Sets to use in service.

**Final Design** means the design presented at the Final Design Review.

**Final Design Review** or **FDR** has the meaning given in section 3.5A of the SPR.

**Portion** has the meaning given in the MF Works Deed.

**Test Readiness Review** has the meaning given in section 3.6 of the SPR.

3. Clause 11.3 (c) is amended as follows:

- (c) The Supplier warrants that:
  - (i) if the Assets are designed and constructed in accordance with the Design Books, the Assets will satisfy the requirements of this deed (but nothing in this clause 11.3(c)(i) affects or limits clauses 11.3(a) or 11.3(b), which will prevail to the extent of any inconsistency); and
  - (ii) the Detailed Design and the Final Design of the Assets, as developed in accordance with this deed, will, subject to clause 11.3(d), be consistent with the design of the Assets set out in the Design Books.

4. Clause 11.3(d) is amended as follows:

- (d) The Supplier:
  - (i) must not depart from the Design Books in the development of the Detailed Design or the Final Design without the prior written consent of TfNSW's Representative;

5. In Schedule 10, paragraph 1.1 is amended as follows:

- (c) the Set has passed all Verification Activities required under the Verification Plan to be performed prior to Provisional Acceptance for the Set to achieve Provisional Acceptance, except Verification Activities for the AMS software;

- (i) the Supplier has done everything else which the Project Agreements (including the SPR) require it to have done as a precondition to Provisional Acceptance of the Set, except installation and Verification Activities for the AMS software and including:

- (i) completion of all associated quality records; and
- (ii) providing to TfNSW all:
  - A. Detailed Design Review certificates in accordance with section 3.5(b) of the SPR;
  - B. Test Readiness Review certificates in accordance with section 3.6(b) of the SPR; and
  - C. manufacturing build books and certificates required by the SPR; and
  - D. Final Design Review certificates in accordance with section 3.5A(b) of the SPR.

in respect of the Set.

...

- (l) the Supplier has completed and achieved System Verification Review in accordance with section 3.7 of the SPR as it relates to the Set, excluding Verification Activities for the AMS software and has issued a System Verification Review certificate in accordance with section 3.8(b)(iii) of the SPR.

6. In Schedule 10, paragraph 1.5 is amended as follows:

- (m) the Supplier has rectified all Recurrent Defects in accordance with clause 14.3 or is diligently following a Confirmed Recurrent Defect Rectification Plan in accordance with clause 14.3(d); ~~and~~

(ma) the Set has successfully completed all Verification Activities for AMS, including AMS software testing and the Set complies with all requirements of the Project Agreements (including the SPR) in respect of AMS. The Supplier may utilise the AMS test track to complete such Verification Activities prior to the AMS Wayside Available Date; and

7. In Schedule 10, paragraph 1.6 is amended as follows:

- (g) the Supplier has rectified all Recurrent Defects in accordance with clause 14.3 or is diligently following a Confirmed Recurrent Defect Rectification Plan in accordance with clause 14.3(d); ~~and~~

(ga) each Set in the Continuous Production Fleet or the Non-continuous Production Fleet (as the case may be) is operating in service successfully using the AMS wayside equipment; and

8. In Schedule 11, table 1.2: "Progress Payments - Initial Fleet":

- (a) row "(c)" is amended as follows:

(c)	Detailed Design Review complete	The Supplier will be entitled to payment of this Progress Payment when the following conditions have been satisfied: <del>and</del>  (a) the Supplier has submitted all Technical Documents to TfNSW's Representative for	
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		<p><i>the Detailed Design Review Design Stage outlined in section 3.5 of the SPR;</i></p> <p><i>(b) each Submitted Document referred to in paragraph (a) above has been Confirmed; and</i></p> <p><i>(c) the Supplier has provided to TfNSW an original copy of the DTRS Significant Contract, duly executed by all parties to the DTRS Significant Contract.</i></p>	
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- (b) after row "(c)" the following row is inserted as a new row:

<u>(ca)</u>	<u>Final Design Review complete</u>	<u>The Supplier will be entitled to payment of this Progress Payment when the Supplier has completed the Final Design Review in accordance with section 3.5A of the SPR.</u>	
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9. In Schedule 14, Table 2.1(a)(i) - "Initial Fleet":

- (a) the row "Detailed Design Review complete" is amended as follows:

Detailed Design Review complete		
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- (b) after the row "Detailed Design Review complete" the following new row is inserted:

<u>Final Design Review complete</u>		
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10. In Schedule 14, paragraph 2.1(b) is amended as follows:

- (b) *Subject to TfNSW's rights under this deed, the Release Date for each Advance Payment Bond is:*
- (i) *for the bonds relating to the mobilisation payment, System Definition Review completion, ~~and~~ Detailed Design Review completion and Final Design Review completion, the Date of Provisional Acceptance of the 12th Set to achieve Provisional Acceptance; and*
- (ii) *for the other Advance Payment Bonds, on the Date of Provisional Acceptance of the Set in respect of which the corresponding Progress Payment was made.*

11. Section 2.11.1(a)(v) of the SPR is amended as follows:

- (v) *how the System Definition, Preliminary Design, ~~and~~ Detailed Design and the Final Design will be created as a consistent and logical extension of the Design Books.*

12. Section 2.11.2(f) of the SPR is amended as follows:

- (f) The Supplier must submit for Review the DOORS® database in \*.ReqIF or \*.RIF format, or another format agreed with TfNSW, to TfNSW with each Technical Package, and at any other time upon request by TfNSW.
13. Section 2.16.1(a)(viii) of the SPR is amended as follows:
- (viii) how the Supplier will verify compliance with the Detailed Design and the Final Design:
14. Section 3.2(a) of the SPR is amended as follows:
- (iv) Final Design Review: RSD-SPR-0793A
- ~~(iv)~~(v) Test Readiness Review; and RSD-SPR-0794
- ~~(v)~~(vi) System Verification Review. RSD-SPR-0795
15. Section 3.5(a) of the SPR is amended as follows:
- (i) Phase 6: Design and implementation' of EN 50126-1 has been completed, except for Technical Packages deferred to FDR;
- (ii) all required inputs to support completion of 'Gate 3 - For construction' of T MU AM 04001 PL have been Submitted and Confirmed (as applicable), except for Technical Packages deferred to FDR;
16. After section 3.5 of the SPR, a new section 3.5A is inserted as follows:
- 3.5A Final Design Review**
- (a) The Final Design Review must achieve the following: RSD-SPR-0844A
- (i) Phase 6: Design and implementation' of EN 50126-1 has been completed; RSD-SPR-0844B
- (ii) all required inputs to support completion of 'Gate 3 - For construction' of T MU AM 04001 PL have been Submitted and Confirmed (as applicable); RSD-SPR-0844C
- (iii) all Project Activities defined as required for FDR in the Project Plans have been completed; RSD-SPR-0844D
- (iv) all requirements of the Delivery Deed relating to FDR have been achieved; RSD-SPR-0844E
- (v) all Confirmed Project Plans are being maintained and complied with; RSD-SPR-0844F
- (vi) all Technical Documents and Project Plans required for FDR, including those defined in Appendix 07, have been provided as Submitted Documents and Confirmed (as applicable); RSD-SPR-0844G
- (vii) input from User Groups and other stakeholders has been addressed to the satisfaction of TfNSW; RSD-SPR-0844H

- (viii) the Final Design is a consistent and logical development of:
      - (A) to the extent a Technical Package submitted as part of the Final Design Review was submitted at Detailed Design Review, the Detailed Design; and RSD-SPR-0844I
      - (B) the Preliminary Design, System Definition the Design Books; and
    - (ix) all hazards have been mitigated SFAIRP by the design. RSD-SPR-0844J
  - (b) the Final Design Review will be complete when the Supplier has: RSD-SPR-0844K
    - (i) completed the Detailed Design Review in accordance with section 3.5(b): RSD-SPR-0844L
    - (ii) satisfied the requirements of section 3.5A(a); and RSD-SPR-0844M
    - (iii) submitted a Final Design Review certificate signed by an authorised representative of the Supplier who is accountable for technical authority under the AEO accreditation, stating that all the requirements of the Final Design Review have been achieved. RSD-SPR-0844N
- 17. Section 3.6(b)(i) of the SPR is amended as follows:
  - (i) completed the ~~Detailed~~ Final Design Review in accordance with section 3.5A(b);
- 18. Section 3.7(a)(vii) of the SPR is amended as follows:
  - (i) each of the Detailed Design and the Final Design have been realised;
- 19. Section 3.8(g)(iv) of the SPR is amended as follows:
  - (iv) all Technical Documents required to demonstrate design compliance with each of the specific and derived requirements under the SPR (PDR/DDR/~~FDR~~);
- 20. Section 3.8(g)(ix)(B) of the SPR is amended as follows:
  - (B) requirements and Technical Documents (DDR/~~FDR~~); and
- 21. Section 3.8(g)(x)(B) of the SPR is amended as follows:
  - (B) the Technical Documents including Verification Procedures, proposed to verify the requirement (~~E~~DDR); and
- 22. In SPR Appendix 2, section 2.20.1(c) is amended as follows:
  - (c) The design must permit a later conversion of each Set for Driver only operation with each Set able to be returned to service within 48 hours of the conversion commencement ~~excluding type testing~~.
- 23. In SPR Appendix 2, section 2.20.1(d) is amended as follows:
  - (d) For Driver only operation, it must be possible in normal operation to operate each Set without requiring the Driver to leave the Driver's seat at any time.
- 24. In SPR Appendix 2, section 2.20.1(f) is amended as follows:

- (f) CCTV coverage of all doors on any one side of each Set must be achieved while providing a reasonable number of clear, discernible images on the monitor(s) ~~of a 5th percentile and 95th percentile walking passenger entering and leaving each doorway of a small child of height 0.8m and a 95th percentile adult male~~ entering and leaving each doorway.
25. In SPR Appendix 2, section 2.20.1(h)(i) is amended as follows:
- (i) space allocation, or space allocation that will be provided by the future DOO conversion modification and wiring for one additional monitor on the Driver's Workstation;
26. In SPR Appendix 2, section 2.20.1(h)(ii) is amended as follows:
- (ii) space allocation, or space allocation that will be provided by the future DOO conversion modification and wiring for door control panels on the Driver's Workstation; and
27. In SPR Appendix 2, section 2.20.1(i)(ii) is amended as follows:
- (i) a concept design that utilises the TMS screen to present the CCTV at low speed when approaching / departing when stationary and departing from a platform and reverts back to the TMS screen at higher speeds.
28. In SPR Appendix 2, section 2.20.1(k) is amended as follows:
- (k) All other wiring, equipment space allocation or equipment necessary for conversion to Driver only operation must be provided except that the additional CCTV screen and additional or re-located controls will only be provided and fitted as part of the future conversion, and any additional wiring that are necessary for conversion to Driver only operation, which are not fitted at the outset, will be provided by Downer at no additional cost to TfNSW and will be installed within the 48 hour period referred to in section 2.20.1(c) of this Appendix 2.
29. In SPR Appendix 2, section 2.21.3(e) is amended as follows:
- (v) PEIs active; and
- ~~(vi) Train Radio on for escalation of PEI calls; and~~
- (vii) EDR.
30. In SPR Appendix 2, section 2.21.7(b) is amended as follows:
- (ii) moving the controller out of "Forward" or "Reverse"; or
- (iii) the driver signing out (to ensure the Set is not inadvertently left in Wash Mode).
- ~~(iv) Set speed exceeding 5km/h.~~
31. In SPR Appendix 2, section 3.11.7.1(b) is amended as follows:
- (b) The availability of the Crew EDR alerts for Inter-car Door EDRs must be configurable to operate in all operational states.
32. In SPR Appendix 2, section 3.14.1(e) is deleted.
33. In SPR Appendix 2, section 3.14(h) is amended as follows:
- (h) The CCTV system must record images from all cameras in all environmental conditions whenever the Set is not in Stabled State and be configurable to either

record or be disabled in Presentation State by maintainer action on request of TfNSW at no cost to TfNSW.

34. In SPR Appendix 2, section 3.15.4(b) is amended as follows:

- (b) ~~As part of Train Preparation the TMS must be powered up and the Driver and Guard prompted to input their personal codes into the TMS. Once logged in, the TMS must provide prompts to the Crew to complete Train Preparation. The Train Preparation routines must be initiated when selected by the Crew, only after first logging in to the TMS with their personal codes.~~

35. In SPR Appendix 2, section 3.19(b)(iii) is amended as follows:

- (iii) comply with TfNSW Onboard Requirements Specification 4153546 Ver 2.0 except that the system's emergency brake valve isolation cocks need not include a locking handle (requirement AMS\_OBR\_763) where located inside a lockable compartment to which the Train crew have access and unless otherwise agreed by TfNSW; and

36. In SPR Appendix 2, section 4.6.3.1(c) is deleted.

37. In SPR Appendix 2, section 6(b)(x) is amended as follows:

- (x) The ramps must be stored securely, rattle and noise free in cabinets locked with Access ~~1~~ 2 Security keys.

38. In SPR Appendix 2, Attachment A the graph entitled "1m/s/s Acceleration Crush Load Acceleration versus Speed for Various Gradients" is deleted.

39. In SPR Appendix 2, section 3.7.1(a)(ii)(A) is amended as follows:

- (A) initial acceleration, up to the same constant power as ~~L~~ Level 1, at 1 m/s<sup>2</sup>. Then a reduction from 1 m/s<sup>2</sup> to 0.8 m/s<sup>2</sup> as per the Baseline Product. The Level 2 performance graphs shall be provided to TfNSW for Review. This acceleration must be re-programmable to reduce from 1.0 m/s<sup>2</sup> to 0.8 m/s<sup>2</sup> at TfNSW's request;

40. In SPR Appendix 2, section 3.6.7(f)(v) is amended as follows:

- (v) testing is to be conducted (minimum of ~~5~~ 3 stops for each combination) at the following modes and speeds (+/- 5 km/h):

41. In SPR Appendix 2, section 3.6.7(f)(v) is amended as follows:

- (B) maximum EP (only) braking at 70 km/h and 100 km/h; and  
(C) maximum EP and Electric Braking at 70 km/h and 100 km/h; and  
~~(D) Drivers' brake valve application of the emergency brake at 70 km/h and 100 km/h/~~

42. In SPR Appendix 2, section 3.12.1(i) is amended as follows:

- (i) At Cab activation the Cab HVAC equipment must continue operation ~~at the previous control settings, and reset to a default setting that will prevent the switching on or off or operating one or more of the crew heater/s from affecting the operation and control of the passenger area Heating Ventilation and Air Conditioning system.~~

43. In SPR Appendix 2, section 3.14.1(d) is amended as follows:

- (d) On activation of a PEI, the CCTV system must display a camera with the view of the first PEI in the queue to a configurable combination of ~~Crew members~~ either Guard only, Driver only or both Driver and Guard. The configuration must be adjustable by the Maintainer at no cost to TfNSW or the Operator on request.
44. In SPR Appendix 2, section 4.5.6(c) is amended as follows:
- (c) Each Set must escalate a PEI call to the Train Radio to allow response by an appropriate Network Control Officer (signaller) in the event of Crew inactivity or lack of response after ~~120~~ a configurable period initially set to 90 seconds which can be configured by the ~~Operator~~ Maintainer at no cost to TfNSW or the Operator on request.
45. In SPR Appendix 2, section 4.5.6.1(e) is amended as follows:
- (e) If a PEI call remains unanswered by the Driver or Guard after a configurable period initially set to 30 seconds then an additional visual/audio alert must warn the Crew that the call will escalate in a configurable period initially set to 60 seconds. Time limits must be adjustable by the Maintainer at no cost to TfNSW or the Operator on request.
46. In SPR Appendix 2, section 4.6.5(c)(ii) is amended as follows:
- (ii) DVA input to PA system; ~~and~~.
47. In SPR Appendix 2, section 3.11.5(o) is amended as follows:
- (o) When closed, the Crew transverse doors and the surrounding end of the Car construction must provide smoke and fire protection to the minimum standard of integrity of 10 minutes when measured in accordance with AS 1530 Part 4. Where the Crew transverse door is not located at the end of a Car this requirement must apply only to the door and not to the surrounding Car construction.
48. In SPR Appendix 2, section 3.10(h) is amended as follows:
- (h) When using the auxiliary method, the time to raise all of the pantographs equipped with an auxiliary compressor must be less than 20 seconds.
49. In SPR Appendix 5, section 6.4.2(b) is amended as follows:
- (b) The Supplier must provide one (1) ~~two (2)~~ pony bogey~~ies~~. Hegenscheidt Model No. 08-1160 pony bogies must be provided unless the design of the Sets precludes the use of this model.
50. In SPR Appendix 7, the table appearing in section 2 is deleted and replaced with the table set out in Exhibit 1 to this Schedule 1.
51. In SPR Appendix 12, section 2, Table 2 is amended as follows:

52. In SPR Appendix 12, at the end of section 2, the following paragraph is inserted:

[REDACTED]

## Exhibit 1 - SPR Appendix 7 - Section 2

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPPR	Periodicity	Handover
<b>Project Management</b>														
Project Management Plan		S		C							C			
Organisation chart	S										S			
Delivery Program		C	S											
Register of Submitted Documents		S	S									S		
<b>Authorisation and Accreditation</b>														
Authorisation and Accreditation Plan				C							C			
Accreditation for design, construction, testing and commissioning of rolling stock				S										
Accreditation for maintenance, modification and refurbishment of rolling stock											S		A	
Accreditation Variation support documents				S							S			
AEO authorisation	S										S			
<b>Safety Assurance</b>														
Maintenance Facility Site Safety Assurance Report										C			V	

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPR	Periodicity	Handover
Set Design Safety Assurance Report				C	C	C	C							
Set Construction Safety Assurance Report						C								
Set Dynamic Testing Safety Assurance Report								C						
Set Safety Assurance Report										C			V	
TLS Phase Safety Assurance Report											C		V	C
Stakeholder Management														
Stakeholder Management Plan				C										
Quality Management														
Quality Plan				C							C		A	
Internal audit schedule			S									S	A	
Supplier hold points and witness points					S									
Workmanship quality standards						S					S			
Risk Management														
Risk Management Plan		S		C							C		A	
Project risk register		S	S									S	A	
Configuration Management														

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPR	Periodicity	Handover
Configuration Management Plan				C							C		A	
Configuration items					C						C			
Product configuration information						C	C				C			
Configuration audit reports										S	S	S	A	S
Work Health and Safety Management														
Safety Management Plan				C							C		A	
Safety Management System				S							S			
Safety performance reporting			S									S		
Incident and Security Management														
Incident and Security Management Plan						C					C		A	
Competency Management														
Training Management Plan				C							C		A	
Systems Engineering Management														
System Engineering Management Plan				C		C					C			
System requirement specifications				C							C		V	
Design Books														

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPPR	Periodicity	Handover
Operational concepts				C										
Brake performance calculations				C										
Architectural design description					C									
Human factors integration plan (HFIP)					C									
Human factors integration report						C	C							
Requirements management														
DOORS database			S	S	S	S	S	S	S		S		V	
Requirements Traceability Matrix (RTM)				C	S	C	C		C				V	
Reliability, Availability, Maintainability														
RAM Management Plan				C							S			
Preliminary RAM analysis				C										
RAM target apportionment					C									
System RAM requirements					C									
Reliability analysis and prediction						C	C				S	S		
System Safety Assurance														
System Safety Plan		S		C							C			

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPR	Periodicity	Handover
Preliminary hazard analysis				C										
Project hazard log		S	S	S	S	S	C	S		S	S		A	
System hazard & Safety risk analysis				C									V	
Safety target apportionment					C									
System Safety requirements					C									
Schedule of Safety Assurance deliverables						C								
Safety Interface Agreements							C				C		A	
<b>Electromagnetic Compatibility</b>														
EMC Management Plan				C										
Electromagnetic compatibility analysis report					C									
Power supply system compatibility analysis report					C									
Track detection systems compatibility analysis report					C									
Electromagnetic compatibility case									C					
Power supply system compatibility case									C					
Track detection systems compatibility case									C					

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPR	Periodicity	Handover
Manufacturing and Procurement														
Manufacturing and Procurement Plan				C							C			
Verification Management														
Verification Plan				C		C								
Verification Program		S	S			C								
Verification Procedures (static testing)							C	C						
Verification Procedures (dynamic testing)								C						
Verification Reports									C					
Verification matrix				C		C	C		C					
Vehicle Information Pack (T HR RS 00814 ST)								C						
Test notification								S						
Operational Readiness														
Operational Readiness Plan						C					C		V	
Training needs analysis						C					C		V	
Training packages									C		C		V	C

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPPR	Periodicity	Handover
Operations and Maintenance Manual for each key Asset (except Sets)									C		C			C
Set Maintenance Manual									C		C			C
Set Operating Manual									C		C			C
Set Cleaning Manual									C		C			C
<b>ICT Management</b>														
ICT Management Plan				C	C	C					C			C
<b>Asset Management</b>														
Asset Management Plan						C					C		A	C
Technical maintenance plans						C	C				C		A	C
Maintenance Works Program											C	S	A	
<b>Vandalism and Graffiti</b>														
Vandalism and Graffiti Management Plan				C		C					C			
<b>Environment and Sustainability Management</b>														
Environment and Sustainability Management Plan				C							C			

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPR	Periodicity	Handover
<b>Technical Submissions</b>														
Technical Packages (including Technical Reports and Technical Documents) except those Technical Packages allocated to FDR in this Appendix.				C	C	C			C				V	
Mock-ups and prototypes						C								
Stakeholder engagement report				C	C	C	C				C			
Escrow deposits										S				
Schedule of finishes						C								
Schedule of decals						C								
Data interchange formats					C						C			
Train System Technical Package						C	C							
Body Structure Technical Package						C								
Body Interior Technical Package						C								
Comms and Surveillance System Technical Package						C								
Electronic Train Information System Tech. Package						C								
Lighting Technical Package						C								
Traction and Main Power Technical Package						C								

DELIVERABLE	Contract Award	Mobilisation	DPPR	SDR	PDR	DDR	FDR	TRR	SVR	Acceptance	TLS Phase	TLSPPR	Periodicity	Handover
Brake Component Technical Package						C								
Driver Only Operation Technical Package						C								
ICT Shore Technical Package						C								
AMS Hardware Technical Package						C								
AMS Software Technical Package							C							
Battery Management System Technical Package							C							
ICMS Technical Package							C							
<b>Reporting</b>														
Delivery Phase Progress Report			S											
TLS Phase Performance Report												S		

# Sydney Growth Trains Project Delivery Deed - Deed of Amendment No. 2

TfNSW

RailCorp

Supplier

Clayton Utz  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806  
Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
[www.claytonutz.com](http://www.claytonutz.com)

Our reference 18022/80172419

# Deed of Amendment

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## Dated

## Parties

Transport for NSW ABN 18 804 239 602 (TfNSW)

Rail Corporation New South Wales ABN 59 325 778 353 (RailCorp)

Downer EDI Rail Pty Limited ABN 92 000 002 031 (Supplier)

## Background

- A. TfNSW, RailCorp and the Supplier are parties to a contract entitled "Sydney Growth Trains Project - Delivery Deed, Contract Number: ISD-16-5312A" dated 1 December 2016 (**Delivery Deed**).
- B. TfNSW, RailCorp and the Supplier agreed to amend the Delivery Deed by the "Sydney Growth Trains Project Delivery Deed - Deed of Amendment No.1" dated 15 September 2017.
- C. The parties have agreed to further amend the Delivery Deed as set out in this deed.

## Operative provisions

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### 1. Definitions and interpretation

Unless otherwise expressly defined in this deed, words and expressions used in this deed have the meanings given to them in the Delivery Deed, and:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) a references to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (i) **includes** in any form is not a word of limitation; and
- (j) a reference to **\$** or **dollar** is to Australian currency.

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## **2. Binding effect of this deed**

- (a) Each party acknowledges that this deed may be relied on and enforced by each other party.
- (b) This deed binds the parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of a party and any third party to whom a party's rights and obligations under the Delivery Deed are novated either in whole or in part.

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## **3. Amendments to the Delivery Deed**

### **3.1 Amendments**

The Delivery Deed is amended as set out in Schedule 1.

### **3.2 Not a Variation**

This deed itself, and the amendments to the Delivery Deed made by this deed, do not constitute a "Variation" within the meaning of clause 1.1 of the Delivery Deed.

### **3.3 No entitlement**

Except as expressly set out in this deed, the Supplier will not be entitled to make, and neither TfNSW or RailCorp will be liable upon, any Claim arising out of or in any way in connection with the subject matter of this deed.

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## **4. Miscellaneous**

### **4.1 Governing law**

This deed is governed by and must be construed according to the law governing the Delivery Deed.

### **4.2 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 any other party to give effect to this deed.

### **4.3 Expenses**

Except as otherwise provided in this deed each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed.

### **4.4 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

### **4.5 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

#### **4.6 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, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

**Executed as a deed**

**Signed sealed and delivered** for and on behalf of **Transport for NSW ABN 18 804 239 602** by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Name of authorised delegate

**Signed sealed and delivered** for and on behalf of **Rail Corporation New South Wales ABN 59 325 778 353** by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Name of authorised delegate

**Executed by Downer EDI Rail Pty Ltd ABN 92 000 002 031** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director

## Schedule 1 - Amendments to Delivery Deed

1. In Schedule 27, clause 1, after row 2, the following is inserted as a new row:

Item no.	Reference	Amendments
2A	Clause 1.1	<p>Insert new definitions of [REDACTED] and [REDACTED] as follows:</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

2. In Schedule 27, clause 1, after row 10, the following is inserted as a new row:

Item no.	Reference	Amendments
10A.	Clause 1.1	<p>Insert a new definition of "AMC Access Prevention" as follows:</p> <p>[REDACTED]</p>

3. In Schedule 27, clause 1, after row 11, the following is inserted as a new row:

Item no.	Reference	Amendments
11A.	Clause 1.1	<p>Insert a new definition of [REDACTED] as follows:</p> <p>[REDACTED]</p>

4. In Schedule 27, clause 1, row 24 is deleted and replaced with the following:

Item no.	Reference	Amendments
24	Clause 24.1	<p>Clause 24.1 is amended as follows:</p> <p><b>24.1 Qualifying Causes</b></p> <p><i>Each of the following events is a <b>Qualifying Cause</b>:</i></p>

		<p>[...]</p> <p>(d) any blockade or embargo, other than a blockade or embargo which only affects the Supplier and/or one or more of the Supplier's Subcontractors;</p> <p><del>(e)</del> an MF Works Delay Event; or</p> <p><del>(f)</del><u>(e)</u> an act or omission by TfNSW, RailCorp, the Operator or another NSW Rail Entity not being an act or omission:</p> <ul style="list-style-type: none"> <li>(i) expressly permitted or allowed by a Project Agreement;</li> <li>(ii) which is within a timeframe expressly permitted or allowed by a Project Agreement;</li> <li>(iii) which is caused or contributed to by a breach by the Supplier of a Project Agreement or any negligent or unlawful act or omission of the Supplier or its Associates; or</li> <li>(iv) being the exercise by TfNSW, RailCorp, the Operator or another NSW Rail Entity of any of its statutory functions or powers; <del>or</del> <u>or</u></li> </ul> <p><u>(f)</u> an AMC Access Prevention.</p>
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**SYDNEY GROWTH TRAINS PROJECT DELIVERY DEED -  
EXTRACT OF DEED OF AMENDMENT No 3**

**Parties**

Name	<b>Downer EDI Rail Pty Limited</b>
ABN	<b>92 000 002 031</b>
Description	<b>Supplier</b>

Name	<b>Transport for NSW</b>
ABN	<b>18 804 239 602</b>
Description	<b>TfNSW</b>

Name	<b>Rail Corporation New South Wales</b>
ABN	<b>59 325 778 353</b>
Description	<b>RailCorp</b>

## **1. Definitions and Interpretation**

### **1.1 Definitions**

In this Deed (including the Background):

- (a) any word, expression, reference or term used in this Deed which is defined in the Delivery Deed and is not specifically defined in this Deed shall, unless the context otherwise indicates, have in this Deed the same meaning as in the Delivery Deed; and
- (b) each term set out below has the meaning given to it in this clause.

**Deed** means this document, including all schedules.

**Delivery Phase Activities** means, for the purposes of this Deed, all things or tasks which the Supplier is, or may be, required to do under the Delivery Deed to design, develop, manufacture, test, commission, commission and supply the Assets.

**DPPR** has the meaning given in section 5.1 of the SPR.

**Effective Date** means:

- (a) if counterparts of this Deed are not used, the date upon which all parties have signed the Deed; or
- (b) if counterparts of this Deed are signed, the date upon which the final counterpart is exchanged between the parties.

**First Option Fleet** means the Option Sets ordered by TfNSW on behalf of RailCorp by way of Option Set Notice dated 6 February 2019.

**GST** has the meaning given to that term in the GST Act.

**GST Act** means the *A New Tax Systems (Goods and Services) Act 1999* (Cth).

**Integrated Test Facility** or **ITF** means the facility operated by the Supplier at Level 3, T1, Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113.

**Related Body Corporate** means, in relation to a body corporate, a body corporate which is related to it within the meaning of section 50 of the Corporations Act 2001 (Cth).

**Related Person** means in respect of each of TfNSW, RailCorp or the Supplier, any past, present or future officer, employee, servant or agent or Related Body Corporate of TfNSW, RailCorp or the Supplier, as the case may be.

**TLS Phase Activities** means, for the purposes of this Deed, all things or tasks which the Supplier is, or may be, required to do under the TLS Deed to comply with its obligations under the TLS Deed, including the Maintenance Services and the Technical Services, but excluding the Delivery Phase Activities.

## 1.2 Interpretation

In the interpretation and application of this Deed, unless the context otherwise requires:

- (a) any reference to the background, or any schedule, attachment or exhibit, is a reference to that thing which is part of this Deed;
- (b) in calculating any period of time commencing from a particular day, the period commences on the following day and the following day counts as part of that period;
- (c) where an expression, word or phrase is given a particular meaning, then other parts of speech based on that expression, word or phrase and other grammatical forms of that expression, word or phrase, have corresponding meanings;
- (d) the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the party which put the document forward, does not apply;
- (e) a reference to this Deed or any other agreement, arrangement or document, includes any variation, novation, supplementation or replacement of them;
- (f) where an expression is defined anywhere in this Deed, it has the same meaning throughout;
- (g) a reference to any gender includes all genders;
- (h) headings are for convenience of reference only and do not affect interpretation;
- (i) a mention of anything after include, includes or including, does not limit what else might be included;
- (j) if an example is given of anything, including an example of a right, obligation or concept, the example does not limit the scope of that thing;
- (k) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision;
- (l) a reference to dollars or \$ is to an amount in Australian currency;
- (m) the singular includes the plural and vice versa;
- (n) a reference to any party to this Deed or to any other document or arrangement, includes that party's legal personal representatives, substitutes (including, without limitation, any person taking by novation), successors and permitted assigns;
- (o) a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, state, government, or government or quasi-government body;
- (p) a reference to anything (including any amount) is a reference to the whole or any part of it (except that nothing in this provision excuses a party from performing the whole of an obligation just because they have performed part of the obligation);
- (q) an agreement, undertaking, representation or warranty by or in favour of two or more persons, binds or is for the benefit of all of them jointly and each of them individually; and
- (r) unless otherwise expressly stated in this Deed, all prices or other sums payable or consideration to be provided under this Deed are exclusive of GST.

## 2. Amendments to the Delivery Deed

The Delivery Deed is amended as set out in Schedule 1.

## 4. Option Sets Variation Order

- (a) Prior to the Effective Date, in accordance with clause 20.2 of the Delivery Deed, TfNSW on behalf of RailCorp gave the Supplier an Option Set Notice dated 6 February 2019.
- (b) This Deed constitutes a Variation Order issued by TfNSW's Representative in accordance with clause 21.4 of the Delivery Deed pursuant to which the Supplier is instructed to implement each of the following Variations that have been implemented on the Initial Fleet, to the First Option Fleet:

### Variations

DD007	Branding Revisions
DD001	Guards Seat
DD004	Drivers' Desk Dash Brow
DD002	Rotary Type Crew Controls Backlighting
DD003	Traction Interlock Bypass (Key Switch Cover)
DD006	Crew Cab Camera
DD008	Text to Voice
VO 008	Schedule 26 Spares Variation
	Total =

- (c) The parties agree that the Variation Costs of the Variations referred to in clause 4(b) in respect of the First Option Fleet is the lump sum amount

## Schedule 1 – Amendments to the Delivery Deed

### 1. Application of this Schedule

With effect on and from the Effective Date, the Delivery Deed is varied by deleting those provisions marked in strike out (to the extent so marked) and inserting those provisions marked in underline (to the extent so marked) as set out in this Schedule 1.

### 2. Amendments to the Delivery Deed

#### 2.1 Clause 1.1

- (a) A new definition of "Defect Free Running Report" is included after the definition of "Defect", as follows:

**Defect Free Running Report** means, in respect of each Set, a report demonstrating satisfaction of the requirement of paragraph (f) of the Provisional Acceptance Criteria.

- (b) A new definition of "Initial Fleet Variations" is included after the definition of "Initial Fleet Set Price", as follows:

**Initial Fleet Variations** means all Variations implemented on the Initial Fleet on or before the Date of Provisional Acceptance of the last Set in the Initial Fleet.

- (c) The definition of "Option Set Order Date" is amended as follows:

**Option Set Order Date Range** means, in respect of each Option Set, the date range identified in the column entitled "Option Set Order Date Range" in the relevant table set out in paragraph 2 of Schedule 9.

#### 2.2 Clause 14.1

Clause 14.1 is amended as follows.

##### 14.1 Provisional Acceptance

- (a) Subject to clause 14.1(aa), ~~The Supplier must present each Set for Provisional Acceptance by TNSW's Representative at the Maintenance Facility Site:~~

- (i) ~~no later than the date specified in the Delivery Program; and~~
- (ii) ~~in sufficient time for the Set to reach Provisional Acceptance no later than its Date for Provisional Acceptance.~~

- ~~(aa) The Supplier must not present a Set for Provisional Acceptance at the Maintenance Facility Site until:~~

- (i) the Supplier has submitted a Defect Free Running Report to TNSW for Review; and
- (ii) the Defect Free Running Report is Confirmed

2.3 Clause 20.4

(a) Clause 20.4 is amended as follows:

**20.4 Non-continuous production Option Sets**

- (a) Without limiting clause 20.3, RailCorp (or TfNSW on behalf of RailCorp) may exercise its option to purchase any Option Set by giving an Option Set Order Notice to the Supplier within or before the relevant Option Set Order Date Range for the relevant Option Sets set out in the table in paragraph 2.2, 2.3, 2.4 or 2.5 of Schedule 9.
- (b) If RailCorp (or TfNSW on behalf of RailCorp) gives an Option Set Notice to the Supplier within or before the relevant Option Set Order Date Range set out in the tables in paragraph 2.2, 2.3, 2.4 or 2.5 of Schedule 9, the Supplier must design, develop, manufacture, test, commission, supply and deliver each Option Set and each Spare and Special Tool the subject of an Option Set Notice pursuant to the terms of this Deed
- (c) RailCorp (or TfNSW on behalf of RailCorp) may give one or more Option Set Notices pursuant to clause 20.4 whether or not an Option Set Notice has been given pursuant to clause 20.3.

2.4 Clause 20.5

(a) Clause 20.5 is amended as follows:

**20.5 Minimum and maximum number of Option Sets**

The parties acknowledge and agree that should RailCorp (or TfNSW on behalf of RailCorp) exercise one or more options to purchase Option Sets pursuant to either or both of clause 20.3 and clause 20.4, the total number of Option Sets purchased in each instance will,

- (a) in the case of the Option Sets referred to in the tables in paragraphs 2.3 and 2.4 of Schedule 9, in each instance will,
  - (i) not be less than 8 Option Sets; and
  - (ii) not be more than 14 Option Sets.
- (b) otherwise, in each instance will not be less than 15 Option Sets; and
- (c) in the aggregate, will not exceed 7745 Option Sets.

2.5 Clause 20.7

(a) A new clause 20.7 is inserted as follows:

**20.7 Option Sets to include Initial Fleet Variations**

The parties acknowledge and agree that should RailCorp (or TfNSW on behalf of RailCorp) exercise one or more options to purchase Option Sets pursuant to clause 20.4 after the Date of Provisional Acceptance of the last Set in the Initial Fleet.

- a) such Option Sets will be designed, developed, manufactured, tested, commissioned, supplied and delivered with all Initial Fleet Variations; and
- b) the Option Fleet Set Price for such Option Sets is inclusive of all Variation Costs associated with the Initial Fleet Variations.