Sydney Growth Trains Project

TLS Deed

TfNSW

RailCorp

Supplier

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Our reference 13647/80172419
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TLS Deed

Date 1 December 2016

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 intends to introduce changes to the timetable for rail passenger services in New South Wales during, or prior to, 2018.
B. In order to achieve the intended timetable changes, TfNSW has agreed (on behalf of RailCorp and the Operator) to procure new passenger Sets and other related Assets.
C. TfNSW, RailCorp and the Supplier have entered into the Delivery Deed, pursuant to which the Supplier will design, develop, manufacture, test, commission, supply and deliver the Sets and other related Assets.
D. RailCorp owns the Sets and the other Assets and the Operator operates the Sets.
E. The Supplier has also agreed to design, construct, commission and hand-over the MF Works under the MF Works Deed.
F. The Supplier has agreed:
   (a) to equip, maintain and operate a maintenance facility for the maintenance of the Sets; and
   (b) to undertake planned and unplanned maintenance of the Sets and other related Assets, including rectifying defects, providing through life support and Spares,
all in accordance with this deed.

Agreed terms

1. Interpretation
1.1 Definitions
In this deed, unless the context otherwise requires, the following expressions have the following meanings:

Accreditation means accreditation (including provisional accreditation) in accordance with the requirements of the Rail Safety National Law, including any regulation, guidelines or ordinance made pursuant to the Rail Safety National Law.

Accredited Person means each of the Operator and the NSW Rail Entities.

ACICA has the meaning given in paragraph 1.4(c)(ii) of Schedule 8.

ACICA Arbitration Rules has the meaning given in paragraph 1.7(a) of Schedule 8.
ACICA Expedited Arbitration Rules has the meaning given in paragraph 1.7(a) of Schedule 8.

Actual Conditions means the requirements and conditions of the Planning Approval.

Actual Delivery Time means, in respect of a Set, the actual time at which the Set is made ready by the Supplier for Train Preparation in relation to the applicable Availability Period.

Additional Required Availability means:

(a) in respect of the Royal Easter Show, the number of additional Available Sets for each Availability Period during the Royal Easter Show set out in the column titled 'Royal Easter Show' in the table in Schedule 28 relevant to the number of Operational Sets;

(b) in respect of New Year's Eve, the number of additional Available Sets for each Availability Period during New Year's Eve set out in the column titled 'New Year's Eve' in the table in Schedule 28 relevant to the number of Operational Sets;

(c) in respect of an Additional Special Event, the number of additional Available Sets for each Availability Period during an Additional Special Event set out in the column titled 'Additional Special Event' in the table in Schedule 28 relevant to the number of Operational Sets; and

(d) in respect of an Availability Period for which the Supplier must provide Additional Required Availability under clause 16.10(b), the number of additional Available Sets which the Supplier must provide during that Availability Period.

Additional Special Event means an event comprising up to 4 consecutive Availability Periods nominated by TfNSW under clause 16.9(b).

Affected Party means a party affected, or which alleges that it is affected, by a Force Majeure Event.

Air Pollution means the emission into air of any air impurity including smoke, dust, cinders, solid particles of any kind, gases, fumes, mists, radioactive substances which is:

(a) harmful to (or is likely to be harmful to) a person who is on or outside any Maintenance Location; or

(b) breaches any Environmental Law.

Alert Event means an actual or likely event or circumstance which arises or could arise because of the TLS Phase Activities and which may interfere with or threaten:

(a) the use of RailCorp Land for railway purposes or the operation of RailCorp's Facilities;

(b) the safe operation of the Railway;

(c) the operational capacity or efficiency of the Railway; or

(d) the future safe operation of the Railway or the future operational capacity or efficiency of the Railway.

including any event or circumstance which has or is likely to have a material detrimental effect on:

(e) the Railway, RailCorp's Facilities or any RailCorp Land;
(f) the safety of the Railway passengers, station patrons, or representatives of TfNSW or the Operator; or

(g) the operation of the Railway.

**AMC** means the train maintenance facility known as the "Auburn Maintenance Centre" located at 154 Manchester Road, Auburn New South Wales 2144.

**Anticipated Conditions** means the example conditions set out in Schedule 10.

**Applicable Cure Period** has the meaning given in clause 28.3(c)(i).

**Approval** means any licence, permit, consent, approval, determination, certificate or exemption from or by any Authority or under any Mandatory Requirement which must be obtained or satisfied (as the case may be):

(a) to perform the TLS Phase Activities; or

(b) for the Operator or another NSW Rail Entity to perform, or continue to perform, their respective Operations Functions,

but does not include:

(c) any direction given by TfNSW's Representative pursuant to a Project Agreement; or

(d) the exercise by TfNSW of its rights under a Project Agreement.

**Approved Cure Plan** has the meaning given in clause 28.3(c).

**Approved Mitigation Plan** has the meaning given in clause 28.4(c).

**Arbitration Expedition Notice** has the meaning given in paragraph 1.7(b)(i) of Schedule 8.

**Asset** means each of:

(a) the Sets; and

(b) the Maintenance Facility Equipment; and
the Maintenance Facility,

and includes all Special Tools, Spares, Consumables and other chattels forming part of the TLS Phase Activities or used by the Supplier or its Subcontractors for the purposes of carrying out the TLS Phase Activities.

**Asset Condition Assessment** means the regular assessment of the condition of the Assets described in section 2.18.1 of the SPR.

**Asset Condition Bond** has the meaning in paragraph 2.2(a) of Schedule 17.

**Asset Information System** or **AIS** means the system for the storage, processing, transmission and management of Asset information as referred to in section 2.18.3 of the SPR.

**Asset Management Failure** has the meaning given in clause 17.2(b).

**Asset Management Plan** means the Project Plan of that name, an initial version of which was developed by the Supplier and included in SPR Appendix 11.

**Asset Management System** means the Asset management arrangements, initially developed by the Supplier under the Delivery Deed, and updated from time to time by the Supplier in accordance with the requirements of this deed.

**Asset Standards Authority** or **ASA** means that body within TfNSW known as the 'Asset Standards Authority' with the objectives, functions, powers and governance as described in its charter, a copy of which can be found at www.asa.transport.nsw.gov.au.

**Associate** means, in relation to a person that is a corporation, any Related Body Corporate of that person and any of their respective officers, employees, agents, contractors, consultants, nominees, licensees or advisors and:

(a) in the case of the Supplier, it includes the Supplier's Subcontractors and their respective officers, employees, agents, contractors, consultants, nominees, licensees or advisors (but does not include TfNSW or any of its officers, employees, agents, contractors, consultants, nominees, licensees or advisors);

(b) in the case of TfNSW, it includes the State, the Operator, each other NSW Rail Entity controlled by the Secretary of Transport for NSW, each other entity controlled by the Secretary of Transport for NSW and, in each case, their respective officers, employees, agents, contractors, consultants, nominees, licensees or advisors (but does not include the Supplier or any of its officers, employees, agents, contractors, consultants, nominees, licensees or advisors);

(c) in the case of the State, it includes:

(i) the Minister for Transport and Infrastructure;

(ii) the Secretary of Transport for NSW; and

(iii) any other person to whom the State delegates a right, power, function or duty from time to time,

but only insofar as each is acting in connection with the Project and does not include the Supplier or its officers, employees, agents, contractors, consultants, nominees, licensees or advisors.

The Environmental Representative is not an Associate of any party.

**Audit Asset** has the meaning given in clause 17.3(c)(i).
Authorisation and Accreditation Plan means the Project Plan of that name.

Authorised Engineering Organisation or AEO means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering organisation status by the Asset Standards Authority.

Authority means:
(a) any governmental, semi-governmental or local-government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality, body, or any other similar entity having jurisdiction in relation to the TLS Phase Activities; or
(b) any other person having a right to impose a requirement, or whose consent is required under any Mandatory Requirements, with respect to any part of the TLS Phase Activities.

Available and Availability have the meaning given in clause 16.3.

Available Set means a Set that is Available.

Availability Payment means, in respect of a month, the availability payment for that month calculated in accordance with paragraph 2 of Schedule 15, as adjusted in accordance with this deed.

Availability Period or AP means:
(a) a Weekday AM Availability Period;
(b) a Weekday PM Availability Period; or
(c) a Weekend Availability Period.

AWE Indexed means, with respect to an amount, the amount must be adjusted in accordance with the indexation process detailed in clause 1.15(b).

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

Bank Bill Rate means, in respect of a period, the rate, expressed as a yield per cent per annum (rounded up, if necessary, to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.10 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 10.30 am, then the Bank Bill Rate will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

Base Case Cost Model means the cost model described in paragraph 1.1 of Schedule 19 as varied from time to time in accordance with paragraph 2 of Schedule 19.

Baseline Environmental Site Assessment means a baseline environmental Contamination report:
(a) procured by TfNSW in accordance with paragraph 2.2 of Schedule 9 for the purpose of determining the nature and extent of Contamination or Pollution existing on, in or under the Maintenance Facility Site prior to the date the Supplier
is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities;

(b) prepared in accordance with the Environmental Guidelines;

(c) prepared by a Site Auditor or an accredited contaminated land consultant approved by TfNSW (such approval not to be unreasonably withheld);

(d) which contains the following information:

(i) the condition of the Maintenance Facility Site, including through documentation of ground surfaces and groundwater;

(ii) identifies and documents past and present sources of potential Contamination;

(iii) defines the nature and extent of Contamination across the Maintenance Facility Site to establish a Contamination baseline;

(iv) assesses the suitability of the Maintenance Facility Site for industrial land use; and

(v) establishes a network of groundwater monitoring wells for the routine monitoring program, targeting up-gradient, operational and down gradient issues;

(e) which includes, as part of the report, a 'Sampling, Analysis and Quality Plan' prepared in accordance with the Environmental Guidelines, and provided to TfNSW for endorsement prior to the commencement of field investigations; and

(f) complies with any other reasonable requirements or directions of TfNSW.

Baseline Pre Existing Contamination means Contamination which the Baseline Environmental Site Assessment expressly identifies as being present in, on or under the Maintenance Facility Site (as relevant) at the date of the Baseline Environmental Site Assessment.

Business Day means any day in New South Wales that:

(a) is not a Saturday, Sunday or public holiday; and

(b) does not fall during the period:

(i) commencing on the Monday before 24 December in any given year; and

(ii) ending on the Friday following 1 January of the following year.

Car means a single vehicle which forms part of a Set.

Certificate of Readiness means a certificate in the form set out in Form 1 in Schedule 25.

Change in Control means, in respect of an entity, any event which occurs such that a change occurs in the Control of that entity.

Change in Disability Law means a Change in Law the terms of which relate to the ability of persons to access and use the Sets.

Change in Law means:

(a) the amendment, repeal or change of a Law existing at the date of this deed;
one of the following occurs after the Planning Approval is granted:

(i) the modification of the Planning Approval under the EP&A Act;

(ii) the issue of a new Approval under the EP&A Act in respect of the Maintenance Facility Site in substitution for or replacement of the Planning Approval; or

(iii) the modification of any such new Approval under the EP&A Act;

(c) the enactment of a new Law; or

(d) a change in the interpretation or application of a Law brought about by:

(i) the amendment, repeal or change of another Law existing at the date of this deed; or

(ii) the enactment of a new Law,

which directly affects the interpretation or application of the first mentioned Law,

but excluding any such amendment, repeal, change or enactment of a Law which, as at the date of this deed:

(e) was published or of which public notice had been given (even as a possible amendment, repeal, change or enactment); or

(f) a party experienced and competent in the delivery of works and services similar to the Delivery Phase Activities and the TLS Phase Activities (as applicable) would have reasonably foreseen or anticipated,

in substantially the same form as the amendment, repeal, change or enactment eventuating after the date of this deed.

Change in Railway Law means a Change in Law the terms of which apply to the rail industry, and not to any other industry.

Change in Rail Industry Standards means a change to a Rail Industry Standard coming into effect or implementation, after the date of this deed.

Claim includes any claim, action, demand or proceeding including any claim, action, demand or proceeding:

(a) under, arising out of, or in any way in connection with, any Project Agreement;

(b) arising out of, or in any way in connection with the Project, the Project Activities or either party's conduct prior to the date of this deed; or

(c) otherwise at law or in equity, including:

(i) by statute;

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

(iii) for restitution, including restitution based on unjust enrichment.

Claim Event has the meaning given in clause 47.1(a).

CLM Act means Contaminated Land Management Act 1997 (NSW).
Collateral Warranty Deed Poll means a deed poll in the form set out in Schedule 22.

Commencement Date means the date on which all Conditions Precedent have been satisfied or waived.

Commercially Sensitive Information means information identified in or of the type referred to in Schedule 2.

Commonwealth means the Commonwealth of Australia.

Completion Documents means:
(a) the Delivery Deed;
(b) the MF Works Deed;
(c) a Parent Guarantee given by the Guarantor in the form set out in Schedule 21;
(d) a parent guarantee given by the Guarantor in the form set out in Schedule 16 to the Delivery Deed;
(e) a certified copy of the Subcontract between the Supplier and CRRC Changchun Railway Vehicles Co. Ltd;
(f) evidence that the Supplier has the required Accreditation for all TLS Phase Activities;
(g) evidence of the Supplier’s AEO status; and
(h) any other document that the parties agree in writing from time to time is a Completion Document.

Condition Audit has the meaning given in clause 17.3(a).

Condition Auditor has the meaning given in clause 17.3(a).

Conditions Precedent means the conditions set out in Schedule 1.

Confirmed means, in relation to a document that must be submitted for Review, that the document has been submitted for Review and has been returned marked by the Reviewing Party with a statement ‘No comment’ in accordance with the Review Procedures or is deemed under the Review Procedures to have been returned marked ‘No comment’. Confirmed Document will be interpreted accordingly.

Confirmed Technical Document means a Technical Document that is a Confirmed Document.

Consumable means a consumable Spare or any other consumable materials required to support the maintenance, repair or overhaul of any Asset.

Contaminated and Contamination have the meaning given to those terms in the CLM Act.

Continuous Production Fleet has the meaning given in the Delivery Deed.

Contract Information means Existing Contract Information and New Contract Information.

Contract Term means the period beginning on the Commencement Date and ending on the End Date.

Control has the meaning given in the Corporations Act.
Controlling Entity means an entity that Controls another entity.

Corporations Act means the Corporations Act 2001 (Cth).

CPI Indexed means, with respect to an amount, the amount must be adjusted in accordance with the indexation process detailed in clause 1.15(a).

Crew has the same meaning as the expression Train Crew.

Cure Plan means a Draft Cure Plan or an Approved Cure Plan.

Customers means passengers and all other users and potential users of:

(a) the Network; or

(b) services and facilities associated with the Network.

CW Activities has the meaning given in paragraph 3.2(a)(iA) of Schedule 9.

Danger Zone means the danger zone as defined by the Network Rules.

Date of Fleet Acceptance has the meaning given in the Delivery Deed.

Date of MF Completion has the same meaning as "Date of Completion" under the MF Works Deed.

Date of Provisional Acceptance of a Set means the date identified in a Provisional Acceptance Certificate issued by TfNSW under the Delivery Deed as the date on which Provisional Acceptance of the Set was achieved.

Day One Clause means each of clauses 1 (Interpretation), 2 (Conditions Precedent), 4 (Objectives, primary obligations and risk allocation), 5.1 (TfNSW's Representative), 5.2 (Appointees of TfNSW's Representative), 5.3 (Directions by TfNSW's Representative), 5.5 (Supplier's Representative), 5.6 (Liability for actions of Supplier's Representative), 8.13 (Key Personnel), 10 (Information Documents), 19 (Project Security), 36 (Representations and warranties), 37 (Dispute resolution), 38 (Records, reporting obligation and privacy), 39 (Disclosure, confidentiality, probity and publicity), 40 (Restrictions on Dealings), 41 (Change in ownership / Control), 42 (Subcontracting), 48 (Notices), 50.2 (Taxes other than GST and duties), 51 (General), Schedule 8 (Dispute Resolution Procedures) and Schedule 17 (Project Security).

Deed of Disclaimer means the Deed Poll titled 'Schedule D6 Deed of Disclaimer', executed by the Supplier on 28 July 2016 in favour of TfNSW and RailCorp.

Default Notice has the meaning given in clause 28.2.

Default Rate means, in respect of a period, a rate equivalent to ☐ per annum above the Bank Bill Rate for that period.

Defect means any:

(a) defect, deficiency, shrinkage, fault or omission in an Asset;

(b) other aspect of an Asset which is not in accordance with the requirements of this deed; or

(c) physical damage to an Asset resulting from any such defect, deficiency, shrinkage, fault, omission or non-compliance.

Defect Rectification Principles means rectifying Defects in a manner that:
(a) as far as practicable, minimises:

(i) Life Cycle Cost;
(ii) any adverse impact on the performance of other Maintenance Services by the Supplier;
(iii) any adverse impact on the Availability or performance of Sets; and
(iv) any instances where works are performed outside the Time to Complete; and

(b) is consistent with Good Industry Practice.

Defects Expert has the meaning given in clause 15.6(e).

Defects Expert's Report has the meaning given in clause 15.6(g).

Deliverable means any works, product, software, documentation (including Technical Documents, Technical Packages and Variations) or any other item (excluding any Asset) or any service to be provided by or on behalf of the Supplier pursuant to a Project Agreement.

Delivery Deed means the deed entitled "Sydney Growth Trains - Delivery Deed" between TfNSW, RailCorp and the Supplier, dated on or about the date of this deed.

Delivery Deed Option refers to the term "Option" as defined in the Delivery Deed.

Design Book has the meaning given in the Delivery Deed.

Design Development Process has the meaning given in the Delivery Deed.

Delivery Phase has the meaning given in the Delivery Deed.

Delivery Phase Activities has the meaning given in the Delivery Deed.

Design Life of an Asset means the period of serviceable use for which it has been designed or any longer period specified in the SPR or this deed (as applicable).

Development Consent has the same meaning as in section 4 of the EP&A Act.

Difference in Conditions means:

(a) Actual Conditions to the extent these are not contemplated by, or are different to, the Anticipated Conditions; or

(b) TfNSW has not:

(i) obtained the Operations Planning Approval pursuant to clause 2.3 of the MF Works Deed on or before the date that is 20 Business Days prior to the TLS Start Date.

Discriminatory Change in Law means a Change in Law the terms of which apply to the:

(a) Project, and not to other rolling stock or rolling stock maintenance projects procured by the State;
(b) Supplier, and not to other persons; or
(c) Maintenance Facility Site, and not to other land.

**Dispute** means any dispute, difference or controversy under or in connection with any Project Agreement or the Project.

**Dispute Resolution Procedures** means the procedures for hearing and resolving Disputes set out in clause 37 and Schedule 8.

**Distance Based Payment** has the meaning given in Schedule 15.

**Draft Cure Plan** has the meaning given in clause 28.3(a).

**Draft Mitigation Plan** has the meaning given in clause 28.4(a).

**EEO Act** means the *Energy Efficiency Opportunities Act 2006* (Cth).

**Emissions and Energy Data** means any data, information, records and reports required to be kept or provided under the NGER Legislation or any other Legal Requirement concerning:

(a) greenhouse gas emissions, energy production or energy consumption;

(b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; or

(c) environmental emissions or energy production, use, consumption or efficiency, in connection with the TLS Phase Activities.

**End Date** has the meaning given in clause 3.2.

**Environment** includes all aspects of the surroundings of human beings including:

(a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;

(b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and

(c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

**Environment Protection Licence** means an environment protection licence granted under the POEO Act.

**Environmental Bond** means the Project Bond described in paragraph 2.3(a) of Schedule 17.

**Environmental Guidelines** means:


(b) Contaminated Sites: Guidelines for Consultants reporting on Contaminated Sites (1997) published by NSW Environment Protection Authority;

(c) National Environmental Protection (Assessment of Site Contamination) Measure (1999) published by National Environment Protection Council;

(d) Contaminated Sites: Guidelines for the Assessment and Management of Groundwater Contamination (2007) published by Department of Environment and Conservation NSW; and

**Environmental Hazard** means any risk of harm, damage, injury, illness or destruction of, or to, the Environment.

**Environmental Law** means all Legal Requirements relating to the Environment or the protection of the Environment and any other law relating to Contamination or Pollution, including:

(a) all Legal Requirements relating to the Environment, noise, development, planning, construction of structures, health, Contamination, radiation, Pollution (including the Environment Protection Licence issued under the POEO Act), waste disposal, land management and Hazardous Materials;

(b) all conditions of any Approval (including the Development Consent) issued under any Legal Requirement described in paragraph (a); and

(c) all regulations and all lawful orders, legally binding guidelines, notices, directions or requirements of any relevant Authority.

**Environmental Monitoring Report** means a report prepared by a Site Auditor or an accredited contaminated land consultant approved by TfNSW (such approval not to be unreasonably withheld) conducted in respect of the Maintenance Facility Site in accordance with the Environmental Guidelines which contains:

(a) a report on the results of a detailed visual inspection of the condition of the Maintenance Facility Site in comparison with the conditions identified in the Baseline Environmental Site Assessment for the Maintenance Facility Site. In particular, the report must assess the ground surfaces for signs of leaks/spills of fuels, oils and/or chemicals; and

(b) where changes in conditions are identified, an assessment of any associated risks of harm, likely sources and management actions.

**Environmental Representative** or ER means a person appointed by TfNSW and notified to the Supplier from time to time.

**EP&A Act** means the *Environmental Planning & Assessment Act 1979* (NSW).

**EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**Equipment Examiner** means a worker of the Operator who carries out maintenance on trains in service.

**ERPM** means EDI Rail PPP Maintenance Pty Limited ABN 97 122 730 116.

**Escrow Agent** means an escrow agent approved by TfNSW.

**Escrow Agreement** has the meaning given in the Delivery Deed.

**Escrow Information** means all Source Code for any computer program, computer interface or train operating system screen included in or required for any Asset or Deliverable, and includes any software applications required for access to the same.

**Estimated Rectification Cost** has the meaning given in clause 17.3(d)(iii).

**ETCS** means European Train Control System.

**Event Recorder** has the meaning given in SPR Appendix 14.
**Excepted Risk** means:

(a) any default under this deed by TfNSW or any fraudulent, illegal, reckless or negligent act or omission of TfNSW or its Associates;

(b) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority; and

(c) 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 Supplier or its Associates.

**Existing Contract Information** means any designs, drawings, specifications, documents, software, information, data, methods of working, inventions or any other material or process that:

(a) exists at the Commencement Date; or

(b) is produced after the Commencement Date independently of the Project Agreements,

and which is provided in connection with, is used in the design, development, construction, testing, operation or maintenance of or forms part of any Asset or Deliverable.

**expiry Date** means the Original Expiry Date, or if the Contract Term is extended in accordance with clause 3.2(b) or clause 3.2(c), the Extended Expiry Date.

**Extended Expiry Date** has the meaning given in clause 3.2(a).

**Failed Set**, being one of the Sets, has:

(a) in clause 16.6(a), the meaning given in clause 16.6(a)(i);

(b) in clause 16.6(b), the meaning given in clause 16.6(b)(i);

(c) in clause 16.6(c), the meaning given in clause 16.6(c)(i);

(d) in clause 16.6(d), the meaning given in clause 16.6(d)(i); and

(e) elsewhere in this deed, each of the meanings given in clause 16.6 (as applicable).

**Final Acceptance** means, in respect of any Set, that the Set complies with the Final Acceptance Criteria applicable to that Set.

**Final Acceptance Certificate** means, in respect of a Set, a certificate issued by TfNSW under the Delivery Deed certifying that the Set has achieved Final Acceptance.

**Final Acceptance Criteria** means, in respect of a Set, the criteria for the issue of a Final Acceptance Certificate relating to it, as set out in the Delivery Deed.

**Final Environmental Site Assessment** means a final environmental Contamination report prepared by a Site Auditor or an accredited contaminated land consultant approved by TfNSW (such approval not to be unreasonably withheld) in accordance with the Environmental Guidelines that:

(a) identifies the nature and extent of any Contamination of the Maintenance Facility Site, and compares any such Contamination of the Maintenance Facility Site with any Contamination identified in the Baseline Environmental Site Assessment for the Maintenance Facility Site;
(b) outlines the investigation undertaken to identify the nature and extent of any Contamination (including historical investigations); and

(c) provides a plan and recommendations for the Remediation of any Contamination identified on the Maintenance Facility Site and adjoining or neighbouring land or waterway to the same condition set out in the Baseline Environmental Site Assessment for the Maintenance Facility Site.

**Final Frequent Breaches Notice** means a notice given under clause 28.7(c).

**Final Inspection** has the meaning given in clause 17.3(a).

**Final Persistent Breach Notice** means a notice given under clause 28.6(c).

**Financial Year** means a period which commences on 1 July and ends on the next 30 June.

**Fleet** has the meaning given in the Delivery Deed.

**Fleet Acceptance** has the meaning given in the Delivery Deed.

**Fleet Acceptance Sunset Date (Continuous Production)** has the meaning given in the Delivery Deed.

**Fleet Acceptance Sunset Date (Non-continuous Production)** has the meaning given in the Delivery Deed.

**Force Majeure Event** means each of the following events:

(a) lightning, earthquake, cyclone, natural disaster, landslide, mudslide, fire and explosion;

(b) a flood which might be expected to occur once or less in every 50 years;

(c) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any Authority;

(d) a "terrorist act" (as defined in section 3 of the Terrorism Insurance Act 2003 (Cth) as at the date of this deed);

(e) ionising radiations or Contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

(f) a failure of supply of any Utility Service to the Maintenance Facility and Maintenance Facility Site;

(g) Industrial Action within Australia affecting the Project which has been caused by the party that is not the Affected Party, or

(h) state wide or industry wide Industrial Action within Australia excluding any such Industrial Action caused by the Affected Party or its Associates,

which:

(i) is beyond the reasonable control of the Affected Party and its Associates; and

(j) prevents or delays the Affected Party from performing any of its obligations under this deed (other than an obligation to pay money) where that cause or the consequences of the cause:
(i) has not resulted from the Affected Party breaching a term of any of the Project Agreements; and

(ii) if the Affected Party is the Supplier, could not have been prevented, avoided, remedied or overcome by the Supplier or its Associates taking those steps which a prudent, experienced and competent designer, constructor and maintainer of rolling stock and rolling stock maintenance facilities (as applicable) would have taken.

Forecast Availability Payment means the amount calculated in accordance with clause 35.1(b).

Forecast KPI Payment means the amount calculated in accordance with either clause 35.1(b), or paragraph 2.1 of Schedule 17, as applicable.

Forecast Scheduled Availability Payment means the amount calculated in accordance with paragraph 2.1 of Schedule 17.

Frequent Breaches means breaches described in clause 28.7(a), regardless of whether those breaches constitute a Supplier Event of Default.

Frequent Breaches Notice means a notice given under clause 28.7(a).

General Change in Law means a Change in Law other than:

(a) a Change in Law with respect to Tax;

(b) a Discriminatory Change in Law;

(c) a Change in Railway Law; and

(d) a Change in Disability Law.

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of an expert, skilled and experienced person, engaged in the same or a similar type of undertaking as that of the Supplier or its Associates, as the case may be, under the same or similar circumstances as the implementation of the Project.

Graffiti includes any writing, drawing, painting, street mural, spray painting or other defacement upon any surface of, or in, a Set or the Maintenance Facility Site.

GST has the meaning given in the GST Act.


GST Amount has the meaning given in clause 50.1(c).

GST Supplier has the meaning given in clause 50.1(c).

Guarantor means Downer EDI Limited ABN 97 003 872 848.

Handover Point means the location for the handover of Sets at the Sydney end of the relevant road within the Maintenance Facility Site (or such other area as TfNSW and the Supplier may agree).

Hazardous Materials means:

(a) any substance, gas, liquid, chemical, mineral or other physical or biological matter (including radiation, radioactivity and magnetic activity) that, because it is toxic, corrosive, flammable, explosive, or infectious or possesses some other dangerous characteristic, has the potential to present a risk of harm to people, including their
health or to any other aspect of the Environment or which may cause
Contamination or Pollution; or

(b) any material or compound controlled, prohibited or regulated from time to time by
any Environmental Law.

Importation GST means GST payable pursuant to sections 13-15 of the GST Act.

Incident means an event or occurrence actually or potentially affecting the operation of trains
on the Network.

Incident and Security Management Plan means the Project Plan of that name.

Indemnified Party means:

(a) TfNSW;
(b) RailCorp;
(c) the State, including:
   (i) the Minister for Transport and Infrastructure;
   (ii) the Secretary of Transport for NSW; and
   (iii) any other person to whom the State delegates a right, power, function
        or duty from time to time;
(d) each other entity controlled by the Secretary of Transport for NSW;
(e) each NSW Rail Entity; and
(f) the Operator,

and each of their respective officers and employees.

Independent Expert means an Independent Expert appointed in accordance with paragraph
1.4(a) of Schedule 8.

Independent Expert Determination Agreement has the meaning given in paragraph 1.4(f)
of Schedule 8.

Independent Expert Determination Rules has the meaning given in paragraph 1.4(h) of
Schedule 8.

Indirect or Consequential Loss means any loss of opportunity, loss of contract, loss of
profit, loss of anticipated profit, loss of business, loss of business opportunities or revenue,
loss of goodwill, loss of use or loss of production or any failure to realise anticipated savings.

Industrial Action means industrial action of any description including industrial action
involving:

(a) the performance of work in a manner different from that in which it is customarily
    performed, or the adoption of a practice in relation to work, the result of which is a
    restriction or limitation on, or a delay in, the performance of work;
(b) a ban, limitation or restriction on the performance of work, or acceptance of or
    offering for work; and
(c) a failure or refusal by any person employed or engaged by the Supplier or its
    Associates to attend for work.
**Information Documents** means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:

(a) referred to in Schedule 6;

(b) issued or made available by, or on behalf of, TfNSW or the State to the Supplier in connection with the RFI, the Procurement Process, the Project Activities or the Project (including anything issued or made available through TfNSW's website) and which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document";

(c) issued or made available by, or on behalf of, TfNSW or the State to the Supplier in connection with the RFI, the Procurement Process, the Project Activities or the Project (including anything issued or made available through TfNSW's website), but which did not form part of the RFI or the Request for Proposals (as applicable), regardless of whether or not it was expressly classified or stated to be an "Information Document"; or

(d) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available:

(e) on, before or after the date of submission of the Proposal (including any such information, data, document or material made available as part of the RFI); or

(f) on, before or after the date of execution of this deed,

other than any information, data, document or material which TfNSW is obliged by the terms of this deed to provide to the Supplier and the Supplier is expressly obliged by the terms of this deed to rely on.

**Infrastructure Possession Manual** means the manual relating to infrastructure possessions, as published by Sydney Trains from time to time.

**Initial Fleet** has the meaning given in the Delivery Deed.

**Initial Fleet Spares List** means the list of Spares and Special Tools relevant to the Initial Fleet, as set out in the column entitled "Initial Fleet Spares List" in the table set out in Schedule 29.

**Insolvency Event** means, in relation to an entity, the occurrence of any of the following events:

(a) an application is made (other than for a frivolous or vexatious reason) for its winding up and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, the application is not dismissed or withdrawn within 30 Business Days;

(b) an order is made for its winding up, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by TfNSW before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;

(c) it passes a resolution for its winding up, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by TfNSW before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
(d) a receiver, receiver and manager, provisional liquidator, trustee for creditors or in bankruptcy or analogous person is appointed to it, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of the entity;

(e) it or any other person appoints an administrator to the entity, or takes any step to do so;

(f) it:

   (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);

   (ii) ceases or threatens to cease to carry on all or a material part of its business;

   (iii) is or states that it is insolvent and/or is unable to pay its debts as and when they fall due; or

   (iv) is taken to fail to comply with a statutory demand in accordance with section 459F of the Corporations Act;

(g) it enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors; or

(h) any analogous or similar act or procedure to those referred to above is done or entered into or applied, voluntarily or involuntarily to the entity.

Insurance means the insurances required to be effected and maintained under this deed.

Insurance Proceeds means the insurance proceeds described in clause 33.13.

Insurance Proceeds Account means the account referred to in clause 33.13(b).

Intellectual Property Register means the register described in paragraph 1.4 of Schedule 3.

Intellectual Property Rights means all intellectual property rights including the following rights:

(a) patents, copyright, rights in circuit layouts, registered designs, trade marks and any right to have confidential information kept confidential; and

(b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

whether created or coming into existence before, on or after the date of this deed.

Interface Activities means any activities undertaken by Interface Parties at the Maintenance Facility Site.

Interface Party means the Operator, any other contractor engaged by TfNSW, the Operator or another NSW Rail Entity who undertakes Interface Activities at the Maintenance Facility Site or on the Network. It does not include the Supplier or any of its Subcontractors (other than where that Subcontractor is engaged directly by TfNSW, the Operator or another NSW Rail Entity to undertake work that is not under, out of or in connection with the Project Activities).

Interface Protocols means the interface protocols between the Supplier, the Operator, TfNSW and any other NSW Rail Entities (to the extent appropriate) which, as at the date of this deed, are described in SPR Appendix 10 and as may be amended from time to time in accordance with clause 16.12.
**Investigative Authority** means any Authority authorised to undertake investigative action under the Rail Safety National Law, Rail Safety National Regulations or the *Transport Safety Investigations Act 2003* (Cth). It includes ONRSR, the Independent Transport Safety Regulator, the Australian Transport Safety Bureau and the Office of Transport Safety Investigations.

**ISCA** means the Infrastructure Sustainability Council of Australia.

**KPI Payment** means, in respect of a month, the KPI Payment for that month calculated in accordance with paragraph 3 of Schedule 15.

**KPI Regime** means the KPI regime described in paragraph 3 of Schedule 15.

**Labour Index** means Average Weekly Earnings, New South Wales index (Persons; Full Time; Adult; Ordinary time earnings; New South Wales; ABS Catalogue No. 6302.0 Table 13A).

**Land Pollution** means placing on or otherwise introducing into or onto, any Maintenance Location any matter whether solid, liquid or gaseous that:

(a) causes or is likely to cause degradation of that Maintenance Location, resulting in actual or potential harm to the health or safety of human beings, animals, property of other terrestrial life or ecosystems or actual or potential loss or property damage, that is not trivial; or

(b) breaches any Environmental Law.

**Law** means legislation of the State or the Commonwealth of Australia, including delegated legislation and any document or policy enforceable under such legislation or delegated legislation.

**Legal Requirements** includes:

(a) Laws;

(b) any decision or requirement, or any similar form of decision or determination (or any official interpretation or administration of any of the foregoing), by any Authority; and

(c) the requirements and conditions of Approvals.

**Licensed Intellectual Property** means all Intellectual Property Rights and trade secrets and know how comprised in or related to the Project, the Assets and the Deliverables including the Contract Information.

**Life Cycle Cost** means the total cost to TfNSW, RailCorp, the Operator and NSW Rail Entities of supply, ownership, operation, maintenance and disposal (both direct and indirect) of the Assets over their Design Life.

**Loss** means:

(a) any cost, expense (including legal expenses on an indemnity basis), loss, charge, fee, payment (including payment made under any indemnity), damage, liability or other amount; and

(b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,

whether direct, indirect or consequential (including financial or pure economic loss), present or future, fixed, ascertained or unascertained, actual or contingent howsoever sustained,
whether in contract, tort, statute or otherwise and, for the avoidance of doubt, it includes Indirect or Consequential Loss.

**Maintenance Bond** means each of the Project Bonds described in paragraph 2.1(a) of Schedule 17.

**Maintenance Bonding Sum** has the meaning given in paragraph 2.1(a) of Schedule 17.

**Maintenance End Date** means:

(a) if TfNSW gives an instruction pursuant to clause 27.10(d), 30.4(a)(i) or 30.8(a), the date on which such instruction takes effect;

(b) otherwise, the End Date.

**Maintenance Facility** means the infrastructure and equipment located at the Maintenance Facility Site.

**Maintenance Facility Equipment** means all plant and equipment to be installed and commissioned by the Supplier for use at the Maintenance Facility Site for the purpose of undertaking the TLS Phase Activities after the date on which the Supplier achieves MF Completion.

**Maintenance Facility Licence** is the licence granted over the Maintenance Facility Site pursuant to paragraph 1.1 of Schedule 9, and substantially on the terms provided in Schedule 20.

**Maintenance Facility Licence Commencement Date** means the date of commencement of the Maintenance Facility Licence as set out in paragraph 1.1(a) of Schedule 9.

**Maintenance Facility Site** means the maintenance facility site as contemplated by SPR Appendix 4.

**Maintenance Liability Cap** has the meaning given in clause 35.1(c).

**Maintenance Liability Period** has the meaning given in clause 35.1(a).

**Maintenance Location** means:

(a) the Maintenance Facility Site;

(b) an Out Depot; or

(c) an Other Site.

**Maintenance Period** means:

(a) in respect of a Set delivered by the Operator to the Handover Point at the Maintenance Facility Site, a period:

(i) commencing when the Set is delivered by the Operator to the Handover Point for maintenance, repairs or stabling by the Supplier; and

(ii) ending when the Set is collected by the Operator from the Pick-up Point; and

(b) in respect of a Set delivered by the Operator to an Other Site, a period:

(i) commencing when the Set is delivered by the Operator to the area within the Other Site for the handover of Sets as agreed between TfNSW and the Supplier; and
(ii) ending when the Set is collected by the Operator from the area within the Other Site for the pick-up of Sets as agreed between TfNSW and the Supplier.

**Maintenance Services** means that part of the TLS Phase Activities comprising the Set maintenance services, presentation services, operations services, logistic support services, Maintenance Facility support services, Reimbursable Repairs and other services required to be provided by or otherwise contemplated by SPR Appendix 5, but does not include the Technical Services.

**Maintenance Services Sum** means the amount calculated in accordance with clause 35.1(b)(i).

**Maintenance Works Program** means the Program described in section 2.18.2 of the SPR and provided as part of the Supplier’s reporting obligations under section 5.3 of the SPR.

**Maintenance Year** means each whole year during the Contract Term commencing on the TLS Start Date and ending on the Maintenance End Date.

**Major Graffiti** means Graffiti in respect of a Set which covers an area in excess of $10m^2$ using a technique that closely encloses the affected area.

**Mandatory Requirements** means:

(a) Legal Requirements;

(b) Rail Industry Standards current as at the date of this deed; and

(c) any Change in Rail Industry Standards with which the Supplier is required to comply pursuant to a Variation in the circumstances contemplated by clause 23.6(c)(i) of the Delivery Deed,

or any of them.

**Materials** means any and all equipment, plant, materials, fixtures, furniture, machinery, goods, parts and other items incorporated into or to be incorporated into any Asset.

**MDBI** means the mean distance between Supplier Related Incidents, provided that any Supplier Related Incident which results in a Set being withheld from service or cancelled before entering service shall be included in the calculation of MDBI.

**Mediation Cut Off Date** has the meaning given in paragraph 1.7(a) of Schedule 8.

**MF Completion** has the same meaning as “Completion” in the MF Works Deed.

**MF Mobilisation Date** means

**MF Works** means the works to be undertaken or procured by the Supplier in the Maintenance Facility Site pursuant to the MF Works Deed.

**MF Works Activities** all things or tasks which the Supplier (as the “Contractor” under the MF Works Deed) is, or may be, required to do to comply with its obligations under the MF Works Deed, including the design, construction, commissioning and hand-over of the MF Works and the provision of temporary works, testing, construction plant and Maintenance Facility Equipment.

**MF Works Deed** means the “Medium Works Contract” between the Supplier and TfNSW for the provision of the MF Works.

**Minimum Operating Standards for Available Sets** means the more stringent of:
(a) the Minimum Standards;

(b) the minimum presentation standards for trains set out in the Train Presentation Manual; and

(c) the standards which affect Availability set out in the Performance Operating Standards.


**Minor Defect** means a Defect which:

(a) in relation to a Set, does not prevent the Set from satisfying the Minimum Operating Standards for Available Sets; and

(b) in relation to an Asset or Deliverable, does not amount to a failure of an Asset or Deliverable to:

(i) comply with a Mandatory Requirement; or

(ii) be fit for purpose,

and in relation to which TfNSW's Representative determines that the Supplier has reasonable grounds for not promptly rectifying.

**Minor Graffiti** means Graffiti which is not Major Graffiti.

**Mitigation Plan** means a Draft Mitigation Plan or an Approved Mitigation Plan.

**Model Variation Event** means an event described in paragraph 2.1 of Schedule 19.

**Moneys Owing** means all moneys identified as "Moneys Owing" in any Project Agreement which the Supplier, alone or with any other person, at any time is or becomes actually liable to pay to, or for the account of, TfNSW (alone or with any other person) or any TfNSW Associate on any account whatsoever under, or in relation to, any Project Agreement or at law (including by way of principal or interest, fees, costs, charges, expenses, indemnity or damages).

**Monthly Operational Data** has the meaning given in paragraph 1 of Schedule 15.

**Moral Rights** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed which rights are created by the **Copyright Act 1968** (Cth) and if the works are used in any jurisdiction other than Australia, any similar right capable of protection under the laws of that jurisdiction.

**Mortdale Facility** means the maintenance facility site as contemplated by SPR Appendix 4.

**Network** has the same meaning as the expression **Sydney Metropolitan Network**.

**Network Access Information** means, in respect of a Network Access Right:

(a) the activities the Supplier proposes to carry out during that Network Access Right (including whether persons or equipment will intrude into the Danger Zone and, where applicable, the side of the Set on which the activities will be carried out);

(b) the location or route to be utilised;

(c) the duration (start and end times) of the Network Access Right;
(d) the periods within which the Supplier wishes to utilise the Network Access Right; and

(e) such other details as TfNSW, the Operator or a relevant NSW Rail Entity may reasonably require from time to time.

**Network Access Right** means:

(a) a Work on Track Authority; or

(b) a Train Run Entitlement.

**Network Procedures** means the procedures issued by Sydney Trains from time to time for the safe conduct of work on the Network. These are to be read in conjunction with the Network Rules.

**Network Rules** means the rules and procedures issued by the Operator from time to time to mandate the requirements for the safe operation of the Network.

**New Contract Information** means all designs, drawings, specifications, documents, software, information, data, methods of working, inventions or any other material or process created, written, or developed or brought into existence by or on behalf of the Supplier or any of its Subcontractors (whether alone or jointly with any other person) in the performance of the work done under this deed and includes any Contract Information which forms part of a Deliverable, but excludes Existing Contract Information.

**New Year’s Eve** means the period:

(a) commencing at the start of the Weekday AM Availability Period or the Weekend Availability Period (as may be relevant) on 31 December; and

(b) ending at the end of the Weekday PM Availability Period or the Weekend Availability Period (as may be relevant) on 1 January of the immediately following calendar year.

**NGER Legislation** means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

**Noise Pollution** means the emission of noise, being noise that, by reasons of its level, nature, character or quality, or the time at which it is made, or any other circumstances:

(a) is harmful to (or is likely to be harmful to) a person who is outside any Maintenance Location;

(b) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside any Maintenance Location; or

(c) breaches any Environmental Law.

**Nominal** means, in respect of a cost or amount, that the stipulated cost or amount already allows for all and any effects of inflation.

**Non-continuous Production Fleet** has the meaning given in the Delivery Deed.

**Notice** has the meaning given in clause 48.

**Notice of Arbitration** has the meaning given in paragraph 1.7(d) of Schedule 8.

**Notice of Dispute** has the meaning given in paragraph 1.1(b) of Schedule 8.

**Notice of Objection** has the meaning given in clause 41.2(b)(ii).
**Notifiable Incident** means any incident requiring notification to an Authority or regulator under the WHS Law and/or the Rail Safety National Law.

**NSW Rail Entity** means RailCorp, the Operator, NSW Trains and any other Authority in New South Wales that owns or operates railway infrastructure or rolling stock.

**NSW Rail Policies and Standards** means a code of conduct, policy or standard relating to the conduct of the Project Activities as issued or published by the Operator, TfNSW or a NSW Rail Entity from time to time. The expression includes:

(a) standards and policies issued by the Asset Standards Authority;

(b) at the date of this deed, all such codes, policies and standards comprised in, or referred to in, the SPR or which are relevant to the Project Activities; and

(c) any amendment or replacement of any of them, from time to time.

**NSW Trains** means the body corporate known by that name which was constituted as a body corporate under the Transport Administration (General) Regulation 2005 (NSW) and all present and future iterations of that body corporate which continue in existence under the Transport Administration (General) Regulation 2013 (NSW) or any other legislation or another entity appointed to undertake some or all of the functions of that body.

**Obsolescence** occurs if an item of equipment or an equipment system is no longer to be provisioned although it may remain in use until worn out or declared Obsolete by either party and **Obsolete** has an equivalent meaning.

**ONRSR** means the Authority or other person having jurisdiction in New South Wales from time to time for the purposes of regulation of rail safety and, at the date of this deed, is the Office of the National Rail Safety Regulator.

**Open Book Basis** means the provision of any pricing, costing and other information required on an open book basis to enable an assessment of actual costs and profit margins, including a breakdown of all relevant preliminaries, offsite and onsite overheads, insurances, labour, equipment, Materials, subcontract costs, margins and, to the extent relevant, discount rates used to calculate present values all in a clear and transparent manner, including provision of reasonably available source documents required to verify the pricing and costs.

**Operational Set** means a Set which has achieved Provisional Acceptance under the Delivery Deed.

**Operations Functions** means the functions and responsibilities of TfNSW, the Operator and other NSW Rail Entities as passenger transport operators on the Network and elsewhere or as the owners or managers of rail infrastructure or rolling stock.

**Operations Planning Approval** has the meaning given in the MF Works Deed.

**Operations Services** means the operations services referred to in section 4 of SPR Appendix 5.

**Operative Provisions** means the operative provisions of this deed, being clauses 1 to 51 excluding all schedules and appendices.

**Operator** means Sydney Trains or such other entity that may be appointed from time to time to operate some or all of the railway passenger services on the Sydney Metropolitan Network.

**Operator Schedule of Rates** means the rates set out in Annexure 4 of Schedule 15.

**Option Fleet** has the meaning given in the Delivery Deed.
Option Fleet Spares List means the list of Spares and Special Tools as set out in the column entitled "Option Fleet Spares List(s)" in the table set out in Schedule 29, as is relevant to the number of Option Sets RailCorp (or TfNSW on behalf of RailCorp) elects to purchase pursuant to the Delivery Deed.

Option Set refers to each of the Sets identified as option sets under the Delivery Deed and purchased by RailCorp (or TfNSW on behalf of RailCorp) under the Delivery Deed.

Option Set Notice has the meaning given in the Delivery Deed.

Option Set Order Date has the meaning given in the Delivery Deed.

Original Bond has the meaning given in paragraph 2.5(b) of Schedule 17.

Original Expiry Date has the meaning given in clause 3.2(a)(i).

Other Rail Industry Standards means:

(a) all rules, standards, policies, codes of practice or guidelines relating to design of any Asset or Deliverable or the performance of the Project Activities that are referred to in the SPR or which are relevant to the Project Activities; and

(b) any amendment or replacement of any of them, from time to time.

It excludes NSW Rail Policies and Standards.

Other Site means any location where Maintenance Services are required to be carried out under this deed. It excludes the Maintenance Facility Site and Out Depots.

Out Depot means a location where Sets can be stabled (including maintenance centre sidings), which is operated and managed by the Operator.

Panel of Mediators means a panel of qualified mediators nominated at the request of the parties by the President of the Resolution Institute (or by whichever entity subsequently replaces that entity, from time to time).

Parent Guarantee means a deed substantially in the form set out in Schedule 21.

PDCS means TfNSW's web based 'TeamBinder' project data and collaboration system, or such other electronic project data and collaboration system notified by TfNSW's Representative under clause 48.1(b).

Performance Monitoring System or PMS means a system to be developed by the Supplier to TfNSW's reasonable satisfaction to enable the Supplier to monitor the operational performance of the Fleet.

Performance Operating Standards or POS means the performance standards set out in Table 3 in Schedule 13.

Performance Report means the report referred to in clause 18.3.

Permitted Purpose includes any of the following:

(a) completing the design, development, construction, manufacture, testing, commissioning, supply and delivery of;

(b) upgrading;

(c) modifying;

(d) converting;
(e) rebuilding;
(f) performing life extension works to;
(g) testing and monitoring the performance of;
(h) performing alterations to;
(i) maintaining;
(j) using and operating;
(k) repairing;
(l) refurbishing;
(m) replacing; and
(n) overhauling,

any Asset or Deliverable, including for the purpose of conducting a tender to engage, and engaging, a third party to do any of the things listed in this definition, but not including the manufacture of entire Sets.

Persistent Breach has the meaning set out in clause 28.6(a), regardless of whether the breach constitutes a Supplier Event of Default.

Persistent Breach Notice means a notice given under clause 28.6(a).

Personal Information means personal information (as that term is defined in the PPIPA) that is collected, used, disclosed or otherwise handled by the Supplier in the course of or for the purpose of performing its obligations under this deed.

Personnel of an entity, includes all officers, employees, contractors, agents, advisers and consultants of the entity and of the Associates of the entity.

Pick-up Point means the location for the pickup of Sets at the Sydney end of the relevant road within the Maintenance Facility Site (or such other area as TfNSW and the Supplier may agree).

Planning Approval means any Development Consent or other approval granted under the EP&A Act, EPBC Act, Heritage Act 1997 (NSW) or other Environmental Laws in respect of the Maintenance Facility Site, including all conditions and documents incorporated by reference in the Development Consent or other approval, as may be modified from time to time.


Pollution means:
(a) Water Pollution;
(b) Air Pollution;
(c) Noise Pollution; or
(d) Land Pollution,

and Polluted has a corresponding meaning.

PPIPA means the Privacy and Personal Information Protection Act 1998 (NSW).
PPSA means the *Personal Property Securities Act 2009* (Cth).

Prescribed Notice has the meaning given in clause 47.2.

Price Base Date means 30 June 2016.

Price per SAU refers to either the:

(a) Price per SAU for the Initial Fleet;

(b) Price per SAU for the Option Sets;

(c) Price per SAU (Additional Required Availability);

(d) Extended Term Price per SAU (Initial Fleet);

(e) Extended Term Price per SAU (Option Sets); or

(f) Extended Term Price per SAU (Additional Required Availability),

as set out in Schedule 15.

Principal Contractor has the meaning given in the WHS Law.

Privacy Management Plan means a privacy management plan required by section 33 of the PPIPA.

Privacy Obligations has the meaning given in clause 38.8(a).

Probity Entity means the Supplier, any of the Supplier’s Associates, or any of their Personnel.

Probity Event includes any event or thing which occurs before, on or after the date of this deed which:

(a) has a material adverse effect on the character, integrity or honesty of a Probity Entity;

(b) relates to any Probity Entity and has or may have a material adverse effect on the public interest or public confidence, in the Project; or

(c) involves a material failure of a Probity Entity:

   (i) to achieve or maintain reasonable standards of ethical behaviour; or

   (ii) to avoid conflicts of interest which will have a material adverse effect on the ability of the Probity Entity to carry out and observe its obligations in connection with the Project.

Probity Investigation means any probity or criminal investigation to report on or assess the character, integrity, experience or honesty of a person or entity, including:

(a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges;

(b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation; and

(c) any involvement of the person or entity in a specified Probity Event.
**Procurement Process** means the request for proposal process conducted by TfNSW for the selection of a supplier to enter into the Project Agreements and to undertake the Project Activities.

**Program** means a document setting out the times at which activities under the Project Agreements will occur, and includes the Verification Program and the Maintenance Works Program.

**Project** means:

(a) the design, development, manufacture, testing, commissioning, supply and delivery of new passenger Sets for the Sydney Metropolitan Network procured under the Delivery Deed;

(b) equipping, maintaining and operating a Set maintenance facility dedicated to the maintenance of those Sets in accordance with the MF Works Deed and this deed;

(c) maintenance of the Sets and other related Assets; and

(d) the Interface Activities,

and all other works, services or matters pertaining to each of the above, from time to time.

**Project Activities** means all things or tasks which the Supplier is, or may be, required to do to comply with its obligations under the Project Agreements, including the Delivery Phase Activities, the TLS Phase Activities and the MF Works Activities.

**Project Agreement** means each of:

(a) this deed;

(b) each Collateral Warranty Deed Poll executed or required to be executed under this deed;

(c) the Maintenance Facility Licence;

(d) each Parent Guarantee;

(e) the Escrow Agreement;

(f) each Significant Contractor Escrow Agreement;

(g) the Delivery Deed;

(h) the MF Works Deed; and

(i) any other document that the parties agree in writing from time to time is a Project Agreement.

**Project Bond** means each of the bonds to be provided by the Supplier to TfNSW under clause 19 and each Renewing Bond and each Replacement Bond that replaces a Project Bond from time to time.

**Project Management Plan** means the Project Plan of that name.

**Project Plan** means each plan, system or strategy listed in section 2 of the SPR, including all subsidiary plans, Programs and supporting documents and information.

**Project Security** means each security required to be provided by the Supplier to TfNSW under clause 19.1.
Proposal means the proposal provided by the Supplier in response to the Request for Proposals for the Project Activities dated 2 August 2016. It also includes any amendments or additions to the proposal after that date.

Proven Pre Existing Contamination means other Contamination which the Supplier demonstrates on reasonable evidence and on the balance of probabilities was present in, on or under the Maintenance Facility Site prior to the commencement of the Maintenance Facility Licence.

Provisional Acceptance means, in respect of a Set:
(a) the Set complies with the “Provisional Acceptance Criteria” under the Delivery Deed for that Set; and
(b) a Provisional Acceptance Certificate has been issued.

Provisional Acceptance Certificate means, in respect of a Set, a certificate issued by TfNSW’s Representative under the Delivery Deed:
(a) certifying that the Set has achieved Provisional Acceptance; and
(b) listing any Minor Defects.

Public Disclosure Obligations has the meaning given to it in clause 39.6.

Qualified Subcontractor means, in respect of a proposed Subcontractor, that the proposed Subcontractor:
(a) is reputable and:
   (i) capable of performing any relevant obligations in respect of; and
   (ii) has, or has access to, sufficient experience, expertise or ability to perform that part of,
   the Project Activities which are the subject of the applicable Significant Contract Documents to the standard required under this deed;
(b) is solvent and has sufficient financial capacity to implement any relevant part of the Project Activities;
(c) does not have any interest or duty which conflicts in a material way with the interests of the Project and is not involved in any business or activity which is incompatible with, or inappropriate in relation to, the Project; and
(d) has the technical capability and the qualifications, skills and experience including holding all Approvals required to perform the obligations of the Supplier to be subcontracted to at least the standards required by this deed.

Qualified Worker means a worker certified under the Rail Safety National Law or by any NSW Rail Entity as competent to carry out the relevant task.

Qualifying Change in Law means:
(a) a Discriminatory Change in Law;
(b) a Change in Railway Law;
(c) a Change in Disability Law; or
(d) a General Change in Law which requires the Supplier to modify the Sets.
quarter means any calendar quarter commencing on 1st January, 1st April, 1st July or 1st October in any year.

Quarter End means the last day of each quarter.

Rail Corridor means the RailCorp Land between the fence-lines either side of the rails or, if there are no fences, the RailCorp Land within 15 metres of the outermost rails.

Rail Industry Standards means either or both of:
(a) NSW Rail Policies and Standards; and
(b) Other Rail Industry Standards.

Rail Infrastructure Facilities has the same meaning as in the Transport Administration Act 1988 (NSW) and includes "rail infrastructure" as that term is defined in the Rail Safety National Law.

Rail Safety National Law means:
(a) the Rail Safety National Law 2012 (NSW) No 82a; and
(b) the Rail Safety National Regulations.

Rail Safety National Regulations means the regulations made under the Rail Safety National Law or the Rail Safety (Adoption of National Law) Act 2012 (NSW).

RailCorp Land means all land owned, leased, occupied or used by RailCorp (and includes any land owned or leased by RailCorp and occupied or used by the Operator) and includes any easements or licences or other legal or beneficial interest in land used in relation to the operation of the Railway. It does not, however, include the Maintenance Facility Site.

RailCorp’s Facilities means all railway track, railway stations, civil works, associated track structures, signalling systems, power supply systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other plant, equipment, buildings or facilities owned, leased, occupied or used by RailCorp (including any railway track, railway stations, civil works, associated track structures, signalling systems, power supply systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other plant, equipment, buildings or facilities owned, leased by RailCorp and occupied or used by the Operator) on, or in relation to, or in any way comprising, any RailCorp Land, and for the avoidance of doubt, includes all Rail Infrastructure Facilities.

Railway means the guided system for transportation of passengers or freight or both (whether or not passengers, freight or both are being transported) on a railway track within the Rail Corridor.

RCTI has the meaning given in clause 50.1(h)(i).

Recipient has the meaning given in clause 50.1(c).

Recommended Rectification Works has the meaning given in clause 15.6(e)(vi).

Recovery means the recovery of a Set because that Set is unable to move under its own power for any reason or is for any other reason not permitted to continue operating on the Network. Recovered and Recovered Set will be interpreted accordingly.

Recurrent Defect means a Defect in an Asset or sub-system of an Asset which:
(a) has the same cause and which, in any rolling 12 month period, affects either:
(i) 6 or more Sets; or
(ii) 6 or more of the same sub-systems of any type of Asset; or

(b) TfNSW reasonably believes will, or is reasonably likely to, fulfil the criteria described in paragraph (a) with the passing of time.

**Recurrent Defect Rectification Cost** has the meaning given in clause 15.6(e)(vii).

**Recurrent Defect Rectification Period** has the meaning given in clause 15.6(e)(viii).

**Recurrent Defect Rectification Plan** has the meaning given in clause 15.6(c).

**Reimbursable Damage Event** means:

(a) a collision between:

(i) a Set; and

(ii) another train (including another Set), any road vehicle or any other object outside the Set;

(b) a derailment;

(c) Vandalism; or

(d) Major Graffiti,

except where the event:

(e) occurs:

(i) during a Maintenance Period in respect of a Set;

(ii) when a Set is at the Maintenance Facility Site or at an Other Site; or

(iii) is, or the consequences of the event requiring repair or other work are, attributable to a Supplier Related Problem.

**Reimbursable Repairs** means repair or other work to a Set:

(a) arising out of a Reimbursable Damage Event; or

(b) required as a result of a direction or order by an Investigative Authority which is not attributable to a Supplier Related Problem.

**Reimbursable Through Life Support** means:

(a) Reimbursable Repairs; and

(b) the Operations Services.

**Reimbursable TLS Payment** means, in respect of a month, the amount payable for Reimbursable Through Life Support provided by the Supplier during that month calculated in accordance with paragraph 4 of Schedule 15.

**Rejection Certificate** means a certificate issued by TfNSWs Representative under paragraph 2.2(e) of Schedule 14.

**Related Body Corporate** has the same meaning as in the Corporations Act.
Release Date means, in respect of a Project Bond, the date specified in paragraph 2.1(b), 2.1(c), 2.1(d), 2.2(b) or 2.3(b) in Schedule 17 for release of a Project Bond by TfNSW.

Relevant Source Code means all Source Code for any computer program or computer included in or required for any Asset or Deliverable.

Reliability and Disruption Adjustment or RDA means, in respect of a Set during an Availability Period, the Reliability and Disruption Adjustment for the Set calculated in accordance with paragraph 2.3 of Schedule 15.

Reliance Rail means Reliance Rail Pty Limited ABN 18 111 280 427.

Remedial Direction means a direction given by TfNSW's Representative which is directed towards remedying a breach or non-compliance with this deed or addressing the consequences of such a breach or non-compliance.

Remediate and Remediation mean:
(a) preparing a long-term management plan (if any) for the Maintenance Facility Site (as relevant);
(b) removing, dispersing, destroying, reducing, mitigating or containing the Contamination or Pollution of the Maintenance Facility Site; and
(c) eliminating or reducing any hazard arising from the Contamination of the Maintenance Facility Site.

Remediation Period has the meaning given in clause 17.2(d).

Remedy means, in respect of a Supplier Event of Default, to remedy or cure the Supplier Event of Default or otherwise overcome the consequences of the Supplier Event of Default.

Renewing Bond has the meaning given in paragraph 2.5(b) of Schedule 17.

Replacement Bond has the meaning given in paragraph 2.6(b) of Schedule 17.

Reputable Insurer means an insurance company having the Required Insurer Rating.

Required Availability has the meaning given in clause 16.2.

Required Delivery Time means the point in time which is the Required Train Preparation Period prior to the commencement of the relevant Availability Period.

Required Train Preparation Period means the period of time required to enable Train Preparation to be completed by the Operator in respect of a Set, being the period determined by TfNSW's Representative in accordance with clause 16.5(c).

Request for Proposals means the 'Request for Proposals' document issued by TfNSW to various shortlisted parties including the Supplier on 13 May 2016 and it includes all addenda and other supplementary documents to that document.

Required Bond Rating means a credit rating given by Standard and Poor's Australia of at least A- or A3 by Moody's Investors Service, Inc (or an equivalent rating if no rating is provided by Standard and Poor's Australia or Moody's Investors Service, Inc).

Required Insurer Rating means a financial security rating given by Standard and Poor's Australia of at least A- or A3 by Moody's Investors Service, Inc (or an equivalent rating if no rating is provided by Standard and Poor's Australia or Moody's Investors Service, Inc).
Required Reliability means 50,000km MDbI.

Review of a document means the review of that document in accordance with the Review Procedures.


Review Procedures means the procedures for Review of Submitted Documents described in Schedule 7.

Reviewing Party has the meaning given in the Review Procedures.

RFI means the Request for Information issued by TfNSW on 23 December 2015 in connection with the Project.

Road Zero means the road known as “Standing Road West 0” at the AMC.

Royal Easter Show means the period each year:

(a) commencing at the start of the Weekday AM Availability Period or the Weekend Availability Period (as may be relevant) on the first calendared day of the Royal Easter Show; and

(b) ending at end of the Weekday PM Availability Period or the Weekend Availability Period (as may be relevant) on the last calendared day of the Royal Easter Show.

Safe Notice means an authorised notice distributed to give advice in addition to that provided in:

(a) the published rules issued by the relevant NSW Rail Entity to mandate the requirements for safe operation in the Network;

(b) the procedures issued by the relevant NSW Rail Entity for the safe conduct of work on the Network; or

(c) publications issued by the relevant NSW Rail Entity to prescribe special safe working arrangements for a location or area.

Safe Work Method Statement means a statement in respect of the TLS Phase Activities that:

(a) identifies the relevant work;

(b) specifies the hazards relating to the work and any risks to health and safety associated with those hazards;

(c) describes the measures to be implemented to control the risks;

(d) describes how the control measures are to be implemented, monitored and reviewed; and

(e) includes as appropriate, a description of the equipment used in the TLS Phase Activities, the standards or codes to be complied with, the qualifications of the Supplier's Personnel doing the TLS Phase Activities (including competency certificates and licences of the Supplier's Personnel) and the training required to do the TLS Phase Activities.

Safety Accreditation Strategy means the strategy of that name described in the Authorisation and Accreditation Plan which meets the requirements of section 2.2 of the SPR.
Safety Interface Agreement means an interface agreement, as defined in the Rail Safety National Law, to which the Supplier is, or is required to be, a party.

Safety Issue means any safety issue or incident and includes a near miss and a Notifiable Incident.

Safety Management Plan means the Project Plan of that name.

Scheduled Maintenance means maintenance work scheduled in the Maintenance Works Program or any other document containing maintenance schedules for the Sets, the Maintenance Facility or the Maintenance Facility Equipment.

Secured Party has the meaning given in clause 43.1.

Security Interest means any:

(a) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements);

(b) 'security interest' as defined in the PPSA; and

(c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

Separate Work Spaces has the meaning given in paragraph 3.2(h)(i) of Schedule 9.

Set means a group of 8 Cars capable of operating as a train in accordance with this deed as more particularly described in SPR, and:

(a) Set 1 or first Set means the first set to achieve Provisional Acceptance;

(b) Set 2 means the second set to achieve Provisional Acceptance, and so on; and

(c) last Set means the last set to achieve Provisional Acceptance.

Significant Contract means a Subcontract of the kind specified in Schedule 5.

Significant Contract Document means, in respect of each Significant Contractor:

(a) the Significant Contract between the Supplier and the Significant Contractor or between Significant Contractors (as relevant);

(b) if required by TfNSW, a Collateral Warranty Deed Poll in favour of TfNSW and RailCorp;

(c) guarantees or other security in respect of the proposed Significant Contractor's obligations under the Significant Contract, in form and substance reasonably satisfactory to TfNSW; and

(d) if required pursuant to 3.1 of Schedule 3, an Escrow Agreement between the Significant Contractor, TfNSW, RailCorp and an Escrow Agent.

Significant Contractor means the Subcontractor appointed under a Significant Contract.
**Significant Contractor Escrow Agreement** has the meaning given in the Delivery Deed.

**Site Audit Statement** has the same meaning as in Part 4 of the CLM Act.

**Site Auditor** means a person accredited as a site auditor under Part 4 of the CLM Act.

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

**Spare** means any replacement item which is required to maintain, repair or overhaul any Set or other Asset, including for the replacement of any part, either on a scheduled basis related to time or distance travelled, or as a result of actual or suspected Defect or damage.

**Spare Set**, being one of the Sets, means, in respect of an Availability Period, an Operational Set which:

(a) is specified by the Supplier in the notice given pursuant to clause 16.1(b) for that Availability Period;

(b) satisfies the requirements of the Minimum Operating Standards for Available Sets; and

(c) is ready for use by the Operator.

**Spares and Consumables Strategy** means the Project Plan of that name described in the Asset Management Plan, an initial version of which was developed by the Supplier and included in SPR Appendix 11.

**Spares Purchase Order** has the meaning given in paragraph 2.1(a) of Schedule 14.

**Special Tool** has the meaning given in the Delivery Deed.

**SPR** means the Scope and Performance Requirements contained in Exhibit 1.

**State** means the State of New South Wales.

**Step-in Activities** means all things or tasks which the Supplier is, or may be, required to do to comply with its obligations under the Project Agreements (whether or not subcontracted to another person).

**Step-in Event** has the meaning given in clause 29.1.

**Step-in Objectives** has the meaning given in clause 29.2(a).

**Step-in Party** means an agent, attorney or nominee of TfNSW, and may be more than one person appointed to act jointly.

**Step-in Powers** has the meaning given in clause 29.3.

**Step-in Right** has the meaning given in clause 29.2(a).

**Stock Discrepancy** has the meaning given in clause 5.4(f).

**Subcontract** means a contract under which a Subcontractor is engaged to perform any part of the Project Activities.
Subcontractor includes a contractor, a supplier of goods or services or a consultant or any of them, and of any tier, involved in performing the Project Activities. It excludes the Supplier.

Submitted Document means a document that has been submitted for Review.

Successor Supplier means the entity that will perform all or any part of the TLS Phase Activities after the Maintenance End Date, and includes that party's proposed subcontractors.

Supplier Event of Default means a material breach of this deed by the Supplier, including those events referred to in clause 28.1.

Supplier Group means the Supplier and any Related Body Corporate identified as a member of the Supplier Group in Schedule 4, and any Related Body Corporate which becomes a member of the Supplier Group during the Contract Term.

Supplier Related Defect means a Defect which is attributable to the Supplier or its Associates. It includes any Defect arising out of the Delivery Phase Activities or TLS Phase Activities.

Supplier Related Incident means:

(a) a Set is introduced into service 3.00 minutes or more after the commencement of any Availability Period due to one or more Supplier Related Problems in respect of that Set;

(b) a Set becomes 3.00 minutes or more behind the time nominated in the Timetable for the Set to pass any way point in the Network due to one or more Supplier Related Problems in respect of that Set;

(c) a Set is cancelled by the Operator whilst it is in service or when it is due to enter service because:

   (i) it fails or ceases to satisfy the Minimum Operating Standards for Available Sets;

   (ii) it has a Supplier Related Defect which the Operator, acting reasonably, believes may delay the Set when in service by 10.00 minutes or more;

   (iii) it:

      A. is introduced into service 10.00 minutes or more after the commencement of an Availability Period; or

      B. becomes 10.00 minutes or more behind the time nominated in the Timetable for the Set to pass any way point in the Network, due to:

         C. one or more Supplier Related Problems in respect of that Set;

         D. if the Set is a Spare Set which has been substituted for a Failed Set under clause 16.6(a) or 16.6(b), the Spare Set being so substituted; or

         E. the Actual Delivery Time of the Set being after the Required Delivery Time for the Set; or

(iv) an Investigative Authority orders or directs TfNSW to cease operating the Set due to one or more Supplier Related Problems; or
Supplier Related Problem means:

(a) a Supplier Related Defect; or

(b) any other act or omission of the Supplier or its Associates.

Supplier Schedule of Rates means Annexure 3 of Schedule 15.

Supplier Termination Event means any of the events listed in clause 30.1.

Supplier's Representative means the person appointed by the Supplier from time to time in accordance with clause 5.5.

Surviving Clauses has the meaning given in clause 51.6(a).

Sydney Metropolitan Network or Network means that part of the rail network described in ASA TS TOC.3 2015 issue 2 as used by Sydney Trains to provide passenger services in the metropolitan area.

Sydney Trains means the body corporate known by that name which was constituted as a body corporate under the Transport Administration (General) Regulation 2005 (NSW) and all present and future iterations of that body corporate which continue in existence under the Transport Administration (General) Regulation 2013 (NSW) or any other legislation or another entity appointed to undertake some or all of the functions of that body corporate.

Systems Engineering Management Plan means the Project Plan of that name described in section 2.11.1 of the SPR.

Target Condition has the meaning given in clause 17.4.

Target Contractual Close Date means the date which is 20 Business Days from the date of this deed, or such later date as is agreed by TfNSW in writing, in its absolute discretion.

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding, including the GST, (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Authority and Taxes has a corresponding meaning.

Technical Dispute Matter means a Dispute or an issue or matter in relation to a Dispute about:

(a) an instruction by TfNSW's Representative under clause 1.11(b) in respect of an ambiguity, discrepancy or inconsistency between any of the documents comprising the Project Agreements and a Technical Document;

(b) the results of the outcome of a Verification Activity;

(c) required rectification work identified in a Rejection Certificate;

(d) comments provided by a Reviewing Party in respect of a Technical Document, under paragraph 5 of Schedule 7;

(e) whether there has been a change in a TfNSW Policy, Rule or Procedure;

(f) the occurrence of an Asset Management Failure or the steps required to remedy an Asset Management Failure in accordance with this deed; or
any other matter which the parties mutually determine, pursuant to paragraph 1.3(a) of Schedule 8, is a Technical Dispute Matter.

Technical Dispute Panel means the panel of experts described in paragraph 2 of Schedule 8.

Technical Documents means all technical documents associated with the specification, design, development, manufacture, verification, operation, maintenance, and disposal of an Asset or Deliverable which the Supplier or any other person requires, or is required to create, as part of, or for the purposes of, performing the Project Activities under the Project Agreements. It includes all technical documents whether they are Existing Contract Information or New Contract Information.

Technical Package means a technical package or component of the works relating to a discrete area within the Maintenance Facility Site, a discrete subsystem of a Set or other Asset or a particular discipline (including any design or subcontract discipline) and described in the Systems Engineering Management Plan.

Technical Services means those services described in:

(a) paragraph 1 of Schedule 14; and

(b) Section 5 of SPR Appendix 5.

Technical Services Payment means, in respect of a month, the amount payable in that month calculated in accordance with paragraph 6 of Schedule 15.

TfNSW Policy, Rule or Procedure means:

(a) the Minimum Standards;

(b) the Performance Operating Standards;

(c) the Train Presentation Manual;

(d) the Train Operations Manual;

(e) the Train Operating Conditions Manual;

(f) the Interface Protocols;

(g) the Network Rules;

(h) the Network Procedures;

(i) the Timetable;

(j) the Infrastructure Possession Manual; and

(k) any other policy, rule, procedure, manual, protocol, timetable or document (excluding any standard issued by TfNSW other than those referred to in paragraphs (a) and (b) above) issued by TfNSW from time to time.

TfNSW Termination Event has the meaning given in clause 30.5.

TfNSW's Representative means the person appointed by TfNSW from time to time in accordance with clause 5.1.

Third Party Claim has the meaning given in clause 34.4(a).
**Timetable** means the general timetable for the Sydney Metropolitan Network as published or updated by TfNSW or the Operator from time to time.

**Time to Complete** means:

(a) for Defects in respect of which the Performance Operating Standards specify a rectification period, the time to complete rectification of those Defects, as set out in the Performance Operating Standards; and

(b) for any other Defects for which this deed specifies a rectification period, the rectification period specified by this deed.

**TLS Payments** means, subject to clause 30.13(c):

(a) the Availability Payments;

(b) the KPI Payments; and

(c) the Reimbursable TLS Payments.

**TLS Phase** means the period from the TLS Start Date until the End Date.

**TLS Phase Activities** means all things or tasks which the Supplier is, or may be, required to do to comply with its obligations under the this deed, and includes the Maintenance Services and the Technical Services.

**TLS Start Date** is the Date of Provisional Acceptance of the first Set in the Initial Fleet.

**Tool** means any tool required for the maintenance, installation, commissioning or testing of an Asset.

**Top-Up Bond** has the meaning given in clause 19.3(b).

**Trade Mark Materials** means any materials on which the Trade Marks appear or are proposed to appear.

**Trade Marks** means the trade marks notified by TfNSW to the Supplier from time to time.

**Train Control** means the control and regulation of rail traffic operating on the Network to ensure the safe and efficient operation of the Network.

**Train Controller** means a Qualified Worker who authorises and may issue occupancies and proceed authorities, and who manages Train Paths and mechanical control to ensure the safe and efficient transit of rail traffic in the Network.

**Train Crew or Crew** means a Train Driver or any other person with the skills, training and authorisation to operate, or support the operation of, the Sets.

**Train Driver or Driver** mean a person with the skills, training and authorisation to operate the Set.

**Train Management System or TMS** has the meaning given in section 3.15 of SPR Appendix 2.

**Train Operating Condition Waiver or TOC Waiver** means a notice of changes or exceptions to the requirements specified in the Train Operating Conditions Manual.

**Train Operating Conditions Manual or TOC Manual** means the manual issued by TfNSW from time to time that prescribes the minimum operating requirements for trains and track vehicles in the Network.
Train Operations Manual or TOM means the train operations manual published by the Operator from time to time.

Train Order means an instruction issued by a Train Controller in Train Order Territory to direct the movement of a Set.

Train Order Territory means the portions of rail line where the Train Order system of safe working is used.

Train Path means a series of track segments over a particular time interval through which a Set can travel and may include stopping points and other set down or changeover points.

Train Plan means the train plan to be produced from time to time by TfNSW for the operation of the Timetable in accordance with clause 16.15 and in accordance with the Train Plan Parameters.

Train Plan Parameters means the parameters for a Train Plan set out in Schedule 12 as amended from time to time in accordance with this deed.

Train Preparation means the process defined in the Train Operations Manual and any other instructions issued by the Operator from time to time which require the Crew to perform defined inspections prior to the Set entering into operational service. Train Preparation may be undertaken at the Operator's absolute discretion and will depend on factors such as the use of the Set in service and the duration of any stabled periods between operational services.

Train Presentation Manual means the document titled "Presentation Staff Cleaning Manual" as published by the Operator and as updated from time to time.

Train Presentation Standard means the standard issued by TfNSW from time to time that prescribes the presentation requirements for trains in the Network.

Train Run means a particular trip by a Set on a Train Path for Verification Activity purposes.

Train Run Entitlement means a right to use the Network for the purpose of conducting a Train Run.

Training means the training referred to in section 2 of the SPR.

Transition Out refers to the processes, and obligations, of the Supplier described in clause 45.

Transport Administration Act means the Transport Administration Act 1988 (NSW).

Underfloor Wheel Profiling Plant means the underfloor wheel profiling plant at the Auburn maintenance centre, or such other underfloor wheel profiling plant as TfNSW may nominate from time to time.

Unscheduled Maintenance means maintenance which is not Scheduled Maintenance.

User means:

(a) TfNSW's Personnel;

(b) Operator's Personnel;

(c) Customers;

(d) NSW Rail Entities; and
Transport
for NSW

Sydney Growth Trains
(ISD-16-5312B)

(e) any other persons or bodies identified as a User by TfNSW’s Representative in the course of the Design Development Process.

User Group means a group of Users or a body representing Users as identified in the Project Plans or nominated by TfNSW’s Representative for the purposes of consulting with a NSW Rail Entity and the Supplier about the Technical Documents in accordance with the Design Development Process.

Utility Service means any service, facility or item of infrastructure, including water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, railway, industrial waste disposal and electronic communications service.

Vandalism means any malicious, reckless or deliberate damage to any part of a Set by any person other than the Supplier or its Associates, excluding Graffiti.

Variation means any variation to:

(a) the Delivery Phase Activities;
(b) the TLS Phase Activities (other than a change to the Required Availability);
(c) the MF Works Activities;
(d) a Set; or
(e) the Minimum Operating Standards for Available Sets,

including any change, addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them.

Variation Costs means, in relation to a Variation, the direct costs and loss of revenue reasonably arising out of or in connection with the Variation (including any increased design costs, construction costs, manufacturing costs, commissioning costs, maintenance costs or through life support costs), after deducting all cost savings and increases in revenue arising out of or in connection with the Variation (including any savings in relation to design costs, construction costs, manufacturing costs, commissioning costs, maintenance costs or through life support costs).

Variation Order has the meaning given in clause 24.4.

Variation Savings means, in relation to a Variation, the amount of Variation Costs if a negative number.

Verification Activity means a verification activity, and Verification Activities means any and all verification activities:

(a) required by the SPR;
(b) identified in the Verification Plan; or
(c) which are otherwise reasonably required for the Supplier to perform its obligations under this deed, including any additional verification of an Asset:

(i) that has previously failed a Verification Activity; or
(ii) after the maintenance or repair of the Asset.

Verification Plan means the Project Plan of that name.

Verification Procedure means the procedure used for Verification Activities which meets the requirements in section 2.16.3 of the SPR.
Verification Report means a report (including supporting documentation) on the conduct of a Verification Activity which is provided in accordance with clause 13.7 and which meets the requirements of section 2.16.4 of the SPR.

Waste has the same meaning as in the POEO Act.

Water Pollution means placing in or on, or otherwise introducing into or onto, Waters (whether through an act or omission) any substance, whether solid, liquid or gaseous, so that the physical, chemical or biological condition of the Waters is changed in breach of any Environmental Law.

Waters means the whole or any part of:

(a) any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam or tidal waters (including the sea); or

(b) any water stored in artificial works, any water in water mains, water pipes or water channels, or any underground or artesian water.

Weekday AM Availability Period means the period from commencement of the first service in the Timetable to 1200 hours on any weekday excluding any public holiday.

Weekday PM Availability Period means the period from 1200 hours to completion of the last service in the Timetable on any weekday excluding any public holiday (recognising that completion of the last service may occur after midnight).

Weekend Availability Period means the period from commencement of the first service in the Timetable to completion of the last service in the Timetable on any Saturday, Sunday or public holiday (recognising that completion of the last service may occur after midnight).

Wheelset means one axle fitted with two wheels.

WHS means work health and safety.


WHS Law means all statutes, regulations and other subordinate legislation or codes of practice in force or that come into force during the Contract Term in New South Wales in respect of WHS including, the WHS Act and any regulations made thereunder, including the WHS Regulation and all other regulations made under the WHS Act.
WHS Obligations has the meaning given in clause 8.5(a).

WHS Regulation means the Work Health and Safety Regulation 2011 (NSW).

Work on Track Authority means any one of the following authorities to perform work on or in the vicinity of the Network:

(a) an advertised formal authority from the Operator to occupy a closed defined portion of track for a specified period;

(b) a formal authority from a relevant NSW Rail Entity for Qualified Workers and their equipment to occupy a defined portion of track for a specified period; or

(c) a formal authority from a relevant NSW Rail Entity for non-exclusive occupancy of track by Qualified Workers within specified limits.

1.2 Schedule definitions

The definitions in the Schedules apply in this deed unless the relevant term is defined differently in the Operative Provisions, in which case the definition in the Operative Provisions applies.

1.3 Interpretation

In this deed:

(a) headings and subheadings are for convenience only and do not affect interpretation,

and the following rules apply in interpreting this deed, unless the context makes it clear that a rule is not intended to apply:

(b) person includes an individual, the estate of an individual, a corporation, an authority or agency, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust and other entity;

(c) a reference to a party is to a party to this deed, and a reference to a party to a document includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation or statutory transfer;

(d) a reference to a document or instrument (including this deed) is to that document or instrument as varied, novated, ratified or replaced from time to time;

(e) 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 object as that Authority, institute, association or body;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to:

(i) a party, schedule, exhibit, attachment, appendix or annexure is a reference to a party, schedule, exhibit, attachment, appendix or annexure to or of this deed;

(ii) this deed includes all schedules, exhibits, attachments, appendices and annexures to it, including the SPR; and

(iii) a reference to the SPR includes all SPR Appendices;

(i) a reference:

(i) in the Operative Provisions to a clause is a reference to a clause of the Operative Provisions; and

(ii) in a schedule, exhibit, attachment, annexure or appendix to a paragraph or annexure, is a reference to a paragraph or annexure of that schedule, exhibit, attachment, annexure or appendix, unless stated otherwise;

(j) if a party is obliged to do something it must do so at its own cost unless expressly provided otherwise in this deed;

(k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally, except to the extent that such agreement, representation, warranty or indemnity is in respect of, or related to, any obligation of TfNSW or RailCorp to pay or procure payment to the Supplier in connection with this deed;

(l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally, except to the extent that such agreement, representation, warranty or indemnity is in respect of, or related to, any obligation of TfNSW or RailCorp to pay or procure payment to the Supplier in connection with this deed, in which case the agreement, representation, warranty or indemnity is for the benefit of the Supplier jointly;

(m) any reference to:

(i) the Project Activities;

(ii) an Asset;

(iii) the Deliverables;

(iv) the Project Plans;

(v) the SPR;

(vi) the Technical Documents; or
(vii) any other document or thing,

or any part of any of them:

(viii) being fit for its purpose or for its intended purpose; or

(ix) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to any purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:

A. this deed and the other Project Agreements;

B. any document provided by TfNSW to the Supplier on or before the date of this deed;

C. to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Variation, any document provided by TfNSW to the Supplier specifically in connection with the Variation; or

D. the Request for Proposals;

(n) 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;

(o) the letters MF are an acronym for Maintenance Facility when used as part of a defined term;

(p) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(q) a reference to A$, $A, dollar or $ is to Australian currency;

(r) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;

(s) a reference to time is to Sydney, Australia time;

(t) a month means a calendar month;

(u) a reference to construction includes development, manufacture, supply, installation, integration, testing and commissioning;

(v) a reference to any standard, code, guideline or specification is a reference to the version stated in this deed or, if no version is stated, the version of that standard, code, guideline or specification from time to time.

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

(x) any obligation of the Supplier under this deed with respect to a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last Confirmed by the Supplier to TfNSW's Representative under clause 9.
1.4 Rights and benefits of TfNSW

(a) Unless expressly stated otherwise, or as the context otherwise requires, each promise by the Supplier (whether by way of warranty, representation, indemnity, undertaking or other form of obligation or promise) is to be taken to be in favour of TfNSW and to create a right or benefit of TfNSW.

(b) The rights and benefits of TfNSW provided for under this deed and the other Project Agreements are intended to be for, and are held by TfNSW for, the benefit of TfNSW in its own right to support the discharge of its duties in relation to, and liabilities arising from, the performance of the Operations Functions, and also for the benefit of:

(i) RailCorp as the owner of the Assets; and
(ii) the Operator and the NSW Rail Entities to support the discharge of their respective duties in relation to, and liabilities arising from, the performance of the Operations Functions.

1.5 Benefits held on trust

(a) (Benefit of indemnities): TfNSW holds as trustee and agent for the Indemnified Parties the benefit of:

(i) each indemnity and release given by the Supplier under this deed in favour of the Indemnified Parties;
(ii) each Project Security required to be provided by the Supplier pursuant to clause 19.1; and
(iii) each right in each Project Agreement to the extent that such right is expressly stated to be for the benefit of an Indemnified Party.

(b) (Supplier's acknowledgment): The Supplier acknowledges the existence of such trusts and consents to:

(i) TfNSW:

A. having recourse to the Project Security, or otherwise enforcing the Project Security, as trustee and agent for and on behalf of the Indemnified Parties; and
B. exercising rights in relation to, or otherwise enforcing such indemnities, releases and other rights on behalf of, the Indemnified Parties;

(ii) TfNSW and RailCorp having recourse to the Project Security, or otherwise enforcing the Project Security, as if the Project Security had been given directly to and for the benefit of the Indemnified Party as a named obligee; and

(iii) each Indemnified Party exercising rights in relation to, or otherwise enforcing the indemnities, releases and other rights as if they were a party to this deed.

(c) (Deemed authority): To the extent that TfNSW does not have actual authority from an Indemnified Party to act as trustee and agent on behalf of the Indemnified Party as contemplated in this clause 1.5, then as between TfNSW and the Supplier, TfNSW will be deemed to have sought and obtained that authority to act as trustee and agent for that Indemnified Party.
1.6 Transfer of functions

The Supplier:

(a) acknowledges that TfNSW or RailCorp may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of either of them may be transferred to or vested in another entity;

(b) without limitation to clause 1.6(a), the Supplier acknowledges that some or all of the powers, functions, assets, liabilities or responsibilities of TfNSW may be transferred to or vested in the Operator;

(c) agrees to do anything (including execute any document), and must procure that its Associates do anything (including execute any document), required to give full effect to any of the matters contemplated in clauses 1.6(a) and 1.6(b); and

(d) shall have no Claim or entitlement to payment of any costs arising from any of the above.

1.7 Nothing to affect rights

Nothing in this deed or any other Project Agreement in any way limits, derogates from or affects any right, power, privilege or immunity in whatever form that TfNSW, RailCorp or any Authority or any other person has or may have under or by virtue of any law and no action for breach of this deed or any Project Agreement will lie against TfNSW or RailCorp for the exercise of any such right, power, privilege or immunity.

1.8 Approvals and consents

(a) TfNSW's Representative may, in making any decision or exercising any function under this deed, in its discretion:

(i) rely upon and adopt as TfNSW's Representative's own opinion, advice from TfNSW or any other person;

(ii) act in accordance with any instruction or direction given to TfNSW's Representative by TfNSW;

(iii) utilise any information as to rates, costs or margins that the Supplier may have provided to TfNSW prior to or subsequent to entering into this deed;

(iv) rely upon TfNSW's Representative's own assessment; or

(v) use a combination of the methods described in clauses 1.8(a)(i) to 1.8(a)(iv) above.

(b) All approvals, consents, decisions or exercises of discretion required (whether expressly or impliedly) or able to be given or made by TfNSW (in its own capacity or on behalf of RailCorp):

(i) relating to extending the Contract Term pursuant to clause 3.2;

(ii) relating to the satisfaction of a Condition Precedent pursuant to the terms of this deed; or

(iii) sought in relation to or in connection with, or referable to or determinative of the occurrence of, any Supplier Event of Default or Supplier Termination Event.
may be given, not given, made, not made, exercised, not exercised, withheld or conditioned by TfNSW in its absolute discretion and the Supplier acknowledges that TfNSW and TfNSW's Representative, in granting any approval or consent or making any decisions or exercising any discretion under or in connection with this deed in relation to such matters, will not assume any duty of care, responsibility or liability to the Supplier or any other person and will not be taken to have agreed that any matter that is the subject of any approval, consent, decision or exercise of a discretion is in compliance with the Project Agreements or the SPR.

1.9 Resolution of ambiguities within this deed

(a) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:

(i) if the ambiguity, discrepancy or inconsistency is in or between the SPR and the rest of this deed, the documents will be given precedence in the following order:

A. this deed (excluding the SPR); and

B. the SPR;

(ii) to the extent clause 1.9(a)(i) does not apply to or resolve the ambiguity, discrepancy or inconsistency, the document or provision which prescribes or requires the highest standard of performance or more onerous obligation on the Supplier consistent with all Mandatory Requirements will take precedence;

(iii) to the extent clauses 1.9(a)(i) and 1.9(a)(ii) do not apply or resolve the ambiguity, discrepancy or inconsistency, and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of an Asset or Deliverable or of the performance of any TLS Phase Activities, the Supplier must comply with the highest quality or standard specified or perform the more onerous obligation; and

(iv) to the extent clauses 1.9(a)(i) to 1.9(a)(iii) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between figured and scaled dimensions, figured will prevail over scaled dimensions.

(b) The documents comprising this deed are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.

(c) If an ambiguity, discrepancy or inconsistency of the type described in clause 1.9(a) is discovered by either party, that party must notify the other party as soon as reasonably practicable. TfNSW's Representative will, as soon as reasonably practicable, instruct the Supplier as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in clause 1.9(a).

1.10 Resolution of ambiguities between Project Agreements

(a) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency between the documents comprising the Project Agreements:

(i) the document or provision which prescribes or requires the highest standard of compliance or more onerous obligation on the Supplier consistent with all Mandatory Requirements will take precedence;
(ii) to the extent clause 1.10(a)(i) does not apply to or resolve the ambiguity, discrepancy or inconsistency, and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of any or of the performance of any of the TLS Phase Activities, the Supplier must comply with the highest quality or standard specified or perform the more onerous obligation; and

(iii) to the extent clauses 1.10(a)(i) and 1.10(a)(ii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between figured and scaled dimensions, figured will prevail over scaled dimensions.

(b) If an ambiguity, discrepancy or inconsistency of the type described in clause 1.10(a) is discovered by either party, that party must notify the other party as soon as reasonably practicable. TfNSW’s Representative will, as soon as reasonably practicable, instruct the Supplier as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in clause 1.11(a).

1.11 Resolution of ambiguities between Project Agreement and Technical Documents

(a) If there is any ambiguity, discrepancy or inconsistency between any of the documents comprising the Project Agreements and a Technical Document:

(i) where the ambiguity, discrepancy or inconsistency is between the provisions of a document comprising the Project Agreement and any part of the Technical Documents, the higher standard, quality or quantum will prevail, but if this does not resolve the ambiguity, discrepancy or inconsistency, the Project Agreement will prevail; and

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

(b) If an ambiguity, discrepancy or inconsistency of the type described in clause 1.11(a) is discovered by either party, that party must notify the other party as soon as reasonably practicable. TfNSW’s Representative will, as soon as reasonably practicable, instruct the Supplier as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in clause 1.11(a).

1.12 No Claim

Any direction given by TfNSW’s Representative in accordance with clause 1.9(c), 1.10(b) or 1.11(b) will not:

(a) entitle the Supplier to make any Claim arising out of or in connection with the direction;

(b) relieve the Supplier from or alter its liabilities or obligations whether under any Project Agreement or otherwise according to law, or

(c) prejudice or limit TfNSW’s rights against the Supplier whether under a Project Agreement or otherwise according to law.

1.13 No bias against drafter

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.
1.14 Excluding liability

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

1.15 Indexation

(a) CPI Indexed

Unless otherwise expressly provided, a reference to "CPI Indexed" after a monetary amount in a Project Agreement means that the amount will be indexed for movements in the consumer price index in accordance with the following formula:

\[ A \text{ (CPI Indexed)} = A \times \frac{CPI_{q-1}}{CPI_{base}} \]

Where:

- \( A \) means the monetary amount originally specified;
- \( CPI_{q-1} \) means the Consumer Price Index All Groups weighted average for the eight capital cities published by the Australian Bureau of Statistics for the Quarter End following the date that occurs 3 months before the relevant calculation date; and
- \( CPI_{base} \) means the Consumer Price Index All Groups weighted average for the eight capital cities published by the Australian Bureau of Statistics for the Quarter End ending 30 June 2016, being 108.6.

If either:

(i) the Consumer Price Index All Groups weighted average for the eight capital cities ceases to be published quarterly; or

(ii) the method of calculation of the Consumer Price Index All Groups weighted average for the eight capital cities substantially alters,

then the Consumer Price Index All Groups weighted average for the eight capital cities is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.

(b) AWE Indexed

Unless otherwise expressly provided, a reference to "AWE Indexed" after a monetary amount means that the amount will be indexed for movements in the Average Weekly Earnings, Australia index in accordance with the following formula:

\[ A \text{ (AWE Indexed)} = A \times \frac{AWE_{q-1}}{AWE_{base}} \]

Where:

- \( A \) means the monetary amount originally specified;
- \( AWE_{q-1} \) means the Average Weekly Earnings, Australia index (Persons, Full Time, Adult, Ordinary Time Earnings of All Persons, All Industries,}
original, all australia abs catalogue no. 6302.0) published by the australian bureau of statistics for the six month period that occurs closest in date prior to the relevant calculation date; and

\[ \text{AWE}_{\text{base}} \]

is the average weekly earnings, australia index (persons, full time, adult, ordinary time earnings of all persons, original, all australia abs catalogue no. 6302.0) published by the australian bureau of statistics for the six month period closest in date prior to 30 june 2016, being 1516.00 as at may 2016.

If either:

(i) the average weekly earnings, australia index (persons, full time, adult, ordinary time earnings of all persons, all industries, original, all australia abs catalogue no. 6302.0) ceases to be published biannually; or

(ii) the method of calculation of the average weekly earnings, australia index (persons, full time, adult, ordinary time earnings of all persons, all industries, original, all australia abs catalogue no. 6302.0) substantially alters,

then the average weekly earnings, australia index (persons, full time, adult, ordinary time earnings of all persons, all industries, original, all australia abs catalogue no. 6302.0) is to be replaced by the nearest equivalent index as selected in good faith by railcorp's representative and any necessary consequential amendments are to be made.

For the avoidance of doubt, in determining the relevant awe indexed value for a quarter end, the value to be used will be the value that is closest in date prior to the quarter end being calculated.

1.16 authorities

(a) the project agreements will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the operator, tfnsw or any other nsw rail entity to exercise any of its statutory functions, duties or powers pursuant to any law.

(b) the supplier acknowledges that, without limiting clause 1.16(a), anything the operator, tfnsw or any other nsw rail entity does, fails to do or purports to do pursuant to its functions and powers under any law will be deemed not to be an act or omission by the operator, that nsw rail entity or tfnsw (including a breach of contract) under or in connection with the project agreements and will not entitle the supplier to make any claim against tfnsw, the operator or the nsw rail entity.

(c) clauses 1.16(a) and 1.16(b) do not limit any liability which any nsw rail entity, the operator or tfnsw would have had to the supplier under the project agreement as a result of a breach by that nsw rail entity, the operator or tfnsw of a term of the project agreement but for clauses 1.16(a) and 1.16(b).

(d) the supplier acknowledges that:

(i) there are many authorities (other than the nsw rail entities) with jurisdiction over aspects of the tls phase activities, the network, parts of the maintenance facility site and other areas affected by the tls phase activities;
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 TLS Phase Activities; and

except to the extent expressly stated otherwise in this deed, the Supplier bears the risk of all occurrences of the kind referred to in clause 1.16(d)(ii) and will not be entitled to make, and TfNSW, the Operator and the NSW Rail Entities will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.17 Reasonable endeavours

If TfNSW and/or RailCorp are required under the terms of this deed to exercise best or reasonable endeavours, the Supplier acknowledges that:

(a) TfNSW and RailCorp will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;

(b) TfNSW and RailCorp cannot guarantee the relevant outcome; and

(c) TfNSW and RailCorp, by undertaking to exercise best or reasonable endeavours, do not agree to:

(i) interfere with or influence the exercise by any person of a statutory power or discretion;

(ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Project Agreements if TfNSW or RailCorp regards that exercise as not in the public interest;

(iii) develop policy or legislate by reference only or predominantly to the interests of the Project Agreements;

(iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Project Agreements; or

(v) act in any other way that TfNSW or RailCorp regards as not in the public interest.

2. Conditions Precedent

2.1 Agreement of no effect until Conditions Precedent satisfied

(a) Subject to clause 2.4, this deed has no effect unless and until each of the Conditions Precedent are satisfied, or waived by TfNSW under clause 2.2, on or before the Target Contractual Close Date.

(b) Within two Business Days of a party becoming aware that any Condition Precedent has been satisfied, that party shall notify the other party.

(c) If the fulfilment of any of the Conditions Precedent requires or would be assisted by the conduct of a party, that party must use all reasonable endeavours to ensure that the condition is fulfilled. Neither TfNSW or RailCorp have any obligation to incur any expense in relation to those endeavours.
2.2 Waiver of Conditions

A Condition Precedent is waived only if TfNSW notifies the Supplier of that waiver in writing. TfNSW may stipulate conditions of waiver in any such notice.

2.3 Termination for failure of Conditions Precedent

(a) The Supplier agrees and acknowledges that the Conditions Precedent are for the benefit of TfNSW. The Supplier must satisfy all of the Conditions Precedent on or before the Target Contractual Close Date.

(b) Unless each of the Conditions Precedent has been satisfied by the Supplier, or waived by TfNSW by notice to the Supplier, by 2.00pm on the Target Contractual Close Date:

(i) TfNSW may give Notice to the Supplier that this deed will be taken to have been terminated on the Target Contractual Close Date;

(ii) if TfNSW gives a Notice under clause 2.3(b)(i):

A. this deed will be of no further force or effect; and

B. no party will be entitled to bring any Claim against the other under or in respect of this deed or in respect of the reimbursement of costs and expenses or otherwise in connection with this deed and the TLS Phase Activities, other than any Claim in relation to a breach of any Day One Clause.

2.4 Day One Clauses

The Day One Clauses commence on the date of this deed.

3. Contract Term

3.1 Commencement Date

Subject to clause 2.4, this deed and the Contract Term commence on the Commencement Date.

3.2 End of Contract Term

(a) The Contract Term ends on:

(i) the date that is 25 years from the Date of Provisional Acceptance of the last Set in the Initial Fleet (Original Expiry Date);

(ii) if the Contract Term is extended in accordance with clause 3.2(b) or clause 3.2(c), the last day of the period of that extension (Extended Expiry Date); or

(iii) the date on which this deed is terminated in accordance with its terms, (End Date).

(b) Not less than 12 months before the Original Expiry Date, TfNSW may in its absolute discretion give notice to the Supplier to extend the Contract Term by a period of 5 years and, if TfNSW does so, the Contract Term and the rights and obligations of the parties under this deed will be extended by a period of 5 years from the Original Expiry Date.
If the Contract Term is extended under clause 3.2(b), not less than 12 months before the Extended Expiry Date, TfNSW may give notice to the Supplier to extend the Contract Term by a further period of 5 years and, if TfNSW does so, the Contract Term, the Extended Expiry Date and the rights and obligations of the parties under this deed will be extended by a further 5 years.

4. Objectives, primary obligations and risk allocation

4.1 Project objectives

TfNSW's strategic objectives for the Project are to achieve the following outcomes:

(a) support the NSW Government’s state priority objective of maintaining or improving reliability of public transport services, including providing safe and high quality rail services to customers;

(b) substantially mitigate fleet reliability and availability risks associated with the staged introduction of the Sydney Metro North West integration timetable in October 2017 and October 2018;

(c) improve reliability performance of the fleet and reduce the cost of maintaining the fleet;

(d) improve the customer experience by creating a fully air conditioned suburban fleet;

(e) achieve value for money through both the construction and commissioning phase and whole of life maintenance of the fleet; and

(f) achieve the above objectives whilst minimising financial, delivery and rail operational risks to government.

4.2 Supplier's primary obligations

On the terms and conditions of the Project Agreements, the Supplier:

(a) will design, develop, manufacture, test, commission, supply and deliver the Sets and other related Assets under the Delivery Deed;

(b) will design, procure, supply, install, commission and integrate the MF Works under the MF Works Deed;

(c) will during the term of the Maintenance Facility Licence, operate and maintain the Maintenance Facility Site;

(d) must procure access to any Other Sites as are necessary to perform the TLS Phase Activities under this deed;

(e) must provide the Required Reliability and the Required Availability under this deed;

(f) must provide the TLS Phase Activities under this deed; and

(g) must provide and, as appropriate, maintain all personnel, equipment and facilities necessary for the effective conduct and management of the Supplier's obligations under this deed.

4.3 TfNSW's primary obligations

On the terms and conditions of the Project Agreements, TfNSW agrees:
(a) to obtain the Planning Approval;
(b) to procure payment for the MF Works under the MF Works Deeds;
(c) to procure payment for the TLS Phase Activities;
(d) to provide assistance to the Supplier with respect to wheel profiling for the Sets in accordance with and subject to Schedule 11; and
(e) to provide the Supplier with access, or procure that access is provided for the Supplier, to:
   (i) the Maintenance Facility Site, pursuant to the Maintenance Facility Licence; and
   (ii) Out Depots.

4.4 Project risks

Except as expressly stated otherwise in the Project Agreements, the Supplier accepts all risks associated with the Project Activities, and will not be entitled to make any Claim against TfNSW, RailCorp or the Operator arising out of or in connection with those risks.

4.5 Rights do not affect risk allocation

(a) TfNSW has various rights under this deed and the other Project Agreements which are designed to give TfNSW the ability to monitor the performance of the Supplier’s obligations. Those rights include:
   (i) the right to Review Project Plans, Technical Documents, Programs, Verification Reports, and other documents which the Supplier must submit to TfNSW for Review;
   (ii) rights to inspect, monitor or audit the Project Activities;
   (iii) the right to notify the ASA of any non-conformance in the performance of the Project Activities that relates to the authorisation granted by the ASA; and
   (iv) rights to attend Verification Activities.

(b) Neither the exercise of, nor the failure to exercise, such rights will:
   (i) relieve the Supplier from, or alter or affect, the Supplier’s liabilities, obligations or responsibilities whether under any Project Agreement or otherwise according to law;
   (ii) prejudice or limit TfNSW’s rights, or the rights of the Operator or any other NSW Rail Entity, against the Supplier whether under any Project Agreement or otherwise according to law; or
   (iii) without limiting clause 4.5(b)(ii), preclude TfNSW, the Operator or any other NSW Rail Entity, from subsequently asserting that the Supplier has not fulfilled its obligations whether under any Project Agreement or otherwise according to law.

(c) Without limiting clause 4.5(b):
   (i) neither TfNSW, the Operator or any other NSW Rail Entity nor TfNSW’s Representative assumes or owes any duty of care to the Supplier to
review, (or if it does review it, in reviewing), any Submitted Document for errors, omissions or compliance with this deed;

(ii) no Review of, comments upon, or notice in respect of, or any failure to Review, comment upon or give any notice in respect of, any document or any other direction, act or omission of TfNSW, the Operator, any other NSW Rail Entity or TfNSW's Representative will:

A. relieve the Supplier from, or alter or affect, the Supplier's liabilities, obligations or responsibilities whether under any Project Agreement or otherwise according to law;

B. prejudice or limit TfNSW's, the Operator's or any other NSW Rail Entity's rights against the Supplier whether under any Project Agreement or otherwise according to law;

C. constitute an instruction to accelerate, disrupt, prolong or vary any of the Project Activities (unless expressly directed in writing); or

D. affect the time for the performance of TfNSW's or RailCorp's obligations.

(iii) the Supplier will not be relieved from compliance with any of its obligations under any Project Agreement or from any of its liabilities whether under any Project Agreement or otherwise according to law as a result of:

A. compliance with any Project Plan;

B. any audits or other monitoring by TfNSW, the Operator, any other NSW Rail Entity or TfNSW's Representative of the Supplier's compliance with any Project Plan; or

C. any failure by TfNSW, the Operator, any other NSW Rail Entity, TfNSW's Representative or anyone acting on behalf of TfNSW, to detect any non-compliance including where any failure arises from any negligence on the part of TfNSW, the Operator, any other NSW Rail Entity, TfNSW's Representative or any other person;

(iv) neither TfNSW, the Operator, any other NSW Rail Entity nor TfNSW's Representative assumes or owes any duty of care to the Supplier to inspect, or if it does so inspect, in inspecting, the Project Activities, the Assets or the Deliverables for errors, omissions or compliance with the requirements of any Project Agreement; and

(v) any inspection of the Project Activities (or lack of inspection) by or on behalf of TfNSW, the Operator, any other NSW Rail Entity or TfNSW's Representative will not in any way:

A. relieve the Supplier from, or alter or affect, the Supplier's liabilities, obligations or responsibilities whether under any Project Agreement or otherwise according to law; or

B. prejudice or limit TfNSW's rights, or the rights of the Operator or any other NSW Rail Entity, against the Supplier whether under any Project Agreement or otherwise according to law.
4.6 No Claim regarding Delivery Phase Activities or MF Works Activities

The Supplier shall not be entitled to, and must not make, any Claim (including any claim regarding the responsibility for a Defect) against TfNSW or RailCorp in respect of any damage, expense, loss or Claim brought against, suffered or incurred by the Supplier arising out of or in any way in connection with any act or omission of the Supplier or any of the Supplier's Associates relating to the Delivery Phase Activities or the MF Works Activities.

5. Governance

5.1 TfNSW's Representative

(a) TfNSW must appoint and retain a natural person to be TfNSW's Representative under the Project Agreements.

(b) TfNSW may at any time by notice to the Supplier replace TfNSW's Representative with another person.

(c) TfNSW's Representative:

(i) may exercise all the powers, duties, discretions and authorities to be exercised by TfNSW's Representative under all Project Agreements and does so as the agent of TfNSW (and not as an independent certifier, assessor or valuer); and

(ii) will have the full power and authority to act for and on behalf of and to bind TfNSW under all the Project Agreements.

5.2 Appointees of TfNSW's Representative

(a) TfNSW's Representative may:

(i) by notice to the Supplier, appoint persons to exercise any of the functions of TfNSW's Representative under any of the Project Agreements. The notice of appointment shall set out the functions that may be exercised by the appointee. The Supplier acknowledges and agrees that a purported exercise by TfNSW's Representative's appointee of a function outside of those functions delegated to the appointee and notified to the Supplier is not binding on TfNSW;

(ii) not appoint more than one person to exercise a specific function at any one time;

(iii) revoke any appointment under clause 5.2(a)(i) by notice to the Supplier; and

(iv) continue to exercise a function under a Project Agreement despite appointing another person to exercise the function under clause 5.2(a)(i) (provided that any directions of TfNSW's Representative take precedence over those of any appointees to the extent of any inconsistency).

(b) All references in a Project Agreement to TfNSW's Representative include a reference to an appointee under this clause 5.2.

5.3 Directions by TfNSW's Representative

(a) If, pursuant to a provision of a Project Agreement enabling TfNSW's Representative to give directions, TfNSW's Representative gives a direction, the Supplier must comply with the direction.
(b) TfNSW’s Representative may give a direction requiring the Supplier:

(i) to comply with an obligation imposed on the Supplier by or in relation to a Project Agreement;

(ii) to take a step which will support the compliance by the Supplier with an obligation imposed on the Supplier by or in relation to a Project Agreement; or

(iii) to decline or cease to take a step which may prejudice the Supplier’s ability to comply with an obligation imposed on the Supplier by or in relation to a Project Agreement.

(c) TfNSW’s Representative may, as part of the direction or subsequent to the direction, prescribe a date by which the direction must be complied with.

(d) Despite any other provision of this deed, TfNSW’s Representative may give a direction orally but must confirm it in writing as soon as practicable.

5.4 TfNSW’s Representative’s right to inspect

(a) The Supplier must itself, and must procure that its Subcontractors, permit TfNSW’s Representative and its nominees on reasonable notice, at any time, to access their respective premises in order to carry out an inspection or audit as contemplated under clause 5.4(b).

(b) After giving notice under clause 5.4(a), TfNSW is entitled to audit, inspect, examine, copy and (subject to clause 13) test:

(i) the materials, goods, workmanship and work methodology employed at any place where the Project Activities are being, have been, or are to be carried out, and all related documentation, systems and certification;

(ii) the suitability of and/or the Supplier’s compliance with:

A. the Project Plans; and

B. the obligations of the Supplier under this deed; or

(iii) the stock of Spares and Special Tools held by the Supplier.

(c) The Supplier must, at its own cost:

(i) make available suitable management representatives and guides to enable TfNSW’s Representative and nominees to perform the audits, inspections, examinations or tests required in an efficient and effective manner;

(ii) provide all necessary access to all records and documentation reasonably required for the audits, inspections, examinations or tests; and

(iii) make available suitable office facilities, with telephone, internet and photocopying facilities.

(d) If at any time, pursuant to an audit, inspection, examination or test under this clause 5.4, TfNSW’s Representative determines that a Project Plan or the Supplier’s performance of any aspect of the Project Activities does not comply with the requirements of this deed, TfNSW’s Representative may notify the Supplier of the details of the non-conformance and issue a Remedial Direction.
The Supplier must permit TfNSW to conduct further audits, inspections, examinations or tests to verify whether the Supplier has complied satisfactorily with the Remedial Direction.

If at any time, pursuant to an audit, inspection, examination or test under this clause 5.4, TfNSW's Representative determines that the stock of Spares or Special Tools held by the Supplier is less than the minimum specified stock identified in the Initial Fleet Spares List or Option Fleet Spares List (as applicable) (Stock Discrepancy), TfNSW will be entitled to deduct the cost of those Spares and Special Tools comprising the Stock Discrepancy from any TLS Payment subsequently payable.

If the aggregate amount to be deducted under clause 5.4(f) is greater than the aggregate of any TLS Payments subsequently payable, the difference will be Moneys Owing from the Supplier to TfNSW.

TfNSW must pay any amounts:

(i) deducted under clause 5.4(f); or

(ii) paid from the Supplier to TfNSW under 5.4(g),

to the Supplier within 20 Business Days after TfNSW's Representative determines that the stock of Spares or Special Tools held by the Supplier to which the Stock Discrepancy relates is greater than or equal to the minimum specified stock identified in the Initial Fleet Spares List or Option Fleet Spares List (as applicable).

5.5 Supplier's Representative

(a) The Supplier must appoint and retain a natural person to be the Supplier's Representative under the Project Agreements.

(b) The Supplier's Representative:

(i) may exercise all the powers, duties, discretions and authorities to be exercised by the Supplier's Representative under all Project Agreements and does so as the agent of the Supplier; and

(ii) must have the full power and authority to act for and on behalf of and to bind the Supplier under all the Project Agreements.

(c) The Supplier must ensure that the Supplier's Representative has full authority to execute the directions of TfNSW's Representative without delay.

(d) On reasonable notice from TfNSW's Representative, the Supplier's Representative must attend any ad hoc or regular meetings required by TfNSW's Representative and must provide reports and make any presentations that TfNSW's Representative reasonably requests, to either:

(i) demonstrate the Supplier's compliance with the Asset Management System, any Project Plan or any other system required to comply with this deed; or

(ii) discuss other matters of importance to the conduct or progress of the TLS Phase Activities.

(e) TfNSW may direct the replacement of the Supplier's Representative if, in TfNSW's Representative's opinion:
(i) the Supplier's Representative is not performing, or is not reasonably competent or capable to properly perform, the duties of the Supplier's Representative; or

(ii) there is a serious breakdown in the relationship between the Supplier's Representative and TfNSW's Representative.

5.6 Liability for actions of Supplier's Representative

The Supplier is bound by and deemed to have knowledge of:

(a) notices or documents signed by the Supplier's Representative;

(b) matters within the knowledge of the Supplier's Representative; and

(c) acts, omissions and defaults of the Supplier's Representative, whether or not the Supplier's Representative was acting within the scope of its authority at the time of the act, omission or default.

5.7 TfNSW's obligations limited

(a) The Supplier must give TfNSW's Representative reasonable advance notice if the Supplier requires any information, materials, documents or instructions from TfNSW's Representative or TfNSW under this deed.

(b) The Supplier acknowledges and agrees that, unless expressly provided to the contrary in this deed:

(i) neither TfNSW nor TfNSW's Representative will be obliged to provide any information, materials, documents or instructions requested by the Supplier under clause 5.7(a); and

(ii) if TfNSW does not provide the relevant information, materials, documents or instructions, the Supplier will not be entitled to:

A. delay the progress of any part of the Project Activities; or

B. make any Claim against TfNSW.

5.8 No legal effect

Section 4 of the SPR describes the governance bodies established by the parties for the purpose of the Project. The governance bodies referred to in section 4 of the SPR are consultative and advisory bodies only and nothing which occurs during a meeting of such bodies will:

(a) affect the rights or obligations of either party under the Project Agreements;

(b) entitle a party to make any Claim against the other;

(c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under a Project Agreement or otherwise according to law;

(d) prejudice a party's rights against the other whether under a Project Agreement or otherwise according to law; or

(e) be construed as a direction by a party to do or not do anything.
6. Mandatory Requirements and Approvals

6.1 Mandatory Requirements

The Supplier must:

(a) perform (and procure any Subcontractors to perform) the TLS Phase Activities in accordance with; and

(b) ensure that all Spares, Tools and Consumables provisioned from time to time are in accordance with,

all applicable Mandatory Requirements.

6.2 Supplier to obtain Approvals

(a) Except to the extent expressly stated otherwise in this deed, the Supplier must:

(i) subject to clause 6.3, obtain (or procure) and maintain all Approvals required for the Supplier or its Associates to perform the TLS Phase Activities;

(ii) comply with, carry out and fulfil, and ensure its Subcontractors comply with, carry out and fulfil, the requirements of all such Approvals;

(iii) not cause TfNSW, the Operator or any other NSW Rail Entity to fail to comply with, carry out or fulfil the requirements of any Approval that TfNSW, the Operator or the NSW Rail Entity is expressly or impliedly under the terms of the Approval required to comply with, carry out or fulfil; and

(iv) pay all fees, effect all Insurances, provide any security and execute any undertakings or agreements or any other document required by any relevant Authority in respect of any Approval which the Supplier must obtain, maintain or comply with (and ensure that the Supplier's Subcontractors do likewise in relation to any Approvals which they must obtain, maintain or comply with in connection with the TLS Phase Activities).

(b) The Supplier indemnifies TfNSW, the Operator and each other NSW Rail Entity against any Loss suffered by any of them arising out of or in any way in connection with a failure by the Supplier to comply with its obligations under this clause 6.2.

6.3 Planning Approval

(a) The parties acknowledge and agree that, under clause 2.3 (Compliance with Law) of the MF Works Deed, TfNSW is responsible for obtaining the Planning Approval.

(b) TfNSW's Representative will give notice to the Supplier, together with a copy of the Planning Approval, as soon as reasonably practicable following the grant of the Planning Approval.

(c) If the Supplier considers that there is a Difference in Conditions and that Difference in Conditions necessitates a change or variation to the TLS Phase Activities:

(i) the Supplier must, within 10 Business Days of the receipt of notice from TfNSW's Representative given pursuant to clause 6.3(b), notify TfNSW's Representative in writing with detailed particulars of the
reason why the Difference in Conditions necessitates a change or variation to the TLS Phase Activities;

(ii) where the Supplier gives such notice and the Difference in Conditions does necessitate a change or variation to the TLS Phase Activities, TfNSW's Representative must issue a Variation Order under clause 24.4 after which relevant adjustments will be made under clause 24.4; and

(iii) irrespective of whether or not the Supplier has given the notice under clause 6.3(c)(i), TfNSW's Representative may (in its absolute discretion) issue a Variation Order under clause 24.4 if it believes the Difference in Conditions necessitates a change or variation to the TLS Phase Activities, after which relevant adjustments will be made under clause 24.4.

(d) The parties acknowledge and agree that any delay by TfNSW in procuring the grant of the Planning Approval will not be a breach of any Project Agreement, but nothing in this clause 6.3(d) limits or affects the Supplier's rights (if any):

(i) under clause 6.3(c);

(ii) to an extension of time to the Date for Completion (as defined in the MF Works Deed) under clause 10.10 (Extension of time) of the MF Works Deed, if the requirements of that clause are satisfied;

(iii) to an extension of time to the Date for Provisional Acceptance under clause 24.8 (Extension of time, relief and/or compensation) of the Delivery Deed, if the requirements of that clause are satisfied; or

(iv) to compensation where it is so entitled under:

A. clause 10.13 (Delay Damages) of the MF Works Deed; or

B. clause 24.8 (Extension of time, relief and/or compensation) of the Delivery Deed.

(e) Except to the extent expressly stated otherwise in clause 6.3(c) or any other Project Agreement, the Supplier will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in any way in connection with any Difference in Conditions.

6.4 Supplier to assist TfNSW

The Supplier must provide TfNSW, the Operator and all other relevant NSW Rail Entities with all reasonable assistance to enable each of them to:

(a) comply with all applicable Mandatory Requirements; and

(b) obtain or satisfy or fulfil the conditions and requirements in respect of any:

(i) Approvals which are obtained by any of them; or

(ii) conditions and requirements of Approvals which are required to be satisfied or fulfilled by them,

relating to the TLS Phase Activities and the Project.
6.5 Communications with Authorities

Except to the extent directed otherwise by TfNSW's Representative, the Supplier must give TfNSW's Representative copies of all documents (including notices, orders or directions) and details of all other communications relating to the Project Activities that are:

(a) received by the Supplier or the Supplier's Associates from an Authority (including Approvals and other notices in connection with the Rail Safety National Law, the Rail Safety National Regulations or any Accreditation held by the Supplier or its Associates) as soon as possible after they are received by the Supplier or the Supplier's Associate; or

(b) given by the Supplier or the Supplier's Associate to an Authority at the time that those documents are given to the Authority.

6.6 Submission of documents

If the Supplier (or an Associate) is required under this deed to prepare for submission, or submit, any documents to an Authority to obtain an Approval, or pursuant to an Approval, the Supplier must:

(a) provide TfNSW's Representative with a copy of those documents for Review before they are submitted to the Authority;

(b) consider any comments made by TfNSW on Review of the documents; and

(c) if the documents are to be submitted by TfNSW or the Operator, deliver a final version of the documents to TfNSW or the Operator (as applicable) in order to enable TfNSW or the Operator (as applicable) to submit the relevant document to the Authority on time.

6.7 Supplier to comply with notices from Authority

The Supplier must comply with any requirement, notice, order or direction received from or given by any Authority in connection with the Project Activities, including any infringement notice, fine or penalty.

7. Rail Safety

7.1 Continuing obligation

Throughout the Contract Term, the Supplier must (and must ensure that the Supplier's Subcontractors):

(a) cooperate with the Accredited Persons, and do everything reasonably necessary to enable each of them to:

   (i) maintain any Accreditation; and

   (ii) comply with their other obligations under the Rail Safety National Law and in relation to rail safety,

   to the extent that their Accreditation or rail safety obligations are affected by the Project Activities;

(b) not do, or omit to do, anything which may:

   (i) cause an Accredited Person to breach any term of its Accreditation; or
(ii) cause the Accreditation of an Accredited Person to be suspended or cancelled; and

(c) give ONRSR access to such premises and information as ONRSR lawfully requests to fulfil its functions with respect to the Project and the Project Activities, within the time requested.

7.2 Supplier’s rail safety obligations

In carrying out the TLS Phase Activities:

(a) the Supplier must (and to the extent the TLS Phase Activities are performed by any Subcontractor, it must ensure that the Subcontractor does):

(i) hold any necessary Accreditation to carry out any railway operations (as defined in the Rail Safety National Law) that are comprised in or form part of the TLS Phase Activities; and

(ii) comply with the conditions of that Accreditation; and

(b) the Supplier must (and, to the extent the TLS Phase Activities are performed by any Subcontractors, it must ensure that the Subcontractors) act as a rail transport operator and comply with any obligations of a rail transport operator they have under the Rail Safety National Law and Rail Safety National Regulations,

and to the extent that any Subcontractor is engaged in or in connection with the TLS Phase Activities in circumstances where subsection 62(1)(b) of the Rail Safety National Law applies, the Supplier must ensure that it is able to comply at all times with its obligations under this clause.

7.3 Safety Interface Agreements

The Supplier must:

(a) subject to clause 7.3(b), enter into Safety Interface Agreements with Interface Parties where required by the Rail Safety National Law; and

(b) prior to execution of any Safety Interface Agreement, submit a draft of the Safety Interface Agreement to TfNSW for Review.

7.4 Supplier’s Personnel

The Supplier must ensure that all the Supplier’s Personnel:

(a) are competent to carry out the work for which they are engaged for the purposes of section 117 of the Rail Safety National Law; and

(b) comply with their obligations under the Rail Safety National Law.

7.5 TfNSW to cooperate

TfNSW must provide all reasonable cooperation to the Supplier that the Supplier reasonably requires to obtain any Accreditation, or a variation to its Accreditation, or to fulfil its obligations under the Rail Safety National Law, in connection with the TLS Phase Activities, by making available relevant information in its possession or control (or procuring another Accredited Person to make available information in its possession or control) if reasonably requested to do so by the Supplier, but only to the extent that the information is not readily available to the Supplier from another source.
7.6 Cooperation with Investigative Authorities

The Supplier must:

(a) give all Investigative Authorities such access to premises and information as the Investigative Authority lawfully requests, within the time requested;

(b) cooperate with and respond to any other lawful requests made by any Investigative Authority, within the time requested; and

(c) not hinder or delay any Investigative Authority in carrying out its duties.

7.7 Supplier’s obligations not limited

The obligations of the Supplier under this clause 7 are in addition to and are not intended to limit the other obligations of the Supplier under this deed or pursuant to any Legal Requirements, including the Supplier’s obligations under clauses 6, 8 and 9.

7.8 Alert Events

(a) The Supplier must notify TfNSW’s Representative immediately upon becoming aware of any matter that may cause an Alert Event.

(b) If the Supplier becomes aware of an Alert Event occurring, the Supplier must, at its cost:

(i) immediately inform TfNSW’s Representative of the Alert Event;

(ii) keep TfNSW’s Representative informed about the Alert Event; and

(iii) provide TfNSW’s Representative with sufficient information to enable TfNSW’s Representative to assess the nature of the Alert Event and the likely effect of the Alert Event on:

A. the Railway, RailCorp’s Facilities and any RailCorp Land;

B. the safety of the Operator’s passengers, station patrons or representatives of TfNSW or the Operator; and

C. the operation of the Railway.

(c) If any Alert Event causes:

(i) the Railway, RailCorp’s Facilities and any RailCorp Land;

(ii) the safety of the Operator’s passengers, station patrons or representatives of TfNSW or the Operator; or

(iii) the operations of the Railway,

to be at risk (as determined by TfNSW in its absolute discretion), the Supplier must:

(iv) immediately co-operate with TfNSW requests in respect of the Alert Event (including by ceasing to carry out that part of the Project Activities in respect of which the Alert Event applies and, if applicable, ceasing any Network Access Rights or vacating the Rail Corridor); and
(v) at its cost assist TfNSW and/or the Operator to take such action as TfNSW directs is necessary to avert any danger and ameliorate the risk.

(d) Neither TfNSW's rights nor the Supplier's liabilities or obligations, whether under this deed or otherwise according to law, in respect of Alert Events, will be limited by the terms of this clause 7.8.

8. Supplier's general obligations

8.1 SPR

In the performance of the TLS Phase Activities, the Supplier must comply with the SPR.

8.2 All work included

Except as stated in this deed, the Supplier has allowed for the provision of all work, materials and equipment necessary for the performance of the TLS Phase Activities, whether or not expressly mentioned in this deed. All such work and materials:

(a) must be undertaken and provided by the Supplier at its own cost;
(b) form part of the TLS Phase Activities and shall not constitute a Variation; and
(c) will not entitle the Supplier to make a Claim except as expressly provided for in this deed.

8.3 Authorised Engineering Organisation

(a) The Supplier must maintain during the Contract Term AEO authorisation from the Asset Standards Authority for all the engineering services defined in SPR Appendix 8.

(b) The Supplier acknowledges that the Asset Standards Authority will assess, and is the body empowered to grant, AEO status to the Supplier to carry out the TLS Phase Activities in accordance with SPR Appendix 8, including on the basis of the procedures of, and undertakings given by, the Supplier and the Supplier's Subcontractors as set out in the Project Plans referred to in clause 9.

8.4 Work health and safety

(a) The Supplier must, and must ensure that the Supplier's Personnel, carry out the TLS Phase Activities:

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

(ii) in a manner that protects property.

(b) The Supplier must, and must (as relevant) ensure that the Supplier's Personnel carrying out the TLS Phase Activities under this deed in Australia:

(i) comply with all Mandatory Requirements and other requirements of this deed for work health, safety and rehabilitation management;

(ii) without limiting clause 8.4(b)(i), comply with their respective obligations under the WHS Law;

(iii) without limiting clauses 8.4(b)(i) and 8.4(b)(ii), comply with their obligations under the WHS Law to consult, cooperate and coordinate.
activities with all other persons who have a WHS duty in relation to the same matter;

(iv) at all times, identify and exercise all necessary precautions to ensure the health and safety of all persons including the Supplier’s Personnel, TfNSW’s Personnel, the Operator’s Personnel and members of the public who may be affected by, or by the performance or purported performance of, the TLS Phase Activities;

(v) pay all fees and charges payable under the WHS Law in connection with the provision of the TLS Phase Activities;

(vi) where the Supplier is engaged, appointed or declared to act in a specific capacity for the purposes of the WHS Law (including as a Principal Contractor), comply with and discharge the obligations under the WHS Law that are applicable to that engaged, appointed or declared capacity;

(vii) when attending, and prior to carrying out the TLS Phase Activities at, any site owned or managed by TfNSW, the Operator or any other NSW Rail Entity, complete (at the Supplier’s cost) any WHS induction process/training provided by TfNSW, the Operator or the NSW Rail Entity and thereafter comply with all Mandatory Requirements relating to WHS and rehabilitation management at those sites;

(viii) when TfNSW’s Personnel or the Operator’s Personnel attend a site managed or controlled by the Supplier, provide:

A. TfNSW, the Operator or the relevant Associate with sufficient information regarding any hazards or risks associated with the sites or the TLS Phase Activities which may affect TfNSW’s Personnel or the Operator’s Personnel; and

B. the Personnel themselves with site induction training, and sufficient information, training and supervision to ensure that they are able to carry out their work without risk to health or safety arising from the sites or the TLSPhase Activities;

(ix) comply with any reasonable directions on WHS given by TfNSW’s Representative;

(x) comply with any directions on a Safety Issue by any relevant Authority or by TfNSW’s Representative within any timeframe specified;

(xi) immediately notify TfNSW’s Representative and the relevant Authorities of any Notifiable Incident and promptly notify TfNSW of any other Safety Issue;

(xii) notify TfNSW’s Representative as soon as possible of any visit to any site or premises at which the Supplier is carrying out the TLS Phase Activities of any union or union official investigating WHS concerns or of any visit by an Authority for any reason;

(xiii) provide TfNSW’s Representative with copies of all notices and correspondence (including from an Authority, union, union official or health and safety representative) concerning WHS Law within two Business Days of the date on which any such notice or correspondence was either dispatched or received;
(xiv) unless otherwise directed by TfNSW's Representative, conduct an investigation into the circumstances of a Safety Issue promptly after the Safety Issue occurs;

(xv) unless otherwise directed by TfNSW's Representative, promptly notify TfNSW of the outcome of an investigation into any Safety Issue;

(xvi) if requested, promptly provide to TfNSW's Representative any documents related to or created in respect of an investigation into a Safety Issue;

(xvii) do all things necessary to assist TfNSW and refrain from doing anything that may impede TfNSW in discharging its obligations under the WHS Law;

(xviii) institute systems to obtain regular written assurances from each Significant Contractor about their ongoing compliance with WHS Law as applicable including the due diligence obligations contained therein;

(xix) provide TfNSW's Representative with the written assurances referred to in clause 8.4(b)(xviii), together with written assurances from the Supplier about the Supplier's ongoing compliance with the WHS Law as applicable;

(xx) provide TfNSW's Representative with a written report of all work health, safety and rehabilitation matters as TfNSW's Representative may require from time to time;

(xxi) cooperate and coordinate with all Interface Parties and TfNSW to ensure that all parties are able to comply with their respective obligations under the WHS Law;

(xxii) exercise a duty of utmost good faith to TfNSW, RailCorp and the Operator in carrying out the TLS Phase Activities to enable TfNSW, RailCorp and the Operator to discharge their respective duties under the WHS Law;

(xxiii) ensure that it does not do anything or fail to do anything that may cause TfNSW, RailCorp or the Operator to be in breach of the WHS Law; and

(xxiv) ensure that each Subcontract includes provisions equivalent to this clause 8.4 and paragraph 3.2(d) of Schedule 9.

(c) The Supplier must liaise, cooperate and confer with TfNSW, RailCorp, the Operator and any other party nominated by TfNSW, as and when reasonably required by TfNSW or the Operator or if required for the proper performance of the Supplier's obligations under this deed, for the purpose of ensuring that the TLS Phase Activities can be performed safely and without risk to health.

(d) Without limiting the Supplier's obligations under this clause 8.4, the Supplier must ensure that the TLS Phase Activities occurring outside of the Commonwealth of Australia are performed consistently with all applicable laws and legal requirements in those jurisdictions in which the TLS Phase Activities are being performed.

(e) Without limiting any duties or obligations under the Rail Safety National Law, the Supplier must ensure, so far as is reasonably practicable, that the Sets are, without risks to the health and safety of persons:

(i) who use the Sets for a purpose for which they are designed or manufactured;
(ii) who store the Sets;
(iii) who carry out any reasonably foreseeable activity in relation to the Sets for a purpose for which they are designed or manufactured or for the proper storage, decommissioning, dismantling or disposal of the Sets;
(iv) who are in the vicinity of and are exposed to the Sets; and
(v) whose health or safety may be affected by a use or activity referred to in this clause 8.4(d).

8.5 WHS audit

(a) Without limiting TfNSW's rights to conduct an audit under any other term of this deed, the Supplier must conduct itself, or allow TfNSW or another third party appointed by TfNSW to conduct, audits of the Supplier's (and any Subcontractor's) compliance with its health and safety obligations:
   (i) under this clause 8; and
   (ii) under all applicable WHS Laws,
(WHS Obligations) from time to time as required by TfNSW.

(b) If the Supplier is required to conduct an audit under clause 8.5(a), it must do so within the time reasonably required by TfNSW's Representative, and promptly provide a report to TfNSW on the outcome of the audit.

(c) If TfNSW conducts an audit under clause 8.5(a), the Supplier must give TfNSW and TfNSW's Personnel (including internal and external auditors and advisers) full access at all reasonable times and on reasonable notice to:
   (i) data, records and other information in the possession or control of the Supplier or any of its Associates reasonably required by TfNSW to conduct the audit; and
   (ii) the Supplier's Personnel for the purposes of obtaining information for the audit.

(d) If an audit identifies any breach of the WHS Obligations, the Supplier must, within a reasonable time, given the nature of the breach, and at its own cost, do all things necessary to remedy that breach and provide to TfNSW documented evidence of the corrective actions taken.

8.6 Prevention of nuisance and interference

In performing the TLS Phase Activities, the Supplier must:

(a) prevent nuisance and unreasonable noise, dust, vibration and disturbances; and
(b) not interfere with the passage of people and vehicles, access to any premises, car parks, roads or pedestrian ways or the operations or activities carried out on or adjacent to any Maintenance Location, except to the extent and for such period that such interference is required for purposes of public health or safety or is not reasonably avoidable.

8.7 Industrial relations

(a) The Supplier must, in performing the TLS Phase Activities, report to TfNSW any grievance or dispute relating to industrial relations or WHS matters that may impact the carrying out of the TLS Phase Activities within 24 hours of it becoming
aware of the grievance or dispute, and provide TfNSW with full and regular updates about the steps being taken to resolve such grievance or dispute.

(b) The Supplier must comply with all applicable:

(i) statutory obligations;

(ii) court and tribunal orders, directions, decisions and contract determinations; and

(iii) industrial instruments (including awards and enterprise agreements, whether registered or unregistered),

and will ensure the Supplier's Personnel in connection with the TLS Phase Activities are paid and receive at least the minimum wages and conditions as provided for by the applicable order, industrial instrument, contract determination or other relevant statutory obligation.

(c) The Supplier must take reasonable steps to resolve Industrial Action which adversely affects, or has the potential to adversely affect, the carrying out of the TLS Phase Activities.

(d) The Supplier must take reasonable steps to prevent or bring to an end any unprotected Industrial Action which is happening, is threatened, impending or probable, or is being organised, and which may impact the carrying out of the TLS Phase Activities, including by pursuing legal action where possible.

8.8 Supply of Training

(a) The Supplier must submit all training packages and manuals to TfNSW for Review, and otherwise comply with its obligations as set out in section 2 of the SPR.

(b) All Training provided by the Supplier must be suitable and sufficient to enable TfNSW, the Operator any other NSW Rail Entities, their employees and other relevant persons under the authority of TfNSW, the Operator or any other NSW Rail Entity to safely and efficiently use the Sets or any other Assets for their intended purposes.

8.9 Community relations

The Supplier:

(a) acknowledges that the areas where the TLS Phase Activities are being carried out are of great importance to many people, including local residents and businesses; and

(b) must participate in all community relations and involvement programs and activities as:

(i) required by the SPR;

(ii) required by any Approvals; and

(iii) otherwise reasonably required by TfNSW from time to time.

8.10 Cooperation and coordination with Interface Parties

(a) The Supplier:
(i) acknowledges that:

A. Interface Parties carry out Interface Activities upon or in the vicinity of a Maintenance Location at the same time as the Supplier;

B. the TLS Phase Activities may interface with the Interface Activities;

C. Interface Parties may be executing work on parts of a Maintenance Location, or adjacent to a Maintenance Location, at the same time as the Supplier is performing the TLS Phase Activities; and

D. Interface Parties may require the Supplier to provide information to them to coordinate the Interface Activities with the TLS Phase Activities and this must be provided in a timely manner by the Supplier;

(ii) must at all times permit Interface Parties to carry out the Interface Activities:

A. on the applicable parts of the relevant Maintenance Location or any adjacent property to the relevant Maintenance Location (as the context requires);

B. at the same time as the Supplier is performing the TLS Phase Activities; and

C. at the times agreed with the Interface Party, or failing agreement at times determined by TfNSW's Representative, and for this purpose, ensure the Interface Parties have safe, clean and clear access to those parts of the relevant Maintenance Location, or property adjacent to the Maintenance Location (to the extent that the Supplier has access to that property and for the period of such access), required by them for the purpose of carrying out their work subject to where the relevant Interface Party is carrying out any Interface Activities;

(iii) must fully cooperate with the Interface Parties, and do everything reasonably necessary to:

A. facilitate the Interface Activities, including providing Interface Parties with such assistance as may be directed by TfNSW's Representative;

B. ensure the effective coordination of the TLS Phase Activities with the Interface Activities;

C. carefully coordinate and interface the TLS Phase Activities with the Interface Activities; and

D. perform the TLS Phase Activities so as to minimise any interference with or disruption or delay to the Interface Activities, including design, construction and any maintenance;

(iv) must be responsible for coordinating the TLS Phase Activities, including work sequencing, testing and commissioning, safety and industrial...
relations matters with those affecting, and influenced by, Interface Parties’ Personnel and work;

(v) must attend coordination meetings chaired by TfNSW's Representative with Interface Parties and others at such times as may be reasonably required by TfNSW's Representative, to review current and future issues;

(vi) must promptly advise TfNSW's Representative if the Supplier becomes aware of any matter arising out of the liaison with Interface Parties that may have an adverse effect upon the TLS Phase Activities; and

(vii) if required by Law, must enter into a Safety Interface Agreement.

(b) TfNSW will not be liable upon any Claim by the Supplier arising out of or in any way in connection with the Interface Parties carrying out Interface Activities.

8.11 Advertising on Sets

(a) Without limiting the Supplier’s obligations under:

(i) clause 8.10; and

(ii) the Maintenance Facility Licence,

the Supplier acknowledges and agrees that TfNSW may, from time to time, engage Interface Parties to install advertising material on the Sets while the Sets are at the Maintenance Facility Site.

(b) The Supplier:

(i) must allow access to such Interface Parties to perform such activities in accordance with and subject to the requirements of this deed and the Maintenance Facility Licence; and

(ii) agrees that any advertising revenue generated from advertising material installed on the Sets will, as between the Supplier and TfNSW, belong to TfNSW.

8.12 Personnel

(a) The Supplier must ensure that the Supplier’s Personnel engaged in or in connection with the TLS Phase Activities are:

(i) competent, experienced, appropriately qualified and obtain and maintain any applicable or appropriate qualifications and training; and

(ii) to the extent required by any Mandatory Requirement, are qualified and trained to meet the requirements of the Supplier’s Accreditation and this deed.

(b) If requested by TfNSW at any time, the Supplier must provide records and any other relevant evidence of qualifications, training and certification of the Supplier’s Personnel.

(c) The Supplier must pay all wages, salaries, benefits and entitlements and all income, payroll, sales and similar taxes, in relation to all Supplier’s Personnel whether or not the liability results from the Supplier entering into the Project Agreements.
The Supplier must, at all times, have and maintain personnel with sufficient skills to properly perform and manage the TLS Phase Activities including all required activities related to programming, budgeting, inspecting, fault finding, repairing and maintaining for safety and serviceability.

Any of the Supplier's Personnel involved with the TLS Phase Activities who are present in Australia may, at the direction of TfNSW, be subjected to selective or random sample testing as required by TfNSW in relation to alcohol or drugs. The testing and any costs of testing are the responsibility of the Supplier and the Supplier must have procedures in place to facilitate this requirement.

If the result from any testing of any person exceeds any of the cut off levels prescribed in TfNSW's alcohol and drugs policy and procedures from time to time or if a person refuses to undertake a test, then that person is not to continue work and must be immediately removed from any work site by the Supplier until TfNSW's Representative notifies the Supplier that the person may return.

If, in TfNSW's opinion, any of the Supplier's Personnel:

(i) do not have the necessary qualifications or Approvals;

(ii) do not otherwise display the level of competence necessary to carry out the TLS Phase Activities safely or in accordance with the requirements of the Project Agreements; or

(iii) act in a manner materially detrimental to safety or TfNSW's public image and reputation,

TfNSW may require the Supplier to order the relevant Personnel to cease performing the TLS Phase Activities.

TfNSW's Representative may, acting reasonably, direct the Supplier to remove any person from the performance of the TLS Phase Activities.

The Supplier must ensure that any person the subject of a direction under clause 8.12(g) or clause 8.12(h) is not again involved in the performance of the TLS Phase Activities.

8.13 Key Personnel

The Supplier must:

(a) employ those personnel specified in paragraph 2 of Schedule 4 in the positions specified in paragraph 2 of Schedule 4;

(b) if no name has been specified for a particular position in paragraph 2 of Schedule 4, promptly employ in that position a person:

(i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in the "Position Description Attributes" section of paragraph 2 of Schedule 4; and

(ii) approved by TfNSW's Representative (such approval not to be unreasonably withheld);

(c) subject to clause 8.13(d), not replace any person in a position specified in paragraph 2 of Schedule 4 without the prior written approval of TfNSW's Representative; and
if any person in a position specified in paragraph 2 of Schedule 4 dies, becomes seriously ill or resigns from the employment of the Supplier, replace him or her with a person:

(i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in the "Position Description Attributes" section of paragraph 2 of Schedule 4; and

(ii) approved by TfNSW's Representative (which approval must not be unreasonably withheld, except in the case of the Supplier's Representative).

8.14 Supplier Documentation

The Supplier warrants that the documentation required to be supplied and maintained by the Supplier under this deed:

(a) will sufficiently, adequately and accurately document the Project, the operation of the Project and any interfaces with the Project;

(b) will be sufficient, adequate and accurate so as to enable the Operator or a NSW Rail Entity to operate and maintain the Assets and otherwise carry out the Operations Functions; and

(c) will be fit for its purposes.

8.15 Transport planning

(a) The Supplier acknowledges that the State or any Authority may make policy decisions in relation to the development and implementation of transport planning in New South Wales as it sees fit. Nothing in the Project Agreements restricts this.

(b) The Supplier must participate as reasonably required by any NSW Rail Entities in the development and implementation of transport planning. This participation may involve:

(i) attending meetings, consultation forums and other similar events;

(ii) reviewing and contributing to the development of proposals and strategies put forward by the State or other transport operators and stakeholders;

(iii) providing comments on the impact of proposals and strategies on the Project; and

(iv) cooperating in good faith in the implementation of TfNSW's public transport policy objectives, as notified to the Supplier.

(c) The Supplier will have no entitlement to make any Claim against any NSW Rail Entity or the State with respect to any consequence of the State, a NSW Rail Entity or any Authority exercising, or not exercising, any right or power in relation to the development and implementation of transport planning in New South Wales, except as expressly provided in this deed.

9. Project Plans

9.1 Purpose

The intended purposes of the Project Plans are:
to demonstrate to TfNSW that the Supplier has the understanding, capacity and
capability at all times to perform the Project Activities safely and in accordance
with the requirements of the Project Agreements;

(b) to ensure that the Assets and Deliverables comply with the requirements of this
deed;

(c) to define responsibilities, resources and processes for planning, performing and
verifying that the Project Activities satisfy the requirements of the Project
Agreements; and

(d) to allow TfNSW to understand how the Supplier will achieve the performance
outcomes and objectives specified in this deed and otherwise fulfil its obligations
under the Project Agreements.

9.2 Project Plans developed under the Delivery Deed

(a) The Supplier acknowledges that it developed the Project Plans pursuant to the
requirements of the Delivery Deed.

(b) TfNSW acknowledges and agrees that, as at the TLS Start Date, each Project
Plan which is a Confirmed Document for the purposes of the Delivery Deed, is a
Confirmed Document for the purposes of this deed.

9.3 Updated Project Plans

The Supplier may update its Project Plans from time to time but must:

(a) review and, if necessary, update each Project Plan to take account of events or
circumstances which will, or may, affect the Project Activities relevant to the
Project Plan, including:

(i) Variations;

(ii) Changes in Law; and

(iii) any breach or potential breach of the warranty in clause 9.4;

(b) without limiting clause 9.3(a), update each Project Plan at the times required by
SPR Appendix 7;

(c) promptly submit each updated Project Plan to TfNSW’s Representative for
Review;

(d) not update any Project Plan in a manner which makes TfNSW’s obligations under
any Project Agreement more onerous or increases any liability or potential liability
of TfNSW or its Associates in connection with the Project; and

(e) ensure that any updated Project Plans:

(i) impose standards, levels of service, scope and requirements that are
    equal to, greater than or higher than those imposed by; and

(ii) provide an equal or greater level of detail than,

the previous versions of the Project Plans.

9.4 Fitness for purpose

The Supplier warrants that each Project Plan will at all times be fit for purpose.
9.5 Review of Project Plans

TfNSW's Representative may (but is not obliged to) Review any Project Plan submitted under this clause 9.

9.6 TfNSW may request updates

If, at any time during the Contract Term:

(a) any Project Plan does not comply with the requirements of the Project Agreements; or

(b) the Supplier has not updated any Project Plan in accordance with the requirements of clause 9.3(a) or clause 9.3(b).

TfNSW's Representative may by notice request that the Supplier amend or update the Project Plan specifying:

(c) the reasons why the Supplier must update the plan (or why the Project Plan does not comply with this deed); and

(d) the time within which the Supplier must update the plan (which must be reasonable, having regard to the amount of work required),

and the Supplier must:

(e) amend or update the Project Plan as requested by TfNSW to comply with the requirements of the Project Agreements; and

(f) submit the amended or updated Project Plan to TfNSW for Review within the time specified under clause 9.6(d).

9.7 Permitted use, implementation and compliance

Without limiting any other provision in this deed, the Supplier must:

(a) implement and comply with each Project Plan; and

(b) not use any plan unless it is a Project Plan,

which is a Confirmed Document.

10. Information Documents

10.1 Supplier investigations

(a) The Supplier warrants, and for all purposes it will be deemed to be the case, that prior to the date of this deed, the Supplier:

(i) examined:

A. this deed (including the SPR) and the Project Agreements;

B. the:

1) Maintenance Facility Site;

2) Out Depots in use on the Network as at the Commencement Date; and
3) Other Sites proposed to be used by the Supplier, and their respective surroundings;

C. the Information Documents;

D. any other information, data, document or material that was made available in writing by TfNSW or any other person on TfNSW's behalf to the Supplier or its Associates; and

E. all information, data, documents and material otherwise available regarding the Project Activities, the Maintenance Locations and the Assets, (including regarding the condition of the Maintenance Locations);

(ii) was given the opportunity prior to submitting its Proposal to itself undertake, and to request others to undertake, tests, enquiries and investigations:

A. relating to the subject matter of the Information Documents and any other information, data, document or material that was made available in writing by TfNSW or any other person on TfNSW's behalf to the Supplier or its Associates and, for this purpose, was given all access that was reasonably required; and

B. for design purposes and otherwise;

(iii) has undertaken its own independent review and evaluation of the suitability and accuracy of, the information referred to in clauses 10.1(a)(i) and (ii) without any reliance on TfNSW;

(iv) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Proposal and its obligations under the Project Agreements;

(v) satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under the Project Agreements and of all matters and things necessary for the due and proper performance and completion of the Project Activities;

(vi) informed itself of all matters relevant to the employment of labour and all industrial matters at the Maintenance Locations;

(vii) had a sufficient opportunity to obtain and obtained all the necessary legal and other technical advice in relation to the terms of this deed, the Deed of Disclaimer, the Information Documents, the site conditions, as well as the risks, contingencies and other circumstances having an effect on its Proposal, the performance of its obligations and its potential liabilities under this deed; and

(viii) had sufficient access to the Maintenance Locations, undertook sufficient site visits, tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on the Supplier.
10.2 Information Documents

(a) Without limiting clause 10.3 or the warranties and acknowledgements in any Deed of Disclaimer, the Supplier acknowledges and agrees that neither TfNSW, its Associates nor any other person acting on behalf of or associated with any of them:

(i) has verified, or has any obligation to verify, the accuracy, adequacy, efficacy, suitability, reliability, completeness or current application of:

A. the Information Documents; or
B. any other information, data, document or material that was made available in writing by TfNSW or any other person on TfNSW's behalf to the Supplier or its Associates; or

(ii) warrants, guarantees, assumes any duty of care or other responsibility for or makes any representation about the accuracy, adequacy, efficacy, suitability, reliability, completeness or current application of:

A. the Information Documents;
B. any other information, data, document or material that was made available in writing by TfNSW or any other person on TfNSW's behalf to the Supplier or its Associates; or
C. any of the Project Agreements;
D. any transaction or arrangement contemplated under any of the Project Agreements;
E. any other matter relevant to the Supplier's decision to enter into the Project Agreements; or
F. any other drawings, plans, design specifications, reports or other information or data which relate, directly or indirectly, to the Project Activities.

(b) Without limiting clause 10.3 or the warranties and acknowledgements in any Deed of Disclaimer, the Supplier acknowledges and agrees that:

(i) the Information Documents, and all Intellectual Property Rights in the Information Documents, will remain the property of TfNSW or any of its Associates (as the case may be);

(ii) the Information Documents did not constitute an invitation, offer or recommendation by or on behalf of TfNSW or any of its Associates;

(iii) whether or not an Information Document or any part thereof forms a schedule or appendix to this deed, the Information Document or part thereof does not form part of this deed and clause 10.3 applies to the Information Document or part thereof; and

(iv) where an Information Document or any part thereof forms a schedule or appendix to this deed, it does so only for the purposes of identification of that document or part thereof.

10.3 Supplier warranty

(a) The Supplier:
warrants that it did not in any way rely upon:

A. any Information Document;

B. any other information, data, representation, statement, document or material made or provided by TfNSW or any other person on behalf of TfNSW to the Supplier or its Associates or any other information, data, representation, statement, document or material for which TfNSW is responsible or may be responsible whether or not obtained from TfNSW or anyone on behalf of TfNSW; or

C. the accuracy, adequacy, efficacy, suitability, completeness or current application of such Information Document or other information, data, representation, statement, document or material,

for the purposes of entering into the Project Agreements or carrying out the TLS Phase Activities but nothing in this paragraph will limit or otherwise affect the Supplier's obligations under the Project Agreements;

(iii) acknowledges and agrees that no statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to by TfNSW, its Associates or any person acting on behalf of or associated with any of them in any prior negotiation, arrangement, understanding or agreement is of any effect except to the extent expressly set out or incorporated in any of the Project Agreements;

(iv) agrees that the acknowledgments under this clause 10.3 are in addition to and, to the extent not inconsistent, do not replace the terms and conditions already agreed to or accepted by the Supplier, any of the Supplier's Associates, or the Supplier's Personnel when receiving the Information Documents;

(v) acknowledges that it is aware that TfNSW and RailCorp entered into this deed relying upon:

A. the warranties, acknowledgements and agreements in clauses 10.3(a)(i) to (iv) and
B. the warranties and acknowledgements in the Deed of Disclaimer and the Proposal; and

(vi) acknowledges and agrees that it will not be relieved of any liability or responsibility under any Project Agreement because of the provision by the Supplier of any documents or any other data or information to TfNSW prior to the date of this deed.

10.4 Liability

The Supplier releases and indemnifies TfNSW and RailCorp from and against:

(a) any Claim against TfNSW or RailCorp by, or liability of TfNSW or RailCorp to, any person; or

(b) (without being limited by clause 10.4(a)) any Loss incurred by TfNSW or RailCorp, arising out of or in any way in connection with:

(c) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Supplier or any other person to whom the Information Documents are disclosed by the Supplier or a failure by TfNSW or RailCorp to provide any information to the Supplier;

(d) any breach by the Supplier of clauses 10.1 to 10.3; or

(e) the Information Documents being relied upon or otherwise used in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the Competition and Consumer Act 2010 (Cth) or any equivalent provision of State or Territory legislation).

11. Maintenance Locations

11.1 Maintenance Facility Site and Out Depots

The terms of Schedule 9 apply in relation to obligations of the Supplier relating to the Maintenance Facility Site under this deed.

11.2 Maintenance Facility Licence

TfNSW must grant to the Supplier, or procure the grant to the Supplier of the Maintenance Facility Licence as further described in paragraph 1.1 of Schedule 9.

11.3 Out Depot Licence

TfNSW must grant to the Supplier, or procure the grant to the Supplier of, a licence for the Supplier to access Out Depots as further described in paragraph 1.5 of Schedule 9.

11.4 Change to location of performance of Maintenance Services

(a) TfNSW may at any time during the TLS Phase issue to the Supplier a notice entitled "Maintenance Facility Site Proposal" requiring that the Supplier negotiate in good faith with TfNSW with respect to the performance of Maintenance Services at a location other than the Maintenance Facility Site. The Maintenance Facility Site Proposal must contain details relating to the proposed change, including:
(i) the proposed new location for the performance of Maintenance Services; and

(ii) the proposed date for the commencement of performance of Maintenance Services at the proposed new location.

(b) Without limiting the generality of clause 11.4(a), TfNSW may issue a Maintenance Facility Site Proposal in circumstances where RailCorp (or TfNSW on behalf of RailCorp) elects pursuant to the Delivery Deed to purchase Option Sets in such a quantity so as to make the performance of Maintenance Services with respect to the Fleet at the Maintenance Facility Site infeasible.

(c) As soon as practicable and in any event within 60 Business Days after receipt of a Maintenance Facility Site Proposal (or such longer period as may be requested by the Supplier and approved by TfNSW (acting reasonably)), the Supplier must provide TfNSW with a proposal (Supplier's Proposal) setting out detailed particulars of:

(i) the reasonable costs, expenses, losses and liabilities which it would incur if the location for the performance of the Maintenance Services was to change as set out in the Maintenance Facility Site Proposal;

(ii) the time within which the proposed Maintenance Facility Site Proposal can be implemented; and

(iii) the effects which, if implemented, the changes described in the Maintenance Facility Site Proposal would have on:

A. any or all of:

1) the Delivery Phase Activities; and

2) the TLS Phase Activities;

B. the Supplier's ability to provide the Required Availability;

C. the use of the Sets by the Operator and its passengers;

D. any Accreditation held or required by TfNSW, RailCorp, the Operator, the Supplier or the Supplier's Associates;

E. the safety of the Sets;

F. any training requirements;

G. the Supplier's ability to:

1) satisfy any warranty given by the Supplier under any Project Agreement; or

2) perform any of its other obligations under any Project Agreement;

H. any relief required by the Supplier from its obligations under this deed to ensure that the Supplier would be left in a no better and no worse position than it would be in if the changes described in the Maintenance Facility Site Proposal were not implemented; and

I. any other information requested by TfNSW.
(d) The Supplier’s Proposal must be prepared:

(i) on an Open Book Basis;

(ii) in a manner which is consistent with the requirements of TfNSW for the implementation of the changes described in the Maintenance Facility Site Proposal;

(iii) having regard to minimising the disruption to Operations Functions; and

(iv) in a manner so that there is no double counting.

(e) Within 60 Business Days after receipt of the Supplier’s Proposal, TfNSW may either:

(i) accept the Supplier’s Proposal and if the Supplier’s Proposal contains any options, nominate which option (or options) TfNSW accepts;

(ii) reject the Supplier’s Proposal;

(iii) withdraw the proposed Maintenance Facility Site Proposal; or

(iv) seek an extension of time for the consideration of the Supplier’s Proposal, consent for which must not be unreasonably withheld by the Supplier.

(f) If TfNSW accepts the Supplier’s Proposal in accordance with clause 11.4(e)(i):

(i) the Supplier must proceed to implement the Maintenance Facility Site Proposal on the basis of Supplier’s Proposal (as accepted by TfNSW); and

(ii) the Supplier will be relieved of its obligations under this deed to the extent specified in the Supplier’s Proposal (as accepted by TfNSW), and this deed will be otherwise amended as required to implement the changes described in the Maintenance Facility Site Proposal, including payment of the reasonable costs, expenses, losses and liabilities of the Supplier in implementing the changes described in the Maintenance Facility Site Proposal.

(g) Without limiting TfNSW’s right to instruct a Variation in accordance with clause 30.8, if TfNSW rejects the Supplier’s Proposal in accordance with clause 11.4(e)(ii), TfNSW may instruct a Variation omitting the Maintenance Services from the TLS Phase Activities in accordance with clause 30.8.

12. Quality

12.1 Workmanship

In performing the TLS Phase Activities, the Supplier must use workmanship:

(a) of at least the standard set out in the SPR, or to the extent a standard is not set out in the SPR, of a standard consistent with Good Industry Practice for work of a similar nature to the relevant TLS Phase Activities; and

(b) which is fit for its intended purpose.

12.2 Materials

In performing the TLS Phase Activities, the Supplier must use Materials which:
(a) comply with the requirements of the SPR, or if not fully described in the SPR, are consistent with Good Industry Practice for work of a similar nature to the relevant TLS Phase Activities;

(b) are free from Defects and other imperfections; and

(c) are safe and fit for their intended purpose.

13. Verification

13.1 Obligation to conduct Verification Activities

The Supplier must carry out any Verification Activities in respect of the TLS Phase Activities in accordance with the Verification Plan.

13.2 Notice of Verification Activities

(a) Before conducting a Verification Activity, the Supplier must give TfNSW's Representative notice of the time, date and place of the Verification Activity. If TfNSW's Representative does not exercise the right to attend, the Verification Activity may nevertheless proceed.

(b) Notice of Verification Activities under clause 13.2(a) or required under a Verification Program must be given not less than 20 Business Days prior to conducting the Verification Activity (unless otherwise agreed in writing by TfNSW's Representative).

(c) The Supplier must provide for Review:

(i) the Verification Procedures associated with the Verification Activity not less than 20 Business Days prior to conducting the Verification Activity; and

(ii) the Confirmed Verification Procedures associated with the Verification Activity not less than five Business Days prior to conducting the Verification Activity.

(d) The Supplier may postpone a Verification Activity in respect of which it has given TfNSW's Representative notice in accordance with clause 13.2(a). If the Supplier postpones a Verification Activity in accordance with this clause, the Supplier must give TfNSW's Representative at least five Business Days' notice of the rescheduled date, time and place of that Verification Activity.

(e) The Supplier will be deemed to have failed a Verification Activity if it fails to give TfNSW's Representative the required notice of when the Verification Activity will be conducted.

13.3 Verification Procedures and conduct of Verification Activities

The Supplier must:

(a) comply with the Verification Activities requirements set out in section 2.16 of the SPR;

(b) develop, utilise and maintain a failure reporting and corrective action system (FRACAS) for the systematic recording, investigation and correction of Defects or deficiencies observed in an Asset (including during the Verification Program); and

(c) ensure that the FRACAS includes at least the following features:
a means of identifying and recording Defects;

(ii) a process for investigating and determining the primary cause of the Defect;

(iii) a process for determining appropriate corrective action to ensure that the Asset complies with the requirements of this deed; and

(iv) a process for updating all relevant Technical Documents (at least including the Asset Management Plan) to reduce the likelihood of a recurrence of the relevant Defect.

13.4 Network Access Rights

(a) The Supplier must minimise the need for Network Access Rights in connection with the performance of the TLS Phase Activities.

(b) If the Supplier wishes to request any Network Access Rights in connection with the performance of the TLS Phase Activities:

(i) as soon as reasonably practicable the Supplier must issue a written request to TfNSW's Representative setting out the Network Access Information for each Network Access Right requested; and

(ii) TfNSW will endeavour to procure any Network Access Right requested by the Supplier, but will not be under any obligation to do so.

(c) TfNSW may cancel or change a Network Access Right at any time.

(d) The Supplier releases and indemnifies TfNSW from all Claims by the Supplier and its Associates in connection with or arising out of:

(i) TfNSW's delay or refusal to grant or procure a Network Access Right; or

(ii) the cancellation of, or a change to, any Network Access Right.

13.5 End of occupation

The Supplier must:

(a) cease to occupy the relevant part of the Network at the cessation of a Network Access Right or in the event of an emergency;

(b) immediately notify TfNSW's Representative and the Operator if the Supplier considers it may be late in vacating the Network; and

(c) indemnify TfNSW and each NSW Rail Entity for all Loss incurred by TfNSW or the relevant NSW Rail Entity as a result of the Supplier continuing to occupy the Network following the cessation of a Network Access Right.

13.6 Supplier unable to utilise

(a) The Supplier must promptly notify TfNSW if the Supplier expects it will not be able to utilise a Network Access Right which has been allocated to it.

(b) If the Supplier fails to utilise any Network Access Right (whether wholly or partially) for any reason other than due to an act or omission of TfNSW or its Associates, the Supplier must indemnify TfNSW and the NSW Rail Entities for all Loss incurred by TfNSW and the NSW Rail Entities, in connection with the
Network Access Right, except where the Supplier requests the cancellation of the Network Access Right at least six weeks before the date on which the Network Access Right was to commence or within another period agreed (in writing) by TfNSW's Representative from time to time in TfNSW's Representative's absolute discretion.

(c) The following preconditions must be satisfied before the Supplier can utilise a Train Run Entitlement:

(i) the Supplier's Incident and Security Management Plan must be a Confirmed Document;

(ii) the Supplier has demonstrated to the reasonable satisfaction of TfNSW an ability to implement its Incident and Security Management Plan;

(iii) the relevant Set has passed all Verification Activities in the Verification Plan that must be passed before utilising a Train Run Entitlement; and

(iv) the Supplier holds all Insurances required under this deed in relation to conduct of the proposed Verification Activity.

(d) The Supplier must, when utilising a Train Run Entitlement:

(i) ensure that the relevant Set complies with the TOC Manual as varied in accordance with any TOC Waiver;

(ii) where the Set is not included in the TOC Manual, obtain a valid TOC Waiver relevant for the activities to be undertaken;

(iii) comply with, and ensure that its Associates comply with, all Train Orders, all relevant TOC Waivers and all relevant Safe Notices;

(iv) prevent the relevant Set from being driven on any part of the Network that is outside the scope of the Train Run Entitlement; and

(v) notify the Train Controller:

A. as soon as the Supplier becomes aware of any changes in, or delays to, the Train Run or anything else which may affect Train Control; and

B. immediately if the Supplier or its Associates do not comply with a Train Order, or expect that they will not comply with a Train Order.

(e) If during a Train Run there is an Incident due to one or more Defects or any other acts or omissions of the Supplier or its Associates, the Supplier must:

(i) promptly assist TfNSW to remove the Set from the Network causing as little disruption to the Operations Functions as possible; and

(ii) if the Incident results in the cancellation of train services, then the Supplier must pay TfNSW (CPI Indexed) in relation to that Incident.

The amount referred to in clause 13.6(e)(ii) represents (and does not exceed) a reasonable and genuine pre-estimate of the Loss and damage which TfNSW will suffer or incur if one or more other train services is cancelled or disrupted due to an Incident during a Train Run (having regard to the times and locations at which Train Runs are expected to occur), and will be Moneys Owing. The parties agree that, as between TfNSW, RailCorp and the Supplier, this clause 13.6(e) is
TfNSW's, RailCorp's and each other NSW Rail Entity's sole monetary remedy in respect of any cancellation of train services arising from an Incident during a Train Run due to a Defect or any other act or omission of the Supplier or its Associates to which this clause applies.

The Supplier acknowledges and agrees that:

(i) TfNSW cannot, and will not, guarantee any configuration for a Network Access Right as fixed;

(ii) TfNSW may be required to cancel or change a Network Access Right at short notice;

(iii) Interface Parties may perform Interface Activities during certain Network Access Rights;

(iv) TfNSW may be required to provide third parties with access to the Network at the same time as the Supplier has access to the Network, including for the performance of works on the Network;

(v) to the extent within the Supplier's control, the Supplier must co-ordinate its activities with any Interface Parties and any others sharing the Network Access Right; and

(vi) during and in relation to all Network Access Rights the Supplier must comply with:

A. all Mandatory Requirements;

B. all Train Orders;

C. its Safety Management Plan; and

D. all directions of TfNSW's Representative.

13.7 Results of Verification Activities

(a) As soon as reasonably practicable after completion of a Verification Activity, and in any event not later than 10 Business Days after completion of a Verification Activity, the Supplier must submit a Verification Report to TfNSW's Representative for Review.

(b) If a Verification Activity has failed, the Supplier must:

(i) submit a FRACAS report as they are generated during the course of the Verification Activities;

(ii) carry out any necessary rectification work; and

(iii) when it believes it has completed all necessary rectification work, give TfNSW's Representative reasonable notice of the proposed re-conduct of the Verification Activities, and clause 13.3 will reapply.

13.8 Supplier remains responsible

(a) Neither TfNSW nor TfNSW's Representative assumes or owes any duty of care to the Supplier to observe, participate in or conduct any Verification Activity or inspection or, if it does observe, participate in or conduct any Verification Activity or inspection, to identify any non-compliance with the Project Agreements of any Asset verified.
(b) No observation of, participation in or conduct of any Verification Activity or inspection of an Asset or failure to participate by TfNSW or TfNSW's Representative in any Verification Activity or inspection shall:

(i) lessen or otherwise affect the warranties given by the Supplier under this deed or otherwise relieve the Supplier from, or alter or affect, the Supplier's liabilities, obligations or responsibilities; or

(ii) prejudice or limit TfNSW's rights against the Supplier, whether under any Project Agreement or otherwise according to law.

13.9 Costs of verification

(a) Subject to clause 13.9(b), each party must bear their own costs of and incidental to Verification Activities carried out under this clause 13.

(b) TfNSW's reasonable incremental costs of and incidental to observing, participating in or conducting any Verification Activity will be Moneys Owing to the extent that the Verification Activity involves retesting an Asset that has previously failed a Verification Activity (to the extent that retesting was not already specifically anticipated in the Verification Plan and the Verification Program).

14. MF Works to be carried out pursuant to MF Works Deed

The parties acknowledge and agree that the Supplier must procure, supply, install, commission and integrate the MF Works in accordance with the MF Works Deed.

15. Through Life Support

15.1 TLS Phase Activities

The Supplier must perform the TLS Phase Activities:

(a) in accordance with:

(i) the Asset Management System;

(ii) the SPR;

(iii) all Mandatory Requirements and Approvals;

(iv) Good Industry Practice; and

(v) all other requirements under the Project Agreements;

(b) so that it is able to provide the Required Availability and Required Reliability;

(c) in a manner that:

(i) is consistent with the Supplier's Accreditation and the Accreditation of all Accredited Persons;

(ii) reduces any risk to the health and wellbeing of persons using, operating, maintaining, or involved in the management of the Assets to as low a level as reasonably practicable;
(iii) reduces, so far as is reasonably practicable (taking into account the Supplier’s obligations under this deed), any risk to the Environment; and

(iv) achieves a high level of performance of the Assets; and

(d) so that each Asset, at all times:

(i) complies with the requirements of this deed;

(ii) meets the requirements of the SPR and all Confirmed Technical Documents;

(iii) remains fit for purpose;

(iv) is in a condition consistent with or better than the Target Condition for that Asset; and

(v) is capable of achieving its Design Life.

15.2 Spares management

During the TLS Phase, the Supplier:

(a) must manage the procurement, use, storage, security, overhaul, modification, maintenance and replacement of Spares, Tools, Special Tools and Consumables required to ensure the timely repair and maintenance and overhaul of the Assets in accordance with the Asset Management System and all other requirements of this deed;

(b) is responsible for the care, custody and control of all Spares, Tools, Special Tools and Consumables and must provide all necessary:

(i) warehouse and other storage facilities;

(ii) inventory control; and

(iii) management requirements,

in relation to Spares, Tools, Special Tools and Consumables required for the Assets;

(c) must ensure that:

(i) the Spares and Consumables Strategy is updated to:

A. include details of the minimum stock of Spares, Tools, Special Tools and Consumables required to be held for the performance of the Maintenance Services; and

B. ensure at all times the Assets are fit for purpose and otherwise comply with the requirements of this deed; and

(ii) it holds and maintains the minimum specified stock of Spares, Tools, Special Tools and Consumables in accordance with the Spares and Consumables Strategy (as updated from time to time) and the SPR, which must include at least the Spares and Special Tools identified in:

A. the Initial Fleet Spares List; and
B. if RailCorp (or TfNSW on behalf of RailCorp) elects pursuant to the Delivery Deed to purchase any or all of the Option Sets, the Spares and Special Tools identified in the Option Set Notice; and

(iii) all Spares, Tools, Special Tools and Consumables are stored, used, tested, commissioned, maintained and overhauled in accordance with:

A. the Asset Management Plan; and

B. the SPR; and

(d) must purchase and provide all Spares, Tools, Special Tools and Consumables at its own cost and bears all risk in relation to the availability, cost, quality, functionality, delivery, fitness for purpose, Obsolescence, maintenance and storage of those Spares, Tools, Special Tools and Consumables.

15.3 Asset security and protection

Without limiting any of the Supplier’s other obligations under this deed, the Supplier must take all reasonable precautions to prevent loss of or damage to:

(a) the Maintenance Facility and the Maintenance Facility Site;

(b) Out Depots and Other Sites; and

(c) the Assets,

resulting from theft, misuse or vandalism (including Vandalism) by any person:

(d) in the case of the Maintenance Facility Site and any Asset or thing located at either of them, at all times; and

(e) in each other case, when the Supplier has access to them for the performance of the TLS Phase Activities.

15.4 Maintenance Services warranties

(a) The Supplier represents and warrants that:

(i) any works to, on or affecting an Asset (including the Maintenance Facility) carried out as part of the Maintenance Services will, when complete, be fit for purpose and satisfy the requirements of this deed;

(ii) each Asset will be maintained during the TLS Phase so that:

A. it is fit for purpose at all times during the TLS Phase; and

B. it will remain fit for purpose for the duration of its Design Life;

(iii) the Maintenance Facility Site and all Maintenance Facility Equipment will be operated and maintained during the TLS Phase so that:

A. they are fit for purpose at all times during the TLS Phase; and

B. provided they are operated and maintained in accordance with the Asset Management System, they will remain fit for purpose for the duration of their Design Life; and
(iv) all other Maintenance Services will be performed by the Supplier in a manner that is fit for purpose.

(b) Without prejudice to the warranty given under clause 15.4(a), the Supplier represents and warrants that each Spare, Tool, Special Tool and Consumable provisioned or supplied under this deed by the Supplier will:

(i) be designed, procured manufactured, stored, overhauled, modified, maintained and supplied so that, at the time of its delivery and on its intended use, it is fit for purpose;

(ii) be maintained (and where required under this deed, used by the Supplier) during the TLS Phase so that it is fit for purpose at all times during the TLS Phase; and

(iii) after the Expiry Date, subject to each Spare, Tool, Special Tool and Consumable being maintained in accordance with Good Industry Practice, be capable of remaining fit for purpose for the duration of its Design Life.

(c) The representations and warranties given by the Supplier under this clause 15.4 are made, and will be deemed to have been made:

(i) in the case of the representations and warranties made under clause 15.4(a) on:
A. the date of this deed; and
B. each day thereafter until the End Date; and

(ii) in the case of the representations and warranties made under clause 15.4(b) on:
A. the date the Spare, Tool, Special Tool or Consumable is provisioned or supplied; and
B. each day thereafter until the End Date.

(d) Clause 15.4(c) will survive the rescission, termination or expiry of this deed.

15.5 General obligation relating to Defects

The Supplier must, from the Date of Provisional Acceptance of a Set, rectify all Defects in the Set in accordance with the Asset Management System, FRACAS, the Defect Rectification Principles and the other provisions of this deed.

15.6 Recurrent Defects

(a) From the earlier of:

(i) in respect of the Continuous Production Fleet:
A. the Date of Fleet Acceptance for the Continuous Production Fleet; or
B. the Fleet Acceptance Sunset Date (Continuous Production); or

(ii) in respect of the Non-continuous Production Fleet:

A. the Date of Fleet Acceptance for the Non-continuous Production Fleet; or

B. the Fleet Acceptance Sunset Date (Non-continuous Production),

the Supplier must:

(iii) monitor and assess the occurrence of any Recurrent Defects; and

(iv) within five Business Days of becoming aware of any Recurrent Defect, give notice of the Recurrent Defect to TfNSW.

(b) If a Recurrent Defect becomes apparent during the TLS Phase, the Supplier must, subject to clause 15.6(c):

(i) rectify that Recurrent Defect in all Assets that have or suffer from the Recurrent Defect;

(ii) undertake all necessary works to prevent the occurrence of the Recurrent Defect in any Assets that have not been affected by the Recurrent Defect; and

(iii) undertake all other works that are reasonably necessary to enable all of the Assets to continue in operation in compliance with the terms of this deed pending the carrying out and completion of the rectification and other works,

in each case in accordance with a Recurrent Defect Rectification Plan that is Confirmed.

(c) Within 20 Business Days after the Supplier gives notice of a Recurrent Defect pursuant to clause 15.6(a)(iv), or the Supplier is notified of the existence of a Recurrent Defect by TfNSW's Representative, the Supplier must submit to TfNSW for Review a draft plan (Recurrent Defect Rectification Plan) for complying with its obligations under clause 15.6(b) as soon as practicable. The Recurrent Defect Rectification Plan will be a Technical Document for the purposes of clause 15.10.

(d) If the Recurrent Defect Rectification Plan is Confirmed, the Supplier must as soon as reasonably practicable implement, and thereafter comply diligently with, the Confirmed Recurrent Defect Rectification Plan.

(e) If:

(i) the Supplier fails to submit a Recurrent Defect Rectification Plan to TfNSW pursuant to clause 15.6(c);

(ii) the Supplier fails to implement and comply with a Confirmed Recurrent Defect Rectification Plan pursuant to clause 15.6(d); or

(iii) a Recurrent Defect Rectification Plan is not Confirmed within 60 Business Days after:

A. the Supplier gives notice of a Recurrent Defect pursuant to clause 15.6(a)(iv); or

B. the Supplier is notified of the existence of a Recurrent Defect by TfNSW's Representative,

TfNSW's Representative may, by notice to the Supplier, refer the following matters to an independent expert (Defects Expert):
(iv) whether the relevant Recurrent Defect exits, and if so;
(v) which Assets have or suffer from the Recurrent Defect and which Assets have not been affected by the Recurrent Defect;
(vi) what works:
   A. are required to rectify the Recurrent Defect in the Assets that have or suffer from the Recurrent Defect;
   B. are necessary to prevent the occurrence of the Recurrent Defect in any Assets that have not been affected by the Recurrent Defect; and
   C. are otherwise reasonably necessary to enable all of the Assets to continue in operation in compliance with the terms of this deed pending the carrying out and completion of the rectification and other works referred to in clauses 15.6(e)(vi) and 15.6(e)(vii);

(Recommended Rectification Works):

(vii) the estimated cost (without double counting) of carrying out the Recommended Rectification Works (Recurrent Defect Rectification Cost); and

(viii) the reasonable period to complete the Recommended Rectification Works (Recurrent Defect Rectification Period).

(f) The Defects Expert must be:

(i) an individual chosen by agreement, in writing, between the parties;

(ii) if the parties do not agree on the person to be appointed within 20 Business Days of a nomination by TfNSW's Representative, an individual nominated by the President of Engineers Australia on request in writing by TfNSW's Representative; and

(iii) engaged by the parties on terms that are acceptable to them and the Defects Expert, but if the parties and the Defects Expert have not entered into such an agreement within 10 Business Days of the Defects Expert being chosen or nominated under clause 15.6(f)(i) or 15.6(f)(ii) (as applicable), then engaged by TfNSW on terms that are acceptable to it and the Defects Expert.

(g) Within 20 Business Days after the Defects Expert is engaged (or such longer period as TfNSW's Representative may reasonably determine), the Defects Expert will inspect and assess the applicable Assets and Recurrent Defect and provide a written report (Defects Expert's Report) to TfNSW and the Supplier stating:

(i) whether the Defects Expert considers the relevant Recurrent Defect to exist, and if so;

(ii) which Assets the Defects Expert considers have or suffer from the Recurrent Defects and which Assets the Defects Expert considers have not been affected by the Recurrent Defect;

(iii) the Defects Expert's recommendations and opinions as to:

   A. the Recommended Rectification Works;
B. the Recurrent Defect Rectification Cost; and
C. the Recurrent Defect Rectification Period.

(h) The Supplier must, at its cost, cooperate with the Defects Expert and provide the Defects Expert with any reasonable assistance required by the Defects Expert.

(i) Following receipt of a Defects Expert’s Report, the Supplier must either:

   (i) complete any Recommended Rectification Works identified in the Defect Expert’s Report within the Recurrent Defect Rectification Period stated in the Defect Expert’s Report (or such longer time as may be agreed by the parties in writing); or

   (ii) submit to TfNSW under clause 15.6(c) a Recurrent Defect Rectification Plan (or a revised Recurrent Defect Rectification Plan) that takes account of the matters stated in the Defects Expert’s Report.

(j) If:

   (i) the Supplier fails to comply with clause 15.6(i); or

   (ii) having submitted a Recurrent Defect Rectification Plan (or a revised Recurrent Defect Rectification Plan) to TfNSW under clause 15.6(i)(ii), the Recurrent Defect Rectification Plan is not Confirmed within 60 Business Days after the date of the notice from the Defects Expert under clause 15.6(g),

    TfNSW will be entitled to deduct the relevant Recurrent Defect Rectification Cost stated in the Defects Expert’s Report from any TLS Payment subsequently payable.

(k) If the aggregate amount to be deducted under clause 15.6(j) is greater than the aggregate of any TLS Payments subsequently payable, the difference will be Moneys Owing from the Supplier to TfNSW.

(l) TfNSW must pay any Recurrent Defect Rectification Cost:

   (i) deducted under clause 15.6(j); or

   (ii) paid from the Supplier to TfNSW under 15.6(k),

    to the Supplier within 20 Business Days after TfNSW’s Representative determines that all relevant Recommended Rectification Works (or alternative works to rectify the Recurrent Defect under a Confirmed Recurrent Defect Rectification Plan) have been completed by the Supplier.

(m) The cost of the Defects Expert under carrying out its functions under clause 15.6(g) will be borne by the Supplier.

(n) If a party disagrees with any matter in a Defects Expert’s Report:

   (i) that party may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedures;

   (ii) the parties must comply with this clause 15.6 notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedures; and
any necessary adjustments will be made following the resolution of the matters in dispute in accordance with the Dispute Resolution Procedures.

15.7 Reimbursable Through Life Support

(a) (Supplier to provide): The Supplier must provide any Reimbursable Through Life Support which TfNSW's Representative directs the Supplier to provide under SPR Appendix 5 in accordance with the requirements of this deed including SPR Appendix 5.

(b) (Payment): To the extent that the proceeds of any Insurances do not cover the costs of the Reimbursable Through Life Support, the Supplier will be entitled to payment for such Reimbursable Through Life Support which the Supplier is directed to provide under SPR Appendix 5 in accordance with the Supplier Schedule of Rates.

(c) (Reimbursable Through Life Support to be carried out efficiently): The Supplier must carry out all Reimbursable Through Life Support in an efficient and cost effective manner.

15.8 Recovery

(a) If any Set requires Recovery for any reason, including if due to the occurrence of a Reimbursable Damage Event, TfNSW will procure all Recovery works necessary on the Network including de-coupling or coupling, providing Train Crew and movement of the Set on the Network.

(b) The Supplier must:

(i) support the Recovery of the Set procured by TfNSW, in consultation with TfNSW, including by making available all specialist recovery tools and equipment that might reasonably be required for Recovery activities; and

(ii) if and as directed by TfNSW's Representative, promptly make available at the location of the incident suitably qualified and experienced personnel to assist with the Recovery.

(c) The Supplier must provide all or any of the following support services at the request of and in consultation with TfNSW if a Set requires Recovery:

(i) Reimbursable Through Life Support;

(ii) provision of on call engineers to:

A. attend the Recovery and provide assistance where required by TfNSW; and

B. investigate and evaluate causes of the event that resulted in the need for the Recovery; and

(iii) storage of the Recovered Set at the Maintenance Facility Site.

(d) Subject to clause 15.7, the Supplier must provide the services described in this clause 15.8 at its own cost and will not be entitled to any relief arising from the requirement under this deed to support the Recovery.

(e) As reasonably required by TfNSW, the Supplier must cooperate with TfNSW and the Operator to develop a work plan setting out a safe and efficient method of managing any event or circumstance giving rise to a Recovery.
15.9 Technical Services

(a) The Supplier must:

(i) if requested, supply Spares and Special Tools to TfNSW in accordance with paragraph 2 of Schedule 14; and

(ii) manage and provide support to TfNSW in respect of Technical Services.

(b) The obligations of the Supplier under this clause 15.9 and Schedule 14 continue until the End Date.

15.10 Preparation, submission and Review of Technical Documents

(a) The Supplier must prepare and submit Technical Documents to TfNSW for Review which:

(i) are updated or amended, having previously achieved a Confirmed Document status;

(ii) are required to fully evidence that:

A. contract requirements (including Variations) and all Supplier derived system requirements:
   1) will be and have been implemented by the manufacture and/or construction of the Assets; and
   2) in each case, have been verified;

B. Defects have been investigated and rectified;

C. hazards and risks in relation to, or in connection with, the Project Activities have been mitigated so far as is reasonably practicable;

D. configuration changes have been fully implemented;

E. the objectives for Reviews of Technical Documents identified in the SPR have been achieved; and

F. Project Plan commitments have been undertaken;

(iii) are listed as Technical Documents for submission in the Systems Engineering Management Plan;

(iv) are required to operate the Assets; or

(v) are otherwise required to be submitted to TfNSW for Review and/or approval by this deed.

(b) The Supplier must submit the Technical Documents for Review:

(i) in accordance with the Systems Engineering Management Plan and the Review Procedures; and

(ii) in each case:
A. on or before the time required in the Systems Engineering Management Plan and the Review Procedures; and

B. where no specific time is provided, allowing a reasonable time period to enable TfNSW to Review the Submitted Documents without any delay to the progress of the Delivery Phase Activities.

(c) The Supplier acknowledges and agrees that the incorporation of TfNSW's comments into any Technical Documents shall not:

(i) constitute a "Variation Proposal" under clause 24.1 or a "Variation Order" under 24.4; or

(ii) otherwise entitle the Supplier to be reimbursed for any costs and expenses incurred or otherwise compensated in any form or manner.

15.11 Underfloor Wheel Profiling Plant for the Sets

The rights and obligations of the parties in relation to Underfloor Wheel Profiling Plant for the Sets are set out in Schedule 11.

16. Set Availability

16.1 Supplier to provide Required Availability

(a) From the TLS Start Date, the Supplier must, in respect of each Availability Period provide the Required Availability.

(b) The Supplier must, in respect of each Availability Period, specify in accordance with the Interface Protocols which Operational Sets will not be made Available to provide the Required Availability for that Availability Period.

(c) For each Availability Period, the number of Sets specified under clause 16.1(b) must not be less than the difference between:

(i) the number of Operational Sets at that time; and

(ii) the Required Availability for that Availability Period.

16.2 What is the Required Availability?

Subject to clauses 16.9 and 16.10, the Required Availability for an Availability Period is the number of Available Sets specified for that Availability Period in annexure 7 of Schedule 15.

16.3 When is a Set Available?

An Available Set is a Set which is Available.

A Set is Available when it has achieved Provisional Acceptance and:

(a) the Set satisfies the following requirements:

(i) the Set satisfies the Minimum Operating Standards for Available Sets; and

(ii) the Set:

A. has been delivered to the Pick-up Point and is ready for collection by the Operator for introduction into service.
16.4 When is a Set in service?

(a) (When a Set is in service): A Set is in service from the time the Set is Available and introduced into service by the Operator until the time it is taken out of service.

(b) (When a Set is introduced into service): A Set is introduced into service when:

(i) it leaves the Pick-up Point to commence a run;
(ii) it leaves an Out Depot to commence a run;
(iii) it commences or resumes a run following the completion of any Unscheduled Maintenance carried out at a place other than the Maintenance Facility Site; or
(iv) it leaves the Underfloor Wheel Profiling Plant to commence a run.

(c) (When a Set is taken out of service): A Set is taken out of service when:

(i) the Set enters an Out Depot following completion of a run;
(ii) the Set is delivered by the Operator to the Handover Point;
(iii) the service is cancelled by the Operator;
(iv) the Supplier withdraws the Set from service for any reason; or
(v) the Set is delivered by the Operator to the Underfloor Wheel Profiling Plant.

16.5 Train Preparation

(a) (Required Delivery Time): Each Set must be ready for Train Preparation prior to the commencement of the relevant Availability Period by the Required Delivery Time.

(b) (Lateness for Required Delivery Time): Where a Set is made ready for Train Preparation by the Supplier after the Required Delivery Time in relation to an Availability Period and, as a result, the Operator fails to complete the Train Preparation prior to the commencement of the relevant Availability Period, the relevant Set will be deemed to be either 'late' or 'very late' into service or 'cancelled' in accordance with paragraph 2.3 of Schedule 15.

(c) (Determination of Required Train Preparation Period): Prior to Provisional Acceptance of Set 1, TfNSW's Representative must (acting reasonably) determine
the Required Train Preparation Period having regard to the following considerations:

(i) the time that, in accordance with the instructions contained in the relevant Supplier operation and maintenance manual and the Train Operations Manual, is expected for Train Preparation;

(ii) a demonstration of how long the Train Preparation actually takes by a representative sample of Crew. In considering simulated or demonstrated times, the Required Train Preparation Period will be based on an upper quartile figure, not an average;

(iii) the level of training which can be expected of the Crew; and

(iv) any other relevant considerations.

16.6 Substituting Spare Sets

(a) (Set fails at commencement of Availability Period and Spare Set is co-located): If:

(i) the Supplier wishes to substitute a Spare Set for a Set which, at the commencement of an Availability Period:

A. does not satisfy the Minimum Operating Standards for Available Sets;

B. has a Supplier Related Defect which the Operator, acting reasonably, believes may delay the Set when in service by 10.00 minutes or more; or

C. an Investigative Authority orders or directs TfNSW or the Operator to cease operating due to one or more Supplier Related Defects,

(in this clause 16.6(a), the Failed Set);

(ii) the Spare Set is at the same location as the Failed Set; and

(iii) the Supplier gives the Operator a notice specifying:

A. the Failed Set which is to be substituted; and

B. the Spare Set which will be substituted for the Failed Set,

then:

(iv) the Spare Set will be substituted for the Failed Set from the commencement of the Availability Period referred to in clause 16.6(a)(i);

(v) the Failed Set will not be deemed to have been 'cancelled' for the purposes of paragraph 2.3 of Schedule 15 by reason of the substitution; and

(vi) the Supplier will be subject to any Reliability and Disruption Adjustments in respect of the Spare Set which relate to Availability Periods from the commencement of the Availability Period referred to in clause 16.6(a)(i).
(b) (Set fails at commencement of Availability Period and Spare Set is not col-located): If:

(i) the Supplier wishes to substitute a Spare Set for a Set which at the commencement of an Availability Period:

A. does not satisfy the Minimum Operating Standards for Available Sets;

B. has a Supplier Related Defect which the Operator, acting reasonably, believes may delay the Set when in service by 10.00 minutes or more; or

C. an Investigative Authority orders or directs TfNSW or the Operator to cease operating due to one or more Supplier Related Defects;

(in this clause 16.6(b), the Failed Set);

(ii) the Spare Set is not at the same location as the Failed Set; and

(iii) the Supplier gives the Operator a notice specifying:

A. the Failed Set which is to be substituted; and

B. the Spare Set which will be substituted for the Failed Set.

then:

(iv) the Operator may, but is not obliged to, allow the substitution of the Spare Set for the Failed Set;

(v) if the Operator allows the substitution:

A. the Spare Set will be substituted for the Failed Set from the commencement of the Availability Period referred to in clause 16.6(b)(i);

B. the Failed Set will not be deemed to have been 'cancelled' for the purposes of paragraph 2.3 of Schedule 15 by reason of the substitution; and

C. the Supplier will be subject to any Reliability and Disruption Adjustments in respect of the Spare Set which relate to Availability Periods from the commencement of the Availability Period referred to in clause 16.6(b)(i); and

(vi) if the Operator does not allow the substitution, the Failed Set will be deemed to have been 'cancelled' for the purposes of paragraph 2.3 of Schedule 15 for the Availability Period referred to in clause 16.6(b)(i).

(c) (Set fails in service; at least 3 hours' notice): If:

(i) the Supplier wishes to substitute a Set for a Set which:

A. has been cancelled in service; or

B. has incurred a Defect or is otherwise in a condition which, under the Performance Operating Standards, would lead to the Set being taken out of service,
(ii) the Supplier gives the Operator a notice at least 3 hours prior to the commencement of the Availability Period from which the substitution is to take effect specifying:

A. the Failed Set which is to be substituted;
B. the Spare Set which will be substituted for the Failed Set;
C. the Availability Period during and from which the substitution is to take effect,

then:

(iii) the Spare Set will be substituted for the Failed Set from the commencement of the Availability Period specified in the notice;

(iv) the Failed Set will not be deemed to be 'withdrawn' for the purposes of paragraph 2.3 of Schedule 15 by reason of the substitution;

(v) the Supplier will be subject to any Reliability and Disruption Adjustments in respect of the Failed Set which relate to the Availability Periods prior to the Availability Period specified in the notice; and

(vi) the Supplier will be subject to any Reliability and Disruption Adjustments in respect of the Spare Set which relate to the Availability Periods from the commencement of the Availability Period specified in the notice.

(d) (Set fails in service; less than 3 hours' notice): If:

(i) the Supplier wishes to substitute a Set for a Set which:

A. has been cancelled in service; or
B. has incurred a Defect or is otherwise in a condition which, under the Performance Operating Standards, would lead to the Set being taken out of service,

(in this clause 16.6(d), the Failed Set); and

(ii) the Supplier gives the Operator a notice less than 3 hours prior to the commencement of Availability Period from which the substitution is to take effect specifying:

A. the Failed Set which is to be substituted;
B. the Spare Set which will be substituted for the Failed Set;
C. the Availability Period during and from which the substitution is to take effect,

then:

(iii) the Operator may, but is not obliged to, allow the substitution of the Spare Set for the Failed Set;

(iv) if the Operator allows the substitution:
A. the Spare Set will be substituted for the Failed Set from the commencement of the Availability Period specified in the notice;

B. the Failed Set will not be deemed to be 'withdrawn' for the purposes of paragraph 2.3 of Schedule 15 by reason of the substitution;

C. the Supplier will be subject to any Reliability and Disruption Adjustments in respect of the Failed Set which relate to the Availability Periods prior to the Availability Period specified in the notice; and

D. the Supplier will be subject to any Reliability and Disruption Adjustments in respect of the Spare Set which relate to the Availability Periods from the commencement of the Availability Period specified in the notice; and

(v) if the Operator does not allow the substitution, the Supplier will be subject to any Reliability and Disruption Adjustments in respect of the Failed Set whether they relate to Availability Periods prior to or from the commencement of the Availability Period specified in the notice.

16.7 When is a Set deemed to be Available?

A Set will be deemed to be Available if it has achieved Provisional Acceptance but does not satisfy a requirement of clause 16.3(a) due to:

(a) damage to the Set caused by a Reimbursable Damage Event, except where the Supplier has been directed by TfNSW's Representative to carry out the relevant repair work for the damage but has not done so within the time required, in which case the deemed Availability will not apply beyond the expiry of the time required for reinstatement;

(b) damage to the Set or the Maintenance Facility caused by an Excepted Risk, except where the Supplier has been directed by TfNSW's Representative to carry out the relevant repair work for the damage but has not done so within the time required, in which case the deemed Availability will not apply beyond the expiry of the time required for reinstatement;

(c) a Variation directed by TfNSW under clause 24, except where the Supplier has not completed the Variation within the time required, in which case the deemed Availability will not apply beyond the expiry of the required time;

(d) a Variation approved by TfNSW under clause 25 which is required to ensure that the Sets comply with a Qualifying Change in Law, except where the Supplier has not completed the Variation within the time required, in which case the deemed Availability will not apply beyond the expiry of the required time;

(e) damage to or loss or destruction of the Set which TfNSW bears the risk of under clause 32.2(a) and which the Supplier is obliged to repair or replace under clause 32.1, except where the Supplier fails to repair or replace the Set within the time required, in which case the deemed Availability will not apply beyond the expiry of the time required for reinstatement;

(f) any default under this deed by TfNSW, or any negligent, illegal, fraudulent or reckless act or omission of TfNSW or the Operator or the Associates of either of them;

(g) a Defect caused by the work of TfNSW or the Operator or an Interface Party;
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(h) an Investigative Authority ordering or directing TfNSW to cease operating the Set or ordering or directing the cessation of use of the Maintenance Facility, except where:

(i) the order or direction is attributable to a Supplier Related Problem; or

(ii) the Supplier has been directed to carry out the rectification work to deal with the issue for which an Investigative Authority issued the order or direction but has not done so within the time required, in which case the deemed Availability will not apply beyond the expiry of the time required for reinstatement; or

(i) any Industrial Action by staff employed by TfNSW or the Operator or the Associates of either of them, other than where it is caused directly or indirectly, by the action or inaction, as the case may be, of the Supplier, or of its Associates (except where such action or inaction is required by this deed); or

(j) the Set is a Set that was delivered by the Operator to the Underfloor Wheel Profiling Plant and has not been made ready for use by the Operator within 2 days from the time and date that the Set was first delivered to the Underfloor Wheel Profiling Plant, except to the extent the delay is attributable to a Supplier Related Problem.

16.8 Withholding or withdrawing a Set from a service

(a) (Meaning of "withheld from service"): A reference in this deed to a Set being "withheld" from service by the Supplier is a reference to:

(i) where the Set is at the Maintenance Facility Site, the Supplier advising the Operator that the Set will not be delivered to the Pick-up Point and made ready for Train Preparation by the Operator at the Required Delivery Time; or

(ii) where the Set is at an Out Depot, the Supplier advising the Operator that the Set will not be ready for use by the Operator at the commencement of the next Availability Period.

(b) (Meaning of "withdrawn from service"): A reference in this deed to a Set being "withdrawn" from service by the Supplier is a reference to the Supplier advising the Operator that a Set which is:

(i) in service; or

(ii) cancelled in service or when it is due to enter service,

will not be ready for use by the Operator at the commencement of the next Availability Period.

(c) (When a Set may not be withheld from service): The Supplier may not withhold a Set from service:

(i) where the Set is at the Maintenance Facility Site, after the Set has been delivered by the Supplier to the Pick-up Point; or

(ii) where the Set is at an Out Depot, after the Crew commences Train Preparation in respect of the Set at or immediately prior to the commencement of an Availability Period.

(d) (When a Set may not be withdrawn from service): For any given Availability Period, the Supplier may not withdraw a Set from service during the period:

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commencing when the Set is introduced into service for that Availability Period; and

(ii) ending when the Set is taken out of service at the end of that Availability Period.

This does not, however, prevent the Supplier from advising the Operator that a Set will not be ready for use by the Operator at the commencement of the next Availability Period.

(e) **Effect of conduct in contravention of this clause:** If the Supplier advises the Operator that:

(i) a Set is not available for collection from the Pick-up Point, or is not ready for use;

(ii) a Set will not be ready for use at the commencement of the next Availability Period; or

(iii) the Supplier wishes to take a Set out of service,

in contravention of clause 16.8(c) or 16.8(d), the Operator will be entitled to cancel the Set and paragraph 2.3 of Schedule 15 will apply.

16.9 **Additional Required Availability for special events**

(a) During the Royal Easter Show and New Year’s Eve:

(i) the Required Availability which the Supplier must provide will be increased by the relevant Additional Required Availability, except for the purposes of clause 30.1(a); and

(ii) the payment and other provisions of this deed will apply in respect of such increased Required Availability.

(b) TfNSW may nominate 4 additional events in each financial year as "Additional Special Events", provided that:

(i) the Operator has given 1 month prior written notice of the Additional Special Event;

(ii) the notice specifies the Availability Periods which the Additional Special Event will cover; and

(iii) the Additional Special Event does not coincide with the Royal Easter Show, New Year’s Eve or any other Additional Special Event.

(c) The Operator may, not less than 48 hours before the commencement of the relevant Additional Special Event, give the Supplier written notice stating that the Operator does not require the Supplier to provide the Additional Required Availability during the relevant Additional Special Event.

(d) If the Operator does not issue a written notice under clause 16.9(c) then:

(i) the Required Availability which the Supplier must provide will be increased by the relevant Additional Required Availability, except for the purposes of 28.1(a); and

(ii) the payment and other provisions of this deed will apply in respect of such increased Required Availability.
(e) If the Operator issues a written notice under clause 16.9(c) in respect of any Additional Special Event, then:

(i) the Supplier is not required to provide the Additional Required Availability to the Operator for that Additional Special Event;

(ii) the Operator may nominate a different additional event during the relevant financial year under clause 16.9(b); and

(iii) the Supplier will not be entitled to any Claim in respect of the non-provision of the Additional Required Availability.

(f) This clause 16.9 only applies after the Date of Provisional Acceptance of the last Set in the Initial Fleet.

### 16.10 Ad-hoc Additional Required Availability

(a) Without limiting clause 16.9, the Operator may from time to time request the Supplier to nominate the number of Available Sets in addition to the Required Availability which the Supplier is willing to provide for one or more particular Availability Periods. The Supplier must respond to any such request by written notice within 5 Business Days.

(b) If the Operator advises the Supplier that it wishes to utilise some or all of the additional Available Sets nominated by the Supplier in its response under clause 16.10(a), then the Required Availability which the Supplier must provide will be increased accordingly during the relevant Availability Periods, and the payment and other provisions of this deed will apply in respect of such Additional Required Availability.

### 16.11 Exclusive remedy

(a) Subject to clauses 16.11(b) and 16.11(c), TfNSW acknowledges and agrees that:

(i) the Supplier will not be liable for any Loss suffered or incurred by TfNSW or the Operator as a result of any breach by the Supplier of its obligation to provide the Required Availability under clause 16.1; and

(ii) the Supplier’s liability to TfNSW for pure economic loss or loss of use (whether total or partial) of the Sets or any real or personal property belonging to TfNSW or the Operator resulting from an event which results in a Reliability and Disruption Adjustment is limited to the amount of that Reliability and Disruption Adjustment.

(b) Clause 16.11(a) does not affect:

(i) the application of any Reliability and Disruption Adjustments; or

(ii) the Supplier’s liability under clause 34.1(a).

(c) If a Reliability and Disruption Adjustment is held to be legally unenforceable, the Supplier will be liable for any Loss suffered or incurred by TfNSW or the Operator as a result of the event which would have triggered that Reliability and Disruption Adjustment up to the amount of the Reliability and Disruption Adjustment which would have applied if it were enforceable.

### 16.12 Interface Protocols

(a) Each party must comply with its respective obligations as set out in the Interface Protocols.
(b) The Supplier must:

(i) further develop the draft Interface Protocols included in Appendix 10 of the SPR; and

(ii) submit the more detailed draft Interface Protocols to TfNSW and the Operator no later than three months prior to the Date for Provisional Acceptance of the first Set.

(c) Upon submission of the more detailed draft Interface Protocols under clause 16.12(b)(ii), the Supplier, the Operator and TfNSW will meet to discuss each other’s requirements in relation to the more detailed Interface Protocols.

(d) Any of the Supplier, the Operator or TfNSW may request that the Interface Protocols be updated or amended at any time by giving notice to the other setting out the reasons for its request.

(e) Within 10 Business Days of any such notice, the Supplier, the Operator or TfNSW will meet to discuss the request and how it would affect each party’s requirements in relation to the Interface Protocols.

(f) If:

(i) TfNSW or the Operator issue a notice pursuant to clause 16.12(d); and

(ii) within 10 Business Days after the meeting, the Supplier notifies TfNSW that it considers that an update or amendment to the Interface Protocols proposed by TfNSW or the Operator will cause the Supplier to incur additional or increased costs,

the proposed update or amendment will be treated as a “Variation Proposal” issued by TfNSW under clause 24.1 and clause 24 will apply.

(g) If clause 16.12(f) does not apply in relation to an update or amendment to the Interface Protocol:

(i) TfNSW’s Representative will, having reasonable regard to the reasons for the request and the effect it would have on each party’s requirements as discussed at the meeting, make a determination as to whether the Interface Protocols will be updated or amended and if so, what amendments will be made;

(ii) if TfNSW’s Representative determines that amendments will be made, it will make the amendments and reissue the Interface Protocols to the Operator, the Supplier and TfNSW; and

(iii) the Supplier will not be entitled to make any Claim against TfNSW or the Operator arising out of, or in any way in connection with, the amendments.

16.13 Change to TfNSW Policies, Rules or Procedures

If a change to any TfNSW Policy, Rule or Procedure (except a change to the Timetable or the Interface Protocols), increases the cost of performing the TLS Phase Activities, the change will be treated as an instruction to implement a Variation under clause 24 and clause 24.14(b) will apply.

16.14 Handover of Sets

(a) The Operator will deliver the Sets to the Supplier at the Handover Point for maintenance and repair, and the Supplier must deliver the Sets to the Operator at the Pick-up Point after maintenance and repair, and provide any Certificates of
Readiness required in respect of the Sets, in accordance with the Train Plan and the processes and procedures set out in the Interface Protocol and SPR Appendix 5.

(b) Without prejudice to the generality of clause 15.1, the Supplier must:

(i) perform the Maintenance Services so that the Sets are capable of being operated in accordance with the Train Plan by the Operator, at the times and locations and in the condition and quantities required by the Train Plan and the Train Plan Parameters; and

(ii) ensure the Required Availability of Sets in each Availability Period.

16.15 Train Plan

(a) TfNSW and the Operator will consult with the Supplier about the development of a Train Plan applicable from time to time.

(b) The Supplier acknowledges and agrees that:

(i) the first Train Plan will be developed by TfNSW and the Operator;

(ii) the first Train Plan and any subsequent Train Plan may be amended at any time by TfNSW or the Operator for any reason including to enable operation of any changes to the Timetable during the Contract Term;

(iii) subject to clause 16.15(c), the Supplier is not entitled to make any Claim or seek any change to or relief of any nature in relation to any matter arising from any change to a Train Plan.

(c) If TfNSW or the Operator implements or proposes to implement a change to the Train Plan at any time and the effect of that change is that the revised Train Plan does not comply with the Train Plan Parameters, TfNSW will be deemed to have given a Variation Order and the impact of the relevant non-compliance with the Train Plan Parameters will be valued in accordance with clause 23.

16.16 Operational delays attributable to more than one cause

(a) Subject to clause 16.16(b), where a Set:

(i) is made available after the commencement of an Availability Period; or

(ii) falls behind the time nominated in the Timetable for the Set to pass any way point in the Network;

and such delay is:

(iii) partially due to one or more Supplier Related Problems in respect of the Set; and

(iv) partially due to one or more other causes,

only that part of the delay which is attributable to a Supplier Related Problem will be taken into account when calculating Reliability and Disruption Adjustments or determining whether a Supplier Related Incident has occurred.

(b) While the Operator may be able to assist the Supplier by having the Crew or an Equipment Examiner take steps to seek to address or mitigate the effects of the Supplier Related Problem which has caused or is causing a delay, TfNSW will not be under any obligation to procure the Operator to do so. Accordingly:
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(i) a delay or failure by the Operator in taking steps to seek to address or mitigate the effects of a Supplier Related Problem; or

(ii) the taking of steps by the Operator to seek to address or mitigate the effects of a Supplier Related Problem which:

A. fail to address or mitigate the effects of the Supplier Related Problem; or

B. exacerbate the effects of the Supplier Related Problem,

will not count as a separate cause of delay, even if this has the effect of extending the delay period.

17. Asset Condition

17.1 Asset Condition Assessment

The Supplier must conduct regular Asset Condition Assessments, and report to TfNSW on the results of those Asset Condition Assessments, in accordance with section 2.18.1 of the SPR.

17.2 Asset Management Failures

(a) The parties must meet annually, within three months of the end of each Maintenance Year, to review the Supplier's compliance with the Maintenance Works Program during the previous Maintenance Year.

(b) An Asset Management Failure will occur if:

(i) the Supplier failed to comply with the Maintenance Works Program; and

(ii) in TfNSW's reasonable opinion, the Supplier's failure to comply with the Maintenance Works Program constitutes a material non-compliance with the Asset Management Plan.

(c) If an Asset Management Failure occurs TfNSW may give the Supplier a notice stating the nature of the Asset Management Failure.

(d) The Supplier must remedy the Asset Management Failure within:

(i) three months of the date on which the notice referred to in clause 17.2(c) is issued; or

(ii) such other period agreed, in writing, between the parties (acting reasonably),

(the Remediation Period).

17.3 Condition Audit

(a) Without limiting TfNSW's rights under clause 5.4, at any time during the Contract Term and at least on one occasion, at a date no later than 3 years prior to the Expiry Date (3 Year Condition Audit), TfNSW's Representative may nominate an independent expert (Condition Auditor) to carry out an audit of the Assets:

(i) under this clause 17.3 (Condition Audit); and

(ii) under clause 17.6 (Final Inspection).
The Condition Auditor must be:

(i) chosen by agreement, in writing, between the parties; or

(ii) if the parties cannot agree on the person to be appointed within 20 Business Days of a nomination by TfNSW's Representative, nominated by the President of Engineers Australia on request in writing by TfNSW's Representative.

TfNSW's Representative must:

(i) notify the Supplier at least 10 Business Days in advance of its proposed inspection program for carrying out the Condition Audit and specify the Assets that will be the subject of the Condition Audit (Audit Assets); and

(ii) consider in good faith any reasonable request by the Supplier for the Condition Audit to be carried out according to a different program.

The Condition Auditor will inspect and assess the Audit Assets and notify TfNSW and the Supplier of:

(i) whether the Audit Assets have been and are being maintained by the Supplier in accordance with this deed;

(ii) any rectification, maintenance and remediation works required to be carried out by the Supplier to bring the condition of the Audit Assets to the Target Condition; and

(iii) the estimated cost (without double counting) of carrying out those works (Estimated Rectification Cost).

The Supplier must, at its cost, cooperate with the Condition Auditor and provide the Condition Auditor with any reasonable assistance required by the Condition Auditor.

TfNSW's Representative must use its reasonable endeavours to procure that the Condition Auditor minimises any disruption caused to the TLS Phase Activities by the Condition Audit.

The cost of the Condition Audit will be borne by TfNSW.

17.4 Target Condition

The Target Condition for Assets at any given time is the condition the Asset should or ought to be in if the Supplier has complied with all its obligations under this deed to maintain, refurbish, modify or replace the Asset and/or its constituent parts from time to time.

17.5 Rectification work

The Supplier must carry out any required rectification, maintenance and remediation work notified pursuant to clause 17.3(d)(ii):

(a) to the satisfaction of the Condition Auditor;

(b) in accordance with all applicable Mandatory Requirements; and

(c) so as to satisfy all other requirements applicable to the Assets under this deed, prior to the Expiry Date.
17.6 Final Inspection

(a) As soon as practicable following the End Date, the Condition Auditor will inspect and assess all the Assets and the Asset Information System to determine:

(i) whether:
   A. each Asset is in its respective Target Condition; and
   B. the Assets have been maintained by the Supplier in accordance with this deed;

(ii) whether any rectification, maintenance or remediation works are required to be carried out to bring the condition of the Assets to the Target Condition; and

(iii) the estimated cost (without double counting) of carrying out those works and/or rectifying any breaches by the Supplier,

and will provide a written report to TfNSW and the Supplier on the findings of the audit.

(b) The amount assessed by the Condition Auditor under clause 17.6(a)(iii) will be Moneys Owing from the Supplier to TfNSW.

18. Performance monitoring

18.1 Performance Monitoring System

(a) The Supplier must monitor its own performance by means of the Performance Monitoring System (subject to TfNSW's right of review and audit).

(b) The Performance Monitoring System must be capable of fulfilling the functions set out in paragraph 5 of Schedule 15.

18.2 Warranty that performance data is correct

The Supplier warrants that the performance data which results from the Performance Monitoring System (including source information, Performance Reports, documentation and data created for or by the Performance Monitoring System) will, at all times, be accurate, complete and correct.

18.3 Performance Report

The Supplier must give TfNSW's Representative a performance report (Performance Report) with each payment claim under clause 22.2. Each Performance Report must:

(a) contain the information set out in paragraph 5 of Schedule 15; and

(b) include sufficient information to enable TfNSW's Representative to confirm the calculation of the TLS Payment for the preceding month.

18.4 TfNSW's right to monitor

TfNSW (or any person authorised by TfNSW) may monitor and review the TLS Phase Activities and the Performance Monitoring System in any way it thinks fit (subject to clause 18.5), including by way of:

(a) customer satisfaction surveys;
18.5 Inspections within Maintenance Facility Site

Where TfNSW (or any person authorised by TfNSW) conducts an audit, review or inspection of the Maintenance Facility or of Sets in the Maintenance Facility Site:

(a) TfNSW will do so in a manner which does not unreasonably interfere with the TLS Phase Activities as scheduled in the Maintenance Works Program, and subject to compliance with the Supplier’s reasonable requirements as to security and safety; and

(b) the Supplier must exercise reasonable endeavours to:

(i) coordinate the TLS Phase Activities so they do not interfere with the audit, review or inspection; and

(ii) provide TfNSW with every reasonable facility and other assistance necessary for the audit, review or inspection.

18.6 Access to information

The Supplier must:

(a) give TfNSW, its Associates and the Operator access to the Performance Monitoring System and any data for, or resulting from, the Performance Monitoring System at all reasonable times (subject to TfNSW providing the Supplier reasonable prior notice);

(b) keep copies of all information, documents and data relevant to the Performance Monitoring System or the TLS Phase Activities for 7 years after their creation or production; and

(c) provide such assistance and access as TfNSW reasonably requires in the exercise of its performance monitoring rights.

18.7 Audits

TfNSW’s Representative (or any person authorised by TfNSW’s Representative) may audit the Performance Monitoring System or the TLS Phase Activities or any performance data for, or resulting from, the Performance Monitoring System at any time until the End Date. Where this clause 18.7 applies, the Supplier must, within a reasonable period, make its Performance Monitoring System, the TLS Phase Activities and any performance data available for any such audit.

18.8 Inaccurate Performance Monitoring System or performance data

If any audit under clause 18.7 reveals an inaccuracy or incompleteness or incorrectness in the Performance Monitoring System or any performance data for, or resulting from, the Performance Monitoring System then the Supplier must:

(a) correct and reissue the affected report or data and (where applicable) take steps to remedy the fault in its monitoring, measuring and reporting system; and
(b) if the error has affected the amount of a TLS Payment, make the appropriate adjustment to the next scheduled payment claim or, if there are no further payment claims scheduled and the adjustment amount is a deduction, the amount will be Moneys Owing.

If any fraud or intentionally false, misleading or deceptive reporting is discovered during any audit, this will constitute a Supplier Event of Default.

18.9 No duty or relief

The Supplier acknowledges that:

(a) neither TfNSW nor TfNSW’s Representative assumes or owes any duty of care to the Supplier to:

(i) inspect the TLS Phase Activities; or

(ii) review maintenance or repair work for errors, omissions or compliance with the requirements of this deed if it does so inspect; and

(b) no inspection of (or failure to inspect) the TLS Phase Activities or review (or failure to review) of maintenance or repair work by or on behalf of TfNSW or TfNSW’s Representative will:

(i) relieve the Supplier from, or alter or affect, the Supplier’s liabilities, obligations or responsibilities whether under this deed or otherwise according to law; or

(ii) prejudice or limit TfNSW’s rights against the Supplier whether under this deed or otherwise according to law.

19. Project Security

19.1 Provision of Project Security by Supplier

The Supplier must provide the Project Security to TfNSW in accordance with Schedule 17.

19.2 No injunction

(a) TfNSW may make a demand or exercise its rights under any Project Security at any time in accordance with the terms of that Project Security and the other provisions of this deed and Schedule 17.

(b) The Supplier must not take any steps to injunct or otherwise restrain:

(i) the issuer of a Project Bond from paying TfNSW pursuant to the terms of the Project Bond;

(ii) TfNSW from making a demand under a Project Bond or a Parent Guarantee;

(iii) TfNSW or RailCorp from exercising any rights under:

A. any Collateral Warranty Deed Poll; or

B. any other Project Security; or

(iv) TfNSW from using the proceeds of a Project Bond or of any call on the Parent Guarantee.
19.3 Proceeds of Project Bonds

(a) TfNSW may use the proceeds of any Project Bond to reimburse it for any Loss which may, or is likely to, be suffered or incurred by an Indemnified Party including as a consequence of an Insolvency Event in respect of the Supplier or any Guarantor under the Parent Guarantee, and in payment of any other monies owing by the Supplier to TfNSW (including Monies Owing) under this deed.

(b) Subject to clause 19.3(d), within 10 Business Days of being requested to do so, the Supplier must procure the issue to TfNSW of a top-up bond for a Maintenance Bond that TfNSW made a demand on (Top-Up Bond). The Top-Up Bond must have a face value equal to that of the Project Bond being replaced, comply with all of the requirements for a Project Bond in paragraph 1.2 of Schedule 17 and will be held by TfNSW for the same purposes for which the Original Bond was held.

(c) Any proceeds remaining from a Maintenance Bond will be repaid to the Supplier in return for the Top-Up Bond.

(d) The Supplier will only be required to provide a Top-Up Bond:

(i) before the first day of the next Maintenance Year; and

(ii) for a value equal to of the Maintenance Bonding Sum.

19.4 No interest

TfNSW is not obliged to pay or procure payment to the Supplier of interest on, or the proceeds of, any Project Security.

19.5 No trust

If TfNSW makes a demand under a Project Bond, it does not hold the proceeds on trust for the Supplier.

19.6 Failure to provide Project Bonds

If the Supplier fails to provide any Project Bond in accordance with its obligations under Schedule 17 or clause 19.3(b), that failure will be a Supplier Event of Default for the purposes of clause 28.1(m).

19.7 Return of Project Bonds

Subject to the provisions of clause 19.8, TfNSW must return a Project Bond to the Supplier within 10 Business Days of the Release Date for that bond.

19.8 TfNSW's rights to retain Project Bonds

Despite any other provision of any Project Agreement, TfNSW may continue to hold and have recourse to a Project Bond where a Project Agreement would otherwise require TfNSW to release it to the extent of any bona fide Claim by TfNSW under the Project Agreement whether before or after termination of the Project Agreement.

20. Payment for TLS Phase Activities

20.1 TLS Payment

In consideration for the performance of the TLS Phase Activities, TfNSW will procure payment of the TLS Payment to the Supplier.
20.2 Nature of TLS Payment

The TLS Payment:

(a) includes an allowance for all costs, expenses, fees and charges incurred by the Supplier in providing the TLS Phase Activities (including the supply of all related Spares, Tools, Special Tools and Consumables and other related Materials);

(b) includes an allowance for all related items of work under this deed (including the supply of any labour, materials or other necessary items);

(c) includes an allowance for the Supplier’s profit, attendance, preliminaries, supervision and all overheads in connection with the performance of all of its related obligations under this deed;

(d) will not be subject to any rise and fall in costs of materials or labour or otherwise, foreign exchange adjustment or any other adjustment for any reason, except to the extent expressly provided by this deed; and

(e) subject to clause 50.2, includes all duties including stamp duty, Importation GST, customs duty and import duty.

20.3 Performance Regime

(a) The Supplier acknowledges and agrees that:

(i) both TfNSW and the Supplier require a formula for the calculation of losses, costs, expenses and detriments which TfNSW or TfNSW’s Associates may incur should the Supplier fail to discharge its obligations under this deed, that is able to be readily applied without unnecessary administrative costs, delay or difficulty;

(ii) it is in the economic and other best interests of both TfNSW and the Supplier that formulae of the nature referred to in clause 20.3(a)(i) be adopted;

(iii) there are many and varied matters which form part of the losses, costs, expenses and detriments which TfNSW or TfNSW’s Associates may incur as a result of a failure by the Supplier to discharge its performance obligations under this deed many of which are either difficult, or in some cases impossible, to calculate with precision;

(iv) the formulae adopted in Schedule 15:

A. meet the requirements and objectives set out in clauses 20.3(a)(i), 20.3(a)(ii) and 20.3(a)(iii);

B. represent (and do not exceed) a reasonable and genuine pre-estimate of the Loss and damage that may be suffered or incurred by TfNSW, RailCorp, the Operator or any other NSW Rail Entity arising from events, actions or omissions contemplated by or addressed under Schedule 15; and

(v) the Supplier:

A. is contracting with TfNSW and RailCorp at arm’s length;

B. possesses equivalent bargaining power to TfNSW;

C. possesses extensive commercial experience and expertise;
D. has had access to and been advised by its own legal, accounting, technical, financial, economic, commercial and other professionals and experts in relation to its rights and obligations under this deed;

E. having received advice, warrants that the payments mechanism in Schedule 15 is legally binding, valid and enforceable according to its terms and does not constitute a penalty in any respect;

F. enters into this deed without any duress, coercion, undue influence or other form of unconscionable conduct or impermissible or objectionable persuasion on the part of TfNSW or TfNSW's Associates;

G. enters into this deed not dependent on or influenced by any statements or representations (whether express or implied) made by or on behalf of TfNSW or the Operator, other than those stated in this deed; and

H. enters into this deed with the intention that the payments mechanism in Schedule 15 is legally binding, valid and enforceable in accordance with its terms.

(b) To the extent possible, the Supplier agrees to exclude and waive any right to the benefit of, to the extent permissible, the application of any legal rule or norm, including under statute, equity and common law, relating to the enforceability of the payments mechanism in Schedule 15 or the characterisation of any adjustments calculated in Schedule 15 as penalties.

(c) If any part of Schedule 15 is found for any reason to be void, invalid or otherwise unenforceable, so as to disentitle TfNSW from deducting amounts from the TLS Payment for the matters referred to in Schedule 15, TfNSW will be entitled to recover from the Supplier, and the Supplier must pay on a full indemnity basis general law damages arising out of or in connection with any Loss suffered by TfNSW, RailCorp, the Operator or any other NSW Rail Entity as a result of an event, action or omission which would have entitled TfNSW to make any adjustment pursuant to Schedule 15, if the relevant provision of this deed had not been found void, invalid or otherwise unenforceable.

(d) The Supplier's liability for any general law damage payable under clause 20.3(c) is Moneys Owing.

20.4 Payment claims for Maintenance Services

For each month from the TLS Start Date until the End Date, the Supplier must deliver to TfNSW's Representative a payment claim under clause 22.2 for the TLS Payments.

21. Payment of Workers and Subcontractors

21.1 Evidence of payment of workers and Subcontractors

The Supplier is not entitled to give TfNSW a payment claim under clause 22, and TfNSW's Representative is not obliged to make any payment under clause 22, unless the Supplier has provided TfNSW's Representative with:

(a) a statutory declaration, in the form set out in Form 2 in Schedule 25, together with any supporting evidence which may be reasonably required by TfNSW's Representative, duly signed by the Supplier's Representative, that, except to the
extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, employees and Subcontractors):

(i) all employees of the Supplier have at the date of the payment claim been paid all moneys due and payable to them; and

(ii) all Subcontractors of the Supplier have been paid all moneys due and payable to them in respect of the TLS Phase Activities;

(b) a statutory declaration in the form set out in Form 3 in Schedule 25 from each Significant Contractor which satisfies the requirements of clause 21.1(a) in relation to the employees and Subcontractors of that Significant Contractor;

(c) where:

(i) the payment claim includes any amount that relates, in part or whole, to TLS Phase Activities carried out in New South Wales; or

(ii) the Supplier is required to be registered as an employer under the Payroll Tax Act 2007 (NSW),

the statutory declarations provided under clauses 21.1(a) and 21.1(b) must include:

(iii) a written statement covering the period covered by the relevant payment claim, for the purposes of, and which complies with, section 127 of the Industrial Relations Act 1996 (NSW), section 175B of the Workers Compensation Act 1987 (NSW) and Schedule 2 Part 5 of the Payroll Tax Act 2007 (NSW), which is in the form approved by the Chief Commissioner of State Revenue pursuant to Part 5 of Schedule 2 of the Payroll Tax Act 2007 (NSW), which as at the date of this deed is the form set out in Form 4 in Schedule 25 and included as Annexure B of the statutory declarations; and

(iv) copies of all relevant certificates of currency in respect of workers compensation insurance which the Supplier has in place in connection with the TLS Phase Activities.

21.2 Direct payment of worker or Subcontractor

(a) If a worker 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 TLS Phase Activities, and produces to TfNSW the court order and a statutory declaration that it remains unpaid, TfNSW may (but is not obliged to) procure payment of the amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid will be a debt due and payable from the Supplier to TfNSW upon demand.

(b) Nothing in this clause 21.2 limits or otherwise affects TfNSW's rights under section 175B(7) of the Workers Compensation Act 1987 (NSW), Schedule 2, Part 5 of the Payroll Tax Act 2007 (NSW) and section 127(5) of the Industrial Relations Act 1996 (NSW).
22. Payment Terms

22.1 Monthly Operational Data

The Supplier's Performance Monitoring System must report monthly, within 5 Business Days of the end of each month during the period between the TLS Start Date and the End Date in accordance with paragraph 5.1(a) of Schedule 15.

22.2 Payment claims for TLS Payments and other amounts for TLS Phase Activities

During the period between the TLS Start Date and the End Date, the Supplier must submit to TfNSW within five Business Days of the end of each month, a payment claim setting out:

(a) the Supplier's calculation of the TLS Payments payable for the preceding month; and

(b) the amounts payable (if any) for Spares and Special Tools purchased under a Spares Purchase Order pursuant to paragraph 2 of Schedule 14.

22.3 Content of payment claims

(a) For a payment claim under clause 22.2 to be valid the payment claim must set out any calculations necessary to arrive at the amount claimed.

(b) The Supplier's payment claim must be:

(i) in respect of payment claims referred to in:

A. clause 22.2(a), in the format set out in Annexure 1 of Schedule 15, or such other format as TfNSW's Representative reasonably requires; and

B. clause 22.2(b), in such format as TfNSW's Representative reasonably requires;

(ii) based on the relevant Monthly Operational Data provided by the Supplier in accordance with clause 22.1;

(iii) accompanied by (unless the TfNSW's Representative otherwise agrees in writing):

A. evidence of the amount due;

B. the documents required under clause 21.1 in relation to payment by the Supplier of all monies due and payable to Subcontractors engaged in the performance of the TLS Phase Activities that are the subject of the claim;

C. the documents required under clause 21.1 in relation to payment by the Supplier of all workers carrying out the TLS Phase Activities;

D. subject to clause 50.1(h), a valid tax invoice (addressed to RailCorp or such other entity as notified by TfNSW); and

E. such other information and documents as TfNSW's Representative may reasonably require; and
22.4 Supplier’s warranties in relation to payment claim

In submitting a payment claim under clause 22.2, the Supplier warrants to TfNSW that:

(a) it has completed all work which is the subject of a payment claim for a Distance Based Payment;

(b) the work complies with all relevant requirements under this deed;

(c) figures and calculations appearing in the payment claim are accurate;

(d) it has paid its suppliers and Subcontractors all monies due and payable in respect of work and services carried out and goods or materials supplied in relation to the work which was the subject of the immediately preceding payment claim;

(e) it has paid its workers and employees all monies in respect of the work that is the subject of the payment claim;

(f) all Insurances required to be affected and maintained by the Supplier are current and in force; and

(g) the Supplier has no Claims in respect of the TLS Phase Activities which are not identified in the payment claim or in any earlier payment claim and which has not previously been given to TfNSW in accordance with this deed.

22.5 Payment

(a) Within 20 Business Days of the receipt of a valid payment claim under clause 22.2, TfNSW’s Representative must assess the claim and TfNSW must:

(i) subject to the provisions of this deed, procure payment to the Supplier of:

A. the amount set out in the payment claim; or

B. such lesser amount determined by TfNSW’s Representative as due to the Supplier; and

(ii) if the amount paid under clause 22.5(a)(i) is less than the amount claimed by the Supplier in its payment claim, give a notice stating the reasons for the difference.

(b) If TfNSW gives a notice under clause 22.5(a)(ii), the Supplier must, within 3 Business Days, issue a revised tax invoice or adjustment note, as the case may be.

(c) In determining the amount payable by TfNSW to the Supplier under this deed, TfNSW’s Representative will not have regard to work which has been performed which is not in compliance with this deed.

22.6 Net amount due from Supplier to TfNSW

Where a payment claim shows, or TfNSW’s Representative reasonably determines, that a net amount is due from the Supplier to TfNSW, the Supplier must:

(a) pay that amount to TfNSW within 20 Business Days of being requested by TfNSW’s Representative to do so; or
otherwise carry forward the amount and set it off against the next payment claim.

22.7 Payment on account

(a) Any payment of moneys to the Supplier is not:

(i) evidence of the value of work or services, or that any work or services have been satisfactorily carried out in accordance with this deed;

(ii) an admission of liability; or

(iii) approval by TfNSW or TfNSW's Representative of the Supplier's performance or compliance with this deed,

but is only taken to be payment on account.

(b) TfNSW's Representative may, in any determination of amounts payable under clause 22.5(a)(i), correct any previous determination under clause 22.5(a)(i) or apply any deductions in accordance with this deed.

22.8 Disputed payments

If an amount paid determined by TfNSW's Representative under clause 22.5(a)(i) is the subject of a Dispute and the Supplier and TfNSW subsequently agree, in writing, or it is determined in accordance with the Dispute Resolution Procedures that the relevant amount in Dispute or another amount was or was not due, then that adjustment will be added to or deducted from (as the case may be) the payment claim in respect of the next month after that agreement is reached or that determination is made (as the case may be).

22.9 Interest

If a party fails to pay or procure payment of an amount that is properly due and payable to the other party on the due date for payment under any Project Agreement (including a previously disputed amount or an amount which is not paid due to the application of set-off by TfNSW under clause 22.10 where the amount set-off is determined to be incorrect), that party is liable to the other party to pay or procure payment of interest on the amount incorrectly withheld at the Default Rate from the day after the date on which the payment was due until (and including) the date of payment.

22.10 Moneys Owing and set-off

(a) All Moneys Owing are payable by the Supplier to TfNSW on demand.

(b) TfNSW may demand payment of Moneys Owing at any time, and any such demand is payable within 10 Business Days of the date of demand.

(c) TfNSW may at any time set-off or deduct from monies due to the Supplier under this deed:

(i) Moneys Owing; and

(ii) any other Claim relating to the Project which TfNSW has against the Supplier, whether under this deed, any other Project Agreement or at law,

and if those amounts are insufficient, TfNSW may have recourse to the Project Security in accordance with clause 19. TfNSW must provide the Supplier with reasonable details of the basis on which it is setting off any Moneys Owing (or any other Claim) under this clause 22.10(c).
(d) The Supplier must:

(i) make all payments due to TfNSW under this deed without set-off or counterclaim; and

(ii) not at any time deduct from money otherwise due to TfNSW (including any Moneys Owing) under any Project Agreement:

A. any debt or other money due from TfNSW to the Supplier; or
B. any Claim to money which the Supplier may have against TfNSW,

whether under this deed, any other Project Agreement or at law.

(e) Nothing in this clause 22.10 affects TfNSW's right to recover from the Supplier the whole of the debt or any balance that remains owing after any set-off.

22.11 Operator Schedule of Rates

The Supplier acknowledges and agrees that:

(a) during the Contract Term, the Operator may be required to or may otherwise assist the Supplier in the performance of the TLS Phase Activities (including for example assisting with the recovery of Sets, or in relation to other operational matters); and

(b) in the circumstances contemplated by clause 22.11(a), payment from the Supplier for the performance of such services will be Moneys Owing, which payment will be calculated in accordance with the Operator’s Schedule of Rates.

23. Option Sets

23.1 Option Set Notice

TfNSW and the Supplier agree that if RailCorp (or TfNSW on behalf of RailCorp) gives an Option Set Notice to the Supplier on or before the relevant Option Set Order Date for an Option Set, the Required Availability will be deemed to be amended accordingly with paragraph 2 of Annexure 7 of Schedule 15 from the date the Supplier receives the Option Set Notice.

23.2 Consequences of Option Set Notice

Where TfNSW's Representative gives an Option Set Notice on or before the relevant Option Set Order Date, the Supplier, in respect of that Option Set Notice:

(a) must carry out its obligations under this deed as amended in accordance with clause 23.1; and

(b) acknowledges that:

(i) the provisions of Schedule 15 will take effect and provide full compensation for all additional costs it will incur arising out of or in connection with the performance of TLS Phase Activities with respect to the relevant Option Set, and no further adjustment will be made the amounts payable to the Supplier under this deed in respect of the relevant Option Set; and
24. **TfNSW initiated Variations**

24.1 **Variation Proposal**

TfNSW's Representative may at any time issue to the Supplier a notice titled "Variation Proposal" setting out the details of a proposed Variation which TfNSW is considering, including TfNSW's proposed requirements for the implementation of the proposed Variation. TfNSW will not be obliged to proceed with any Variation proposed in a "Variation Proposal".

24.2 **Supplier's Variation Notice**

As soon as practicable and in any event within 20 Business Days after receipt of a "Variation Proposal" (or such longer period as may be requested by the Supplier, having regard to the nature of the relevant Variation Proposal, and approved by TfNSW (acting reasonably)), the Supplier must provide TfNSW with a notice (Supplier's Variation Notice) setting out detailed particulars of:

(a) the Variation Costs which it will incur, or the Variation Savings which it will derive, as a result of the proposed Variation, such Variation Costs or Variation Savings to be separately identified in respect of:

(i) this deed;

(ii) the Delivery Deed; and

(iii) the MF Works Deed;

(b) the effect (if any) which the proposed Variation will have on all affected Programs and Project Plans;

(c) the Approvals (if any) required to implement the proposed Variation;

(d) the time within which the proposed Variation will be implemented;

(e) the effects which the proposed Variation will have on:

(i) any or all of:

   A. the Delivery Phase Activities;

   B. the TLS Phase Activities; and

   C. the MF Works Activities;

(ii) the workmanship, durability or functional integrity of any element of the Project Activities (including the MF Works) or any Asset or the Maintenance Facility;

(iii) the Supplier's ability to provide the Required Availability;

(iv) the Maintenance Facility;

(v) the use of the Sets by the Operator and its passengers;
(vi) any Accreditation held or required by TfNSW, RailCorp, the Operator, the Supplier or the Supplier’s Associates;

(vii) the safety of the Sets;

(viii) RailCorp’s Facilities;

(ix) any training requirements;

(x) the Supplier’s ability to return the Maintenance Facility to TfNSW (or its nominee) in accordance with the requirements of this deed; or

(xi) the Supplier’s ability to:

A. satisfy any warranty given by the Supplier under any Project Agreement; or

B. perform any of its other obligations under any Project Agreement;

(f) any relief required by the Supplier from its obligations under this deed to ensure that the Supplier would be left in a no better and no worse position than it would be in if the Variation were not implemented; and

(g) any other information requested by TfNSW.

24.3 Supplier’s Variation Notice requirements

The Supplier’s Variation Notice must be prepared:

(a) so as to avoid, as far as practicable, the need for a new Approval or a modification to an existing Approval for the implementation of the Variation;

(b) where applicable, on the basis of the prices and rates set out in Annexure 3 of Schedule 15;

(c) on an Open Book Basis (and to this end the Supplier must allow TfNSW to review and audit the Supplier’s records to verify that the Supplier’s Variation Notice has been prepared on an Open Book Basis);

(d) assuming the Supplier is a willing, efficient and competent provider of the Variation in an efficient and competitive market;

(e) in a manner which is consistent with the requirements of TfNSW for the implementation of the Variation;

(f) having regard to minimising disruption to the performance of the Operations Functions;

(g) having regard to minimising any delay in achieving:

(i) Provisional Acceptance in relation to a Set;

(ii) Final Acceptance in relation to a Set;

(iii) Fleet Acceptance of:

A. the Continuous Production Fleet; or

B. the Non-continuous Production Fleet; or
(iv) MF Completion in relation to the MF Works,

to the extent that Provisional Acceptance of a Set, Final Acceptance of a Set, Fleet Acceptance or MF Completion (as applicable) has not yet been achieved;

(h) having regard to minimising any adverse safety impacts of the Variation;

(i) in a manner which ensures that all appropriate insurances relevant to the Variation are taken out and maintained consistently with those that would have been required by TfNSW if the Variation had been included in the original requirements of the Project Agreements, unless TfNSW otherwise determines;

(j) in a manner so that there is no double counting; and

(k) in the form of an offer capable of immediate acceptance by TfNSW within 40 Business Days after the date on which TfNSW receives the Supplier's Variation Notice.

24.4 Instruction to proceed

Whether or not TfNSW's Representative has issued a "Variation Proposal" under clause 24.1 and whether or not the Supplier has issued a the Supplier's Variation Notice under clause 24.2 in response to a "Variation Proposal", TfNSW's Representative may at any time during the Contract Term instruct the Supplier to implement a Variation by issuing a notice titled "Variation Order". In these circumstances, the matters set out in clauses 24.2(a), 24.2(d), 24.2(e)(vi) and 24.2(f) will, until TfNSW and the Supplier agree otherwise or a determination is made in accordance with the Dispute Resolution Procedures, be reasonably determined by TfNSW's Representative. In making his or her determination, TfNSW's Representative will:

(a) have regard to the principles set out in clause 24.3, to the extent relevant; and

(b) determine all matters required to enable the Variation to be implemented.

If the Supplier disagrees with a matter determined by TfNSW's Representative under this clause 24.4:

(c) the Supplier may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedures;

(d) the Supplier must proceed to implement the Variation on the basis determined by TfNSW notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedures; and

(e) any necessary adjustments will be made following the expert or arbitrator's determination.

If TfNSW has not issued a "Variation Proposal" under clause 24.1, the "Variation Order" under this clause 24.4 will also be taken to be a "Variation Proposal" under clause 24.1. However, clauses 24.5, 24.6(c), 24.7(a), 24.9(a), 24.11, 24.12 and 24.13 will not apply where TfNSW issues a "Variation Order" under this clause 24.4.

If a Variation the subject of Variation Order affects:

(f) the Delivery Phase Activities, TfNSW's Representative will issue a separate "Variation Order" under the Delivery Deed, and clause 21.4 of the Delivery Deed will apply; or

(g) the MF Works Activities, TfNSW's Representative will issue a separate "Variation Order" under the MF Works Deed, and clause 6.2 of the MF Works Deed will apply.
24.5 Tender for works

If TfNSW issues a "Variation Proposal" under clause 24.1, TfNSW may require that the Supplier conduct a tender process for all or part of the works which would be required to effect the Variation if the value of those works is likely to exceed [CPI Indexed]. If TfNSW elects to require the tender process:

(a) the tender process must be carried out promptly and in accordance with TfNSW’s reasonable requirements; and

(b) the date by which the Supplier must provide the Supplier’s Variation Notice will be extended by such period as is reasonably required to conduct the tender process.

The Supplier must have regard to the outcome of the tender process (including the tendered prices) in the Supplier’s Variation Notice (or, if the Supplier’s Variation Notice has been submitted before the completion of the tender process, promptly submit an appropriately amended Supplier’s Variation Notice).

24.6 Election by TfNSW

Within 40 Business Days after receipt of the Supplier’s Variation Notice or, if clause 24.5 applies, 40 Business Days after the receipt of an amended Supplier’s Variation Notice, TfNSW may either:

(a) accept the Supplier’s Variation Notice and if the Supplier’s Variation Notice contains any options, nominate which option TfNSW accepts;

(b) reject the Supplier’s Variation Notice; or

(c) withdraw the proposed Variation,

by notice to the Supplier (which in the case of paragraph (a) must be titled "Variation Order").

24.7 TfNSW accepts the Supplier’s Variation Notice

If TfNSW accepts the Supplier’s Variation Notice in accordance with clause 24.6(a):

(a) the Supplier must proceed to implement the Variation on the basis of the Supplier’s Variation Notice (as accepted by TfNSW); and

(b) the Supplier will be relieved of its obligations under this deed to the extent specified in the Supplier’s Variation Notice (as accepted by TfNSW).

24.8 TfNSW rejects the Supplier’s Variation Notice

If TfNSW rejects the Supplier’s Variation Notice in accordance with clause 24.6(b), the parties must consult in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Supplier’s Variation Notice which are in dispute.

24.9 If parties reach agreement

If the parties reach agreement on the disputed matters in the Supplier’s Variation Notice and TfNSW directs the Supplier to implement the Variation (by notice titled “Variation Order”):

(a) the Supplier must proceed to implement the Variation on the basis of the Supplier’s Variation Notice (as varied by the parties’ agreement, as recorded in the "Variation Order" to both parties’ reasonable satisfaction, on the matters in the Supplier’s Variation Notice which were in dispute); and
24.10 If parties fail to reach agreement

If the parties are unable to reach agreement within 10 Business Days after the commencement of the consultation under clause 24.8, TfNSW may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedures. In determining the dispute under the Dispute Resolution Procedures:

(a) the principles set out in clause 24.3 must be considered, to the extent relevant; and

(b) all matters required to enable the Variation to be implemented must be determined, assuming TfNSW makes the election referred to in clause 24.12(a).

24.11 TfNSW may direct the Supplier to proceed pending outcome of dispute resolution process

If TfNSW refers the matter for dispute resolution, TfNSW may also direct the Supplier to implement the Variation by a notice titled "Variation Order" whether or not the matters in dispute have been agreed or determined in accordance with the Dispute Resolution Procedures.

If TfNSW gives such a notice:

(a) the disputed matters will, until TfNSW and the Supplier otherwise agree or a determination is made in accordance with the Dispute Resolution Procedures, be reasonably determined by TfNSW's Representative. In making his or her determination, TfNSW's Representative will:

(i) have regard to the principles set out in clause 24.3, to the extent relevant; and

(ii) determine all matters required to enable the variation to be implemented;

(b) the Supplier must proceed to implement the Variation on the basis determined by TfNSW notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedures;

(c) the Supplier will be relieved of its obligations under this deed to the extent specified in TfNSW's notice; and

(d) any necessary adjustments will be made following the determination of the matters in dispute.

24.12 TfNSW options following determination

Following determination of the dispute referred for dispute resolution under clause 24.10 (if parties fail to reach agreement), TfNSW may, if it has not already exercised its right under clause 24.11, elect to do either of the following:

(a) require the Supplier to proceed to implement the Variation in accordance with the Supplier's Variation Notice as varied by the determination; or

(b) withdraw the proposed Variation,
by notice to the Supplier (which in the case of clause 24.12(a) must be titled "Variation Order").

24.13 Supplier to implement Variation

If TfNSW gives the Supplier notice pursuant to clause 24.12(a):

(a) the Supplier must proceed to implement the Variation in accordance with the Supplier's Variation Notice (as varied by the determination, once made); and

(b) the Supplier will be relieved of its obligations under this deed to the extent specified in the Supplier's Variation Notice (as varied by the determination, once made).

24.14 Variation Costs

(a) (Variation Costs, when agreed): If the Supplier implements a Variation in accordance with clause 24.7 or 24.9 and the Supplier's Variation Notice (as subsequently agreed, if clause 24.9 applies) states that the Variation will result in Variation Costs in an amount greater than zero, the Supplier may submit a payment claim in accordance with clause 22 in respect of the relevant portion of the Variation Costs stated in the Supplier's Variation Notice (as subsequently agreed, if clause 24.9 applies) at the times or after the achievement of the relevant milestones specified in the Supplier's Variation Notice (as subsequently agreed, if clause 24.9 applies).

(b) (Variation Costs, when not agreed): If the Supplier implements a Variation in accordance with clause 24.4, 24.11 or 24.13 which results in Variation Costs in an amount greater than zero, or if clause 16.12 applies, the Supplier may submit a payment claim in accordance with clause 22 in respect of the relevant portion of the Variation Costs:

(i) pending determination in accordance with the Dispute Resolution Procedures or agreement between the parties, as reasonably determined by TfNSW's Representative; and

(ii) following determination in accordance with the Dispute Resolution Procedures or agreement between the parties, as so determined or agreed,

after each month in which the relevant work was undertaken, or (if agreed between the parties or determined under the Dispute Resolution Procedures) at the times or after the achievement of the relevant milestones as agreed or determined. If the Variation Costs paid under clause 24.14(b)(i) are more or less than the Variation Costs for the relevant month as subsequently determined or agreed, then the difference will be paid by the relevant party to the other.

24.15 Variation Savings

(a) If the Supplier implements a Variation in accordance with clauses 24.4, 24.7, 24.9, 24.11 or 24.13, that results in Variation Savings, the Supplier must pay TfNSW the Variation Savings.

(b) To the extent that the Variation Savings relate to the TLS Phase Activities, TfNSW may set-off against its obligations to pay the TLS Payments, the Variation Savings in the manner and at the time as agreed between TfNSW and the Supplier or, to the extent that they fail to agree, as determined in accordance with the Dispute Resolution Procedures (or as reasonably determined by TfNSW pending determination under the Dispute Resolution Procedures).
24.16 Delivery Deed Options

TfNSW and the Supplier agree that:

(a) if a notice pursuant to clause 21.16 of the Delivery Deed is given in respect of a Delivery Deed Option by the relevant date specified in the table in Schedule 23 to the Delivery Deed, this deed will be deemed to be amended in accordance with the relevant amendments set out in the table in Schedule 26 from the date the Supplier receives such notice;

(b) any adjustment to Schedule 15 made in accordance with clause 24.16(a) will be full compensation for all additional costs the Supplier will incur arising out of or in connection with the performance of TLS Phase Activities with respect to the relevant Delivery Deed Option, and no further adjustment will be made to the amounts payable to the Supplier under this deed in respect of the relevant Delivery Deed Option; and

(c) the Supplier is not entitled to make any other Claim under this deed in connection with the issue of notice pursuant to clause 21.16 of the Delivery Deed in respect of a Delivery Deed Option.

24.17 No liability unless Variation Order

The Supplier will not be entitled to make any Claim in respect of the TLS Phase Activities against TfNSW arising out of, or in any way in connection with, any Variation, except where the Supplier is directed to carry out a Variation pursuant to a "Variation Order" issued by TfNSW under clause 24.4, 24.6, 24.9, 24.11, 24.12 or 46.3.

25. Supplier initiated Variations

25.1 No Variation without consent

The Supplier must not undertake any Variation without TfNSWs prior written consent.

25.2 Supplier may propose a Variation

The Supplier may propose a Variation by giving a written notice with details of:

(a) the proposed Variation;

(b) the reason for the proposed Variation;

(c) the Variation Costs it will incur, or the Variation Savings it will derive, by carrying out the proposed Variation, such Variation Costs or Variation Savings to be separately identified in respect of:
   (i) this deed;
   (ii) the Delivery Deed; and
   (iii) the MF Works Deed;

(d) the effect (if any) the proposed Variation will have on all affected Programs and Project Plans;

(e) the Approvals (if any) required to implement the proposed Variation;

(f) the time within, and the manner in which, the Supplier proposes to implement the proposed Variation; and
(g) the effects (if any) which the proposed Variation will have on:

(i) any or all of:
   A. the Delivery Phase Activities;
   B. the TLS Phase Activities; and
   C. the MF Works Activities;

(ii) the workmanship, durability or functional integrity of any element of the Project Activities (including the MF Works) or any Asset or the Maintenance Facility;

(iii) the Supplier’s ability to provide the Required Availability;

(iv) the Maintenance Facility;

(v) the use of the Sets by the Operator and its passengers;

(vi) any Accreditation held or required by TfNSW, RailCorp, the Operator, Supplier or its Associates;

(vii) the safety of the Sets;

(viii) RailCorp’s Facilities;

(ix) any training requirements; or

(x) the Supplier’s ability to:
   A. satisfy any warranty given by the Supplier under any Project Agreement; or
   B. perform any of its other obligations under any Project Agreement.

25.3 Supplier to provide statement

If TfNSW requires, the Supplier must provide in respect of any Variation it proposes:

(a) a written statement stating that the proposed Variation:

   (i) will not adversely affect the functional integrity of the Sets, the MF Works, the Maintenance Facility or the ability of the Supplier to provide the Required Availability or otherwise carry out the Project Activities in accordance with the Project Agreements; and

   (ii) will not adversely affect the quality standards, warranties and other obligations required under the Project Agreements; and

(b) any other information and supporting documentation TfNSW requires.

25.4 TfNSW may approve or reject

If the Supplier gives a notice under clause 25.2 together with any written statement or other information or supporting documentation which TfNSW requires under clause 25.3, TfNSW:

(a) will consider the Supplier’s proposed Variation in good faith; and
subject to clause 25.5:

(i) may approve (with or without conditions) or reject the proposed Variation in its absolute discretion by notice to the Supplier (which in the case of an approval must be titled "Variation Approval"); and

(ii) will be under no obligation to approve the proposed Variation for the convenience of or to assist the Supplier.

If TfNSW approves the Variation:

(c) the Supplier must proceed to implement the Variation on the basis approved by TfNSW; and

(d) the Supplier will be relieved of its obligations under this deed to the extent specified in TfNSW's approval.

25.5 Variation required as a result of a change in law or change to RailCorp's Facilities

(a) To the extent that any Variation requested by the Supplier is required to ensure that the Sets comply with a change in law, TfNSW must, in its discretion, either:

(i) approve the Variation proposed by the Supplier (by notice titled "Variation Approval");

(ii) direct the Supplier to carry out a Variation in accordance with clause 24 to ensure that the Sets comply with the change in law; or

(iii) take such other action as TfNSW considers necessary to ensure that the Sets comply with the change in law (including modifying RailCorp's Facilities).

(b) To the extent, as a direct result of a modification to RailCorp's Facilities, a Variation requested by the Supplier is required to ensure that the Sets have the same functionality as prior to such modification to RailCorp's Facilities, TfNSW must, in its discretion, either:

(i) approve the Variation proposed by the Supplier (by notice titled "Variation Approval");

(ii) direct the Supplier to carry out a Variation in accordance with clause 24 to ensure that the Sets have the same functionality as prior to such modification to RailCorp's Facilities; or

(iii) take such other action as TfNSW considers necessary to ensure that the Sets have the same functionality as prior to such modification to RailCorp's Facilities (including making further modifications to RailCorp's Facilities).

(c) If TfNSW approves a Variation in accordance with clause 25.5(a)(i) or 25.5(b)(i):

(i) the Supplier must proceed to implement the Variation on the basis of the Supplier's notice under clause 25.2 (as approved by TfNSW);

(ii) if the Variation is required to ensure that the Assets, the Deliverables or the Maintenance Facility comply with a Qualifying Change in Law, clause 25 will apply; and

(iii) if the Variation is required to ensure the Assets, the Deliverables or the Maintenance Facility have the same functionality as prior to such
modification to RailCorp's Facilities, the Supplier may submit a payment claim in accordance with clause 22 in respect of the relevant portion of the Variation Costs stated in the Supplier's notice under clause 25.2:

A. pending determination in accordance with the Dispute Resolution Procedures or agreement between the parties, as reasonably determined by TfNSW's Representative; and

B. following determination in accordance with the Dispute Resolution Procedures or agreement between the parties, as so determined or agreed,

after each month in which the relevant work was undertaken, or (if agreed between the parties or determined under the Dispute Resolution Procedures) at the times or after the achievement of the relevant milestones as agreed or determined. If the Variation Costs paid are more or less than the Variation Costs for the relevant month as subsequently determined or agreed, then the difference will be paid by the relevant party to the other.

### 25.6 Supplier to bear risks and costs

Unless otherwise agreed in writing by TfNSW and subject to clause 25.5:

(a) the Supplier will bear all risks and costs:

(i) associated with proposing a Variation and providing the details under clause 25.2 and complying with clause 25.3;

(ii) reasonably incurred by TfNSW in assessing a Variation proposed by the Supplier; and

(iii) associated with carrying out a Variation proposed by the Supplier and approved by TfNSW under clause 25.4; and

(b) the Supplier will not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, a Variation proposed by the Supplier and approved by TfNSW under clause 25.4.

### 25.7 Variation Savings

(a) If the Supplier implements a Variation in accordance with this clause 25, that results in Variation Savings, the Supplier must pay TfNSW of the Variation Savings.

(b) TfNSW may set-off the amount referred to in clause 25.7(a) against its obligations to pay the TLS Payments in the manner and at the time as agreed between TfNSW and the Supplier or, to the extent that they fail to agree, as determined in accordance with the Dispute Resolution Procedures.

### 26. Change in Law

#### 26.1 Non-Qualifying Changes in Law

Subject to clause 26.2, the Supplier will be liable for the consequences of, and will have no Claim in respect of the TLS Phase Activities against TfNSW arising out of or in any way in connection with, a change in law.
26.2 Qualifying Change in Law

If, and to the extent, a Qualifying Change in Law occurring after the date of this deed requires the Supplier to incur additional costs, the Supplier:

(a) must use all reasonable endeavours to minimise the additional costs to be incurred; and
(b) may claim compensation in respect of such additional costs (net of any savings) in accordance with this clause 26.

26.3 Notice of proposed Qualifying Change in Law

If the Supplier becomes aware of a proposed Qualifying Change in Law, the Supplier must:

(a) promptly notify TfNSW of the proposed Qualifying Change in Law; and
(b) if requested by TfNSW:
   (i) provide TfNSW with details of the likely effects of the Qualifying Change in Law on the Supplier; and
   (ii) otherwise consult with TfNSW in relation to the proposed Qualifying Change in Law.

26.4 Compensation for Qualifying Change in Law

To the extent that a Qualifying Change in Law increases the cost of performing the TLS Phase Activities, TfNSW must compensate the Supplier by way of either of the following, at TfNSW's discretion:

(a) an increase to the Availability Payments over the balance of the Contract Term;
(b) a lump sum to be paid at the time of the next Availability Payment; or
(c) a payment after each month in which the additional costs are incurred,

which, in each case, puts the Supplier in the same financial position it would have been in had the Qualifying Change in Law not occurred.

27. Force Majeure Events

27.1 Notification of Force Majeure Event

(a) If the Affected Party alleges or wishes to claim that a Force Majeure Event has occurred it must promptly give the other party notice of the Force Majeure Event as soon as the Affected Party becomes aware of the occurrence of the Force Majeure Event.

(b) As soon as reasonably practicable after giving notice under clause 27.1(a), if the Affected Party is the Supplier, the Supplier must give TfNSW (progressively if necessary) full particulars of relevant matters pertaining to the Force Majeure Event including:

(i) the nature of the Force Majeure Event;
(ii) the obligations affected;
(iii) the action that the Supplier has taken and/or proposes to take to remedy, overcome or mitigate the situation;
(v) an estimate of the time during which the Supplier will be unable to carry out the affected obligations due to the Force Majeure Event;

(v) an estimate of the costs that the Supplier will incur to remedy, overcome or mitigate the situation (including pursuant to clause 27.5); and

(vi) all insurance moneys to which the Supplier believes it will be entitled in making good damage caused by the Force Majeure Event.

(c) After giving notice under clause 27.1(a) and, if the Affected Party is the Supplier, particulars under clause 27.1(b), the Supplier must continue to keep TfNSW's Representative informed of all relevant information pertaining to the Force Majeure Event.

27.2 Meeting

The parties must meet within 5 Business Days of delivery of a notice under clause 27.1(a) to determine:

(a) whether a Force Majeure Event has occurred;

(b) the extent to which the Force Majeure Event is covered by insurance; and

(c) the estimated duration of the Force Majeure Event.

27.3 Suspension of obligations

If a Force Majeure Event occurs and the Affected Party gives notice under clause 27.1(a), then:

(a) the Affected Party's non-financial obligations under this deed (other than this clause 27) which are affected by the Force Majeure Event will be suspended, but only to the extent and for so long as the Force Majeure Event prevents or delays the Affected Party from performing those obligations; and

(b) no Default Notice or notice under clause 30.6(a) may be given in respect of a breach of such obligations during the period of suspension.

Upon the Affected Party becoming able to recommence performing its obligations which were suspended under clause 27.3(a), subject to a reasonable period in order to remobilise, the Affected Party must recommence the performance of its obligations.

27.4 Availability Payments

Subject to clause 16.7, nothing in this clause 27 will oblige TfNSW to pay any Availability Payments with respect to Sets which are not Available due to a Force Majeure Event.

27.5 Best endeavours to mitigate effect

During the period of suspension under clause 27.3, the Affected Party must use its best endeavours to overcome or mitigate the effects of the Force Majeure Event. This may include incurring reasonable expenditure, rescheduling resources or implementing appropriate temporary measures.

27.6 Alternative arrangements

During the period of suspension under clause 27.3, TfNSW may make alternative arrangements for the performance of any suspended obligations of the Supplier (without incurring any liability to the Supplier, except to the extent set out in clause 16.7(g)).
27.7 Cessation of Force Majeure Event

The Affected Party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure Event.

27.8 No financial relief to the Supplier

TfNSW will not be obliged to provide any financial relief to the Supplier during the period of suspension, to the extent of the suspension.

27.9 No compensation to TfNSW

The Supplier will not be liable to compensate TfNSW for any costs or losses which TfNSW incurs during the period of suspension in respect of the suspended obligations.

27.10 Prolonged Force Majeure Event

If a Force Majeure Event:

(a) will, in the reasonable opinion of TfNSW’s Representative, prevent; or
(b) prevents,

the Supplier from performing its material non-financial obligations for a continuous period of at least 12 months, then TfNSW may, either:

(c) terminate this deed, by giving 20 Business Days’ notice to the Supplier; or
(d) instruct a Variation omitting the Maintenance Services from the TLS Phase Activities.

If TfNSW gives an instruction under clause 27.10(d), thereafter TfNSW may either itself or by third parties carry out some or all of the Maintenance Services (if TfNSW elects to do so).

28. Default

28.1 Supplier Events of Default

Each of the following events is a Supplier Event of Default:

(a) (Unacceptable Availability): after the Commencement Date:

(i) less than of the Required Availability is provided in any 1 Availability Period;
(ii) less than of the Required Availability is provided in any 12 consecutive Availability Periods; or
(iii) less than of the Required Availability is provided in any 20 Availability Periods in any rolling 12 month period;

(b) (Unacceptable Reliability): at any time after the date that is 24 months after the TLS Start Date, the calculated MDBI for the twelve month period preceding the date of the MDBI calculation (Reliability Measurement Period) is lower than 

(c) (Lack of or breach of Accreditation/Approval): the Supplier or any of Supplier’s Personnel:
(i) undertakes any of the TLS Phase Activities which require Approval (including Accreditation) without having that Approval (including Accreditation); or

(ii) breaches (as determined by any Authority) the terms of its Approval (including any Accreditation) in carrying out the TLS Phase Activities;

(d) (Lack of AEO status or breach of AEO authorisation): the Supplier:

(i) fails to achieve AEO status;

(ii) loses AEO status; or

(iii) breaches any AEO authorisation accreditation requirements provided in SPR Appendix 8,

in breach of its obligations under clause 8.3;

(e) (Threatened suspension or revocation of a NSW Rail Entity's Accreditation): an act or omission of the Supplier or Supplier's Personnel in carrying out the TLS Phase Activities results in an Authority notifying a NSW Rail Entity that unless conditions identified by the Authority are complied with, it proposes to suspend or revoke the Accreditation of the Supplier or the NSW Rail Entity;

(f) (Safety breach): either:

(i) a Set is involved in a collision or derailment whilst that Set is in service which causes injury to any person; or

(ii) there is a Notifiable Incident at a Maintenance Location or in respect of Sets,

and the Incident is found to be primarily attributable to breach or negligence of any one or more of the Supplier or its Associates;

(g) (Asset Management Failure): the Supplier fails to remedy an Asset Management Failure within three months of the expiry of the Remediation Period;

(h) (Failure to report): the Supplier fails to comply with any of its reporting obligations under this deed or a report from the Supplier contains an inaccuracy which has a material impact on TfNSW or another NSW Rail Entity;

(i) (Moneys Owing): the Supplier fails to pay any Moneys Owing when due and the failure is not remedied within 20 Business Days of a written demand from TfNSW;

(j) (Restrictions on dealings): the Supplier breaches any of its obligations under clause 40;

(k) (Change in Control): a Supplier Event of Default is deemed to have occurred under clause 41.3(c);

(l) (Subcontracting): the Supplier breaches any of its obligations under clause 42;

(m) (Failure to provide or replace Security): the Supplier fails to provide TfNSW with a Project Security as required under this deed, within the time period required under this deed;

(n) (Failure to reinstate): the Supplier fails to comply with any of its material obligations under clause 32;
(o) **(Failure to insure):** except as set out in clause 33, the Supplier fails to effect and maintain (or cause to be effected and maintained) any of the Insurances;

(p) **(Incorrect representation or warranty):** a representation or warranty made or given by the Supplier in this deed or any other Project Agreement proves to be untrue in a material respect;

(q) **(Breach of probity obligations):** the Supplier fails to comply with any of its obligations under clauses 39.3 or 39.4;

(r) **(Breach of Maintenance Facility Licence):** any material breach by the Supplier of an obligation under the Maintenance Facility Licence;

(s) **(Other identified breach):** any other breach that is stated in this deed to be a Supplier Event of Default; and

(t) **(Other breach):** any other material breach by the Supplier of an obligation under this deed or any other Project Agreement, other than (without limiting the paragraphs (a) and (b) of this clause 28.1) a breach which results in a Reliability and Disruption Adjustment.

### 28.2 Default Notice

(a) If a Supplier Event of Default occurs, TfNSW may give the Supplier a notice (Default Notice):

(i) stating that it is a notice under this clause 28.2; and

(ii) specifying the nature of the Supplier Event of Default and whether that Supplier Event of Default is reasonably capable of being remedied.

(b) If a Supplier Event of Default referred to in clause 28.1(a) occurs, TfNSW will be limited to issuing one Default Notice per month.

(c) If a Supplier Event of Default referred to in clause 28.1(b) occurs, TfNSW will be limited to issuing one Default Notice per month.

(d) Subject to clauses 28.2(b) and 28.2(c), the establishment of a Cure Plan or Mitigation Plan in relation to a Supplier Event of Default under either clause 28.1(a) or 28.1(b) shall not restrict TfNSW from giving the Supplier a subsequent Default Notice in another month.

### 28.3 Cure Plan

(a) If a Default Notice has been given and:

(i) the Supplier Event of Default is capable of being remedied, the Supplier must, within 10 Business Days after receipt of the Default Notice, Remedy the Supplier Event of Default; or

(ii) if the Supplier Event of Default is not reasonably capable of being Remedied within 10 Business Days after receipt of the Default Notice, the Supplier must, within that period, prepare and submit to TfNSW a draft plan describing the actions and measures which the Supplier will diligently pursue to Remedy the Supplier Event of Default (Draft Cure Plan).

(b) Within 10 Business Days after receipt of a Draft Cure Plan, TfNSW must either:

(i) approve the Draft Cure Plan by notifying the Supplier; or
(ii) reject the Draft Cure Plan by notifying the Supplier and providing reasons to the Supplier for its rejection.

(c) If TfNSW approves a Draft Cure Plan pursuant to clause 28.3(b)(i) (Approved Cure Plan):

(i) the period of time in the Approved Cure Plan to Remedy the Supplier Event of Default is the cure period (Applicable Cure Period); and

(ii) the Supplier must comply with and implement the Approved Cure Plan (or otherwise diligently pursue remediation of the Supplier Event of Default) and Remedy the Supplier Event of Default within the Applicable Cure Period.

(d) If TfNSW rejects a Draft Cure Plan pursuant to clause 28.3(b)(ii), the Supplier, in good faith consultation with TfNSW, must within five Business Days amend the Draft Cure Plan to meet TfNSW’s reasonable requirements and submit the amended Draft Cure Plan to TfNSW for its approval, in which case this clause 28.3 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 28.3(a). This clause 28.3(d) does not extend the Applicable Cure Period. TfNSW is not obliged to give the Supplier more than one opportunity to amend a Draft Cure Plan.

28.4 Mitigation Plan

(a) If:

(i) a Default Notice has been given; and

(ii) the Supplier Event of Default is not capable of being Remedied,

the Supplier must, within 10 Business Days after receipt of the Default Notice, prepare and submit to TfNSW a draft plan describing the actions and measures which the Supplier will diligently pursue to Remedy or mitigate the effects of the Supplier Event of Default and prevent the Supplier Event of Default from recurring (Draft Mitigation Plan).

(b) Within 10 Business Days after receipt of the Draft Mitigation Plan, TfNSW must either:

(i) approve the Draft Mitigation Plan by notifying the Supplier; or

(ii) reject the Draft Mitigation Plan by notifying the Supplier and providing reasons to the Supplier for its rejection.

(c) If TfNSW approves a Draft Mitigation Plan pursuant to clause 28.4(b)(i) (Approved Mitigation Plan), the Supplier must comply with and implement the Approved Mitigation Plan.

(d) If TfNSW rejects a Draft Mitigation Plan pursuant to clause 28.4(b)(ii), the Supplier, in good faith consultation with TfNSW, must within five Business Days amend the Draft Mitigation Plan to meet TfNSW’s reasonable requirements and submit the amended Draft Mitigation Plan to TfNSW for its approval, in which case this clause 28.4 will apply to the amended Draft Mitigation Plan as if it were originally submitted under clause 28.4(a). TfNSW is not obliged to give the Supplier more than one opportunity to amend a Draft Mitigation Plan.

28.5 If Supplier fails to Remedy or comply

If a Default Notice has been given and the Supplier fails to:
if the Supplier Event of Default is capable of being Remedied:

(i) Remedy the Supplier Event of Default, or submit a Draft Cure Plan, in accordance with clause 28.3;

(ii) if TfNSW rejects a Draft Cure Plan pursuant to clause 28.3(b)(ii), amend the Draft Cure Plan to meet TfNSW's requirements and submit the amended Draft Cure Plan in accordance with clause 28.3(d); or

(iii) comply with and implement the Approved Cure Plan (or otherwise diligently pursue the remediation of the Supplier Event of Default so that the Supplier Event of Default is, or will be, Remedied within the Applicable Cure Period); or

(b) if the Supplier Event of Default is not capable of being Remedied:

(i) submit a Draft Mitigation Plan in accordance with clause 28.4(a);

(ii) if TfNSW rejects a Draft Mitigation Plan pursuant to clause 28.4(b)(ii), amend the Draft Mitigation Plan to meet TfNSW's requirements and submit the amended Draft Mitigation Plan in accordance with clause 28.4(d); or

(iii) comply with and implement the Approved Mitigation Plan,

28.6 Persistent Breach

(a) If a breach of the same obligation of the Supplier under this deed or any other Project Agreement occurs more than once in any 12 month period (Persistent Breach), TfNSW may, without limiting the right of TfNSW to exercise any right or remedy under this deed, issue a notice (Persistent Breach Notice) to the Supplier.

(b) A Persistent Breach Notice must:

(i) state that it is a Persistent Breach Notice;

(ii) identify the Persistent Breach;

(iii) not relate to:
A. a Supplier Event of Default which is the subject of a current Approved Cure Plan or Approved Mitigation Plan that the Supplier is implementing diligently; or

B. a breach which results in a Reliability and Disruption Adjustment; and

(iv) state that, if the breach continues beyond a period of 30 Business Days from the date of service of the Persistent Breach Notice or recurs within 12 months of the end of that period, it will result in TfNSW becoming entitled to issue a Final Persistent Breach Notice.

(c) If, following the issue of a Persistent Breach Notice, the breach specified in the Persistent Breach Notice has continued beyond 30 Business Days or recurred within 12 months of the end of that period, then TfNSW may issue a further notice to the Supplier (Final Persistent Breach Notice).

(d) A Final Persistent Breach Notice must:

(i) state that it is a Final Persistent Breach Notice;

(ii) identify the breach;

(iii) state that the breach has been the subject of the earlier Persistent Breach Notice; and

(iv) state that if the breach continues beyond a further 30 Business Days from the date of service of the Final Persistent Breach Notice or recurs three or more times in the six month period after the date of service of the Final Persistent Breach Notice, TfNSW will become entitled to terminate this deed.

28.7 Frequent Breaches

(a) If the Supplier commits frequent breaches of this deed which, in aggregate:

(i) substantially frustrate the objects of this deed;

(ii) significantly impair TfNSW's ability to fulfil any of its objectives under the Transport Administration Act;

(iii) have a material adverse effect on the Project, TfNSW, the Operator, another NSW Rail Entity or Customers; or

(iv) in TfNSW's reasonable opinion indicate that the Supplier does not intend to be or does not regard itself as being bound by this deed,

whether or not such breaches are of the same type or class (Frequent Breaches). TfNSW may, without limiting the right of TfNSW to exercise any right or remedy under this deed, issue a notice (Frequent Breaches Notice) to the Supplier.

(b) A Frequent Breaches Notice must:

(i) state that it is a Frequent Breaches Notice;

(ii) identify the Frequent Breaches;

(iii) not relate to:
A. a Supplier Event of Default which is the subject of a current Approved Cure Plan or Approved Mitigation Plan that the Supplier is implementing diligently; or  

B. a breach which results in a Reliability and Disruption Adjustment; and  

(iv) state that, if Frequent Breaches continue to occur at any time during the 12 month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, that will result in TfNSW becoming entitled to issue a Final Frequent Breaches Notice.

(c) If, following the issue of a Frequent Breaches Notice, Frequent Breaches continue to occur at any time during the 12 month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, TfNSW may issue a further notice to the Supplier (Final Frequent Breaches Notice).

(d) A Final Frequent Breaches Notice must:

(i) state that it is a Final Frequent Breaches Notice;  

(ii) identify the Frequent Breaches;  

(iii) state that Frequent Breaches have been the subject of the earlier Frequent Breaches Notice; and  

(iv) state that if Frequent Breaches continue to occur at any time in the six month period after the date of service of the Final Frequent Breaches Notice, TfNSW will become entitled to terminate this deed.

29. Step-in

29.1 Step-in Events

Each of the following is a Step-in Event:

(a) a Supplier Termination Event;  

(b) a Supplier Event of Default; and  

(c) an event or circumstance which arises out of or in connection with the Step-in Activities that poses a serious threat to, or causes or will cause material damage or material disruption to:

(i) the health or safety of persons;  

(ii) the Environment;  

(iii) any property; or  

(iv) the safe and secure performance of the TLS Phase Activities.

29.2 Step-in Rights

(a) If:

(i) a Step-in Event occurs; and  

(ii) TfNSW's Representative has given notice to the Supplier in accordance with clause 29.2(b).
then a Step-in Party has the right (Step in Right) to exercise all or any of the Step-in Powers set out in clause 29.3 for the purposes of remediying the Step-in Event or overcoming the risk or mitigating the consequences resulting from the Step-in Event (Step-in Objectives).

(b) The notice referred to in clause 29.2(a)(ii):

(i) must specify:

A. the Step-in Event which has triggered the Step-in Right;
B. the Step-in Powers which the Step-in Party proposes to perform;
C. the date on which the relevant Step-in Party proposes to commence exercising the relevant Step-in Powers; and
D. if known, the date on which the relevant Step-in Party proposes to cease exercising the relevant Step-in Powers; or

(ii) may be given orally if TfNSW's Representative considers that the Step-in Event requires urgent remedy or action and there is insufficient time to issue a written notice under clause 29.2(b)(i), but if given orally must be followed within 24 hours by a written notice under clause 29.2(b)(i).

(c) The occurrence of a Step-in Right and the exercise of any Step-in Powers by a Step-in Party, do not limit the right of TfNSW to exercise any right or remedy in respect of a Step-in Event, including the rights and remedies under clauses 28 and 30.

29.3 Step-in Powers

On the occurrence of a Step-in Right, and for the purposes of the Step-in Objectives, a Step-in Party may do anything in respect of the Step-in Event occasioning the Step-in Right that the Supplier could do including any one or more of the following:

(a) enter into and remain in possession of all or any of the Assets;
(b) operate and maintain all or any of the Assets;
(c) exercise all or any of the Supplier's rights, and perform all or any of the Supplier's obligations:

(i) in connection with the performance of the Step-in Activities;
(ii) under or in relation to a Project Agreement or any other document to which the Supplier is a party in respect of the Project; and
(iii) under or in relation to any Accreditation or other Approval held by the Supplier,
as if it were the Supplier, to the exclusion of the Supplier;

(d) do anything the Step-in Party considers necessary or desirable to achieve the Step-in Objectives;
(e) do anything incidental to the matters listed in clauses 29.3(a) to 29.3(d);
(f) do any other action limited only to the extent that the Step-in Party considers, in its absolute discretion, such action is necessary or desirable to achieve the Step-in Objectives, (Step-in Powers).

29.4 Supplier's obligations

(a) The Supplier must:

(i) cooperate with the Step-in Party in the exercise of the Step-in Powers;

(ii) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and

(iii) ensure that the Supplier's Subcontractors do likewise.

(b) Without limiting clause 29.4(a), the Supplier must:

(i) allow the Step-in Party to access and use:

A. all or any of the land and assets used in the performance of the Step-in Activities;

B. all persons whether officers, employees, agents or contractors of the Supplier or the Supplier's Subcontractors engaged in or in connection with the performance of the Step-in Activities; and

C. any information the Step-in Party reasonably requires;

(ii) to the extent necessary, procure any consents to disclose Personal Information to the Step-in Party;

(iii) assist the Step-in Party in dealing with ONRSR in relation to any Accreditation issues;

(iv) comply with all reasonable directions given by the Step-in Party; and

(v) ensure that the Supplier's Subcontractors involved in performing the Step-in Activities do likewise,

to enable the Step-in Party to exercise its Step-in Powers.

(c) The Supplier irrevocably appoints TfNSW as its attorney with full power to exercise the Step-in Powers (or to delegate the exercise of the Step-in Powers to another Step-in Party).

(d) The Supplier's obligations under this deed will be suspended to the extent and for such period as is necessary to enable a Step-in Party to exercise its Step-in Rights.

29.5 TfNSW's obligations

(a) TfNSW must ensure that each Step-in Party, in exercising the Step-in Powers, uses its reasonable endeavours to perform the relevant Step-in Activities in accordance with the requirements of this deed.
(b) The Supplier acknowledges that a Step-in Party is not under any obligation to the Supplier to remedy the Step-in Event nor to overcome the risk or mitigate any consequences resulting from the Step-in Event.

29.6 Payments during step-in

(a) If, during a period when a Step-in Party is exercising its Step-in Rights:

(i) the Supplier continues to perform obligations under this deed which affect the calculation of the TLS Payment, the parts of the TLS Payment affected by the performance of those obligations will continue to be calculated in accordance with Schedule 15 based on the actual performance of those obligations during the relevant period; or

(ii) the Supplier's performance of an obligation which affects the calculation of the TLS Payment is suspended, the parts of the TLS Payment which are affected by the Step-in Party's performance of those obligations will continue to be calculated in accordance with Schedule 15, but based on the average performance of the relevant obligation by the Supplier for the six months immediately prior to TfNSW exercising the Step-in Right.

(b) TfNSW will be entitled to deduct the following amounts from any TLS Payment payable in respect of a period when a Step-in Party is exercising its Step-in Rights:

(i) where the Step-in Event was a Supplier Termination Event or Supplier Event of Default:

A. the costs avoided by the Supplier as a result of the exercise of the Step-in Right; and

B. the reasonable costs incurred by TfNSW in exercising the Step-in Right, including all reasonable costs incurred by a Step-in Party in performing the relevant Step-in Activities; or

(ii) where the Step-in Event was not a Supplier Termination Event or Supplier Event of Default, the costs avoided by the Supplier as a result of the exercise of the Step-in Right.

(c) If the aggregate amount to be deducted under clause 29.6 is greater than the TLS Payment payable in respect of the relevant period, the difference will be Moneys Owing from the Supplier to TfNSW.

29.7 No Claim

The Supplier acknowledges that TfNSW, RailCorp and their respective Associates will have no liability to the Supplier, and the Supplier will not be entitled to make any Claim against TfNSW, RailCorp or their respective Associates, arising out of or in connection with any conduct, delay or breach of duty in the exercise or non-exercise of a Step-in Power except to the extent the Claim arises from fraud, wilful default or gross negligence on the part of the Step-in Party.

29.8 Step-out

(a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, upon the earlier of:

(i) the relevant Step-in Event being remedied (or the risk or consequences resulting from the Step-in Event being overcome) to the satisfaction of TfNSW; and
(ii) TfNSW's Representative notifying the Supplier that the Step-in Party will no longer exercise the Step-in Powers.

(b) TfNSW must give notice to the Supplier of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by TfNSW to the Supplier not less than two Business Days prior to the date the Step-in Party proposes to cease to exercise the Step-in Powers).

(c) TfNSW and the Supplier must consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to the Supplier resuming the performance of the relevant Step-in Activities is effected without interruption to the TLS Phase Activities.

(d) Upon the Step-in Party ceasing to exercise the Step-in Powers, the Supplier must resume the performance of the relevant Step-in Activities in accordance with this deed (unless this deed has been terminated).

30. Termination

30.1 Supplier Termination Events

Each of the following events is a Supplier Termination Event:

(a) (Failure to submit, amend or implement cure/mitigation plan): an event described in clause 28.5(a) or clause 28.5(b) occurs;

(b) (Persistent Breach): TfNSW has issued a Final Persistent Breach Notice and the relevant breach has continued beyond 30 Business Days or has recurred three or more times in the six month period after the date of service of the Final Persistent Breach Notice;

(c) (Frequent Breaches): TfNSW has issued a Final Frequent Breaches Notice and Frequent Breaches continue to occur at any time in the six month period after the date of service of the Final Frequent Breaches Notice;

(d) (Performance): TfNSW has issued to the Supplier:

(i) three or more Default Notices for Supplier Events of Default under clause 28.1(a); or

(ii) three or more Default Notices for Supplier Events of Default under clause 28.1(b),

in any rolling two year period;

(e) (Abandonment): the Supplier wholly or substantially abandons performance of the TLS Phase Activities;

(f) (Insolvency of the Supplier): an Insolvency Event occurs in relation to the Supplier, whether or not the Supplier is or has been in breach of any Project Agreement;

(g) (Suspension or revocation of the Supplier’s Accreditation): an Authority suspends or revokes any Accreditation or Approval required by the Supplier to perform all or part of the TLS Phase Activities;

(h) (Suspension or cancellation of NSW Rail Entity Accreditation): an act or omission of the Supplier or its Associates results in an Authority suspending or revoking a NSW Rail Entity’s Accreditation;
(l) **(Interference with access):** the Maintenance Facility Licence is terminated, suspended or revoked due to, or in relation to, any act or omission of the Supplier;

(j) **(Default under Parent Guarantee):** the Guarantor defaults in the performance of an obligation under the Parent Guarantee;

(k) **(Insolvency of the Guarantor):** an Insolvency Event occurs in relation to the Guarantor, whether or not the Guarantor is or has been in breach of the Parent Guarantee;

(l) **(Fraud or misleading conduct):** there is any corrupt, fraudulent, false, misleading or deceptive conduct or collusive pricing on the part of the Supplier in the performance of any of the TLS Phase Activities (including any fraud or intentionally false, misleading or deceptive reporting discovered during any audit or inspection carried out by TfNSW or an Authority);

(m) **(Illegality Event):** the occurrence of any of the following events:

(i) any Project Agreement:

A. is revoked, repudiated or terminated or ceases to be legal, valid and binding and enforceable against the Supplier or any other person (other than TfNSW or RailCorp), other than as contemplated by the Project Agreements; or

B. becomes invalid, void or voidable in any material respect, and, where the event is capable of being Remedied, the event is not Remedied within 20 Business Days of the relevant event occurring; or

(ii) it is or becomes unlawful for the Supplier to perform any of its obligations under the Project Agreements, and such event is not Remedied within 20 Business Days of the relevant event occurring; and

(n) **(Other identified breach):** any other breach that is stated in this deed to be a Supplier Termination Event.

### 30.2 Notice of Supplier Termination Event

Without limiting the right of TfNSW to exercise any right or remedy or the Supplier's other obligations under this deed, the Supplier must notify TfNSW's Representative immediately upon becoming aware of a Supplier Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become a Supplier Termination Event.

### 30.3 TfNSW action following Supplier Termination Event

Without limiting the right of TfNSW to exercise any right or remedy under this deed, if a Supplier Termination Event has occurred, TfNSW may take any action it considers appropriate or necessary to:

(a) overcome the effects of the Supplier Termination Event; or

(b) preserve the Project,

including TfNSW (or its nominees) entering and remaining on or in the Maintenance Facility Site or any Other Site at which the TLS Phase Activities were carried out. The amount of any Loss incurred by TfNSW in taking such action will be Moneys Owing.
30.4 TfNSW's rights following Supplier Termination Event

(a) If a Supplier Termination Event occurs, TfNSW may, without limiting the right of TfNSW to exercise any right or remedy under this deed, either:

(i) instruct a Variation omitting the Maintenance Services from the TLS Phase Activities; or

(ii) give a notice to the Supplier immediately terminating this deed.

The instruction or notice must set out details of the Supplier Termination Event for which TfNSW is giving the notice.

(b) If TfNSW gives an instruction under clause 30.4(a)(i), thereafter TfNSW may either itself or by third parties carry out some or all of the Maintenance Services (if TfNSW elects to do so).

30.5 TfNSW Termination Events

Each of the following events is a TfNSW Termination Event:

(a) (Failure to pay): TfNSW fails to comply with its payment obligations under clause 22 and the failure is not remedied within 20 Business Days of a written demand from the Supplier (provided that an amount in genuine dispute is not to be taken into account for the purposes of this clause 30.5(a)); or

(b) (Breach): a breach by TfNSW of this deed which:

(i) substantially frustrates the performance by the Supplier of, or renders it impossible for the Supplier to perform, all or a substantial part of its obligations under this deed; or

(ii) renders it impossible for the Supplier to exercise all or a substantial part of its rights under this deed,

for a continuous period of two months after the Supplier has given TfNSW notice of such breach.

30.6 Termination for TfNSW Termination Event

(a) If a TfNSW Termination Event occurs, the Supplier may give TfNSW 30 Business Days' notice of its intention to terminate this deed.

(b) If the Supplier gives a notice under clause 30.6(a), TfNSW may suspend the Supplier's right to terminate by giving a suspension notice within 30 Business Days of receipt of the Supplier's notice.

(c) TfNSW's suspension of the Supplier's right to terminate expires on the earliest of:

(i) TfNSW notifying the Supplier that it is ending the suspension period;

(ii) in the case of the TfNSW Termination Event referred to in clause 30.5(a), 30 Business Days after the date of receipt of the Supplier's notice under clause 30.6(a);

(iii) in the case of any other TfNSW Termination Event, 24 months after the date of receipt of the Supplier's notice under clause 30.6(a); and

(iv) when the relevant TfNSW Termination Event has been remedied (or its effects overcome).
(d) If TfNSW's suspension of the Supplier's right to terminate expires:

(i) under clause 30.6(c)(i), 30.6(c)(ii) or 30.6(c)(iii) and the TfNSW Termination Event has not been remedied (or its effects overcome), the Supplier may immediately terminate this deed by notice to TfNSW; and

(ii) under clause 30.6(c)(iv), this deed will continue in force.

(e) The Supplier must continue to perform its obligations under this deed while its right to terminate is suspended, to the extent that it is lawful and practicable to do so.

(f) If TfNSW does not give a suspension notice under clause 30.6(b) and the relevant TfNSW Termination Event has not been remedied (or its effects overcome) within 30 Business Days of receipt of the Supplier's notice under clause 30.6(a), the Supplier may, if the TfNSW Termination Event is still subsisting, immediately terminate this deed by notice to TfNSW.

(g) If TfNSW issues a notice to the Supplier under clause 30.6(b) TfNSW must procure monthly payment to the Supplier equal to an amount sufficient to place the Supplier in the net after tax position it would have been in had the relevant TfNSW Termination Event not occurred, from the date TfNSW issues a notice under clause 30.6(b) until the end of the period of suspension.

(h) TfNSW will not be entitled to give any notice under clause 28.2 or 30.4(a) to the extent the occurrence or circumstance which would otherwise entitle TfNSW to give such a notice results from a TfNSW Termination Event.

30.7 Termination of TLS Deed for convenience by TfNSW

Without prejudice to the right of TfNSW to exercise any right or remedy under the Project Agreements, TfNSW may:

(a) at any time, for its sole convenience and without giving reasons, terminate this deed by notice to the Supplier with effect from the date stated in the notice (which date must not precede the date the notice is received by the Supplier); and

(b) thereafter, either itself or by third parties carry out some or all of the TLS Phase Activities (if TfNSW elects to do so).

TfNSW's right of termination for convenience under this clause 30.7 applies as a sole and unfettered discretion to voluntarily terminate this deed as a whole.

30.8 Omission of Maintenance Services for convenience by TfNSW

Without limiting the right of TfNSW to exercise any right or remedy under the Project Agreements, TfNSW may:

(a) at any time, for its sole convenience and without giving reasons, instruct a Variation omitting the Maintenance Services from the TLS Phase Activities; and

(b) thereafter, either itself or by third parties carry out some or all of the Maintenance Services (if TfNSW elects to do so).

TfNSW's right to instruct a Variation under this clause 30.8 applies as a sole and unfettered discretion to voluntarily omit the Maintenance Services as a whole.

30.9 Termination for Force Majeure Event

TfNSW may terminate this deed pursuant to clause 27.10(c).
30.10 **Termination of Delivery Deed or MF Works Deed**

The parties acknowledge and agree that if either:

(a) the Delivery Deed; or

(b) the MF Works Deed

is terminated for any reason, then, unless notified otherwise by TfNSW in writing within 10 Business Days of the date of termination of the Delivery Deed or MF Works Deed (as relevant), this deed is terminated with effect from the date that is 11 Business Days after the date of termination of the Delivery Deed or MF Works Deed (as relevant), without necessity of notice.

30.11 **Consequences of termination**

Upon termination of this deed:

(a) except as provided in Schedule 18, the Supplier is not entitled to any compensation and will have no Claim against RailCorp, TfNSW, the Operator or the State by virtue of or arising from the termination;

(b) RailCorp and TfNSW are entitled to the compensation (if any) and other rights and remedies set out in Schedule 18;

(c) TfNSW may have recourse to and apply any Project Security and any Project Bonds or other security provided by the Supplier under or in connection with this deed in respect of any Loss it may suffer or Claim which TfNSW may have against the Supplier, whether for amounts due under a Project Agreement, damages (including liquidated damages) or otherwise; and

(d) the rights and obligations of the parties will otherwise cease except for:

(i) any accrued rights and obligations under this deed, including those arising out of the termination of this deed; and

(ii) any rights and obligations which expressly or impliedly continue after termination of this deed, including those referred to in clause 51.6.

30.12 **Waiver and no Claim**

If this deed is terminated:

(a) the Supplier waives any right it might otherwise have to pursue a claim of restitution of any kind, including a claim of unjust enrichment or quantum meruit; and

(b) the Supplier will not be entitled to make a Claim against TfNSW or TfNSW’s Associates for any amount other than for payment of the amounts payable pursuant to Schedule 18 (if any).

30.13 **Omission of Maintenance Services**

If TfNSW gives an instruction pursuant to clause 27.10(d), 30.4(a)(i) or 30.8(a):

(a) such an instruction will not invalidate, or amount to a repudiation of, this deed;

(b) the Supplier must continue to perform the Technical Services in accordance with this deed for the remainder of the Contract Term;
in relation to the TLS Payments:

(i) the Supplier will have no further entitlement to, and TfNSW will have no liability in respect of, the Availability Payments, the KPI Payments or the Reimbursable TLS Payments; but

(ii) the Supplier will be entitled to, and TfNSW must pay, the Technical Services Payment for the remainder of the Contract Term;

(d) except as provided in clause 30.13(e), the Supplier is not entitled to any compensation and will have no Claim against RailCorp, TfNSW or the State by virtue of or arising from that instruction; and

(e) in respect of an instruction pursuant to:

(i) clause 27.10(d):
A. the Variation Costs in respect of the Variation instructed under clause 27.10(d) will be deemed to be zero; and
B. the Supplier will be entitled to payment of compensation calculated in accordance with paragraph 3.2 of Schedule 18;

(ii) clause 30.4(a)(i):
A. the Variation Costs in respect of the Variation instructed under clause 30.4(a)(i) will be deemed to be zero; and
B. the Supplier must indemnify the Indemnified Parties in accordance with paragraph 1.2 of Schedule 18

(iii) clause 30.8(a):
A. the Variation Costs in respect of the Variation instructed under clause 30.8(a) will be deemed to be zero; and
B. the Supplier will be entitled to payment of compensation calculated in accordance with paragraph 2.2 of Schedule 18.

30.14 Preservation of rights

Nothing in this clause 30 or that TfNSW does or fails to do pursuant to this clause 30 will prejudice the right of TfNSW to exercise any right or remedy (including recovering damages or exercising a right of set-off under this deed) which it may have where the Supplier breaches (including repudiates) a Project Agreement.

31. Ownership of Assets

31.1 Title

Subject to the rights and title in the Contract Information expressly reserved to the Supplier pursuant to Schedule 3, title to and property in all Assets, Deliverables and any other chattels forming part of the TLS Phase Activities will pass to RailCorp immediately, in each case, on the earliest to occur of the following:

(a) the date when the Supplier acquires title to the Asset, Deliverable or other chattel;

(b) the omission of the Maintenance Services pursuant to an instruction given by TfNSW pursuant to clause 27.10(d), 30.4(a)(i) or 30.8(a); or
(c) termination of this deed for any reason,
free from any Security Interest and that Asset, Deliverable or other chattel shall thereafter remain the property of RailCorp.

31.2 Supplier’s warranty

The Supplier represents and warrants for the benefit of TfNSW, RailCorp and the other NSW Rail Entities that:

(a) the Supplier supplies all Assets, Deliverables and other chattels forming part of the TLS Phase Activities to TfNSW with full title guarantee and free from any Security Interests; and

(b) there are no outstanding Disputes, Claims or proceedings relating to, or arising from the design, construction, engineering, manufacture, testing, supply, delivery, condition, possession or operation of that Asset, Deliverable or other chattel with any person.

31.3 Repetition of warranty

The representations and warranties of the Supplier under clause 31.2 are:

(a) made and given on the date of this deed; and

(b) taken to be repeated in relation to each Asset, Deliverable and other chattel forming part of the TLS Phase Activities supplied under this deed on the date when title in that Asset or Deliverable is expressed to pass from the Supplier to RailCorp under clause 31.1.

32. Damage and reinstatement

32.1 Reinstatement of the Sets

(a) If a Set is damaged, lost or destroyed after that Set has achieved Provisional Acceptance then the Supplier must repair, replace or reinstate the Set within a reasonable period specified by TfNSW’s Representative (having regard to the Supplier’s obligations with respect to the holding of Spares in clause 15.2), unless TfNSW’s Representative gives a notice in writing to the Supplier that clause 32.2(a)(iv), clause 32.2(b)(iv) or clause 32.2(c)(iv) is to apply, such notice to be given, without limitation, where TfNSW’s Representative reasonably considers that it is not economically practicable to repair, replace or reinstate the Set.

(b) If TfNSW’s Representative gives a notice in writing to the Supplier that clause 32.2(a)(iv), clause 32.2(b)(iv) or clause 32.2(c)(iv) is to apply:

(i) the Supplier assigns to RailCorp and TfNSW, the Supplier’s right to make and receive the proceeds of a claim under the Insurances in respect of the damage, loss or destruction of the Set (other than claims in respect of the Supplier’s Loss or any insured legal liability to third parties);

(ii) as between the Supplier, RailCorp and TfNSW, the Supplier waives the right to retain the proceeds of any such claim under the Insurances (other than the proceeds of claims in respect of the Supplier’s Loss or any insured legal liability to third parties); and

(iii) the Supplier must pay to TfNSW all proceeds it receives from the Insurances in respect of the damage, loss or destruction of the Set.
other than proceeds in respect of the Supplier's own Loss or any insured legal liability to third parties.

32.2 Risk of loss or damage to the Sets

(a) (After Provisional Acceptance and not attributable to the Supplier, or Exceptioned Risk – TfNSW bears loss): TfNSW bears the risk of damage to or loss or destruction of a Set (other than Minor Graffiti) which:

(i) occurs:

A. after the Date of Provisional Acceptance of the Set; and

B. other than during a Maintenance Period,

and is not attributable to:

C. any breach or other act or omission of the Supplier or its Associates; or

D. an event which occurred prior to the Date of Provisional Acceptance of the Set; or

(ii) arises from an Exceptioned Risk;

and:

(iii) if TfNSW’s Representative does not give a notice under clause 32.1(a) that clause 32.2(a)(iv) is to apply, TfNSW must pay the Supplier the reasonable cost of carrying out the repair, replacement or reinstatement work arising from any such damage, loss or destruction (to the extent the Insurance Proceeds, if any, are insufficient); or

(iv) if TfNSW gives the Supplier a written notice under clause 32.1(a) that this clause is to apply:

A. TfNSW and the Supplier must meet and negotiate in good faith with a view to agreeing upon:

1) the means by which the Supplier is able to continue to provide the Required Availability (or an agreed lesser Required Availability);

2) to the extent required, a Variation under clause 24; and

B. the parties acknowledge that the outcome of these negotiations may include rotating any spare Sets as part of the Required Availability or the Operator using a Set which contains less than 8 Cars, and if TfNSW and the Supplier do not come to an agreement pursuant to clause 32.2(a)(iv)A which is reduced to writing and executed by the parties in a manner which is contractually binding on them within 30 Business Days of TfNSW issuing a notice under clause 32.1(a) that this clause 32.2(a)(iv) is to apply then:

1) the Required Availability will be adjusted as reasonably determined by TfNSW’s Representative to reflect the decrease in the number of Sets; and
any adjustment to the Required Availability determined by TfNSW will be deemed to be a Variation under clause 24, and Variation Costs or Variation Savings (as appropriate) so as to leave the Supplier in a 'no net gain, no net loss' position as regards any decrease in the number of Sets and any reduction in the Required Availability.

(During Maintenance Period and not Excepted Risk - Supplier bears loss):
The Supplier bears the risk of damage to or loss or destruction of a Set which:

(i) occurs during a Maintenance Period; and

(ii) does not arise from an Excepted Risk,

and:

(iii) if TfNSW's Representative does not give a notice under clause 32.1(a) that clause 32.2(b)(iv) is to apply, the Supplier must bear the cost of the repair or replacement work arising from such damage, loss or destruction (to the extent the Insurance Proceeds, if any, are insufficient); or

(iv) if TfNSW gives the Supplier a written notice under clause 32.1(a) that this clause is to apply:

A. TfNSW and the Supplier must meet and negotiate in good faith with a view to agreeing upon:

1) the means by which the Supplier is able to continue to provide the Required Availability (or an agreed lesser Required Availability); and

2) to the extent required, a Variation under clause 25,

and the parties acknowledge that the outcome of these negotiations may include rotating any spare Sets as part of the Required Availability or TfNSW using a Set which contains less than 8 Cars; and

B. if TfNSW and the Supplier do not come to an agreement pursuant to clause 32.2(b)(iv)A which is reduced to writing and executed by the parties in a manner which is contractually binding on them within 30 Business Days of TfNSW issuing a notice under clause 32.1(a) that this clause 32.2(b)(iv) is to apply:

1) the Required Availability will be adjusted as reasonably determined by TfNSW's Representative to reflect the decrease in the number of Sets; and

2) TfNSW will not be obliged to provide any financial relief or compensation to the Supplier on account of Availability Payments which the Supplier would have earned but for the damage, loss or destruction to the Set.
(c) 

(After Provisional Acceptance and attributable to Supplier - parties share loss): The parties will share the risk of damage to or loss or destruction of a Set which:

(i) occurs:

A. after the Date of Provisional Acceptance of the Set; and

B. other than during a Maintenance Period; and

(ii) is attributable to:

A. any breach or other act or omission of the Supplier or its Associates; or

B. an event which occurred prior to the Date of Provisional Acceptance of the Set,

as follows:

(iii) if TfNSW's Representative does not give a notice under clause 32.1(a) that clause 32.2(c)(iv) is to apply:

A. the Supplier will be liable for the first [CPI Indexed] of the costs of repair or replacement (to the extent the Insurance Proceeds, if any, are insufficient); and

B. TfNSW must pay the Supplier the reasonable costs of carrying out the repair or replacement work (to the extent the Insurance Proceeds, if any, are insufficient) in excess of [CPI Indexed]; and

(iv) if TfNSW gives the Supplier a written notice under clause 32.1(a) that this clause is to apply:

A. TfNSW and the Supplier must meet and negotiate in good faith with a view to agreeing upon the means by which:

1) the Supplier is able to continue to provide the Required Availability (or an agreed lesser Required Availability); and

2) to the extent required, a Variation under clause 25,

and the parties acknowledge that the outcome of these negotiations may include rotating any spare Sets as part of the Required Availability or TfNSW using a Set which contains less than 8 Cars; and

B. if TfNSW and the Supplier do not come to an agreement pursuant to clause 32.2(c)(iv)A which is reduced to writing and executed by the parties in a manner which is contractually binding on them within 30 Business Days of TfNSW issuing a notice under clause 32.1(a) that this clause 32.2(c)(iv) is to apply:

1) the Required Availability will be adjusted as reasonably determined by TfNSW's Representative to reflect the decrease in the number of Sets; and
2) TFNSW will not be obliged to provide any financial relief or compensation to the Supplier on account of Availability Payments which the Supplier would have earned but for the damage, loss or destruction to the Set.

32.3 Risk of loss or damage to Maintenance Facility

(a) The Supplier bears the risk of any damage to or loss or destruction of:

(i) after the Date of MF Completion of the MF Works under the MF Works Deed, the Maintenance Facility; and

(ii) the Maintenance Facility Equipment;

and the Supplier must repair, replace or reinstate them within a reasonable period specified by TFNSW's Representative if any such damage, loss or destruction occurs. The repair or replacement work must be carried out at the Supplier's cost, unless the damage, loss or destruction arises from an Excepted Risk.

(b) If the damage, loss or destruction arises from an Excepted Risk then TFNSW must pay the Supplier the reasonable cost of carrying out the repair, replacement or reinstatement work.

32.4 Reinstatement work

Where the Supplier is required to repair, replace or reinstate a Set, the Maintenance Facility or the Maintenance Facility Equipment, the Supplier must:

(a) take immediate steps to clear debris and begin initial repair work, subject to allowing reasonable time for inspection by insurers;

(b) promptly consult with TFNSW and carry out steps necessary to ensure that:

(i) the repair, replacement or reinstatement work complies with the SPR and is completed within a reasonable period as specified by TFNSW's Representative (having regard to matters including the need for an appropriate transition-in period for the relevant Set in returning to service); and

(ii) to the greatest extent possible, the Supplier continues to comply with its obligations under the Project Agreements;

(c) manage all repair, replacement and reinstatement activities so as to minimise any impact on railway operations;

(d) keep TFNSW informed of progress of repair, replacement and reinstatement activities; and

(e) apply all Insurance Proceeds towards the cost of repair, replacement or reinstatement.

32.5 Damage to third party property

Without limiting clause 34 and 35, where any damage to or loss or destruction of real or personal property of third parties occurs which arises out of:

(a) a breach by the Supplier of its obligations under this deed, the Supplier must promptly repair, replace or reinstate the damage, loss or destruction at the Supplier's cost; and
(b) the TLS Phase Activities, the Supplier must promptly repair, replace or reinstate the damage, loss or destruction (where the Supplier has legal liability to do so), or if the affected person agrees, reasonably compensate the affected person (where the Supplier has legal liability to do so).

If the Supplier fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation (where this clause 32.5 requires the Supplier to do so), TfNSW may after giving reasonable prior notice to the Supplier carry out the repair, replacement or reinstatement work or pay reasonable compensation, and any Loss incurred by TfNSW will be Moneys Owing.

33. Insurance

33.1 Supplier’s insurance obligations

The Supplier must, at its own cost and expense, effect and maintain (or cause to be effected and maintained) the Insurances specified in paragraph 1 of Schedule 16 on the terms and for the periods set out in this clause 33 and Schedule 16.

33.2 Subcontractors

The Supplier must ensure that all Subcontractors effect and maintain appropriate insurances (for the relevant TLS Phase Activities subcontracted) including workers compensation insurance in accordance with Legal Requirements.

33.3 Additional, increased or varied Insurances

(a) If TfNSW at any time reasonably requires the Supplier to:

(i) insure against a risk not specifically provided for or contemplated under clause 33.1; or

(ii) increase the extent of, or change the terms of, an existing Insurance from that set out in clause 33.1,

it may notify the Supplier and request that the Supplier give effect to TfNSW’s requirements.

(b) The Supplier must promptly inform TfNSW of the amount of any additional premium payable in giving effect to a requirement of TfNSW under clause 33.3(a) before it implements the requirement (using reasonable endeavours to minimise any increase in or maximise any reduction in the cost of any additional, increased or varied Insurances), and TfNSW will advise the Supplier whether it still requires the Supplier to give effect to that requirement.

(c) Any additional premiums paid on any additional, increased or varied Insurances required by TfNSW under clause 33.3(b), as well as any brokerage and Taxes payable in respect of those premiums, will be reimbursed by TfNSW to the Supplier within 20 Business Days after the Supplier provides evidence satisfactory to TfNSW (acting reasonably) that the insurance cover has been so effected and the premium paid.

33.4 Review of Insurance limits and deductibles

The minimum sums insured and maximum deductibles for the Insurances referred to in clause 33.1 will be reviewed by TfNSW’s Representative on each anniversary of the TLS Start Date to determine whether and by how much the minimum sums insured and maximum deductibles should be increased or decreased, having regard to the opinion of a reputable insurance broker as to prudent insurance practice at the time.
33.5 Joint names

The Supplier must ensure that all Insurances effected by the Supplier in compliance with this clause 33 other than the Insurances in Schedule 16 referred to as:

(a) Professional Indemnity Insurance;
(b) Employer's Liability and Workers' Compensation Insurance;
(c) Compulsory Third Party Motor Vehicle Insurance; and
(d) Public and Products Liability Insurance,

are in the joint names of the Supplier, TfNSW, RailCorp and the Operator, and extend cover to the Supplier's Subcontractors and others described in the relevant policy, by specifying them within the definition of "Insured", for their respective rights and interests.

33.6 Insurance requirements generally

(a) All Insurances effected by the Supplier in compliance with this clause 33, other than the Insurances in Schedule 16 referred to as Employer's Liability and Workers' Compensation Insurance and Compulsory Third Party Motor Vehicle Insurance:
   (i) must be taken out with Reputable Insurers or with insurers approved by TfNSW's Representative (such approval not to be unreasonably withheld);
   (ii) must be on the terms required by this clause 33 or otherwise as approved by TfNSW's Representative (such approval not to be unreasonably withheld);
   (iii) must not contain any exclusion, endorsement or alteration unless it is first approved in writing by TfNSW's Representative (such approval not to be unreasonably withheld);
   (iv) which name more than one insured, must include a waiver and cross liability clause in which the insurer agrees:
      A. to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
      B. that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
      C. that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any Insurance;
   (v) must contain a term which requires the lead insurer or the Supplier's broker to give TfNSW 30 Business Days' notice prior to:
      A. the lead insurer giving the Supplier a notice of cancellation;
      B. the lead insurer cancelling the policy on the request of the Supplier; or
C. the lead insurer giving the Supplier any other notice in respect of the policy;

(vi) must contain a term providing that notice of a claim by any insured will be accepted by the insurer as notice by all insureds;

(vii) must not exclude coverage for innocent non-disclosure;

(viii) for policies written on an occurrence basis, must provide that a single deductible is payable for each occurrence regardless of whether a claim or claims are brought against one or more insureds;

(ix) must not contain any 'other insurance' provisions that attempt or purport to limit or restrict coverage where another insurance policy may also potentially respond;

(x) must be governed by and be construed according to the laws of New South Wales and, in the case of all policies other than legal liability policies, include a provision under which each party to that policy agrees to:

A. submit to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to that policy; and

B. waive 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 proceedings have been brought in an inconvenient forum, if the venue falls within clause 33.6(a)(x)A; and

(xi) must not be materially altered, cancelled or permitted to lapse by or on behalf of the Supplier without the prior approval of TfNSW.

(b) All Insurances in Schedule 16 referred to as Professional Indemnity Insurance, must:

(i) cover any legal liability contractually assumed to the extent that the Supplier and any other insureds under those Insurances have contracled out of the operation of Part 4 of the Civil Liability Act 2002 (NSW) or assumed liability for others under this deed;

(ii) without limiting clause 33.6(b)(i), cover the Supplier for potential liability to TfNSW assumed by reason of the exclusion of Part 4 the Civil Liability Act 2002 (NSW); and

(iii) not exclude any potential liability the Supplier may have to TfNSW under or by reason of this deed.

(c) All Insurances in Schedule 16 referred to as Plant and Equipment Insurance and Industrial Special Risks Insurance must be endorsed to note and allow the Supplier's obligations under clause 32, to the effect that compliance with the provisions of those clauses will not prejudice the Supplier's or any other insured's rights to indemnity under the Insurances.

(d) Insurances in Schedule 16 referred to as Public and Products Liability Insurance, must not expressly exclude liability arising under clause 34 solely on the basis that it is a contractually assumed liability.
Insurances in Schedule 16 referred to as Industrial Special Risks Insurance (other than in respect of the business interruption cover referred to in Schedule 16 in relation to that Insurance), must specify TfNSW, and the Supplier as joint loss payees.

33.7 Premiums, coverage and deductibles

(a) The Supplier must punctually pay all premiums and other amounts payable in respect of the Insurances effected by it, and give TfNSW evidence of payments for premiums if and when requested by TfNSW.

(b) All Insurances required under this deed shall provide coverage for at least the 'Minimum Sum Insured' specified in Schedule 16, and deductibles no greater than the 'Maximum Deductible' specified in Schedule 16.

(c) If an insurer requires payment under a relevant insurance policy by TfNSW, TfNSW may recover the payment of such amount from the Supplier as Moneys Owing.

33.8 Evidence of insurance

In respect of the Insurances required to be effected and maintained by the Supplier under this clause 33, the Supplier must:

(a) allow an agent of TfNSW to inspect the Public and Products Liability Insurance and Professional Indemnity Insurance policies at any time; and

(b) give TfNSW's Representative:

(i) certified copies of all policies (including policy schedules, wordings and endorsements), other than any policy for Professional Indemnity Insurance or Public and Products Liability Insurance within 10 Business Days after it receives them from the insurer or broker; and

(ii) whenever requested by TfNSW's Representative, a certificate of currency satisfactory to TfNSW's Representative (acting reasonably) to confirm that the Insurances which the Supplier must effect and maintain pursuant to this clause 33 have been effected and maintained in accordance with the requirements of this clause 33.

33.9 Failure to produce proof of insurance

If the Supplier fails to provide evidence satisfactory to TfNSW's Representative in accordance with clause 33.8(b)(i) or within 10 Business Days of a request under clause 33.8(b)(ii), TfNSW may effect and maintain the relevant Insurances and pay the premium. The costs incurred by TfNSW in connection with taking such action will be recoverable from the Supplier as Moneys Owing.

33.10 The Supplier's obligations not limited

The taking out of Insurances does not limit the liabilities or obligations of the Supplier under this deed. The Supplier bears the risk of the Insurances being inadequate to enable the Supplier to fulfil its obligations under this deed.

33.11 General insurance obligations

The Supplier must:

(a) not knowingly do or permit, or omit to do, anything which prejudices any Insurance;
rectify anything which might prejudice any Insurance;

(c) reinstate an Insurance required to be maintained under clause 33.1 if it lapses;

(d) not cancel, vary or allow any Insurance required to be maintained under clause 33.1 to lapse without the prior written consent of TfNSW's Representative and must impose an obligation on its broker to give TfNSW 30 Business Days' notice prior to any policy lapsing;

(e) immediately notify TfNSW of any fact or circumstance or change in circumstances which might prejudice an Insurance;

(f) without limiting clause 33.12(a), immediately notify TfNSW's Representative if it receives any claim or notice in connection with an Insurance;

(g) give full and true particulars 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; and

(h) comply at all times with the terms of each Insurance.

33.12 Claims under Insurances

In addition to the obligations to notify the insurer under any Insurance, the Supplier must:

(a) notify TfNSW's Representative of any occurrence of which it is aware that may give rise to a claim (other than a claim by TfNSW or its Associates) under any Insurance other than statutory insurance;

(b) keep TfNSW's Representative informed of subsequent developments of which it is aware concerning the claim;

(c) do everything reasonably required by TfNSW (or any other person in whose name the relevant policy is effected) to enable TfNSW or such other person to claim, collect or recover money due under an Insurance;

(d) subject to clause 33.12(e), diligently pursue any material claim which it has under any Insurance in relation to that occurrence; and

(e) not compromise, settle, prosecute or enforce a claim under any Insurance without the prior written consent of TfNSW's Representative (which must not be unreasonably withheld or delayed).

33.13 Insurance Proceeds Account

(a) This clause 33.13 applies to all amounts received under:

(i) the Insurances in Schedule 16 referred to as Plant and Materials Insurance; and

(ii) the Insurances in Schedule 16 referred to as Industrial Special Risk Insurance,

but excluding any proceeds of delay in start up or business interruption insurance,

(Insurance Proceeds).

(b) The Supplier must:

(i) establish an account to be known as the Insurance Proceeds Account;
(ii) maintain that account in the name of the Supplier with a financial institution nominated by the Supplier and approved by TfNSW (each approval not to be unreasonably withheld);

(iii) give details of that account to TfNSW;

(iv) if requested by TfNSW’s Representative, grant TfNSW a first ranking Security Interest over the Insurance Proceeds Account; and

(v) procure the agreement of the financial institution referred to in clause 33.13(b)(ii) not to exercise any right of set-off or combination of accounts in relation to the Insurance Proceeds Account.

(c) All Insurance Proceeds must be deposited into the Insurance Proceeds Account.

(d) Subject to clause 33.13(f), moneys in the Insurance Proceeds Account may only be applied towards the cost of repair or reinstatement.

(e) The Supplier must give TfNSW records of expenditure from the Insurance Proceeds Account within 30 Business Days of such expenditure.

(f) If this deed is terminated under clauses 27.10 or 30, TfNSW will be entitled to any moneys remaining in the Insurance Proceeds Account on the date of termination.

34. Indemnities

34.1 Indemnity from the Supplier

The Supplier must indemnify each Indemnified Party from and against:

(a) any Loss incurred by an Indemnified Party in respect of:

(i) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property belonging to an Indemnified Party; or

(ii) any claim against an Indemnified Party (including by another Indemnified Party) in respect of:

A. any illness, personal injury to, or death of, any person; or

B. damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property,

caused by, arising out of, or in any way in connection with any breach or other act or omission of the Supplier, the Supplier’s Associates or the Supplier’s Personnel; or

(b) any Loss incurred by an Indemnified Party arising out of or in any way connection with:

(i) any breach or failure to comply with the terms of any Project Agreement by the Supplier; or

(ii) any fraudulent, negligent or unlawful act or omission by the Supplier, the Supplier’s Associates or the Supplier’s Personnel.
34.2 Exclusions from indemnity

The Supplier's liability under clause 34.1 will be reduced to the extent that the Loss arises from:

(a) a fraudulent, negligent or unlawful act or omission of the Indemnified Party; or
(b) a breach by TfNSW or RailCorp of their obligations under a Project Agreement.

34.3 Exclusion of Indirect or Consequential Loss

(a) Subject to clause 35.2, but otherwise despite any other provision of this deed, the Supplier has no liability to any Indemnified Party (whether in contract, tort or otherwise), nor will any Indemnified Party be entitled to make any Claim against the Supplier, in respect of Indirect or Consequential Loss incurred or sustained by the Indemnified Party as a result of any act or omission of the Supplier (whether negligent or otherwise).

(b) Subject to clause 35.2(d), and despite any other provision of this deed, none of the Indemnified Parties has any liability to the Supplier (whether in contract, tort or otherwise), nor will the Supplier be entitled to make any Claim against any Indemnified Party, in respect of Indirect or Consequential Loss incurred or sustained by the Supplier as a result of any breach or other act or omission of any Indemnified Party (whether negligent or otherwise).

34.4 Procedure for Third Party Claims

(a) If an Indemnified Party wishes to claim indemnity under clause 34.1(a)(ii) in respect of a claim against the Indemnified Party (Third Party Claim), a notice of the Third Party Claim must be given to the Supplier as soon as reasonably practicable.

(b) The Indemnified Party must:

(i) subject to clause 34.4(c), take such actions as the Supplier may reasonably direct in defending or mitigating the Third Party Claim;

(ii) not settle or compromise the Third Party Claim without the Supplier's consent (not to be unreasonably withheld or delayed); and

(iii) periodically inform the Supplier of the status of the Third Party Claim and the actions taken to defend or mitigate it.

(c) If the Supplier wishes to direct an Indemnified Party to take actions in defending or mitigating the Third Party Claim, the Supplier must first give reasonable security to the Indemnified Party for any cost or liability arising out of such direction.

(d) The Supplier's liability under clause 34.1 will be reduced to the extent that a failure by an Indemnified Party to comply with clause 34.4(b) prejudices the Supplier, but not otherwise.

34.5 Obligations not affected

(a) Clause 34.1 does not limit or otherwise affect the Supplier's other obligations under this deed or otherwise according to law.

(b) The Supplier is not relieved of any obligation to indemnify an Indemnified Party under clause 34.1 by reason of effecting Insurance or being an insured party under an insurance policy effected by TfNSW.
34.6 Indemnified Parties

The Supplier acknowledges and agrees that if the indemnity in clause 34.1 or the matters stated in clause 34.3(b) are unenforceable, all references in this clause 34 to "the Indemnified Party" or "an Indemnified Party" will be read as a reference to "TfNSW and RailCorp" only.

35. Liability

35.1 Maintenance Liability Cap and Through Life Support

(a) The term Maintenance Liability Period means each of:

(i) the period commencing on the TLS Start Date and ending on the last day of the fifth Maintenance Year under this deed;

(ii) the period commencing on the first day of the sixth Maintenance Year under this deed and ending on the last day of the tenth Maintenance Year under this deed;

(iii) the period commencing on the first day of the eleventh Maintenance Year under this deed and ending on the last day of the fifteenth Maintenance Year under this deed;

(iv) the period commencing on the first day of the sixteenth Maintenance Year under this deed and ending on the last day of the twentieth Maintenance Year under this deed;

(v) the period commencing on the first day of the twenty-first Maintenance Year under this deed and ending on the Original Expiry Date;

(vi) if TfNSW elects to extend the Contract Term pursuant to clause 3.2(b), the period commencing on the day following the Original Expiry Date and ending on the period referred to in clause 3.2(b); and

(vii) if TfNSW elects to extend the Contract Term pursuant to clause 3.2(c), the period commencing on the day following the last day of the period referred to in clause 3.2(b) and ending on the last day of the period referred to in clause 3.2(c).

(b) The Maintenance Services Sum is an amount calculated by TfNSW's Representative and notified to the Supplier's Representative not less than 30 Business Days before the start of each Maintenance Liability Period. For the purposes of this clause:

(i) the Maintenance Services Sum will be calculated by adding the Forecast Availability Payment and Forecast KPI Payment payable over the relevant Maintenance Liability Period, and dividing the sum by the number of years in that Maintenance Liability Period; and

(ii) the sum of the Forecast Availability Payment and Forecast KPI Payment for each month during a Maintenance Liability Period will be calculated based upon the forecast Nominal Availability Payments plus the forecast Nominal KPI Payments calculated in row 1530 in the "PayMech" tab of the Base Case Cost Model, each adjusted to reflect actual indexation (rather than modelled forecast indexation), as determined in accordance with clause 1.15.

(c) Subject to clause 35.2, the Supplier's aggregate liability to the Indemnified Parties or any person claiming through them under any Project Agreement arising out of, or in any way in connection with the performance of the TLS Phase Activities in a
Maintenance Liability Period, and whether arising pursuant to an indemnity, in contract, in tort, in equity, by operation of law or otherwise is limited, in aggregate in respect of the relevant Maintenance Liability Period, to an amount equal to of the Maintenance Services Sum applicable in that Maintenance Liability Period (Maintenance Liability Cap).

(d) Subject to clause 35.2, the Supplier’s aggregate liability to the Indemnified Parties or any person claiming through them under any Project Agreement arising out of, or in any way in connection with the performance of, the Supplier’s obligations under clause 15.9(a)(i) in the period from the Maintenance End Date to the end of the Contract Term, and whether arising pursuant to an indemnity, in contract, in tort, in equity, by operation of law or otherwise, is limited in aggregate, in respect of liability arising in each Financial Year during that period, to an amount equal to the sum of:

(i) all Technical Services Payments paid by TfNSW to the Supplier; and

(ii) of the price of all Spares or Special Tools purchased from the Supplier by TfNSW, RailCorp and any other NSW Rail Entity,

in that Financial Year.

35.2 Exceptions to liability cap and exclusions

Nothing:

(a) in clause 34.3(a) will limit or exclude the Supplier's liability to an Indemnified Party or any person claiming through an Indemnified Party under any of the Project Agreements or at law:

(i) in respect of Reliability and Disruption Adjustments that reduce the amount of any TLS Payment calculated under paragraph 2 of Schedule 15; or

(ii) for Loss in respect of and liabilities of an Indemnified Party to a third party

(b) in clause 34.3(a) or this clause 35 will limit or exclude the Supplier’s liability to an Indemnified Party or any person claiming through an Indemnified Party under any of the Project Agreements or at law:

(i) to the extent that the Supplier has:

A. recovered from a third party (including any Subcontractor and whether by way of indemnity or otherwise); or

B. would have recovered from a third party, but for clause 34.3(a) or this clause 35 (as applicable) and if it had diligently pursued a claim against the third party, an amount in respect of that liability;

(ii) to the extent that the Supplier:

A. is indemnified in respect of that liability by a policy of insurance; or

B. would have been indemnified in respect of that liability by a policy of insurance but for clause 34.3(a) or this clause 35 (as applicable) and if the Supplier had:
1) diligently pursued a claim under the policy of insurance;
2) complied with the terms and conditions of that policy of insurance; and
3) complied with its insurance obligations under this deed;

(iii) for Loss arising from any criminal acts or fraud on the part of the Supplier or any of the Supplier's Associates;

(iv) for Loss arising from wilful misconduct on the part of the Supplier or any of the Supplier's Associates;

(v) to the extent that, by law, the parties cannot limit, or exclude by contract, that liability;

(vi) in respect of any fine, penalty or impost imposed by an Authority or under any Legal Requirement;

(vii) for Loss arising where the Supplier wholly or substantially abandons the TLS Phase Activities;

(viii) in respect of any liability to pay or allow any amount:
A. under clause 13.6(e)(ii); or
B. calculated under any formula in Schedule 15 as contemplated by clause 20.3(a)(iv)B;

(ix) for any interest under clause 22.9; or

(x) in respect of any liability under clause 34.1(a);

(c) in clause 34.3(a) or this clause 35 will limit or exclude the Supplier's liability arising out of, or in connection with, the indemnities given by the Supplier pursuant to paragraph 2.2 of Schedule 3 to any or all of the persons or entities identified pursuant to paragraph 2.2(b) of Schedule 3; or

(d) in clause 34.3(b) will limit or exclude the Indemnified Parties' liability to the Supplier under any of the Project Agreements:

(i) for Loss arising from any criminal acts or fraud on the part of TfNSW or any of TfNSW's Associates;

(ii) for Loss arising from wilful misconduct on the part of TfNSW or any of TfNSW's Associates;

(iii) for Loss arising from the illness, personal injury, or death of, any person to the extent caused or contributed to by TfNSW or any of TfNSW's Associates;

(iv) for Loss arising from any loss or damage to third party property to the extent caused or contributed to by TfNSW or any of TfNSW's Associates;

(v) in respect of any liability expressly imposed on TfNSW or RailCorp under any of the Project Agreements to pay or procure payment to the Supplier any of the following amounts:
A. any Availability Payments, KPI Payments or Reimbursable TLS Payments;
B. any interest under clause 22.9; or
C. the amount payable under paragraph 2.2(e) of Schedule 18; or
(vi) to the extent that, by law, the parties cannot limit, or exclude by contract, that liability.

36. Representations and warranties

36.1 TfNSW and RailCorp representations and warranties

TfNSW and RailCorp each separately represent and warrant for the benefit of the Supplier that:

(a) it is a statutory body validly constituted and existing under the Transport Administration Act;
(b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each Project Agreement (or will have them in full force and effect at the time the obligation is to be performed);
(c) each Project Agreement to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms; and
(d) the execution, delivery and performance of each Project Agreement does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

36.2 Supplier’s representations and warranties

The Supplier represents and warrants for the benefit of TfNSW and RailCorp that:

(a) it is duly registered and remains in existence;
(b) the execution, delivery and performance of each Project Agreement to which it is a party does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
(c) it has taken all corporate and other action required to enter into each Project Agreement to which it is a party and to authorise the execution and delivery of that Project Agreement and the satisfaction of its obligations under it;
(d) each Project Agreement to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms;
(e) it subsists and is properly constituted;
(f) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
(g) no Supplier Event of Default or Supplier Termination Event has occurred or is subsisting;
(h) it is not in default of its material obligations under any Project Agreement;
subject to laws from time to time its obligations under each Project Agreement will rank at least equally with, all its present and future unsecured obligations;

it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);

there has been no material change in the financial condition of the Supplier (since the date of its last audited accounts) which would prejudice the ability of the Supplier to perform its obligations under the Project Agreements;

there has been no material change in the financial condition of the Guarantor (since the date of its last audited accounts) which would prejudice the ability of the Guarantor to perform its obligations under the Project Agreements;

the most recently published financial statements of the Supplier and the Guarantor have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Supplier and the Guarantor and are unqualified for the period in question;

the Supplier is not aware of any material facts or circumstances that have not been disclosed to TfNSW and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with the Supplier; and

no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under any Project Agreement to which it is expressed to be a party.

36.3 Repetition of representations and warranties

The representations and warranties contained in clauses 36.2(e), 36.2(g), 36.2(h), 36.2(k), 36.2(l), 36.2(m), 36.2(n) and 36.2(o) are made on the date of this deed. Each other representation and warranty contained in this clause is made on the date of this deed; and

will be deemed to be repeated on the Commencement Date and on each anniversary of the date of this deed,

with reference to the facts and circumstances then subsisting.

37. Dispute resolution

The parties must comply with the Dispute Resolution Procedures in respect of any Dispute.

38. Records, reporting obligation and privacy

38.1 Records

(a) The Supplier must keep appropriate books of account, records, documentation and systems which evidence its performance of the Project Activities and its compliance with the Project Agreements.

(b) The Supplier must ensure its books of account, records, documentation and systems are available to TfNSW in accordance with clause 5.4.
38.2 Financial reporting
(a) Not later than four months after the end of each Financial Year, the Supplier must give TfNSW audited financial statements for the previous Financial Year for the Supplier or any consolidated entity of which the Supplier forms part.
(b) Each of the documents to be provided to TfNSW in accordance with this clause 38.2 must be accompanied by a certificate signed by two authorised officers of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.
(c) The Supplier must prepare (or procure the preparation of) the accounts and financial statements required under this clause 38.2 in compliance with all Legal Requirements and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.

38.3 Notices under Project Agreements
The Supplier must give TfNSW as soon as practicable certified copies of all notices of default, breach or Dispute given or received by it under the Project Agreements from any of its co-contracting parties.

38.4 Advice on rights of third parties under Project Agreements
The Supplier undertakes to advise TfNSW as soon as practicable after an event has occurred which, to the Supplier's actual knowledge, could in any way materially prejudice TfNSW's or RailCorp's rights under the Project Agreements by reason of the exercise of rights available to third parties arising from the Project Agreements.

38.5 ASIC and ASX notices
The Supplier must give TfNSW, as soon as practicable, copies of all notices and other documents given or received by a member of the Supplier Group to or from the Australian Securities and Investments Commission or the Australian Stock Exchange Limited.

38.6 Other information
The Supplier must promptly give TfNSW such other information relating to the Project Agreements or the Project Activities as TfNSW may reasonably require from time to time.

38.7 Retention of records
The Supplier must retain all records in relation to the Project Agreements:
(a) until they are delivered to TfNSW pursuant to clause 45.11(b); or
(b) if not so delivered to TfNSW, for at least seven years after the end of the Contract Term.

38.8 Privacy
(a) (Definitions): In this clause Privacy Obligations means:
   (i) while the PPIPA is in force, obligations imposed on public sector agencies under the PPIPA; and
   (ii) if the PPIPA is repealed, obligations imposed on Authorities and private sector organisations by any Commonwealth or New South Wales legislation that replaces the PPIPA in whole or in part.
(b) **(PPIPA):** The Supplier agrees to comply with all relevant provisions of the PPIPA as if it was a 'public sector agency' as that term is defined in the PPIPA and will give notice to TfNSW of any matter or thing which may or would, were the Supplier a 'public sector agency', amount to a breach of any applicable provision of the PPIPA.

(c) **(Compliance with Privacy Obligations and privacy plans):** The Supplier must:

(i) comply with the Privacy Obligations and the Supplier's Privacy Management Plan; and

(ii) provide all reasonable assistance to enable TfNSW to comply with the Privacy Obligations.

(d) **(Personal Information):** Without limiting clause 38.8(c), the Supplier must ensure that Personal Information is collected, used, disclosed and handled by it in accordance with the Supplier's Privacy Management Plan and this deed.

(e) **(Supplier's Privacy Management Plan):** At least 20 Business Days prior to the first occasion on which the Supplier will handle any Personal Information in undertaking the Project Activities, the Supplier must submit to TfNSW's Representative a Supplier's Privacy Management Plan which sets out the Supplier's procedures in relation to privacy protection and includes, as a minimum, procedures which:

(i) ensure that the Supplier will comply with the Privacy Obligations;

(ii) are consistent with the Privacy Obligations as they apply to TfNSW; and

(iii) are consistent with Good Industry Practice.

(f) **(TfNSW's review):** TfNSW's Representative will have the right to Review the Supplier's Privacy Management Plan and the Supplier must promptly amend the Supplier's Privacy Management Plan to meet any concerns reasonably raised by TfNSW's Representative.

(g) **(Updating of the Supplier's Privacy Management Plan):** Throughout the Contract Term, the Supplier must review and, if necessary, update the Supplier's Privacy Management Plan:

(i) to take account of:

A. events or circumstances which will, or may, affect the manner in which the Supplier carries out the Project Activities; and

B. any evolution in technology and in security threats; and

(ii) upon written request by TfNSW's Representative.

(h) **(Submission of updated plan):** The Supplier must submit any plan updated in accordance with clause 38.8(g) to TfNSW's Representative, in which case clause 38.8(f) will reapply.

(i) **(Subcontracts):** The Supplier must ensure that all Subcontracts with all Subcontractors who collect, use, store, dispose of or disclose Personal Information contain provisions to the same or similar effect as clauses 38.7 and 38.8.
(j) **(Audit):** TfNSW may require the Supplier and the Supplier's Subcontractors to have their privacy procedures audited by a qualified nationally recognised firm provided that TfNSW is not entitled to require such an audit more frequently than annually. The Supplier and the Supplier's Subcontractors must take such action as is reasonable to comply with any exceptions or discrepancies discovered by any such audit.

(k) **(Disclosure to TfNSW):** If the Supplier discloses any Personal Information to TfNSW, the Supplier must take reasonable steps to ensure that the individual about whom the Personal Information relates is aware of the following information:

(i) the fact that their Personal Information is being disclosed to TfNSW and why;

(ii) the fact that they may seek to access or correct their Personal Information held by TfNSW;

(iii) TfNSW's address, being the address stated in clause 48; and

(iv) any other information as reasonably directed by TfNSW.

### 39. Disclosure, confidentiality, probity and publicity

#### 39.1 Disclosure by TfNSW

(a) TfNSW, RailCorp or any other NSW Rail Entity may publish or disclose (on the internet or otherwise):

(i) the terms and conditions of this deed or any other Project Agreement; and

(ii) any document or information arising under, out of or in connection with this deed or any other Project Agreement or relating to the performance of this deed or any other Project Agreement.

(b) To the extent that the information proposed to be published or disclosed by TfNSW or any other NSW Rail Entity under clause 39.6(a) (and without limiting any NSW Rail Entity's rights to publish or disclose information under clause 39.6(a)) contains Commercially Sensitive Information:

(i) TfNSW or any other NSW Rail Entity may publish or disclose the information under clause 39.6(a) without consultation with the Supplier if the Commercially Sensitive Information is redacted or otherwise not disclosed or TfNSW or any other NSW Rail Entity is required by law to do so;

(ii) TfNSW will use its reasonable endeavours to maintain the confidentiality of the Commercially Sensitive Information; and

(iii) if TfNSW proposes to disclose any Commercially Sensitive Information, TfNSW must use reasonable endeavours to give the Supplier prior notice of that intention and must consult with the Supplier prior to disclosing any Commercially Sensitive Information.

#### 39.2 Confidentiality

(a) Subject to clause 39.2(b), the Supplier must:
(i) keep confidential the Project Agreements and information relating to the Project Agreements, the Project Activities and any discussions concerning the Project Agreements; and

(ii) ensure that each of its Associates comply with the terms of clause 39.2(a)(i).

(b) The Supplier is not obliged to keep confidential any information:

(i) which is in the public domain through no fault of the Supplier or the Supplier’s Associates; or

(ii) the disclosure of which is:

A. required by law;

B. given with the written consent of TfNSW; or

C. given to a court in the course of proceedings to which the Supplier is a party.

(c) If TfNSW requires the Supplier to provide TfNSW with a confidentiality deed in favour of a third party in respect of any of that third party’s confidential information that is provided to the Supplier, then the Supplier must execute such a confidentiality deed in the form reasonably specified by TfNSW.

39.3 Probity Event

(a) The Supplier must give notice to TfNSW immediately upon becoming aware that a Probity Event has occurred or is likely to occur.

(b) The notice under clause 39.3(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances which have given rise (or are likely to give rise) to the Probity Event.

(c) Subject to any obligation that TfNSW may have, or in its absolute discretion considers that it may have, in respect of any Legal Requirement, TfNSW (or any person nominated by TfNSW) and the Supplier must promptly, and in any case no later than 10 Business Days after TfNSW:

(i) receives a notice under clause 39.3(a); or

(ii) becomes aware of a Probity Event,

meet to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur.

(d) The Supplier must comply with any agreement made in accordance with clause 39.3(c) in the agreed timeframe.

(e) If TfNSW (or any person nominated by TfNSW) and the Supplier fail to agree to a course of action in accordance with clause 39.3(c), the Supplier must take any action required by TfNSW (or its nominee) to remedy the Probity Event in accordance with any timeframe determined by TfNSW (or its nominee).

39.4 Probity Investigation

Without limiting or otherwise restricting clause 39.3:
4) TfNSW (or any person nominated by TfNSW) may, at any time, conduct a Probity Investigation in respect of a Probity Entity or any person who is proposed to become a Probity Entity;

(b) the Supplier agrees that TfNSW may require the Supplier at any time to, conduct a Probity Investigation in respect of a Probity Entity;

(c) where TfNSW requires the Supplier to conduct a Probity Investigation in accordance with clause 39.4(b), the Supplier must promptly:

(i) conduct that Probity Investigation; and

(ii) communicate the findings of that Probity Investigation to TfNSW in the form required by TfNSW; and

(d) the Supplier must procure all consents necessary to enable the Supplier or TfNSW (or any person nominated by TfNSW) to conduct any Probity Investigation.

39.5 TfNSW costs of Probity Events and Probity Investigations

(a) Subject to clause 39.5(b), the Supplier must bear all costs incurred by TfNSW in connection with a Probity Event or Probity Investigation.

(b) The Supplier will not be liable for TfNSW's costs of any further Probity Investigation required by TfNSW in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

39.6 Public Disclosure Obligations

(a) The Supplier acknowledges and agrees that disclosures regarding the Project Agreements by TfNSW, any other NSW Rail Entity or any Authority may be required:

(i) under law, including the Government Information (Public Access) Act 2009 (NSW) or any similar or replacement legislation;

(ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,

(Public Disclosure Obligations).

(b) The Supplier must use all reasonable endeavours to assist TfNSW, any NSW Rail Entity or an Authority in meeting their Public Disclosure Obligations in connection with the Project Agreements and the Project Activities.

39.7 Publicity

Except for notices which the Supplier is required to disclose to any recognised stock exchange, the Supplier must:

(a) not make any public announcements or statements in relation to the Project Agreements or the Project Activities (including by posting any information relating to the Project Agreements or Project Activities on any website) without TfNSW's prior written consent;

(b) use reasonable endeavours to agree with TfNSW the wording and timing of all public announcements and statements by it or its Associates relating to the Project Agreements or the Project Activities before the relevant announcement or statement is made;
(c) give TfNSW a draft of any proposed media release relating to the Project Agreements or the Project Activities and obtain TfNSW's prior written approval of the media release before distributing it;

(d) give TfNSW a copy of any announcement or media release as soon as practicable after it is made or distributed; and

(e) ensure that its Associates comply with the requirements referred to in this clause 39.7.

40. Restrictions on dealings

40.1 Restrictions on amendment to Project Agreements

The Supplier must not:

(a) make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to;

(b) terminate, surrender, rescind or accept the repudiation of;

(c) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

(d) enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Agreement to which TfNSW is not a party, without TfNSW's prior written consent (which consent will not be unreasonably withheld or delayed).

40.2 Restrictions on assignment

(a) (TfNSW and RailCorp):

(i) Without limiting clause 1.6(b), TfNSW and RailCorp may assign, novate, transfer or otherwise deal with their rights or obligations under any Project Agreement without the Supplier's prior approval.

(ii) The Supplier hereby irrevocably agrees that if TfNSW or RailCorp elects to undertake any assignment, novation, transfer or other disposal in accordance with clause 40.2(a)(i) in respect of any Project Agreement to which the Supplier is a party, the Supplier:

A. will enter into a new agreement upon the same terms and conditions as each such Project Agreement excepting that the assignee, transferee or person to whom that other disposal is made pursuant to clause 40.2(a)(i) agrees to perform and observe TfNSW's or RailCorp's obligations under those documents as if it were named in the relevant Project Agreement instead of TfNSW or RailCorp (as the case may be); and

B. must execute and deliver such documents and do such things as and when reasonably requested by TfNSW or RailCorp to do so in order to enable or facilitate any assignment, novation, transfer or other disposal in accordance with this clause 40.2.
40.3 Restrictions on dealings with Assets, Deliverables and the Maintenance Facility Site

The Supplier must not:

(a) create, permit or suffer any Security Interest over;

(b) lease, licence, transfer, sell, part with possession of, or otherwise deal with; or

(c) operate or use, or permit any other person to operate or use,

any Asset, Deliverable, or any part of any Maintenance Location, except as expressly permitted under the Project Agreements.

40.4 Restrictions on business

The Supplier must not conduct any business at the Maintenance Facility Site other than the performance of its obligations and the exercise of its rights under the Project Agreements, without TfNSW’s prior written consent.

40.5 Restrictions on related party contracts

The Supplier must not (and must ensure that the Supplier’s Subcontractors do not) enter into any contract relating to the Project Activities with a Related Body Corporate (other than on arm’s length commercial terms) without TfNSW’s prior written consent.

41. Change in ownership / Control

41.1 Initial status of ownership

The Supplier represents and warrants that, at the Commencement Date, the legal and beneficial ownership of each member of the Supplier Group and the Supplier Group structure is as set out in Schedule 4.

41.2 Change in ownership of Supplier Group Member

(a) The Supplier must inform TfNSW’s Representative as soon as reasonably practicable and, in any event, within 20 Business Days of any Change in Control of the Supplier.

(b) If the Supplier provides TfNSW with a notice under clause 41.2(a), TfNSW may acting reasonably:

(i) request further information from the Supplier in respect of the Change in Control and the Supplier must provide TfNSW with the information requested within five Business Days; and

(ii) within the later of:

A. 20 Business Days of receipt of a notice from the Supplier in accordance with clause 41.2(a); and

B. 15 Business Days of receipt of further information in respect of the Change in Control in accordance with clause 41.2(b)(i).
provide the Supplier with a notice (Notice of Objection) relating to the Change in Control.

(c) The Supplier must pay TfNSW, as Moneys Owing, costs (including legal and financial advisers' fees) reasonably incurred by TfNSW or any Associate in relation to considering or consenting to a proposed Change of Control under any Project Agreement.

41.3 Notice of Objection

(a) TfNSW may give a Notice of Objection under clause 41.2(b)(ii) if TfNSW is of the reasonable opinion that:

(i) the Supplier has not provided TfNSW with full details of the proposed Change in Control or any further information requested by TfNSW;

(ii) the new Controlling Entity:

A. is not solvent or reputable;

B. has an interest or duty which conflicts in a material way with the interests of the Project, TfNSW, RailCorp, the Operator or any other NSW Rail Entity or the State;

C. has failed or is likely to fail to comply with the Probity Investigation procedure as if it were a Probity Entity; or

D. is involved in a business or activity which is incompatible, or inappropriate, in relation to the Project, TfNSW, RailCorp, the Operator or any other NSW Rail Entity or the State;

(iii) the Change in Control:

A. is against the public interest;

B. would adversely affect the ability or capability of the Supplier to perform its obligations under any Project Agreement; or

C. would increase the liability of, or risks accepted by, TfNSW or RailCorp under the Project Agreements; or

(iv) a Probity Event has occurred, or is likely to occur, in relation to the new Controlling Entity (if it were a Probity Entity) or the proposed Change in Control.

(b) If TfNSW issues the Supplier with a Notice of Objection under clause 41.2(b)(ii), TfNSW must specify the steps that it reasonably requires the Supplier to take to address the grounds for objection by TfNSW to the Change in Control.

(c) If the Supplier fails to take the steps and implement the measures identified in a Notice of Objection as referred to in clause 41.3(b) within a reasonable time specified by TfNSW, a Supplier Event of Default will be deemed to have occurred.

42. Subcontracting

42.1 Subcontracting

(a) The Supplier may subcontract any part of its performance of the TLS Phase Activities, but only in the manner permitted by this clause 42.
(b) The Supplier must not subcontract or delegate the management or administration responsibilities for delivering the Supplier’s obligations in relation to performance of the TLS Phase Activities.

(c) The Supplier must ensure that each of its Subcontractors is reputable and has or has access to sufficient experience, expertise and ability to perform the relevant TLS Phase Activities to the standards required by this deed.

42.2 Supplier remains liable

The Supplier:

(a) is not relieved of any of its liabilities or obligations under a Project Agreement as a result of any subcontracting or approval of any Subcontractor;

(b) is at all times responsible for the performance of all Subcontractors; and

(c) acknowledges and agrees that breach of any Project Agreement caused or contributed to by a Subcontractor, or failure by a Subcontractor to comply with the obligations of the Supplier under the Project Agreements, is a breach or failure of the Supplier and the Supplier is entirely responsible for any failure to take reasonable care on the part of its Subcontractors to the extent permitted by law, notwithstanding that TfNSW’s Representative may have provided consent to the Supplier’s engagement of a Significant Contractor in accordance with clause 42.3.

42.3 TfNSW to consent to appointment of Significant Contractor

(a) Before the Supplier may enter into any Significant Contract (including where to replace an existing Subcontractor) the Supplier must:

(i) notify TfNSW’s Representative that it proposes to enter into the Significant Contract; and

(ii) provide TfNSW’s Representative with the following information for Review:

A. details of the identity of the proposed Significant Contractor;

B. copies of the proposed Significant Contract Documents;

C. the scope of the TLS Phase Activities which the Supplier intends the proposed Significant Contractor will undertake; and

D. evidence to the satisfaction of TfNSW that the proposed Significant Contractor is (or remains) a Qualified Subcontractor.

(b) On completion of TfNSW’s Review, TfNSW’s Representative must notify the Supplier whether TfNSW consents or does not consent to the proposed engagement of the Significant Contractor based on the information provided by the Supplier in accordance with clause 42.3(a)(ii) and any further information provided by the Supplier in accordance with the Review Procedures.

(c) It will be reasonable for TfNSW’s Representative to withhold TfNSW’s consent under clause 42.3(b) if:

(i) the Supplier has not provided to TfNSW all of the information and documents required under clauses 42.3(a) and 42.3(e);
(ii) TfNSW has reasonable cause to consider the proposed Significant Contractor is not a Qualified Subcontractor; or

(iii) in the case of a proposed replacement Significant Contractor, the proposed Significant Contract Documents are not on substantially the same terms as the Significant Contract Documents to be replaced.

(d) If TfNSW's Representative consents to the Supplier's engagement of the proposed Significant Contractor in accordance with clause 42.3(b), the Supplier must:

(i) enter into the Significant Contract Documents;

(ii) ensure that the terms of the executed Significant Contract Documents are not materially amended from the proposed Significant Contract Documents provided to TfNSW in accordance with clause 42.3(a)(ii)B;

(iii) provide TfNSW with a Collateral Warranty Deed Poll executed by the Significant Contractor; and

(iv) provide TfNSW with a copy of the Significant Contract Documents as executed by the Significant Contractor and the Supplier within 15 Business Days of the execution of the Significant Contract.

(e) If the proposed Significant Contract Documents provided to TfNSW's Representative in accordance with clause 42.3(a)(ii)B are later subject to material amendment prior to the formation and execution of the Significant Documents, the Supplier must provide TfNSW with the details of those proposed amendments and clauses 42.3(a) to 42.3(d) will reapply.

42.4 Termination and replacement

The Supplier must:

(a) not terminate, surrender, rescind or accept repudiation of (or give the relevant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of) any Significant Contract Document; and

(b) if there is an early termination, surrender or rescission of a Significant Contract Document for any reason:

(i) notify TfNSW's Representative promptly upon its terminating or being surrendered or rescinded, or of the Supplier becoming aware of the termination, surrender or rescission (and in any event within 5 Business Days); and

(ii) take such steps as TfNSW's Representative may direct to reinstate or replace the relevant Significant Contract Document (or Significant Contractor).

42.5 Form of Significant Contracts

Each Significant Contract must include the following in a form satisfactory to TfNSW:

(a) an undertaking from the Significant Contractor to amend, rectify or make good at the Significant Contractor's own cost any Defect, omission or default;

(b) an undertaking from the Significant Contractor to provide guarantees, warranties and indemnities in favour of the Supplier functionally equivalent to those provided by the Supplier to TfNSW;
assignments, licences, consents, waivers and other like provisions with respect to Intellectual Property Rights and Moral Rights in favour of TfNSW functionally equivalent to those provided by the Supplier to TfNSW;

(d) an undertaking from the Significant Contractor to do all things, including to undertake all investigations, permit such checks, and provide such consents and information as may be required in respect of its Personnel under this deed;

(e) provisions which satisfy the requirements of clauses 8.4, 38, 39, 43 and 49;

(f) provisions which recognise TfNSW's rights under clauses 29 and 45; and

(g) provisions which enable the Supplier to comply with its novation obligations under clause 45.9.

42.6 Other Significant Contract requirements

The Supplier must (and must ensure that its Subcontractors):

(a) comply with its obligations under and use reasonable endeavours to enforce the terms of each Significant Contract to which it is a party;

(b) notify TfNSW of any material breach under a Significant Contract or any dispute with or between any Subcontractors arising in connection with any Significant Contract immediately upon becoming aware of that breach or dispute and keep TfNSW informed of the status of the breach or dispute;

(c) not without TfNSW's prior written consent (not to be unreasonably withheld or delayed):

   (i) make or permit any amendment to, or replacement of or waiver of a provision of;

   (ii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

   (iii) enter into any agreement or arrangement which affects the operation or interpretation or relates to the subject matter of, a Significant Contract; and

(d) not without TfNSW's prior written consent (not to be unreasonably withheld or delayed), suffer or permit any compromise or waiver of any material claim, or give any release under a Significant Contract.

42.7 Obligations and acknowledgements as to Claims

The Supplier must, in circumstances where it makes any Claim against TfNSW as a consequence of a Claim that has been made by a Subcontractor against the Supplier, take reasonable steps to ensure that any such Claim made by the Subcontractor is bona fide, prior to making any related Claim against TfNSW.

42.8 Arrangements with Related Bodies Corporate

The Supplier must ensure that any agreement or arrangement (whether legally enforceable or not) between it and any of its Associates is on arm's length terms.
43. PPSA

43.1 PPSA undertakings

(a) If the interests of RailCorp, TfNSW or any other NSW Rail Entity (a Secured Party) under this deed, any other Project Agreement or any transactions contemplated by them constitute one or more Security Interests in favour of that Secured Party:

(i) the Supplier agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information or procuring that a Subcontractor does the same) which that Secured Party may require for the purposes of:

A. ensuring that any Security Interest of that Secured Party is enforceable, perfected and otherwise effective;

B. ensuring that any Security Interest of that Secured Party is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA;

C. enabling that Secured Party to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by that Secured Party; or

D. enabling that Secured Party to exercise any right or power in connection with the Security Interest;

(ii) the Supplier agrees that it will bear all costs and expenses:

A. that it incurs in complying with clause 43.1(a)(i); and

B. incurred by a Secured Party for the purposes set out in clause 43.1(a)(i);

(iii) to the extent permitted by law, and in respect of any Security Interest created by this deed, any other Project Agreement or any transactions contemplated by them:

A. the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);

B. the application of Part 4.3 of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA; and

C. the Supplier waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice cannot be excluded;

(iv) the parties agree to the full extent permitted by law not to disclose information of the kind mentioned in section 275(1) of the PPSA;
the Supplier agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if the relevant Secured Party approves;

a Secured Party’s Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly, from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this deed;

except where contemplated in clause 43.2(a), the Supplier will not, without the relevant Secured Party’s prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the collateral; and

for the avoidance of doubt, pursuant to section 80 of the PPSA, the Supplier covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person to whom a Secured Party assigns some or all of its rights and obligations under a Project Agreement should have the benefit of this covenant.

43.2 PPSA procedures

(a) Without limiting clause 43.1(a)(vii), if the Supplier holds any Security Interests in the Assets for the purposes of the PPSA by reason of entering into any supply or other arrangements with a Subcontractor, the Supplier agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that the Supplier takes all steps to identify Security Interests in its favour and under the PPSA to perfect continuously any such Security Interest including all steps necessary:

(i) for the Supplier to obtain the highest ranking priority possible in respect of the Security Interest (such as perfecting a purchase money security interest (as defined in the PPSA) or perfecting a Security Interest by control); and

(ii) to reduce as far as possible the risk of a third party acquiring an interest free of the Security Interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

(b) If a Secured Party asks, the Supplier agrees to arrange at its expense an audit of the above PPSA procedures. A Secured Party may ask the Supplier to do this if it reasonably suspects that the Supplier is not complying with this clause.

44. Rights to and use of the Intellectual Property

The parties’ rights and obligations in relation to Intellectual Property Rights are set out in Schedule 3.

45. Transition Out provisions

45.1 Right to appoint successor

The Supplier acknowledges that TfNSW may, on or before the End Date:
invite any person (including the Supplier) to perform all or any part of the TLS Phase Activities for the period commencing after the End Date; and

without limiting clauses 27.10, 30.4(b) or 30.8(b), if TfNSW gives an instruction pursuant to clause 27.10(d), 30.4(a)(i) or 30.8(a), invite any person to perform all or any part of the Maintenance Services for the period commencing after the Maintenance End Date.

45.2 Transition out planning

(a) The Supplier must prepare, update and submit processes for transition out as part of the Project Management Plan in accordance with section 2.1.1 of the SPR.

(b) The Supplier must ensure that a Step-in Party, prospective Successor Supplier or Successor Supplier has, to the extent permitted by law, immediate access to the transition out planning information contained in the Project Management Plan on reasonable notice from TfNSW and in any case at the times the Supplier is required to submit the Project Management Plan to TfNSW in accordance with clause 9.

45.3 Preparation for transition

(a) The Supplier must, to the extent permitted by law, provide TfNSW with reasonable access to the Supplier's Associates and the information, books and records, kept by or on behalf of the Supplier in connection with the TLS Phase Activities, for the purpose of TfNSW preparing reports and documents in connection with any invitation to a person for the performance of all or part of the TLS Phase Activities.

(b) The Supplier must use reasonable endeavours to assist TfNSW in the preparation for, and the conduct of, a fair and competitive expression of interest or tendering process.

(c) Without limiting clause 45.3(b), the Supplier must, to the extent permitted by law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as TfNSW may reasonably require in connection with the contracting of the TLS Phase Activities.

(d) The Supplier warrants to TfNSW and RailCorp that all information provided under clauses 45.2 and 45.3 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

45.4 Continuity of the TLS Phase Activities

The Supplier must manage, perform and maintain the TLS Phase Activities in a way that a Step-in Party or Successor Supplier (or nominee of TfNSW) is able at any time to immediately take over the performance of all or part of the TLS Phase Activities without interruption.

45.5 Non frustration of transfer

The Supplier must not do anything that directly or indirectly prevents or materially prejudices or frustrates the transfer of the performance of all or part of the Maintenance Services from the Maintenance End Date (where applicable) or the relevant TLS Phase Activities on the End Date to a Successor Supplier (or nominee of TfNSW).

45.6 Assistance in securing continuity

The Supplier must do everything, both before and after the End Date, as TfNSW may reasonably require to assist and advise any Step-in Party, prospective Successor Supplier,
Successor Supplier or nominee of TfNSW in performing the TLS Phase Activities, including the provision of:

(a) information and records related to the performance of the relevant TLS Phase Activities (excluding Commercially Sensitive Information); and

(b) training sessions to any person nominated by TfNSW in relation to the performance of the relevant TLS Phase Activities.

### 45.7 Access

The Supplier must ensure that a prospective Successor Supplier, Successor Supplier or nominee of TfNSW has access to the Assets and systems for the purpose of:

(a) the prospective Successor Supplier, Successor Supplier or nominee of TfNSW receiving information in respect of the relevant TLS Phase Activities; and

(b) preparations by the prospective Successor Supplier, Successor Supplier or nominee of TfNSW to take over the performance of the Maintenance Services from the Maintenance End Date (where applicable) or the relevant TLS Phase Activities from the End Date,

but only to the extent that any of the above does not unduly interfere with the performance of the TLS Phase Activities.

### 45.8 Transfer of Assets

On the Maintenance End Date, the Supplier must:

(a) have completed all works scheduled to be carried out under the current Maintenance Works Program;

(b) surrender and deliver to TfNSW or TfNSW’s nominee:
   (i) the Maintenance Facility Site, in a state and condition which complies with the Target Condition and the other requirements of this deed;
   (ii) any completed or partially completed Deliverables produced under or in connection with this deed;

(c) transfer all of the Supplier’s rights, title and interest (if any) in any or all of the things referred to in clause 45.8(b)(ii) to TfNSW or its nominee free from any Security Interest; and

(d) in respect of the Maintenance Services, and on the End Date in respect of all other TLS Phase Activities, procure for TfNSW and/or RailCorp in TfNSW’s and or RailCorp’s name (as directed by TfNSW), a licence to any Contract Information on the same terms as the licences granted to TfNSW and or RailCorp under Schedule 3, including in relation to Intellectual Property Rights to works that were begun but not yet completed at the time of the Maintenance End Date or End Date (as applicable).

### 45.9 Novation of, or ceasing to be a party to, Subcontracts

(a) The Supplier must procure the novation to TfNSW or its nominee of any Subcontract relating to the TLS Phase Activities which TfNSW may nominate (in its absolute discretion), with effect from the end of the Contract Term, the Maintenance End Date or such other date as TfNSW may agree in writing.

(b) The Supplier must execute any document required by TfNSW to give effect to any novation contemplated by clause 45.9(a).
45.10 Assignment of warranties and guarantees

The Supplier must procure the transfer or assignment to TfNSW or its nominees of the benefit of any designer's and manufacturer's warranties relating to anything required to be transferred under clause 45.8.

45.11 Transfer of documents and information

The Supplier must:

(a) on or before the Maintenance End Date, have completed the transfer of the Asset Information System database to TfNSW or TfNSW's nominee such that:

(i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;

(ii) it remains fully functional and retains interface capabilities;

(iii) all data entry is fully up to date;

(iv) all data archives are included; and

(v) all supporting documentation is included; and

(b) on or before the Maintenance End Date (in respect of the Maintenance Services) or otherwise the End Date, deliver to TfNSW or its nominee (or both, as required) all and any documents and other information concerning the TLS Phase Activities which are required for the efficient transfer of responsibility for their performance, including:

(i) documentation, information technology and Contract Information (including software and data not otherwise required to be provided to TfNSW under this deed);

(ii) any documentation or programs required to be provided under Schedule 3; and

(iii) any other documentation specified in the SPR.

45.12 Power of attorney

(a) The Supplier must execute any documents that are reasonably required by TfNSW to be executed by the Supplier in order to give effect to this clause 45.

(b) The Supplier irrevocably appoints TfNSW and such persons as are from time to time nominated by TfNSW, jointly and severally, as its attorney with full power and authority to execute any document, agreement or novation contemplated by this clause 45.

45.13 All other acts

The Supplier must promptly do all other acts and things reasonably required to enable TfNSW or its nominee to be in a position to complete the TLS Phase Activities and operate, maintain and repair the Assets.
46. AMC Option
47. Notice of Claims

47.1 Communication of Claims

(a) If the Supplier wishes to make a Claim against TfNSW or RailCorp, the Supplier must give TfNSW’s Representative a Prescribed Notice under clause 47.2 within 20 Business Days of the earlier of:

(i) the date when the Supplier was or could reasonably have been aware of the conduct, circumstance, event, act, default, omission, direction, fact, matter or thing upon which the Claim is or will be based (Claim Event); and

(ii) the date when the Supplier could reasonably have been aware of the entitlement to make the Claim.

(b) The Supplier must not delay giving notice until a Claim Event or series of Claim Events is complete or until the quantum of the Claim can be ascertained.

(c) This clause 47 does not apply to any Claim for payment of the TLS Payment under clause 22.2.

(d) This clause 47.1 is in addition to, and not in substitution for, and does not qualify or diminish, any other requirement of this deed relating to the notification or making of Claims.

47.2 The Prescribed Notice

A Prescribed Notice is a notice stating that it is a notice under this clause 47.2 and containing full particulars of:

(a) the Claim Events;

(b) the legal basis or bases for the Claim including any clause of this deed relied upon; and

(c) the quantum or likely quantum of the Claim (if any).

47.3 Failure to notify

TfNSW and RailCorp shall not be liable upon any Claim by the Supplier which was not notified strictly in accordance with this clause 47, and such Claim will be absolutely barred.
48. **Notices**

48.1 **How to give Notice**

(a) Wherever referred to in this clause, **Notice** means each communication (including each notice, consent, approval, request, direction and demand) under or in connection with this deed.

(b) At any time and from time to time TfNSW's Representative may notify the Supplier that a PDCS will be used for giving Notices under or in connection with this deed. TfNSW's Representative's notice will set out:

(i) the name of the relevant PDCS;
(ii) the commencement date for use of the PDCS;
(iii) any password, login details or similar information required for the Supplier to use the PDCS; and
(iv) any other information reasonably necessary for the use and service of Notices via the PDCS.

(c) Each Notice must:

(i) before the date referred to in clause 48.1(b):

A. be in writing;
B. be:
   1) in the case of a Notice from the Supplier, addressed to TfNSW's Representative; or
   2) in the case of a Notice from TfNSW or RailCorp, addressed to the Supplier's Representative;
C. be signed by:
   1) in the case of a Notice from the Supplier, the Supplier's Representative; and
   2) in the case of a Notice from TfNSW, TfNSW's Representative,

or on that person's behalf by any authorised agent of that person;
D. be:
   1) delivered or posted to the address via, in the case of posting, the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service; or
   2) sent by email in the form of a .pdf file of a letter (with or without attachments) to the email address of the addressee, in accordance with clause 48.1(c)(i)E; and...
E. addressed as follows (or as otherwise notified by the intended recipient to each other party from time to time):

**TfNSW**

Name: TfNSW, a New South Wales Government agency  
Address: Level 2, 1 Prince Albert Road, Sydney NSW 2000  
Email: [redacted]@transport.nsw.gov.au  
For the attention of: Project Director, Sydney Growth Trains

**RailCorp**

Name: Rail Corporation New South Wales, a New South Wales Government agency  
Address: Level 2, 1 Prince Albert Road, Sydney NSW 2000  
Email: [redacted]@transport.nsw.gov.au  
For the attention of: Project Director, Sydney Growth Trains

**Supplier**

Name: Downer EDI Rail Pty Limited  
Address: T3, Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113  
Email: [redacted]@downergroup.com  
For the attention of: The Company Secretary

(ii) on and from the commencement date for use of the PDCS referred to in clause 48.1(b):

A. be sent through the PDCS in accordance with the requirements set out in clause 48.4(a) and:

1) in the case of a Notice from the Supplier, be addressed to TfNSW’s Representative; or

2) in the case of a Notice from TfNSW, be addressed to the Supplier’s Representative; or

B. in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 48.1(c)(i).

### 48.2 When Notice is received

A communication is taken to be received by the addressee:

(a) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;

(b) (in the case of prepaid post sent to an address in the same country) four Business Days after the date of posting;
(c) (in the case of international post) ten Business Days after the date of posting;

(d) (in the case of email) at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient specified in clause 48.1(c)(i)E; and

(e) (in the case of delivery by hand) on delivery,

provided that if the communication would be deemed to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

48.3 Communications sent by email

With respect to communications sent by email:

(a) only the letter in .pdf format attached to the email and, subject to clause 48.3(b) any attachments to such letter which are referred to in the letter, will form part of the Notice under clause 48.1. Any text in the body of the email or the subject line will not form part of the Notice;

(b) an attachment to an email referred to in clause 48.1(c)(i)D.2) will only form part of a Notice under clause 48.1 if it is in:

(i) .pdf format;

(ii) a format compatible with Microsoft Office; or

(iii) such other format as may be agreed between the parties from time to time; and

(c) the parties agree, with respect to any Notices under or in connection with this deed:

(i) to ensure that their respective firewall and/or mail server (as applicable):

A. allows messages of up to 100 MB to be received;

B. does not trap any messages in the spam filter which:

1) in the case of notices sent by TfNSW or RailCorp to the Supplier have been sent from the transport.nsw.gov.au domain (or such other domain as may be notified by TfNSW to the Supplier from time to time by not less than 30 days notice); and

2) in the case of notices sent by the Supplier to TfNSW or RailCorp, have been sent from the downergroup.com domain (or such other domain as may be notified by the Supplier to TfNSW from time to time by not less than 30 days notice); and

C. automatically sends a receipt notification to the sender upon receipt of a message; and

(ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.
48.4 Notices sent through the PDCS

(a) With respect to Notices sent through the PDCS:

(i) all Notices must be submitted by:
   A. in the case of a Notice from the Supplier, the Supplier’s Representative; and
   B. in the case of a Notice from TfNSW, TfNSW’s Representative,

or on that person’s behalf by any authorised agent of, that person;

(ii) only the text in any Notice, or subject to paragraph 48.4(a)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and

(iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
   A. .pdf format;
   B. a format compatible with Microsoft Office; or
   C. such other format as may be agreed between the parties in writing from time to time.

(b) The Supplier must:

(i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;

(ii) ensure that relevant Supplier’s Personnel log on and use the PDCS and check whether Notices have been received on each Business Day;

(iii) ensure all relevant Supplier’s Personnel attend all necessary training required by TfNSW’s Representative in respect of the PDCS;

(iv) advise TfNSW’s Representatives which of the Supplier’s Personnel require access to the PDCS;

(v) at all times, ensure that it has access to Supplier’s Personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and

(vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 48.1(c)(ii)B to TfNSW’s Representative through the PDCS.

(c) TfNSW has no liability for any losses the Supplier may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Supplier will not be entitled to make, and TfNSW will not be liable upon, any Claim against TfNSW arising out of or in connection with the Supplier’s access to or use of the PDCS or any failure of the PDCS.
48.5 Formal and information communications

The parties wish to distinguish formal communications from informal communications and agree that:

(a) a formal communication is one which complies with the requirements of clause 48.1;

(b) an informal communication is one which does not comply with the requirements of clause 48.1. Examples of informal communications include:

(i) oral communications, whether made during meetings, discussions, over the phone or otherwise; and

(ii) communications sent by email which are not formal communications (for example, an email which does not attach a .pdf file of a signed letter);

(c) formal communications will have effect as Notices in connection with this deed;

(d) informal communications will not be treated as Notices under or in connection with this deed; and

(e) informal communications will not affect any party's rights or obligations out of or in connection with this deed, and cannot be relied upon.

49. Proportionate liability

49.1 Exclusion of proportionate liability scheme

(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 any party under this deed whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

(b) Without limiting the above, the rights, obligations and liabilities of TfNSW and the Supplier under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

49.2 Supplier not to apply proportionate liability scheme

To the extent permitted by law:

(a) the Supplier must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any claim by TfNSW or RailCorp against the Supplier (whether in contract, tort or otherwise); and

(b) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any claim by TfNSW or RailCorp against the Supplier (whether in contract, tort or otherwise), the Supplier will indemnify TfNSW and RailCorp against any Loss, damage, cost or expense that forms part of a claim by TfNSW or RailCorp against the Supplier which TfNSW or RailCorp cannot recover from the Supplier because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

49.3 Subcontracts

The Supplier must:
ensure that the terms on which it engages all its Subcontractors exclude (to the extent permitted by law) 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 each Subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and

(b) require each Subcontractor down the contractual chain from any Subcontractor to include, in any further contract that it enters into with a third party for the performance of the Project Activities, 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 each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

50. Taxes

50.1 Goods and Services Tax (GST)

(a) Except where the context suggests otherwise, terms and expressions used in this clause 50.1 have the meanings given to those expressions in the GST Act.

(b) 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. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 50.1.

(c) Despite any other provision in this deed, if GST is payable on a supply made by a party (GST Supplier) under or in connection with this deed, the party that is required to provide consideration to the GST Supplier (Recipient) must pay or procure payment to the GST Supplier an amount equal to the GST payable on the supply (GST Amount) by the GST Supplier.

(d) The Recipient must pay or procure payment of the GST Amount in addition to and at the same time as payment for the taxable supply is required to be made under this deed except where the Supplier has failed to provide sufficient information required to enable TfNSW or RailCorp (as the case may be) to issue a RCTI in accordance with clause 50.1(i), in which case the GST Amount will be payable once that information is provided.

(e) If this deed requires a party to reimburse any other party for any expense, Loss or outgoing (reimbursable expense) incurred by another party, the amount required to be reimbursed by the first party will be the sum of:

(i) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and

(ii) if the other party’s recovery from the first party is a taxable supply, any GST payable in respect of that supply and for the avoidance of doubt, if the supply is a taxable supply, clause 50.1(c) will apply.

(f) If a payment under this deed is calculated by reference to or as a percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a percentage of that other amount or revenue stream net of any GST component.

(g) If the amount of GST paid or payable by the GST Supplier on any supply made under this deed differs from the amount of GST paid by the Recipient because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST or for any other reason, then the amount of GST paid
by the Recipient will be adjusted accordingly by a further payment by the Recipient to the GST Supplier or the GST Supplier to the Recipient as the case requires.

(h) The parties agree that, unless otherwise agreed in writing, the following will apply to the supply of Assets and any other taxable supplies made by the Supplier to TfNSW and RailCorp under or in connection with this deed:

(i) TfNSW and RailCorp (as the case may be) will issue to the Supplier a recipient created tax invoice (RCTI) for each taxable supply made by the Supplier to TfNSW and RailCorp (as the case may be) under this deed;

(ii) TfNSW and RailCorp (as the case may be) will issue to the Supplier an adjustment note for any adjustment event;

(iii) the Supplier will not issue a tax invoice in respect of any taxable supply it makes to TfNSW and RailCorp (as the case may be); and

(iv) TfNSW and RailCorp (as the case may be) may at any time notify the Supplier that it will no longer issue a RCTI for any taxable supply made by the Supplier under this deed, in which case, from that point in time:

A. TfNSW and RailCorp (as the case may be) will not be required to issue RCTIs in respect of such supply;

B. the Supplier will be required to issue tax invoices to TfNSW and RailCorp (as the case may be); and

C. TfNSW and RailCorp (as the case may be) need not make a payment for a taxable supply made by the Supplier under or in connection with this deed until the Supplier has given TfNSW or RailCorp (as the case may be) a tax invoice for the relevant taxable supply.

(i) Each party acknowledges and warrants that at the time of entering into this deed it is registered for GST and will notify the other parties if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by the Commissioner of Taxation in relation to the creation or issuing of RCTIs.

50.2 Taxes other than GST and duties

(a) Unless otherwise expressly provided in this deed, the Supplier must pay all Taxes due in connection with the Supplier’s performance of its obligations under this deed.

(b) The Supplier acknowledges and agrees that it will be liable for and has made adequate allowance for:

(i) all Taxes other than GST (but including Importation GST);

(ii) all duties including stamp duty, customs duty and import duty; and

(iii) all costs relating to the imposition of any new Taxes, duties or the like, or a change in any of them.

(c) Where the Supplier is granted an import duty concession or there is a change in legislation or any other event that results in a reduction in customs or import duty rates (including, tariff amendments and free trade agreements) applicable to imported goods, the Supplier must, and must ensure that its Subcontractors:
(i) procure the benefit of any customs or import duty savings or any customs or import duty refunds in full as soon as reasonably practicable; and

(ii) account promptly to TfNSW for \[\text{of those savings or refunds.}\]

Any savings or refunds that the Supplier is required to account to TfNSW under this clause will be Moneys Owing from the Supplier to TfNSW.

(d) The Supplier must not make applications for import customs duty concessions without prior consultation with TfNSW.

(e) The Supplier acknowledges and agrees that:

(i) the Supplier will attend to the importation of any imported goods necessary to fulfil its obligations under this deed;

(ii) unless already approved, prior to the importation of any such goods, the Supplier will apply for approval for the deferral of Importation GST as set out in Division 33 of the GST Act; and

(iii) notwithstanding any other provision of this deed or any other related document, the Supplier will not seek to include in any payment claim or in any other way pass on directly or indirectly, any unrecoverable Importation GST incurred in relation to such goods.

50.3 Withholding

(a) If TfNSW is required in its opinion to withhold any amount or procure the withholding of any amount in respect of Taxes from a payment to be made to the Supplier under any Project Agreement, that amount may be withheld and:

(i) such withholding and payment to the relevant taxing Authority will be a good discharge of TfNSW’s obligation to procure payment of the relevant amount to the Supplier; and

(ii) the Supplier will have no Claim against TfNSW or RailCorp arising out of or in any way in connection with such withholding.

(b) If TfNSW procures payment of an amount to the Supplier without withholding an amount in respect of Taxes, the Supplier must indemnify TfNSW for any Loss suffered by TfNSW as a result of TfNSW failing to withhold the amount in respect of Taxes.

51. General

51.1 Certification

For the purposes of this deed, a copy of a document will be regarded as duly certified by the Supplier if it is certified as a true copy by a director, secretary or general manager of the Supplier.

51.2 Cost of performing obligations

Subject to any express provision of this deed to the contrary each party must pay its own costs and expenses relating directly or indirectly to the preparation, negotiation, execution, stamping of and performance of its obligations under this deed.
51.3 Governing law

(a) This deed is governed by and must be construed according to the laws applying in New South Wales.

(b) Without prejudice to the operation of the provisions in Schedule 8, each party irrevocably:

(i) submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts for any proceedings in connection with this deed; and

(ii) waives any right it might have to claim that those courts are an inconvenient forum if that venue falls within clause 51.3(b)(i).

51.4 Amendments

(a) Subject to clauses 51.4(b) and 51.4(c), this deed may only be varied by a deed executed by or on behalf of each party.

(b) If in respect of any Variation Order that requires a change to the SPR:

(i) TfNSW issues to the Supplier a letter in the form of Schedule 27 (or such other form as may be agreed by the parties) that has been signed by TfNSW's Representative on TfNSW's behalf; and

(ii) the Supplier replies to TfNSW's letter within 10 Business Days in the form required by TfNSW's letter and signed by the Supplier's Representative on the Supplier's behalf,

the SPR will be deemed to be amended in accordance with TfNSW's letter, with effect from the date of the Supplier's reply.

(c) Nothing in clause 51.4(a) limits clause 24 or 25.

51.5 Waiver

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct (including 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 or in connection with this deed by a party) precludes, or operates 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;

(b) a waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party;

(c) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(d) no waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

51.6 Survival of certain provisions; no merger

Without limiting clause 51.12:
(a) clauses 1 (Interpretation), 5.1 (TfNSW's Representative), 10.2 (Information Documents), 10.3 (Supplier warranty), 15.4 (Maintenance Services warranties), 17.6 (Final Inspection), 19 (Project Security), 20.2 (Nature of TLS Payment), 22.9 (Interest), 22.10 (Moneys Owing and set-off), 30.11 (Consequences of termination), 30.12 (Waiver and no Claim), 31.2 (Supplier's warranty), 34 (Indemnities), 35 (Liability), 36 (Representations and warranties), 37 (Dispute resolution), 38 (Records, reporting obligation and privacy), 39 (Disclosure, confidentiality, probity and publicity), 44 (Rights to and use of the Intellectual Property), 45 (Transition Out provisions), 47 (Notice of Claims), 48 (Notices), 49 (Proportionate liability), 50.1 (Goods and Services Tax (GST)), 50.2 (Taxes other than GST and duties), this clause 51 (General), Schedule 3 (Intellectual Property), paragraph 2 of Schedule 9 (Land and the Environment) and Schedule 18 (Amounts payable on termination or omission of Maintenance Services), the representations, warranties and indemnities given by the Supplier under this deed and any other provision which is expressed or by implication from its nature is intended to survive termination or is necessary for the interpretation of the clauses set out in this clause 51.6 (together, the Surviving Clauses) will survive rescission, termination or expiration of this deed;

(b) if this deed is rescinded or terminated, no party will be liable to any other party except:

(i) under the Surviving Clauses; or

(ii) in respect of any breach of this deed occurring before such rescission or termination;

(c) no provision of this deed which is expressed to survive termination will prevent any other provision of this deed, as a matter of interpretation, also surviving termination; and

(d) no right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

51.7 Further acts and documents

Each party must do anything (including execute any document), and must ensure that its Associates do anything (including execute any document), required by law or that the other party may reasonably require to give full effect to this deed.

51.8 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

51.9 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

51.10 Exercise of remedies

(a) If the Supplier breaches any of its obligations under this deed or any other Project Agreement, TfNSW may exercise any or all of the rights and powers and pursue any or all of the remedies available to TfNSW under the Project Agreements and/or enforce any other legal or equitable remedy available under applicable law.
51.11 Entire agreement

(a) To the extent permitted by law, in relation to its subject matter, this deed together with the other Project Agreements:

(i) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

(ii) supersedes any prior written or other agreement of the parties, with respect to its subject matter.

(b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.

51.12 Indemnities

(a) 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.

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

(c) A party must pay on demand any amount it must pay under an indemnity in this deed.

51.13 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.

51.14 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

51.15 Relationship between TfNSW, RailCorp and the Supplier

Nothing in, or contemplated by, this deed or any other Project Agreements will be construed or interpreted as:

(a) constituting a relationship between TfNSW, RailCorp and the Supplier, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or

(b) imposing any general duty of good faith on TfNSW or RailCorp to the Supplier or its Associates in relation to or arising out of this deed, other than to comply with
the obligations (if any) expressly stated to be assumed by TfNSW or RailCorp under this deed or any other Project Agreement on a good faith basis.

51.16 Form of documents

(a) All documentation in computer readable or other written forms brought (whether before or after the date of this deed) or required to be brought into existence as part of, or for the purpose of, performing the TLS Phase Activities must be written in the English language.

(b) All other communications made under this deed must also be made in English.

(c) All soft copy documentation must be submitted without any security restrictions and be fully text searchable.

51.17 Vienna convention

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this deed.

51.18 Time Limits

Where in this deed any obligation of a party is required to be performed within a specified time or on a specified date, that obligation will be deemed to continue after that time or date if the party fails to comply with that obligation within that time or on that date.
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

CLAIR HODGE
Full name of witness (print)

Group Corporate Counsel
Position held

Signature of authorised delegate

Timothy Readon
Full name of authorised delegate (print)

Secretary
Position held

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

GARY CHARLES PEDERSEN
Full name of witness (print)

CHIEF FINANCIAL OFFICER
Position held

Signature of authorised delegate

HOWARD PAUL COLLINS
Full name of authorised delegate (print)

ACTING CHIEF EXECUTIVE
Position held

Signed, sealed and delivered for and on behalf of Downer EDI Rail Pty Ltd (ABN 92 000 002 031) by its attorneys under a power of attorney dated 29/11/16 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

GRANT FENN
Full name of attorney

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

MICHAEL MULLIN
Full name of attorney

Sydney Growth Trains
(ISD-16-5312B)
Schedule 1 – Conditions Precedent

1. Conditions to be satisfied by Supplier

Provision to TfNSW by the Supplier of the following:

(a) original copies of each Completion Document, duly executed by all parties to them (other than TfNSW and RailCorp);

(b) a legal opinion (or opinions) from solicitors reasonably acceptable to TfNSW in a form and substance satisfactory to TfNSW in relation to the due execution by all parties (other than TfNSW and RailCorp), and the enforceability, of the Completion Documents to which they are a party;

(c) evidence in a form and substance satisfactory to TfNSW that any authorisation required by the Supplier (and any other party entering into any Completion Document other than TfNSW and RailCorp) in connection with its entry into any of the Completion Documents to which it is a party and the performance of its obligations under those Completion Documents, has been obtained and is in full force and effect;

(d) evidence in form and substance satisfactory to TfNSW that any stamp duty payable in connection with the entry into the Completion Documents has been paid;

(e) evidence in form and substance satisfactory to TfNSW that the Insurances required by this deed to be effected and maintained by the Supplier from the Commencement Date, are in full force and effect and in the form approved by TfNSW;

(f) evidence in a form and substance satisfactory to TfNSW that the Supplier Group structure is consistent with Schedule 4, including certifications regarding shareholdings; and

(g) any other opinion, certificate or other documents that TfNSW reasonably requests.
Schedule 2 – Commercially Sensitive Information

The following information is Commercially Sensitive Information:

1. any information relating to the amounts payable to the Supplier in respect of the performance of the TLS Phase Activities, including:
   (a) the Base Case Cost Model; and
   (b) all prices, rates and margin percentages specified in this deed;

2. any information relating to the financing arrangements of the Supplier, including information regarding bonding arrangements;

3. the terms of the policies of Insurance required to be effected and maintained by the Supplier under this deed (but not the terms of clause 33);

4. any Contract Information which the Supplier has identified as confidential;

5. Schedule B1 "Train Solution" (including sub-schedules) of the Supplier's Proposal;

6. Schedule B4 "Through Life Support Solution" (including sub-schedules) of the Supplier's Proposal;

7. Relevant Source Code submitted by the Supplier or its Subcontractors for submission to Escrow; and

8. all Technical Documents and Technical Packages submitted by the Supplier for Review.
Schedule 3 – Intellectual Property

1. Intellectual Property Rights

1.1 Licensed Intellectual Property

(a) The Supplier grants to TfNSW and RailCorp and any entity nominated by TfNSW or RailCorp (including the Operator), a non-exclusive, perpetual, irrevocable, transferable, royalty free licence, without additional cost to exercise all Intellectual Property Rights in the Licensed Intellectual Property for the Permitted Purpose.

(b) Without limiting paragraph 1.1(a), the Supplier grants to TfNSW and RailCorp and any entity nominated by TfNSW or RailCorp (including the Operator), a non-exclusive, perpetual, irrevocable, transferable, royalty free licence, without additional cost to exercise all Intellectual Property Rights in the Licensed Intellectual Property in or used in:

(i) the physical surface layout, dimensions and surface appearance of the Driver's cab, the Guard's cab and the detrainment device, and to the extent necessary for the purposes set out in paragraph 1.1(b)(iv) below, the surface appearance of the Cars and Sets (not including "behind the scenes" functionality or other elements not evident to an operator or passenger);

(ii) without limiting paragraph 1.1(b)(i), the appearance, method of use and functionality of the Train Operating System screens (including the logic trees that determine the progression between different screens), passenger information displays and interfaces, (not including "behind the scenes" functionality or other elements not evident to an operator or passenger);

(iii) any software developed by the Supplier or its Associates for use on a computer outside the Sets to emulate the operation of the Train Operating System; and

(iv) any item which TfNSW or RailCorp or any entity nominated by TfNSW or RailCorp (including the Operator) reasonably wishes to use to the extent necessary to ensure that:

A. so far as reasonably possible the information provided to, and the experience of, a passenger or a crew member is substantially the same whether the passenger or crew member is in a Set or in any other existing or future train within the Operator's fleet; or

B. a person who is able to operate a Set is able to also operate any other existing or future train within the Operator's fleet in generally the same way as he or she operates a Set; or

C. so far as reasonably possible the operation and functionality of the systems on any other existing or future train within the Operator's fleet used in connection with:

1) surveillance of passengers and crew members;

2) train safety; or

3) emergency situations,
have the same "look and feel" as in the Sets, being similar in appearance and operator use to those features on the Sets.

(c) The licences granted in paragraphs 1.1(a) and 1.1(b):

(i) may be sub-licensed; and

(ii) will survive expiry of this deed or termination of this deed on any basis.

1.2 Further documentation and assistance

Without limiting the Supplier's other obligations under this deed with respect to the performance of the TLS Phase Activities, the Supplier must provide, and procure that its Associates provide, all documentation, information and assistance as TfNSW may reasonably require in connection with:

(a) the Project;

(b) TfNSW's, RailCorp's or the Operator's use and enjoyment of the Assets and the Deliverables; and

(c) TfNSW's or RailCorp's use and exercise of the Intellectual Property Rights in the Assets and the Deliverables,

in accordance with and as contemplated by this deed.

1.3 Access to Intellectual Property Rights

If requested by TfNSW, the Supplier must, at its own cost:

(a) fully disclose to TfNSW all details of the Intellectual Property Rights, trade secrets and know-how used in the Project and the Deliverables or in carrying out the TLS Phase Activities; and

(b) allow TfNSW to discuss the Intellectual Property Rights, trade secrets and know-how with, and obtain information about the Intellectual Property Rights, trade secrets and know-how from, the Supplier or any of the Supplier's Associates involved in the creation, development or use of the Intellectual Property Rights, trade secrets and know-how.

1.4 Intellectual Property Register

(a) The Supplier must develop and maintain a register (Intellectual Property Register) which identifies:

(i) the Licensed Intellectual Property;

(ii) ownership of the Intellectual Property Rights in the Licensed Intellectual Property;

(iii) any arrangements relating to the Licensed Intellectual Property;

(iv) the entity which is to develop each item of New Contract Information and Relevant Source Code;

(v) any Relevant Source Code and Escrow Information held with an Escrow Agent, and details of the relevant deposit packages including date of last deposit; and
(vi) any other information reasonably required by TfNSW for the effective documentation and management of the Licensed Intellectual Property.

(b) Within 10 Business Days of the Commencement Date the Supplier must develop a proposal for the form of the Intellectual Property Register and provide that proposal to TfNSW’s Representative for Review.

(c) The Supplier must establish the Intellectual Property Register within 10 Business Days of receiving approval from TfNSW following the Review conducted in accordance with paragraph 1.4(b).

1.5 Moral rights

(a) The Supplier warrants that all of the Supplier’s Personnel have provided consents and waivers, to the fullest extent possible under the laws of any applicable jurisdiction, in relation to their Moral Rights, sufficient to ensure unimpeded use of the Licensed Intellectual Property by RailCorp and TfNSW or persons authorised by them.

(b) The Supplier must do all things requested by TfNSW or RailCorp, including signing or procuring the signature of particular forms, to give full effect to paragraph 1.5(a).

1.6 Licensing of Subcontractor created Intellectual Property Rights

To the extent that any Licensed Intellectual Property may be owned by any of the Supplier’s Associates, the Supplier:

(a) must procure from the relevant Supplier’s Associate a licence from the Supplier’s Associate to enable the Supplier to provide the licences in paragraph 1.1; and

(b) warrants that it:

(i) is entitled to grant to TfNSW and RailCorp the rights granted in paragraph 1.1; and

(ii) has procured from those Associates such authority and licences as are necessary for the Supplier to do so.

2. Warranties and Indemnities

2.1 Warranties

The Supplier warrants, both at the date of this deed and, to the extent that any Intellectual Property Rights or Moral Rights or other protected rights come into existence at some time in the future, at such future date, that:

(a) it will not breach any Intellectual Property Rights or Moral Rights or other protected rights of any person in performing its obligations under the Project Agreements;

(b) the performance of the TLS Phase Activities and the use of the Licensed Intellectual Property in accordance with, or as contemplated by the Project Agreements, will not infringe any Intellectual Property Rights or Moral Rights or other protected rights of any person;

(c) the use of the Assets and the Deliverables and the Licensed Intellectual Property in accordance with, or as contemplated by the Project Agreements by TfNSW, the Operator or another NSW Rail Entity will not infringe any Intellectual Property Rights or Moral Rights or other protected rights of any person;
the Licensed Intellectual Property is all the Intellectual Property Rights that are required for the Supplier to carry out its obligations under this deed;

It is not aware of any claims that any of the Assets, the Deliverables, the Licensed Intellectual Property or Source Code and their use in accordance with, or as contemplated by, the Project Agreements infringe or will infringe any Intellectual Property Rights or Moral Rights or other protected rights of any person;

It has the authority to grant the rights granted under paragraph 1.1; and

in respect of each computer program forming part of the Assets or the Deliverables, the Source Code will compile into the executable code.

### 2.2 Indemnity

(a) The Supplier indemnifies the persons referred to in paragraph 2.2(b) against:

(i) all Claims which may be brought or made against any of them by any person in respect of:

A. any alleged or actual infringement of Intellectual Property Rights by the Supplier or the Supplier’s Associates in the course of, or incidental to, performing any obligations under this deed;

B. the use by any of them of any Intellectual Property Rights that are the subject of the warranty in paragraph 2.1; and

C. an infringement of Moral Rights resulting from the use, operation, maintenance or modification of the Assets or the Deliverables or any part of them; and

(ii) any Loss that may be suffered or incurred by the parties referred to in paragraph 2.2(b) in connection with any Claim referred to in paragraph 2.2(a)(i) or any Claim arising from a breach of the warranties set out in paragraph 2.1.

(b) Those indemnified for the purpose of this paragraph 2.2 are RailCorp, TfNSW and anyone receiving a right through them (including the Operator) to exercise any Intellectual Property Right assigned, granted or licensed to RailCorp or TfNSW under this deed and any of their Associates.

(c) Subject to paragraphs 2.2(d) and (e), a party indemnified must, as soon as reasonably practicable after it becomes aware of a Claim:

(i) notify the Supplier of the alleged infringement;

(ii) give the Supplier at the time of notification the option to conduct the defence of the Claim; and

(iii) provide the Supplier (at the Supplier’s expense) with reasonable assistance in conducting the defence of such Claim.

(d) Paragraph 2.2(c) does not apply where:

(i) interlocutory proceedings are commenced against a party indemnified on an urgent basis;

(ii) the party indemnified reasonably considers that there is insufficient time to notify the Supplier and for the Supplier to commence defence of such proceedings on behalf of the party indemnified; and
(iii) the party indemnified initially defends such proceedings.

(e) Paragraph 2.2(c) does not apply to Claims which would or may prevent the continued development or operation of the Assets or the Deliverables or continued conduct of the Project Activities and the party indemnified:

(i) to the extent reasonably practicable, consults in good faith with the Supplier with respect to such Claims; and

(ii) does not in the course of defending or compromising such claims make admissions which may materially affect the validity of the Licensed Intellectual Property without the written consent of the Supplier (such consent not to be unreasonably withheld).

2.3 Infringements

(a) If the Supplier becomes aware of a Claim by a person that the use of any of the Licensed Intellectual Property infringes or amounts to a misuse of the Intellectual Property Rights or other rights of a third party it must promptly provide TfNSW with notice of the alleged Claim.

(b) Notwithstanding paragraphs 2.1 and 2.2, if as a result of any alleged infringement or threatened infringement of Intellectual Property Rights, RailCorp, TfNSW, the Operator, the Supplier, or any other entity is prevented (whether by court order or otherwise) from exercising Intellectual Property Rights it had been exercising or was proposing to exercise pursuant to this deed, the Supplier must:

(i) secure for RailCorp and TfNSW and any other entity that has been nominated by TfNSW or RailCorp under paragraph 1.1 the right to continue to exercise the Intellectual Property Rights;

(ii) replace the Intellectual Property Rights with equivalent non infringing Intellectual Property Rights; or

(iii) modify any materials, equipment, software, devices or processes so that they become non infringing or remove any materials, equipment, software, devices or processes that are infringing without prejudice to any other rights of RailCorp or TfNSW or any other entity that has been nominated by TfNSW or RailCorp under paragraph 1.1.

(c) If the amount of time necessary to proceed with one of the options set out in paragraph 2.3(b) is deemed excessive by TfNSW, then TfNSW may direct the Supplier to select another option and the Supplier must comply with that direction.

(d) The steps required for the Supplier to comply with its obligations under paragraphs 2.3(b) and 2.3(c) are at the Supplier's sole cost and expense.

3. Source Code

3.1 Escrow Agreement

If required by TfNSW, the Supplier must, following a Variation directed under this deed, enter into an Escrow Agreement with RailCorp, TfNSW and the Escrow Agent:

(a) to set out the terms on which all Relevant Source Code and Escrow Information will be held in escrow by the Escrow Agent; and

(b) on the same terms as the Escrow Agreements entered into pursuant to the Delivery Deed.
4. Trade Mark Licence

4.1 Licence

TfNSW grants to the Supplier a non-exclusive licence to use the Trade Marks during the Contract Term for the purposes of the TLS Phase Activities.

4.2 Restrictions

The Supplier must not:

(a) use the Trade Marks for any purposes other than for the purposes of the TLS Phase Activities, without TfNSW's prior written consent; or

(b) use the Trade Marks for any unlawful purpose.

4.3 Directions

The Supplier agrees to observe all directions notified to it by TfNSW regarding such matters as:

(a) the nature, standards, characteristics and quality of the Trade Mark Materials, or any goods upon which, or services in respect of which, the Trade Marks are to be used; and

(b) the manner in which the Supplier uses any of the Trade Marks, including in the Trade Mark Materials.

4.4 TfNSW's rights in respect of Trade Marks

The Supplier agrees that the Supplier must not:

(a) use the Trade Marks in any way which is likely to harm or prejudice TfNSW's or any NSW Rail Entities' rights in the Trade Marks;

(b) apply to register in any territory any trade mark, or apply to register any business name, company name or internet domain name that comprises or contains the Trade Marks (or any of them) or any words or images that are substantially identical with, or deceptively similar to, the Trade Marks (or any of them), without the prior written consent of TfNSW; or

(c) challenge or in any way impugn:

(i) TfNSW's or the relevant NSW Rail Entity's complete ownership of, or rights to use, the Trade Marks; or

(ii) the validity of, or TfNSW's or any NSW Rail Entity's title to, any applications for registration made by TfNSW or any NSW Rail Entity, or any registrations obtained by TfNSW or any NSW Rail Entity in respect of the Trade Marks.

4.5 Goodwill in Trade Marks

All use of the Trade Marks as between TfNSW and the Supplier shall enure for the benefit of TfNSW, and any goodwill arising in respect of any of the Trade Marks is exclusively the property of TfNSW.
4.6 Limitations on rights granted

TfNSW and the Supplier agree that the licence granted to the Supplier under paragraph 4.1 excludes:

(a) the right to commence an action for trade mark infringement under section 26(1)(b) of the Trade Marks Act 1995 (Cth), which TfNSW expressly reserves to itself (for itself and on behalf of the NSW Rail Entities) in all instances; and

(b) the rights of an ‘authorised user’ of a trade mark referred to in sections 26(1)(c), (d), (e) and (f) of the Trade Marks Act 1995 (Cth).
# Schedule 4 – Supplier Group Structure and Key Personnel

## 1. Supplier Group Structure

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downer EDI Limited</td>
<td>(Guarantor)</td>
</tr>
<tr>
<td>Downer EDI Rail Pty Limited</td>
<td>(Supplier)</td>
</tr>
</tbody>
</table>

## 2. Key Personnel

### 2.1 Supplier’s Key Personnel

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
<th>Position Description Attributes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supplier’s Representative</strong></td>
<td>[Contracts Director - NSW Passenger Fleets]</td>
<td>Core Accountabilities - Has overall responsibility for the successful delivery of the Project including operational and financial performance. Ensures the delivery of the Project is within scope according to the required contractual, quality, safety and environmental specifications and obligations. Qualifications &amp; Experience - Proven ability to effectively deliver change strategies, build relationships, and engage stakeholders with extensive experience and proven abilities in managing the Through Life Support of passenger trains within multi-disciplinary maintenance facilities.</td>
</tr>
<tr>
<td><strong>Project Manager</strong></td>
<td>[Contracts Director - NSW Passenger Fleets]</td>
<td>Core Accountabilities - Has overall responsibility for the successful delivery of the Project including operational and financial performance. Ensures the delivery of the Project is within scope according to the required contractual, quality, safety and environmental specifications.</td>
</tr>
<tr>
<td>Position [TfNSW proposed title]</td>
<td>Name</td>
<td>Position Description Attributes</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Proven ability to effectively deliver change strategies, build relationships, and engage stakeholders with extensive experience and proven abilities in managing the Through Life Support of passenger trains within multi-disciplinary maintenance facilities</td>
</tr>
<tr>
<td>Project Commercial Manager</td>
<td></td>
<td>Core Accountabilities</td>
</tr>
<tr>
<td>[Commercial manager]</td>
<td></td>
<td>Manages all commercial issues, including minor and major contract disputes when delegated by senior management</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Negotiates contract terms and conditions with customers, subcontractors and suppliers, in liaison with the senior management team and Project management</td>
</tr>
<tr>
<td>Project Engineering Manager - Rolling Stock</td>
<td></td>
<td>Qualifications &amp; Experience</td>
</tr>
<tr>
<td>[Passenger Services Engineering Manager]</td>
<td></td>
<td>Qualifications in Law or associated commercial disciplines, with a minimum of 5 years' experience in managing contractual arrangements on large scale projects</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Core Accountabilities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Provides engineering leadership in evaluating technical solutions to ensure the fleet will fulfil contractual obligations relative to the cost, performance and future demands</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Manages a team of engineers supporting Maintenance and Project activities, including developing and maintaining engineering technical documents including work and test instructions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Qualifications &amp; Experience</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Degree qualified in appropriate an engineering discipline or equivalent with a minimum of 10 years' experience and proven track record in the application of engineering and assurance processes in the rail sector</td>
</tr>
<tr>
<td>Lead Electrical Engineer - Rolling Stock</td>
<td></td>
<td>Core Accountabilities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Management of electrical engineering resource to achieve project deliverables</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Responsible for electrical engineering integration, design activities and approvals in line with Downer process and procedures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Qualifications &amp; Experience</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Qualifications in Electrical Engineering or similar</td>
</tr>
<tr>
<td>Position [TfNSW proposed title]</td>
<td>Name</td>
<td>Position Description Attributes</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>Lead Mechanical Engineer– Rolling Stock</td>
<td></td>
<td>with 5 to 7 years’ relevant experience in a Rollingstock environment</td>
</tr>
<tr>
<td><strong>Core Accountabilities</strong></td>
<td></td>
<td>Responsible for changes to (mechanical) configuration to meet reliability and operational requirements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Responsible for assessing concessions arising from departures from specification/baseline configuration</td>
</tr>
<tr>
<td><strong>Qualifications &amp; Experience</strong></td>
<td></td>
<td>Qualifications in Mechanical Engineering or an equivalent discipline with a minimum of 10 years’ mechanical engineering experience in the Rollingstock sector</td>
</tr>
<tr>
<td>Quality System and Assurance Lead – Rolling Stock [Configuration &amp; Safety Assurance Manager]</td>
<td></td>
<td>Ensures adequate systems are in place to demonstrate compliance with all Rail Safety legislation for the Project</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Conducts regular internal audits of Rail Safety procedures, follows up with the relevant personnel, verifies implementation of preventative and corrective actions</td>
</tr>
<tr>
<td><strong>Core Accountabilities</strong></td>
<td></td>
<td>Qualifications in an appropriate engineering discipline or equivalent with a minimum of 7 years’ experience and proven track record in the application of systems and safety assurance in rail sector</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Demonstrable experience in the application of relevant safety standards such as EN50126, EN50128, EN50129, AS4292</td>
</tr>
<tr>
<td>Lead Safety &amp; Reliability Engineer [Maintenance Engineering Lead]</td>
<td></td>
<td>Ongoing management and improvement of Reliability, Availability and Maintainability (RAM), Systems Safety Management Plan and Technical Maintenance Plan to ensure compliance with contractual train performance obligations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ensure compliance with EN50126, Rail Safety National Law</td>
</tr>
<tr>
<td><strong>Qualifications &amp; Experience</strong></td>
<td></td>
<td>Engineering degree or equivalent with strong electronics and mechanical aptitude with at least five years’ related Rollingstock experience</td>
</tr>
<tr>
<td>Position [TfNSW proposed title]</td>
<td>Name</td>
<td>Position Description Attributes</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>------</td>
<td>---------------------------------</td>
</tr>
</tbody>
</table>
| TLS Manager [Fleet Operations Manager] | | Core Accountabilities  
Manages day-to-day activities and coordinates activities within the Depot to ensure work output is in accordance with schedule requirements, Technical Maintenance Plans, and specified standards  
Develops and implements plans to improve the cost efficiency of Rollingstock assets and meet agreed levels of financial performance  
Qualifications & Experience  
Qualifications in Engineering, or relevant Trades experience with a minimum of 5 years’ fleet operations management experience |
| TLS Lead Engineer [Passenger Services Engineering Manager] | | Core Accountabilities  
Provides engineering leadership in evaluating technical solutions to ensure the fleet will fulfil contractual obligations relative to the cost, performance and future demands  
Manages a team of engineers supporting Maintenance and Project activities, including developing and maintaining engineering technical documents including work and test instructions  
Qualifications & Experience  
Qualifications in an electrical or mechanical discipline with at least 5 years’ experience managing fleet engineering requirements |
## Schedule 5 – Significant Contracts

<table>
<thead>
<tr>
<th>System</th>
<th>Nominated Significant Contractor</th>
<th>Role in TLS Phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air conditioning modules</td>
<td></td>
<td>Technical support, material supply and overhaul</td>
</tr>
<tr>
<td>Traction and main power system and cabling</td>
<td></td>
<td>Technical support, material supply and overhaul</td>
</tr>
<tr>
<td>Couplers</td>
<td></td>
<td>Technical support, material supply and overhaul</td>
</tr>
<tr>
<td>Gangways</td>
<td></td>
<td>Technical support, material supply and overhaul</td>
</tr>
<tr>
<td>Braking system and pneumatics</td>
<td></td>
<td>Technical support, material supply and overhaul</td>
</tr>
<tr>
<td>Train Information System</td>
<td></td>
<td>Technical support, material supply and overhaul</td>
</tr>
<tr>
<td>Civil and infrastructure engineering (e.g. for building modifications, track and OHL realignment and maintenance facility modifications)</td>
<td></td>
<td>Inspection/Design/Upgrade</td>
</tr>
<tr>
<td>Civil and infrastructure engineering (e.g. for building modifications, track and OHL realignment and maintenance facility modifications)</td>
<td></td>
<td>Inspection/Design/Upgrade</td>
</tr>
<tr>
<td>System</td>
<td>Nominated Significant Contractor</td>
<td>Role in TLS Phase</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>----------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>Set and Maintenance Facility cleaning services</td>
<td></td>
<td>Cleaning subcontractor</td>
</tr>
<tr>
<td>Waste management services</td>
<td></td>
<td>Waste management services</td>
</tr>
<tr>
<td>Spares supply and ongoing technical support</td>
<td></td>
<td>Material supply and technical support</td>
</tr>
</tbody>
</table>
# Schedule 6 - Information Documents

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Rev</th>
<th>Date</th>
<th>Drawing / document number</th>
<th>File Name</th>
<th>Electronic Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Sydney Trains (RailCorp) Standards</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>A2</td>
<td>Floor Panels for Rolling Stock Specification FE 087-04</td>
<td>1.3</td>
<td>22 Sep 2004</td>
<td>FE 087-04</td>
<td>FE087-04</td>
<td>pdf</td>
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<tr>
<td>A5</td>
<td>Incident Management Framework Part 3 - Roles and Responsibilities</td>
<td>2.1</td>
<td>20 Nov 2014</td>
<td>-</td>
<td>Incident Management Framework - Part 3 Roles and Responsibilities</td>
<td>pdf</td>
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<tr>
<td>A6</td>
<td>State Rail Presentation Staff Cleaning Manual</td>
<td>2a</td>
<td>01 Jun 2004</td>
<td>-</td>
<td>TRAIN PRESENTATION MANUAL State Rail Presentation v2a 2004</td>
<td>pdf</td>
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<tr>
<td>A8</td>
<td>Sydney Trains Train Working Procedures TWP100, Responsibilities of Train Crew</td>
<td>4.0</td>
<td>29 Nov 2015</td>
<td>TWP 100</td>
<td>TWP100</td>
<td>pdf</td>
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<tr>
<td>B</td>
<td>Data Room</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B1</td>
<td>Sydney Growth Trains Data Room User Guide</td>
<td>1</td>
<td>-</td>
<td>4910208_1</td>
<td>SGT - RFP - Data Room User Guide</td>
<td>pdf</td>
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<tr>
<td>C</td>
<td>TfNSW Reference Documents</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C1</td>
<td>TfNSW Enterprise Risk Management (TERM) Standard</td>
<td>4.0</td>
<td>14 Jan 2015</td>
<td>30-ST-164</td>
<td>TfNSW Enterprise Risk Management Standard - 30-ST-164</td>
<td>pdf</td>
</tr>
<tr>
<td>No.</td>
<td>Description</td>
<td>Rev</td>
<td>Date</td>
<td>Drawing / document number</td>
<td>File Name</td>
<td>Electronic Format</td>
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**Mortdale Maintenance Centre**

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| E100| Preliminary Site Investigation Mortdale Passenger Fleet Maintenance Centre, NSW | -   | 09/09/2015     | S4040401_RPT_ Mortdale_9Sept05 | CLR01698 - Mortdale PFM Centre PSI | pdf               |
| E101| Mortdale SS HV Operating Diagram                                           | L   | 04/06/2010     | 230                        | Mortdale_230_L          | pdf               |
| E102| Mortdale Current Meter Readings – Maintenance Roads and Administration Building | -   | 27/06/2016     | -                          | Mortdale Water Usage (Meters 1 and 3)           | pdf               |</p>
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Schedule 7 – Review Procedures

1. **General**

   This Schedule applies:

   (a) where any documents, plans, processes, programs or manuals in any format, or any other document or thing must be submitted to TfNSW, TfNSW’s Representative or another person (as applicable) (Reviewing Party) for Review under this deed (Submitted Document); and

   (b) to define the Review Procedures.

2. **Submission and review**

   2.1 **Submission**

   When documents and other information are submitted for Review, the submission must include:

   (a) details of the Submitted Document, its nature and the relevant clause, schedule or annexure of this deed under which it is submitted for Review;

   (b) the Submitted Document; and

   (c) any other information required under this deed or otherwise necessary for the Reviewing Party to review the Submitted Document and respond in accordance with these Review Procedures.

   2.2 **Review**

   The Reviewing Party may review the Submitted Document and provide any comments in writing to the Supplier in accordance with these Review Procedures and this deed within the Review Period.

   2.3 **Review Period**

   The Review Period for a Submitted Document is 20 Business Days from the date the relevant Reviewing Party receives (or is deemed, pursuant to any determination of the issue under the Dispute Resolution Procedures, to have received) the relevant information reasonably required to support the request for Review or comment or in order to make the election or determination. Provided that in each case if at any time during the Review Period a Reviewing Party reasonably requires additional information concerning the request for Review or comment or in order to make the election or determination and such information is available or able to be obtained if the Supplier uses reasonable endeavours to obtain it, then the Review Period will not include the time that the Supplier takes to provide that information after the request for that additional information is made.

3. **Further Information**

   The Supplier must as soon as reasonably practicable upon request by the Reviewing Party submit any further or other information, data or documents, and make available appropriately qualified Supplier’s Personnel, that the Reviewing Party reasonably requires in order to be able to review theSubmitted Document and respond in accordance with these Review Procedures.
4. Comment on Submitted Document

4.1 No comment on Submitted Document

The Reviewing Party may return a Submitted Document to the Supplier with or without comment. If the Reviewing Party has no comments on a Submitted Document, the Reviewing Party may mark that document with a statement 'No comment'.

4.2 No intention to comment

If the Reviewing Party decides that it does not intend to Review, comment on or respond to any Submitted Document in accordance with paragraphs 2.1 or 3 then the Reviewing Party must use reasonable endeavours to advise the Supplier as soon as possible after making that decision, and if it does so, the Reviewing Party will be deemed to have returned the Submitted Document to the Supplier marked with the statement 'No comment'.

4.3 Failure to comment

Subject to paragraph 4.4, if the Reviewing Party fails to comment on or respond to any Submitted Document submitted in accordance with paragraphs 2.1 and 3 within the Review Period, then the Reviewing Party will be deemed to have returned the Submitted Document to the Supplier marked with the statement 'No comment'.

4.4 Late comments

If a Reviewing Party fails to comment on or respond to any Submitted Document within the relevant Review Period, or otherwise wishes to raise a comment on a Submitted Document after the expiry of the Review Period for the Submitted Document, it will nevertheless be entitled to later make comments on the relevant Submitted Document, in which case the provisions of these Review Procedures will apply to those comments as if they had been provided within the Review Period.

4.5 Response to Submitted Document

The Reviewing Party may provide comments in respect of a Submitted Document in accordance with paragraph 5.

4.6 Substantiate comments

If the Reviewing Party provides the Supplier with comments in respect of the Submitted Document under paragraph 5, the Reviewing Party must provide sufficient detail to the Supplier to substantiate those comments.

5. Grounds on which Reviewing Party may make comments

5.1 General

The Reviewing Party may provide comments in respect of a Submitted Document where:

(a) the Submitted Document:

(i) is incomplete, of poor quality or otherwise is not in a condition to allow the Reviewing Party to adequately review it;

(ii) is not fit for purpose;

(iii) does not comply with relevant Mandatory Requirements or Approvals (including in respect of safety); or
(iv) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of this deed in respect of the Submitted Document;

(b) the Reviewing Party considers that the Supplier's ability to perform its obligations under this deed or another Project Agreement would be adversely affected by the implementation of the Submitted Document;

(c) the implementation of the Submitted Document or proceeding on the basis of the Submitted Document would adversely affect any right of TfNSW, RailCorp, the Operator or another NSW Rail Entity under this deed or another Project Agreement or its ability to enforce any such right;

(d) the ability of TfNSW, RailCorp, the Operator or another NSW Rail Entity to perform their respective obligations under this deed or another Project Agreement would be adversely affected by the implementation of the Submitted Document;

(e) the ability of TfNSW, the Operator or another NSW Rail Entity to undertake the Operations Functions would be adversely affected by the implementation of the Submitted Document; or

(f) the implementation of the Submitted Document would be likely to result in an increase to TfNSWs or RailCorp's liabilities or potential or contingent liabilities under this deed or another Project Agreement.

5.2 Programs

Where the Submitted Document is a Program required under this deed, in addition to its rights under paragraph 5.1, the Reviewing Party may provide comments in respect of the Submitted Document on the grounds that compliance with the Program would (on the balance of probabilities):

(a) adversely affect the safety of any person;

(b) mean that the period for carrying out programmed work exceeds or falls short of the period reasonably required for that work; or

(c) increase the likelihood of disruption to the conduct of the Operations Functions by TfNSW, the Operator or another NSW Rail Entity.

5.3 Project Plans

Where the Submitted Document is a Project Plan, or any revision to any such plan, in addition to its rights under paragraph 5.1, the Reviewing Party may provide comments in respect of the Submitted Document and the Supplier must address those comments on the Submitted Document where:

(a) carrying out the relevant TLS Phase Activities in the periods or at the times suggested is reasonably likely to interfere with the carrying out of the Operations Functions;

(b) there is a risk that the safety of any person would be adversely affected;

(c) the period for carrying out work under the plan would exceed or fall short of the period reasonably required for the relevant work;

(d) the plan is otherwise not in accordance with Good Industry Practice; or

(e) the Life Cycle Cost of the Assets to TfNSW, the Operator or the NSW Rail Entities will be increased.
5.4 Technical Documents

Where the Submitted Document is a Technical Document, in addition to its rights under paragraph 5.1, the Reviewing Party may provide comments in respect of the Submitted Document and the Supplier must address those comments on the Submitted Document where the Reviewing Party considers that the relevant Technical Document:

(a) fails to mitigate safety risk so far as is reasonably practicable;

(b) is not a consistent or logical extension of the Design Books or previously Confirmed Technical Documents;

(c) is not consistent with the physical configuration of the Assets;

(d) fails to consider or address feedback from stakeholders and User Groups;

(e) is not in accordance with Good Industry Practice; or

(f) if implemented, would result in:

(i) an increase in the Life Cycle Costs of the Assets; or

(ii) a reduction in the performance of the Assets, including with respect to:

A. capacity;

B. quality of the Customer experience and amenity;

C. quality of the Crew amenity;

D. safety;

E. aesthetics, cleanliness, condition and visible features;

F. Design Life;

G. maintainability;

H. durability, including resistance to Graffiti and Vandalism;

I. reliability;

J. whole of life performance;

K. environmental performance;

L. sustainability performance;

M. functional performance; or

N. security.

6. Document management

6.1 Copies of Submitted Documents

Unless otherwise specified in this deed, the Supplier must provide an electronic copy of all Submitted Documents to the Reviewing Party for Review in accordance with these Review
Procedures and the SPR via the PDCS or, if TfNSW has not or does not give the notification referred to in clause 48.1(b), in accordance with clause 48.1.

6.2 Register of Submitted Documents

The Supplier must compile and maintain a register of the date of receipt and content of each Submitted Document, and must regularly update that register to record:

(a) each Submitted Document to which it receives a response or comment from the Reviewing Party, including that response or comment; and

(b) each Submitted Document to which it receives no response or comment or is deemed not to receive any response or comment from the Reviewing Party in accordance with paragraphs 4.1 to 4.3.

7. Compliance with Confirmed Documents

Where the Reviewing Party comments on a Submitted Document under paragraph 5 then, provided that the Supplier does not give notice of a Technical Dispute Matter in accordance with paragraph 1.1 of Schedule 8 in relation to the Reviewing Party’s comments on that Submitted Document, the Supplier must, prior to proceeding with any relevant part of the TLS Phase Activities (or anything else the subject of the Submitted Document) in accordance with the Submitted Document:

(a) amend the Submitted Document in accordance with the comments of the Reviewing Party to ensure that the Submitted Document meets the requirements of this deed; and

(b) re-submit the Submitted Document (as amended) to the Reviewing Party,

and the provisions of paragraphs 2 to 8 (inclusive) shall re-apply until such time as the Submitted Document is returned to the Supplier without any comment or with the statement 'No comment'.

8. Significance of Reviews

(a) The parties acknowledge and agree that these Review Procedures are solely for the purpose of enabling TfNSW to monitor the progress of, and provide feedback on, the Supplier’s compliance with the requirements of the Project Agreements in its conduct of the Project Activities.

(b) Nothing which occurs under these Review Procedures will:

(i) relieve the Supplier from, or alter or affect, the Supplier’s liabilities, obligations or responsibilities in relation to a Submitted Document whether under a Project Agreement or otherwise according to a Mandatory Requirement;

(ii) prejudice TfNSW’s rights against the Supplier whether under any Project Agreement or otherwise under a Mandatory Requirement; or

(iii) be construed as a direction by TfNSW or TfNSW’s Representative to do or not do anything.

(c) Neither TfNSW nor TfNSW’s Representative assumes or owes any duty of care to the Supplier to review or, if it does review, in reviewing the Submitted Documents submitted by the Supplier for errors, omissions or compliance with the Project Agreements or any Mandatory Requirement.
Schedule 8 – Dispute Resolution Procedures

1. Dispute Resolution

1.1 Notification

(a) Any Dispute must be resolved in accordance with these Dispute Resolution Procedures.

(b) A party that wishes to progress a Dispute must give the other party and TfNSW's Representative notice of the Dispute (Notice of Dispute) in accordance with the notice requirements set out in clause 48. The Notice of Dispute must:
   (i) specify the Dispute;
   (ii) provide particulars of the party’s reasons for being dissatisfied; and
   (iii) set out the position which the party believes to be correct.

1.2 Procedure to settle Disputes

(a) The procedure that is to be followed to resolve a Dispute notified under paragraph 1.1 is as follows:
   (i) for a Dispute about a matter that is a Technical Dispute Matter:
      A. first, negotiation under paragraph 1.3(b);
      B. second, referral of the Dispute for resolution by an Independent Expert under paragraph 1.4; and
      C. if, pursuant to paragraphs 1.4(1) or 1.4(m), any determination of an Independent Expert made in respect of the Dispute is not final and binding, then third, arbitration of the Dispute under paragraph 1.7.
   (ii) for a Dispute about any other matter:
      A. first, negotiation under paragraph 1.3(c); and
      B. second, mediation of the Dispute under paragraph 1.6; and
      C. third, arbitration of the Dispute under paragraph 1.7.

(b) A party may not commence court proceedings in relation to a Dispute until it has followed the procedures in this paragraph 1.2, unless the party is seeking appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not capable of being adequately compensated by an award of damages.

1.3 Negotiation

(a) Within three Business Days of a party issuing a Notice of Dispute to the other party, the parties must determine whether the Dispute is about a matter that is a Technical Dispute Matter.

(b) If the Dispute is about a matter that the parties have determined under paragraph 1.3(a) is a Technical Dispute Matter then, within five Business Days of a party issuing a Notice of Dispute to the other party:
1.4 Independent Expert (Technical Dispute Matters)

(a) If negotiations under paragraph 1.3(b) do not resolve a Dispute about a matter that is a Technical Dispute Matter within 10 Business Days after the Notice of Dispute was issued in respect of the Dispute then, unless otherwise agreed by the parties (in writing), the Dispute must be referred for resolution to an independent expert under this paragraph (Independent Expert).

(b) An Independent Expert must be chosen by the parties within five Business Days after the date referred to in paragraph 1.4(a) and appointed within a further five Business Days.

(c) If the parties fail to agree on the choice of an Independent Expert within the time referred to in paragraph 1.4(b), then TfNSW’s Representative may:

(i) nominate an Independent Expert from the appropriate discipline on the Technical Dispute Panel; or

(ii) if TfNSW’s Representative’s nominee is unable or unwilling to act, request the President or Acting President of the Australian Centre for International Commercial Arbitration (ACICA) or any person to whom the President of ACICA has delegated decision making authority, to nominate an alternative expert in accordance with paragraph 1.4(e).

(d) The parties may review and update the Technical Dispute Panel at any time but not more than once in every quarter after the date of this deed.

(e) The Independent Expert may be nominated by the President or Acting President of ACICA on the application of TfNSW’s Representative pursuant to paragraph 1.4(c)(ii), provided that:

(i) no person may be appointed to act as the Independent Expert under this paragraph unless qualified by education, experience and training to determine the relevant Technical Dispute Matter; and

(ii) unless the parties otherwise agree in writing, no person may be appointed as the Independent Expert who is (or has been at any time within the preceding three years) an employee of any party or any Associate of that party or who is (or has been at any time within the preceding three years) a consultant to or contractor of any party or any Associate of that party or who holds any significant financial interest in any party.
The parties shall enter into an agreement with the expert on the terms contained in Schedule 24 or such other terms as may be agreed between the parties and the Independent Expert (Independent Expert Determination Agreement).

The parties shall not withhold agreement to:

(i) any amendment the Independent Expert requests to be made to those terms contained in the Independent Expert Determination Agreement, provided the amendment is reasonable and does not conflict with this paragraph 1.4; or

(ii) any reasonable fees and disbursements the Independent Expert requests to be set out in the Independent Expert Determination Agreement.

The Independent Expert shall make the determination in accordance with:

(i) the Independent Expert Determination Agreement and this deed generally; and

(ii) the Expert Determination Rules (2010) published by the Resolution Institute (or by whichever entity subsequently replaces that entity, from time to time), or any rules published by that entity to replace such rules, from time to time, which the parties agree will be modified and amended as required to the extent that such rules conflict with the requirements of this deed or any other Project Agreement,

(Independent Expert Determination Rules).

An expert determination conducted in accordance with the Independent Expert Determination Agreement is not an arbitration.

If the Independent Expert does not submit the determination by the time required under or in accordance with the Independent Expert Determination Agreement, either party may, by notice to the other party, instigate the appointment of another Independent Expert in accordance with the provisions of this paragraph 1.4. On the appointment of a new Independent Expert, the appointment of the previous Independent Expert ceases, unless before the appointment of the new Independent Expert, the previous Independent Expert has submitted a final determination in the manner required, in which case the new Independent Expert must immediately be informed that his or her services will not be required.

The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise. The parties agree that any law or legislation relating to arbitration will not apply to that Independent Expert or the determinations or the procedure by which such determinations are reached.

The determination of the Independent Expert must be in writing and, unless clause 1.4(m) applies, following the expiry of the period of time allowed for a request for amendment under paragraph 1.4(n), will, to the extent permitted by law, save in the event of fraud, be final and binding on TfNSW, RailCorp and the Supplier unless within:

(i) 20 Business Days of receipt of the determination; or

(ii) 10 Business Days of the receipt of the determination amended under paragraph 1.4(n) or the notification by the Independent Expert that no amendment will be made to the determination,
a party gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration pursuant to paragraph 1.7. If a notice of dissatisfaction is given under this paragraph 1.4(i), the Independent Expert's determination will be binding on the parties and must be given effect until it is overturned or varied by the determination of the arbitrator.

(m) Notwithstanding paragraph 1.4(i), the determination of the Independent Expert will not be final and binding on TfNSW, RailCorp or the Supplier where the Dispute is about whether any relevant Technical Document, Deliverable or Asset:

(i) is fit for purpose; or

(ii) complies with the requirements of any Project Agreement.

(n) A party may request the Independent Expert to amend the determination within five Business Days of receipt of the determination and, following such a request by any party, the Independent Expert may amend the determination to correct:

(i) a clerical mistake;

(ii) an error from an accidental slip or omission;

(iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

(iv) a defect in form.

If a request for amendment to a determination is made by any party under this paragraph 1.4(n), the Independent Expert must amend the determination or notify the parties that no amendment will be made (as is applicable) within 5 Business Days of the request.

(o) Any determination of an Independent Expert which is final and binding will be determinative only of the matters in dispute which were referred to the Independent Expert and will not be binding on the parties in respect of a dispute in respect of any other matter (including related matters).

(p) Each party will bear its own costs relating to its participation in the Independent Expert process established by this paragraph 1.4, including preparation of submissions, attendance at conferences and legal expenses.

(q) The fees, expenses and costs of the Independent Expert will be borne equally between the parties unless otherwise determined by the Independent Expert.

1.5 Independent Expert – Related expert determinations

Where any Dispute is to be referred to the process provided in paragraph 1.4 and that Dispute involves issues that are substantially the same as, or connected with issues raised in a related dispute or difference between TfNSW or RailCorp and any other party or parties involved in the Project, and expert determination proceedings have already commenced in respect of the Dispute or the related dispute or disputes, TfNSW may, in its absolute discretion:

(a) join the Dispute to those existing expert determination proceedings by giving notice to all parties concerned and the relevant expert, and the expert in such proceedings will have the power to make such directions as are necessary to join the parties and the cause of action to enable the expert to make a determination in respect of the Dispute; or

(b) join the related dispute or disputes to the existing expert determination proceedings concerning the Dispute by giving notice to all parties concerned and
the relevant expert, and such parties will be considered parties to the expert
determination proceedings for the purposes of paragraph 1.4 and the Independent
Expert Determination Rules, and such rules will, to the extent possible, be
modified to accommodate this, and the expert in such proceedings will have the
power to make such directions as are necessary to join the parties and the cause
or causes of action to enable the expert to make a determination in respect of the
Dispute and the related dispute or disputes.

1.6 Mediation (non-Technical Dispute Matters)

(a) If negotiations between authorised senior representatives under paragraph 1.3(c)
do not resolve the Dispute within 20 Business Days of a party issuing a Notice of
Dispute to the other party then, unless otherwise agreed by the parties (in writing),
the Dispute must be referred to mediation under this paragraph.

(b) The mediator must be chosen by the parties from the Panel of Mediators within 25
Business Days of a party issuing a Notice of Dispute to the other party and
appointed within a further five Business Days.

(c) In the absence of agreement by the parties as to the mediator, the mediator will be
appointed on the application of either party by the President or Acting President of
ACICA or by any person to whom the President of ACICA has delegated decision
making authority.

(d) Each party to the mediation may appoint a person, including a legally qualified
person, to represent it or assist it in the mediation.

(e) All meetings and proceedings in relation to the mediation must be held at a place
determined by the mediator in the Sydney CBD, administered by ACICA and will
be conducted in accordance with the ACICA Mediation Rules (2007), which the
parties agree will be modified and amended as required to the extent that such
rules conflict with the requirements of this deed or any other Project Agreement.

(f) Each party will bear its own costs relating to the preparation for and attendance at
the mediation.

(g) The fees, expenses and costs of the mediator will be borne equally between the
parties.

(h) The mediation process will cease if the Dispute has not been settled within 20
Business Days of the mediator being appointed, or such longer time as may be
agreed by the parties in writing (having regard to the nature of the Dispute and the
time required to assemble relevant information).

1.7 Arbitration – General principles

(a) If:

(i) paragraphs 1.4(l) or 1.4(m) apply; or

(ii) mediation under paragraph 1.6 does not resolve the Dispute within 20
Business Days of the mediator being appointed, or such longer time as
may be agreed by the parties in writing (having regard to the nature of
the Dispute and the time required to assemble relevant information)
(Mediation Cut Off Date),

then, unless otherwise agreed by the parties, the Dispute will be referred to and
finally resolved by arbitration in accordance with either:

(iii) the rules of ACICA (ACICA Arbitration Rules); or
(iv) the Australian Centre for International Commercial Arbitration Expedited Arbitration Rules (ACICA Expedited Arbitration Rules),

which the parties agree will be modified and amended as required to the extent that such rules conflict with the requirements of this deed or any other Project Agreements.

(b) Notwithstanding any provision of the ACICA Expedited Arbitration Rules to the contrary (including monetary thresholds), if:

(i) a party considers that a Dispute about a matter may be resolved in accordance with the ACICA Expedited Arbitration Rules and that party wishes to progress the Dispute in accordance with the ACICA Expedited Arbitration Rules, that party must give the other party notice that it considers that the Dispute may be resolved in accordance with the ACICA Expedited Arbitration Rules (Arbitration Expedition Notice) within three Business Days after the Mediation Cut Off Date; and

(ii) the other party agrees (in writing) that the matter in dispute is suitable to be resolved in accordance with the ACICA Expedited Arbitration Rules, the other party must advise the party that provided the Arbitration Expedition Notice that the proposed use of the ACICA Expedited Arbitration Rules is accepted in writing within two Business Days of receipt of the Arbitration Expedition Notice,

then the Dispute will be referred to and finally resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules.

(c) If:

(i) no Arbitration Expedition Notice is given; or

(ii) within two Business Days of the issue of an Arbitration Expedition Notice, the parties have not agreed in writing whether the matter in dispute will be resolved in accordance with the ACICA Expedited Arbitration Rules,

then the Dispute will be referred to and finally resolved by arbitration in accordance with the ACICA Arbitration Rules.

(d) Within two Business Days after the rules for the arbitration are determined in accordance with paragraph 1.7(b) or paragraph 1.7(c), the party who issued the Notice of Dispute in relation to the relevant Dispute must issue a notice of arbitration to ACICA in accordance with the ACICA Arbitration Rules or the ACICA Expedited Arbitration Rules as the case may be (Notice of Arbitration).

(e) The parties agree that there will be one arbitrator.

(f) The seat of the arbitration will be Sydney.

(g) The language of the arbitration will be English.

(h) The parties further agree to the following general principles relating to the procedure of the arbitration:

(i) arbitration has been chosen for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

(ii) any arbitration conducted pursuant to this paragraph 1.7 shall not necessarily mimic court proceedings and the practices of those courts
will not regulate the conduct of the proceedings before the arbitral tribunal;

(iii) in conducting the arbitration, the arbitrator must take into account the matters set out above, particularly in deciding issues such as:

A. how many written submissions will be allowed;
B. where appropriate, the length of written submissions;
C. the extent of document discovery permitted, if any;
D. the consolidation of arbitration proceedings, when requested;
E. the joinder of parties or the consolidation of proceedings, when requested;
F. the length of any hearing; and
G. the number of experts, if any, each party is allowed to appoint; and

(iv) the arbitrator has the power to grant all legal, equitable and statutory remedies, except punitive damages.

(i) The parties agree that the arbitrator will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings.

(j) All evidence in chief will be in writing, unless otherwise ordered by the arbitrator.

(k) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitrator.

(l) After consultation with the parties, the arbitrator will determine whether to conduct the proceedings on the basis of documents and other materials only or whether an oral hearing will be held. In doing so the arbitrator shall have particular regard to the parties' request for an expedited procedure and the rules of natural justice.

(m) If the arbitrator determines that an oral hearing will be conducted, the following principles will apply in respect of the oral hearing:

(i) the duration of the oral hearings will be fixed by the arbitrator;

(ii) unless otherwise ordered by the arbitrator, the oral hearing will be conducted on a stop-clock basis with the effect that the time available to the parties will be split equally between the parties so that each party shall have the same time to conduct its case unless, in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the parties;

(iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;

(iv) not less than 10 Business Days prior to the date fixed for the oral hearing, or any other period of time specified by the arbitrator, each party shall give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination; and
(v) in exceptional circumstances the arbitrator may extend the time for the oral hearing set pursuant to paragraph 1.7(m)(i).

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

(o) The arbitrator has the power, on the application of any party to this arbitration agreement, to allow a third party, who the arbitral tribunal 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.

(p) Any arbitration award will be final and binding upon the parties.

(q) This arbitration agreement is governed by and must be construed according to the laws applying in New South Wales.

### 1.8 Arbitration – Related arbitral proceedings

Where any Dispute is to be resolved by arbitration in accordance with paragraph 1.7 and that Dispute involves issues that are substantially the same as, or connected with issues raised in a related dispute or difference between TfNSW or RailCorp and any other party or parties involved in the Project, and arbitral proceedings have already commenced in respect of the Dispute or the related dispute or disputes, TfNSW may, in its absolute discretion:

(a) join the Dispute to those existing arbitral proceedings by giving notice to all parties concerned and the arbitral tribunal, and the arbitral tribunal in such proceedings will have the power to make such directions as are necessary to join the parties and the cause of action to enable the arbitral tribunal to make an award in respect of the Dispute; or

(b) join the related dispute or disputes to the existing arbitral proceedings concerning the Dispute by giving notice to all parties concerned and the arbitral tribunal, and such parties will be considered parties to the arbitral proceedings for the purposes of paragraph 1.7 and the ACICA Arbitration Rules or ACICA Expedited Arbitration Rules, and such rules will, to the extent possible, be modified to accommodate this, and the arbitral tribunal in such proceedings will have the power to make such directions as are necessary to join the parties and the cause or causes of action to enable the arbitral tribunal to make an award in respect of the Dispute and the related dispute or disputes.

### 1.9 Continued performance of obligations

(a) Notwithstanding the existence of a Dispute, each of the parties must continue to perform its obligations under the Project Agreements, save for the payment of any money which is the subject of the Dispute.

(b) Paragraph 1.9(a) will not apply where a Project Agreement has been terminated and does not prevent TfNSW from exercising its rights of set-off under a Project Agreement.

### 1.10 Final and binding

Where the Dispute Resolution Procedures state that the settlement or the final resolution of any Dispute arising under or in connection with a Project Agreements, including any Dispute as to the Supplier's liability under or in connection with the Project Agreement, in accordance with the procedures provided for in this deed or otherwise as agreed between the parties (in writing), will be final and binding on the Supplier, the Supplier must not reopen, revisit or
otherwise dispute that settlement or resolution or the subject matter of that settlement or resolution.

2. Technical Dispute Panel

The Technical Dispute Panel is comprised of the following persons:

(a)
(b) 
(c)

3. Exclusion from determination or award

(a) The powers conferred and restrictions imposed on a court by Part 4 of the Civil Liability Act 2002 (NSW) are not conferred on an Independent Expert or an arbitrator appointed in accordance with these Dispute Resolution Procedures.

(b) The Independent Expert or 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 paragraph, have applied to any Dispute referred to the Independent Expert or arbitrator.
Schedule 9 – Maintenance Facility and Out Depots

1. Access and tenure

1.1 Maintenance Facility Licence

TfNSW must grant (or procure the grant) to the Supplier and the Supplier accepts a licence (Maintenance Facility Licence) over the Maintenance Facility Site:

(a) commencing on the Date of MF Completion;
(b) until the Maintenance End Date;
(c) substantially on the terms set out in Schedule 20; and
(d) to be formally completed in accordance with paragraphs 1.3 and 1.4.

1.2 Preparation of licence plan

TfNSW must, at its cost, procure preparation of a licensing plan of the Maintenance Facility Site in consultation with the Supplier.

1.3 Preparation and execution of the Maintenance Facility Licence

(a) The Supplier must, as soon as practicable after the date of this deed, provide TfNSW with all information necessary for TfNSW to prepare the Maintenance Facility Licence.
(b) TfNSW must prepare and deliver execution copies of the Maintenance Facility Licence (in duplicate) to the Supplier for execution not later than five Business Days after the Maintenance Facility Licence Commencement Date.
(c) The Supplier must execute the Maintenance Facility Licence (in duplicate) and provide the executed copies of that licence to TfNSW's Representative within five Business Days of receipt of that licence from TfNSW.
(d) As soon as reasonably practicable on receipt from the Supplier, TfNSW must execute the Maintenance Facility Licence.
(e) Following execution of the Maintenance Facility Licence, TfNSW will provide a counterpart of the executed licence to the Supplier.

1.4 Completion of licence details

(a) The Supplier and RailCorp authorise TfNSW to complete the details in the reference schedules of the Maintenance Facility Licences.
(b) TfNSW and the Supplier agree to be bound by the provisions of the Maintenance Facility Licence on and from the Maintenance Facility Licence Commencement Date even if the Maintenance Facility Licence has not been executed by the relevant date.

1.5 Licence to access Out Depots

(a) TfNSW must procure the grant to the Supplier, and the Supplier accepts the grant, of a non-exclusive right to access Out Depots for the purposes of the Supplier and the Supplier's Personnel.
(i) carrying out repairs and maintenance to the Sets when they are on the Network; and

(ii) recovering Sets which have broken down in service.

(b) When exercising its rights to access Out Depots under paragraph 1.5(a), the Supplier must:

(i) comply with and ensure that the Supplier’s Associates comply with all reasonable requirements and directions of the Operator and all other requirements of this deed; and

(ii) minimise any disruption, interference, delay or inconvenience to:

A. the Operator;
B. other users of the relevant Out Depot; and
C. other parties having rights of access to the relevant Out Depot.

2. **Land and the Environment**

2.1 **Environmental liability and obligations**

The Supplier must:

(a) promptly remove any Waste, including rubbish, refuse, debris and other materials, resulting from the TLS Phase Activities;

(b) not cause any Contamination of any Maintenance Location or any other land;

(c) not cause any Pollution to any Maintenance Location unless it is authorised pursuant to any Environmental Law or Approval;

(d) take reasonable steps to prevent the spillage or escape of Hazardous Materials or other materials onto, from or into any Maintenance Location;

(e) immediately notify TfNSW and any relevant Authority of any event or incident which may result in Pollution or Contamination of any Maintenance Location or involves the spillage or escape of Hazardous Materials or injury or damage to persons or property;

(f) take immediate steps to stop, control, and clean up any Pollution and/or spillage or escape of any Hazardous Materials;

(g) immediately obtain any reports, surveys or audits by a Site Auditor to enable TfNSW to determine whether a breach of the terms of this clause has occurred; and

(h) comply with the directions of TfNSW in accordance with paragraph 2.5.

2.2 **Baseline Environmental Site Assessment**

(a) The Supplier must obtain and provide to TfNSW the Baseline Environmental Site Assessment(s) for the Maintenance Facility Site, no later than one month prior to the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities.
(b) TfNSW and the Supplier acknowledge and agree that the Maintenance Facility Site will be in the condition as set out in the relevant Baseline Environmental Site Assessment(s) as at the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities.

(c) The Supplier accepts the Maintenance Facility Site in its condition (including any Baseline Pre Existing Contamination) at the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities and as set out in the Baseline Environmental Site Assessment(s).

2.3 Environmental Monitoring Report

The Supplier must obtain and provide to TfNSW the Environmental Monitoring Report for the Maintenance Facility Site, every five years from the commencement of the Maintenance Facility Licence.

2.4 Responsibility for Contamination

(a) TfNSW is responsible for any Baseline Pre Existing Contamination (including the soils and groundwater) on, in or under the Maintenance Facility Site, prior to the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities.

(b) Subject to paragraph 2.4(c), the Supplier is responsible for all Contamination (including the soils and groundwater) present on, in or under the Maintenance Facility Site from the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities in respect of a part or parts of the Maintenance Facility Site, including Contamination:

(i) which is disturbed by or interfered with in the carrying out of the TLS Phase Activities or the MF Works Activities;

(ii) migrates to or from the Maintenance Facility Site as a result of the TLS Phase Activities or the MF Works Activities; or

(iii) otherwise arises out of or in connection with the TLS Phase Activities or the MF Works Activities.

(c) The Supplier is not responsible for Contamination from the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities if the Supplier establishes on reasonable evidence that the Contamination:

(i) migrated to the Maintenance Facility Site from neighbouring land or waterways not in the possession or control of the Supplier (unless the Supplier caused or contributed to the Contamination);

(ii) did not occur as part of the TLS Phase Activities or the MF Works Activities, and the Contamination was caused by a person other than the Supplier;

(iii) is Baseline Pre Existing Contamination; or

(iv) is Proven Pre Existing Contamination.

2.5 Remediation

(a) The Supplier must do whatever is necessary or TfNSW reasonably requires to:
(i) Remediate any Contamination on, in or under the Maintenance Facility Site, if it:

A. arises in connection with the Project Activities;

B. first occurred or was first caused after the Commencement Date; or

C. is identified to be the responsibility of the Supplier in the Final Environmental Site Assessment,

so that the Maintenance Facility Site is in a state as close as practicable to the state which the Maintenance Facility Site was in before the act or omission in connection with the Project Activities occurred or the state of the Maintenance Facility Site as set out in the Baseline Environmental Site Assessment for that site (where it exists);

(ii) clean up, manage or abate any Pollution occurring:

A. on or from the Maintenance Facility Site arising in connection with the Project Activities;

B. if the Pollution first occurred or was first caused after the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities; or

C. is identified to be the responsibility of the Supplier in the Final Environmental Site Assessment,

so that the Maintenance Facility Site is in a state as close as practicable to the state which the Maintenance Facility Site was in before the act or omission in connection with the Project Activities occurred or the state of the Maintenance Facility Site as set out in the Baseline Environmental Site Assessment for that site (where it exists);

(iii) remedy any breach of an Environmental Law that occurs on or affects the Maintenance Facility Site:

A. arising in connection with the Project Activities; or

B. after the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities,

as soon as it occurs (including by restoring the Maintenance Facility Site to a state as close as practicable to the state which the Maintenance Facility Site was in before that breach);

(iv) address any Environmental Hazard that has arisen, or in respect of which the condition has changed, after the date the Supplier is granted access to the Maintenance Facility Site under the MF Works Deed for the MF Works Activities; and

(v) remedy any breach of this paragraph 2.

(b) The Supplier must provide TfNSW with:

(i) a draft Final Environmental Site Assessment for the Maintenance Facility Site at least twelve months prior to the Expiry Date; and
(ii) the Final Environmental Site Assessment for the Maintenance Facility Site, at least six months prior to the Expiry Date.

(c) TfNSW may provide written notification to the Supplier requiring the Supplier to:

(i) immediately undertake any recommendations specified by the Site Auditor in a Final Environmental Site Assessment;

(ii) immediately thereafter, provide TfNSW with a validation report from the Site Auditor that certifies that the recommendations in the Final Environmental Site Assessment have been completed by the Supplier; and

(iii) provide the validation report and a Site Audit Statement for the Maintenance Facility Site to TfNSW prior to the Maintenance End Date certifying that the Maintenance Facility Site is in the same condition as set out in the Baseline Environmental Site Assessment for that site.

2.6 NGERS and EEO Act

The Supplier acknowledges and agrees that it is responsible for and will comply with any obligations arising in respect of the TLS Phase Activities under the NGER Legislation and/or EEO Act.

2.7 Provision and reporting of Emissions and Energy Data

(a) This clause applies if, despite the operation of paragraph 2.6, TfNSW or RailCorp incurs liability under or in connection with the NGER Legislation as a result of or in connection with the TLS Phase Activities.

(b) The Supplier must:

(i) assist TfNSW and RailCorp to comply with the NGER Legislation in relation to the TLS Phase Activities; and

(ii) provide Emissions and Energy Data to TfNSW within 10 Business Days of receiving a written request for such data from TfNSW.

2.8 Environment Protection Licence

(a) Subject to paragraph 2.8(c), the Supplier must:

(i) if required by Legal Requirements, obtain an Environment Protection Licence in respect of the Project Activities at the Maintenance Facility Site from the date on which the Supplier is first given access to the Maintenance Facility Site; and

(ii) hold any required Environment Protection Licence in respect of the TLS Phase Activities until the End Date.

(b) The Supplier must ensure that any Environment Protection Licence is consistent with the Planning Approval.

(c) To the extent that the TLS Phase Activities are such that they are controlled by an Environment Protection Licence held by a person other than the Supplier, the Supplier must comply with the terms of that Environment Protection Licence.
2.9 Environmental Representative

(a) TfNSW will, if required by the Planning Approval, engage, or procure engagement of, the Environmental Representative.

(b) The Supplier acknowledges that the Environmental Representative:

(i) is independent of the parties;
(ii) is required to discharge certain functions as identified in the Planning Approval;
(iii) is required to oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval and shall advise TfNSW upon achievement of the outcomes contemplated in the Planning Approval; and
(iv) is required to advise TfNSW and TfNSW's Representative on the Supplier's compliance with the Planning Approval.

(c) The Supplier must cooperate with the Environmental Representative and provide the Environmental Representative with:

(i) all information and documents (including licences and approvals relating to environmental performance and environmental impacts); and
(ii) allow the Environmental Representative:
A. to attend meetings; and
B. access to such premises,
as may be:
C. necessary or reasonably required by the Environmental Representative or TfNSW's Representative to allow the Environmental Representative to perform its functions in connection with this deed or the Planning Approval; or
D. requested by the Environmental Representative or directed by TfNSW's Representative.

(d) The Supplier must:

(i) comply with the requirements of the Environmental Representative, including so as to allow the Environmental Representative to discharge any functions of the Environmental Representative provided for in the Planning Approval; and
(ii) not interfere with or improperly influence the Environmental Representative in the performance of any of its functions in connection with this deed.

(e) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed will entitle the Supplier to make any Claim against TfNSW or RailCorp.

2.10 No warranty or representation

Neither TfNSW nor RailCorp warrants or represents:
41. That any Maintenance Location is suitable for any use or any particular use, including the TLS Phase Activities;

(b) anything about the condition of any Maintenance Location, including in respect of Contamination or Pollution;

(c) whether or not there are any Hazardous Materials on any Maintenance Location;

(d) that any information about any past use of any Maintenance Location is accurate; or

(e) that any Maintenance Location is or is not Contaminated or Polluted, or the nature or extent of any Contamination or Pollution.

2.11 Release and indemnity

To the full extent permitted by law, the Supplier indemnifies the Indemnified Parties and agrees to keep the Indemnified Parties always indemnified against all costs, expenses, fines, Losses, damages and Claims which the Indemnified Parties may become liable for, suffer or incur, in connection with or arising directly or indirectly out of the failure by the Supplier to comply with its obligations under this paragraph 2.

2.12 Survival

The rights and obligations contained in this paragraph 2 survive the termination or expiration of this deed.

3. Other obligations

3.1 Control of traffic

The Supplier:

(a) is responsible for the control, direction and protection of all road and pedestrian traffic, affected by the carrying out of the TLS Phase Activities;

(b) must manage all such traffic to ensure:

(i) its continuous, safe and efficient movement;

(ii) the traffic carrying capacity of local area roads is maintained; and

(iii) that any delays and disruptions to road traffic and the movement of road traffic are kept to an absolute minimum;

(c) must at all times comply with the requirements of the SPR in respect of road traffic management and safety; and

(d) must comply with the directions of any relevant Authority and TfNSW’s Representative with respect to such management.

3.2 Principal contractor

(a) Without limiting the Supplier’s obligations under any other provision of this deed, from the date on which the Supplier is given access to the Maintenance Facility Site (or a part) in accordance with this deed:

(i) TfNSW:
engages the Supplier as Principal Contractor (except where the Supplier is commissioning a construction project and has itself engaged a Principal Contractor) to the extent that any TLS Phase Activities at the Maintenance Facility Site include a construction project involving construction work costing at least [redacted] (CW Activities);  

B. authorises the Supplier to have management and control, for the purposes only of the WHS Law, of each workplace at which CW Activities are to be carried out and to discharge the duties of a Principal Contractor under the WHS Law (except where the Supplier is commissioning a construction project and has itself engaged a Principal Contractor); and  

C. must give the Supplier prior notice of any Interface Party undertaking work at the Maintenance Facility Site during the Maintenance Facility Licence before such work commences; and  

(ii) except where the Supplier is commissioning a construction project and has itself engaged a Principal Contractor, the Supplier accepts the engagement as Principal Contractor and agrees to discharge the duties imposed on a Principal Contractor by the WHS Law and the Supplier agrees:  

A. to discharge its obligations as Principal Contractor at its own cost;  

B. to complete all forms (if any) and attend to all statutory requirements (if any) to ensure it is appointed as Principal Contractor; and  

C. that it has management or control of the relevant workplaces for the purposes only of the WHS Law.

(b) The Supplier's engagement as Principal Contractor under the WHS Regulation:  

(i) will be in force until the completion of the CW Activities (as the case may be);  

(ii) may be revoked prior to that date by TfNSW giving 10 Business Days' notice to the Supplier of its revocation or on termination of this deed.

(c) In this paragraph 3.2 and in clause 8.4 of this deed, the terms 'workplace', 'construction project' and 'construction work' have the same meanings assigned to those terms in the WHS Law.

(d) The Supplier must:  

(i) ensure that if any law, including in the state or territory in which the TLS Phase Activities are carried out (as the case may be) requires that:  

A. a person:  

1) be authorised or licensed (in accordance with the WHS Law) 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 WHS 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;

(ii) not direct or allow a person to carry out work or use plant or substances at a workplace unless the requirements of paragraph 3.2(d)(i) are met (including any requirement to be authorised, licensed, qualified, experienced or supervised); and

(iii) if requested by TfNSW or required by the WHS Law, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to WHS (as the case may be) to the reasonable satisfaction of TfNSW before the Supplier or a Supplier's Subcontractor (as the case may be) commences such work.

(e) If:

(i) the engagement of the Supplier as Principal Contractor under this paragraph 3.2 is not effective for any reason; or

(ii) where the Supplier is commissioning a construction project and has itself engaged a Principal Contractor, the engagement of that Principal Contractor is not effective for any reason,

the Supplier agrees that it will exercise and fulfil the functions and obligations of the Principal Contractor under the WHS Law as if it had been validly engaged and authorised as Principal Contractor under paragraph 3.2(b).

(f) To the extent that the Supplier is engaged as the Principal Contractor, the Supplier's obligations as Principal Contractor under the WHS Law include, among other things:

(i) preparation and maintenance of a WHS management plan for the Maintenance Facility Site;

(ii) preparation of and compliance with appropriate Safe Work Method Statements; and

(iii) displaying signs that are clearly visible from outside the Maintenance Facility Site identifying the Supplier as the 'principal contractor' for the purposes of the WHS Law and stating the contact telephone numbers of the Supplier (including an after-hours emergency telephone number).

(g) If the Supplier is not engaged as the Principal Contractor for a particular site or the Supplier's engagement as Principal Contractor has been terminated, then the Supplier must (and must ensure that the Supplier's Personnel also):

(i) do all things necessary to cooperate with the new or other Principal Contractor and to assist it in complying with its obligations as Principal Contractor and generally; and
(ii) refrain from doing anything that may impede the new or other Principal Contractor in complying with their obligations as Principal Contractor and generally under WHS Law.

(h) The Supplier must ensure that where the Supplier and an Interface Party (or any other person engaged as a Principal Contractor) are engaged to work in the same vicinity:

(i) the areas for which the Supplier and the Interface Party are engaged must be physically separate and clearly demarcated (Separate Work Spaces); and

(ii) appropriate arrangements for access and egress to and from the Separate Work Spaces must be agreed in writing in advance with the Interface Party, in consultation with TfNSW.

3.3 Sustainability

The Supplier must comply with the sustainability requirements set out in the SPR, including those in SPR Appendix 9.

3.4 Utility Services

The Supplier:

(a) must obtain, pay for, contract for the provision of, acquire or otherwise procure or provide any Utility Services and all connections for all Utility Services (including electricity) it requires to perform the Delivery Phase Activities and TLS Phase Activities at the Maintenance Facility Site;

(b) must investigate, protect, relocate, modify and provide for all Utility Services necessary for it to comply with its obligations under the Project Agreements in relation to the Project Activities;

(c) must not, without TfNSW’s Representative’s prior written consent, obtain any Utility Services or connect any Utility Services to the Maintenance Facility Site that are not necessary to allow the Supplier to carry out the Project Activities;

(d) must obtain TfNSW’s Representative’s prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Utility Services or changes or modifications to existing connections for Utility Services at the Maintenance Facility Site;

(e) must consult with and keep TfNSW fully informed as to the Supplier’s dealings with the providers of Utility Services;

(f) must ensure there are no unplanned disruptions to the Utility Services in carrying out Delivery Phase Activities or TLS Phase Activities at the Maintenance Facility Site and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of Delivery Phase Activities or TLS Phase Activities;

(g) must ensure that maintenance points for Utility Services are located within the Maintenance Facility Site and only as approved in writing in advance by TfNSW’s Representative (such approval not to be unreasonably withheld or delayed);

(h) assumes the risk of the existence, location, condition and availability of Utility Services (in so far as they affect the Delivery Phase Activities or TLS Phase Activities); and
must, to the extent not prohibited by law, indemnify each Indemnified Party from and against any Claims against the Indemnified Party, or Loss suffered by the Indemnified Party arising out of or in connection with any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:

(i) a failure by the Supplier to comply with any obligations under this deed;

(ii) any act or omission of the Supplier or its Associates; or

(iii) a failure by the Supplier to comply with any obligations under this deed with respect to Utility Services.
Schedule 10 – Planning Approval - Anticipated Conditions

(Note: The following assumptions relate to the MF Works. They are provided to assist the Supplier in its understanding of the likely requirements applicable in connection with or related to the MF Works.

Should additional maintenance facilities or modification to existing facilities be required to operate the Initial Fleet, the construction and operation of these facilities shall need to be assessed and approved in accordance with the Environmental Planning and Assessment Act (1979). TfNSW will prepare the environmental impact assessment for the proposal however the Supplier is required to provide all necessary information to TfNSW to undertake the assessment. This includes but is not limited to, a detailed design of the works proposed to modify or construct the Maintenance Facility, a detailed construction methodology and the proposed operational requirements. The Supplier shall be required to comply with any conditions of approval and/or mitigation measures identified as part of the planning approval and report regularly on compliance throughout construction of the MF Works. The Supplier may be required to obtain and comply with an environmental protection licence issued under the Protection of the Environment Operations Act 1997 for both the construction and operation of the project.

The planning approval pathway is yet to be finalised and will be informed by the scale and nature of the MF Works proposed by the Supplier. The draft Conditions of Approval (CoA) outlined below are indicative of the CoA that would be applied to the project if a Part 5 assessment is undertaken (ie through preparation of a Review of Environmental Factors and subsequent determination by TfNSW). If a Part 5.1 assessment is required (ie, through preparation of an Environmental Impact Statement), the Department of Planning and Environment will determine the planning approval and impose CoA of its own choice.)

1. Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CEMP</td>
<td>Construction environmental management plan</td>
</tr>
<tr>
<td>CLM Act</td>
<td>Contaminated Land Management Act 1997 (NSW)</td>
</tr>
<tr>
<td>CLP</td>
<td>Community liaison plan</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental impact assessment</td>
</tr>
<tr>
<td>EPA</td>
<td>NSW Environment Protection Authority</td>
</tr>
<tr>
<td>EP&amp;A Act</td>
<td>Environmental Planning and Assessment Act 1979 (NSW)</td>
</tr>
<tr>
<td>EPL</td>
<td>Environment protection licence issued by the EPA under the Protection of the Environment Operations Act 1997 (NSW)</td>
</tr>
<tr>
<td>EMR</td>
<td>Environmental management representative</td>
</tr>
<tr>
<td>ISO</td>
<td>International Standards Organisation</td>
</tr>
<tr>
<td>OEH</td>
<td>NSW Office of Environment and Heritage</td>
</tr>
<tr>
<td>OOHWP</td>
<td>Out of hours work protocol</td>
</tr>
<tr>
<td>POEO Act</td>
<td>Protection of the Environment Operations Act 1997 (NSW)</td>
</tr>
<tr>
<td>PMEM</td>
<td>Principal Manager Environment Management, TfNSW (or nominated delegate)</td>
</tr>
<tr>
<td>PMS</td>
<td>Principal Manager Sustainability, TfNSW (or nominated delegate)</td>
</tr>
<tr>
<td>REF</td>
<td>Review of environmental factors</td>
</tr>
</tbody>
</table>
2. Definitions

construction
Where used, includes all work in respect of the construction of the MF Works, other than survey, acquisitions, fencing, investigative drilling or excavation, building/road dilapidation surveys, or other activities determined by the EMR to have minimal environmental impact such as minor access roads, minor adjustments to services/utilities, establishing temporary construction compounds (in accordance with these assumptions), or minor clearing (except where threatened species, populations or ecological communities would be affected).

emergency work
Includes works to avoid loss of life, damage to external property, utilities and infrastructure, prevent immediate harm to the Environment, Contamination of land or damage to a heritage (indigenous or non-indigenous) item.

environmental management representative
An independent environmental management representative appointed to the Project or a delegate nominated by TfNSW.

Incident
Means a set of circumstances that:
(a) causes or threatens to cause material harm to the Environment;
(b) breaches or exceeds the limit or performance measures/criteria in the Planning Approval; or
(c) breaches or exceeds the limit or performance measures/criteria in any Environmental Law.

noise sensitive receiver
In addition to residential dwellings, noise sensitive receivers include, but are not limited to, hotels, entertainment venues, pre-schools and day care facilities, educational institutions (e.g. schools, TAFE colleges), health care facilities (e.g. nursing homes, hospitals), recording studios, places of worship/religious facilities (e.g. churches), and other noise sensitive receivers identified in the EIA.

Operation
Means the operation of the Maintenance Facility but does not include commissioning trials of equipment or temporary use of parts of the Maintenance Facility during construction or maintenance.

reasonable and feasible
Consideration of best practice taking into account the benefit of proposed measures and their technological and associated operational application in the NSW and Australian context. Feasible relates to engineering considerations and what is practical to build. Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and nature and extent of potential improvements.

the Project
The construction and operation of the project as described in the EIA.

the Proponent
A person or body proposing to carry out an activity under Part 5 of the EP&A Act. In the case of the Project, the Proponent is TfNSW.
3. General assumptions

1. The MF Works would be subject to an assessment and determination under either Part 5 or Part 5.1 of the EP&A Act. The Supplier will need to comply with the conditions of the Planning Approval which are applicable to the TLS Phase Activities. The conditions of the Planning Approval will be made available to the Supplier upon determination of the Planning Approval under the EP&A Act.

2. If obtained, the Planning Approval would permit the construction of the MF Works and the operation of the Maintenance Facility for rolling stock maintenance and repair at the site.

3. The MF Works would be constructed on land owned by RailCorp and operated and maintained by the Supplier under the TLS Deed (who will have obtained the requisite accreditation from ONRSR) for the duration of the Contract Term.

4. It is envisaged that the Planning Approval would permit operation of the Maintenance Facility on a 24 hours per day, 7 days per week basis.

<table>
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<th>Condition</th>
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<tbody>
<tr>
<td>Terms of approval</td>
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<tr>
<td>The Project shall be carried out generally in accordance with the environmental impact assessment (EIA) for this Project, which comprises the following documents:</td>
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<table>
<thead>
<tr>
<th>DOCUMENT</th>
<th>AUTHOR</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Insert project name] Project – Review of Environmental Factors</td>
<td>[author]</td>
<td>[DD MM YYYY]</td>
</tr>
<tr>
<td>[Insert project name] Project – Submissions Report [if relevant]</td>
<td>[author]</td>
<td>[DD MM YYYY]</td>
</tr>
<tr>
<td>[Insert project name] Project – Determination Report</td>
<td>TfNSW</td>
<td>[DD MM YYYY]</td>
</tr>
</tbody>
</table>

In the event of an inconsistency between these conditions and the EIA, these conditions will prevail to the extent of the inconsistency.

Statutory requirements

These conditions do not relieve the Proponent of any obligation to obtain all other licences, permits, Approvals and land owner consents from any Authority and land owners pursuant to any Law for the Project. The Proponent shall comply with the terms and conditions of such licences, permits, Approvals and permissions.

Project modifications

Any modification to the Project as approved in the EIA would be subject to further assessment. This assessment would need to demonstrate that any environmental impacts resulting from the modifications have been minimised. The assessment shall be subject to approval under delegated authority by TfNSW or as required under the EP&A Act. The Proponent shall comply with any additional requirements from the assessment of the project modification.

Communications

Community liaison plan
The Proponent shall develop and implement a community liaison plan (CLP) to engage with government agencies, relevant councils, landowners, community members and other relevant stakeholders (such as utility and service providers, bus companies and businesses) where required. The CLP shall comply with the obligations of these conditions and should include, but not necessarily be limited to:

(a) details of the protocols and procedures for disseminating information and liaising with the community and other key stakeholders about construction activities (including timing and staging) and any associated impacts during the construction period

(b) stakeholder and issues identification and analysis

(c) procedures for dealing with complaints or disputes and response requirements, including advertising the 24 hour construction response line number

(d) details (including a program) of training for all employees, contractors and sub-contractors on the requirements of the CLP.

Sub-plans to the CLP will be developed as required. These sub-plans will detail site-specific consultation and communication requirements for construction works that impact residents, other stakeholders and businesses. They will also identify further mitigation measures and processes to reduce construction impacts.

The CLP shall be prepared to the satisfaction of the Director Community Engagement prior to the commencement of construction and implemented, reviewed and revised as appropriate during construction of the Project.

### Community notification and liaison

The local community shall be advised of any activities related to the Project with the potential to impact upon them.

Prior to any site activities commencing and throughout the Project duration, the community is to be notified of works to be undertaken, the estimated hours of construction and details of how further information can be obtained (i.e. contact telephone number/email, website, newsletters etc.) including the 24 hour construction response line number.

Construction-specific impacts including information on traffic changes, access changes, detours, services disruptions, public transport changes, high noise generating work activities and work required outside the nominated working hours shall be advised to the local community at least seven (7) days prior to such works being undertaken or other period as agreed to by the Director Community Engagement or as required by the EPA (where an EPL is in effect).

### Website

The Proponent shall provide electronic information (or details of where hard copies of this information may be accessed by members of the public) related to the Project, on dedicated pages within its existing website, including:

(a) a copy of the documents referred to in any Approval

(b) a list of environmental management reports that are publicly available

(c) 24 hour contact telephone number for information and complaints.

All documents must be compliant with the Web Content Accessibility Guidelines 2.0.
## Condition

### Complaints management

The Proponent shall set up a 24 hour construction response line number.

Details of all complaints received during construction are to be recorded on a complaints register. A verbal response to phone enquiries on what action is proposed to be undertaken is to be provided to the complainant within two (2) hours during all times construction is being undertaken and within 24 hours during non-construction times (unless the complainant agrees otherwise). A verbal response to written complaints (email/letter) should be provided within 48 hours of receipt of the communication. A detailed written response is to be provided to the complainant within seven (7) calendar days for verbal and/or written complaints.

Information on all complaints received during the previous 24 hours shall be forwarded to the EMR each working day.

### Environmental management

#### Construction environmental management plan

The Proponent shall prepare a CEMP prior to commencement of construction which addresses the following matters, as a minimum:

- (a) traffic and pedestrian management (in consultation with the relevant roads authority)
- (b) noise and vibration management
- (c) water and soil management
- (d) air quality management (including dust suppression)
- (e) indigenous and non-indigenous heritage management
- (f) flora and fauna management
- (g) storage and use of Hazardous Materials
- (h) Contaminated land management (including acid sulphate soils)
- (i) weed management
- (j) waste management
- (k) bushfire risk
- (l) sustainability
- (m) environmental incident reporting and management procedures
- (n) non-compliance and corrective/preventative action procedures

The CEMP shall:

- (a) comply with the conditions of this Approval, conditions of any licences, permits or other Approvals issued by government authorities for the Project, all Law, and accepted best practice management
### Condition

<table>
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<tr>
<th>Condition</th>
<th>Requirement</th>
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<tbody>
<tr>
<td>(b)</td>
<td>comply with the relevant requirements of the <em>Guideline for Preparation of Environmental Management Plans</em> (Department Infrastructure, Planning and Natural Resources, 2004)</td>
</tr>
<tr>
<td>(c)</td>
<td>include an environmental policy</td>
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</tbody>
</table>

The Proponent shall:

- **(a)** consult with government agencies and relevant service/utility providers as part of the preparation of the CEMP
- **(b)** submit a copy of the CEMP to the EMR for review
- **(c)** submit a copy of the CEMP to the PMEM (or nominated delegate) for approval
- **(d)** review and update the CEMP at regular intervals, and in response to any actions identified as part of the EMR's audit of the document
- **(e)** ensure updates to the CEMP are made within 7 days of the completion of the review or receipt of actions identified by any EMR audit of the document, and be submitted to the EMR for approval

The CEMP must be approved by the PMEM prior to the commencement of construction work associated with the Project.

### Environmental controls map

The Proponent shall prepare an environmental controls map (ECM) in accordance with TfNSW's *Guide to Preparing ECMs* (3TP-SD-015) prior to the commencement of construction for implementation for the duration of construction. The ECM is to be endorsed by the EMR and may be prepared in stages as set out in the CEMP.

The Proponent shall submit a copy of the ECM to the EMR for review and endorsement. The EMR is to be given a minimum period of 7 days to review and endorse the ECM. Following receipt of the EMR’s endorsement, the ECM shall be submitted to the PMEM (or nominated delegate) for approval, at least 14 days prior to commencement of construction (or such time as is otherwise agreed to by the PMEM).

The ECM shall be prepared as a map – suitably enlarged (e.g. A3 size or larger) for mounting on the wall of a site office and included in site inductions, supported by relevant written information.

Updates to the ECM shall be made within 7 days of the completion of the review or receipt of actions identified by any EMR audit of the document, and be submitted to the EMR for approval.

### Environmental management representative

Prior to the commencement of construction, the PMEM shall appoint an EMR for the duration of the construction period for the Project.

The EMR shall provide advice to the PMEM in relation to the environmental compliance and performance of the Project. The EMR shall have responsibility for:

- **(a)** considering and advising the Proponent on matters specified in these conditions and compliance with such
- **(b)** reviewing and where required by the PMEM, providing advice on the Project's induction and training program for all persons involved in the
<table>
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<tr>
<th>Condition</th>
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<tbody>
<tr>
<td>construction activities and monitoring implementation</td>
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<tr>
<td>(c) periodically auditing the Project’s environmental activities to evaluate the implementation, effectiveness and level of compliance of on-site construction activities with authority approvals and licences, the CEMP and associated plans and procedures, including carrying out site inspections weekly, or as required by the PMEM</td>
</tr>
<tr>
<td>(d) reporting weekly to the Proponent, or as required by the PMEM</td>
</tr>
<tr>
<td>(e) issuing a recommendation to the Proponent for work to stop immediately, if in the view of the EMR circumstances so require. The stop work recommendation may be limited to specific activities if the EMR can easily identify those activities</td>
</tr>
<tr>
<td>(f) requiring reasonable steps to be taken to avoid or minimise unintended or adverse environmental impacts</td>
</tr>
<tr>
<td>(g) reviewing corrective and preventative actions to ensure the implementation of recommendations made from the audits and site inspections</td>
</tr>
<tr>
<td>(h) providing reports to the Proponent on matters relevant to the carrying out of the EMR role as necessary</td>
</tr>
<tr>
<td>(i) where required by the PMEM, providing advice on the content and implementation of the CEMP and environmental controls map (ECM) in accordance with the conditions</td>
</tr>
<tr>
<td>(j) reviewing and approving updates to the CEMP</td>
</tr>
</tbody>
</table>

The EMR shall be available during construction activities to inspect the site(s) and be present on-site as required.

### Hours of work

**Standard construction hours**

Construction activities shall be restricted to the hours of 7:00 am to 6:00 pm (Monday to Friday); 8:00 am to 1:00 pm (Saturday) and at no time on Sundays and public holidays except for the following works which are permitted outside these standard hours:

(a) any works which do not cause noise emissions to be more than 5dB higher than the rating background level at any nearby residential property and/or other noise sensitive receivers

(b) out of hours work identified and assessed in the EIA or the approved OOHWP

(c) the delivery of plant, equipment and materials which is required outside these hours as requested by police or other authorities for safety reasons and with suitable notification to the community as agreed by the PMEM

(d) emergency work to avoid the loss of lives, property and/or to prevent environmental harm

(e) any other work as agreed by the PMEM (or nominated delegate) and considered essential to the Project, or as approved by EPA (where an EPL is in effect)
### Condition

#### High noise generating activities

Rock breaking or hammering, jack hammering, pile driving, vibratory rolling, cutting of pavement, concrete or steel and any other activities which result in impulsive or tonal noise generation shall not be undertaken for more than 3 hours, without a minimum 1 hour respite period unless otherwise agreed to by the PMEM (or nominated delegate), or as approved by EPA (where relevant to the issuing of an EPL), unless inaudible at nearby residential properties and/or other noise sensitive receivers.

#### Noise and vibration

**Construction noise and vibration**

Construction noise and vibration mitigation measures shall be implemented through the CEMP, in accordance with TfNSW's *Construction Noise Strategy* (TTP-ST-157) and the EPA *Interim Construction Noise Guideline* (July 2009). The mitigation measures shall include, but not necessarily be limited to:

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<tbody>
<tr>
<td>(a)</td>
<td>details of construction activities and an indicative schedule for construction works</td>
</tr>
<tr>
<td>(b)</td>
<td>identification of construction activities that have the potential to generate noise and/or vibration impacts on surrounding land uses, particularly sensitive noise receivers</td>
</tr>
<tr>
<td>(c)</td>
<td>detail what reasonable and feasible actions and measures shall be implemented to minimise noise impacts (including those identified in the EIA)</td>
</tr>
<tr>
<td>(d)</td>
<td>procedures for notifying noise sensitive receivers of construction activities that are likely to affect their noise and vibration amenity, as well as procedures for dealing with and responding to noise complaints</td>
</tr>
<tr>
<td>(e)</td>
<td>an OOHWP for the assessment, management and approval of works outside the standard construction hours identified in these assumptions, including a risk assessment process which deems the out of hours activities to be of low, medium or high environmental risk, is to be developed. All out of hours works are subject to approval by the EMR and/or PMEM (or nominated delegate) or as approved by EPA (where relevant to the issuing of an EPL). The OOHWP should be consistent with the TfNSW <em>Construction Noise Strategy</em></td>
</tr>
<tr>
<td>(f)</td>
<td>a description of how the effectiveness of actions and measures shall be monitored during the proposed works, identification of the frequency of monitoring, the locations at which monitoring shall take place, recording and reporting of monitoring results and if any exceedance is detected, the manner in which any non-compliance shall be rectified</td>
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</table>

#### Vibration criteria

Vibration (other than from blasting) resulting from construction and received at any structure outside of the Project shall be limited to:

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<tbody>
<tr>
<td>(a)</td>
<td>for structural damage vibration - German Standard DIN 4150: Part 3 – 1999: <em>Structural Vibration in Buildings: Effects on Structures</em></td>
</tr>
<tr>
<td>(b)</td>
<td>for human exposure to vibration – the acceptable vibration values set out in the <em>Environmental Noise Management Assessing Vibration: A Technical</em></td>
</tr>
</tbody>
</table>
Transport for NSW

Condition

Guideline (DEC 2006).

These limits apply unless otherwise approved by the PMEM through the CEMP.

Non-tonal reversing beepers

Non-tonal reversing beepers (or an equivalent mechanism) shall be fitted and used on all construction vehicles and mobile plant regularly used on site (i.e. greater than one day) and for any out of hours work.

Piling

Wherever practical, piling activities shall be completed using non-percussive piles. If percussive piles are proposed to be used, approval of the PMEM shall be obtained prior to commencement of piling activities.

Operational noise and vibration

Prior to commencement of construction of physical noise mitigation structures an operational noise and vibration management plan (ONVMP) shall be prepared to confirm the final mitigation measures for operational noise and vibration that would be implemented.

The ONVMP shall be prepared in consultation with Sydney Trains (where relevant) and other relevant stakeholders. The ONVMP shall:

(a) consider any changes to the predicted noise and vibration levels identified in the EIA as a result of the detailed design process and any changes to the proposed maintenance activities including [insert any site specific considerations]

(b) examine all reasonable and feasible noise and vibration mitigation measures consistent with [Rail Infrastructure Noise Guideline (EPA, 2013)/Industrial Noise Policy (EPA, 2000)]

(c) identify specific physical and other mitigation measures for controlling noise and vibration at the source and at the receiver (if relevant) including location, type and timing of implementation of the proposed operational noise and vibration mitigation measures

(d) seek feedback from directly affected receivers on the final mitigation measures proposed in the review.

The Proponent shall submit a copy of the ONVMP to the EMR for review and endorsement. The EMR is to be given a minimum period of 7 days to review and endorse the ONVMP. Following receipt of the EMR’s endorsement, the ONVMP shall be submitted to the PMEM (or nominated delegate) for approval, at least one month prior to commencement of construction of physical noise mitigation structures (or such time as is otherwise agreed to by the PMEM).

The approved physical mitigation measures are to be installed prior to the commencement of operations, unless otherwise agreed by the PMEM.

Operational noise compliance monitoring

In order to validate the predicted noise levels identified in the ONVMP, monitoring shall be undertaken within three months of commencement of operation and within three months from Provisional Acceptance of the last Set in the Initial Fleet. The noise and vibration monitoring shall be undertaken to confirm compliance with the predicted noise and vibration levels, or as modified by the reasonable and feasible review.
Condition

[insert any site specific considerations as relevant]

Should the results of monitoring identify exceedances of the predicted noise and vibration levels, additional reasonable and feasible mitigation measures would be implemented in consultation with the affected property owners.

Contamination and hazardous materials

Contamination investigation

If recommended by the stage 1 preliminary site investigation report, a stage 2 detailed site investigation shall be undertaken prior to construction commencing. The assessment shall generally be undertaken in accordance with:

(a) The National Environment Protection (Assessment of Site Contamination) Amendment Measure (NEPM) 2013
(b) NSW EPA (1995) Sampling Design Guidelines
(c) AS4482 Guide to investigation and sampling of site with potentially contaminated soil (2005)
(d) CLM Act
(e) any applicable portions of State Environmental Planning Policy 55 – Remediation of Land

The report shall be prepared in accordance with the DECCW’s Guidelines for Consultants Reporting on Contaminated Sites (2011). The report shall include a preliminary waste classification in accordance with the NSW EPA Waste Classification Guidelines (2014).

Specific requirements for further investigation, remediation or management of any Contamination within the identified areas recommended in the stage 2 detailed site investigation shall be included in the CEMP as appropriate.

If Contamination is identified within the Maintenance Facility Site, the Proponent is to determine whether there is a duty to report under section 60 of the CLM Act and the DECC Guidelines.

Unidentified Contamination (other than asbestos)

If previously unidentified Contamination (excluding asbestos) is discovered during construction, work in the affected area must cease immediately, and an investigation must be undertaken and report prepared to determine the nature, extent and degree of any contamination. The level of reporting must be appropriate for the identified contamination in accordance with Environmental Law and relevant EPA guidelines, including the Guidelines for Consultants Reporting on Contaminated Sites.

The Proponent shall:

(a) submit a copy of any Contamination report to the EMR for review. The EMR is to be given a minimum period of 7 days to review and provide any comments to the Proponent in relation to the report.

(b) submit a copy of the report to the PMEM for consideration upon completion of the EMR review period. The PMEM shall determine whether consultation with the relevant council and/or EPA is required prior to continuation of construction works within the affected area.

Note: In circumstances where both previously unidentified asbestos contamination and other

TfNSW
## Condition

Contamination are discovered within a common area, nothing is these conditions shall prevent the preparation of a single investigation report to satisfy the requirements of both Condition [X] and Condition [X].

### Asbestos management

If previously unidentified asbestos Contamination is discovered during construction, work in the affected area must cease immediately, and an investigation must be undertaken and report prepared to determine the nature, extent and degree of the asbestos Contamination. The level of reporting must be appropriate for the identified Contamination in accordance with relevant EPA and WorkCover guidelines and include the proposed methodology for the remediation of the asbestos Contamination. Remediation activities must not take place until receipt of the investigation report.

Works may only recommence upon receipt of a validation report from a suitably qualified Contamination specialist that the remediation activities have been undertaken in accordance with the investigation report and remediation methodology.

**Note:** In circumstances where both previously unidentified asbestos Contamination and other Contamination are discovered within a common area, nothing in these conditions shall prevent the preparation of a single investigation report to satisfy the requirements of both Condition [X] and Condition [X].

## Storage and use of Hazardous Materials

Construction hazard and risk issues associated with the use and storage of Hazardous Materials shall be addressed through risk management measures, which shall be developed by the construction contractor prior to construction as part of the overall CEMP, in accordance with relevant EPA guidelines, TfNSW Chemical Storage and Spill Response Guideline and Australian and ISO standards. These measures shall include:

1. **the storage of Hazardous Materials**, and refuelling/maintenance of construction plant and equipment to be undertaken in clearly marked designated areas that are designed to contain spills and leaks

2. **spill kits**, appropriate for the type and volume of Hazardous Materials stored or in use, to be readily available and accessible to construction workers. Kits to be kept at Hazardous Materials storage locations, in site compounds and on specific construction vehicles. Where a spill to a watercourse is identified as a risk, spill kits to be kept in close proximity to potential discharge points in support of preventative controls

3. **all Hazardous Materials spills and leaks** to be reported to site managers and actions to be immediately taken to remedy spills and leaks

4. **training in the use of spill kits** to be given to all personnel involved in the storage, distribution or use of Hazardous Materials

### Hazardous Materials survey

A Hazardous Materials survey in accordance with AS2601 (2001) *Demolition of Structures* would be undertaken by an appropriately qualified environmental scientist prior to the demolition of [insert relevant element to be demolished].

Subsequent removal of any Hazardous Material is to be undertaken in accordance with Environmental Law and applicable EPA and WorkCover guidelines.

### Erosion and sediment control
### Condition

#### Erosion and sediment control

Soil and water management measures shall be prepared as part of the CEMP for the mitigation of water quality impacts during construction of the Project. The management measures shall be prepared in accordance with Managing Urban Stormwater; Soils and Construction 4th Edition (Landcom, 2004).

#### Heritage management

##### Indigenous and non-indigenous heritage

If previously unidentified indigenous or non-indigenous heritage/archaeological items are uncovered during construction works, all works in the vicinity of the find shall cease and appropriate advice shall be sought from a suitably qualified heritage consultant (and in consultation with the OEH Heritage Branch where appropriate). Works in the vicinity of the find shall not re-commence until clearance has been received from the heritage consultant. *Unexpected Heritage Finds Guideline - 3TP-SD-115*

#### General

##### Pre-construction environmental compliance matrix

A pre-construction environmental compliance matrix (PECM) for the Project (or such stages of the Project as agreed to by the EMR) shall be prepared detailing compliance with all relevant conditions and mitigation measures prior to commencement of construction. The PECM shall also include details of approvals, licences and permits required to be obtained under any other legislation for the Project.

The Proponent shall:

- **(a)** submit a copy of the PECM to the EMR for review. The EMR is to be given a minimum period of 7 days to review and provide any comments to the Proponent in relation to the PECM.

- **(b)** upon completion of the EMR review period, submit a copy of the PECM to the PMEM for approval, at least 14 days (or within such time as otherwise agreed to by the PMEM) prior to commencement of construction of the Project.

##### Construction environmental compliance report

The Proponent shall prepare a construction environmental compliance report (CECR) which addresses the following matters:

- **(a)** compliance with the CEMP and these conditions

- **(b)** compliance with the Sustainable Design Guidelines Version 3.0 compliance checklist

- **(c)** compliance with any approvals or licences issued by relevant authorities for construction of the Project

- **(d)** implementation and effectiveness of environmental controls (the assessment of effectiveness should be based on a comparison of actual impacts against performance criteria identified in the CEMP)

- **(e)** environmental monitoring results, presented as a results summary and analysis
<table>
<thead>
<tr>
<th>Condition</th>
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<tr>
<td>(f) details of the percentage of waste diverted from landfill and the percentage of spoil beneficially reused</td>
</tr>
<tr>
<td>(g) number and details of any complaints, including summary of main areas of complaint, actions taken, responses given and intended strategies to reduce recurring complaints (subject to privacy protection)</td>
</tr>
<tr>
<td>(h) details of any review and amendments to the CEMP resulting from construction during the reporting period</td>
</tr>
<tr>
<td>(i) any other matter as requested by the PMEM.</td>
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</tbody>
</table>

The Proponent shall:

(a) submit a copy of the CECR to the EMR for review. The EMR is to be given a minimum period of 7 days to review and provide any comments to the Proponent in relation to the CECR

(b) submit a copy of the CECR to the PMEM (or nominated delegate) for approval upon completion of the EMR review period.

The first CECR shall report on the first six months of construction and be submitted within six weeks of expiry of that period (or at any other time interval agreed to by the PMEM). CECRs shall be submitted no later than six months after the date of submission of the preceding CECR (or at other such periods as requested by the PMEM) for the duration of construction.

Pre-operation compliance report

A pre-operation compliance report (POCR) for the Project shall be prepared, prior to commencement of operation of the Project. The POCR shall detail compliance with all conditions of approval, licences and permits required to be obtained under any other legislation for the project.

The Proponent shall:

(a) submit a copy of the POCR to the EMR for review. The EMR is to be given a minimum period of 7 days to review and provide any comments to the Proponent in relation to the POCR

(b) upon completion of the EMR review period submit a copy of the POCR to the PMEM (or nominated delegate) for approval. The POCR is to be provided to the PMEM at least one month prior to the scheduled operation of the Project (or such time as otherwise agreed to by the PMEM).

Graffiti and advertising

Hoardings, site sheds, fencing, acoustic walls around the perimeter of the site, and any structures built as part of the Project are to be maintained free of Graffiti and advertising not authorised by the Proponent during the construction period. Graffiti and unauthorised advertising will be removed or covered within the following timeframes:

(a) offensive Graffiti will be removed or concealed within 24 hours

(b) highly visible (yet inoffensive) Graffiti will be removed or concealed within a week

(c) Graffiti that is neither offensive or highly visible will be removed or...
Condition

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<th>Condition</th>
<th>Details</th>
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<tr>
<td>(d)</td>
<td>any unauthorised advertising material will be removed or concealed within 24 hours.</td>
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</table>

Utilities affected by construction

Utilities, services and other infrastructure potentially affected by construction shall be identified prior to construction to determine requirements for access to, diversion, protection and/or support. Consultation with the relevant owner and/or provider of services that are likely to be affected by the MF Works shall be undertaken to make suitable arrangements for access to, diversion, protection and/or support of the affected infrastructure as required. The cost of any such arrangements shall be borne by the Supplier.

Flora and fauna

Removal of trees or vegetation

Separate approval, in accordance with TfNSW’s Application for Removal or Trimming of Vegetation (9TP-FT-078), is required for the trimming, cutting, pruning or removal of trees or vegetation where the impact has not already been identified in the EIA for the Project. The trimming, cutting, pruning or removal of trees or vegetation shall be undertaken in accordance with the conditions of that approval.

Biodiversity Offsets

[Subject to outcomes of EIA]

Lighting

Lighting scheme

A lighting scheme for the construction and operation of the Project is to be developed by a suitably qualified lighting designer and prepared in accordance with AS 1158 “Road Lighting” and AS 4282 “Control of the Obtrusive Effect of Outdoor Lighting”. The lighting scheme shall address the following as relevant:

(a) consideration of lighting demands of different areas
(b) strategic placement of lighting fixtures to maximise ground coverage
(c) use of LED lighting
(d) minimising light spill by directing lighting into the [Insert project type]
(e) control systems for lighting that dim or switch-off lights settings according to the amount of daylight the zone is receiving
(f) motion sensors to control low traffic areas
(g) allowing the lighting system to use low light or switch off light settings while meeting relevant lighting Standards requirements, and
(h) ensuring security and warning lighting is not directed at neighbouring properties.

The proposed lighting scheme is to be submitted to and accepted by TfNSW – Transport.
Sydney Growth Trains
(ISD-16-5312B)

**Condition**

Projects Delivery Office Urban Design Team.

**Property**

**Property condition surveys**

[Note: This section should be informed by a vibration impact assessment prepared during the EIA for the project. If the REF does not propose a survey threshold, then a pre-construction vibration impact assessment should be undertaken.]

Subject to landowner agreement, property condition surveys shall be completed prior to piling, excavation or bulk fill or any vibratory impact works including jack hammering and compaction (Designated Works) in the vicinity of the following buildings/structures:

(a) all buildings/structures/roads within a plan distance of [50] metres from the edge of the Designated Works

(b) all heritage listed buildings and other sensitive structures within [150] metres from the edge of the Designated Works.

Property condition surveys need not be undertaken if a risk assessment indicates that selected buildings/structures/roads identified in (a) and (b) will not be affected as determined by a qualified geotechnical and construction engineering expert with appropriate registration on the National Professional Engineers Register prior to commencement of Designated Works.

Selected potentially sensitive buildings and/or structures shall first be surveyed prior to the commencement of the Designated Works and again immediately upon completion of the Designated Works.

All owners of assets to be surveyed, as defined above, are to be advised (at least 14 days prior to the first survey) of the scope and methodology of the survey, and the process for making a claim regarding property damage.

A copy of the survey(s) shall be given to each affected owner. A register of all properties surveyed shall be maintained.

Any damage to buildings, structures, lawns, trees, sheds, gardens, etc. as a result of construction activity direct and indirect (i.e. including vibration and groundwater changes) shall be rectified at no cost to the owner(s).

**Sustainability**

**Sustainability officer**

The Proponent shall appoint a sustainability officer who is responsible for implementing sustainability objectives for the Project.

Details of the sustainability officer, including defined responsibilities consistent with the Proponent’s sustainability objectives are to be submitted to the satisfaction of the PMS prior to preparation of the pre-construction sustainability report (PCSR).

**Pre-construction sustainability report**

Prior to commencement of construction, a PCSR shall be prepared to the satisfaction of the PMS. The Report shall include the following minimum components:

(a) a completed electronic checklist demonstrating compliance with the
<table>
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<tr>
<td><strong>Sustainable Design Guidelines Version 3.0</strong></td>
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<tr>
<td>(b) a statement outlining the Proponent’s own corporate sustainability obligations, goals, targets, in house tools, etc</td>
</tr>
<tr>
<td>(c) a section specifying any areas of innovation that will be explored and/or implemented on the Project during the course of the construction period</td>
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The Proponent shall submit a copy of the PCSR to the PMS for approval, at least 14 days prior to the commencement of construction (or within such time as otherwise agreed to by the PMS).

### Traffic and Access

#### Traffic management plan

The Proponent shall prepare a construction traffic management plan (TMP) as part of the CEMP which addresses, as a minimum, the following:

- (a) ensuring adequate road signage at construction work sites to inform motorists and pedestrians of the work site ahead to ensure that the risk of road accidents and disruption to surrounding land uses is minimised
- (b) maximising safety and accessibility for pedestrians and cyclists
- (c) ensuring adequate sight lines to allow for safe entry and exit from the site
- (d) ensuring access to railway stations, businesses, entertainment premises and residential properties (unless affected property owners have been consulted and appropriate alternative arrangements made)
- (e) managing impacts and changes to on and off street parking and requirements for any temporary replacement provision
- (f) parking locations for construction workers away from stations and busy residential areas and details of how this will be monitored for compliance
- (g) routes to be used by heavy construction-related vehicles to minimise impacts on sensitive land uses and businesses
- (h) details for relocating kiss-and-ride, taxi ranks and rail replacement bus stops if required, including appropriate signage to direct patrons, in consultation with the relevant bus operator. Particular provisions should also be considered for the accessibility impaired
- (i) measures to manage traffic flows around the area affected by the Project, including as required regulatory and direction signposting, line marking and variable message signs and all other traffic control devices necessary for the implementation of the TMP

The Proponent shall consult with the relevant roads authority during preparation of the TMP, as required. The performance of all Project traffic arrangements must be monitored during construction.

### Road condition reports

Prior to construction commencement, the Proponent shall prepare road condition surveys and reports on the condition of roads and footpaths affected by construction. Any damage resulting from the construction of the Project, aside from that resulting from normal wear and tear, shall be
### Condition

repaired at the Proponent’s expense.

### Road safety audit

A road safety audit would be undertaken as part of the detailed design process. The road safety audit would include specific assessment of:

(a) sight distances for vehicles [identify relevant area where sight distances needs to be assessed i.e. exiting or entering a specific intersection or project element such as a new car park] and mitigation measures proposed

(b) assessment of the [identify relevant intersection] intersection and mitigation measures proposed

The road safety audit is to be submitted to and accepted by TfNSW.

### Urban design and landscaping

#### Urban design and landscaping plan

The Proponent shall prepare an urban design and landscaping plan (UDLP) which demonstrates design excellence in the essential urban design requirements of the Project, as evident in the following matters:

(a) the appropriateness of the proposed design with respect to the existing surrounding landscape, built form, behaviours and use-patterns (including consideration of Crime Prevention Through Environmental Design principles)

(b) materials, finishes, colour schemes and maintenance procedures including graffiti control for new walls, barriers and fences

(c) landscape treatments and street tree planting to integrate with surrounding streetscape

(d) design detail that is sympathetic to the amenity and character of heritage items located within or adjacent to the Project site

(e) opportunities for public art created by local artists to be incorporated, where considered appropriate, into the Project

(f) total water management principles to be integrated into the design where considered appropriate

(g) design measures included to meet the Sustainable Design Guidelines Version 3.0

(h) identification of design and landscaping aspects that will be open for community input

(i) any other matters which the conditions require the UDLP to address

The UDLP shall be:

(a) prepared prior to the finalisation of the Project’s concept design
<table>
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<th>Condition</th>
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<tr>
<td>(b) prepared in consultation with council and relevant stakeholders</td>
</tr>
<tr>
<td>(c) prepared by a registered architect and/or landscape architect who has appropriate and relevant urban design expertise</td>
</tr>
<tr>
<td>(d) endorsed by TfNSW prior to the finalisation of the design.</td>
</tr>
</tbody>
</table>

4. Proposed assumptions applicable to both construction and operational phases

[Note: The meaning of the term “Supplier” in the following sections should be read, in the context of the construction activities, as a reference to the Contractor under the MF Works Deed.]

1. In addition to meeting the specific performance criteria established under the Planning Approval, the Supplier shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the Environment that may result from construction of the MF Works or the operation of the Maintenance Facility.

2. The Supplier shall ensure that employees, contractors and sub-contractors are aware of, and comply with, the conditions of the Planning Approval relevant to their respective activities, and relevant Law.

3. The Supplier shall be responsible for impacts on the Environment resulting from the actions of all persons that it invites onto the site, including contractors, sub-contractors and visitors.

4. Except as expressly provided by an EPL, the Supplier shall comply with the POEO Act.

Waste

5. Any hazardous waste must be stored in an environmentally safe manner pending removal to a licenced waste facility and must not come into contact with any incompatible waste.

6. The Supplier shall ensure that any transport, handling and management of Hazardous Materials during construction does not result in a potentially hazardous storage environment or present a significant risk to human health, life or property, or the biophysical environment, consistent with State Environmental Planning Policy No. 33 – Hazardous and Offensive Development and associated guidelines.

7. The Supplier must ensure that waste generated as a result of the TLS Phase Activities on the site are assessed and classified in accordance with the Waste Classification Guidelines (EPA, 2014) prior to disposal.

8. Waste must be:
   (a) transported only to a controlled waste facility, or to a waste facility that can lawfully receive that waste; or
   (b) recovered in accordance with the EPA’s Waste Recovery Exemptions.

9. Transport vehicles must be kept in a clean condition and be constructed and maintained so as to prevent waste spillage.

10. Transport vehicles must be covered when loaded so as to prevent spilling and loss of waste and to prevent emission of odours. The waste transporter must have a licence to transport waste.
Incident reporting:

11. The Supplier is to comply with Part 5.7 of the POEO Act (Duty to Notify Pollution Incidents).

12. The Supplier shall notify TfNSW of any pollution incident requiring notification under section 148 of the POEO Act immediately upon becoming aware of the incident. The Supplier shall provide full written details of the incident to TfNSW within seven days of the date on which the incident occurred, including copies of any information supplied to the EPA.

13. Where the Supplier holds the Licence, the Supplier is required to make any statutory notifications directly to relevant authorities for any environmental and/or pollution incident that require notification pursuant to any Law. The Supplier is also responsible for the preparation and submission of any reports, records or any other information requests by any statutory environmental regulator(s).

14. For the purposes of the POEO Act, the Supplier is taken to be the occupier of the Maintenance Facility, from the commencement of the Maintenance Facility Licence.

15. For the purposes of the CLM Act, the Supplier is taken to be the occupier of the Maintenance Facility, from the commencement of the Maintenance Facility Licence, and is responsible for any Contamination resulting from the Supplier’s activities during the Contract Term (including any residual contamination arising as a consequence of the Project Activities after the completion of the Contract Term).

Compliance tracking:

16. The Supplier shall develop and implement a compliance tracking program to track compliance with these requirements. The compliance tracking program must be submitted to TfNSW for approval at least one month prior to the commencement of the Maintenance Facility Licence and operate for the remainder of the Contract Term of the TLS Deed. The compliance tracking program must include:

(a) provisions for periodic review of the compliance status of the Maintenance Facility against the requirements detailed in this document;

(b) provisions for the notification of TfNSW prior to the commencement of construction and prior to the commencement of operation of the Maintenance Facility;

(c) provisions for periodic reporting of compliance status to TfNSW during construction;

(d) a program for independent environmental auditing in accordance with ISO 19011:2003 - Guidelines for Quality and/or Environmental Management Systems Auditing;

(e) procedures for rectifying any non-compliance identified during environmental auditing or review of compliance;

(f) mechanisms for recording environmental incidents during construction and actions taken in response to those incidents;

(g) provisions for reporting environmental incidents to TfNSW during construction; and

(h) provisions for ensuring all employees, contractors and sub-contractors are aware of, and comply with, the conditions of the Planning Approval relevant to their respective activities.

Statutory requirements:

17. The Supplier shall ensure that all licences, permits and Approvals are obtained as required by any Law and maintained with respect to the Maintenance Facility. None of these...
conditions removes the obligation of the Supplier to obtain, renew or comply with such licences, permits or Approvals.

18. The Supplier shall, where reasonable and feasible, offset carbon emissions generated by the operation of the Maintenance Facility.
Planning Approval – Draft Assumptions for the Operation of the Maintenance Facility

Operational phase proposed conditions:

1. An operational environmental management plan (OEMP) for the operational phase of the Maintenance Facility must be prepared by the Supplier and approved by TfNSW. The OEMP should be reviewed and updated on an annual basis, unless otherwise determined by TfNSW. The OEMP would typically include the following:
   (a) Identification of environmental goals, objectives and outcomes;
   (b) Identification of relevant statutory and other obligations which the Supplier is required to fulfil, including all licences/approvals required from authorities and other stakeholders, and key legislation and policies which control the Supplier’s operation of the Maintenance Facility;
   (c) Compliance with statutory requirements and relevant non-statutory requirements;
   (d) Actions, timing and responsibilities to be implemented to comply with requirements of the Planning Approval and other statutory requirements;
   (e) A reporting framework for any matters on an ongoing basis;
   (f) Details of training requirements for contractors, personnel, staff in environmental awareness, best practice environmental management systems and work safety;
   (g) Emergency and incident management procedures, including contact names, reporting format and corrective/preventative action procedures;
   (h) Monitoring programs, maintenance requirements and auditing procedures for environmental systems (e.g. train wash, management of wastes, chemical and hazardous materials etc);
   (i) Community complaints and complaint handling procedures; and
   (j) Quality assurance procedures.

2. The Supplier shall:
   (a) submit a copy of the OEMP to the EMR for review. The EMR is to be given a minimum period of 7 days to review and endorse the OEMP;
   (b) submit a copy of the OEMP to TfNSW for approval after it has been endorsed by the EMR.

3. The OEMP shall be submitted for the approval of TfNSW no later than two months prior to the commencement of operation, or within such period otherwise agreed by TfNSW. Any approved mitigation measures are to be installed or implemented prior to the commencement of operation, unless otherwise agreed by TfNSW.

Noise and Vibration:

4. Compliance monitoring shall be undertaken within 3 months of commencement of operations of the Maintenance Facility and within 3 months of the Provisional Acceptance of the last Set in the Initial Fleet to evaluate the effectiveness of the operational noise and vibration mitigation measures in complying with the requirements of the Industrial Noise Policy (EPA 2000) and any other applicable requirements of the Planning Approval.

In the event that the compliance monitoring indicates the operation of the Maintenance Facility will lead to greater noise impacts than that prescribed in the Industrial Noise Policy (EPA 2000), the Supplier is to identify and implement additional reasonable and feasible
noise mitigation measures in consultation with relevant stakeholders and the affected residents/receivers.

5. The Supplier shall ensure that noise emanating from stationary sources complies with the noise limits at the nearest noise sensitive receivers in accordance with the NSW Industrial Noise Policy (EPA 2000). Noise generated from the Maintenance Facility is likely to include associated traffic movements.

6. Wherever practicable, testing of warning sounds on rolling stock in the Maintenance Facility shall only be undertaken wholly within the Maintenance Facility building. No testing of warning sounds is permitted to take place at the Maintenance Facility unless it meets the noise goals in the Industrial Noise Policy (EPA 2000).
Schedule 11 – Underfloor Wheel Profiling Plant

1. Supplier Obligations
   (a) The Supplier must ensure that its Wheelsets are profiled as and when required in order to comply with the requirements of this deed.
   (b) The Supplier must:
       (i) provide to the Operator, from time to time, a schedule of its wheel profiling requirements in accordance with section 2.8 of SPR Appendix 5 and the Interface Protocols; and
       (ii) comply with section 2.8 of SPR Appendix 5 and the Interface Protocols when the Supplier wishes to book a Set into the Underfloor Wheel Profiling Plant as set out in the Interface Protocols.

2. TfNSW Obligations
   (a) TfNSW will use reasonable endeavours to procure that Wheelsets are profiled in accordance with the arrangements set out in:
       (i) the Interface Protocols; and
       (ii) section 2.8 of SPR Appendix 5.
   (b) TfNSW will procure that up to the number of Wheelsets listed in Table 11.1 below will be profiled in any Maintenance Year without charge to the Supplier.
   (c) If the Supplier requires more Wheelsets to be profiled in any Maintenance Year than the quantum set out in Table 11.1 for that Maintenance Year, TfNSW will:
       (i) use reasonable endeavours to arrange wheel profiling services in respect of the excess number of Wheelsets; and
       (ii) be entitled to payment by the Supplier as Moneys Owing for those wheel profiling services it is able to arrange, calculated in accordance with the Operator Schedule of Rates.

Table 11.1: Number of Wheelsets to be profiled without charge to the Supplier

<table>
<thead>
<tr>
<th>Maintenance Year</th>
<th>Initial Fleet</th>
<th>Option Fleet</th>
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<tbody>
<tr>
<td></td>
<td>Quantity for 24 Sets</td>
<td>Quantity for Option Sets 1 to 15</td>
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<tr>
<td>1</td>
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</table>
Schedule 12 - Train Plan Parameters

(a) The Supplier acknowledges that the Required Availability will allow the Supplier to undertake some Maintenance Services during the day, including during peak hours.

(b) TfNSW and the Operator will produce a Train Plan which, from and including the Date of Provisional Acceptance of the first Set, will:

(i) provide sufficient train paths to allow \( n \) Sets to be transferred to the Maintenance Facility Site and \( m \) Sets to be transferred from the Maintenance Facility Site in every 24 hour period; and

(ii) provide sufficient train paths to allow \( n \) Set to be transferred to an Underfloor Wheel Profiling Plant and to allow \( m \) Set to be transferred from an Underfloor Wheel Profiling Plant in every 24 hour period.

(c) It is expected that these train paths shall be sufficient to allow the Supplier to complete its maintenance obligations (all planned maintenance inspections, heavy cleaning and repairs) as defined in SPR Appendix 5.
Schedule 13 – Minimum Standards and Performance Operating Standards

1. Introduction

1.1 Terminology

The following terminology is used in this Schedule:

(a) (Into Service from Maintenance Facility Site): The Minimum Operating Standards for Available Sets and Performance Operating Standards that apply to a Set that has been presented at the Pick-up Point at the Maintenance Facility Site.

(b) (Into Service from Out-Depot): The Minimum Operating Standards for Available Sets and Performance Operating Standards that apply to a Set that has been stabled at an Out Depot.

(c) (In Service): The Minimum Operating Standards for Available Sets and Performance Operating Standards that apply to a Set that has entered the Network.

(d) (Continue into service): The Set may enter service and passengers loaded/unloaded until either the end of the current Availability Period (i.e. 1 AP) or the end of the next Availability Period (i.e. 2 APs). The empty Set is then to be worked to the Maintenance Facility Site*.

(e) (Continue in service): The Set may remain In Service and passengers loaded/unloaded until either the end of the current Availability Period (1 AP) or the end of the next Availability Period (2 APs). The empty Set is then to be worked to the Maintenance Facility Site*.

(f) (Work out of service): The Set may remain In Service and passengers loaded/unloaded until the end of the current run or the end of the next run. The empty Set is then to be worked to the Maintenance Facility Site*.

(g) (Work empty out of service): A Set that is already empty is to be worked to the Maintenance Facility Site without taking on any passengers*.

(h) (Detrain at the next suitable station and work empty out of service): Detrain passengers at the current station (if the incident occurs at a station), or at the next suitable station (if the incident occurs between stations) and then work the empty Set to the Maintenance Facility Site*.

(i) (NIS): Not into service.

(j) (Availability impacted = X): The period allowed from the first report of the Defect to the time the Set is deemed Unavailable if the Defect is not rectified.

(k) (Availability impacted = NIS): The Defect must be rectified before the Set enters into service or returns to service.

(l) (Availability impacted = 1 stop then NIS): The Defect requires the Set to be taken out of service at the current stop or the next station stop if between stations.

(m) (Availability impacted = <1 run then NIS): The Set may complete the current run or terminate early as advised by Mechanical Control with the reported Defect and must then be taken out of service.

(n) (Availability impacted = 1 run then NIS): The Set may complete the current run with the reported Defect and must then be taken out of service.
(o) **(Availability impacted = <2 runs then NIS):** The Set may complete the current run and the next run or terminate early as advised by Mechanical Control with the reported Defect and must then be taken out of service.

(p) **(Availability impacted = 2 runs then NIS):** The Set may complete the current run and the next run with the reported Defect and must then be taken out of service.

(q) **(Availability impacted = 1 AP then NIS):** The Set may complete the current Availability Period with the reported Defect and must then be taken out of service.

(r) **(Availability impacted = 2 AP then NIS):** The Set may complete the current Availability Period and the next Availability Period with the reported Defect and must then be taken out of service.

(s) **(Availability impacted = 12 AP then NIS):** The Set may complete the current Availability Period and the next eleven Availability Periods with the reported Defect and must then be taken out of service.

(t) **(KPI impacted = X):** The maximum period allowed from the first report of a Defect to the time at which KPI payments are impacted by the Defect remaining outstanding.

(u) **(Measure):** The criteria to be used for assessing the Defect. The Measure may vary depending on whether the Set is going Into Service From Maintenance Facility Site, going Into Service From Out Depot, or In Service.

(v) **(Action):** Where a Defect referred to in the Performance Operating Standards has been identified, the action required to be taken before the Set enters or continues in service.

(w) **(Tolerance):** The acceptable tolerance (once the required Action, if any, has been taken) which allows the Set to enter or continue In Service.

* Alternatively, depending on the nature of the Defect and the circumstances, the Set may either remain at, or be worked to, an Out Depot where the Set can be assessed and/or repaired by the Supplier’s Personnel.

### 1.2 Inconsistency

If there is any inconsistency between a requirement or obligation of the Supplier expressed in paragraph 1 and paragraph 3, the more stringent or onerous requirement or obligation applies.
2. Minimum Standards
<table>
<thead>
<tr>
<th>Into Service from Maintenance Facility Site</th>
<th>Into Service from Out-Depot</th>
<th>In Service</th>
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<tbody>
<tr>
<td><strong>Air springs</strong> All must work and Cars level with air springs inflated.</td>
<td>If one bogie's air spring(s) on any one Car is deflated or defective, isolate, report to Mechanical Control and work empty out of service at max speed of 65 km/h.</td>
<td>If one bogie's air spring(s) on any one Car is deflated or defective, isolate, report to Mechanical Control and continue in service at max speed of 65 km/h.</td>
</tr>
<tr>
<td><strong>Air conditioning - passenger</strong> All must be operational.</td>
<td>If only one air conditioning unit supplying conditioned air to a Car and the internal temperature is less than 29 degrees C, continue into service.</td>
<td>If only one air conditioning unit supplying conditioned air to a Car and the internal temperature is less than 29 degrees C, continue in service.</td>
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<td>If no conditioned air is supplied to a Car, ensure that the fresh air fans are operating, forecast temperatures are in the range 15-25 degrees C and continue into service.</td>
<td>If no conditioned air is supplied to a Car, ensure that the fresh air fans are operating and temperature is less than 29 degrees C within the Car and continue in service.</td>
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<td>In all cases, if not within the temperatures above, isolate the affected Car, report to Mechanical Control and continue into service.</td>
<td>In all cases, if not within the temperatures above relocate passengers to other Car(s), isolate the affected Car, report to Mechanical Control and continue in service.</td>
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<td>If required to isolate two or more Cars work empty out of service.</td>
<td>If required to isolate two or more Cars work out of service.</td>
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<td><strong>Air pressure displays on Train Driver's workstation</strong> Must be operational.</td>
<td>Must be operational.</td>
<td>Must be operational on one screen. Activate failover to other screen or use backup gauges if fitted. Report to Mechanical Control and work out of service.</td>
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<td>Where backup gauges are fitted, this standard is assessed by maintenance staff. Unless directed Train Crew are not required to test this equipment.</td>
<td>If the air pressure information is not available to the Train Driver, then detrain at the next suitable station and work empty out of service.</td>
</tr>
<tr>
<td><strong>Automatic public address (DVA)</strong> Must be operational in all Cars</td>
<td>If defective in 1 or more Cars report to Mechanical Control and continue into service.</td>
<td>If defective in 1 or more Cars report to Mechanical Control and continue in service.</td>
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<td>If objectionable noise being issued from DVA in any 1 Car, isolate defective PA amplifier(s) and continue into service. Report to Mechanical Control.</td>
<td>If objectionable noise being issued from DVA in any 1 Car, isolate defective PA amplifier(s) and continue in service. Report to Mechanical Control.</td>
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<td>Into Service from Maintenance Facility Site</td>
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<tr>
<td>EAPS including battery chargers</td>
<td>All must be operational.</td>
<td>If 75% or more of the EAPS modules are operational, report to Mechanical Control and continue into service. If less than 75% EAPS modules are operational then report to Mechanical Control and work empty out of service.</td>
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<tr>
<td>Bells</td>
<td>All must be operational</td>
<td>If defective use another form of effective communication, such as the intercom. If not possible then Guard is to relocate to other cab and continue in service. Report to Mechanical Control.</td>
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<tr>
<td>Blue Light</td>
<td>All must be operational</td>
<td>If defective report to Mechanical Control and continue into service.</td>
</tr>
<tr>
<td>Bogie components missing, loose, damaged or broken</td>
<td>No bogie components to be missing, loose, damaged or broken. Axle boxes must not be exhibiting signs of lubrication loss, overheating (discolouration or paint blistering) or signs of water damage or penetration. This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.</td>
<td>No bogie components to be missing, loose, damaged or broken. Axle boxes must not be exhibiting signs of lubrication loss, overheating (discolouration or paint blistering) or signs of water damage or penetration. If the above is noted, report to Mechanical Control and work empty out of service (or as directed). This standard is assessed by maintenance staff.</td>
</tr>
<tr>
<td>Brakes</td>
<td>Must be operational.</td>
<td>Refer to WAR 030 (TOM Notice No.017-2013) If 2 bogies or less isolated, no restrictions, operate normally (excludes both bogies on a terminal end car, in this case refer to WAR 090 Automatic brake). Report to Mechanical Control. If 3 or 4 bogies isolated, operate up to max speed in accordance with WAR 090 Automatic brake (excludes both bogies on a terminal car).</td>
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<td>Into Service from Maintenance Facility Site</td>
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<tr>
<td>Parking brakes</td>
<td>Report to Mechanical Control and work empty out of service. If more than 4 bogies isolated, do not enter passenger service. Report to Mechanical Control. If more than 6 bogies are isolated then refer to WAR 090 Automatic brake.</td>
<td>Report to Mechanical Control and work empty out of service. If more than 4 bogies isolated, do not enter passenger service. Report to Mechanical Control. If more than 6 bogies are isolated then refer to WAR 090 Automatic brake.</td>
</tr>
<tr>
<td>All must be operational.</td>
<td>If up to 2 bogies (excluding both bogies on a terminal end Car) have defective and isolated park brakes, continue into service and report to Mechanical Control. If more than 2 bogies (excluding both bogies on a terminal end Car) have defective and isolated park brakes, report to Mechanical Control and work empty out of service. If both bogies on a terminal end Car have brakes defective and isolated and park brake is working on at least 1 bogie, then report to Mechanical Control and work empty out of service. If both bogies on a terminal end Car have defective and isolated park brakes, then report to Mechanical Control and treat the train as disabled. Do not move until the affected end is attached to another train or locomotive with working automatic air brakes. If both bogies on a terminal end Car have defective and isolated park brakes, then report to Mechanical Control and treat the train as disabled. Do not move until the affected end is attached to another train or locomotive with working automatic air brakes.</td>
<td>If up to 2 bogies (excluding both bogies on a terminal end Car) have defective and isolated park brakes, continue in service and report to Mechanical Control. If more than 2 bogies (excluding both bogies on a terminal end Car) have defective and isolated park brakes, report to Mechanical Control and work out of service. If both bogies on a terminal end Car have brakes isolated and defective and park brake is working on at least 1 bogie then report to Mechanical Control, key isolate Car in and transfer passengers to other Cars. Detrain at the next suitable station and work empty out of service. If both bogies on a terminal end Car have defective and isolated park brakes, then report to Mechanical Control and treat the train as disabled. Do not move until the affected end is attached to another train or locomotive with working automatic air brakes.</td>
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<tr>
<td>Internal CCTV system</td>
<td>System and all internal cameras must be operational.</td>
<td>Refer to applicable standards for Internal surveillance system for the permissible number of defective internal CCTV cameras and associated action required.</td>
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<tr>
<td>External CCTV system</td>
<td>System and all external cameras must be operational.</td>
<td>If reverse view cameras are fitted, if only one external CCTV camera is inoperative per side (i.e. all cameras in other direction must be operational), report to Mechanical Control and continue into service.</td>
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<td>If reverse view cameras are not fitted, if one external CCTV camera is inoperative per side, report to Mechanical Control and work empty out of service.</td>
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<td>If reverse view cameras are fitted, if one or more cameras is not operational for both directions on either side, report to Mechanical Control and work empty out of service.</td>
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<td>If reverse view cameras are not fitted, if two or more cameras are not operational on either side, report to Mechanical Control and work empty out of service.</td>
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<tr>
<td>CCTV image recorders</td>
<td>All must be operational.</td>
<td>If only one unit operational, report to Mechanical Control and continue into service. If both units are not operational, work empty out of service.</td>
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<tr>
<td>Closed circuit television (CCTV) screens</td>
<td>If only 1 screen is operational. Guard to relocate to other cab if required. Report to Mechanical Control and continue into service.</td>
<td>If only 1 screen is operational. Guard to relocate to other cab if required. Report to Mechanical Control and continue in service.</td>
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<tr>
<td>Certificate of Readiness</td>
<td>A valid Certificate of Readiness must be displayed in the cab</td>
<td>A valid Certificate of Readiness must be displayed in the cab. If the Certificate of Readiness has expired then report to Mechanical Control and work empty out of service.</td>
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<tr>
<td>Train Preparation Certificate</td>
<td>Train Preparation Certificate test must be completed on TMS prior to entering passenger service.</td>
<td>Train Preparation Certificate test must be completed on TMS prior to entering passenger service.</td>
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<tr>
<td>Compressors</td>
<td>All must be operational.</td>
<td>At least two compressors operational and the Train is able to maintain operational main reservoir (MR) air pressure. Report to Mechanical Control and continue into service.</td>
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<td>If only one compressor is operational, do not enter passenger service, report to Mechanical Control and work empty out of service.</td>
<td>If only one compressor is operational and the Train maintains operational MR air pressure, report to Mechanical Control and work out of service.</td>
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<td>If MR pressure cannot be maintained then treat the Train as disabled, do not enter passenger service report to Mechanical Control and work empty out of service.</td>
<td>If MR pressure cannot be maintained then treat the set as disabled, report to Mechanical Control and work empty out of service.</td>
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<td>Couplers</td>
<td>Both leading and trailing end couplers must be operational. This standard is assessed by maintenance staff. Unless directed Train Crew are not required to inspect this equipment.</td>
<td>At least 1 end coupler must be operational. This standard is assessed by maintenance staff. Unless directed Train Crew are not required to inspect this equipment.</td>
</tr>
<tr>
<td>Cab air conditioning / heaters</td>
<td>Permissible to run if no air conditioning in cab provided the fresh air unit is operational and temperature is tolerable (i.e. within the range 15 and 28 degrees C). Report to Mechanical Control and continue into service.</td>
<td>Permissible to run if no air conditioning in cab provided the fresh air unit is operational and temperature is tolerable (i.e. within the range 15 and 28 degrees C). Report to Mechanical Control and continue in service.</td>
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<tr>
<td>Blinds in cab</td>
<td>All must work.</td>
<td>If defective or damaged and can be repaired or tied up such that visibility is not affected, then report to Mechanical Control and continue into service. If blind cannot be lowered or requires removal then report to Mechanical Control and work Set to suit prevailing conditions. If defective or damaged and can be repaired or tied up such that visibility is not affected, then report to Mechanical Control and continue in service. If blind cannot be lowered or requires removal then report to Mechanical Control and work Set to suit prevailing conditions.</td>
</tr>
<tr>
<td>Train Crew cab lights</td>
<td>All must work.</td>
<td>Permissible to run provided no more than 600mm of LED strip lights are not operating per cab. Permissible to run provided no more than 600mm of LED strip lights are not operating per cab.</td>
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<tr>
<td>Demister</td>
<td>All must work.</td>
<td>If defective report to Mechanical Control and continue into service once screen is demisted. Continue in service if defective.</td>
</tr>
<tr>
<td>Train Crew bodyside and transverse doors</td>
<td>All must work.</td>
<td>Permissible for one Train Crew bodyside door to be isolated. Report to Mechanical Control and work out of service. If Train Crew transverse door is defective report to Mechanical Control and work empty out of service. Permissible for one Train Crew bodyside door to be isolated. Report to Mechanical Control and work out of service. If Train Crew transverse door is defective then report to Mechanical Control and work out of service. If the transverse door cannot be closed and locked then detrain at the next suitable station and work empty out of service.</td>
</tr>
<tr>
<td>Detrainment door (excluding emergency access ramp)</td>
<td>Door must be secure and locked</td>
<td>No obvious sign of damage or tampering. If not securely closed, then work out of service. No obvious sign of damage or tampering. If not securely closed, report to Mechanical Control and work out of service.</td>
</tr>
<tr>
<td>Fire extinguishers</td>
<td>All fire extinguishers must be fit for purpose, in date and securely fastened.</td>
<td>All fire extinguishers must be fit for purpose, in date and securely fastened. All fire extinguishers must be fit for purpose, in date and securely fastened.</td>
</tr>
<tr>
<td>Heating — crew cab</td>
<td>All must be operational.</td>
<td>If 1 or more are defective, continue into service. If 1 or more are defective, continue in service.</td>
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<tr>
<td>Cab indications</td>
<td>All must work.</td>
<td>If any of the following cab indications (see list below) are defective and cannot be monitored by alternative means, report to Mechanical Control and work empty out of service: 1. park brake applied; 2. air spring fault; 3. locked axle fault; If any of the following cab indications (see list below) are defective and cannot be monitored by alternative means, report to Mechanical Control and work out of service: 1. park brake applied; 2. air spring fault; 3. locked axle fault;</td>
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<td>Section</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Into Service from Out-Depot</td>
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<tr>
<td>PA system</td>
<td>All must be operational.</td>
<td>Report to Mechanical Control and continue into service.</td>
</tr>
<tr>
<td>Intercom</td>
<td>All must be operational.</td>
<td>If the Drivers or Guards handset unit is faulty, use alternative unit. If there are no operational handsets available in the cab or the intercom is usable but requires repeating of messages, then the Guard is to relocate to other cab.</td>
</tr>
<tr>
<td>Train Crew seats</td>
<td>All must work and be fit for purpose.</td>
<td>If Drivers seat is defective then report to Mechanical Control and work empty out of service. If Guards seat defective then report to Mechanical Control, use Drivers seat and continue into service.</td>
</tr>
<tr>
<td>Speedometer</td>
<td>All must be operational.</td>
<td>Must be operational on AMS screen. If AMS isolated, then use TMS speedometer. Report to Mechanical Control and work empty out of service.</td>
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<tr>
<td>Horns</td>
<td>All must be operational.</td>
<td>If both town and country horns are defective (if continuous horn then isolate), report to Mechanical Control, run in accordance with NTR 408 Using train whistles and work out of service.</td>
</tr>
<tr>
<td>Windscreen wipers and washers</td>
<td>All must be operational.</td>
<td>If defective and dry conditions, continue in service at normal speed. If defective and wet conditions, do not enter passenger service. Report to Mechanical Control and work empty out of service.</td>
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<td>Into Service from Maintenance Facility Site</td>
<td>Into Service from Out-Depot</td>
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<tr>
<td>TMS Driver and Guards display units (DDU and GDU)</td>
<td>All must be operational.</td>
<td>If DDU is defective, report to Mechanical Control and work empty out of service.</td>
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<td>If GDU is defective, Guard to use DDU, report to Mechanical Control and continue into service.</td>
</tr>
<tr>
<td>Driver display units (AMS HMI fitted)</td>
<td>All must be operational.</td>
<td>If either DDU or HMI are defective, report to Mechanical Control and work empty out of service.</td>
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<tr>
<td>Train radio</td>
<td>All must be operational.</td>
<td>If one or both not operational, report to Mechanical Control and work empty out of service. Refer to NTR 410 Defective equipment.</td>
</tr>
<tr>
<td>Windscreens</td>
<td>No cracks, chips, star damage, craters or scratches that impair the Train Driver’s vision in the critical vision area are permitted in either the outer or inner glass layers.</td>
<td>If cracks, chips, star damage, craters or scratches are not in the critical viewing area and only affect outer layer of the windscreen, report to Mechanical Control and continue into service.</td>
</tr>
<tr>
<td>Event Recorder</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Into Service from Out-Depot</td>
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<td>All must be operational.</td>
<td>At least one Event Recorder must be fully operational. Report to Mechanical Control and continue into service.</td>
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<td>If all Event Recorders are defective, work empty out of service.</td>
</tr>
<tr>
<td>Decals</td>
<td>All emergency information decals must be undamaged, complete and legible on each Car.</td>
<td>If any emergency information decals are damaged, missing or illegible continue into service. Report to Mechanical Control. Decals to be replaced during the AP.</td>
</tr>
<tr>
<td>Traction interlocking and traction interlock indicators</td>
<td>All must be operational.</td>
<td>Traction interlocking not operational — traction remains available when doors open. Report to Mechanical Control and work empty out of service.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Traction interlocking not operational on a maximum of 1 door per side. Report to Mechanical Control. Lock and isolate the affected doors and continue into service.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If a traction interlocking indicator is not working (confirm by using the lamp test push button) but doors are still protected then continue into service using the Guards DOIL indicators and TMS main status screen. Report to Mechanical Control.</td>
</tr>
</tbody>
</table>

Sydney Growth Trains
(ISD-16-5312B)
<table>
<thead>
<tr>
<th></th>
<th>Into Service from Maintenance Facility Site</th>
<th>Into Service from Out-Depot</th>
<th>In Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guard's door open indicator light (DOIL)</td>
<td>All must be operational.</td>
<td>If 1 DOIL indicator is defective in the Guard's active cab (check using test lamps push button) then report to Mechanical Control and continue into service, with Guard using the other DOIL, or audible indication device and door status screen. If no door status indication is available then the Guard is to relocate to the other cab. Report to Mechanical Control and continue in service. If defective, Guard to make manual door warning announcements using the public address (PA) system. Report to Mechanical Control and continue into service.</td>
<td>If 1 DOIL indicator is defective in the Guard's active cab (check using test lamps push button) then report to Mechanical Control and continue in service, with Guard using the other DOIL, or audible indication device and door status screen. If no door status indication is available then the Guard is to relocate to the other cab. Report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>Door warning device (DWD)</td>
<td>All equipment must be operational</td>
<td>If defective, Guard to make manual door warning announcements using the public address (PA) system. Report to Mechanical Control and continue into service. If DWD push button in Guard's active position is defective, then Guard to relocate to other cab. Report to Mechanical Control and continue into service.</td>
<td>If defective, Guard to make manual door warning announcements using the public address (PA) system. Report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>Driver safety system - vigilance / operator enable system / ETCS</td>
<td>All equipment must be operational. All equipment must be operational.</td>
<td>If defective, do not enter passenger service. Report to Mechanical Control and work empty out of service.</td>
<td>Must be operational in active cab. If defective report to Mechanical Control, isolate the defective equipment as required. If required, obtain the services of a Guard or other qualified person to operate as a second person in the Train Driver's cab then work out of service. If a qualified person is not available, then detrain at the next suitable station and work empty out of service.</td>
</tr>
<tr>
<td>Tripgear</td>
<td>Both must be operational.</td>
<td>Both must be operational.</td>
<td>Both must be operational.</td>
</tr>
</tbody>
</table>

If defective, do not enter passenger service. Report to Mechanical Control and work empty out of service. If defective, isolate defective trip gear and obtain the services of a Guard or other qualified person to operate as a second person in the Train Driver's cab then work out of service.
<table>
<thead>
<tr>
<th></th>
<th>Into Service from Maintenance Facility Site</th>
<th>Into Service from Out-Depot</th>
<th>In Service</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Emergency door release (EDRs)</strong> (Internal) - Passenger bodyside and Crew transverse doors</td>
<td>All passenger bodyside and Train Crew transverse door EDRs must be fully operational.</td>
<td>All passenger bodyside and Train Crew transverse door EDRs must be fully operational.</td>
<td>If a qualified person is not available then detrain at the next suitable station and work empty out of service.</td>
</tr>
<tr>
<td></td>
<td>This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.</td>
<td>This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.</td>
<td>If one passenger bodyside door internal EDR is not operational per Car, then lock and isolate the door. Report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td></td>
<td><strong>Crew override</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Crew override must be fully operational from both cabs.</td>
<td>Crew override must be fully operational from both cabs.</td>
<td>If Crew override not operational then report to Mechanical Control and work out of service.</td>
</tr>
<tr>
<td></td>
<td>This standard is assessed by maintenance staff. Unless directed Crew are not required to inspect this equipment.</td>
<td>This standard is assessed by maintenance staff. Unless directed Crew are not required to inspect this equipment.</td>
<td></td>
</tr>
<tr>
<td><strong>Inter-car doors emergency door release (EDR)</strong></td>
<td>All inter-car door EDRs must be fully operational.</td>
<td>All inter-car door EDRs must be fully operational.</td>
<td>If 1 inter-car door EDR is not operational lock the inter-car door open. If not possible then close and isolate the door. Report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td></td>
<td>This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.</td>
<td>This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.</td>
<td>If the EDR cover cannot be secured closed and the local audible alarm is sounding, then close and isolate the inter-car door concerned. Report to Mechanical Control and work out of service.</td>
</tr>
<tr>
<td><strong>Emergency door release (EDRs)</strong> (External)</td>
<td>All External EDRs must be fully operational.</td>
<td>All External EDRs must be fully operational.</td>
<td>If one or both passenger bodyside door external EDRs are found to be defective per Car, then relocate passengers to adjacent Cars and lock-off/Nightsafe the Car. Report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td></td>
<td>This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.</td>
<td>This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Crew override</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Crew override must be fully operational from both cabs.</td>
<td>Crew override must be fully operational from both cabs.</td>
<td>If Crew override not operational then report to Mechanical Control and work out of service.</td>
</tr>
<tr>
<td></td>
<td>This standard is assessed by maintenance staff. Unless directed Crew are not required to inspect this equipment.</td>
<td>This standard is assessed by maintenance staff. Unless directed Crew are not required to inspect this equipment.</td>
<td></td>
</tr>
</tbody>
</table>
### Emergency couplers
- Must be present and operational.
- This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.
- Must be present and operational.
- Operational aspects are to be assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.
- If required, fit in accordance with NTR 416 Disabled trains.

### Emergency/safety equipment locker
- Safety/emergency equipment locker must be locked with seal intact.
- If the safety/emergency equipment locker is not locked or seal is broken, report broken seal and any missing items to Mechanical Control and continue into service.
- If the safety/emergency equipment locker is not locked or seal is broken, report broken seal and any missing items to Mechanical Control and continue in service.

### Floor
- No uneven surfaces/trip hazards.
- No uneven surfaces/trip hazards. If considered unsafe, isolate Car. Report to Mechanical Control and continue into service.
- No uneven surfaces/trip hazards. If considered unsafe, isolate Car. Report to Mechanical Control and continue in service.

### Internal smoke detectors
- All fire detection equipment must be fully operational.
- If one internal smoke detector not operational per Car, report to Mechanical Control and continue into service.
- If one internal smoke detector not operational per Car, report to Mechanical Control and continue in service.

### External smoke detectors
- All fire detection equipment must be fully operational.
- If one or more of the external smoke detectors is not operational per set, report to Mechanical Control and continue into service.
- If one or more of the external smoke detectors is not operational per set, report to Mechanical Control and continue in service.

### Crew compartment fire detection panel
- All fire detection equipment must be fully operational.
- No more than 1 indicator panel not operational. Guard to relocate to other cab and use alternate indicator panel. Report to Mechanical Control and continue into service.
- No more than 1 indicator panel not operational. Guard to relocate to other cab and use alternate indicator panel. Report to Mechanical Control and continue in service.
- If both fire indicator panels not operational, report to Mechanical Control and work out of service.
<table>
<thead>
<tr>
<th>Into Service from Maintenance Facility Site</th>
<th>Into Service from Out-Depot</th>
<th>In Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guards emergency brake pipe air gauge</td>
<td>If gauge defective but Guard can check the brake pipe pressures on electronic display, then report to Mechanical Control and continue into service. If brake pipe pressure not available on electronic display, then treat train as disabled and report to Mechanical Control.</td>
<td>If gauge defective but Guard can check the brake pipe pressures at both ends on electronic display, then report to Mechanical Control and continue in service. If brake pipe pressure not available on electronic display, but is available on electronic display in the other cab, then Guard to relocate to the other cab and continue in service.</td>
</tr>
<tr>
<td>Both must work</td>
<td>If brake pipe pressure continuity cannot be confirmed on electronic display then report to Mechanical Control, detrain at the next suitable station and treat the train as disabled.</td>
<td></td>
</tr>
<tr>
<td>Electrical wiring</td>
<td>No exposed wiring is permissible.</td>
<td>If any exposed wiring, lock off/Nightsafe the affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>No exposed wiring is permissible.</td>
<td>If any cabinet doors/covers cannot be secured and locked, lock off/Nightsafe the affected Car, report to Mechanical Control and continue in service.</td>
<td>If any cabinet doors/covers cannot be secured and locked, lock off/Nightsafe affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>Cabinet doors and covers</td>
<td>Must be fitted and secured/locked.</td>
<td>If any cabinet doors/covers cannot be secured and locked, lock off/Nightsafe the affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>Must be fitted and secured/locked.</td>
<td>If any internal panelling considered unsafe, lock off/Nightsafe the affected Car, report to Mechanical Control and continue into service.</td>
<td>If any internal panelling considered unsafe, lock off/Nightsafe the affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>Internal panelling</td>
<td>All must be in a safe and secure condition.</td>
<td>If any internal panelling considered unsafe, lock off/Nightsafe the affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>All must be in a safe and secure condition.</td>
<td>If any handrails or grab handles considered unsafe, lock off/Nightsafe the affected Car, report to Mechanical Control and continue into service.</td>
<td>If any handrails or grab handles considered unsafe, lock off/Nightsafe the affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>Handrails and grab handles</td>
<td>All must be in a safe and secure condition.</td>
<td>If any handrails or grab handles considered unsafe, lock off/Nightsafe the affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>All must be in a safe and secure condition.</td>
<td>If any broken or missing glass, isolate affected Car, report to Mechanical Control and unless otherwise instructed by the applicable safe working procedures, continue into service.</td>
<td>If any broken or missing glass, isolate affected Car, report to Mechanical Control and unless otherwise instructed by the applicable safe working procedures, continue into service.</td>
</tr>
<tr>
<td>Interior glass</td>
<td>No broken or missing glass</td>
<td>If any defective, report to Mechanical Control, refer to NTR 406 Using train lights and continue into service.</td>
</tr>
<tr>
<td>No broken or missing glass</td>
<td>If any defective, report to Mechanical Control, refer to NTR 406 Using train lights and continue into service.</td>
<td>If any defective, report to Mechanical Control, refer to NTR 406 Using train lights and continue in service.</td>
</tr>
<tr>
<td>No visible cracks greater than 100mm</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lights exterior</td>
<td>All must be operational.</td>
<td></td>
</tr>
<tr>
<td>Into Service from Maintenance Facility Site</td>
<td>Into Service from Out-Depot</td>
<td>In Service</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>----------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Passenger lighting</td>
<td>All must be operational</td>
<td>If any defective report to Mechanical Control. It is permissible to have no lighting on 1 side of any Car and to continue in service.</td>
</tr>
<tr>
<td></td>
<td>If any defective report to Mechanical Control. Permissible for up to 1.2m of LED strip lights to be not operational in any 1 Car saloon area or up to 600mm in any 1 Car vestibule area. Continue into service.</td>
<td>If all passenger lighting is defective on a Car then lock off affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td></td>
<td>If more than the maximum permissible are defective, then lock off affected Car, report to Mechanical Control and continue into service.</td>
<td>If more than the maximum permissible are defective, then lock off affected Car, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>Passenger door exit lights</td>
<td>All lights must be working.</td>
<td>If exit lights are partially defective on a passenger door, report to Mechanical Control and continue into service.</td>
</tr>
<tr>
<td></td>
<td>If exit lights are partially defective on a passenger door, report to Mechanical Control and continue into service.</td>
<td>If exit lights are partially defective on a passenger door, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td></td>
<td>If all exit lights are defective on a passenger door, lock and isolate the door, report to Mechanical Control and continue into service.</td>
<td>If all exit lights are defective on a passenger door, lock and isolate the door, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td>Pantographs</td>
<td>All must be operational.</td>
<td>Refer to WAR 030 (TOM Notice No.017-2013) 3 pantographs must be operational. Refer to WAR 208 Main power faults, If possible, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td></td>
<td>Refer to WAR 030 (TOM Notice No.017-2013) 3 pantographs must be operational. Defective pantograph must be lowered and isolated. Refer to WAR 208 Main power faults, If possible, report to Mechanical Control and continue in service.</td>
<td>Refer to WAR 030 (TOM Notice No.017-2013) 3 pantographs must be operational. Defective pantograph must be lowered and isolated. Refer to WAR 208 Main power faults, If possible, report to Mechanical Control and continue in service.</td>
</tr>
<tr>
<td></td>
<td>If defective pantograph cannot be lowered and isolated, report to Mechanical Control and do not move the Set until authorised.</td>
<td>If defective pantograph cannot be lowered and isolated, report to Mechanical Control and do not move the Set until authorised.</td>
</tr>
<tr>
<td>Passenger bodyside doors</td>
<td>All must be operational.</td>
<td>If up to two doors per side are defective, lock and isolate the doors then continue in service.</td>
</tr>
<tr>
<td></td>
<td>If one door per side is defective, lock and isolate the door then continue into service.</td>
<td>If up to two doors per side are defective, lock and isolate the doors then continue in service.</td>
</tr>
<tr>
<td></td>
<td>If unable to close any passenger door, work empty out of service.</td>
<td>If both the defective doors are on one Car, then isolate the Car and continue in service.</td>
</tr>
<tr>
<td></td>
<td>In the event of loss of power to a door control unit (DCU) or other condition which results in the EDR being available for use, key isolate the Car concerned, report to Mechanical Control and continue into service.</td>
<td>If unable to close any passenger door, detrain at the next suitable station and work empty out of service.</td>
</tr>
</tbody>
</table>
### Sydney Growth Trains

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<table>
<thead>
<tr>
<th></th>
<th>Into Service from Maintenance Facility Site</th>
<th>Into Service from Out-Depot</th>
<th>In Service</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Inter-car doors</strong></td>
<td>All must be operational</td>
<td>If 1 or more inter-car doors are defective, lock the inter-car doors open. Report to Mechanical Control and continue into service.</td>
<td>If 1 or more inter-car doors are defective, lock the inter-car doors open. Report to Mechanical Control and continue into service.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If not possible then close and isolate the door, report to Mechanical Control and continue into service.</td>
<td>If not possible then close and isolate the door, report to Mechanical Control and continue into service.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If it is necessary to close and isolate 2 or more inter-car doors, report to Mechanical Control and work empty out of service.</td>
<td>If it is necessary to close and isolate 2 or more inter-car doors, report to Mechanical Control and work empty out of service.</td>
</tr>
<tr>
<td><strong>Passenger intercom</strong></td>
<td>All must be operational</td>
<td>If PEI(s) in any Car are defective, place an &quot;Out of Order&quot; sticker over the unit(s) and monitor Car on a regular basis. Report to Mechanical Control and continue into service.</td>
<td>If PEI(s) in any Car are defective, place an &quot;Out of Order&quot; sticker over the unit(s) and monitor Car on a regular basis. Report to Mechanical Control and continue into service.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If no PEIs are operational in any 1 disabled vestibule area then place an &quot;Out of Order&quot; sticker over the unit(s) and monitor Car on a regular basis. When operating after dark, lock off/Nightsafe the Car concerned. Report to Mechanical Control continue into service.</td>
<td>If no PEIs are operational in any 1 disabled vestibule area then place an &quot;Out of Order&quot; sticker over the unit(s) and monitor Car on a regular basis. If operating after dark, lock off/Nightsafe the Car concerned. Report to Mechanical Control continue into service.</td>
</tr>
<tr>
<td><strong>Passenger information displays</strong></td>
<td>All internal and external displays must be operational.</td>
<td>If one or more displays are defective in any Car then isolate the displays concerned and continue into service.</td>
<td>If one or more displays are defective in any Car then isolate the displays concerned and continue into service.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If one or more displays have been Vandalised and are considered hazardous to passengers then report to Mechanical Control, lock off/Nightsafe the affected Car and continue into service.</td>
<td>If one or more displays have been Vandalised and are considered hazardous to passengers then report to Mechanical Control, lock off/Nightsafe the affected Car and continue into service.</td>
</tr>
<tr>
<td>Into Service from Maintenance Facility Site</td>
<td>Into Service from Out-Depot</td>
<td>In Service</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>-----------------------------</td>
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<td></td>
</tr>
<tr>
<td>Passenger seats All seats, including flip up seats, securely installed, clean, safe and usable. All flip up and walkover seat mechanisms must be operational.</td>
<td>If all displays in all Cars are defective, then isolate the system, report to Mechanical Control and continue in service. Crew to work in accordance with OSP 9 Spoken Communications with passengers.</td>
<td>If all displays in all Cars are defective, then isolate the system, report to Mechanical Control and continue in service. Crew to work in accordance with OSP 9 Spoken Communications with passengers.</td>
<td></td>
</tr>
<tr>
<td>Skirting (side and front) All must be fitted and secure</td>
<td>Permissible to enter passenger service with up to nine individual seats per Car missing or unsuitable for passenger use. Report to Mechanical Control and continue into service. If more than nine seats in a Car cannot be used or if any seats are considered unsafe, then lock off/Nightsafe the Car and continue into service.</td>
<td>Permissible to run in passenger service with up to nine individual seats per Car missing or unsuitable for passenger use. Report to Mechanical Control and continue in service. If more than nine seats in a Car cannot be used or if any seats are considered unsafe, then lock off/Nightsafe the Car and continue in service.</td>
<td></td>
</tr>
<tr>
<td>Terminal and emergency egress ramp Must be fitted and visually free from obvious damage or signs of tampering.</td>
<td>Any loose covers or skirts must be reported to Mechanical Control and made secure or removed. If this is possible then continue into service. If not possible, work empty out of service.</td>
<td>Any loose covers or skirts must be reported to Mechanical Control and made secure or removed. If this is possible then continue in service. If not possible, then detain at the next suitable station and work empty out of service.</td>
<td></td>
</tr>
<tr>
<td>Traction inverter and motors All must be operational.</td>
<td>Refer to WAR 030 (TOM Notice No.017-2013) At least 6 of the 8 traction inverter/motor pairs must be operational. Report to Mechanical Control and continue into service. If less than 6 traction inverter/motor pairs are operational then report to Mechanical Control and work empty out of service in accordance with WAR 190 Traction faults.</td>
<td>Refer to WAR 030 (TOM Notice No.017-2013) At least 6 of the 8 traction inverter/motor pairs must be operational. Report to Mechanical Control and continue in service. If less than 6 traction inverter/motor pairs are operational then report to Mechanical Control, detain at the next suitable station and work empty out of service in accordance with WAR 190 Traction faults.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Into Service from Maintenance Facility Site</td>
<td>Into Service from Out-Depot</td>
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</tr>
<tr>
<td>-------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Exterior</td>
<td>Complies with Train Presentation Manual - clean and no external Graffiti to be visible.</td>
<td>Clean and no external Graffiti to be visible.</td>
<td>Matters of train presentation including cleanliness and potentially offensive Graffiti must be reported to Mechanical Control.</td>
</tr>
<tr>
<td>Interior</td>
<td>Complies with Train Presentation Manual - clean and no internal Graffiti to be visible.</td>
<td>Cars to be clean and free of hazards and Graffiti that are of a direct personal nature, offensive matter or dangerous material. Offensive Graffiti includes obscenity or vulgarity of a direct personal nature. Offensive matter includes vomit and human waste. Dangerous material includes blood, glass and sharp objects. Report to Mechanical Control and, if necessary, lock off/Nightsafe the Car affected, and continue into service. If more than one Car is affected, do not enter passenger service until the Cars concerned have been cleaned.</td>
<td>Cars to be clean and free of hazards and Graffiti that are of a direct personal nature, offensive matter or dangerous material. Offensive Graffiti includes obscenity or vulgarity of a direct personal nature. Offensive matter includes vomit and human waste. Dangerous material includes blood, glass and sharp objects. Report to Mechanical Control and, if necessary, lock off/Nightsafe the Car affected, and continue in service. If more than one Car is affected, detrain at the next suitable station and arrange cleaning or work empty out of service.</td>
</tr>
<tr>
<td>Water in Train</td>
<td>No interior surfaces to be wet.</td>
<td>If any wet surfaces are considered to pose a slip hazard or result in significant passenger discomfort then lock off/Nightsafe the Car concerned and continue into service. Report to Mechanical Control.</td>
<td>If any wet surfaces are considered to pose a slip hazard or result in significant passenger discomfort then lock off/Nightsafe the Car concerned and continue in service. Report to Mechanical Control.</td>
</tr>
<tr>
<td>Wheels</td>
<td>Refer to TWP 136 Defective wheels for details of allowable defects and actions required. This standard is assessed by maintenance staff. Unless directed, Train Crew are not required to inspect this equipment.</td>
<td>Refer to TWP 136 Defective wheels for details of allowable defects and actions required.</td>
<td>Refer to TWP 136 Defective wheels for details of allowable defects and actions required.</td>
</tr>
<tr>
<td>Wheelchair ramps</td>
<td>Both ramps must be present</td>
<td>If 1 or both of the ramps is missing or damaged then continue into service. Report to Mechanical Control if both ramps are affected.</td>
<td>If 1 or both of the ramps is missing or damaged then continue into service. Report to Mechanical Control if both ramps are affected.</td>
</tr>
<tr>
<td>Into Service from Maintenance Facility Site</td>
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<td></td>
</tr>
<tr>
<td>Windscreens, Train Crew bodyside windows, passenger bodyside windows, bodyside door windows, Train Crew transverse door windows and inter-car door windows</td>
<td>Refer to TWP 150 Damaged or missing window glass for details of allowable defects. Windows and windscreen to be clean.</td>
<td>Refer to TWP150 Damaged or missing window glass for details of allowable defects and action required of Crew.</td>
<td>Refer to TWP150 Damaged or missing window glass for details of allowable defects and action required of Crew.</td>
</tr>
</tbody>
</table>
## 3. Performance Operating Standards

### Table 3: Performance Operating Standards

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 - 1</td>
<td>Info Service from</td>
<td>Lights in all areas of each Car operating</td>
<td>100% operating (i.e. all LEDs illuminated and not flickering in every LED light)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 - 3</td>
<td>Out-Depot or defective in service</td>
<td>At Out Depot - saloon or vestibule lights not operating</td>
<td>Maximum of 600mm of LED strip lights not operating in any one Car area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 - 4</td>
<td></td>
<td></td>
<td>Maximum of 1.2m of LED strip lights not operating in any one Car saloon area or maximum of 600mm of LED strip lights not operating in any one Car vestibule area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 - 5</td>
<td></td>
<td></td>
<td>More than 1.2m of LED not operating in any one Car saloon area or more than 600mm of LED strip lights not operating in any one Car vestibule area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 - 6</td>
<td>In service - Saloon, vestibule, door entry or door step lights not operating</td>
<td>More than 1.2m of LED strip lights not operating in any one Car saloon area; or more than 600mm of LED strip lights not operating in any one Car vestibule area; or any one passenger exit light, crew or emergency step light not operating in any one Car.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------------------------------------------</td>
<td>-----------------------------------------------------</td>
<td>---------------------------------------------</td>
<td>--------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>1.3 - 1 Door Warning Device (DWD) not operational</td>
<td>Before a Major Service - Door warning device (DWD) not operational</td>
<td>All must be operational</td>
<td>Guard to provide manual announcements until fixed</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>1.3 - 2 Door control DWD push button at Guard's active position faulty</td>
<td>Automated door closing voice announcement not working</td>
<td>One or more DWD voice announcements not functioning but manual announcements possible</td>
<td>Guard to provide manual announcements until fixed</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>1.3 - 3 Door control DWD push button in other Cab is operational</td>
<td>Door control DWD push button at Guard's active position faulty</td>
<td>DWD push button in other Cab is operational</td>
<td>Guard to relocate to other Cab.</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>1.3 - 4 Defective in service</td>
<td>Automated door closing voice announcement not working</td>
<td>One or more DWD voice announcements not functioning but manual announcements possible</td>
<td>Guard to provide manual announcements until fixed</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>1.3 - 5 DWD push button at Guard's active position faulty</td>
<td>DWD push button in other Cab is operational</td>
<td>DWD push button in other Cab is operational</td>
<td>Guard to relocate to other Cab.</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.4 - 1 Intercar Doors</td>
<td>Intercar doors not operating within required timeframe.</td>
<td>Must open within 1 second of nominal setting and close within 2 seconds of nominal setting</td>
<td>If one or more intercar doors are defective, lock the intercar door open in accordance with relevant procedures. Permissible for a maximum of one intercar door to be closed and isolated (if for example a damaged Alternative Access Panel (AAP) prevents it being locked open). If any intercar door cannot be opened or closed due to an open AAP then close and secure. In this case no KPI or Availability Impacts apply.</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>1.4 - 2 Intercar Doors</td>
<td>Intercar doors not operating within required timeframe.</td>
<td>Must open within 2 seconds of nominal setting and close within 3 seconds of nominal setting</td>
<td>If one or more intercar doors are defective, lock the intercar door open in accordance with relevant procedures. Permissible for a maximum of one intercar door to be closed and isolated (if for example a damaged Alternative Access Panel (AAP) prevents it being locked open). If any intercar door cannot be opened or closed due to an open AAP then close and secure. In this case no KPI or Availability Impacts apply.</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>1.4 - 3a Intercar doors not operating</td>
<td>One or more intercar doors inoperative</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>----------</td>
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<td>--------</td>
<td>--------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>1.4 - 3c</td>
<td>Intercar doors not operating</td>
<td>One or more intercar doors inoperative</td>
<td>If it is not possible to lock open two or more defective intercar doors (due to a damaged AAP for example) then close and isolate the doors concerned and work empty out of service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.4 - 4</td>
<td>Defective in service</td>
<td>Intercar doors not operating</td>
<td>One or more intercar doors inoperative</td>
<td>If one or more intercar doors are defective, lock the intercar door open in accordance with relevant procedures, Permissible for a maximum of one intercar door to be closed and isolated (if for example a damaged AAP prevents it being locked open). If any intercar door cannot be opened or closed due to an open AAP then close and secure. In this case no KPI or Availability Impacts apply.</td>
<td></td>
</tr>
<tr>
<td>1.4 - 5</td>
<td>Intercar doors not operating</td>
<td>One or more intercar doors inoperative</td>
<td>If it is not possible to lock open two or more defective intercar doors (due to a damaged AAP for example) then close and isolate the doors concerned and work empty out of service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.5 Seats Missing/Unusable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.5 - 1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>All seats installed and useable (including flipup seats)</td>
<td>100% available</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.5 - 2</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Number of seats missing or unusable</td>
<td>Maximum nine individual seats missing or unusable in any one Car</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.6 Seats Poor Condition/Faulty</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.6 - 1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>After Major Service - number of seats unsuitable for passenger use</td>
<td>100% available</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.6 - 2</td>
<td></td>
<td>Any seats ripped or torn but still useable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.6 - 3</td>
<td></td>
<td>Any seats worn or threadbare but still useable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.6 - 4</td>
<td></td>
<td>After Major Service - flip up seats faulty</td>
<td>No flip up seats with faulty mechanisms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.6 - 5</td>
<td></td>
<td>After Major Service - walk over seat mechanisms faulty</td>
<td>No passenger seats with faulty walk over mechanisms</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 1.6 Transport for NSW

#### 1.6-6

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Into Service from Out-Depot or defective in service</td>
<td>Number of seats unsuitable for passenger use</td>
<td>Maximum nine individual seats unsuitable in any one car</td>
<td></td>
</tr>
<tr>
<td>Flip up seats do not retract</td>
<td></td>
<td>No more than one wheelchair space in any one Car to be unavailable provided a second wheelchair space is accessible from that location</td>
<td></td>
</tr>
<tr>
<td>Walk over seat mechanisms faulty</td>
<td></td>
<td>Any faulty walkover mechanisms - seats still usable</td>
<td></td>
</tr>
</tbody>
</table>

#### 1.7 Air Conditioning - Passenger

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Into Service from Maintenance Facility Site</td>
<td>Number of air conditioning units operating and maintaining temperature/humidity in passenger areas</td>
<td>All operating correctly</td>
<td></td>
</tr>
<tr>
<td>Temperature/humidity in passenger areas not maintained, all air con units operating</td>
<td>Temperature in passenger areas is within the allowable range, as follows:</td>
<td>Ensure temperature is within allowable range</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>External Temp °C</th>
<th>Internal temp range (Tolerance as per EN14750)</th>
<th>PGS allowable range - Into service from Out Depot/In Service</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 19</td>
<td>21</td>
<td>19-23</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>22</td>
<td>20-24</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>23</td>
<td>21-25</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>24</td>
<td>22-26</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>25</td>
<td>23-27</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>26</td>
<td>24-28</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>27</td>
<td>25-29</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>28</td>
<td>26-30</td>
<td></td>
</tr>
</tbody>
</table>

#### 1.7-3

| Temperature/humidity in passenger saloon not maintained, one (of two) air con units not operating | Temperature in affected Car must be no greater than 28 degrees C | Ensure temperature is tolerable. If temperature is not acceptable isolate Car in accordance with procedures. | |

#### 1.7-4

| At Out Depot, no air conditioning (both units inoperable) | Forecast temperatures are in the range 15 to 25 degrees C | Ensure fresh air fans are operating in affected Car and temperature is within tolerance. If not isolate Car in accordance with procedures. | |
### 1.7-6
In service, no air conditioning in one Car (both units inoperable)

Temperature in affected Car must be no greater than 28 degrees C

Ensure fresh air fans are operating in affected Car and temperature is within tolerance. If not isolate Car in accordance with procedures.

1) Ensure fresh air fans are operating in affected Cars and temperature is within tolerance.
2) If fresh air fans are inoperative, isolate Cars in accordance with procedures and work out of service.

### 1.7-7
In service, no air conditioning in more than one Car (both units inoperable)

Temperature in affected Car must be no greater than 28 degrees C

#### 1.8a Automatic Public Address [Digital Voice Annunciations]

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.8a-1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Automatic passenger information voice announcements DVA not operational</td>
<td>Must be functional in all Car</td>
</tr>
<tr>
<td>1.8a-2</td>
<td>Into Service from Out Depot or defective in service site</td>
<td>Automatic passenger information voice announcements DVA not operational</td>
<td>Not operational in any one Car</td>
</tr>
<tr>
<td>1.8a-3</td>
<td>Manual Public address announcements - see Cab Equipment PA System</td>
<td>Automatic passenger information voice announcements DVA operation</td>
<td>Poor quality or incorrect volume. Cannot be heard without moving seat in a Car</td>
</tr>
<tr>
<td>1.8a-4</td>
<td>Manual Public address announcements - see Cab Equipment PA System</td>
<td>Objectionable noise from DVA in any one Car</td>
<td>Isolate PA amplifier in affected Car and Crew to work in accordance with OSP9 Spoken Communications with Passengers. If necessary isolate the affected Car in accordance with procedures.</td>
</tr>
<tr>
<td>1.8a-5</td>
<td>Manual Public address announcements - see Cab Equipment PA System</td>
<td>Objectionable noise from DVA in more than one Car and unable to isolate defective unit</td>
<td></td>
</tr>
</tbody>
</table>

### 1.8b Passenger Emergency Intercom

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.8b-1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Number of Passenger Emergency Intercom (PEI) units not operational</td>
<td>Must be functional in all Cars</td>
</tr>
<tr>
<td>1.8b-2</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Number of Passenger Emergency Intercom units not operational</td>
<td>One unit in any Car not working</td>
</tr>
<tr>
<td>1.8b-3</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Number of Passenger Emergency Intercom units not operational</td>
<td>No more than one Car with two PEIs not operational.</td>
</tr>
<tr>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
</tr>
<tr>
<td>----------</td>
<td>-------------------------------------------------------------------------</td>
<td>------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1.9 - 1</td>
<td>Number of passenger information displays not displaying or incorrect data displayed</td>
<td>All displays must be operational</td>
<td>Place an &quot;Out of Order&quot; sticker over the unit(s). If all PEIs are not operational in a disabled vestibule area then ensure that wheelchair users are advised and not assisted onto the train at this position. Monitor the Car concerned on a regular basis. If operating after dark, isolate the Car concerned in accordance with procedures.</td>
</tr>
<tr>
<td>1.9 - 2</td>
<td>Number of passenger information displays not displaying or incorrect data displayed</td>
<td>One display per Car unreadable</td>
<td>Isolate</td>
</tr>
<tr>
<td>1.9 - 3</td>
<td>Number of passenger information displays not displaying or incorrect data displayed</td>
<td>More than one display in one Car unreadable</td>
<td>Isolate</td>
</tr>
<tr>
<td>1.9 - 4</td>
<td>Number of passenger information displays not displaying or incorrect data displayed</td>
<td>All displays in all Cars</td>
<td>Isolate system</td>
</tr>
<tr>
<td>1.9 - 5</td>
<td>Number of passenger information displays not displaying</td>
<td>All displays in one Car Vandalised</td>
<td>Isolate</td>
</tr>
<tr>
<td>1.9 - 6</td>
<td>Number of passenger information displays not displaying</td>
<td>One or more display per Car with Graffiti damage</td>
<td></td>
</tr>
</tbody>
</table>

### 1.19 CCTV

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.10 - 1</td>
<td>CCTV System not fully operational</td>
<td>System and all cameras must be operating</td>
<td>Guard to use opposite camera view direction function and continue to monitor all doors.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10 - 2</td>
<td>Number of CCTV Cameras at Passenger Emergency help points inoperative</td>
<td>No more than one camera in any one Car linked to the Passenger Emergency Intercom inoperative</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10 - 3</td>
<td>Number of external CCTV cameras inoperative (reverse view fitted)</td>
<td>No more than one external CCTV camera inoperative per side (i.e. all cameras in other direction must be operational).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10 - 4</td>
<td>Number of external CCTV cameras inoperative (reverse view not fitted)</td>
<td>One or more external CCTV cameras in each direction per side inoperative</td>
<td>Guard to use opposite camera view direction function and continue to monitor all doors.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10 - 5</td>
<td>Number of CCTV internal cameras inoperative</td>
<td>Not more than two inoperable cameras in any one Car and not more than one inoperable camera in any one Saloon area of that Car</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10 - 6</td>
<td>Number of internal CCTV Cameras Vandalised or Graffiti over lens</td>
<td>One camera obviously not working due to Vandalism or Graffiti and not more than two inoperable cameras in any one Car and not more than one inoperable camera in any one saloon area of the Car</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-7</td>
<td>Number of internal CCTV Cameras inoperative, Vandalised or Graffiti over lens</td>
<td>All internal cameras inoperable in any one area of saloon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-8</td>
<td>Number of CCTV image recorders not operational</td>
<td>Minimum one unit operational</td>
<td>If only one unit not operational then continue into service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-9</td>
<td>Number of CCTV Cameras at Passenger Emergency help points inoperative</td>
<td>No more than one camera in any one Car linked to the Passenger Emergency Intercom</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-10</td>
<td>Number of external CCTV cameras inoperative (reverse view fitted)</td>
<td>No more than one external CCTV camera in each direction per side inoperative</td>
<td>Guard to use opposite camera view direction function and continue to monitor all doors.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-11</td>
<td>Number of external CCTV cameras inoperative (reverse view not fitted)</td>
<td>No more than one external CCTV camera inoperative. Vandalised or with Graffiti over lens per side (i.e all cameras in other direction must be operational).</td>
<td>Guard to continue to monitor all doors from available CCTV images and perform direct viewing for doors not captured by CCTV - relocate to front Cab depending on location of camera failure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-12</td>
<td>Number of CCTV internal cameras inoperative</td>
<td>Not more than two inoperative cameras in any one Car and not more than one inoperative camera in any one saloon area of that Car</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-13</td>
<td>Number of internal CCTV Cameras Vandalised or Graffiti over lens</td>
<td>One camera obviously not working due to Vandalism or Graffiti and not more than two inoperative cameras in any one Car and not more than one inoperative camera in any one saloon area of the Car</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-14</td>
<td>Number of internal CCTV Cameras inoperative, Vandalised or Graffiti over lens</td>
<td>All internal cameras inoperative in any one area of saloon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10-15</td>
<td>Number of CCTV image recorders not operational</td>
<td>Minimum one unit operational</td>
<td>If only one unit not operational then continue into service</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 1.11 Water inside train

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.11-1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Pooled or wet surface due to water ingress through leaking windows/dors/panelling</td>
<td>No interior surfaces to be wet</td>
<td>Isolate Car if water is sufficient to cause slip hazard or passenger discomfort.</td>
<td></td>
</tr>
<tr>
<td>1.11-2</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Pooled or wet surface due to water ingress through leaking windows/dors/panelling</td>
<td>Interior surfaces must be safe</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 1.12 Train Presentation

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.12-1</td>
<td>Info Service from Maintenance Facility Site</td>
<td>Interior: verify against Train Presentation Manual</td>
<td>Interior presentation must meet either the Turnaround or Daily Clean specification as applicable, depending on whether the Set is being returned to service on the same day or after an overnight stay.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.12-2</td>
<td>Exterior: verify against Train Presentation Manual</td>
<td>Clean and no external Graffiti to be visible</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.12-3</td>
<td>Not used</td>
<td>Not used</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 1.13 Floor condition

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.13 - 1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Area of floor covering worn, ripped or missing in vestibule, walkways or stairs</td>
<td>No uneven surfaces or trip hazards and no more than 10 satisfactory patches per Car</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.13 - 2</td>
<td>Area of floor covering worn, ripped or missing in seating areas</td>
<td>Worn, ripped or missing floor covering is not in an area which would cause a trip hazard</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.13 - 3</td>
<td>Area of floor covering worn</td>
<td>Must be less than 30% of high use areas worn through top surface</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.13 - 4</td>
<td>Wheelchair accessibility symbol/space marking on floor</td>
<td>Symbol missing/floor marker Vandalised</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.13 - 5</td>
<td>Graffiti on floor</td>
<td>No graffiti marks to be visible (in accordance with the Train Presentation Manual)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.13 - 6</td>
<td>Area of floor covering ripped or missing in vestibule, walkways or stairs</td>
<td>Uneven surfaces or trip hazards must be made safe or tagged</td>
<td>Temporarily tape area or patch if trip hazard exists</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.13 - 7</td>
<td>Area of floor covering ripped or missing in seating areas</td>
<td>Worn, ripped or missing floor covering is not in an area which would cause a trip hazard</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.13 - 8</td>
<td>Wheelchair accessibility symbol/space marking on floor</td>
<td>Symbol missing/floor marker Vandalised</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1.13 - 9</td>
<td>Graffiti on floor</td>
<td></td>
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</tr>
</tbody>
</table>

### 1.14 Internal fittings

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.14 - 1</td>
<td>After a Major Service, condition of internal panelling or cabinet doors/coverings, electrical wiring and fittings</td>
<td>All must be fit for purpose</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14 - 2</td>
<td>Missing cracked or broken draught screens, glass stair divider</td>
<td>No broken or missing glass. No visible cracks greater than 100mm.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14 - 3</td>
<td>Condition of protective film on glass</td>
<td>No missing, poorly applied (e.g. air pockets, excessive gaps) or defective film</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14 - 4</td>
<td>Graffiti shadowing or scuffing must not be visible</td>
<td>Temporarily tag or tape, then repair or replace within time period</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14 - 5</td>
<td>Condition of internal panelling or cabinet doors/coverings</td>
<td>Damaged but still secure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
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</tr>
<tr>
<td>1.14-6</td>
<td>Loose or hazardous</td>
<td>isolate in accordance with relevant procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14-7</td>
<td>Will not lock shut</td>
<td>temporarily tag and tape or isolate Car in accordance with relevant procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14-8</td>
<td>Condition of grab rails and handles</td>
<td>jammed closed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14-9</td>
<td>All grab rails and handles must be secure with no loose or hazardous parts</td>
<td>if any rail or handle is hazardous to passengers, isolate Car in accordance with relevant procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14-10</td>
<td>Condition of electrical</td>
<td>wiring or fittings</td>
<td>Car must be isolated in accordance with relevant procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14-11</td>
<td>Wiring or internal fitting exposed or equipment cupboards not lockable</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14-12</td>
<td>Missing cracked or broken draught screens, glass stair divider</td>
<td>no broken or missing glass</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14-13</td>
<td>No visible cracks greater than 100 mm</td>
<td></td>
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</tr>
</tbody>
</table>

### 1.15 Decals

<table>
<thead>
<tr>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.15-1</td>
<td>Condition of decals (emergency information, train information and network information) damaged, marked, torn or missing</td>
<td>All decals to be clearly readable, none torn, ripped or missing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.15-2</td>
<td>Condition of decals (emergency information) damaged, marked, torn or missing</td>
<td>All decals relating to safety or emergency operation to be clearly readable, none torn, ripped or missing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.15-3</td>
<td>Condition of decals (network or train information) damaged, marked, torn or missing</td>
<td>At least one decal per Car relating to train or network information to be clearly readable</td>
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</tbody>
</table>

### 1.16 Windows Passenger

<table>
<thead>
<tr>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.16-1</td>
<td>Condition of passenger side, door and intercar door windows</td>
<td>no broken or missing glass</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.16-2</td>
<td>No visible cracks greater than 100 mm</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.16-3</td>
<td>Condition of protective film on passenger side, door and intercar door window glass</td>
<td>no missing, poorly applied (e.g. air pockets, excessive gaps) or defective protective film</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Schedule 13

<table>
<thead>
<tr>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.16-1</td>
<td>Isolate Car in accordance with relevant procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Visibility through side window glass
- Side windows must provide clear view of station signage (i.e., no opaque panels permitted).
- No more than 20% of glass area on any one window to be unusable for viewing station signage.
- No more than five windows per Car with a maximum of 20% of glass area of each window to be unusable for viewing station signage.

### Passenger side window glass scratched or marked
- No more than 30% of glass area on any one window to be unusable for viewing.

### Passenger Door glass scratched or marked
- No more than 30% of glass area on any one window to be unusable for viewing.

### Condition of intercar door windows
- Must not run with glass missing or broken glass exposed.
- Must not run with visible cracks greater than 100 mm.

### Visibility through intercar door glass
- Glass provides clear view of next Car (i.e., no opaque panels permitted).

### Passenger side windows, passenger door windows, intercar door windows - protective film
- One or more windows with missing protective film.
- One or more windows with poorly applied (e.g., air pockets, excessive gaps) or defective protective film.

### 1.17 Hearing Augmentation

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.17 - 1</td>
<td>Info Service from Maintenance Facility Site</td>
<td>Hearing augmentation system not operational</td>
<td>Must be functional in all Cars</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.17 - 2</td>
<td>Info Service from Out-Depot or defective in service</td>
<td>Hearing augmentation system not operational</td>
<td>Not operational in any one Car</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.17 - 3</td>
<td>Hearing augmentation system not operational</td>
<td>Not operational in any part of any one Car</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 1.18 Wheel Chair Ramps

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.18 - 1</td>
<td>Info Service from Maintenance Facility Site</td>
<td>2 ramps per Set. Must be present/operational in both Cabs</td>
<td>Both ramps must be present/operational.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.18 - 2</td>
<td>Info Service from Out-Depot or defective in service</td>
<td>2 ramps per Set. Must be present/operational in both Cabs</td>
<td>One ramp missing/Vandalised</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 1.19 Passenger Counting System

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>2.1 - 1</td>
<td>Number of air springs deflated or leaking</td>
<td>All must be inflated and not leaking</td>
<td>Observe max speed restriction.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 - 2</td>
<td>Number of air springs deflated.</td>
<td>No more than one bogie on one Car with air spring deflated</td>
<td>Work out of service to the Maintenance Facility Site. Observe speed restrictions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 - 3</td>
<td>More than one bogie on one Car or more than two bogies per train</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2 - 1</td>
<td>Number of air pressure displays not working in any Cab</td>
<td>All must be operational</td>
<td></td>
</tr>
<tr>
<td>2.2 - 2</td>
<td>Number of air pressure displays not working in any Cab</td>
<td>All must be operational</td>
<td></td>
</tr>
<tr>
<td>2.2 - 3</td>
<td>Number of air pressure displays not working in active Driver's Cab</td>
<td>The following information must be available - main reservoir air pressure, brake pipe air pressure, and brake cylinder pressure</td>
<td>If the air pressure information is not available on the DDU screen then activate back-up pressure gauges (if fitted). Work out of service.</td>
</tr>
</tbody>
</table>

**KPI impacted**

**Availability impacted**
<table>
<thead>
<tr>
<th>2.4 Auxiliary supply</th>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4-3 Into Service from Maintenance Facility Site</td>
<td>Electrical Auxiliary Power Supply (EAPS) including battery chargers</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.4-6 Into Service from Out-Depot or in Service</td>
<td>Electrical Auxiliary Power Supply (EAPS) including battery chargers</td>
<td>75% (or more) EAPS modules must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.5 Bells</td>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>2.5-1 Into Service from Maintenance Facility Site</td>
<td>Bell not operational</td>
<td>Must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.5-2 Into Service from Out-Depot or defective in service</td>
<td>Bell not operational</td>
<td>Guard to relocate to other Cab.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.6 Blue Lights</td>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>2.6-1 Into Service from Maintenance Facility Site</td>
<td>Guard's Blue lights not operational</td>
<td>Must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.6-2 Into Service from Out-Depot or defective in service</td>
<td>Guard's Blue lights not operational</td>
<td>Light intermittent or not working</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.7 Bogies</td>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
</tr>
<tr>
<td>2.7-1 Into Service from Maintenance</td>
<td>Bogie components missing, loose.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
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</tr>
<tr>
<td>2.8-1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>EP Brakes do not apply</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-2</td>
<td>Pulse Width Modulation (PWM) failure</td>
<td>Must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-3</td>
<td>Automatic Brakes do not apply</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-4</td>
<td>Park Brakes do not apply</td>
<td>All must be operational</td>
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</tr>
<tr>
<td>2.8-5</td>
<td>Brake cylinder air pressure retention</td>
<td>Air loss not greater than 10kPa/min</td>
<td></td>
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</tr>
<tr>
<td>2.8-6</td>
<td>Brake pad thickness</td>
<td>Must equal or exceed 8mm</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2.8-7</td>
<td>Rheostatic and regenerative braking defective</td>
<td>Must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-8</td>
<td>Into Service from Out-Depot</td>
<td>EP Brake control system defective</td>
<td>Must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-9</td>
<td>Pulse Width Modulation (PWM) failure</td>
<td>Must be operational</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2.8-10</td>
<td>Automatic brake control defective</td>
<td>Must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-11</td>
<td>Number of bogies having brakes isolated or defective (excluding both bogies on a terminal end Car - see below, ref 2.6-14)</td>
<td>No more than two bogies</td>
<td>Isolate bogie(s).</td>
<td></td>
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</tr>
<tr>
<td>Section</td>
<td>Description</td>
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<tr>
<td>2.8-12</td>
<td>Number of bogies having brakes isolated or defective (excluding both bogies on a terminal end Car - see below, ref 2.8-14). Three or more bogies. Isolate bogies and work empty out of service at a maximum speed of in accordance with current Waratah procedure WAR 090. Maximum speed of 80km/h up to 4 failed bogies. Maximum speed of 25km/h more than 4 failed bogies.</td>
<td></td>
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</tr>
<tr>
<td>2.8-14</td>
<td>Both bogies on a terminal end Car having brakes isolated and defective and park brake is working on at least one bogie. One park brake on a terminal end Car must be working. Isolate bogies and work empty out of service at a maximum speed of 25km/h in accordance with current Waratah procedure WAR 090.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>2.8-15</td>
<td>Number of bogies with inoperative park brake (excluding both bogies on a terminal end Car - see below, ref 2.8-16). Up to two bogies with park brake isolated.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2.8-16</td>
<td>Both bogies on a terminal end Car having inoperative park brakes. Treat train as disabled. Do not move until it is attached to another train or locomotive with automatic air brakes.</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2.8-17</td>
<td>Brake cylinder air pressure retention. Air loss is greater than 35 kPa per minute.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2.8-18</td>
<td>Brake pad thickness. Must be greater than 5 mm.</td>
<td></td>
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</tr>
<tr>
<td>2.8-19</td>
<td>Rheostatic and regenerative braking defective. Must be operational.</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2.8-20</td>
<td>Defective in service. EP Brake control system defective. Refer to current Waratah procedure WAR 095. Work train using automatic brake.</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2.8-21</td>
<td>Pulse Width Modulation (PWM) failure. Work train in accordance with relevant procedure.</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
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</tr>
<tr>
<td>2.8-22</td>
<td>Automatic brake control defective.</td>
<td>Stop train. If unable to rectify defective equipment or the Driver is unable to change ends, then train may require assistance.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-23</td>
<td>Number of bogies having brakes isolated or defective (excluding both bogies on a terminal end Car - see below, ref 2.8-26).</td>
<td>No more than two bogies.</td>
<td>Isolate bogie(s).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-24</td>
<td>Number of bogies having brakes isolated or defective (excluding both bogies on a terminal end Car - see below, ref 2.8-26).</td>
<td>Three to four bogies</td>
<td>Isolate bogies and operate at a maximum speed of 80km/h in accordance with current Waratah procedure WAR 090.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-25</td>
<td>Number of bogies having brakes isolated or defective (excluding both bogies on a terminal end Car - see below, ref 2.8-26).</td>
<td>Greater than four bogies</td>
<td>Isolate bogies. Operate at a maximum speed of 25km/h in accordance with current Waratah procedure WAR 090, and detrain passengers at the next suitable station and work empty out of service.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-26</td>
<td>Both bogies on a terminal end Car having brakes isolated and defective and park brake is working on at least one bogie.</td>
<td>One park brake on a terminal end Car must be working</td>
<td>Isolate Car and transfer passengers to other Cars. Detrain passengers at the next suitable station and work empty out of service.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-27</td>
<td>Number of bogies with inoperative parkbrake (excluding both bogies on a terminal end Car - see below, ref 2.8-28).</td>
<td>Up to two bogies with park brake isolated</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.8-28</td>
<td>Both bogies on a terminal end Car having inoperative park brakes.</td>
<td>Treat train as disabled. Do not move until it is attached to another train or locomotive with automatic air brakes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td>Availability impacted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------------------------------------------</td>
<td>-------------------------------------</td>
<td>--------------</td>
<td>-----------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9-29 Brake cylinder air pressure retention</td>
<td>Air loss is greater than 35 kPa per minute</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9-30 Brake pad thickness</td>
<td>Must be greater than 5 mm.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9-31 Rheostatic and regenerative braking</td>
<td>Must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compressor defective</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9 Compressors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9-1 Into Service from</td>
<td>Number of compressors not</td>
<td>All compressors must be operational</td>
<td>Isolate non operational units.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance Facility Site</td>
<td>operating</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9-3 Into Service from</td>
<td>Number of compressors not</td>
<td>At least 2 compressors must be</td>
<td>Isolate faulty unit.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Out-Depot or defective in service</td>
<td>operating</td>
<td>operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9-4 Compressor not cycling</td>
<td>At least 2 compressors must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>normally e.g. operating continuously, tripping CB or incorrect air pressure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.9-5 Compressor not working</td>
<td>At least 2 compressors must be operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>normal duty cycle or apparent problem e.g.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>noisy, damaged, leaking, loose or missing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>filters</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>2.9-6 Compressor not operating correctly</td>
<td>At least 2 compressors must be operational</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>with obvious major fault e.g. smoking,</td>
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<td></td>
</tr>
<tr>
<td>vibrating, major damage, continuously</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>operating and unable to isolate</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.10 Guard's emergency Brake Pipe (BP)</td>
<td>Work out of service to the Maintenance</td>
<td>Isolate faulty unit.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>air gauge</td>
<td>Facility Site</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td>Action</td>
<td>KPI impacted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.10 Guard's emergency Brake Pipe (BP)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>air gauge</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.10 Guard's emergency Brake Pipe (BP)</td>
<td>Work out of service to the Maintenance</td>
<td>Isolate faulty unit.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>air gauge</td>
<td>Facility Site</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.10 Guard's emergency Brake Pipe (BP)</td>
<td>Work out of service to the Maintenance</td>
<td>Isolate faulty unit.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>air gauge</td>
<td>Facility Site</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 2.10 Brake Pipe gauge

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.10-1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Brake Pipe air gauge not working</td>
<td>Air gauge must be operational</td>
</tr>
<tr>
<td>2.10-2</td>
<td>Into Service from Out-Depot</td>
<td>Brake Pipe air gauge not working</td>
<td>Air gauge must be operational</td>
</tr>
<tr>
<td>2.10-3</td>
<td>Defective in service</td>
<td>Brake Pipe air gauge not working</td>
<td>Brake pipe air pressure must be available to the Guard on a TMS screen</td>
</tr>
<tr>
<td>2.10-4</td>
<td></td>
<td>Brake Pipe air gauge not working and Brake Pipe air pressure not available to Guard on TMS</td>
<td></td>
</tr>
</tbody>
</table>

### 2.11 Lights exterior

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.11-1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Exterior lights not operational</td>
<td>All exterior lights to be operational</td>
<td>KPI impacted</td>
</tr>
<tr>
<td>2.11-2</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Exterior lights not operational</td>
<td>Sufficient exterior lights must be operational in accordance with Network Rule NTR 409</td>
<td></td>
</tr>
<tr>
<td>2.11-3</td>
<td></td>
<td></td>
<td>All of one type not operational</td>
<td>Work out of service to the Maintenance Facility Site.</td>
</tr>
</tbody>
</table>

### 2.12 Pantographs

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.12.1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Pantograph not operational</td>
<td>Pantograph must raise and lower within specification, and if re-entering service from an inspection, Carbon must not be grooved, chipped or damaged and have greater than 30 day wear remaining and the pantograph frame and head must be undamaged</td>
<td>KPI impacted</td>
</tr>
<tr>
<td>2.12-2</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Pantograph defective e.g. damaged or will not raise when any pan up push button is pressed</td>
<td>No more than one pantograph lowered and isolated.</td>
<td>Lower pantograph and isolate. May proceed with one pantograph lowered and isolated.</td>
</tr>
<tr>
<td>2.12-3</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Pantograph defective e.g. damaged or will not lower when any pant down push button is pressed</td>
<td>If defective pantograph cannot be lowered notify Mechanical Control and the Network Control Officer (NCO). Do not move the train until authorised to do so by Mechanical Control.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>2.13 Scharfenberg Coupler</td>
<td>Location</td>
<td>Measure</td>
<td>KPI impacted</td>
<td></td>
</tr>
<tr>
<td>2.13-1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Leading and trailing end couplers operational</td>
<td>Tolerance</td>
<td></td>
</tr>
<tr>
<td>2.13-2</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Leading and trailing end couplers operational</td>
<td>Action</td>
<td></td>
</tr>
<tr>
<td>2.14 Skirts side and front</td>
<td>Location</td>
<td>Measure</td>
<td>Tolerance</td>
<td></td>
</tr>
<tr>
<td>2.14-1</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Loose or missing side skirts, end skirts or equipment covers</td>
<td>Loose skirts must be secured, taped or removed to prevent movement during run. If still loose, work out of service.</td>
<td></td>
</tr>
<tr>
<td>2.14-2</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Loose side or end skirts or equipment covers</td>
<td>No loose skirts or covers allowed. All skirts and equipment covers must be secure.</td>
<td></td>
</tr>
<tr>
<td>2.14-3</td>
<td>Missing side or end skirts or equipment covers</td>
<td>No loose skirts or covers allowed.</td>
<td>All skirts and equipment covers must be either secure or removed. Report missing item and position on train.</td>
<td></td>
</tr>
<tr>
<td>2.15 Traction Motors</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>
### Location 2.15-1
**Into Service from Maintenance Facility Site**
- **Measure**: Number of traction inverter/motor pairs cut-out
- **Tolerance**: All traction motors must be fit for purpose
- **Action**: Work in accordance with the requirements of TWP136
- **KPI impacted**: Availability

### Location 2.15-2
**Into Service from Out-Depot or defective in service**
- **Measure**: Number of traction inverter/motor pairs cut-out
- **Tolerance**: No more than 2 of 8 traction motor pairs cut-out per Set.
- **Action**: Work in accordance with the requirements of TWP136
- **KPI impacted**: Availability

### Location 2.15-4
**Grades 1 in 33 and all underground lines**
- **Measure**: Number of traction inverter/motor pairs cut-out
- **Tolerance**: No more than 2 of 8 traction motor pairs cut-out per Set.
- **Action**: Work in accordance with the requirements of TWP136
- **KPI impacted**: Availability

### Location 2.16-1
**Into Service from Maintenance Facility Site**
- **Measure**: Wheel condition
- **Tolerance**: Refer to TWP136
- **Action**: Work in accordance with the requirements of TWP136
- **KPI impacted**: Availability

### Location 2.16-2
**Into Service from Out-Depot**
- **Measure**: Wheel condition
- **Tolerance**: Refer to TWP136
- **Action**: Work in accordance with the requirements of TWP136
- **KPI impacted**: Availability

### Location 2.16-3
**Defective in service**
- **Measure**: Wheel condition
- **Tolerance**: Refer to TWP136
- **Action**: Work in accordance with the requirements of TWP136
- **KPI impacted**: Availability

### Location 2.16-3
**Wheel unusable. Pony Bogie required**
- **Measure**: Wheel condition
- **Tolerance**: Refer to TWP136
- **Action**: Detain passengers and work in accordance with the requirements of TWP136
- **KPI impacted**: Availability

### Location 3.1-1
**Safety Equipment Locker (including Emergency Equipment Box)**
- **Into Service from Maintenance Facility Site**
- **Measure**: Safety equipment locker contents complete
- **Tolerance**: Seal must be intact
- **Action**: Check seal
- **KPI impacted**: Availability

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**TfNSW**

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**Sydney Growth Trains**

**Schedule 13**

**TLS Deed**

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**LS20571850.6**

**4006666_34**

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3.1.2 Safety equipment locker seal broken
All items on list to be present.
All equipment to be checked against list provided in the Train Preparation procedures. Replace equipment as required.

3.1.4 Into Service from Out-Depot or in Service Safety equipment locker is not locked or seal is broken
All items on list to be present. Both emergency (otherwise known as transition) couplers must also be available
All equipment to be checked against list provided in the Train Preparation procedures. Replace equipment as required.

3.2 Drivers Safety System - Vigilance, Operator Enable System (OES) and Tripgear

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Into Service from</td>
<td>Vigilance system, Operator Enable System and Trip Gear not</td>
<td>All equipment must be operational</td>
<td>If defective, isolate defective system and obtain the services of a Guard or other qualified person to operate as a second person in the Train Driver's cab then work out of service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance Facility Site</td>
<td>not operational</td>
<td></td>
<td>If a qualified person is not available then detrain at the next suitable station and work empty out of service.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.3 Event Recorder [Data Logger]

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Into Service from</td>
<td>Check data logger [Event Recorder] operational and recording data</td>
<td>Both data loggers [Event Recorders] must be operational</td>
<td>Return to the Maintenance Facility Site as soon as possible during second AP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance Facility Site</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Into Service from</td>
<td>Number of data loggers [Event Recorders] operational</td>
<td>One data logger [Event Recorder] fully operational, one not operational</td>
<td>Return to the Maintenance Facility Site as soon as possible during second AP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Out-Depot</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Both data loggers [Event Recorders] defective or not recording all inputs</td>
<td>Work out of service</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defective in service</td>
<td>Number of data loggers [Event Recorders] operational</td>
<td>One data logger [Event Recorder] fully operational, one not operational</td>
<td>Return to the Maintenance Facility Site as soon as possible during second AP</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Both data loggers [Event Recorders] defective or not recording all inputs</td>
<td>Work out of service</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Schedule 13
TLS Deed
### 3.4 AMS/ATP

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI Impacted</th>
<th>Availability Impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.4-1 Into Service from Maintenance Facility Site</td>
<td>Self test complete and OK status not achieved</td>
<td>Both AMS units must be operational and HMI displaying speedometer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.4-2 Into Service from Out-Depot</td>
<td>Self test complete and OK status not achieved</td>
<td>Both AMS units must be operational and HMI displaying speedometer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.4-3a Defective in service</td>
<td>AMS Speedometer not displaying speed or not operational</td>
<td>AMS screen must display current time, speed and system active icon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.4-3b</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 3.4.3a
- If a qualified person is not available then detain at the next suitable station and work empty out of service.

#### 3.4.3b
- If still defective, isolate AMS and obtain the services of a Guard or other qualified person to operate as a second person in the Train Driver's cab then work out of service.

### 3.5 Door open traction interlocking

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI Impacted</th>
<th>Availability Impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.5-1 Into Service from Maintenance Facility Site</td>
<td>Traction interlock, traction interlock indicators and door open indicators not operational</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-2 Into Service from Out-Depot</td>
<td>Traction interlocking not operational - traction interlocking must be operational</td>
<td>Traction interlocking must be operational</td>
<td>Do not enter passenger service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-3</td>
<td>Traction interlocking not operational - preventing movement when all doors closed</td>
<td>Traction interlocking must be operational</td>
<td>Isolate traction interlocking. Do not enter passenger service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-4</td>
<td>Number of doors with traction interlocking not operational</td>
<td>A maximum of 1 in 16 doors per side with traction interlocking not operational or isolated</td>
<td>Lock and isolate affected door. Continue into service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-5</td>
<td>Drivers traction interlocking indicator light not operational</td>
<td>All doors are protected but Drivers traction interlocking indicator light not working</td>
<td>Driver to check indicator light not working by using the &quot;Test Lamps&quot; push button. Driver to use TMS door status screen or Guard's DOIL. Work out of service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-6</td>
<td>Guards Door Open Indicator Light (DOIL) not operational</td>
<td>Continue into service. Guard to check DOIL not working by using the &quot;Test Lamps&quot; push button. Guard to use other DOIL or Audible Indication Device and</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 3.5 Traction Interlocking

<table>
<thead>
<tr>
<th>Section</th>
<th>Status</th>
<th>Description</th>
<th>Action</th>
<th>KPI Impacted</th>
<th>Availability Impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.5-7</td>
<td>Defective in service Traction interlocking not operational - traction remains available when doors open</td>
<td>Traction interlocking must be operational</td>
<td>Detrain at next suitable location and work empty out of service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-8</td>
<td>Traction interlocking not operational - preventing movement when all doors closed</td>
<td>Traction interlocking must be operational</td>
<td>Bypass traction interlocking. Detrain at the next suitable station and work empty out of service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-9</td>
<td>Number of doors with traction interlocking not operational.</td>
<td>A maximum of 1 in 8 doors per side with traction interlocking not operational or isolated.</td>
<td>Lock and isolate affected door. Continue in service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-10</td>
<td>Driver's Traction interlocking indicator light not operational</td>
<td>All doors are protected but Driver's traction interlocking indicator not working</td>
<td>Driver to check indicator light not working by using the “Test Lamps” push button. Driver to use TMS door status screen or Guard's DOIL. Work out of service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-11</td>
<td>Guards Door Open Indicator Light DOIL not operational</td>
<td>All doors are protected but Guards DOIL not working</td>
<td>Continue in service. Guard to use other DOIL, or Audible Indication Device and TMS door status screen. If no door status indication available then Guard to relocate to other Cab and continue in service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5-12</td>
<td>Guard's DOIL does not extinguish</td>
<td></td>
<td>Refer to procedures.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 3.6 Terminal and Emergency Access Ramp

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI Impacted</th>
<th>Availability Impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.6-1</td>
<td>Info Service from Maintenance Facility Site</td>
<td>Visual inspection of terminal end emergency access ramp</td>
<td>Visible sign of damage or tampering. Seal not intact.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.6-2</td>
<td>Info Service from Out-Depot</td>
<td>Visual inspection of terminal end emergency access ramp</td>
<td>Visible sign of damage or tampering. Seal not intact.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.6-3</td>
<td>Defective in service</td>
<td>Visual inspection of terminal end emergency access ramp</td>
<td>Visible sign of damage or tampering. Seal not intact.</td>
<td>Work out of service</td>
<td></td>
</tr>
</tbody>
</table>
### 3.7 Fire Detection System

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.7-1 Into Service from Maintenance Facility Site</td>
<td>Number of smoke detectors not operational</td>
<td>All fire detection equipment must be fully operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.7-2 Cab fire indicator panel not operational</td>
<td>All fire detection equipment must be fully operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.7-3 Not used</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.7-4 Into Service from Out-Depot or in Service</td>
<td>Number of internal smoke detectors not operational</td>
<td>At least one detector must be working in each passenger area of each Car.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.7-5 Number of external smoke detectors not operational</td>
<td>No more than 1 external smoke detector not operational per Set.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.7-6 Cab fire indicator panel not operational</td>
<td>One (1) indicator panel not working</td>
<td>Guard to relocate to other Cab and use alternate indicator panel.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.7-7 Cab fire indicator panel not operational</td>
<td>Both fire indicator panels not operational</td>
<td>Work out of service</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 3.8 Emergency Door Release (EDR) and Crew Override

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.8-1 Into Service from Maintenance Facility Site or Out-Depot</td>
<td>Number of internal EDRs not operational</td>
<td>All internal (passenger bodyside, transverse &amp; intercar door) EDRs must be fully operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.8-2 Number of external EDRs not operational</td>
<td>All external EDRs must be fully operational</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.8-3 Crew Override not operational</td>
<td>Crew Override must be fully operational from both Cabs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.8-4a Defective in service</td>
<td>Number of internal passenger bodyside EDRs not operational</td>
<td>1 internal EDR not operational per Car</td>
<td>Lock and isolate door. Any door locked or isolated must be identified and labelled to indicate that the door is inoperable. Guards may also make PA announcements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.8-4b Number of internal passenger bodyside EDRs not operational</td>
<td>Both internal EDRs not operational per Car</td>
<td>Isolate Car. Any door locked or isolated must be identified and labelled to indicate that the door is inoperable. Guards may also make PA announcements</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.8-5 Number of intercar EDRs not operational</td>
<td>1 intercar EDR not operational or with cover that cannot be secured closed per Car</td>
<td>Isolate and lock Intercar door.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.8-6 Number of external EDRs not operational</td>
<td>1 external EDR not operational per Car</td>
<td>Isolate Car. Work out of service.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.8-7 Crew Override not operational</td>
<td>Crew Override not operational.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 3.9 Detrainment door (excluding emergency access ramp)

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.9-1 Into Service from Maintenance Facility Site</td>
<td>Visual inspection of detrainment door</td>
<td>No visible sign of damage or tampering. Door fully closed and locked.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.9-2 Into Service from Out-Depot</td>
<td>Visual inspection of detrainment door</td>
<td>No visible sign of damage or tampering. Door fully closed and locked.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.9-3 Defective in service</td>
<td>Visual inspection of detrainment door</td>
<td>No visible sign of damage or tampering. Door fully closed and locked.</td>
<td>If unable to close and lock, work out of service</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 4.1 Crew Compartment

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1-1 Into Service from Maintenance Facility Site</td>
<td>Number of air conditioning units</td>
<td>All operating correctly</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-3</td>
<td>Crew fresh air units not operational</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-4</td>
<td>Blinds in Cabs not working</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-5</td>
<td>Any lights in Crew areas</td>
<td>100% operating (i.e. all LEDs illuminated and not flickering, in every LED strip light)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-7</td>
<td>Crew Cab doors operational (transverse and Crew body side)</td>
<td>All must work. Crew body side doors must open within 3.5 - 4.5 seconds, close within 3.5 - 4.5 seconds and emergency power close within 1.5 - 2.5 seconds</td>
<td>Check fire extinguisher in each Cab</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-9</td>
<td>Fire extinguishers</td>
<td>Both must be charged, sealed, secured in cradle and within 6 months of last inspection</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-11</td>
<td>All heaters must be operational</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-12</td>
<td>Operation of indicator lights</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-13</td>
<td>Operation of public address in all Cars</td>
<td>All must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirement</td>
<td>Description</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>-------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-14</td>
<td>Operation of intercom between all Driver's Cabs and all Guard's Cabs. All must be operational.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-15</td>
<td>Drivers and Guards seats. Seats must have no broken or loose components, adjust correctly and lock in position.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-16</td>
<td>Drivers and Guards seats. No excessively worn fabric.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-17</td>
<td>Speedometers not operating. All must be operational.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-18</td>
<td>Horn not operating. All must be operational.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-19</td>
<td>Wipers or washers not working. All must be operational.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-20</td>
<td>TMS and DDU/GDU not working. All units must be operational and pass self test diagnostic.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-21</td>
<td>Train Radio self test. All units must be operational and pass self test diagnostic.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-62</td>
<td>Demister not operating. All must be operational.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1-64</td>
<td>CCTV video screen. All must be operational.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Temperature in Crew Cab areas is within the allowable range, as follows:**

<table>
<thead>
<tr>
<th>External Temp °C</th>
<th>Internal temp range (Tolerance as per EN14750)</th>
<th>POS allowable range - Into service from Out Depot/In Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 19</td>
<td>21</td>
<td>19-23</td>
</tr>
<tr>
<td>21</td>
<td>22</td>
<td>20-24</td>
</tr>
<tr>
<td>23</td>
<td>23</td>
<td>21-25</td>
</tr>
<tr>
<td>25</td>
<td>24</td>
<td>22-26</td>
</tr>
<tr>
<td>28</td>
<td>25</td>
<td>23-27</td>
</tr>
<tr>
<td>30</td>
<td>26</td>
<td>24-28</td>
</tr>
<tr>
<td>33</td>
<td>27</td>
<td>25-29</td>
</tr>
<tr>
<td>4.1-24</td>
<td>No air conditioning in Cab</td>
<td>Temperature tolerable (within the range 15 and 28 degrees C)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>4.1-26</td>
<td>No air conditioning and no fresh air fans in Cab</td>
<td>Fresh air fans must be working in Active Crew Cabs</td>
</tr>
<tr>
<td>4.1-26</td>
<td>Blinds on front screen in Cabs are obstructing view through front windscreen</td>
<td>Blinds will not raise</td>
</tr>
<tr>
<td>4.1-27</td>
<td>Blinds on front screen in Cabs not working eg torn, missing will not lower</td>
<td>Blind not serviceable</td>
</tr>
<tr>
<td>4.1-28</td>
<td>Blind on side screen in Cab will not raise</td>
<td>Obstructing view through side windscreen</td>
</tr>
<tr>
<td>4.1-29</td>
<td>Blinds on side screen in Cabs not working eg torn, missing will not lower</td>
<td>Blind not serviceable</td>
</tr>
<tr>
<td>4.1-30</td>
<td>Lights in Crew Cab</td>
<td>No more than 600mm of LED strip lights not operating per Cab.</td>
</tr>
<tr>
<td>4.1-31</td>
<td>Lights in Crew Cab</td>
<td>All task (i.e. down) lights not operating per Cab.</td>
</tr>
<tr>
<td>4.1-33</td>
<td>Operation of Crew access doors (transverse and crew body side)</td>
<td>All transverse doors must be able to be opened/closed. Both body side doors must be able to be opened/closed in occupied Cabs</td>
</tr>
<tr>
<td>4.1-34</td>
<td>Operation of Crew body side doors</td>
<td>Must open within 5 seconds, close within 5 seconds and emergency power close within 1.5 - 2.5 seconds</td>
</tr>
<tr>
<td>4.1-36</td>
<td>Draughts, leaks at doors and windows</td>
<td></td>
</tr>
<tr>
<td>4.1-37</td>
<td>Fire extinguishers</td>
<td>Both must be charged, sealed, secured in cradle and within 6 months of last inspection</td>
</tr>
<tr>
<td>4.1-38</td>
<td>Indicator lights on console</td>
<td>Any indicator lights for safety related warnings not operational and alternative display available</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Issue</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>-------</td>
</tr>
<tr>
<td>4.1-39</td>
<td>Indicator lights on console</td>
<td>Any indicator lights for safety related warnings not operational and no backup display</td>
</tr>
<tr>
<td>4.1-40</td>
<td>Public Address announcements not operational</td>
<td>Driver's Cab unit faulty</td>
</tr>
<tr>
<td>4.1-41</td>
<td>Public Address announcements</td>
<td>Guard's Cab unit faulty</td>
</tr>
<tr>
<td>4.1-42</td>
<td>Public Address announcements</td>
<td>Any Cars - continuous objectionable noise or poor quality/incorrect volume (where severity is such that PA requires isolation in the car affected)</td>
</tr>
<tr>
<td>4.1-43</td>
<td>Public Address announcements</td>
<td>Any Cars - poor quality or incorrect volume</td>
</tr>
<tr>
<td>4.1-44</td>
<td>PA Individual speakers</td>
<td>Any one speaker in a Car not working</td>
</tr>
<tr>
<td>4.1-45</td>
<td>Local PA equipment not operational</td>
<td>PA in whole Car not working</td>
</tr>
<tr>
<td>4.1-46</td>
<td>Intercom between Driver and Guard not operational</td>
<td>No communication possible</td>
</tr>
<tr>
<td>4.1-48</td>
<td>Intercom between Driver and Guard</td>
<td>Useable but poor quality or intermittent speech i.e. requires repeating of messages or communication distorted</td>
</tr>
<tr>
<td>4.1-49</td>
<td>Drivers and Guards seats</td>
<td>Seats must have no broken or loose components, adjust correctly and lock in position.</td>
</tr>
<tr>
<td>4.1-50</td>
<td>Drivers and Guards seats</td>
<td>Seat to be fit for purpose</td>
</tr>
<tr>
<td>4.1-51</td>
<td>AMS speedometer not operating</td>
<td>Either AMS speedometer or TMS speedometer must be operational</td>
</tr>
<tr>
<td>4.1-52</td>
<td>TMS and DDU/GDU not working</td>
<td>Self test does not complete and does not provide indication of any subsystems not operational</td>
</tr>
<tr>
<td>Clause</td>
<td>Description</td>
<td>Condition</td>
</tr>
<tr>
<td>--------</td>
<td>-------------</td>
<td>-----------</td>
</tr>
</tbody>
</table>
| 4.1-52b | Driver's TMS DOU screen not operational | | 1) Brake pressures must be displayed to continue into service  
2) If pressures not displayed, activate backup gauges. Work out of service |
<p>| 4.1-53 | Train Radio self test | Self test does not complete and provide indication of any subsystems not operational | If one or both not operational run in accordance with NTR 410 Defective Equipment Work out of service before second end change |
| 4.1-54 | Horn operation | Not operating correctly - either no horn or continuous horn | Isolate horn if continuous Run in accordance with NTR 408 Using train whistles |
| 4.1-55 | Horn operation operating low volume or excessive volume | Normal operation not achieved - operating at low or excessive volume |
| 4.1-56 | Windscreen wiper operation | Wiper worn, ripped, skipping, streaking or motor too slow, too fast, noisy but operating |
| 4.1-57 | Windscreen wiper operation | Wiper not moving due to arm broken, missing, loose, stuck or motor not operating |
| 4.1-58 | Windscreen wipers operation | Unable to stop or isolate |
| 4.1-59 | Condition of Windscreens - at an Out Depot | Cracks, chips, star damage, craters or scratches | For defects in the critical vision area or a defect not in the critical vision area but that is in both the outer and inner layers of glass |
| 4.1-60 | Condition of Windscreens - in service | Cracks, chips, star damage, craters or scratches | For defects in the critical vision area or a defect not in the critical vision area but that is in both the outer and inner layers of glass |
| 4.1-61 | Condition of Windscreens - at an Out Depot or in service | Cracks, chips, star damage, craters or scratches | For defects not in the critical vision area and in the outer layer of glass only. |
| 4.1-63 | Demister operation | Windscreen must be clear before proceeding | Wait for air conditioning to clear windscreen and then continue in service |
| 4.1-65 | CCTV video screen | One or more CCTV screens not operational | If only 1 screen is operational in a cab. Guard to relocate to other cab if required. |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Condition</th>
<th>Test Result</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1-66</td>
<td>Into Service from Maintenance Facility Site</td>
<td>CCTV System not fully operational</td>
<td>All cameras must be operating</td>
</tr>
<tr>
<td>4.1-67</td>
<td>Into Service from Out-Depot or in Service</td>
<td>Crew Cab cameras not operational</td>
<td>One camera not operational</td>
</tr>
<tr>
<td>4.1-68</td>
<td>Crew Cab cameras not operational</td>
<td>Both cameras not operational</td>
<td></td>
</tr>
<tr>
<td>4.1-69</td>
<td>Into Service from Maintenance Facility Site</td>
<td>All Advertising Screens active</td>
<td>All Advertising Screens to be active and displaying test screen</td>
</tr>
<tr>
<td>4.1-70</td>
<td>Into Service from Out-Depot</td>
<td>All Advertising Screens active</td>
<td>Up to 4 failed Advertising Screens</td>
</tr>
<tr>
<td>4.1-71</td>
<td>Defective in service</td>
<td>Video Advertising Screen not working or display faulty</td>
<td>Advertising Screen must display normal video</td>
</tr>
<tr>
<td>4.1-72</td>
<td></td>
<td>Advertising Screen cracked or sharp edges exposed</td>
<td>Make safe if vandalised</td>
</tr>
<tr>
<td>4.1-73</td>
<td>Into Service from Maintenance Facility Site</td>
<td>Self test OK</td>
<td>TMS Auto Prep test to report system OK</td>
</tr>
<tr>
<td>4.1-74</td>
<td>Into Service from Out-Depot or defective in service</td>
<td>Self test OK</td>
<td>TMS Auto Prep test to report system OK</td>
</tr>
</tbody>
</table>
Schedule 14 – Obsolescence Support and Supply of Spares and Special Tools to TfNSW

1. Obsolescence Support

1.1 Notice of Obsolescence and Obsolescence reporting

(a) If at any time prior to the End Date, any Spare becomes, or is reasonably likely to become, Obsolete, the Supplier must as soon as possible provide TfNSW with a notice (Obsolescence Notice) setting out details of the nature of and reasons for the Obsolescence.

(b) Without limiting paragraph 1.1(a), on or before the first working day of July in each year during the Contract Term, the Supplier must prepare and submit to TfNSW’s Representative a report which:

(i) states the Supplier’s activities in respect of Obsolescence management and identification carried out in the previous year;

(ii) identifies any Spares that:

A. have become Obsolete during the previous year; and

B. are expected to become Obsolete within the next 2 years;

(iii) in respect of any Spares identified in paragraph 1.1(b)(ii), nominates:

A. alternative items with the same fit, form and function as the Spares which have or may become Obsolete; and

B. those Spares that, in order to be replaced, will require re-design and/or manufacturing to be undertaken, and the expected time required to re-design and/or manufacture these items,

(Obsolescence Report).

1.2 Supplier to investigate options to address Obsolescence

(a) The Supplier must:

(i) prior to the Maintenance End Date, at its own cost; and

(ii) after the Maintenance End Date, where required pursuant to paragraph 6.3(d) of Schedule 15,

investigate and identify options available to the parties to overcome any Obsolescence identified in an Obsolescence Notice or Obsolescence Report including:

(iii) opportunities to purchase or acquire sufficient rights to an adequate contingency supply of the Obsolete item;

(iv) opportunities to purchase or acquire the Obsolete item from an alternative supplier;

(v) the replacement of the item with a suitable alternative product;
opportunities to procure the manufacture of the Obsolete item and any alternative manufacturer; or

options to ensure continued access to technical assistance for software faults arising in any proprietary software comprising part of a Spare,

in each case, to ensure that the relevant Spare continues to:

satisfy the requirements set out in the SPR and this deed throughout the Design Life of all related Assets; and

be available:

A. to the Supplier at the Supplier’s cost until the Maintenance End Date; and

B. to TfNSW and RailCorp at TfNSW’s or RailCorp’s cost after the Maintenance End Date,

to support the maintenance of the relevant Asset up to the end of its Design Life without any adverse effect on, or material inconvenience to, TfNSW, RailCorp, the Operator or any other NSW Rail Entity.

(b) The Supplier must:

(i) consult regularly with TfNSW concerning the investigation and development of options under paragraph 1.2(a);

(ii) provide TfNSW with all further information and assistance reasonably required to enable TfNSW to make an appropriate decision on the options identified;

(iii) provide TfNSW with any data reasonably required by TfNSW (including original design information and performance specifications) to enable TfNSW to source another manufacturer to supply the Obsolete item; and

(iv) provide TfNSW with technical assistance to resolve software faults occurring in any Asset that contains proprietary software.

1.3 TfNSW’s discretion

TfNSW may, at any time, either:

(a) on consideration of the options identified by the Supplier under paragraph 1.2 for managing the Obsolescence of the item:

(i) notify the Supplier which (if any) of the options identified it wishes the Supplier to implement; or

(ii) require the Supplier to identify further alternative solutions to address the Obsolescence (in which case paragraph 1.2 will reapply); or

(b) notify the Supplier of a reasonable alternative solution preferred by TfNSW to address the Obsolescence.

1.4 Supplier’s obligations

The Supplier must:
prior to the Maintenance End Date, at its own cost; and

(b) after the Maintenance End Date, where required pursuant to paragraph 6.3(d) of Schedule 15,
do all that is necessary to:

c) implement the option for addressing the Obsolescence chosen by TfNSW pursuant to paragraph 1.3; and

d) ensure that the relevant Spare continues to:

(i) satisfy the requirements set out in the SPR and this deed throughout the Design Life of all related Assets; and

(ii) be available:

A. to the Supplier at the Supplier's cost until the Maintenance End Date; and

B. to TfNSW at TfNSW's cost after the Maintenance End Date,
to support the maintenance of the relevant Asset up to the end of its Design Life without any adverse effect on, or material inconvenience to, TfNSW, RailCorp, the Operator or any other NSW Rail Entity.

1.5 Supplier not excused

Despite any other provision of this deed, the Obsolescence or impending Obsolescence of any Spare does not excuse any failure by the Supplier to comply with its obligations under this deed.

2. Supply of Spares and Special Tools

2.1 Spares Purchase Order

(a) At any time during the Contract Term, if TfNSW issues to the Supplier a purchase order (Spares Purchase Order):

(i) the Supplier must, procure, manufacture, supply, test and commission Spares or Special Tools from the Initial Fleet Spares List or Option Fleet Spares List (where relevant) identified in the Spares Purchase Order; and

(ii) TfNSW or RailCorp must purchase those Spares or Special Tools, on the terms and conditions set out in this paragraph 2.

(b) TfNSW must ensure that its Spares Purchase Order:

(i) clearly identifies from the Initial Fleet Spares List or Option Fleet Spares List (where relevant) all those Spares or Special Tools that TfNSW wishes to purchase; and

(ii) includes TfNSWs preferred delivery plan for the Spares or Special Tools (if any).

(c) Within 10 Business Days of receiving a Spares Purchase Order, the Supplier must provide to TfNSW for agreement a draft delivery program for the Spares or Special Tools. The program must:
(i) not contemplate any delay to any existing TLS Phase Activities or the times for supply of any existing Asset or Deliverable under this deed;

(ii) provide for delivery and commissioning of each Spare and Special Tool within the maximum lead time specified for that item indicated in Schedule 29, and

(iii) if TfNSW's required delivery plan contemplates earlier dates for delivery and commissioning, the Supplier must use all reasonable endeavours to commit in its draft program to meet those requirements for earlier delivery and commissioning.

2.2 Delivery and acceptance of Spares and Special Tools

(a) The Supplier must deliver and, if required by TfNSW, commission Spares and Special Tools at the Maintenance Facility Site or other location identified by TfNSW's Representative by the date specified in the program agreed under paragraph 2.1(c).

(b) The Supplier must give TfNSW's Representative:

(i) not less than 20 Business Days' notice of the date, time and location when it proposes to deliver and, if required by TfNSW, commission each Spare or Special Tool; and

(ii) not less than five Business Days' notice of the date, time and location when it proposes to deliver and, if required by TfNSW, commission a Spare or Special Tool that has previously been the subject of a Rejection Certificate under paragraph 2.2(e).

(c) The Supplier must provide TfNSW's Representative with all additional documents, details and other information that TfNSW's Representative may reasonably require in order to demonstrate whether the Spare or Special Tool is fit for purpose.

(d) If, on delivery and (if required) commissioning, TfNSW's Representative is satisfied the Spares or Special Tools:

(i) are of the type and in the quantities ordered;

(ii) comply with the requirements of this deed; and

(iii) are otherwise fit for purpose,

TfNSW's Representative must confirm acceptance of the Spare or Special Tool within 10 Business Days of making that determination.

(e) If, on delivery and commissioning, TfNSW's Representative is not satisfied that Spares or Special Tools:

(i) are of the type and in the quantities ordered;

(ii) comply with the requirements of this deed; or

(iii) are otherwise fit for purpose,

TfNSW's Representative will issue a Rejection Certificate to the Supplier, detailing the required rectification work which must be completed before the Spares or Special Tools may (and must) be re-submitted for delivery and commissioning.

(f) A Rejection Certificate issued under paragraph 2.2(e) is a Remedial Direction.
If TfNSW's Representative issues a Rejection Certificate for any Spares or Special Tools:

(i) the Supplier must remove the relevant Spare or Special Tool from the Maintenance Facility Site or other location identified by TfNSW's Representative within two Business Days of the date of the Rejection Certificate at the Supplier's cost and, at the Supplier's option, either:

A. promptly carry out the rectification works set out in the Rejection Certificate and any other rectification works that are necessary to ensure the Spare or Special Tool is fit for purpose; or

B. supply or procure the supply of a replacement Spare or Special Tool that is fit for purpose; and

(ii) on satisfactory completion of all of those works or the availability of the replacement:

A. give TfNSW's Representative the notice required under paragraph 2.2(b); and

B. deliver the Spare or Special Tool in accordance with that notice.

(h) The Supplier acknowledges and agrees that:

(i) the ability of TfNSW or RailCorp to purchase any Spares or Special Tools is entirely for the convenience and benefit of TfNSW and RailCorp and is in addition to, and does not limit in any way, the Supplier's obligation to supply and manage all Spares or Special Tools necessary for its performance of the TLS Phase Activities; and

(ii) neither TfNSW or RailCorp is obliged to purchase Spares or Special Tools from the Supplier, and may procure Spares and Special Tools by other means.

2.3 Spares and Special Tools warranty

The Supplier warrants that:

(a) all Spares and Special Tools supplied under the provisions of this Schedule will be procured, manufactured, subject to Verification Activities and commissioned in accordance with the Technical Documents;

(b) all related work carried out in accordance with the Technical Documents will satisfy the requirements of this deed; and

(c) the Spares and Special Tool will:

(i) upon delivery; and

(ii) in each case, thereafter at all relevant times throughout their Design Life,

be safe and fit for their intended purpose.
2.4 **Price and payment for supply of Spares and Special Tools**

(a) TfNSW must procure payment for Spares and Special Tools under this Schedule in accordance with clause 22 of this deed and for those purposes the price of each Spare or Special Tool is the listed price of the Spare in Schedule 29 (CPI Indexed).

(b) The price of the Spare or Special Tool is deemed to be the amount of the relevant amount payable in accordance with clause 22 of this deed.

2.5 **Fixed price for Spares and Special Tools**

The listed price of each Spare and Special Tool in Schedule 29 (together with any additions or deductions expressly provided for by this deed):

(a) are fixed prices;

(b) include an allowance for all costs, expenses, fees and charges incurred by the Supplier in performing its obligations under this paragraph 2;

(c) include an allowance for all related items of work under this deed (including the supply of any labour, materials or other necessary items);

(d) include an allowance for the Supplier's profit, attendance, preliminaries, supervision and all overheads in connection with the performance of its obligations under this paragraph 2;

(e) will not be subject to any rise and fall in costs of materials or labour or otherwise, foreign exchange adjustment or any other adjustment for any reason, except to the extent expressly provided by this paragraph 2; and

(f) subject to clause 50.2 of this deed, include all duties including stamp duty, Importation GST, customs duty and import duty.
Schedule 15 – Payment and Performance Regime

1. Definitions

In this schedule:

“AVKM” means, in respect of a month, the average number of kilometres travelled by Operational Sets during that month calculated in accordance with paragraph 2.6.

“Configuration” means the interrelated functional and physical characteristics of a product defined in the Product Configuration Information.

“Configuration Item” means an entity within a Configuration that satisfies an end use function.

“Current Configuration Status” means the Product Configuration Information at the current time.

“Cumulative Set Kilometres” means, in respect of Distance Based Payments, the relevant distance travelled in kilometres by the Initial Fleet, or an individual Option Set (to be pro-rated based on the number of Option Sets purchased) calculated cumulatively from Provisional Acceptance to the end of the Contract Term.

“Distance Based Payment” has the meaning given in paragraph 2.8.

“Extended Term Price per SAU (Initial Fleet)” means in the event of the Contract Term being extended in accordance with clause 3.2(b) or 3.2(c) of this deed the amount determined by reference to Table 1.1(a) of annexure 8 of this schedule, indexed in accordance with annexure 5 of this schedule.

“Extended Term Price per SAU (Option Sets)” means in the event of the Contract Term being extended in accordance with clause 3.2(b) or 3.2(c) of this deed, the amount determined by reference to Table 1.1(b) of annexure 8 of this schedule, indexed in accordance with annexure 5 of this schedule.

“Extended Term Price per SAU(Additional Required Availability)” means in the event of the Contract Term being extended in accordance with clause 3.2(b) or 3.2(c) of this deed, the amount determined by reference to Table 1.1(c) of annexure 8 of this schedule, indexed in accordance with annexure 5 of this schedule.

“Maximum Potential Monthly KPI Payment” means, the amount given by the following formula:

\[
\text{Maximum Potential Monthly KPI Payment} = \text{IOS} + (\sum \text{OS} \times 30000)
\]

Where:

\( \sum \text{OS} \) = the total number of Option Sets elected to be purchased by RailCorp (or TfNSW on behalf of RailCorp).

The Maximum Potential Monthly KPI Payment will be indexed in accordance with annexure 5 of this schedule.

“Monthly Operational Data” means the operational data provided by the Supplier in the format provided for in annexure 2 or as amended and agreed between the Operator and Supplier from time to time.

“Open Audit Finding” means an audit finding from the date that the audit finding is communicated to the Supplier until the date the Operator communicates its acceptance of the Supplier's closure of the audit finding. Each of these communications must be by formal correspondence. Each audit finding will have a discrete designation and be documented in an audit report.
"Option Set FX Base Date" means 10:15am on 18 May 2016, being the date when any applicable foreign currency exchange rates priced in Base Case Cost Model.

"Other Defect" means a Defect with respect to an Other KPI Item.

"Other KPI Item" means:
(a) a "Major Subsystem Item";
(b) a "Safety Equipment Item"; or
(c) a "Cab Equipment Item".

as defined in the Performance Operating Standard which is stated to be "KPI Impacted" after a specified number of Availability Periods.

"Passenger Amenity Defect" means a Defect with respect to a Passenger Amenity KPI Item.

"Passenger Amenity KPI Item" means a "Passenger Amenity Item" as defined in the Performance Operating Standard which is stated to be "KPI Impacted" after a specified number of Availability Periods.

"Permitted Correction Period" means the number of Availability Periods specified in each Passenger Amenity KPI Item or Other Defects KPI Item as listed in the Performance Operating Standard.

"Price per SAU for the Initial Fleet" means the amount of , per Availability Period, for the Initial Fleet, indexed in accordance with annexure 5 of this schedule.

"Price per SAU for the Option Sets" means the amount of , per Availability Period, for the Option Sets, indexed in accordance with annexure 5 of this schedule.

"Price per SAU (Additional Required Availability)" means the amount of , per Availability Period, indexed in accordance with annexure 5 of this schedule.

"Product Configuration Information" means the documentation requirements for product design, realisation, verification, operation and support.

"SAU Allowance" means, in respect of a month, the SAU allowance for that month calculated in accordance with paragraph 2.7.

"TLS Marginal Price" means , indexed in accordance with annexure 5 of this schedule.

"Transition-in Adjustment" means the transition-in adjustment specified in paragraph 2.4.

"Volume Adjustment" means, in respect of a month, the volume adjustment for that month calculated in accordance with paragraph 2.5.

2. Availability Payments

2.1 Formula for calculation of Availability Payment

The Availability Payment for a month will be calculated in accordance with the following formula:

\[ AP = \left( P(SAU)_{IF} \times \sum(SAU_{IF}) \right) + \left( P(SAU)_{OS} \times \sum(SAU_{OS}) \right) - \sum(RDA) + \text{SA} + \]
VA + (P(SAU_{ARA}) \times \Sigma(SAU_{ARA})) + DBP

Where:

AP = the Availability Payment for the relevant month;

P(SAU)_{IF} = the Price per SAU for the Initial Fleet;

P(SAU)_{OS} = the Price per SAU for the Option Sets;

\Sigma(SAU)_{IF} = the total Required Availability for the Initial Fleet to be provided by the Supplier during the relevant month in accordance with annexure 7;

\Sigma(SAU)_{OS} = the total Required Availability for the Option Sets to be provided by the Supplier during the relevant month in accordance with annexure 7;

\Sigma(RDA) = the sum of the Reliability and Disruption Adjustments for the relevant month;

SA = the SAU Allowance for the relevant month;

VA = the Volume Adjustment for the relevant month;

P(SAU)_{ARA} = the Price per SAU (Additional Required Availability);

\Sigma(SAU)_{ARA} = the Additional Required Availability provided under clauses 16.9 or 16.10(b) of this deed; and

DBP = the Distance Based Payment for the relevant month calculated in accordance with paragraph 2.8.

2.2 Minimum Availability Payment

If the Availability Payment for a month as calculated in accordance with paragraph 2.1 of this schedule is less than zero, then the Availability Payment for that month will be taken to be zero.

2.3 Reliability and Disruption Adjustments

If any one or more of the circumstances described in paragraphs 2.3(a)-2.3(c) (inclusive) apply in respect of a Set during an Availability Period, the Reliability and Disruption Adjustment for the relevant Set will be the greatest (rather than the aggregate) of the applicable Reliability and Disruption Adjustments described below:

(a) Lateness

(i) Late into or in service

If a Set:

A. is introduced into service between 3.00 minutes and 9 minutes 59 seconds after the commencement of an Availability Period; or

B. becomes between 3.00 minutes and 9 minutes 59 seconds behind the time nominated in the Timetable for the Set to pass any way point in the Network,
due to:

C. one or more Supplier Related Problems in respect of that Set;

D. if the Set is a Spare Set which has been substituted for a Failed Set under clause 16.6(a) or 16.6(b) of this deed, the Spare Set being so substituted; or

E. the Actual Delivery Time of that Set being after the Required Delivery Time for that Set,

then the Set will be deemed 'late' and a Reliability and Disruption Adjustment will be calculated in accordance with the following formula:

$$RDA = \text{RDA} \times \text{TIA}$$

Where:

$$RDA = \text{the Reliability and Disruption Adjustment;}$$

$$TIA = \text{the Transition-in Adjustment.}$$

(ii) Very late into or in service

If a Set:

A. is introduced into service 10.00 minutes or more after the commencement of an Availability Period; or

B. becomes 10.00 minutes or more behind the time nominated in the Timetable for the Set to pass any way point in the Network;

due to:

C. one or more Supplier Related Problems in respect of that Set;

D. if the Set is a Spare Set which has been substituted for a Failed Set under clause 16.6(a) or 16.6(b) of this deed, the Spare Set being so substituted; or

E. the Actual Delivery Time of that Set being after the Required Delivery Time for that Set,

then the Set will be deemed 'very late' and a Reliability and Disruption Adjustment will be calculated in accordance with the following formula:

$$RDA = \text{RDA} \times \text{TIA}$$

Where:

$$RDA = \text{the Reliability and Disruption Adjustment;}$$

$$TIA = \text{the Transition-in Adjustment.}$$

(b) Cancellations

If a Set is cancelled by the Operator whilst it is in service or when it is due to enter service because:
(i) it fails or ceases to satisfy the Minimum Operating Standards for Available Sets;

(ii) it has a Supplier Related Defect which the Operator, acting reasonably, believes may delay the Set when in service by 10.00 minutes or more;

(iii) it:

A. is introduced into service 10.00 minutes or more after the commencement of an Availability Period; or

B. becomes 10.00 minutes or more behind the time nominated in the Timetable for the Set to pass any way point in the Network, due to:

C. one or more Supplier Related Problems in respect of that Set;

D. if the Set is a Spare Set which has been substituted for a Failed Set under clause 16.6(a) or 16.6(b) of this deed, the Spare Set being so substituted; or

E. the Actual Delivery Time of the Set being after the Required Delivery Time for the Set; or

(iv) an Investigative Authority orders or directs TfNSW or the Operator to cease operating the Set due to one or more Supplier Related Problems, then the Set will be deemed 'cancelled' and a Reliability and Disruption Adjustment will be calculated in accordance with the following formula:

\[ \text{RDA} = \text{TIA} \times \text{TIA} \]

Where:

\[ \text{RDA} = \text{the Reliability and Disruption Adjustment}; \quad \text{and} \]

\[ \text{TIA} = \text{the Transition-in Adjustment}. \]

(c) Withholding or withdrawal of Sets

(i) Withheld or withdrawn on 24 hours' or less notice

If the Supplier does not achieve the Required Availability because a Set is withheld or withdrawn from service by the Supplier and the Supplier gives the Operator 24 hours' or less notice (or does not give the Operator any notice) of its intention to withhold or withdraw that Set from service, then the Set will be deemed 'withheld/withdrawn on less than 24 hours' notice' and a Reliability and Disruption Adjustment will be calculated as follows:

\[ \text{RDA} = \text{TIA} \times \text{TIA} \]

Where:

\[ \text{RDA} = \text{the Reliability and Disruption Adjustment}; \quad \text{and} \]

\[ \text{TIA} = \text{the Transition-in Adjustment}. \]
Withheld or withdrawn on more than 24 hours' notice

If the Supplier does not achieve the Required Availability because a Set is withheld or withdrawn from service by the Supplier and the Supplier gives the Operator more than 24 hours' notice of its intention to withhold or withdraw that Set from service, then the Set will be deemed 'withheld/withdrawn from service on more than 24 hours' notice' and a Reliability and Disruption Adjustment will be calculated in accordance with the following formula:

\[ \text{RDA} = \text{RDA} \times \text{TIA} \]

Where:

\[ \text{RDA} = \text{the Reliability and Disruption Adjustment; and} \]

\[ \text{TIA} = \text{the Transition-in Adjustment.} \]

2.4 Transition-in Adjustment

For the purposes of calculating the Reliability and Disruption Adjustments, the Transition-in Adjustment will be as follows:

(a) **(First 6 months):** If, at the beginning of the relevant month, less than 6 months have expired since the Date of Provisional Acceptance of Set 1, the Transition-in Adjustment for that month will be 

(b) **(6 to 12 months):** If, at the beginning of the relevant month, 6 months or more but less than 12 months have expired since the Date of Provisional Acceptance of Set 1, the Transition-in Adjustment for that month will be 

(c) **(12 to 24 months):** If, at the beginning of the relevant month, 12 months or more but less than 24 months have expired since the Date of Provisional Acceptance of Set 1, the Transition-in Adjustment for that month will be 

(d) **(More than 24 months):** If, at the beginning of the relevant month, 24 months or more have expired since the Date of Provisional Acceptance of Set 1, the Transition-in Adjustment for that month will be 

2.5 Volume Adjustment

The Volume Adjustment for the relevant month will be calculated in accordance with the following formula:

\[ \text{VA} = \text{MP}_{\text{TLS}} \times \text{AVKM}_{\text{min}} \]

Where:

\[ \text{VA} = \text{the Volume Adjustment for the relevant month;} \]

\[ \text{MP}_{\text{TLS}} = \text{the TLS Marginal Price; and} \]

\[ \text{AVKM}_{\text{min}} = \text{the greater of:} \]

(i) \[ \text{AVKM; and} \]

(ii) \[ \text{.} \]
2.6 AVKM

The average number of Set kilometres travelled by all Operational Sets during any month (AVKM) will be calculated in accordance with the following formula:

\[
\text{AVKM} = \frac{\text{KM}}{\text{N}_{AS}}
\]

Where:

- \(\text{KM}\) = the total number of kilometres travelled by the Operational Sets during the relevant month; and
- \(\text{N}_{AS}\) = the average number of Available Sets in the relevant month, being the sum of Available Sets in each Availability Period in the relevant month, divided by the number of Availability Periods in the relevant month.

2.7 SAU Allowance

The SAU Allowance (SA) for the relevant month will be calculated in accordance with the following formula:

\[
\text{SA} = \text{KM}_{OS} \times \text{TIA}
\]

Where:

- \(\text{KM}_{OS}\) = the total number of kilometres travelled by the Operational Sets during the relevant month;
- \(\text{TIA}\) = the Transition-in Adjustment.

2.8 Distance Based Payment

The Distance Based Payment (DBP) for a month will be calculated in accordance with the following formula:

\[
\text{DBP} = \text{DBP}_{IF} + \text{DBP}_{OS}
\]

Where:

- \(\text{DBP}_{IF}\) = means the Distance Based Payment for the Initial Fleet calculated by reference to annexure 10, paragraph 1; and
- \(\text{DBP}_{OS}\) = means the Distance Based Payment for the Option Sets calculated by reference to annexure 10, paragraph 2.

For the avoidance of doubt Distance Based Payments will be made monthly based on the later of the Cumulative Set Kilometres indicated in Table 1 and Table 2 of annexure 10 and the time at which evidence has been provided that each maintenance activity (on a per Set basis) described in Table 1 and Table 2 of annexure 10 and as detailed in the Supplier’s Asset Management Plan has been completed.
3. KPI Regime

3.1 KPI Payments

The Supplier will be entitled to receive a KPI Payment each month during the TLS Phase. The amount of the KPI Payment will depend upon the Supplier’s performance against the KPIs. The KPI Payment will be calculated in accordance with the following formula:

\[ KP = \frac{AKS \times (\frac{\$KPI_{\text{max}} \times N_{\text{OPS}}}{N_{\text{IF}} + N_{\text{OS}}})}{100} \]

Where:

- \( KP \) = the KPI Payment for the relevant month;
- \( AKS \) = the aggregate of the KPI Scores for each KPI for the previous month;
- \( \$KPI_{\text{max}} \) = the Maximum Potential Monthly KPI Payment;
- \( N_{\text{OPS}} \) = the average number of Operational Sets for the relevant month. Where a Set achieves Provisional Acceptance during a month, the incremental increase to \( N \) will be calculated based on the number of days left in the month divided by the total number of days in the relevant month;
- \( N_{\text{IF}} \) = 24, being the total number of Initial Fleet Sets to be manufactured under the Delivery Deed; and
- \( N_{\text{OS}} \) = being the total number Option Sets that RailCorp (or TfNSW on behalf of RailCorp) elect to purchase.

3.2 Potential KPI Points & Timing

The maximum potential KPI Score and assessment period for each KPI is summarised in the following table.

<table>
<thead>
<tr>
<th>No</th>
<th>KPI</th>
<th>Maximum Potential KPI Score</th>
<th>Assessment Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Passenger Amenity Defects Overdue</td>
<td>□</td>
<td>Monthly</td>
</tr>
<tr>
<td>2.</td>
<td>Other Defects Overdue</td>
<td>□</td>
<td>Monthly</td>
</tr>
<tr>
<td>3.</td>
<td>Unreported Defects</td>
<td>□</td>
<td>Rolling 3 months</td>
</tr>
<tr>
<td>4.</td>
<td>Configuration Items failing audit</td>
<td>□</td>
<td>Monthly</td>
</tr>
<tr>
<td>5.</td>
<td>Presentation (Cars failing audit)</td>
<td>□</td>
<td>Monthly</td>
</tr>
<tr>
<td>6.</td>
<td>Compliance with Audit Findings</td>
<td>□</td>
<td>Monthly</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>□</td>
<td></td>
</tr>
</tbody>
</table>
Further details on how each KPI will be measured and scored are set out below.

(a) If the KPI Score calculated for a KPI calculated in accordance with paragraphs 3.3 - 3.8 for a month is less than zero, the KPI Score for that month will be zero;

(b) Where a month for which a KPI Score is being calculated is not a whole calendar month:
   (i) the Assessment Period will be assumed to be a full calendar month for the purposes of determining the relevant KPI score for the relevant KPI; and
   (ii) the total KPI Score determined for the month will be pro-rated by the number of days in the calendar month relative to the number of days for which KPIs were capable of being assessed.

3.3 Passenger Amenity Defects Overdue

There are presently 84 Passenger Amenity KPI Items listed in the Performance Operating Standard for each Set.

Each Passenger Amenity KPI Item specifies a number of Availability Periods (the "Permitted Correction Period") within which the relevant Defect may be corrected before the Supplier will be "KPI Impacted". The KPI Score for this KPI will be calculated each month during the TLS Phase as follows:

(a) Firstly, for each Passenger Amenity Defect, the Overdue Periods will be calculated in accordance with the following formula:

\[ OP = TPO - BPCP \]

Where:

\[ OP = \text{the number of Overdue Periods for the relevant Passenger Amenity Defect as at the end of the previous month;} \]

\[ TPO = \text{the total number of Availability Periods from and including the Availability Period during which the relevant Passenger Amenity Defect was logged (or, if it was logged before the commencement of the previous month, from the commencement of the previous month) until the Availability Period in which the Defect was rectified (or the last Availability Period of the previous month if the Defect has not been rectified). Where the Availability Period in which the Defect was rectified is within a Maintenance Period the Defect is considered to be rectified in the first Availability Period of that Maintenance Period; and} \]

\[ BPCP = \text{the Permitted Correction Period (or, if the Passenger Amenity Defect was logged before the previous month, the balance of the Permitted Correction Period, if any, as at the end of the previous month) for the relevant Passenger Amenity Defect.} \]

(b) Secondly, for each Passenger Amenity Defect, the Normalised Overdue Period will be calculated in accordance with the following formula:

\[ NOP = \frac{OP}{PCP} \]

Where:

\[ NOP = \text{the Normalised Overdue Periods for the relevant Passenger Amenity Defect;} \]
Transport for NSW

Sydney Growth Trains
(ISD-16-5312B)

OP = the number of Overdue Periods for the relevant Passenger Amenity Defect; and

PCP = the Permitted Correction Period for the relevant Passenger Amenity Defect.

(c) Thirdly, the KPI Score will be calculated in accordance with the following formula:

\[ S_{PAO} = 20 \times \left( 1 - \frac{\sum (NOP) \times 15}{N_{PA} \times N_{OPS}} \right) \]

Where:

\[ S_{PAO} = \text{the KPI Score for the month;} \]

\[ \Sigma (NOP) = \text{the sum of the Normalised Overdue Periods as at the end of the previous month;} \]

\[ N_{PA} = \text{the number of Passenger Amenity KPI Items in the Performance Operating Standards as at the end of the previous month;} \]

and

\[ N_{OPS} = \text{the average number of Operational Sets in the previous month. When a Set achieves Provisional Acceptance during a month, the incremental increase to } N \text{ will be calculated based on the number of days left in the month divided by the total number of days in the relevant month.} \]

3.4 Other Defects Overdue

There are presently 49 Other KPI Items listed in the Performance Operating Standards.

Each Other KPI Item specifies a number of Availability Periods (the "Permitted Correction Period") within which the relevant Defect may be corrected before the Supplier will be "KPI Impacted". The KPI Score for this KPI will be calculated each month during the TLS Phase as follows:

(a) Firstly, for each Other Defect, calculate the Overdue Periods in accordance with the following formula:

\[ OP = TPO - BPCP \]

Where:

\[ OP = \text{the number of Overdue Periods for the relevant Other Defect as at the end of the previous month;} \]

\[ TPO = \text{the total number of Availability Periods from and including the Availability Period during which the relevant Other Defect was logged (or, if it was logged before the commencement of the previous month, from the commencement of the previous month) until the Availability Period in which the Defect was rectified (or the last Availability Period of the previous month if the Defect has not been rectified). Where the Availability Period in which the Defect was rectified is within a Maintenance Period the Defect is considered to be rectified in the first Availability Period of that Maintenance Period; and} \]

\[ BPCP = \text{the Permitted Correction Period (or, if the Other Defect was logged before the previous month, the balance of the Permitted} \]
Correction Period, if any, as at the end of the previous month) for the relevant Other Defect.

(b) Secondly, for each Other Defect, the Normalised Overdue Period will be calculated in accordance with the following formula:

\[ \text{NOP} = \frac{\text{OP}}{\text{PCP}} \]

Where:

\[ \text{NOP} = \text{the Normalised Overdue Periods for the relevant Other Defect;} \]
\[ \text{OP} = \text{the number of Overdue Periods for the relevant Other Defect; and} \]
\[ \text{PCP} = \text{the Permitted Correction Period for the relevant Other Defect.} \]

(c) Thirdly, the KPI Score will be calculated in accordance with the following formula:

\[ S_{\text{opo}} = 20 \times \left( 1 - \frac{\sum (\text{NOP}) \times 10}{N_0 \times N_{\text{ops}}} \right) \]

Where:

\[ S_{\text{opo}} = \text{the KPI Score for the month;} \]
\[ \sum (\text{NOP}) = \text{the sum of the Normalised Overdue Periods as at the end of the previous month; and} \]
\[ N_0 = \text{the number of Other KPI Items in the Performance Operating Standard as at the end of the previous month; and} \]
\[ N_{\text{ops}} = \text{the average number of Operational Sets in the previous month. When a Set achieves Provisional Acceptance during a month, the incremental increase to } N \text{ will be calculated based on the number of days left in the month divided by the total number of days in the relevant month.} \]

3.5 Unreported Defects

Each month during the TLS Phase, the Operator may:

(a) audit a number of Cars for Defects which have not been reported; and

(b) advise the Supplier of the results of the audit(s).

The Operator will determine the dates of the audit(s) and the Cars to be audited.

The KPI Score for this KPI will be calculated each month during the TLS Phase in accordance with the following formula:

\[ S_{\text{opo}} = 20 \times \left( 1 - \frac{D \times 10}{CA \times (N_{\text{op}} + N_{\text{ao}})} \right) \]

Where:
the KPI Score for the month;

\[ S_{OD} = \text{the total number of Defects identified during the audit(s) carried out in the previous 3 months which were not reported; } \]

\[ D = \text{the number of Cars audited in the previous 3 months; } \]

\[ N_{APA} = \text{the average number of Passenger Amenity KPI Items in the Performance Operating Standard during the previous 3 months; and } \]

\[ N_{AO} = \text{the average number of Other KPI Items in the Performance Operating Standard during the previous 3 months. } \]

If the Operator:

(c) fails to carry out an audit in the month prior to the month in which the KPI Score is being calculated; or

(d) fails to advise the Supplier by the end of the month in which the KPI Score is being calculated of the results of audit(s) carried out in the previous month,

the KPI Score for the month in which the KPI Score is being calculated will be 20.

### 3.6 Configuration Items failing audit

Each month during the TLS Phase, the Operator may:

(a) audit a number of Cars for compliance with the current configuration status; and

(b) advise the Supplier of the results of the audit(s).

The Operator will determine the dates of the audits and the Cars to be audited.

The KPI Score for this KPI will be calculated each month during the TLS Phase in accordance with the following formula:

\[ S_{CI} = 10 \times \left( 1 - \frac{NC \times 5}{CI \times CA} \right) \]

Where:

\[ S_{CI} = \text{the KPI Score for the month; } \]

\[ NC = \text{the total number of non-conformances with the current configuration status identified during the audit(s) carried out in the previous month; } \]

\[ CI = \text{the number of Configuration Items per Car; and } \]

\[ CA = \text{the number of Cars audited in the previous month. } \]

If the Operator:

(c) fails to carry out an audit in the month prior to the month in which the KPI Score is being calculated; or

(d) fails to advise the Supplier by the end of the month in which the KPI Score is being calculated of the results of audit(s) carried out in the previous month,

the KPI Score for the month in which the KPI Score is being calculated will be 10.
3.7 Presentation (Cars failing audit)

Each month during the TLS Phase the Operator may:

(a) audit a number of Cars cleaned by the Supplier for compliance with the Train Presentation Manual; and

(b) advise the Supplier of the results of the audit(s).

The Operator will determine the dates of the audit(s) and the Cars to be audited.

The KPI Score for this KPI will be calculated each month during the TLS Phase in accordance with the following formula:

$$S_p = 15 \times \left(1 - \frac{F \times 2}{CA}\right)$$

Where:

- $S_p$ = the KPI Score;
- $F$ = the number of Supplier cleaned Cars audited in the previous month which failed to satisfy the requirements of the Train Presentation Manual; and
- $CA$ = the number of Supplier cleaned Cars audited in the previous month.

If the Operator:

(c) fails to carry out an audit in the month prior to the month in which the KPI Score is being calculated; or

(d) fails to advise the Supplier by the end of the month in which the KPI Score is being calculated of the results of the audit(s) carried out in the previous month,

the KPI Score for the month in which the KPI Score is being calculated will be 15.

If the KPI Score calculated in accordance with the above formula for a month is less than zero, the KPI Score for that month will be zero.

3.8 Compliance with Audit Findings

Each month during the TLS Phase, the TfNSW may:

(a) perform audits in accordance with this deed;

(b) advise the Supplier of the results of the audit(s), including any non-compliances, whether specifically included in this deed or otherwise;

If the Supplier:

(c) fails to provide the TfNSW with an appropriate response to address an audit finding raised, within a period of less than two months of receipt of the audit results, the audit finding will be captured in the KPI detailed in paragraph 3.8(d); and

(d) the KPI Score for this KPI will be calculated each month during the TLS Phase in accordance with the following formula:

$$S_{SP} = 15 - \left(\frac{N_{(3-6)}}{N_{(6,8)}} + \left(2 \times N_{(6,8)}\right)\right)$$
Where:

\[ S_M = \text{the KPI Score}; \]
\[ N_{(2,6)} = \text{the number of Open Audit Findings that as at the end of the relevant month have remained open for a period of greater than 2 months but less than 6 months; and} \]
\[ N_{(6+)} = \text{the number of Open Audit Findings that as at the end of the relevant month have remained open for a period of greater than 6 months.} \]

For the avoidance of doubt:

(e) where an Open Audit Finding that is included in the calculation of the KPI for any month, remains open as at the end of any subsequent month, the audit finding will be included in the KPI calculation for all subsequent months until closed;

(f) the Operator will determine the dates and subject of each audit consistent with the requirements of this deed; and

(g) If the KPI Score calculated in accordance with the above formula for a month is less than zero, the KPI Score for that month will be zero.

4. Reimbursable TLS Payments

The Reimbursable TLS Payment for a month will be calculated as follows:

\[ RP = \sum (RI \times P_R) - (IA) \]

Where:

\[ RP = \text{the Reimbursable TLS Payment for the month}; \]
\[ RI = \text{an item of Reimbursable Through Life Support}; \]
\[ P_R = \text{the price for that item of Reimbursable Through Life Support specified in annexure 3 of this schedule, indexed in accordance with annexure 5 of this schedule; and} \]
\[ IA = x \left( \frac{N_{OFS}}{24} \right), \text{being the monthly value of "included in SAU" Reimbursable Through Life Support, indexed in accordance with annexure 5 of this schedule; and} \]

Where:

\[ N_{OFS} = \text{the average number of Operational Sets for the relevant month Where a Set achieves Provisional Acceptance during a month, the incremental increase to \text{N will be calculated based on the number of days left in the month divided by the total number of days in the relevant month.} \]

5. Performance Monitoring System

5.1 Performance Monitoring System Requirements

The Supplier must establish a Performance Monitoring System which:

(a) reports monthly within five business days of the month’s end;

(b) is accessible in electronic format by TfNSW, the Operator and their Associates;
supports the requirements for capture, calculation, analysis and reporting of the following:

(i) **Set and fleet Availability** - captures the number of Available Sets by Availability Period, the Required Availability, the number of Operational Sets and the average number of Available Sets. Additional Required Availability provided pursuant to clauses 16.9 or 16.10(b) of this deed, substituted Spare Sets and Deemed Availability must be able to be separately identified, along with supporting documentation. Cumulative Availability must be able to be calculated e.g. the number of Availability Periods since the Date of Provisional Acceptance of Set 1, per month, year to date, for each Key Performance Indicator;

(ii) **Set and fleet reliability** - itemising reported Set cancellation, late into or in service, very late into or in service, Set withheld or withdrawn on 24 hours' or less notice and Set withheld or withdrawn on more than 24 hours' notice. The exact times of each incident's occurrence, reasons, duration and fault attribution is to be provided, along with required supporting documentation, by Set. Incidents must be able to be cumulatively calculated, by Set e.g. for first 6 Sets, and algorithms in place to flag exceedances e.g. if greater than 12 incidents for the first 6 Sets. It must include the ability to apply the Transition-in Adjustment and Volume Adjustment;

(iii) **KPIs** - including both the aggregate KPI Score and, for each KPI, the calculation and capture of items used to calculate the score as well as the required supporting documentation. KPI reporting areas include: Passenger Amenity Defects Overdue, Other Defects Overdue, Unreported Defects, Configuration Items failing audit, Presentation and Compliance with Audit Findings;

(iv) **Reimbursable Through Life Support** - itemising the quantity in units of each item of Reimbursable Through Life Support provided, the price of each item, the extended calculation for each item, and total for each month less the monthly value of "included" Reimbursable Through Life Support;

(v) **Distance travelled by the Sets** - as reported by each Set's odometer, and able to be cumulatively calculated at specific points in time e.g. at the end of each Availability Period, end of month, etc;

(vi) **Indexation** - where applicable, be able to capture quarterly indexation data, and apply the indices in this data to the relevant items to be indexed referred to in annexure 6 of this schedule at the agreed percentage of the item to be indexed;

(vii) **Condition and reliability of Maintenance Facility** - able to capture data to capture issues, condition reports etc. for the Maintenance Facility;

(viii) **Configuration changes to the Sets** - able to capture all configuration items, record all configuration changes and hold supporting information; and

(ix) **Certification status of Supplier personnel** - hold data of all personnel, their certification status, certification expiry and renewal dates.

(d) assists the Operator and the Supplier to work together to identify areas for improvement in the Operator's and the Supplier's performance and operations; and
can produce monthly Performance Reports which comply with the requirements of annexure 6.

6. Technical Services Payment

6.1 Payment for Technical Services in event of omission of Maintenance Services

If clause 30.13 applies, the Supplier will be entitled to payment for the Technical Services as calculated in accordance with paragraph 6.2 and, where relevant, paragraph 6.3 of this Schedule 15.

6.2 Technical Services described in paragraph 1.1 of Schedule 14

(a) For the Technical Services described in paragraph 1.1 of Schedule 14, the sum of the Technical Services Payment for each relevant month during the TLS Phase will be calculated based upon the Technical Services cost line(s) included in the Base Case Cost Model on a real $ basis on tab "8. TLS Costs", row 161.

(b) The amount of the Technical Services Payment referred to in paragraph 6.2(a) shown on a real basis is to be adjusted for actual inflation to date in accordance with paragraph 1.1(a) of annexure 5 of this schedule, and CPI Indexed for all future months.

6.3 Other Technical Services

(a) Where TfNSW requires the Supplier to carry out Technical Services other than the Technical Services described in paragraph 1.1 of Schedule 14, TfNSW's Representative may issue the Supplier a notice entitled "Technical Services Request" setting out the details of the relevant Technical Services which TfNSW is considering, including TfNSW's proposed requirements for the implementation of the proposed Technical Services. TfNSW will not be obliged to proceed with any Technical Services proposed in a "Technical Services Request".

(b) As soon as practicable and in any event within 20 Business Days after receipt of a "Technical Services Request" (or such longer period as may be requested by the Supplier, having regard to the nature of the relevant Technical Services Request, and approved by TfNSW's Representative (acting reasonably)), the Supplier must provide TfNSW with a notice entitled "Technical Services Proposal" setting out detailed particulars of:

(i) the Supplier's proposed methodology for carrying out the relevant Technical Services; and

(ii) the Supplier's proposal for its direct costs associated with carrying out the relevant Technical Services, calculated:

A. where relevant, on the basis of the prices and rates set out in Annexure 3 of Schedule 15; and

B. on an Open Book Basis (and to this end the Supplier must allow TfNSW to review and audit the Supplier's records to verify that the Supplier's proposal has been prepared on an Open Book Basis).

(c) Following receipt of the Supplier's "Technical Services Proposal" under paragraph 6.3(b), TfNSW may either:

(i) accept the Supplier's "Technical Services Proposal";
(ii) reject the Supplier's "Technical Services Proposal"; or
(iii) withdraw its "Technical Services Request";

by notice to the Supplier.

(d) If TfNSW accepts the Supplier's "Technical Services Proposal" in accordance with paragraph 6.3(c)(i), the Supplier:
(i) must perform the relevant Technical Services in accordance with the Supplier's "Technical Services Proposal" (as accepted by TfNSW);
(ii) will be entitled to payment of the amounts specified in its "Technical Services Proposal" (as accepted by TfNSW); and
(iii) the amounts referred to in paragraph 6.3(d)(ii) will be "Technical Services Payments" for the purposes of this deed.

(e) If TfNSW:
(i) rejects the Supplier's "Technical Services Proposal" in accordance with paragraph 6.3(c)(ii); or
(ii) withdraws its "Technical Services Request" in accordance with paragraph 6.3(c)(iii),

the Supplier:
(iii) must not perform the relevant Technical Services; and
(iv) will not be entitled to make any Claim in respect of the non-provision of the relevant Technical Services.
Annexure 1
Pro-forma payment claim for TLS Payments and other amounts for TLS Phase Activities

Supplier Name
Supplier Address

<table>
<thead>
<tr>
<th>Availability Payment</th>
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<tbody>
<tr>
<td>( \Sigma (\text{SAUfs}) )</td>
<td>( \text{PSAUF} )</td>
</tr>
<tr>
<td>( \Sigma (\text{SAUos}) )</td>
<td>( \text{PSAUOS} )</td>
</tr>
<tr>
<td>( \Sigma (\text{SAUARA}) )</td>
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<tr>
<td>Very Late into or in service</td>
<td>[ ]</td>
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<tr>
<td>Cancellations</td>
<td>[ ]</td>
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<td>Withheld or withdrawn on 24 hours' or less notice</td>
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<tr>
<td>Withheld or withdrawn on more than 24 hours' notice</td>
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| \( \Sigma (\text{RDA}) \) | [ ] |

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<td>( \text{AVK\text{max}} )</td>
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<td>( \text{Base KM} )</td>
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<td>( \text{MPTLS} )</td>
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<td>( \text{KMF} )</td>
<td>[ ]</td>
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<tr>
<td>( \text{KMOs} )</td>
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<td>( \text{TIA} )</td>
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<tr>
<td>( \text{DBPOS} )</td>
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| Minimum Availability Payment Adj. | [ ] |

| Availability Payment | [ ] |
### KPI Payment

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<td>Other Defects Overdue</td>
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<td>Unreported Defects</td>
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<tr>
<td>Configuration Items failing audit</td>
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<tr>
<td>Presentation (Cars failing audit)</td>
<td>[ ]</td>
<td>15</td>
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<td>Compliance with Audit Findings</td>
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<td>Aks</td>
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<td>Nif</td>
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<tr>
<td>Nos</td>
<td>[ ]</td>
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<tr>
<td>Nops</td>
<td>[ ]</td>
</tr>
<tr>
<td>IA</td>
<td>[ $]</td>
</tr>
<tr>
<td>Vandalism</td>
<td>[ $]</td>
</tr>
<tr>
<td>Graffiti Removal</td>
<td>[ $]</td>
</tr>
<tr>
<td>Operations Services</td>
<td>[ $]</td>
</tr>
<tr>
<td>Labour</td>
<td>[ $]</td>
</tr>
<tr>
<td>Training</td>
<td>[ $]</td>
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<tr>
<td>Labour for Project Work &amp; Reimbursable Insurance</td>
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<tr>
<td>Additional Items</td>
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<td>( \sum (RI \times Pii) )</td>
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### Adjustments

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<td>Prior Months Adjustments</td>
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### TOTAL PAYMENT CLAIM

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<td>GST</td>
<td>[ $]</td>
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<tr>
<td>Total inc GST</td>
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### Supporting documentation

The following supporting documentation has been supplied or is attached
Annexure 2
Pro Forma Monthly Operational Data
## Monthly Operational Data

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<th>[Date]</th>
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<td><strong>Availability</strong></td>
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<tr>
<td>Required Availability (Initial Fleet)</td>
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<tr>
<td>Required Availability (Option Fleet)</td>
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<td>Additional Required Availability</td>
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<td><strong>Km Travelled by Operational Sets</strong></td>
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<td></td>
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<td><strong>Reliability and Disruption Adjustments</strong></td>
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<td>Late into or in service</td>
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<tr>
<td>Cancellations</td>
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<td>Withheld or withdrawn on 24 hours' or less notice</td>
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<td>Withheld or withdrawn on more than 24 hours' notice</td>
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<tr>
<td><strong>KPI</strong></td>
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<td>Passenger Amenity Defects Overdue</td>
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<td>Other Defects Overdue</td>
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<tr>
<td>Unreported Defects</td>
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<td>Configuration Items failing audit</td>
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<td>Presentation (Cars failing audit)</td>
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<td>Compliance with Audit Findings</td>
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<tr>
<td>Vandalism</td>
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</tr>
<tr>
<td>V1.2</td>
<td></td>
</tr>
<tr>
<td>V1.4</td>
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</tr>
<tr>
<td>Major Graffiti</td>
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<tr>
<td>G1.1</td>
<td></td>
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<tr>
<td>etc</td>
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</tbody>
</table>
## SCHEDULE OF RATES INSTRUCTIONS

To the extent that TfNSW is required to pay the Supplier in accordance with the Supplier's Schedule of Rates and an applicable rate is not specified in this schedule, TfNSW must pay to the Supplier a rate based on invoice cost (an arm's length commercial terms) plus [ ] which includes all overheads and a profit margin.

If additional items are regularly consumed and they relate to a category in this Schedule of Rates, these items should be included as a catalogue item under the relevant section priced at base dated dollars.

### General

- **Unit** - the base unit of measure for the item e.g. each, metre, metre squared (m²), set etc.
- **Material Cost** - represents the Free Into Store (FIS) cost per defined unit (the Supplier cost into store) i.e. including delivery charges, handling costs etc. Material cost for a refurbished item represents the average cost of a refurbishment and excludes the initial purchase cost of the new item.
- **Labour Cost** - includes the direct labour content per defined unit. This labour cost includes direct labour on-costs e.g. annual leave, sick leave, long service leave, shift allowances, etc.
- **Labour Overhead** - includes all other indirect costs per defined unit which are variable in nature e.g. overhead, supervision and support services, management and administration etc. associated with the direct labour activities.
- **Other Costs** - is this is used to indicate where the Supplier material or labour is not used to provide the service. Specialist sub-contractors may be used for specific tasks or for part of the overall task. Where this is the case, this figure represents the total cost charged by the sub-contractor to the Supplier for the defined unit.
- **Profit Margin** - This figure represents the mark-up per defined unit on material, labour, labour overhead costs and if applicable sub-contractor costs...

Total Costs - the sum of the costs shown in A, B, C, D and E.

Total included in SAU amount is the sum of the total per unit cost and the included in SAU quantities. The annual and monthly sum of the included in SAU amount for Vandalism (Table 1) is included immediately following Table 1.

### Vandalism

- **Material Costs** reflect the selection of a new (N) or refurbished (R) on the relevant column.
- **Labour costs** include removal and replacement of the item or in situ repair of the item as applicable.

### Graffiti

Graffiti removal costs for any incident where the area affected is equal to or less than 10 square metres per Set are not shown in this sheet as they are included in the cleaning cost for a Set scheduled for cleaning at the Maintenance Facility.

Where Major Graffiti (in excess of 10 square metres) is identified on a Set entering the Maintenance Facility, reimbursement will be based on the costs shown in this table. Costs are per square metre for the additional work over and above the 10 square metres included in the cleaning cost. For example, if any area of 12 square metres is treated for Graffiti removal, the reimbursable portion would be 2 square metres.

### Operations Services

Operations Services include those items regularly requested by TfNSW or the Operator's operations staff in accordance with Exhibit 1, Appendix 5 Through Life Support Specification section 4.

Where a data update is requested for all Sets the costs shown are for the entire fleet to be updated.

### Labour Rates

These rates represent the Supplier classifications per defined Unit. Definitions of labour and labour overhead are as shown above in "General".

### Training Rates

These rates represent the cost of providing training courses to the Operators personnel which are tailored to the requirement of each group. Separate rates for each course and a per person cost for the training materials are provided. The maximum number of personnel who can be accommodated on any one course are also included.

### Project Work

Labour rates in this section are used for project work and collision repairs. Definitions of labour and overheads are shown above in "General"
Cleaning Rates Relating to Reimbursable Damage Events

These rates represent the cost of cleaning a Set which has been sent to the Maintenance Facility for other reimbursable work and the Set requires cleaning to re-enter passenger service.

1. Vandalism

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Unit</th>
<th>N = New R = Refurbished</th>
<th>Included in SAU (Quantity/Year/24 Sets)</th>
<th>Material Cost per unit (New/Refurbished item) ($)</th>
<th>Labour Cost ($)</th>
<th>Labour overhead ($)</th>
<th>Other costs (e.g. subcontract or labour) ($)</th>
<th>Profit Margin ($)</th>
<th>Total Unit Cost (new item) ($)</th>
<th>Total Included Amount ($)</th>
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<tbody>
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<td>V1.1</td>
<td>Decal small - Braille (less than or equal to 0.03 m²) remove and replace</td>
<td>each</td>
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<td></td>
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</tr>
<tr>
<td>V1.2</td>
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**Sydney Growth Trains (ISD-16-5312B)**

**Schedule 15**

**TLS Deed**
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<td>Labour Cost ($)</td>
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<tr>
<td>V13.54</td>
<td>Floor covering patch damaged area up to 0.1 m² - including mobilisation costs</td>
<td>each</td>
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<tr>
<td>V13.55</td>
<td>Floor covering patch damaged area up to 0.1 m² and 0.25 m² - including mobilisation costs</td>
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<td>V13.56</td>
<td>Floor covering patch large damaged area (cut out and replace) - 1st metre square / saloon or vestibule including mobilisation costs</td>
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V14 Vandalism Emergency Door Release

| V14.1 | Side Doors - Emergency Door Release actuator | each |                        |                                   |                                            |                |                   |                                        |                 |                             |                        |
| V14.2 | Side Doors - Emergency Door Release mechanism (complete) | each |                        |                                   |                                            |                |                   |                                        |                 |                             |                        |
| V14.3 | Inter Car door - Emergency Door Release actuator | each |                        |                                   |                                            |                |                   |                                        |                 |                             |                        |
| V14.4 | Inter Car door - Emergency Door Release mechanism (complete) | each |                        |                                   |                                            |                |                   |                                        |                 |                             |                        |

V15 Vandalism TOS

| V15.1 | TMS Screen | each |                        |                                   |                                            |                |                   |                                        |                 |                             |                        |
| V15.2 | AMS Screen | each |                        |                                   |                                            |                |                   |                                        |                 |                             |                        |
### 1. Vandalism

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<th>Material Cost per unit (New/Refurbished item) ($)</th>
<th>Labour Cost ($)</th>
<th>Labour overhead ($)</th>
<th>Other costs (eg: subcontractor labour) ($)</th>
<th>Profit Margin ($)</th>
<th>Total Unit Cost (new item) ($)</th>
<th>Total Included Amount ($)</th>
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<td></td>
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<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D+E</td>
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**Total Included SAU Amount (Vandalism subtotal):**

**Total Included SAU Amount (annually):**

**Total Included SAU Amount (monthly):**

### 2. Graffiti Removal

#### G1 External graffiti

<table>
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<th>Labour Cost ($)</th>
<th>Labour overhead ($)</th>
<th>Other costs (eg: subcontractor labour) ($)</th>
<th>Profit Margin ($)</th>
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<td>C</td>
<td>D</td>
<td>A+B+C+D+E</td>
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</table>

**G1 External graffiti**
- Graffiti removal external (area less than or equal to 10 m²/set)
  - per m²
- Major Graffiti removal external (excess area over 10 m²/set)
  - per m²

#### G2 Internal graffiti

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<th>N = New R = Refurbished</th>
<th>Included in SAU (Quantity/Year/24 Sets)</th>
<th>Material Cost per unit (New/Refurbished item) ($)</th>
<th>Labour Cost ($)</th>
<th>Labour overhead ($)</th>
<th>Other costs (eg: subcontractor labour) ($)</th>
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<td>C</td>
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**G2 Internal graffiti**
- Graffiti removal internal (total area less than or equal to 10 m²/set)
  - per m²
- Major Graffiti removal for any area in excess of 10 m²/set based on location as below:
  - per m²
  - per m²

### 3. Operations Services

#### OS1 Event Recorders downloads

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<tr>
<th>Description</th>
<th>N = New R = Refurbished</th>
<th>Included in SAU (Quantity/Year/24 Sets)</th>
<th>Material Cost per unit (New/Refurbished item) ($)</th>
<th>Labour Cost ($)</th>
<th>Labour overhead ($)</th>
<th>Other costs (eg: subcontractor labour) ($)</th>
<th>Profit Margin ($)</th>
<th>Total Unit Cost (new item) ($)</th>
<th>Total Included Amount ($)</th>
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</table>

**OS1 Event Recorders downloads**
- Event recorder manual download one unit per Set (at Maintenance Facility)
  - per Set
- Event recorder manual download both units on the same Set (at Maintenance Facility)
  - per Set
- Event recorder manual download - additional downloads at the same site at the same time
  - per Set
- Event recorder manual download one unit per Set (at Out Depot)
  - per Set
- Event recorder manual download both units on the same Set (at Out Depot)
  - per Set
<table>
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<th>Description</th>
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<th>Labour overhead $</th>
<th>Other costs (eg: subcontractor labour) $</th>
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<tbody>
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<td>OS2.5</td>
<td>CCTV Hard disk manual dump to DVD both units on one Set (at Maintenance Facility)</td>
<td>per Set</td>
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<td>OS4.2</td>
<td>Manual upload of new data for DVA during regular inspection visit</td>
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<td>OS4.3</td>
<td>Upload new data for DVA via remote comms link</td>
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<td>Create new data file from Operator supplied pre-recorded digital voice announcements</td>
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<td>Remove and replace Operator's decals, maps or posters: Remove and replace one item in each of 8 Cars at Maintenance Facility</td>
<td>per Set</td>
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<td>Remove and replace three items in each of 8 Cars at Maintenance Facility</td>
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<td>Remove and replace one item in each of 8 Cars at Out Depot</td>
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<td>Labour overhead $</td>
<td>Other costs (eg: subcontractor labour) $</td>
<td>Profit Margin $</td>
<td>Total Unit Cost (new item) $</td>
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<td>Distribution of Low Region Power Maps</td>
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4. Labour Rates

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<th>Other costs (eg: subcontractor labour) ($)</th>
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5. Training Rates
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### Transport for NSW

**Category**  
TR2.4  
TR2.5  
TR2.6

**Description**  
Supply of additional training aids and materials for stations personnel  
Supply of additional training aids and materials for security personnel  
Supply of additional training aids and materials for Presentation personnel

**Unit**  
per person  
per person  
per person

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<tr>
<th>Category</th>
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### 6. Labour Rates and material costs for Project Works

**Labour Rates**

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**Material Costs**

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B1.6.9 ETIS

165000052      | CREW DISPLAY UNIT 12.1 TOUCHSCREEN               | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 260500211     | ETIS8A 19 INCH 6U RACK                          | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 260500212     | ETIS8B 19 INCH 6U RACK                          | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 260500225     | ETIS6 19 INCH 6U RACK                           | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 260500226     | ETIS6 19 INCH 6U RACK                           | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 260500227     | ETIS4 19 INCH 6U RACK                           | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 360501782     | RUGGED MEMORY MODULE                            | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 360501783     | DIGITAL INPUT OUTPUT MODULE                     | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 360501784     | ANALOGUE INPUT MODULE                           | each  |                         |                                                 |                |                     |                                          |                  |                     |
| 360501785     | CENTRAL PROCESSING UNIT WITH GRAPHICS           | each  |                         |                                                 |                |                     |                                          |                  |                     |

<p>| Schedule 15 | TLS Deed | 383 |</p>
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**Liability**

Sydney Growth Trains

(ISD-19-53120)

Schedule 15

TLS Deed

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Sydney Growth Trains
(ISO-16-5312B)
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<td>Wi-Fi COVERAGE</td>
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<td>ADVERTISING SCREENS</td>
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<td>ADVERTISING SCREEN</td>
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<td>INTEGRATED CONDITION MONITORING SYSTEM</td>
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<td>GEOMETRY MEASUREMENT MODULE</td>
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<td>OVERHEAD MEASUREMENT MODULE</td>
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<td>PROCESSING CABINET</td>
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</table>

### 7. Cleaning Rates relating to Reimbursable Damage Events

<table>
<thead>
<tr>
<th>Category Description</th>
<th>Unit</th>
<th>N = New R = Refurbished</th>
<th>Material Cost per unit (New/Refurbished Item) ($)</th>
<th>Labour Cost ($)</th>
<th>Labour overhead ($)</th>
<th>Other costs (eg: subcontractor labour) ($)</th>
<th>Profit Margin ($)</th>
<th>Total Unit Cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reimbursable interior cleaning</td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>CL1.1</td>
<td>Daily clean of 8 Cars (including cabs)</td>
<td>per Set</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>CL1.2</td>
<td>Turnaround clean of 8 Cars (including cabs)</td>
<td>per Set</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
### 8. Annual maintenance cost of Spare TDC

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Unit</th>
<th>N = New</th>
<th>R = Refurbished</th>
<th>Material Cost per unit (New/Refurbished item) ($)</th>
<th>Labour Cost ($)</th>
<th>Labour overhead ($)</th>
<th>Other costs (eg: subcontractor labour) ($)</th>
<th>Profit Margin ($)</th>
<th>Total Unit Cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TDC1.1</td>
<td>Annual planned preventative maintenance</td>
<td>each</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
Annexure 4  
Operator Schedule of Rates

**NON SCHEDULED ITEMS**

To the extent that the Supplier is required to pay the Operator in accordance with the Through Life Support Specification and an applicable rate is not specified in this schedule, the Supplier must pay to the Operator a rate based on cost plus.

**TABLE 1 - WHEEL RE-PROFILING**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Unit</th>
<th>Unit Rate ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>W1</td>
<td>Wheel Profiling</td>
<td>Per Wheelset</td>
<td></td>
</tr>
<tr>
<td>W1.1</td>
<td>Wheel re-profiling</td>
<td>Per 8 car set</td>
<td></td>
</tr>
<tr>
<td>W1.2</td>
<td>Labour (For post-turning adjustments of brakes, trip cock and/or rail guard height)</td>
<td>Per 8 car set</td>
<td></td>
</tr>
</tbody>
</table>

All rates are to be CPI Indexed in accordance with annexure 5 of this schedule.

**TABLE 2 – LABOUR RATES**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Unit</th>
<th>Total Unit Rate $</th>
<th>Total Unit Rate $</th>
</tr>
</thead>
<tbody>
<tr>
<td>L2.1</td>
<td>LRFM01 Rail Maintainer</td>
<td>per hour</td>
<td>Normal Hours</td>
<td>Overtime Hours</td>
</tr>
<tr>
<td>L2.2</td>
<td>LRFM02 Rail Maintainer</td>
<td>per hour</td>
<td>Normal Hours</td>
<td>Overtime Hours</td>
</tr>
<tr>
<td>L2.3</td>
<td>LRFM03 Rail Maintainer</td>
<td>per hour</td>
<td>Normal Hours</td>
<td>Overtime Hours</td>
</tr>
<tr>
<td>L2.4</td>
<td>LRFM04 Rail Maintainer</td>
<td>per hour</td>
<td>Normal Hours</td>
<td>Overtime Hours</td>
</tr>
<tr>
<td>L2.5</td>
<td>LRFM05 Rail Maintainer</td>
<td>per hour</td>
<td>Normal Hours</td>
<td>Overtime Hours</td>
</tr>
<tr>
<td>L2.6</td>
<td>LRFM06 Rail Maintainer</td>
<td>per hour</td>
<td>Normal Hours</td>
<td>Overtime Hours</td>
</tr>
<tr>
<td>L2.7</td>
<td>LRFM07 Rail Maintainer</td>
<td>per hour</td>
<td>Normal Hours</td>
<td>Overtime Hours</td>
</tr>
</tbody>
</table>

All rates are to be AWE Indexed.  
Note: Overtime hours in Table 2 are for weekday afternoon and night only. Additional loadings apply to weekend and excess overtime.

**TABLE 3 – OPERATOR ASSISTANCE IN RETURNING A SET TO SERVICE**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Unit</th>
<th>Unit Rate ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>R3.1</td>
<td>Returned to service under own power by Operator</td>
<td>Per Set</td>
<td></td>
</tr>
<tr>
<td>R3.2</td>
<td>Hauled to service by Operator</td>
<td>Per Set</td>
<td></td>
</tr>
<tr>
<td>R3.3</td>
<td>Returned to service on pony bogie by Operator</td>
<td>Per Set</td>
<td></td>
</tr>
</tbody>
</table>

All rates are to be CPI Indexed in accordance with annexure 5 of this schedule.

**TABLE 4 – OPERATOR MOVEMENT OF SET TO OR FROM CARDIFF MAINTENANCE CENTRE**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Unit</th>
<th>Unit Rate ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>M4.1</td>
<td>Provision of Train Path</td>
<td>Per Set each way</td>
<td></td>
</tr>
<tr>
<td>M4.2</td>
<td>Provision of Train Crew</td>
<td>Per Set each way</td>
<td></td>
</tr>
</tbody>
</table>

All rates are to be CPI Indexed in accordance with annexure 5 of this schedule.
Annexure 5
Indexation

1. Indexation

1.1 Common Terms

(a) CPI Indexed

A reference to "CPI Indexed" for the purposes of calculating an indexation factor in this annexure will be calculated in accordance with the following formula:

\[
\text{CPI Indexed} = \frac{CPI_{Q-1}}{CPI_{Base}}
\]

Where:

\(CPI_{Q-1}\) means the Consumer Price Index All Groups weighted average for the eight capital cities published by the Australian Bureau of Statistics for the most recent Quarter End published prior to the relevant calculation date; and

\(CPI_{Base}\) means the Consumer Price Index All Groups weighted average for the eight capital cities published by the Australian Bureau of Statistics for the Quarter End ending 30 June 2016, being 108.6.

If either:

(i) the Consumer Price Index All Groups weighted average for the eight capital cities ceases to be published quarterly, or

(ii) the method of calculation of the Consumer Price Index All Groups weighted average for the eight capital cities substantially alters,

then the Consumer Price Index All Groups weighted average for the eight capital cities is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.

(b) AWE Indexed

A reference to "AWE Indexed" for the purposes of calculating an indexation factor in this annexure will be calculated in accordance with the following formula:

\[
\text{AWE Indexed} = \frac{AWE_{Q-1}}{AWE_{Base}}
\]

Where:

\(AWE_{Q-1}\) means the Average Weekly Earnings, Australia index (Persons, Full Time, Adult, Ordinary Time Earnings of All Persons, All Industries, Original, All Australia ABS Catalogue No. 6302.0) published by the Australian Bureau of Statistics for the six month period that occurs closest in date prior to the relevant calculation date; and

\(AWE_{Base}\) is the Average Weekly Earnings, Australia index (Persons, Full Time, Adult, Ordinary Time Earnings of All Persons, Original, All Australia ABS Catalogue No. 6302.0) published by the Australian Bureau of Statistics for the six month period closest in date prior to 30 June 2016, being 1516.00 as at May 2016.
If either:

(i) the Average Weekly Earnings, Australia index (Persons, Full Time, Adult, Ordinary Time Earnings of All Persons, All Industries, Original, All Australia ABS Catalogue No. 6302.0) ceases to be published biannually; or

(ii) the method of calculation of the Average Weekly Earnings, Australia index (Persons, Full Time, Adult, Ordinary Time Earnings of All Persons, All Industries, Original, All Australia ABS Catalogue No. 6302.0) substantially alters,

then the Average Weekly Earnings, Australia index (Persons, Full Time, Adult, Ordinary Time Earnings of All Persons, All Industries, Original, All Australia ABS Catalogue No. 6302.0) is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.

1.2 Indexation of Price per SAU

The following amounts:

(a) Price per SAU for the Initial Fleet;
(b) Price per SAU for the Option Sets;
(c) Extended Term Price per SAU for the Initial Fleet; and
(d) Extended Term Price per SAU for the Option Sets,

will be subject to indexation in accordance with the following formula:

\[ P(SAU)_{\text{INDEXED}} = P(SAU)_{\text{BASE}} \times IF_{P(SAU)} \]

Where:

\[ P(SAU)_{\text{INDEXED}} = \text{The Price per SAU indexed for movements in CPI and / or AWE.} \]

\[ P(SAU)_{\text{BASE}} = \text{The Price per SAU at the Price Base Date} \]

\[ IF_{P(SAU)} = \%CPI_{SAU} \text{ (CPI Indexed)} + \%AWE_{SAU} \text{ (AWE Indexed)} + \frac{(1-\%CPI_{SAU} - \%AWE_{SAU})}{1} \]

Where:

\[ \%CPI_{SAU} = \]

\[ \%AWE_{SAU} = \]

CPI Indexed = \[ \frac{CPI_{Q-1}}{CPI_{\text{BASE}}} \] consistent with paragraph 1.1(a) of this annexure

AWE Indexed = \[ \frac{AWE_{Q-1}}{AWE_{\text{BASE}}} \] consistent with paragraph 1.1(b) of this annexure

For the avoidance of doubt, any reference to \( P(SAU) \) in the above formula is a reference to any of the components listed in paragraph 1.2(a)-(d) of this annexure as relevant.
1.3 Indexation of Price per SAU (Additional Required Availability)

The following amounts:

(a) Price per SAU (Additional Required Availability); and

(b) Extended Term Price per SAU (Additional Required Availability).

will be subject to indexation in accordance with the following formula:

\[ P(SAU_{ARA})_{INDEXED} = P(SAU_{ARA})_{BASE} \times IF_{P_{SAU_{ARA}}} \]

Where:

| \( P(SAU_{ARA})_{INDEXED} \) | The Price per SAU (Additional Required Availability) indexed for movements in CPI and / or AWE. |
| \( P(SAU_{ARA})_{BASE} \) | The Price per SAU (Additional Required Availability) at the Price Base Date. |
| \( IF_{P_{SAU_{ARA}}} \) | \( \%CPI_{ARA} \) (CPI Indexed) + \( \%AWE_{ARA} \) (AWE Indexed) + \( (1-\%CPI_{ARA}-\%AWE_{ARA}) \) |

Where:

\( \%CPI_{ARA} \) = \[ \]

\( \%AWE_{ARA} \) = \[ \]

CPI Indexed = \[ CPI_{q-1} \]

AWE Indexed = \[ AWE_{q-1} \]

For the avoidance of doubt, any reference to the \( P(SAU_{ARA}) \) in the above formula is a reference to both \( P(SAU_{ARA}) \) and \( EP(SAU_{ARA}) \) as relevant.

1.4 Indexation of Reliability and Disruption Adjustments

The sum of the Reliability and Disruption Adjustments for the relevant month will be CPI Indexed in accordance with clause 1.15 of this deed.

1.5 Indexation of TLS Marginal Price

The TLS Marginal Price will be indexed in accordance with the following formula:

\[ MP(TLS)_{INDEXED} = MP(TLS)_{BASE} \times IF_{MP(TLS)} \]

Where:

\( MP(TLS)_{INDEXED} \) = The TLS Marginal Price indexed for movements in CPI and / or AWE.
Indexation of Maximum Potential Monthly KPI Payment

The Maximum Potential Monthly KPI Payment for the relevant month will be CPI Indexed in accordance with clause 1.15 of this deed.

Indexation of Schedule of Rates

The rates and prices in the Supplier Schedule of Rates and the Operator Schedule of Rates will be CPI Indexed in accordance with clause 1.15 of this deed unless expressly provided otherwise.

Indexation of “included” Reimbursable Through Life Support

The monthly value of “included” Reimbursable Through Life Support will be CPI Indexed in accordance with clause 1.15 of this deed.

Indexation of Distance Based Payments

The monthly Distance Based Payment included in paragraph 2.8 will be indexed in accordance with the following formula:

\[
\text{DBP}_{\text{INDEXED}} = \text{DBP}_{\text{BASE}} \times \text{IF}_{\text{DBP}}
\]

Where:

\[
\text{DBP}_{\text{INDEXED}} = \text{The Distance Based Payment indexed for movements in CPI and/or AWE.}
\]

\[
\text{DBP}_{\text{BASE}} = \text{The Distance Based Payment at the Price Base Date.}
\]

\[
\text{IF}_{\text{DBP}} = \%\text{CPI}_{\text{DBP}} (\text{CPI Indexed}) + \%\text{AWE}_{\text{DBP}} (\text{AWE Indexed}) + (1-\%\text{CPI}_{\text{DBP}} - \%\text{AWE}_{\text{DBP}})
\]

Where:
1.10 Indexation of SAU Allowance

The SAU Allowance included in paragraph 2.7 for the relevant month will be CPI Indexed in accordance with clause 1.15 of this deed.
Annexure 6
Performance Report

As a minimum, the Performance Report should include the following sections:

Section 1 - Required Availability summary

Report, by exception, any changes from the Required Availability which were provided in the previous month e.g. any Additional Required Availability pursuant to clauses 16.9 or 16.10 or any agreed reductions in Required Availability.

Section 2 - Available Sets

Provide a graph of daily Availability by each Availability Period plotted against the Required Availability for each Availability Period. Any Required Availability not provided should be highlighted in red.

Where the Required Availability has not been provided, provide a detailed commentary on each failure to provide the Required Availability. Separately identify Sets which are deemed Available within the total for each Availability Period.

List any concessions against the Minimum Operating Standards for Available Sets granted by the Operator to achieve Availability during the previous month.

Section 3 - Reliability

Summarise all reported incidents giving rise to a Reliability and Disruption Adjustment by each category of incident for the month and identify all Supplier Related Incidents. Provide commentary identifying agreed upon incidents and disputed incidents outstanding. Where relevant the reason for any attribution decision should be provided.

Provide a rolling 12 month tally of all logged incidents giving rise to a Reliability and Disruption Adjustment and the allocation to the Operator and the Supplier Related Incidents and separately identify disputed incidents and the final attribution of the disputed incidents.

Provide a table and a chart of reliability (MDBI) based on kilometres run and the Supplier Related Incidents for both cumulative (from the Date of Practical Completion of Set 1), current month and rolling 12 month averages. The table and chart should also show the predicted cumulative and steady state MDBI derived from the Base Case Financial Model.

Section 4 - Key Performance Indicators

Report the following KPIs for the previous month and plot previous 12 month and trend lines in graph form:

- Passenger Amenity Defects overdue
- Other Defects overdue
- unreported Defects
- Configuration Items failing audit
- presentation (Cars failing audit)
- compliance with audit findings
Section 5 - Reimbursable Through Life Support

Summarise abnormal consumption of reimbursable items by comparison of included quantities and actual consumption of the same item. Plot and track consumption of any items identified by the Operator for tracking where included quantities deviate significantly from budget.

Section 6 - Scheduled Maintenance

Summarise total kilometres, average kilometres per Set and other relevant kilometre based trends against planned figures.

Provide status of all routine servicing planned and completed in previous month and separately identify any rescheduled services, past due and overdue services at month end. Tabulate or graph current routine service status of every Set and highlight and colour code past due or overdue services for each Set.

Section 7 - Maintenance Facility Report

Summarise any buildings or grounds issues (including damage, noise, pollution, neighbourhood complaints etc.), track, overhead or signalling issues, security breaches, personnel issues, driver or guard reports or internal reports relating to the Maintenance Facility for the prior month. Summarise prior issues resolved and outstanding issues from prior months.

Summarise and reference updated condition reports as they fall due and when completed.

Section 8 - Configuration Management

Summarise any configuration changes in progress or completed in previous month and any planned work in the next month. Specifically identify any past due or overdue configuration changes.

Section 9 - Personnel Certification Status

Provide summary data of all personnel with certification expired or past due in the previous month with specific commentary on any expired certificates which have not been renewed. Provide a list of all the Operator personnel whose certification falls due in the next 60 days.

Section 10 - Current joint projects and initiatives

Provide summary status report on current projects and initiatives.

Section 11 - Management of Graffiti Report

Provide a report on the monthly count of Graffiti "Tags" removed.

Attachments

Attach any printouts, project summaries, incident reports, audit reports or other supporting information required by the Operator under this deed.
Annexure 7
Required Availability

The following tables set out the number of Available Sets which the Supplier must provide for each Availability Period:

(a) Initial Fleet; and
(b) if RailCorp (or TfNSW on behalf of RailCorp) elects to order any Option Sets pursuant to the Delivery Deed, the Option Sets.

1. **Initial Fleet**

<table>
<thead>
<tr>
<th>Number of Operational Sets</th>
<th>Required Availability</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
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<td>13.</td>
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<td>14.</td>
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</tbody>
</table>
### Required Availability

<table>
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<th>Number of Operational Sets</th>
<th>Availability Period</th>
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</table>

### Option Sets

<table>
<thead>
<tr>
<th>Set Number</th>
<th>Availability Period</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>29</td>
<td></td>
</tr>
</tbody>
</table>
Annexure 8
Extended Contract Term

1. Availability Payments

1.1 Formula for calculation of Availability Payment

In the event of the Contract Term being extended in accordance with 3.2(b) or 3.2(c) of this deed, the calculation of the Availability Payment in paragraph 2.1 from the Original Expiry Date until the Extended Expiry Date shall remain identical to that included in paragraph 2.1 of this schedule, with the following exceptions:

(a) Extended Term Price per SAU (Initial Fleet)

The Price per SAU (Initial Fleet) is to be replaced with the Extended Term Price per SAU (Initial Fleet) where:

\[ EP(SAU)_{IF} = \]

Extended Term Price per SAU (Initial Fleet) determined by reference to Table 1.1(a) below, indexed in accordance with annexure 5 of this schedule.

Table 1.1(a) – Extended Term Price per SAU (Initial Fleet)

<table>
<thead>
<tr>
<th>Contract Term Extension Period</th>
<th>EP(SAU)_{IF}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial 5 Year Extension (clause 3.2(b))</td>
<td></td>
</tr>
<tr>
<td>Subsequent 5 Year Extension (clause 3.2(c))</td>
<td></td>
</tr>
</tbody>
</table>

(b) Extended Term Price per SAU (Option Sets)

The Price per SAU (Option Sets) is to be replaced with the Extended Term Price per SAU (Option Sets) where:

\[ EP(SAU)_{OS} = \]

Extended Term Price per SAU(Option Sets) determined by reference to Table 1.1(b) below, indexed in accordance with annexure 5 of this schedule.

Table 1.1(b) – Extended Term Price per SAU (Option Sets)

<table>
<thead>
<tr>
<th>Contract Term Extension Period</th>
<th>EP(SAU)_{OS}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial 5 Year Extension (clause 3.2(b))</td>
<td></td>
</tr>
<tr>
<td>Subsequent 5 Year Extension (clause 3.2(c))</td>
<td></td>
</tr>
</tbody>
</table>

If applicable, the Extended Term Price per SAU (Option Sets) will be adjusted at the Option Set Order Date for movements in foreign currency exchange in accordance with annexure 9 of this schedule.

(c) Extended Term Price per SAU (Additional Required Availability)

The Price per SAU (Additional Required Availability) is to be replaced with the Extended Term Price per SAU (Additional Required Availability) where:

\[ EP(SAU)_{ARA} = \]

Extended Term Price per SAU (Additional Required Availability) determined by reference to Table 1.1(c) below, indexed in accordance with annexure 5 of this schedule.
Table 1.1(c) – Extended Term Price per SAU (Additional Required Availability)

<table>
<thead>
<tr>
<th>Contract Term Extension Period</th>
<th>EP(SAUASA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial 5 Year Extension (clause 3.2(b))</td>
<td></td>
</tr>
<tr>
<td>Subsequent 5 Year Extension (clause 3.2(c))</td>
<td></td>
</tr>
</tbody>
</table>

For the avoidance of doubt, all components of the Availability Payment will continue to be indexed in accordance with annexure 5 of this schedule from the Original Expiry Date until the Extended Expiry Date.
Annexure 9
Option Set Foreign Exchange Adjustment Mechanism

1. Option Set Foreign Exchange Adjustment Mechanism

1.1 Option Sets

Not Used
Annexure 10
Distance Based Payment

1. Distance Based Payment for the Initial Fleet (DBP₁F)

The Distance Based Payment for the Initial Fleet (DBP₁F) is determined by reference to Table 1, below, and is payable at the later of the Cumulative Set Kilometres Trigger being achieved and the actual completion of the work (on a per Set basis) detailed in Table 1 below. The DBP₁F payment for a particular month will be calculated by reference to the Cost per Set multiplied by the number of Sets completed during a relevant month of a refurbishment period.

Table 1: Distance Based Payment – Initial Fleet

<table>
<thead>
<tr>
<th>Cumulative Set Kilometres Item</th>
<th>Cumulative Set Kilometres Trigger</th>
<th>Maintenance activity description</th>
<th>Number of months for which each DBP₁F applies (Refurbish Period)</th>
<th>Number of units to be refurbished</th>
<th>Materials $</th>
<th>Labour $</th>
<th>Other Costs (E.g. Sub-contractors) $</th>
<th>Profit Margin $</th>
<th>Total Cost for the Initial Fleet $</th>
<th>Cost per Set $</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bogies - Overhaul (per TMP)</td>
<td>24 months</td>
<td>24</td>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Bogies - Overhaul (per TMP)</td>
<td>24 months</td>
<td>24</td>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Bogies - Overhaul (per TMP)</td>
<td>24 months</td>
<td>24</td>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Bogies - Overhaul (per TMP)</td>
<td>24 months</td>
<td>24</td>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Traction System EAPs -</td>
<td>24 months</td>
<td>24</td>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Overhaul (per TMP)(^6) consisting of:</td>
<td>5.1 EAPs Overhaul - Scope 3</td>
<td>5.2 Lightning Arrestor Overhaul</td>
<td>5.3 Main Power System Overhaul</td>
<td>5.4 Traction Inverter Module Overhaul - scope 3.</td>
<td>6</td>
<td>Midlife Overhaul (per TMP)(^7)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------------</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24 months</td>
<td>24</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Total Set kilometres travelled by the number of Accepted Sets in the Initial Fleet.
2. Not used.
3. The duration from the start of the refurbishment activity to the end, measured in months.
4. Number of units to be refurbished.
5. The total real $ cost of the activity.
6. As further described by the column titled "Scope Description" for those activities listed as being undertaken at "18 years" in the Technical Maintenance Plan in Appendix 3 of the Asset Management Plan.
7. As further described in the Section titled "Upgrade and refurbishment" of the Supplier's Asset Management Plan.
2. Distance Based Payment for the Option Sets (DBPOS)

The Distance Based Payment for the Option Sets (DBPOS) is determined by reference to Table 2, below, and is payable at the later of the Cumulative Set Kilometres Trigger being achieved and the actual completion of the work detailed in Table 2 below. The DBPOS payment for a particular month will be calculated by reference to the cost per Set multiplied by the units completed during a relevant month of a refurbishment period.

The table below reflects the Distance Based Payment for one individual Option Set – the DBPOS will be pro-rated to reflect the number of Option Sets elected to be purchased by RailCorp (or TfNSW on behalf of RailCorp), by application of the profile per individual Option Set.

Table 2: Distance Based Payment – Option Sets

<table>
<thead>
<tr>
<th>Cumulative Set Kilometres Trigger Item</th>
<th>Cumulative Set Kilometres Trigger²</th>
<th>Maintenance activity description²</th>
<th>Number of months for which each DBPOS applies (Refurbish Period)</th>
<th>Unit</th>
<th>Materials $</th>
<th>Labour $</th>
<th>Other Costs (E.g. Sub-contractors) $</th>
<th>Profit Margin $</th>
<th>Total Cost per Set $²</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bogies - Overhaul (per TMP)</td>
<td>1 month</td>
<td>Per Set</td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Bogies - Overhaul (per TMP)</td>
<td>1 month</td>
<td>Per Set</td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Bogies - Overhaul (per TMP)</td>
<td>1 month</td>
<td>Per Set</td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Bogies - Overhaul (per TMP)</td>
<td>1 month</td>
<td>Per Set</td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Traction System EAPs -</td>
<td>1 month</td>
<td>Per Set</td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>A+B+C+D</td>
<td></td>
</tr>
<tr>
<td>Cumulative Set Kilometres Item</td>
<td>Cumulative Set Kilometres Trigger</td>
<td>Maintenance activity description</td>
<td>Number of months for which each DBP applies (Refurbish Period)</td>
<td>Unit</td>
<td>Materials $</td>
<td>Labour $</td>
<td>Other Costs (E.g. Sub-contractors) $</td>
<td>Profit Margin $</td>
<td>Total Cost per Set $</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------------------</td>
<td>-----</td>
<td>------------</td>
<td>---------</td>
<td>-------------------------------</td>
<td>----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Overhaul (per TMP)² consisting of:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1 EAPs Overhaul - Scope 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.2 Lightning Arrestor Overhaul</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.3 Main Power System Overhaul</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.4 Traction Inverter Module Overhaul - scope 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Midlife Overhaul (per TMP)²</td>
<td>1 month</td>
<td>Per Set</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Total Set kilometres travelled by an individual Option Set to be pro-rated for the number of Option Sets purchased by RailCorp (or TfNSW on behalf of RailCorp).
2. Not used.
3. The duration from the start of the refurbishment activity to the end, measured in months.
4. Number of units to be refurbished.
5. The total real $ cost of the activity.
6. As further described by the column titled “Scope Description” for those activities listed as being undertaken at “18 years” in the Technical Maintenance Plan in Appendix 3 of the Asset Management Plan.
7. As further described in the Section titled “Upgrade and refurbishment” of the Supplier’s Asset Management Plan.
## Schedule 16 – Insurances

### 1. Insurances

<table>
<thead>
<tr>
<th>Insurance</th>
<th>Minimum Coverage Requirements</th>
<th>Maximum Deductible</th>
<th>Period Insurance to be effected and maintained</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers Liability and Workers' Compensation Insurance</td>
<td>Workers' compensation insurance in accordance with Legal Requirements (and on the basis that, where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance shall extend to cover the vicarious liability of TfNSW and RailCorp for the acts or omissions of the Supplier) and, where common law claims can be brought outside of the relevant statutory workers compensation or accident compensation scheme, employer's liability insurance covering any injury, damage, expense, loss or liability suffered or incurred by any persons employed by the Supplier or engaged in performing the TLS Phase Activities or their dependants (and on the basis that such insurance shall extend to cover the vicarious liability of TfNSW and RailCorp for the acts or omissions of the Supplier).</td>
<td>In accordance with Legal Requirements</td>
<td>Contract Term</td>
</tr>
<tr>
<td>Own Damage Motor Vehicle Insurance</td>
<td>Coverage: Policy to cover all physical loss or damage to motor vehicles (whether owned, hired, leased or acquired by the Supplier or any of the Supplier's Subcontractors) which are used in connection with the TLS Phase Activities. Insured amount: Not less than market value.</td>
<td></td>
<td>Contract Term</td>
</tr>
<tr>
<td>Third Party Property Damage Motor Vehicle Insurance</td>
<td>Coverage: Policy to cover third party property damage related to any motor vehicles which are used in connection with the TLS Phase Activities. Insured amount: for any one occurrence and unlimited in the aggregate.</td>
<td></td>
<td>Contract Term</td>
</tr>
<tr>
<td>Compulsory Third Party</td>
<td>Coverage: Compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with the TLS</td>
<td>In accordance with Legal Requirements</td>
<td>Contract Term</td>
</tr>
<tr>
<td>Insurance</td>
<td>Minimum Coverage Requirements</td>
<td>Maximum Deductible</td>
<td>Period Insurance to be effected and maintained</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Motor Vehicle Insurance</td>
<td>Phase Activities.</td>
<td></td>
<td>Requirements</td>
</tr>
<tr>
<td></td>
<td>Insured amount: In accordance with Legal Requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plant and Equipment Insurance</td>
<td>Coverage: Covers physical loss or damage to any plant or equipment (whether owned, hired, leased or acquired by the Supplier or the Supplier's Subcontractors) which is used in connection with the carrying out of the TLS Phase Activities.</td>
<td></td>
<td>Contract Term</td>
</tr>
<tr>
<td></td>
<td>Insured amount: Not less than market value.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industrial Special Risks Insurance</td>
<td>Coverage: An industrial special risks insurance policy covering the Sets, Maintenance Facility Equipment, Spares, Consumables, Tools and Verification Activities (either which are the property of the Supplier or for which the Supplier is responsible):</td>
<td></td>
<td>TLS Start Date until the Maintenance End Date</td>
</tr>
<tr>
<td></td>
<td>• against destruction, loss or damage and other insurable risks as are reasonably required by TfNSW; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• including cover for business interruption arising from such destruction, loss or damage.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Insured amount:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Full replacement or reinstatement value of the insured property plus an additional amount sufficient to cover, but not to be limited to, costs of demolition and removal of debris, fees for project managers and other consultants, and an amount to cover additional costs and expenses to expedite the commencement and completion of the repair, replacement or reinstatement of those assets; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Business interruption insurance, which includes cover for loss of revenue and increased costs of working, following loss or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td>Minimum Coverage Requirements</td>
<td>Maximum Deductible</td>
<td>Period Insurance to be effected and maintained</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Public and Products Liability Insurance</td>
<td>Coverage: A broadform public and products liability insurance policy, written on an occurrence basis, which covers the liability of the Supplier and the Supplier's Subcontractors in respect of: • damage to, loss or destruction of, or loss of use of, real or personal property; • injury to, or death, illness or disease of, any persons (other than employees or where covered by other compulsory insurance); and • advertising injury or advertising liability risks including: • libel, slander or defamation; • infringement of copyright or of title or slogan; • piracy or unfair competition or idea misappropriation under an implied contract; and • invasion of privacy, committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast, arising out of, or in connection with, the TLS Phase Activities or ownership, maintenance, repair and occupation of property.</td>
<td></td>
<td>TLS Start Date until the Maintenance End Date</td>
</tr>
</tbody>
</table>

The policy must cover:

• the liability of the Supplier and its Associates and
<table>
<thead>
<tr>
<th>Insurance</th>
<th>Minimum Coverage Requirements</th>
<th>Maximum Deductible</th>
<th>Period Insurance to be effected and maintained</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subcontractors and the vicarious liability of the Indemnified Parties for the acts and omissions of other named insureds; any indemnity given by the Supplier under the Project Agreements.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The definition of product must include any software or computer related products.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insured amount: for any single occurrence and unlimited in the aggregate as to the number of occurrences and in the annual aggregate in respect of products liability for any one period of insurance.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transit Insurance (including marine transit insurance)</td>
<td>Coverage: A policy of insurance covering any materials, equipment or components used in the performance of the TLS Phase Activities.</td>
<td></td>
<td>Commencement Date until 24 months after the end of the Contract Term</td>
</tr>
<tr>
<td>Insured amount: The full replacement value of property in transit including insurance and freight.</td>
<td></td>
<td>per locomotive.</td>
<td></td>
</tr>
<tr>
<td>Professional Indemnity Insurance</td>
<td>Coverage: A professional indemnity insurance policy, on a claims made basis, covering the liability of the Supplier and the Supplier’s Subcontractors in respect of any act or omission in the rendering of professional services, and any breach of a duty owed in a professional capacity by the Supplier, the Supplier’s Subcontractors and anyone engaged by them in a professional capacity with provision for at least one automatic reinstatement per period of insurance.</td>
<td></td>
<td>Commencement Date until seven years after the end of the Contract Term</td>
</tr>
<tr>
<td>Insured amount: for any one claim and in the aggregate.</td>
<td></td>
<td>per wagon.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>for all other claims</td>
<td></td>
</tr>
</tbody>
</table>

Schedule 16
TLS Deed

Sydney Growth Trains
(ISD-16-5312B)
Schedule 17 – Project Security

1. Provision of Project Security by Supplier

1.1 Guarantee

On or before the Target Contractual Close Date, the Supplier must provide TfNSW with a validly executed guarantee and indemnity in the form set out in Schedule 21 (or such other substantially similar form as TfNSW may agree, in writing) given by the Guarantor (Parent Guarantee) as a Condition Precedent under clause 2.

1.2 Project Bonds

The Supplier must provide the Project Bonds to TfNSW, in the form set out in Schedule 23 and in accordance with the provisions of paragraph 2.

2. Project Bonds

2.1 Maintenance Bond

(a) On or before:

(i) the first day of the first Maintenance Liability Period, the Supplier must provide TfNSW with a bond in respect of that Maintenance Liability Period with a value equal tourence of the Maintenance Bonding Sum applicable for that Maintenance Liability Period; and

(ii) the first day of the:

A. sixth;

B. eleventh;

C. sixteenth; and

D. twenty-first,

Maintenance Years, the Supplier must provide TfNSW with a bond in respect of that Maintenance Liability Period with a value equal to of the Maintenance Bonding Sum applicable for that Maintenance Liability Period; and

(iii) if TfNSW elects to extend the Expiry Date pursuant to clause 3.2(b) and/or clause 3.2(c), the Supplier must provide TfNSW with a bond in respect of that Maintenance Liability Period with a value equal to of the Maintenance Bonding Sum applicable for that Maintenance Liability Period,

(Maintenance Bond).

For the purposes of this paragraph 2.1:

(iv) the Maintenance Bonding Sum will be calculated by adding the Forecast Scheduled Availability Payments and Forecast KPI Payments payable over the relevant Maintenance Liability Period, and dividing the sum by the number of years in that Maintenance Liability Period;

(v) the Forecast Scheduled Availability Payment for each month during a Maintenance Liability Period will be calculated based upon the
forecast Nominal Availability Payments (excluding any Distance Based Payments), calculated in row 1532 in the "PayMech" tab of the Base Case Cost Model, each adjusted to reflect actual indexation (rather than modelled forecast indexation), as determined in accordance with clause 1.15; and

(vi) the Forecast KPI Payment for each month during a Maintenance Liability Period will be calculated based upon the forecast Nominal KPI Payment calculated in row 1529 in the "PayMech" tab of the Base Case Cost Model, adjusted to reflect actual indexation (rather than modelled forecast indexation), as determined in accordance with clause 1.15.

(b) Subject to paragraph 2.2 and TfNSW's rights under this deed, the Release Date for each Maintenance Bond provided under paragraphs 2.1(a)(i), 2.1(a)(ii)A, 2.1(a)(ii)B and 2.1(a)(ii)C is 61 months from the first day of the Maintenance Year in respect of which it was issued.

(c) Subject to paragraphs 2.1(d), 2.2 and 2.3, TfNSW's rights under this deed and the Supplier providing TfNSW with the Environmental Bond, the Release Date for the Maintenance Bond provided under paragraph 2.1(a)(ii)D is 1 month from the Original Expiry Date.

(d) If TfNSW elects to extend the Expiry Date under clause 3.2(b) and/or 3.2(c):

(i) the Supplier is not required to provide the Environmental Bond under paragraph 2.1(c) for the Release Date for the Maintenance Bond provided under paragraph 2.1(a)(ii)D to occur; and

(ii) subject to paragraphs 2.2 and 2.3, TfNSW's rights under this deed and the Supplier providing TfNSW with the Environmental Bond, the Release Date for the Maintenance Bond provided under paragraph 2.1(a)(iii) is 61 months from the first day of the applicable Maintenance Liability Period in respect of which it was issued.

2.2 Asset Condition Bond

(a) Within 15 Business Days of notification by the Condition Auditor of the Estimated Rectification Cost following the 3 Year Condition Audit pursuant to clause 17.3(d), the Supplier must provide TfNSW with a bond (Asset Condition Bond) with a value equal to of the Estimated Rectification Cost.

(b) Subject to TfNSW's rights under this deed, the Release Date for the Asset Condition Bond is 60 Business Days after the Maintenance End Date.

2.3 Environmental Bond

(a) As a condition precedent to the release of the Maintenance Bond provided under:

(i) if the Contract Term is not extended under clauses 3.2(a) or 3.2(b), paragraph 2.1(a)(ii)D; or

(ii) if the Contract Term is extended under either or both clauses 3.2(a) and 3.2(b), paragraph 2.1(a)(iii),

the Supplier must provide TfNSW with a bond (Environmental Bond) with a value equal to .

(b) Subject to TfNSW's rights under this deed, the Release Date for the Environmental Bond is the later to occur of:
2.4 Bond requirements

Each Project Bond must be:

(a) an irrevocable and unconditional instrument in the form set out in Schedule 23 or such other form as TfNSW may approve;

(b) issued in favour of TfNSW;

(c) issued in Australian Dollars;

(d) state an expiry date that is:

(i) in the case of the Maintenance Bond, three months after the end of the relevant Maintenance Liability Period; and

(ii) in the case of all other Project Bonds, no less than three years after the date on which the Project Bond is provided to TfNSW under this deed;

(e) at all times provided by a bank acceptable to TfNSW that maintains the Required Bond Rating; and

(f) payable at an office of the issuer in Sydney (or such other place as TfNSW may approve).

2.5 Replacement of expiring Project Bond

(a) Except where TfNSW otherwise permits in writing, the Supplier must ensure that no Project Bond held by TfNSW expires.

(b) The Supplier must replace each Project Bond (Original Bond) with a new Project Bond (Renewing Bond) by no later than 20 Business Days prior to the expiry date stated in the Original Bond.

(c) The Renewing Bond must comply with all of the requirements for a Project Bond in paragraph 2.4 and will be held by TfNSW for the same purposes for which the Original Bond was held.

(d) TfNSW agrees to surrender an Original Bond in exchange for a Renewing Bond complying with this paragraph 2.5 upon receiving reasonable notice of a request to do so (which notice need not exceed five Business Days).

(e) If the Supplier fails to provide a Renewing Bond as required under this clause then, without limiting TfNSW's other rights including under clauses 19.6 and 28.1(m) of this deed, TfNSW may present the Original Bond for payment and may hold the proceeds as a cash security for the performance of the obligations for which the Original Bond was held.

2.6 Bond ratings trigger

If the issuer of a Project Bond ceases to have the Required Bond Rating, then the Supplier must:
(a) notify TfNSW of that circumstance as soon as reasonably practicable and in any event within 20 Business Days of the Project Bond ceasing to have the Required Bond Rating; and

(b) within 10 Business Days of being requested to do so, procure the issue to TfNSW of a replacement bond (Replacement Bond) which must have a face value equal to that of the Project Bond being replaced, comply with all of the requirements for a Project Bond in paragraph 2.4 and will be held by TfNSW for the same purposes for which the Original Bond was held,

and TfNSW must promptly surrender the original Project Bond to the Supplier following the issue of the Replacement Bond.
Schedule 18 – Amounts payable on termination or omission of Maintenance Services

1. Supplier Termination Event

1.1 Indemnity in event of termination

If this deed is terminated:

(a) pursuant to clause 30.4(a)(ii); or

(b) pursuant to clause 30.10, as a result of:

(i) termination of the Delivery Deed for a "Supplier Termination Event" under the Delivery Deed; or

(ii) termination of the MF Works Deed for a "Contractor’s default" referred to in clause 14.1 of the MF Works Deed,

the Supplier must indemnify the Indemnified Parties on demand from and against all Loss arising from the termination of this deed including:

(c) the costs of procuring a replacement contract including any increase in the price of the replacement contract and all project management, legal and other professional costs and fees in relation to that replacement contract; and

(d) all other costs of the Indemnified Parties (including project management, legal and other professional costs and fees).

1.2 Indemnity in event of omission of Maintenance Services

If TfNSW gives an instruction under clause 30.4(a)(i), the Supplier must indemnify the Indemnified Parties on demand from and against all Loss arising from the omission, including:

(a) the costs of procuring a replacement contract for the omitted maintenance services including any increase in the price of the replacement contract and all project management, legal and other professional costs and fees in relation to that replacement contract; and

(b) all other costs of the Indemnified Parties (including project management, legal and other professional costs and fees).

2. TfNSW Termination Event

2.1 Sole remedy

If:

(a) this deed is terminated for:

(i) convenience under clause 30.7; or

(ii) a TfNSW Termination Event under clause 30.6; or

(b) TfNSW gives an instruction pursuant to clause 30.8(a),
as its sole remedy in relation to that termination or instruction, the Supplier is entitled to payment of compensation calculated in accordance with paragraph 2.2.

2.2 Compensation payable

The compensation payable or to be procured by TfNSW to the Supplier under this paragraph is limited to the sum of the following amounts (and if the resulting amount is a negative amount, the corresponding positive amount will be Moneys Owing from the Supplier to TfNSW):

(a) the cost of redundancy payments for Personnel that have been incurred by the Supplier, or will be reasonably incurred by the Supplier as a direct result of the termination or the instruction given pursuant to clause 30.8(a) (as applicable);

(b) in respect of TLS Payments, the value of all TLS Payments due and payable to the Supplier for Maintenance Services provided up to the date of termination or the date the instruction given pursuant to clause 30.8(a) takes effect (as applicable), but not yet paid;

(c) the lesser of:

(i) per Maintenance Year of the projected Availability Payments from the date of termination or the date the instruction given pursuant to clause 30.8(a) takes effect (as applicable), to the Expiry Date; and

(ii) of the next three years of projected Availability Payments; and

(d) to the extent not taken into account in any item above, the amount reasonably and properly payable by the Supplier to its Subcontractors as a direct result of the termination of this deed or the instruction given pursuant to clause 30.8(a) (as applicable),

but only to the extent those amounts:

(e) in the case of amounts referred to in paragraphs 2.2(a) and 2.2(d), are incurred under arrangements and/or agreements entered into on arm's length commercial terms prior to the date of termination or the date the instruction given pursuant to clause 30.8(a) takes effect (as applicable);

(f) the Supplier and its Associates have used their best endeavours to mitigate those amounts; and

(g) they are adjusted to avoid any double counting,

less:

(h) amounts in respect of which the Supplier:

(i) is indemnified by a policy of Insurance; or

(ii) would have been indemnified if the Supplier had:

A. diligently pursued a claim under the policy of Insurance;

B. complied with the terms and conditions of that policy of Insurance; and

C. complied with its Insurance obligations under this deed; and

(i) any gains which have or will accrue to the Supplier as a result of:
(i) the termination of this deed and any other Project Agreements; or
(ii) the instruction given pursuant to clause 30.8(a),
as applicable.

3. Force Majeure Event

3.1 Sole remedy

If:

(a) this deed is terminated pursuant to clause 27.10(c); or

(b) TfNSW gives an instruction pursuant to clause 27.10(d),
as its sole remedy in relation to that termination or instruction (as applicable), the Supplier is entitled to payment of compensation calculated in accordance with paragraph 3.2.

3.2 Compensation payable

The compensation payable or to be procured by TfNSW to the Supplier under this paragraph is limited to the sum of the following amounts (and if the resulting amount is a negative amount, the corresponding positive amount will be Moneys Owing from the Supplier to TfNSW):

(a) in respect of TLS Payments, the value of all TLS Payments due and payable to the Supplier for Maintenance Services provided up to the date of termination or the date of the instruction given pursuant to clause 27.10(d) takes effect (as applicable), but not yet paid;

(b) to the extent not taken into account above, the amount reasonably and properly payable by the Supplier to its Subcontractors as a direct result of the termination of this deed,
but only to the extent those amounts:

(c) in the case of the amount referred to in paragraph 3.2(b), is incurred under arrangements and/or agreements entered into on arm's length commercial terms prior to the date of termination or the date of the instruction given pursuant to clause 27.10(d) (as applicable);

(d) the Supplier and its Associates have used their best endeavours to mitigate those amounts; and

(e) they are adjusted to avoid any double counting,

less:

(f) amounts in respect of which the Supplier:

(i) is indemnified by a policy of Insurance; or

(ii) would have been indemnified if the Supplier had:

A. diligently pursued a claim under the policy of Insurance;

B. complied with the terms and conditions of that policy of Insurance; and
C. complied with its Insurance obligations under this deed; and

(g) any gains which have or will accrue to the Supplier as a result of:

(i) the termination of this deed and any other Project Agreements; or

(ii) the instruction given pursuant to clause 27.10(d),

as applicable.

4. Time for Payment

An amount payable or to be procured under this Schedule 18 by TfNSW to the Supplier is due and payable as a lump sum on or before the later of:

(a) 60 Business Days from the:

(i) date of termination;  

(ii) date an instruction given pursuant to clause 30.8(a) takes effect; or

(iii) date of an instruction given pursuant to clause 27.10(d) takes effect,

(as applicable); and

(b) 30 Business Days from the date on which that amount is determined and agreed (in writing) between the parties.
Schedule 19 – Base Case Cost Model and

1. Cost Model

1.1 Provision of the Base Case Cost Model and

The Supplier must provide to TfNSW on the date of this deed:

(a) the Supplier’s audited cost model for the performance of the TLS Phase Activities at the Mortdale Facility, in the form and substance approved by TfNSW (Base Case Cost Model); and

(b)

1.2 Status of the Base Case Cost Model and

TfNSW must not be adversely affected by any ambiguities, discrepancies, inconsistencies, conflicts, errors or omissions in the Base Case Cost Model or the [Redacted], or by the fact that it may not reflect the actual financial performance or the projected performance or budgets of the TLS Phase Activities or the Supplier and is purely a model to be used for the purposes of:

(a) calculation of the:

(i) Forecast Availability Payment pursuant to clause 35.1(b)(ii);

(ii) Forecast KPI Payment pursuant to clause 35.1(b)(ii) and paragraph 2.1(a)(vi) of Schedule 17; and

(ii) Forecast Scheduled Availability Payment pursuant to paragraph 2.1(a)(v) of Schedule 17;

(c) the calculation of any amounts payable under Schedule 18; and

(d) the determination of any Dispute in accordance with Dispute Resolution Procedures.

2. Varying the Base Case Cost Model and

2.1 Model Variation Events

The Base Case Cost Model and, to the extent relevant, the [Redacted] must be varied on the occurrence of any of the following events (each a Model Variation Event):

(a) a Variation which results in a permanent adjustment, or any other permanent adjustment, to the Availability Payment or KPI Payments expressly provided for in this deed; and

(b) any other event which the Supplier and TfNSW agree to be a Model Variation Event.

2.2 Principles for variations to the Base Case Cost Model and

When a Model Variation Event occurs, the Base Case Cost Model and, to the extent relevant, the [Redacted], will be varied by taking into account only the amounts determined in
accordance with this deed, as agreed between TfNSW and the Supplier, or as determined in accordance with the Dispute Resolution Procedures.

2.3 Procedures for varying the Base Case Cost Model and

(a) As soon as reasonably practicable following any Model Variation Event, the Supplier must submit for Review:

(i) one electronic copy of the revised Base Case Cost Model and the revised

(ii) an instruction manual outlining how to use the revised Base Case Cost Model and the revised

(iii) all supporting formulae and data; and

(iv) a certificate from a model auditor acceptable to TfNSW confirming that an independent audit of the revised Base Case Cost Model and the revised

A. calculations in the revised Base Case Cost Model and the revised

B. the revised Base Case Cost Model and the revised

C. any macros in the revised Base Case Cost Model and the revised

D. the input data used in the revised Base Case Cost Model and the revised

(b) If the revised Base Case Cost Model is Confirmed, then the revised Base Case Cost Model will be the Base Case Cost Model for the purposes of this deed. If the revised

is Confirmed, then the revised

will be the

for the purposes of this deed.
Schedule 20 – Form of Licence

Maintenance Facility Licence

Transport for NSW
Licensor

Downer EDI Rail Pty Limited
Licensee

Clayton Utz
Lawyers
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

Our reference /17948/80172419
Licence for Permitted Use

Date

Parties

Transport for NSW ABN 18 804 239 602 (Licensor)
Downer EDI Rail Pty Limited ABN 92 000 002 031 (Licensee)

Background

A. The Licensor is entitled to grant a licence in respect of the Licensed Area.

B. The Licensor, together with RailCorp and the Licensee, intend to enter into, or have entered into, the MF Works Deed, the Delivery Deed and the TLS Deed.

C. The Licensor agrees to grant a non-exclusive licence to the Licensee for the Permitted Use on the terms of this agreement.

D. The Licensee agrees to accept the licence, on the terms of this agreement.
Reference Schedule

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Item 2: Term
From the Commencing Date to the Maintenance End Date.

Item 3: Licensed Area
That part of the Maintenance Facility Site together with that part of the Land outside the Maintenance Facility Site having a combined area of approximately [Insert] square metres shown hatched on the plan attached at Annexure A.

Item 4: Land
The land comprised in folio identifiers [Insert details].

Item 5: Commencing Date
The Date of MF Completion.

Item 6: Licence Fee
[Insert].

Item 7: Permitted Use
The undertaking of Verification Activities in accordance with the terms of the Delivery Deed, and Maintenance Services in accordance with the terms of the TLS Deed.

Item 8: Other Conditions
[Insert].

Item 9: Normal Operating Hours
[Insert].

Item 10: Licensee's Proportion
[Insert].
Agreed Terms

1. Definitions

1.1 Definitions

In this agreement, unless the contrary intention appears:

Commencing Date means the date referred to in Item 5.

Common Areas means [insert ].

Costs and Claims means any:

(a) duty, liability or obligation to any person;
(b) cost or expense;
(c) loss or damage (including but not limited to financial or economic loss, loss of goodwill, loss of profits, indirect and/or consequential loss); and
(d) claim, proceeding, demand, notice, order or other requirement.

Delivery Deed means the deed entitled 'Sydney Growth Trains Project - Delivery Deed' between the Licensor, RailCorp and the Licensee entered into on or around the date of this agreement.

GST Amount has the meaning given in clause 16.2(a).

Land means the land described at Item 4.

Licence means the licence to occupy the Licensed Area granted by the Licensor to the Licensee under this agreement.

Licence Fee means the fee referred to in Item 6 which applies on the Commencing Date, or as otherwise reviewed under this agreement.

Licensed Area means the area referred to in Item 3.

Licensee's Contribution means, subject to clause 7.3, the Licensee's Proportion multiplied by an Outgoing.

Licensee's Property means the Licensee's plant, equipment, fixtures, fittings, furnishings and other property of the Licensee on or in the Licensed Area.

Licensee's Proportion means the percentage of the Outgoings payable by the Licensee specified in Item 10.

Licensor's Property means the Licensor's plant, equipment, fixtures, fittings, furnishings and other property of the Licensor or the Operator on or in the Railway Premises.

Normal Operating Hours means the hours specified at Item 9, as amended from time to time, and notified to the Licensee by the Licensor.

Outgoings means all amounts paid or payable by the Licensor in connection with the Licensed Area (plus GST on those amounts to the extent that the Licensor does not receive an input tax credit for that GST) including the following:

(a) (rates and levies) rates, rents, levies and other charges payable to any Authority;
(b) (taxes) imposts, duties, fees, deductions, compulsory loans or withholdings and taxes (excluding income tax and capital gains tax) payable to any Authority, including land tax on the basis assessed to the Licensor;

(c) (cleaning) the cost of cleaning and disposal of refuse;

(d) (security) the cost of security and fire protection services;

(e) (Services) the cost of supplying, maintaining and repairing any Services which are not charged directly to any Licensee;

(f) (maintenance) the cost of repairs, renovation, replacements and maintenance of the Licensed Area, excluding the cost of any structural improvement which has the effect of upgrading the Maintenance Facility building to a better or more extensive condition than at the Commencing Date, or the cost of rectification of defects in the MF Works;

(g) (signs) the cost of supplying, operating and maintaining any signs;

(h) (washrooms) the cost of supplying paper towels, soap and other toilet requisites in the washrooms in the Maintenance Facility building;

(i) (gardening) the cost of planting, buying, hiring and maintaining any indoor or outdoor gardens; and

(j) (pests) the cost of pest and vermin control.

Permitted Use means the use referred to in Item 7.

Rail Infrastructure Facilities has the same meaning as in the Transport Administration Act 1988 (NSW) and includes "rail infrastructure" as that term is defined in the Rail Safety Law.

Rail Safety Law means the:

(a) Rail Safety National Law as applied (with modifications) as a law of New South Wales by the Rail Safety (Adoption of National Law) Act 2012 (NSW);

(b) Rail Safety National Law National Regulations 2012 (NSW); and

(c) Rail Safety (Adoption of National Law) Regulation 2012 (NSW),
as amended, replaced or updated from time to time.

Railway Legislation means the Transport Administration Act 1988 (NSW), the Rail Safety Law and any other legislation or regulation governing the Licensor's operations, including but not limited to the operation of railway passenger or freight services.

Railway Premises means all or any part of the Land together with all improvements from time to time on or near the Land owned or used by the Licensor or the Operator for Railway Purposes or for any other purpose and includes but is not limited to any:

(a) Rail Infrastructure Facilities;

(b) underground and overhead passages which join improvements on the Land to any other land; and

(c) plant, machinery, fittings, equipment, conveniences and amenities owned, leased or controlled by the Licensor or the Operator, including but not limited to all railway track, railway stations, tunnels, civil works, associated track structures, over track structures, signalling systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other
plant, equipment, buildings or facilities owned, leased or used by the Licensor or the Operator.

**Railway Purposes** means any action or activity undertaken or required to be undertaken by the Licensor or the Operator, in their absolute discretion, under the Railway Legislation for the use, control, safe operation, management, maintenance or repair of any railway infrastructure, facility or service, the Licensor's Property and Rail Infrastructure Facility.

**Reference Schedule** means the reference schedule appearing at the front of this agreement and marked "Reference Schedule".

**Services** means any services provided to the Licensed Area or the Railway Premises by an Authority, service provider or the Licensor (for example air conditioning, communication, drainage, power, escalators, fire and emergency services, garbage, gas, heating, lifts, information booths, sewerage, telephone, televisions, trade waste and water) and the pipes, wires, ducting and other means of providing those services to the Licensed Area or the Railway Premises.

**Term** means the term of this agreement, as set out in Item 2.

**TLS Deed** means the deed entitled 'Sydney Growth Trains Project - TLS Deed' between the Licensor, RailCorp and the Licensee entered into on or around the date of this agreement.

### 1.2 TLS Deed definitions

Capitalised expressions not defined in this agreement have the same meaning as in the TLS Deed.

### 1.3 TLS Deed overrides

The parties:

(a) acknowledge that they must, in the exercise of any rights or the performance of any obligations under this agreement, comply with the terms of the TLS Deed; and

(b) agree that, in the event of any inconsistency between the terms of this agreement and the terms of the TLS Deed, the terms of the TLS Deed prevail.

### 2. Grant of licence

#### 2.1 Licence

The Licensor grants to the Licensee a non exclusive licence to use the Licensed Area for the purposes only of carrying out the Permitted Use during the Term, subject to the conditions (if any) set out in Item 8 and otherwise as set out in this agreement.

#### 2.2 Nature of licence

(a) The Licensee has a personal right of occupation on the terms specified in this agreement and has no interest in the Land. The legal right to possession and control over the Licensed Area remains vested in the Licensor throughout the term of the agreement.

(b) Nothing in this agreement:

(i) confers on the Licensee any rights as a tenant of the Licensed Area; or

(ii) creates the relationship of landlord and tenant between the parties.
During the Term, and subject to the terms of the TLS Deed, the Licensor must ensure that it does not:

(i) undertake or procure the undertaking within the Licensed Area; or

(ii) grant any rights to third parties,

that interferes with the undertaking by the Licensee of the Permitted Use.

3. Licensor's rights and reservations

3.1 Licensor's right to enter the Licensed Area (a) Subject to paragraphs (b) and (c), and in addition to any rights the Licensor may have under the Delivery Deed or TLS Deed, the Licensor or its agents may enter the Licensed Area together with all necessary workmen and equipment at all reasonable times, if it gives the Licensee reasonable notice, to:

(i) determine the condition of the Licensed Area or whether the Licensee is complying with this agreement;

(ii) undertake any repairs or maintenance to the Licensed Area or the Maintenance Facility building;

(iii) carry out any work to the Railway Premises, the Services or any adjacent property, including but not limited to for the purpose of installing any new Services for Railway Purposes or for any other reason;

(iv) exercise its rights under any provision of this agreement or any other Project Agreement;

(v) enable it to comply with any law or any notice from any Authority affecting the Railway Premises;

(vi) show the Licensed Area to prospective purchasers or mortgagees at any time or to prospective tenants during the last 6 months of the Term;

(vii) ensure that the Licensed Area is locked and secure; and

(viii) do anything for Railway Purposes or to avoid or rectify an emergency.

(b) When exercising its rights under paragraph (a), the Licensor:

(i) must take reasonable steps to minimise any disruption to the Licensee; and

(ii) is not required to give reasonable notice or enter at a reasonable time in the case of an emergency.

(c) Where the Licensor exercises its rights under paragraphs (a)(ii), (a)(iii) or (a)(v) and, in the Licensor's opinion, access is urgently required, the Licensee acknowledges and agrees that:

(i) the Licensor is not required to give the Licensee notice if, in the Licensor's opinion, giving such notice is not practicable;

(ii) it must give the Licensor and/or TfNSW prompt access to the Licensed Area; and
(iii) it will undertake (in accordance with clause 10) such temporary repairs as are necessary in order to make safe the relevant property or Services until such time as the Licensor is able to undertake the proposed repairs and/or maintenance.

3.2 **Restricted access to Railway Premises**

The Licensor may exclude any person (including the Licensee) from the Railway Premises:

(a) if required by law or for safety or security reasons;

(b) outside the Normal Operating Hours; and

(c) during public holidays.

3.3 **Convert title**

(a) The Licensor may convert the title to any part of the Railway Premises to strata (or similar) title.

(b) The Licensee must do anything the Licensor reasonably requires concerning the conversion including, but not limited to, promptly providing its unconditional consent, in writing, to the subdivision or grant of easement.

3.4 **Subdivide and grant easements**

The Licensor may subdivide the Land or grant an easement or other right over it or the Licensed Area unless this would have a substantial adverse effect on the Licensee. The Licensee must do anything the Licensor reasonably requires concerning the subdivision or grant of easement.

3.5 **Benefit of Licensee’s obligations**

If someone else becomes entitled to receive the Licence Fee:

(a) that person may exercise all of the Licensor’s rights under this agreement; and

(b) the Licensee must enter into any deed reasonably required by the Licensor, at the Licensee’s cost.

3.6 **Superior interests**

The Licensee acknowledges and agrees that the Operator has an interest in the Licensed Area which is concurrent with or superior to the Licensor’s interest. Accordingly the Licensee agrees that it must allow the Operator to:

(a) exercise its right, or the Licensor’s right, to enter the Licensed Area;

(b) carry out repairs, maintenance and other work in the Licensed Area; and

(c) exercise its rights and obligations in respect of the Licensed Area.

3.7 **Licensor may perform Licensee’s obligations**

(a) The Licensor may, at the Licensee’s cost, do anything which the Licensee should have done under this agreement if the Licensee does not promptly do so or if, in the Licensor’s opinion, the Licensee does not do so properly.

(b) The Licensee must reimburse the Licensor on demand for any costs and expenses incurred by the Licensor under paragraph (a).
3.8 Appoint agents and managers
The Licensor may appoint or authorise an agent or others to do anything it may or must do under this agreement or conduct the day to day running of the Railway Premises.

3.9 Keys
If the Licensor gives the Licensee any key, access card or other opening device to access the Railway Premises or the Licensed Area:
(a) the Licensee must not copy it without the Licensor’s prior consent;
(b) the Licensee must reimburse the Licensor for any cost it incurs as a result of the Licensee losing any opening device;
(c) the Licensee must give the opening device to current employees only, and must keep a list of those employees and give the list to the Licensor on request; and
(d) the Licensee must return all opening devices to the Licensor on the expiration or termination of this agreement.

3.10 Rights in relation to Railway Premises
The Licensor may at any time:
(a) change the direction or flow of pedestrian or vehicular traffic in and around the Railway Premises; and
(b) issue a direction to the Licensee requiring the Licensee to assist in the management or rectification of any emergency which takes place in the Railway Premises, including but not limited to any direction requiring the Licensee to cease or suspend the Permitted Use for a specified period of time. The Licensee must immediately comply with any such direction of the Licensor.

4. Licence Fee
The Licensor acknowledges receipt of the Licence Fee.

5. Liability for expenses
The Licensee must indemnify the Licensor against, and must pay to the Licensor on demand the amount of, all costs and expenses incurred in connection with:
(a) any amendment to this agreement; and
(b) any request for the consent or approval of the Licensor,
including legal expenses on a full indemnity basis, administration costs of the Licensor and expenses incurred in engaging consultants.

6. Licensee’s charges
(a) The Licensee must pay directly to the relevant Authority or service provider all amounts separately charged to the Licensed Area by any Authority or service provider and any Services separately metered and consumed in the Licensed Area.
(b) The Licensee must, within 7 days of a request by the Licensor, provide the Licensor with evidence of payment of the amounts referred to in this clause.
7. Outgoings

7.1 Payment of Licensee's Contribution

The Licensee must pay, or reimburse the Licensor if the Licensor has paid, the Licensee's Contribution for each Outgoing:

(a) to the Licensor or as otherwise directed by the Licensor; and

(b) within 14 days of service of a notice under clause 7.2(a).

7.2 Notice from Licensor

(a) The Licensor must notify the Licensee of the amount of each Outgoing payable and the Licensee's Contribution for that Outgoing.

(b) The notice referred to in paragraph (a) is conclusive evidence of its contents unless the Licensor or the Licensee notify the other of any manifest error within 14 days of service of the notice.

7.3 Specified Outgoings

The Licensor may, acting reasonably, decide that some items of Outgoings will be shared only between some occupants or groups of occupants of the Land when calculating the Licensee's Contribution. If the Licensor does this, it must provide reasonable details with its notice under clause 7.2(a).

7.4 Variation of the Licensee's Proportion

If the Licensee's Proportion changes, the Licensor may notify the Licensee of the change giving reasonable details of the change. The notice is conclusive evidence of its contents unless the Licensor or the Licensee notify the other of any manifest error within 14 days of service of the notice.

8. Licensee's obligations

8.1 Approvals

The Licensee must take out, maintain and renew all Approvals, other than the Planning Approval, required for the occupation, use and operation of, and carrying out of the work under the Delivery Deed and TLS Deed in the Licensed Area.

8.2 General obligations

The Licensee must and must ensure that the Licensee's Associates:

(a) (comply with directions) immediately comply at all times with the directions and requirements of the Licensor while on the Licensed Area;
(b) **(Mandatory Requirements)** at its own cost, comply with all Mandatory Requirements in respect of:

(i) the Licensed Area or anything in it;

(ii) the use and occupation of the Licensed Area; or

(iii) the effect or likely effect of the use of the Licensed Area on the Environment,

whether or not any such requirements are required to be effected by the Licensee, the Licensor or any other person, and

(c) **(use)** use the Licensed Area only for the Permitted Use.

### 8.3 Maintenance of Licensed Area

(a) The Licensee must, at its own cost:

(i) **(good and substantial repair)** keep the Licensed Area in good and substantial repair and working condition, including as required under the TLS Deed, but excluding:

A. fair, wear and tear;

B. to the extent permitted in respect of a Force Majeure Event pursuant to clause 27 of the TLS Deed;

(ii) **(remove graffiti)** remove any graffiti or other disfigurement on the Licensed Area or the Licensee's Property within 5 Business Days of it occurring;

(iii) **(Licensee's Property)** keep the Licensee's Property within the Licensed Area in good and substantial repair and working condition;

(iv) **(remove Waste)**:

A. remove all Waste produced by the Licensee's occupation of the Licensed Area from the Licensed Area regularly;

B. comply with the Licensor's directions regarding refuse disposal; and

C. not put any refuse in bins provided for common use;

(v) **(damage)** immediately repair any damage to or defect in the Licensed Area caused by the Licensee or the Licensee's Associates;

(vi) **(repairs and maintenance)** without limiting the Licensee's obligations under the TLS Deed, carry out repairs and maintenance promptly using high quality materials and workmanship and in keeping with the standard, quality and appearance of the Licensed Area and the Licensee's Property;

(vii) **(induction)** if the Licensor or the Operator requires, attend from time to time, any induction course or training session in relation to the safe operation of the railway which is in the vicinity of the Licensed Area;

(viii) **(cleaning)** having regard to the nature of the Licensed Area, keep the Licensed Area clean and clear of debris and rubbish;
(ix) (fuel) reclaim and recycle oil and fuel used in the work under the TLS Deed;

(x) (landscaped areas) if relevant, keep in good condition any part of the Licensed Area that is landscaped, keep that part of the Licensed Area free of weeds and, if required by the Licensor, engage a gardener approved by the Licensor to do so; and

(x) (Licensor's Property) keep in good condition the Licensor's Property located in the Licensed Area including any air conditioning, plant and fire equipment, and enter into and maintain any comprehensive maintenance contracts in respect of the Licensor's Property or Services that the Licensor requires.

(b) The Licensee accepts the Licensed Area in its state of repair, order and condition as at the Commencing Date.

8.4 Prohibitions on Licensee

The Licensee must not:

(a) (no alteration) make any change or structural alteration or addition to the Licensed Area except with the consent in writing of the Licensor;

(b) (no damage) damage the Licensed Area, or any thing on the Licensed Area (whether or not it is the property of the Licensor), or injure any person in or around the Licensed Area;

(c) (no rubbish) keep any rubbish in or around the Licensed Area;

(d) (no nuisance) use the Licensed Area for any illegal purpose or do anything which does or could cause a nuisance, annoy or offend the Licensor, the Operator or the occupants of any nearby property;

(e) (no interference) do anything or allow anything to be done which would cause an interference or obstruction to the operations being carried on by the Licensor or the Operator in and around the Licensed Area;

(f) (no residential use) not use the Licensed Area for any residential purpose whether temporary or permanent;

(g) (no activity to cause signal failure) carry out or allow the carrying out of any activity which may give rise to or cause a failure of any railway signalling instruments or which may cause any other railway equipment to fail to operate or to malfunction for any period of time;

(h) (access to railway tracks) enter, access or place any item on or near any railway tracks outside the Licensed Area;

(i) (fire risk) store any thing in the Licensed Area which is dangerous, explosive or could increase the risk of fire on the Licensed Area;

(j) (signage) except for any signage required by any Mandatory Requirement or the requirement of an Authority, erect any signage on or about the Licensed Area except with the consent in writing of the Licensor;

(k) (no advertising) carry out any form of advertising on the Licensed Area;

(l) (alienation) part with possession of the Licensed Area or any part of it; or
8.5 **Conduct of works**

If the Licensee seeks to carry out any structural, building or installation works on the Licensed Area during the Term, the Licensee must at its own cost:

(a) submit a written application to the Licensor describing the intended works;

(b) comply with all relevant requirements of the WHS Regulation with respect to the preparation of safe work method statements;

(c) not commence the works until the application has been approved by the Licensor in writing and the Licensee has complied with all conditions imposed by the Licensor in relation to the works;

(d) ensure that the works are carried out:

   (i) promptly and within the period of time required by the Licensor;

   (ii) in accordance with good building practice and in keeping with the amenity and operation of the Licensed Area;

   (iii) in accordance with plans and specifications agreed by the Licensor in writing;

   (iv) using new and good quality materials;

   (v) to the satisfaction of the Licensor; and

   (vi) by contractors with appropriate insurance cover as required by the Licensor;

(e) protect any structures or items on the Licensed Area from damage and, if any damage is caused directly or indirectly as a result of the works, at the Licensor’s election, either:

   (i) promptly repair and make good the damage to the Licensor’s satisfaction; or

   (ii) pay or reimburse the Licensor on demand for any costs and expenses incurred by the Licensor relating to the make good of the damage;

(f) accept full responsibility for the conduct and safety of the Licensee’s Associates;

(g) comply on time with any laws, including any laws in relation to work health and safety;

(h) remove from the Licensed Area on a regular basis all rubbish, debris and residual materials resulting from the works;

(i) pay or reimburse the Licensor on demand by the Licensor for any costs or expenses incurred by the Licensor as a result of the works being carried out;

(j) otherwise comply with the Licensor’s requirements and directions from time to time relating to access to the Licensed Area and the carrying out of the works, including but not limited to immediately ceasing the works if requested by the Licensor; and
8.6 **Annual fire statements**

(a) The Licensee will at its cost comply with the requirements set out in Division 5, Clauses 175 - 178 of the *Environmental Planning & Assessment Regulations 2000 (NSW)* (EPA Regulations).

(b) The Licensee must at its cost cause to be prepared by a properly qualified person an Annual Fire Safety Statement in accordance with the EPA Regulations.

(c) The Licensee must at its cost comply with any notice it receives from either, the Licensor, Council or the Fire Commissioner arising out of or in connection with fire safety and the EPA Regulations.

8.7 **Essential condition**

(a) The Licensee's obligations under this clause 8 are an essential obligation of this agreement.

(b) The terms in clause 8.6 have the same meaning as given to those terms in the *Environmental Planning & Assessment Regulations 2000 (NSW)*.

9. **Assignment of rights, sublicensing**

The Licensee must not, and must not purport to, assign or sublicense any of its rights under this agreement.

10. **Work health and safety**

10.1 **Compliance with WHS Act and WHS Regulation**

Despite any other provision in this agreement, the Licensee must at all times comply with the WHS Act and WHS Regulation and must provide to the Licensor upon request evidence that the Licensee is complying with the WHS Act and WHS Regulation.

10.2 **Delivery Deed and TLS Deed**

Without limiting the application of the WHS Act and WHS Regulation to the Licensee, during the Term, the Licensee is responsible for all aspects of WHS in connection with its business or undertaking carried out in the Licensed Area in accordance with the terms of the Delivery Deed and the TLS Deed.

11. **Environmental issues**

11.1 **No representation**

The Licensor does not warrant or represent:

(a) that the Licensed Area is suitable for any use, or for any particular use, including the Permitted Use;

(b) the accuracy of information about the past use of the Licensed Area; or

(c) that the Licensed Area is not Contaminated, or the nature or extent of any Contamination.
11.2 Environmental obligations

The Licensee acknowledges its obligations under paragraph 2 of Schedule 9 of the TLS Deed.

12. Risk and liability

12.1 Risk

(a) The Licensee occupies the Licensed Area, and uses the Common Areas at its own risk and carries out any building work at its own risk.

(b) If the Licensee is obliged to do anything under this agreement, it does so at its own risk.

12.2 No restriction on Licensor

Nothing in this agreement restricts the Licensor's right to carry out works in or around the Licensed Area at any time and for any purpose.

12.3 Insurance

The parties acknowledge their respective insurance obligations under the Delivery Deed and TLS Deed and their application to the rights and obligations of the parties under this agreement.

12.4 Release of Licensor

(a) To the extent permitted by law, the Licensee unconditionally and irrevocably releases the Licensor from:

(i) all Costs and Claims caused by any reason and in connection with any damage, loss, injury or death to or of any person or property on or near the Licensed Area or the Railway Premises, including but not limited to by reason of the fact that the Licensed Area may be near any land used for Railway Purposes; and

(ii) any liability for damage to the Licensee's Property or for any other loss (however that loss was caused or arose), including but not limited to:

A. financial or economic loss to the Licensee or to any other person;

B. loss of goodwill in relation to the business being carried on by the Licensee;

C. loss of the Licensee's profits;

D. indirect or consequential loss; and/or

E. loss resulting from:

1) the movement of any vehicle in the Licensed Area;

2) the death of, or injury to any person who is a passenger in or driver of a vehicle on, over or through the Licensed Area, or any person who is in or around the Licensed Area;
3) damage caused to any vehicle whilst in the Licensed Area;

4) the liability of another person;

5) the Licensor granting any other lease, licence or other right to operate a business in or around the Railway Premises which may be a use which competes with the Permitted Use or has an adverse effect on the ability of the Licensee to carry out the Permitted Use;

6) the vacancy of any other tenancy or area in the Railway Premises from time to time (for whatever reason);

7) any change in the flow of members of the public in and around the Licensed Area for any reason;

8) the failure of any tenant, occupant or other person in the Railway Premises to keep their leased premises or other area clean and tidy;

9) any product promotion which is carried out by any person within the Railway Premises (whether the promotion is carried out with the consent of the Licensor or otherwise);

10) the Licensor carrying out any maintenance, refurbishment, alteration, upgrade or other works or other activity in and around the Railway Premises for Railway Purposes (including but not limited to works required under the Disability Discrimination Act 1992 (Cth)) provided that the Licensor gives the Licensee at least 2 months' notice in writing of the proposed works (or in the case of an emergency, a period of notice that is reasonably practicable in the circumstances);

11) any special events in the area of the Railway Premises and crowd control and other measures taken by the Licensor in relation to those events, including but not limited to closing the Railway Premises, changing the location of entrances and exits and changing the flow of people through the Railway Premises;

12) the frequency of trains passing through the Railway Premises and changes to train timetables which may be made in the absolute discretion of the Licensor;

13) any incidents or accidents occurring in or around the Railway Premises which require temporary closure or shutdown of the Railway Premises;

14) any delay in rectifying a breakdown or failure of any fixtures, fittings, plant and equipment in the Railway Premises and under the control of the Licensor;
15) a Force Majeure Event, including any industrial dispute associated with employees or contractors responsible for operating the railway;

16) noise, vibration or stray electrical currents emanating from the railway;

17) any act beyond the control of the Licensor including (without limitation) any fire, flood, storm, tempest or washaway, war (whether declared or undeclared), revolution, riot or civil commotion; and

18) any other occurrence if the likelihood of the occurrence was specifically drawn to the Licensee’s attention, in writing, before the agreement was entered into or if it was disclosed in the Licensor’s disclosure statement.

(b) In addition to the matters set out in clause 12.4(a)(i), nothing the Licensor does in relation to carrying out the Railway Purposes or operating and maintaining the Rail Infrastructure Facilities constitutes a nuisance under or in relation to this agreement and the Licensee must not, and is not entitled to, take any action or make any claim against the Licensor by reason of the fact that the Licensed Area may be in or in the vicinity of:

(i) a railway being operated by the Licensor for Railway Purposes or otherwise; and/or

(ii) Rail Infrastructure Facilities.

(c) The Licensor is not liable to pay compensation to the Licensee under clause 12.4 or under any other clause contained in this agreement in respect of any occurrence if the likelihood of the occurrence was specifically drawn to the Licensee’s attention in writing before this License was entered into or if it was disclosed to the Licensee.

12.5 Indemnity

The Licensee unconditionally and irrevocably indemnifies the Licensor against any Costs and Claims which the Licensor incurs or is liable for in connection with:

(a) the use or occupation of the Licensed Area by the Licensee or the Licensee’s Associates;

(b) any Service not working properly, being unavailable or being interrupted, or the misuse of any Service provided to the Licensed Area, unless caused by the negligence of the Licensor;

(c) the escape of any water from the Licensed Area caused or contributed to by the Licensee or the Licensee’s Associates;

(d) a breach by the Licensee of its obligations under clause 12.2 of Schedule 6A of the Transport Administration Act 1988 (NSW), as amended from time to time; and

(e) the Licensor’s termination of this agreement under clause 13.1,

including, without limitation, the loss to the Licensor of the benefit of the Licensee performing its obligations under this agreement from the date of termination until the end of the Term.
12.6 Continuing indemnity

Each indemnity of the Licensee contained in this agreement is a:

(a) continuing obligation of the Licensee and remains in full force and effect after the
termination of this agreement; and
(b) separate and independent obligation of the Licensee.

13. Default and termination

13.1 Termination relating to Delivery Deed or TLS Deed

(a) If the Delivery Deed is terminated for any reason then, unless otherwise notified by
the Licensor in writing within 10 business days of the date of termination of the
Delivery Deed, this deed is terminated with effect from the date that is the date
that is 11 Business Days after the date of termination of the Delivery Deed, without
necessity of notice.

(b) Despite any other provision in this agreement, this agreement will terminate
automatically:

(i) on the date of termination of the TLS Deed, if the TLS Deed is
terminated;

(ii) on the date of the relevant instruction, if TfNSW gives an instruction
pursuant to clause 27.10(d), 30.4(a)(i) or 30.8(a) of the TLS Deed;

13.2 Make good

Howsoever this agreement is terminated, the Licensee must, at its cost and to the satisfaction
of the Licensor:

(a) remove all rubbish and the Licensee's Property from the Licensed Area, unless the
Licensor agrees or directs otherwise, and make good any damage caused by the
removal;

(b) promptly leave the Licensed Area in a condition consistent with the Licensee's
performance of its obligations under this agreement to maintain and repair the
Licensed Area;

(c) remove any structures erected by it on the Licensed Area (unless the Licensor
agrees or directs otherwise);

(d) hand over all keys provided by the Licensor in relation to the Licensed Area,
including security access devices; and

(e) immediately repair any damage caused to the Licensed Area in the course of
complying with this clause and in all cases leave the Licensed Area in no worse
condition than it was in at the Commencing Date.
13.3 Storage of Licensee's Property

(a) If the Licensee does not remove the Licensee's Property or remedy any damage under clause 13.2, the Licensor may do so and store the Licensee's Property at the Licensee's cost.

(b) If the Licensee does not remove all of the Licensee's Property from the Licensed Area or from the place where it is stored by the Licensor within 5 Business Days of being asked to do so by the Licensor, that Licensee's Property which has not been removed by the Licensee becomes the property of the Licensor if the Licensor so elects.

14. Rail legislation and related matters

14.1 Acknowledgment

The Licensee acknowledges the effect of the Railway Legislation in relation to this agreement, including but not limited to any obligations imposed under that legislation on the Licensee.

14.2 Importation of statutory provisions

If any law, including but not limited to the Railway Legislation, requires that this agreement includes any provision or any provision is deemed to be included in this agreement, then this agreement contains that provision in the form prescribed by the law.

14.3 Rights in relation to Licensed Area

(a) The Licensee acknowledges and agrees that the Licensor and the Operator have full and unfettered access to the Railway Premises at all times and may not be excluded from entering the Railway Premises by any action of the Licensee. For the avoidance of doubt, Railway Premises includes the Licensed Area.

(b) Despite any other provision in this agreement, the Licensee acknowledges that this agreement does not permit the Licensee to access any part of the Railway Premises not comprising the Licensed Area.

(c) Despite any other provision in this agreement, the Licensee must not do anything which interferes with the normal operation of the railway or the Railway Premises.

15. Notices

A notice, consent or other communication under this agreement is only effective if it is served in the manner set out in clause 48 of the TLS Deed.

16. GST

16.1 Definitions

GST means the same as in the GST Law.

GST Law means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

16.2 Payment of GST

(a) A recipient of a taxable supply made under this agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to
any GST paid or payable by the supplier in respect of the taxable supply (GST Amount) without deductions or set off of any other amount.

(b) The recipient must pay the GST Amount to the supplier:

(i) on the same day as the due date for the consideration in respect of the relevant taxable supply, provided that the supplier has issued a tax invoice to the recipient for that supply; or

(ii) if there is no due date, within 5 Business Days of receiving a written request or a tax invoice from the supplier.

16.3 Reimbursements

A party’s obligation to reimburse another party for an amount paid or payable to a third party (e.g., a party’s obligation to pay another party’s legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

16.4 Formula use GST exclusive amounts

If a payment made under this agreement is calculated by reference to or as a percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a percentage of that other amount or revenue stream net of any GST component.

16.5 Indemnities

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

(b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

(c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

17. General clauses and interpretation

17.1 Governing law

(a) This agreement is governed by and must be construed according to the laws applying in New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

17.2 Giving effect to this agreement

Each party must do anything (including executing any document), and must ensure that its employees and agents do anything (including executing any document), that any other party may reasonably require to give full effect to this agreement.

17.3 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:
17.4 Operation of this agreement
(a) This agreement contains the entire agreement between the parties about its subject matter.
(b) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

17.5 Consents
(a) Where this agreement contemplates that the Licensor may agree or consent to something (however it is described):
   (i) the Licensor may:
      A. agree or consent, or not agree or consent, in its absolute discretion; and
      B. agree or consent subject to conditions; and
   (ii) the agreement or consent must be in writing, unless this agreement expressly contemplates otherwise.
(b) In making a discretionary determination, the Licensor will take into consideration any current government policy. The Licensor may withdraw a consent if it is inconsistent with government policy and the Licensee must, without delay, cease the relevant activity and comply with the directions of the Licensor.

17.6 No merger
The provisions of this agreement do not merge on termination.

17.7 Exclusion of contrary legislation
Any legislation that adversely affects an obligation of the Licensee, or the exercise by the Licensor of a right or remedy, under or relating to this agreement is excluded to the full extent permitted by law.

17.8 Expiry or termination
Expiry or termination of this agreement does not affect any rights arising from a breach of this agreement before then.

17.9 Payments under this agreement
(a) The Licensee must make payments under this agreement.
(i) to the Licensor (or to a person nominated by the Licensor in a notice to the Licensee) by the method the Licensor reasonably requires;

(ii) when due and payable whether or not demanded by the Licensor; and

(iii) without withholding any part of any payment by way of deduction, set off or counterclaim.

(b) If no date for payment is specified the Licensee must make payments under this agreement within 7 days of being asked by the Licensor.

(c) Where any money the Licensor charges the Licensee is calculated using a time period and this agreement starts or ends during that time period, the Licensor must make proportional adjustments.

(d) If either the Licensor or the Licensee prove an error in any money charged the Licensor must correct it and make any necessary adjustment, in a notice to the Licensee. On the next day on which the Licence Fee is due, the Licensee must pay the Licensor or the Licensor must credit the Licensee with the difference between what the Licensee has paid and what the Licensee should have paid.

17.10 Counterparts

This agreement may be executed in counterparts.

17.11 Interpretation

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

(i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;

(ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

(iii) a party to this agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

(iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

(v) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word is defined, another part of speech has a corresponding meaning.

(e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.

A reference to a month is to a calendar month.

A reference to an Item is to the relevant Item in the Reference Schedule in this agreement.

17.12 Business Days

If the day on or by which a person must do something under this agreement is not a Business Day:

(a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

(b) in any other case, the person must do it on or by the previous Business Day.

17.13 Multiple parties

If a party to this agreement is made up of more than one person, or a term is used in this agreement to refer to more than one party:

(a) an obligation of those persons is joint and several;

(b) a right of those persons is held by each of them severally; and

(c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example):

(i) a representation, warranty or undertaking is given by each of them separately; and

(ii) a reference to that party or that term is a reference to each of those persons separately.

18. Disputes

Any disputes in relation to the subject matter of this agreement must be determined under the TLS Deed on the basis the dispute constitutes a dispute under the TLS Deed.
Sydney Growth Trains
(ISD-16-5312B)

Executed as an agreement

Signed for and on behalf of Transport for New South Wales by its delegated authority in the presence of:

Signature of witness
Signature of delegated authority

Full name of witness
Full name of delegated authority

Signed, sealed and delivered for and on behalf of Downer EDI Rail Pty Ltd (ABN 92 000 002 031) by its attorneys under a power of attorney dated in the presence of:

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

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

Schedule 20
TLS Deed

TfNSW
Annexure A - Licensed Area

[Note: plan of Licensed Area to be inserted]
Guarantee and indemnity - Sydney Growth Trains Project

Downer EDI Limited
Guarantor

Transport for NSW
TfNSW

Clayton Utz
Lawyers
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

Our reference /17948/80172419
Guarantee and indemnity

Date

Parties

Downer EDI Limited ABN 97 003 872 848 of T3, Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113 (Guarantor)

Transport for NSW ABN 18 804 239 602 of 18 Lee Street, Chippendale NSW 2008 (TfNSW)

Background

- TfNSW, RailCorp and the Supplier are parties to a through life support deed dated [insert date] (TLS Deed) under which the Supplier has agreed to undertake planned and unplanned maintenance of new passenger rolling stock and other related assets procured by TfNSW.

- This Deed sets out the terms on which the Guarantor gives a guarantee and indemnity in respect of the Guaranteed Money and the Supplier’s obligations to the Beneficiaries under the Project Agreements and TfNSW accepts the benefit of each guarantee, indemnity and other obligation of the Guarantor in this Deed in its own right and on behalf of each of the Beneficiaries as trustee and agent for each of the Beneficiaries.

Operative provisions

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Authorised Representative means a director or company secretary, or a person one party notifies to the other party as being authorised to act as its authorised representative for the purposes of the Project Agreements.

Beneficiary means TfNSW, RailCorp, the State and each of their Associates and Beneficiaries means all of them.

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) in a Project Agreement.

External Administrator means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Guarantee means a guarantee, indemnity, letter of credit, legally binding letter of comfort or other obligation of any kind:

(a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;

(b) to indemnify any person against the consequences of default in the payment of; or
(c) to be responsible for,

an obligation or monetary liability of another person or the assumption of any responsibility or obligation in respect of the solvency or financial condition of another person.

**Guarantee and Indemnity** means the guarantee and indemnity contained in this Deed.

**Guaranteed Money** means all money and amounts (in any currency) that the Supplier is, or may become liable at any time (presently, prospectively or contingently), to pay to or for the account of any Beneficiary (whether alone or not and in any capacity) under or in connection with a Project Agreement (including by way of interest, fees, costs, charges, expenses, duties, indemnities, Obligations, debts or damages and money which a person would be liable to pay but for an Insolvency Event in respect of that person).

**Insolvency Provision** means any Legal Requirement or principle of law or equity relating to insolvency, sequestration, liquidation or bankruptcy (including any Legal Requirement relating to the avoidance of conveyances in fraud of creditors or of preferences, and any Legal Requirement 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.

**Liquidation** means:

(a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or

(b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

**Obligations** means all the liabilities and obligations of the Supplier to the Beneficiaries under or arising out of or in any way in connection with a Project Agreement or the work to be carried out or performed by the Supplier under a Project Agreement, and includes any liabilities or obligations which:

(a) are liquidated or unliquidated;

(b) are present, prospective or contingent;

(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 Supplier is liable or obligated solely, or jointly, or jointly and severally with another person;

(h) the circumstances in which the Beneficiaries come 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 of this Deed; or

(i) the capacity in which the Supplier and the Beneficiaries come to owe or be owed such liability or obligation,

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

Power means any right, power, authority, discretion, remedy or privilege conferred on TfNSW or RailCorp under any Project Agreement by statute, by law or by equity.

Project Agreement means:

(a) this Deed;
(b) each document described as such in Part 2 of Schedule 1 of this Deed;
(c) any other document that the Guarantor and TfNSW agree is a 'Project Agreement'; and
(d) a document entered into or given under or in connection with, or for the purpose of amending or novating, any document referred to in paragraphs (a), (b) or (c) above.

RailCorp means the body corporate known as Rail Corporation New South Wales (ABN 59 325 778 353).

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 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 TfNSW 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.

Supplier is the entity identified as such in Part 1 of Schedule 1 of this Deed.

TLS Deed has the meaning given in the Paragraph A of the Background.

1.2 Defined terms

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

1.3 Interpretation

In this Deed:

(a) headings and subheadings are for convenience only and do not affect interpretation,
Transport for NSW

Sydney Growth Trains
(ISD-16-5312B)

(a) a reference to a person includes an individual, the estate of an individual, a corporation, an authority or agency, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust and other entity;

(b) a reference to a party is to a party to this Deed or a reference to a party to another document includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(c) a reference to a document or instrument (including this Deed) is to that document or instrument as varied, novated, ratified or replaced from time to time;

(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 a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(g) a reference to a party, clause, paragraph or schedule is to a party to, clause or paragraph of or schedule to, this Deed, and a reference to this Deed includes any schedules;

(h) if a party is obliged to do something it must do so at its own cost unless expressly provided otherwise in this Deed;

(i) any agreement, undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

(j) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

(k) 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;

(l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(m) a reference to A$, $A, dollar or $ is to Australian currency;
(o) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;

(p) a reference to time is to Sydney, Australia time;

(q) a month means a calendar month;

(r) an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;

(s) a reference to property or an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset.

(t) no waiver of any breach of this Deed or of any of its terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed, and no waiver of any breach will operate as a waiver of any other breach or subsequent breach;

(u) unless stated otherwise, all interest, amounts in the nature of interest (including discount amounts) and fees are to be calculated on a daily basis and a year of 365 days; and

(v) an Event of Default subsists until either:

(i) remedied to TfNSW's satisfaction before a Power relating to that Event of Default is exercised; or

(ii) waived by TfNSW in writing; and

(iii) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting.

1.4 Business Day

If the day on or by which any sum is payable or anything is to be done under this Deed is not a Business Day, that sum will be paid or that thing must be done no later than the next Business Day.

1.5 Transfer of functions

The Guarantor:

(a) acknowledges that TfNSW or RailCorp may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of either of them may be transferred to or vested in another entity;

(b) agrees to do anything (including execute any document), and must procure that its Associates do anything (including execute any document), required to give full effect to any of the matters contemplated in clause 1.5(a); and

(c) shall have no Claim or entitlement to payment of any costs arising from any of the above.

1.6 Nothing to affect rights

Nothing in this Deed or any other Project Agreement in any way limits, derogates from or affects any right, power, privilege or immunity in whatever form that TfNSW, RailCorp or any Authority or any other person has or may have under or by virtue of any law and no action for
breach of this Deed or any Project Agreement will lie against TfNSW or any Beneficiary for the exercise of any such right, power, privilege or immunity.

2. Guarantee

2.1 Consideration

The Guarantor acknowledges:

(a) that TfNSW and RailCorp entered into the Project Agreements on the condition that the Guarantor guarantee the Supplier's performance of the provisions of the Project Agreements;

(b) that TfNSW holds on trust for the Beneficiaries the benefit of:

(i) each guarantee, indemnity and release given by the Guarantor under this Deed in favour of the Beneficiaries; and

(ii) each right in each Project Agreement to the extent that such right is expressly stated to be for the benefit of a Beneficiary;

(c) that the Beneficiaries rely on the Guarantee and Indemnity; and

(d) the existence of the trusts mentioned in 2.1(b),

and the Guarantor consents to:

(e) TfNSW exercising rights in relation to, or otherwise enforcing such guarantees, indemnities, releases and rights on behalf of the Beneficiaries as trustee and agent for each of the Beneficiaries; and

(f) the Beneficiaries exercising rights in relation, or otherwise enforcing the indemnities, releases and those rights as if they were a party to this Deed.

2.2 Guarantee

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

2.3 Payment by Guarantor

If the Supplier does not pay the Guaranteed Money when due, the Guarantor must on demand pay to TfNSW (or to a nominee of TfNSW) the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.4 Perform Obligations

If the Supplier defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.3 of this Guarantee, on demand from time to time by TfNSW, immediately perform any of the Obligations then required to be performed by the Supplier in the same manner as the Supplier is required to perform the Obligations.

2.5 TfNSW holds benefit

TfNSW accepts the benefit of the undertakings provided in this clause 2 in its own right and on behalf of each of the Beneficiaries as trustee and agent for each of the Beneficiaries.
3. Indemnity

(a) As a covenant separate and distinct from that contained in clause 2.2, the Guarantor irrevocably and unconditionally agrees to indemnify the Beneficiaries and at all times to keep the Beneficiaries indemnified against any loss or damage suffered by any Beneficiary arising out of or in connection with:

(i) any failure by the Supplier to perform the Obligations duly and punctually;
(ii) an Insolvency Event in respect of the Supplier; or
(iii) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Supplier for any reason, and whether or not any Beneficiary knew or ought to have known of that reason.

(b) TfNSW accepts the benefit of the undertakings provided in this clause 3 in its own right and on behalf of each of the Beneficiaries as trustee and agent for each of the Beneficiaries.

4. Deferral of certain rights

Until TfNSW has given a final discharge to the Guarantor, the Guarantor may not (either directly or indirectly) without TfNSW's prior written consent:

(a) claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defence:

(i) against the Supplier; or
(ii) which either Obligor may have against any Beneficiary,

which might reduce or discharge the Guarantor's liability under the Guarantee and Indemnity;

(b) claim or exercise a right of subrogation or contribution or otherwise claim the benefit of a Guarantee, irrespective of whether or not that Guarantee:

(i) relates to the Guaranteed Money;
(ii) is given by the Guarantor; or
(iii) is in favour or for the benefit of any Beneficiary,

and any money the Guarantor receives in breach of this clause 4(b) will be held on trust for the Beneficiaries and must be paid promptly to TfNSW to hold in its own right and on behalf of each of the Beneficiaries as trustee and agent for each of the Beneficiaries; or

(c) unless TfNSW has given a direction to do so (in which case the Guarantor must do so in accordance with the direction as trustee for TfNSW):

(i) prove, claim or exercise voting rights in the Supplier's Liquidation, or otherwise claim or receive the benefit of any distribution, dividend or payment arising out of the Supplier's Liquidation on any account; or
(ii) demand, or accept payment of, any money owed to the Guarantor by the Supplier,
and any such money it receives in excess of what may be or become Guaranteed Money will be held on trust for the Beneficiaries and must be paid promptly to TfNSW to hold in its own right and on behalf of each of the Beneficiaries as trustee and agent for each of the Beneficiaries.

5. Prove in Liquidation

The Guarantor irrevocably authorises TfNSW (in its own right and on behalf of each of the Beneficiaries as trustee and agent for each of the Beneficiaries) and each of TfNSW's Authorised Representatives to prove in the Liquidation of the Supplier for all money that the Guarantor can claim against the Supplier on any account. TfNSW need only account to the Guarantor for dividends it receives in excess of the Guaranteed Money, without interest.

6. Nature and preservation of liability

6.1 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.

6.2 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 Supplier or the Guarantor.

(b) This Deed binds each person who has executed it, notwithstanding:

(i) any person, whether named as a party or not, and whether or not that person was intended to become a "Guarantor", not executing this Deed or not becoming a "Guarantor" or not otherwise being bound by this Deed;

(ii) the execution of this Deed by any person being defective, invalid, forged or irregular in any way; or

(iii) this Deed being or becoming not binding, unenforceable, void or voidable against any other person.

6.3 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 6.3, 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 Supplier or the Guarantor;

(b) the receipt by a Beneficiary of any payment, dividend or distribution under any Insolvency Provision in relation to the Supplier or the Guarantor;

(c) the occurrence of any Event of Default;

(d) a Project Agreement 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) TfNSW accepting or declining to accept any Security from any person at any time;

(f) any person granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Supplier or the Guarantor;

(g) any person not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of a Project Agreement or any Obligation;

(h) any laches, acquiescence or other act, neglect, default, omission or mistake by TfNSW or RailCorp;

(i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by TfNSW, RailCorp, the Supplier or the Guarantor of a Project Agreement or any Obligation;

(j) any variation or alteration to, or any substitution of, a Project Agreement or any Obligation, whether or not that variation, alteration or substitution is substantial or material, or imposes any additional liability on or disadvantages the Supplier or the Guarantor;

(k) the full, partial or conditional release or discharge by TfNSW or RailCorp or by operation of law, of the Supplier or the Guarantor from a Project Agreement 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 Supplier or the Guarantor is a member;

(m) the Guaranteed Money not being recoverable or the liability of an Obligor or any other person to any Beneficiary ceasing or reducing (including due to a release or discharge by any Beneficiary under the terms of any composition or arrangement with the creditors of the Beneficiary or by law);

(n) any Project Agreement not being executed by, or binding against, the Supplier;

(o) the transfer, assignment or novation by TfNSW, RailCorp, the Supplier or the Guarantor of all or any of its rights or obligations under a Project Agreement or under any other Obligation;

(p) any failure by TfNSW, RailCorp or another Beneficiary to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, TfNSW, RailCorp or another Beneficiary relating to or affecting the Supplier 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 TfNSW, RailCorp or another Beneficiary was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Supplier;

(q) TfNSW, RailCorp or another Beneficiary agreeing with the Supplier 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 Supplier or the Guarantor;

(r) the provisions of section 440J of the Corporations Act operating to prevent or delay:
6.4 No merger

(a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect a Project Agreement or any other Power of TfNSW or RailCorp.

(b) TfNSW will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collateral to this Deed, and this Deed will not merge in that judgment or order.

6.5 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 6.3, any transaction between TfNSW, RailCorp and the Supplier, or any particulars concerning any Obligation.

6.6 Appropriation

(a) TfNSW 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 TfNSW holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as TfNSW determines in its absolute discretion.

(b) TfNSW 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 TfNSW may, at its discretion, appropriate in reduction of the Guarantor’s liability under this Deed.

6.7 Void or voidable transactions

If:

(a) TfNSW or any other Beneficiary 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 TfNSW; or

(b) any payment or other transaction to or in favour of TfNSW or any other Beneficiary 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;
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 TfNSW or any other
Beneficiary,

then:

(e) the relevant Beneficiary 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
relevant Beneficiary may reasonably require to restore to the relevant Beneficiary
all those rights; and

(g) the Guarantor must indemnify the relevant Beneficiary against costs, losses and
expenses suffered or incurred by the relevant Beneficiary 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.

6.8 No set-off, counterclaim

The liability of the Guarantor under this Deed will not be reduced or avoided by any set-off or
counterclaim available to the Supplier against any Beneficiary.

6.9 Claim on the Guarantor

TfNSW is not required to make any claim or demand on the Supplier, or to enforce a Project
Agreement, or any other right, power or remedy against the Supplier, before making any
demand or claim on the Guarantor.

6.10 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 TfNSW
(or any other Beneficiary), the Supplier or any other person.

7. Representations and Warranties

7.1 General representations and warranties

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and
warrants to the Beneficiaries 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 any Beneficiary 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.

7.2 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 Beneficiaries 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.

7.3 Representations and warranties repeated

Each representation and warranty in this Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

8. Payments

8.1 On demand

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

8.2 Payment in gross

All money received or recovered by TfNSW 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 TfNSW or any Security, until TfNSW has been paid 100 cents in the dollar in respect of the Guaranteed Money.

8.3 Interest

As a liability separate and distinct from the Guarantor’s liability under clauses 2 and 3, the Guarantor must on demand by TfNSW 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 8.3, provided that interest will not be payable under this clause.
to the extent that interest for late payment to TfNSW is incorporated into the calculation of the amount payable under a Project Agreement.

8.4 Merger

If the liability of the Guarantor to pay to TfNSW 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 8.3 and that fixed by or payable under the judgment or order.

8.5 No set-off or deduction

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

(a) 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 TfNSW), then the Guarantor must:

(c) pay to TfNSW any additional amounts necessary to enable the relevant Beneficiary to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to that Beneficiary 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 TfNSW for any Taxes and interest or penalties to which any Beneficiary may become liable consequent on the failure of the Guarantor to pay those Taxes; and

(e) deliver to TfNSW, promptly on request from TfNSW, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

8.6 Certificate of TfNSW

A certificate in writing of TfNSW certifying the amount payable by the Supplier or the Guarantor to TfNSW or stating any other act, matter or thing relating to this Deed or the Delivery Deed will be prima facie evidence of the contents of the certificate.

8.7 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 TfNSW 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 TfNSW on its conversion of the amount of the Payment Currency received into the Agreed Currency at market rates prevailing at or about the time of its receipt of the amount of the Payment 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 TfNSW and the ultimate receiving Beneficiary (where
9. Expenses and stamp duties

9.1 Expenses

The Guarantor must on demand reimburse the Beneficiaries for and keep the Beneficiaries 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 any Beneficiary 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.

9.2 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 Beneficiaries against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

9.3 Goods and Services Tax

If a Beneficiary 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 TfNSW 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 Beneficiaries indemnified for the full amount of the GST Liability.

10. Assignment

10.1 By Guarantor

The Guarantor may not assign, transfer or otherwise deal with its rights, interests or obligations under this Deed without TfNSW's prior written consent.

10.2 By TfNSW

TfNSW may assign, transfer, novate or otherwise deal with all or any of its rights and obligations under the Project Agreements, and may disclose to a proposed assignee or transferee any information in TfNSW's possession relating to the Guarantor, in each case without the consent of any person.
11. **TfNSW's role as trustee and agent**

(a) TfNSW's role as trustee and agent for the Beneficiaries is limited solely to those express rights and obligations provided in this Deed.

(b) Except as expressly required in this Deed, any dealings which TfNSW has with any other party, including the Obligors, is in its own right and not as agent of the Beneficiaries. No Obligor can rely on any act or omission of any Beneficiary as binding any other Beneficiary, except as expressly provided in this Deed.

(c) Except to the extent expressly required by law, and taking account of the limited nature of TfNSW's agency contemplated in this Deed, nothing in this Deed constitutes TfNSW acting as a trustee or fiduciary of any other person.

12. **Governing law, jurisdiction and arbitration**

12.1 **Governing law**

This Deed and where applicable, the arbitration reference contained in clause 12.3, is governed by and must be construed according to the laws of New South Wales.

12.2 **Jurisdiction**

(a) This clause 12.2 only applies where clauses 12.3 to 12.9 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 is a venue described in clause 12.2(b).

12.3 **Reference to arbitration**

(a) Clauses 12.3 to 12.9 will only apply where the Guarantor is a foreign company (as defined in section 9 of the Corporations Act).

(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.

12.4 **Powers of the arbitrator**

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

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

12.6 **Joinder**

The arbitral tribunal has the power, on the application of any party to this Deed, 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.

12.7 **Arbitration – Related arbitral proceedings**

Where any claim or dispute is to be resolved by arbitration in accordance with clause 12.3(b) and that claim or dispute involves issues that are substantially the same as, or connected with issues raised in a related dispute or difference between TfNSW or RailCorp and any other party or parties involved in the Project, and arbitral proceedings have already commenced in respect of the related dispute or disputes, TfNSW may, in its absolute discretion:

(a) join the dispute to those existing arbitral proceedings by giving notice to all parties concerned and the arbitral tribunal, and the arbitral tribunal in such proceedings will have the power to make such directions as are necessary to join the parties and the cause of action to enable the arbitral tribunal to make an award in respect of the dispute; or

(b) join the related dispute or disputes to the existing arbitral proceedings concerning the dispute by giving notice to all parties concerned and the arbitral tribunal, and such parties will be considered parties to the existing arbitral proceedings and the ACICA Arbitration Rules or ACICA Expedited Arbitration Rules, and such rules will, to the extent possible, be modified to accommodate this, and the arbitral tribunal in such proceedings will have the power to make such directions as are necessary to join the parties and the cause or causes of action to enable the arbitral tribunal to make an award in respect of the dispute and the related dispute or disputes.

12.8 **Exclusion from determination or award**

(a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with clause 12.3.

(b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a dispute 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 the arbitral tribunal.

12.9 **Award final and binding**

Any award will be final and binding upon the parties.
13. **Notices, demands and communications**

13.1 **How to give a notice**

(a) Wherever referred to in this clause, Notice means each communication (including each notice, consent, approval, request, direction and demand) under or in connection with this Deed.

(b) Each Notice must:

(i) be in writing;

(ii) be:

A. in the case of a Notice from the Guarantor, addressed to TfNSW's Representative; or

B. in the case of a Notice from TfNSW, addressed to the Guarantor;

(iii) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(iv) be delivered or posted to the relevant address shown below (or to any new address notified by the intended recipient):

**TfNSW**

Name: TfNSW, a New South Wales Government agency  
Address: Level 2, 1 Prince Albert Road, Sydney NSW 2000  
For the attention of: Project Director, Sydney Growth Trains

**Guarantor**

Name: Downer EDI Limited  
Address: T3, Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113  
For the attention of: The Company Secretary

(c) A notice, consent or other communication under this Deed is only effective if it is:

(i) in writing, signed by or on behalf of the person giving it;

(ii) addressed to the person to whom it is to be given; and

(iii) sent or delivered in one of the following ways:

A. delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or

B. sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.
13.2 When a notice is received

A communication is taken to be received by the addressee:

(a) (in the case of prepaid post sent to an address in the same country) two Business Days after the date of posting;
(b) (in the case of international post) seven Business Days after the date of posting; and
(c) (in the case of delivery by hand) on delivery,

provided that if the communication would be deemed to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

14. Miscellaneous

14.1 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 TfNSW and the Beneficiaries 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.

14.2 Further assurance

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

14.3 Form of demand

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

14.4 Entire agreement

This Deed constitutes the entire agreement and understanding between the parties in relation to the subject matter of this Deed 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.

14.5 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 TfNSW 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.

14.6 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.

14.7 Remedies cumulative

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

14.8 Principal and independent obligation

Each guarantee, indemnity and other obligation of the Guarantor in this Deed is:

(a) a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation and, without limiting in any way the operation of any of the other provisions of this Deed, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negatived; and

(b) is in addition to, and not prejudiced by, any other Guarantee now or later held by any Beneficiary.

14.9 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 TfNSW 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 TfNSW under this Deed will only be effective and binding on TfNSW if it is given or confirmed in writing by TfNSW.

(c) No waiver by TfNSW 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.

14.10 Consents

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

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

14.12 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.

14.13 Variations

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

14.14 Provisions limiting or excluding liability

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

14.15 Set-off

(a) TfNSW may (without prior notice at any time) set off any obligation then due and payable by the Guarantor under this Deed against any obligation (whether or not due and payable) by TfNSW to the Guarantor, regardless of the place or currency of payment of either obligation or the office or branch through which either obligation is booked. If the obligations are in different currencies, TfNSW may convert either obligation into the currency of the other obligation at a market rate of exchange determined by it for the purpose of the set-off. If either obligation is unliquidated or unascertained, TfNSW may effect the set-off in an amount estimated by it in good faith to be the amount of that obligation.

(b) TfNSW is not obliged to exercise any right of set off pursuant to paragraph (a), which is in addition to its other rights of combination of account, set-off or lien (by contract or operation of law).

(c) On its exercise of any set off pursuant to paragraph (a), against the Guarantor, TfNSW will promptly notify the Guarantor of details of that set-off.

14.16 Counterparts

(a) This Deed need not be executed by TfNSW.

(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.

14.17 Confidentiality

(a) Subject to clause 14.17(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 an 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, as long as it advises that related body corporate of the confidential nature of the terms of this Deed;

(vii) (in the case of TfNSW) to a potential assignee provided they agree to keep the terms of this Deed confidential;

(viii) (in the case of TfNSW) 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.
Schedule 1

Part 1 - Supplier
Name: Downer EDI Rail Pty Limited
ABN: 92 000 002 031
Address: T3, Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113

Part 2 – Project Agreements
1. The TLS Deed;
2. Each of the following documents as defined in the TLS Deed:
   (a) the Maintenance Facility Licence;
   (b) the Escrow Agreement; and
   (c) each Significant Contractor Escrow Agreement.
Executed as a deed.

Signed, sealed and delivered for and on behalf of Downer EDI Limited (ABN 97 003 872 848) by its attorneys under a power of attorney dated in the presence of:

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

Full name of attorney

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 attorney

Full name of witness

Full name of witness (print)

Signature of authorised delegate

Full name of authorised delegate (print)

Position held

Position held
Collateral Warranty Deed Poll

Sydney Growth Trains Project

[insert] (Subcontractor)
Details

Date

This Deed Poll is made by:

Name [Insert]
Short form name Subcontractor
Notice details [Insert]

In favour of:

Name Transport for NSW (ABN 18 804 239 602)
Short form name TfNSW
Notice details [Insert]

Background

A. TfNSW, RailCorp and the Supplier are parties to a through life support deed dated [Insert date] (TLS Deed) under which the Supplier has agreed to undertake planned and unplanned maintenance of new passenger rolling stock and other related assets procured by TfNSW.

B. The Supplier and the Subcontractor have entered into or will enter into the Subcontract.

C. The Subcontractor has agreed that it will, in addition to its obligations to the Supplier under the Subcontract, owe obligations directly to TfNSW and RailCorp as set out in this Deed Poll.

Terms

1. Defined terms & interpretation

1.1 Defined terms

In this Deed Poll:

Beneficiary means TfNSW, RailCorp, the State, the Operator, each other NSW Rail Entity and each of their Associates and Beneficiaries means all of them.

New Subcontract means the new Subcontract that comes into existence between the Subcontractor and the Suitable Substitute Supplier pursuant to clause 3.1(c).

Notice of Novation has the meaning given in clause 3.1(a).

Novation Deed means a deed in the form of Schedule 1.
Novation Date has the meaning given in clause 3.1(c).

Power means any right, power, authority, discretion, remedy or privilege, whether express or implied conferred on any person.

TLS Deed has the meaning given in Paragraph A of the Background and includes all schedules, exhibits, attachments, appendices and annexures to that document, including the SPR.

RailCorp means the body corporate known as Rail Corporation New South Wales which was constituted under the Transport Administration Act 1988 (NSW) and all present and future iterations of that body corporate which continue to exist under that Act or any other legislation or another entity appointed to undertake some or all of the functions of that body.

Subcontract means the subcontract entered into between the Supplier and the Subcontractor dated on or about the date of this Deed Poll.

Subcontract Deliverable means any works, asset, product, materials, documentation or any other item or service to be provided by or on behalf of the Subcontractor pursuant to the Subcontract.

Suitable Substitute Supplier means a person nominated by TfNSW or RailCorp who:

(a) has the legal capacity, power and authority to become a party to and perform the obligations of the Supplier under the Subcontract; and

(b) employs persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Supplier under the Subcontract.

Supplier means Downer EDI Rail Pty Limited ABN 92 000 002 031.

1.2 Interpretation

In this Deed Poll:

(a) headings and subheadings are for convenience only and do not affect interpretation,

and the following rules apply in interpreting this Deed Poll unless the context makes it clear that a rule is not intended to apply:

(b) person includes an individual, the estate of an individual, a corporation, an authority or agency, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust and other entity;

(c) a reference to a party to a document includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(d) a reference to a document or instrument (including this Deed Poll) is to that document or instrument as varied, novated, ratified or replaced from time to time;

(e) 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 object as that authority, institute, association or body;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a clause or schedule is a reference to a clause or schedule of this Deed Poll;

(i) if a party is obliged to do something it must do so at its own cost unless expressly provided otherwise in this Deed Poll;

(j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

(k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

(l) 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;

(m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(n) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;

(o) a reference to time is to Sydney, Australia time; and

(p) a month means a calendar month.

1.3 TLS Deed

The Subcontractor acknowledges that it has been provided with and has reviewed a redacted copy of the TLS Deed.

1.4 Terms defined in TLS Deed

Subject to clause 1.1 of this Deed Poll which, for the purpose of interpreting this Deed Poll, takes precedence to the extent of any inconsistency (notwithstanding any contrary provision of any Project Agreement), terms defined in the TLS Deed have the same meanings when used in this Deed Poll.
1.5 Rights and benefits of TfNSW

The rights and benefits of TfNSW provided for under this Deed Poll are intended to be for, and are held by TfNSW for, the benefit of TfNSW in its own right to support the discharge of its duties in relation to and liabilities arising from the performance of the Operations Functions, and also for the benefit of:

(a) RailCorp as the owner of the Assets; and
(b) the Operator and the other NSW Rail Entities to support the discharge of their respective duties in relation to and liabilities arising from performance of the Operations Functions.

1.6 Benefits held on trust

The Subcontractor acknowledges:

(a) that TfNSW holds on trust for the Beneficiaries the benefit of:
   (i) each indemnity and release given by the Subcontractor under this Deed Poll in favour of the Beneficiaries; and
   (ii) each right of TfNSW under this Deed Poll;
(b) the existence of the trusts mentioned in clause 1.6(a); and
(c) that the Beneficiaries rely on those rights granted on their behalf which are mentioned in clause 1.6(a),

and consents to:

(d) TfNSW exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of the Beneficiaries; and
(e) the Beneficiaries in their own right exercising rights in relation, or otherwise enforcing the indemnities, releases and those rights.

1.7 Transfer of functions

The Subcontractor:

(a) acknowledges that TfNSW or RailCorp may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of any of them may be transferred to or vested in another entity;
(b) agrees to do anything (including execute any document), and must procure that its Associates do anything (including execute any document), required to give full effect to any of the matters contemplated in clause 1.7(a); and
(c) shall have no Claim or entitlement to payment of any costs arising from any of the above.

1.8 Nothing to affect rights

The Subcontractor acknowledges and agrees that nothing in this Deed Poll or any other Project Agreement in any way limits, derogates from or affects any right, power, privilege or immunity in whatever form that TfNSW, RailCorp or any Authority or any other person has or may have under or by virtue of any law and no action will lie against TfNSW or RailCorp for the exercise of any such right, power, privilege or immunity.
1.9 Approvals and consents

The Subcontractor acknowledges and agrees that all approvals, consents, decisions or exercises of discretion required (whether expressly or impliedly) or able to be given or made by TfNSW may be given, not given, made, not made, exercised, not exercised, withheld or conditioned by TfNSW in its absolute discretion and the Subcontractor acknowledges that TfNSW and TfNSW's Representative, in granting any approval or consent or making any decisions or exercising any discretion under or in connection with this Deed Poll in relation to such matters will not assume any duty of care, responsibility or liability to the Subcontractor or any other person and will not be taken to have agreed that any matter that is the subject of any approval, consent, decision or exercise of a discretion is in compliance with the Project Agreements.

1.10 Precedence

The Subcontractor acknowledges and agrees that the provisions of clause 1.10 of the TLS Deed will apply to resolve any ambiguity, discrepancy or inconsistency between this Deed Poll and any other Project Agreement.

1.11 No Claim

The Subcontractor acknowledges and agrees any direction given by TfNSW's Representative in accordance with clause 1.10(b) of the TLS Deed in respect of this Deed Poll will not:

(a) entitle the Subcontractor to make any Claim arising out of or in connection with the direction;
(b) relieve the Subcontractor from or alter its liabilities or obligations whether under any Project Agreement or otherwise according to law; or
(c) prejudice or limit TfNSW's rights against the Subcontractor whether under a Project Agreement or otherwise according to law.

1.12 No bias against drafter

No provision of this Deed Poll is to be interpreted to the disadvantage of a person because that person (or its representative) drafted that provision.

1.13 Business Day

If the day on or by which anything is to be done under this Deed Poll is not a Business Day, that thing must be done no later than the next Business Day.

1.14 Excluding liability

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

2. Subcontractor Representations and Warranties

The Subcontractor represents and warrants to TfNSW that:

(a) it is validly incorporated and has the power to carry on its business as it is now being conducted;
(b) it has the power to enter into and perform its obligations under this Deed Poll and the Subcontract;
it has taken all action which is necessary to authorise the entry into and performance of its obligations under this Deed Poll and the Subcontract;

its obligations under this Deed Poll and the Subcontract are legal, valid and binding obligations, enforceable in accordance with their terms;

it will fully comply with all of its obligations under the Subcontract and this Deed Poll in accordance with their terms;

each warranty and each representation made to the Supplier under the Subcontract is repeated and made directly in favour of TfNSW under this Deed Poll;

it is reputable and has, or has access to, sufficient experience, expertise and ability to perform its obligations to the standards required by the Subcontract;

it has exercised and will continue to exercise, in accordance with good industry practice, the level of skill, care and diligence in performing its duties under the Subcontract which may reasonably be expected of a contractor experienced in the performance of the same or similar works or services as those it is required to provide under the Subcontract, provided that, other than as expressly set out in this Deed Poll, the Subcontractor will have no greater obligations to TfNSW by virtue of this Deed Poll than it would have had if TfNSW had been named as the Supplier under the Subcontract;

the Subcontractor will carry out and complete its obligations under the Subcontract:

(i) in accordance with the Subcontract and this Deed Poll;

(ii) in accordance with all Approvals and Mandatory Requirements;

(iii) in a good and workmanlike manner;

(iv) using (including installing) materials that will be to the quality and standard specified in the Subcontract, but if no standard is specified, new and of merchantable quality and which are and will remain at all relevant times safe and fit for their intended purposes; and

(v) so that the works carried out or performed by the Subcontractor, when completed, will be and will remain at all relevant times fit for their intended purposes;

it has exercised and will continue to exercise reasonable skill, care and diligence in connection with the selection and supervision of its employees, agents, subcontractors and suppliers;

if at any time requested to do so by TfNSW, it will:

(i) extend to TfNSW any guarantee of performance by the Subcontractor or any warranty given to the Supplier by the Subcontractor;

(ii) provide TfNSW or any person authorised by TfNSW, with such information related to the Subcontractor’s obligations under the Subcontract and its performance of those obligations as TfNSW may reasonably require; and

(iii) allow TfNSW or any person authorised by TfNSW, on reasonable notice, to inspect the works or services the Subcontractor is performing or providing under the Subcontract as TfNSW may reasonably require;
(l) it will promptly inform TfNSW of any default by the Supplier under the Subcontract;
(m) it will not do anything that may invalidate any insurance policy held by TfNSW and/or the Supplier in relation to the Project;
(n) the copy documents annexed to this Deed Poll confirm the details of the relevant all risks, indemnity and liability insurances required to be taken out by the Subcontractor under the Subcontract and:
   (i) such insurances are valid and the premiums for the current periods of insurance have been duly paid;
   (ii) the Subcontractor is not aware (after having made due and careful enquiry) as at the date of this Deed Poll of any circumstances likely to give rise to any claim under such insurances; and
   (iii) the Subcontractor will maintain and keep current such insurances (or equivalent replacement insurances) for so long as any liability may arise under this Deed Poll and will promptly notify TfNSW's Representative in relation to any renewals, amendments, replacement or revocations of such insurance policies;
(o) the Subcontract Deliverables supplied by it to the Supplier under the Subcontract conform or will conform with the requirements of the Subcontract; and
(p) title in and ownership of the Subcontract Deliverables identified in a progress claim under the Subcontract pass to or will pass to the Supplier no later than upon the payment for the Subcontract Deliverables.

3. Novation

3.1 Novation

(a) If at any time:
   (i) the TLS Deed or Subcontract is terminated;
   (ii) there is an event of default (howsoever described) that entitles the Subcontractor to terminate the Subcontract, or would entitle the Subcontractor to do so subject to giving a requisite notice or with the passage of time; or
   (iii) TfNSW exercises their right to require the Supplier to novate the Subcontract,

TfNSW may exercise its rights under this clause 3 by giving a notice of novation (Notice of Novation) to the Subcontractor requiring that the Subcontract be novated to a Suitable Substitute Supplier.

(b) The Subcontractor agrees that, despite any provision of the Subcontract, any Suitable Substitute Supplier may exercise all or any of TfNSW’s Powers under or in connection with this Deed Poll, as if it were, and to the exclusion of, TfNSW.

(c) With effect on and from the day that the Notice of Novation is given to the Subcontractor (the Novation Date), the Subcontractor agrees that (subject to clause 4) the Subcontract is discharged and the New Subcontract is created on the same terms and conditions as the Subcontract except that:
   (i) the Suitable Substitute Supplier is substituted for the Supplier as a party to the New Subcontract; and
(ii) each reference in the Subcontract to the Supplier will be read as a reference to the Suitable Substitute Supplier in the New Subcontract.

3.2 Rights and benefits

With effect on and from the Novation Date, the Suitable Substitute Supplier:

(a) is bound by the New Subcontract as the Subcontract relates to the Supplier provided that, despite clause 3.1(c), the Suitable Substitute Supplier is bound to perform only those obligations under the New Subcontract that are outstanding as at the Novation Date or which occur on or after the Novation Date; and

(b) enjoys under the New Subcontract all the rights and benefits conferred on the Supplier under the Subcontract.

TfNSW must use all reasonable endeavours to procure the Supplier, within 10 Business Days from the Novation Date, to assign to the Suitable Substitute Supplier any Security Interest which it holds from the Subcontractor in respect of the Subcontract and which is capable of assignment and any such Security Interest effectively assigned will reduce the Subcontractor's obligation to provide security under the New Subcontract.

3.3 Limitation of Liability

The Subcontractor acknowledges and agrees that the liability of the Subcontractor under this Deed Poll is not affected by TfNSW or RailCorp exercising or refraining from exercising any or all of TfNSW's or RailCorp's rights against the Supplier under the TLS Deed, under any other Project Agreement or pursuant to any Mandatory Requirement.

Any information provided to, and any inspection undertaken by, TfNSW pursuant to this Deed Poll will not limit or discharge the obligations of the Subcontractor under the Subcontract nor will it relieve the Subcontractor from any liability which it may have in respect of any defect or default arising under the Subcontract.

3.4 New Security Interest

The Subcontractor will promptly do all further acts and execute and deliver all further documents as the Suitable Substitute Supplier reasonably requires to perfect any Security Interest provided by the Subcontractor to the Supplier to be transferred to a Suitable Substitute Supplier in respect of the New Subcontract.

3.5 Release from future performance

On and from the Novation Date, the Subcontractor releases the Supplier from any obligation under the Subcontract to be performed on or after the Novation Date.

3.6 Subcontractor acknowledgement

The Subcontractor acknowledges and agrees that nothing in this Deed Poll or any of the transactions contemplated by this Deed Poll constitutes:

(a) a breach of any term of the Subcontract;

(b) an event of default under the Subcontract; or

(c) any other event or circumstance which, with the giving of notice, lapse of time, or fulfilment of any condition, would cause the acceleration of any payment to be made under, or the termination or enforcement of, the Subcontract.
3.7 Novation Deed

If TfNSW gives the Subcontractor a Notice of Novation, the Subcontractor agrees that it will enter into a Novation Deed with a Suitable Substitute Supplier and will use its best endeavours to procure that the Supplier enters into a Novation Deed.

4. Accrued Rights

The novation and release under clause 3 do not prejudice any accrued rights, obligations, claims or liabilities arising under the Subcontract in connection with the performance of the Subcontract before the Novation Date which the Supplier and the Subcontractor may have against each other.

5. Indemnity

5.1 Indemnity from the Subcontractor

The Subcontractor indemnifies and holds harmless TfNSW and each Beneficiary from and against any Claim or Loss arising out of, or in connection with, a breach by the Subcontractor of any of the representations and warranties given under this Deed Poll or a failure by the Subcontractor to comply with any of its other obligations under this Deed Poll.

5.2 Continuing indemnities

(a) Each indemnity in this Deed Poll is a continuing obligation, separate and independent from the other obligations of the Subcontractor, and survives termination, completion or expiration of this Deed Poll.

(b) It is not necessary for a Beneficiary to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed Poll.

(c) The Subcontractor must pay on demand any amount it must pay under an indemnity in this Deed Poll.

6. Miscellaneous

6.1 Legal costs

The Subcontractor must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed Poll.

6.2 Assignment

At any time, TfNSW may assign or create a Security Interest over the benefits and rights accrued under this Deed Poll. The Subcontractor must not assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under any Project Agreement, without TfNSWs prior written approval.

6.3 Amendment

The Subcontractor must not:

(a) make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to;

(b) terminate, surrender, rescind or accept the repudiation of;
(c) permit the novation, assignment or substitution of any counterparty’s right, obligation or interest in; or

(d) enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Agreement to which TfNSW is not a party, without TfNSW's prior written consent (which consent will not be unreasonably withheld or delayed).

6.4 Restrictions on related party contracts

The Subcontractor must not enter into any contract relating to the TLS Phase Activities with a Related Body Corporate (other than on arm’s length commercial terms) without TfNSW's prior written consent.

6.5 Waiver and exercise of rights

A right may only be waived in writing, signed by the person giving the waiver, and:

(a) no other conduct (including 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 or in connection with this Deed Poll by a person) precludes, or operates 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 person under or in accordance with this Deed Poll is only effective and binding on that person if it is given or confirmed in writing by that person;

(c) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(d) 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.

6.6 Rights cumulative

Subject to any express provision in this Deed Poll to the contrary, the rights of a person under or in accordance with this Deed Poll are cumulative and are in addition to any other rights of that person.

6.7 Consents

A consent required from a person under or in accordance with this Deed Poll may be given or withheld, or may be given subject to any conditions, as that person (in its absolute discretion) thinks fit, unless this Deed Poll expressly provides otherwise.

6.8 Further assurance

The Subcontractor must promptly execute all documents and do all things that TfNSW from time to time reasonably require of it (including providing any information that a Suitable Substitute Supplier may reasonably request) to effect, perfect or complete the provisions of this Deed Poll and any transaction contemplated by it.

6.9 Power of attorney

The Subcontractor irrevocably appoints, with effect from the date TfNSW gives a Notice of Novation, TfNSW or the Suitable Substitute Supplier (as applicable) and such persons as are from time to time nominated by TfNSW or the Suitable Substitute Supplier (as applicable),
6.10 Operation of this Deed Poll

(a) If at any time any provision of this Deed Poll is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make this Deed Poll enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this Deed Poll.

(b) The Subcontractor acknowledges and agrees that to the extent permitted by law, in relation to its subject matter, this Deed Poll:

(i) embodies the entire understanding of the Subcontractor, and constitutes the entire terms on which the Subcontractor agrees to be bound by this Deed Poll; and

(ii) supersedes any prior written or other agreement, with respect to its subject matter.

(c) Any right that a person may have under this Deed Poll is in addition to, and does not replace or limit, any other right that the person may have.

6.11 Governing law and jurisdiction

(a) This Deed Poll is governed by and must be construed according to the laws applying in New South Wales.

(b) The Subcontractor irrevocably:

(i) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed Poll; and

(ii) 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 proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.11(b)(i).

6.12 Process Agent

(a) The Subcontractor:

(i) appoints the Supplier as its agent to receive on its behalf service of process of any proceedings in Australia (Process Agent);

(ii) may from time to time appoint a replacement of the Process Agent or any replacement Process Agent by giving notice to TfNSW, each such replacement to have an address in the Commonwealth of Australia;

(iii) acknowledges that service will be taken to be completed on delivery to the Process Agent or any replacement Process Agent (whether or not it is forwarded to and received by the Subcontractor); and

(iv) if for any reason the Process Agent or any replacement Process Agent ceases to be able to act, or ceases to have an address in the Commonwealth of Australia, agrees to appoint a substitute Process
Agent acceptable to TfNSW and to deliver to TfNSW a copy of the new Process Agent’s acceptance of that appointment.

(b) The Subcontractor acknowledges that the appointment of the Process Agent or a replacement Process Agent cannot be revoked without the simultaneous appointment of a replacement Process Agent.

Nothing in this Deed limits TfNSW’s right to serve process in any other manner permitted by law.

6.13 Provisions binding

The terms and provisions of this Deed are binding on the Subcontractor immediately upon execution of the Deed by the Subcontractor.

6.14 Attorneys

Each person who executes this Deed on behalf of a person under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

7. Limitation on Subcontractor’s liability

(a) Notwithstanding any other provision of this Deed, the Subcontractor shall have no greater liability to the Beneficiaries and the Suitable Substitute Supplier under or in connection with this Deed than the liability it would have to the Beneficiaries and the Suitable Substitute Supplier if the Beneficiaries and the Suitable Substitute Supplier were jointly named with the Supplier as the supplier under the Subcontract.

(b) The Subcontractor is entitled to rely on all rights, defences, exclusions and limitations available to the Subcontractor under the Subcontract.
Schedule 1 – Novation Deed

Date

Parties

Name: Downer EDI Rail Pty Limited
ABN: 92 000 002 031
Short form name: Supplier
Notice details: T3, Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113

Name: [Insert]
ABN: [Insert]
Short form name: Subcontractor
Notice details: [Insert]

Name: [Insert]
ABN: [Insert]
Short form name: Substitute Supplier
Notice details: [Insert]

Recitals

A. The Supplier wishes to novate its rights and liabilities under the Subcontract to the Substitute Supplier.

B. The Subcontractor consents to the novation of the Supplier’s rights and liabilities under the Subcontract to the Substitute Supplier.

1. Defined terms & interpretation

1.1 Defined terms from Collateral Warranty Deed Poll

Terms defined in the Collateral Warranty Deed Poll (as defined below), including definitions incorporated into the Collateral Warranty Deed Poll from the TLS Deed under clause 1.3 of the Collateral Warranty Deed Poll, have the same meanings when used in this deed unless otherwise defined in this deed.

1.2 Other defined terms

In this deed:

Collateral Warranty Deed Poll means the deed poll entered into by the Subcontractor dated [insert date].
Novation Date means the date of execution of this deed on behalf of the Supplier.

TLS Deed means the agreement between TfNSW, RailCorp and the Supplier dated [Insert] under which the Supplier has agreed to undertake planned and unplanned maintenance of new passenger rolling stock and other related assets procured by TfNSW.

Subcontract has the meaning given in the Collateral Warranty Deed Poll.

1.3 Interpretation

(a) The provisions of clause 1.3 of the TLS Deed are incorporated in, and apply to, this deed as if set out in full with any necessary amendments.

(b) In this deed, a reference to identical rights or obligations means rights or obligations which are identical in character, rather than identical as to the person entitled to them or obliged to perform them.

2. Novation

2.1 Rights and obligations – Subcontract Documents

Subject to clause 2.2, with effect on and from the Novation Date:

(a) no party to the Subcontract has any further obligation to the Supplier;

(b) the Supplier has no further rights and no further obligations to any other party to the Subcontract;

(c) the Substitute Supplier has rights which are identical to the rights which the Supplier had under the Subcontract;

(d) the Substitute Supplier assumes, from immediately before the acknowledgement in paragraph (b) was given, obligations towards each of the parties to the Subcontract as if the Substitute Supplier were originally named in the Subcontract in place of the Supplier; and

(e) the Subcontractor accepts the liability of the Substitute Supplier in place of the liability of the Supplier.

2.2 Accrued rights and obligations before Novation Date

All parties to the Subcontract remain entitled to their rights and bound by their obligations in respect of the Subcontract which have accrued before the Novation Date.

2.3 Security

Upon the execution and exchange of this deed:

(a) the Supplier must release any security given to it by the Subcontractor in accordance with the Subcontract;

(b) the Subcontractor must give the Substitute Supplier security in the same form and for the same amounts as any security required by the Subcontract; and

(c) the Subcontractor must ensure that the Substitute Supplier is appropriately noted on all relevant insurance policies as required by the Subcontract.
3. **Costs and Duty**

Each party must bear their own costs of and incidental to this deed. The Substitute Supplier must pay all stamp duty and any penalties in respect of this deed.

4. **Notices and other communications**

The notice details of the Substitute Supplier for the purposes of the Subcontract are [insert].

5. **Governing law and jurisdiction**

This deed is governed by and must be construed according to the laws applying in New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.
Sydney Growth Trains
(ISD-16-5312B)

Signing page

EXECUTED as a deed. Each attorney signing this deed under a power of attorney certifies, by the attorney’s signature, that the attorney has no notice of the revocation of the power of attorney.

Signed, sealed and delivered for and on behalf of Downer EDI Rail Pty Ltd (ABN 92 000 002 031) by its attorneys under a power of attorney dated in the presence of:

[Insert execution clauses for the Subcontractor and Substitute Supplier]

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

Full name of attorney

Signature of witness

Full name 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 attorney
Signing page

EXECUTED as a deed poll. An attorney signing this Deed Poll under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

[Insert execution clause for the Subcontractor]
Schedule 23 – Form of Project Bond

Details
To: Transport for NSW ABN 18 804 239 602 (TfNSW)
For: Downer EDI Rail Pty Limited ABN 92 000 002 031 (the Supplier)
From: [Insert name and ABN of the issuer of the bond] (the Issuer)
Date: [Insert]

1. Recitals
   (a) TfNSW and the Supplier are parties to a maintenance deed dated [Insert date] (TLS Deed).
   (b) Under the terms of the TLS Deed, the Supplier is required to provide this bond to TfNSW.

2. Maximum Aggregate Sum
   At the request of the Supplier and in respect of the Supplier's obligations under the TLS Deed, the Issuer unconditionally and irrevocably undertakes to pay to TfNSW, on demand by TfNSW, any sum or sums which may from time to time be demanded by TfNSW to a maximum aggregate sum of A$[/insert] (Maximum Aggregate Sum).

3. Payment of the Maximum Aggregate Sum
   Payment or payments under this bond must be made by the Issuer to TfNSW:
   (a) without reference to the Supplier, any other person (other than the Issuer), the TLS Deed or any other agreement between TfNSW and the Supplier;
   (b) without enquiring into either or both of the Supplier's or TfNSW's performance or non-performance of the TLS Deed or any other agreement between TfNSW and the Supplier;
   (c) despite any notice by the Supplier or any other person to the Issuer not to pay the whole or any part of the Maximum Aggregate Sum;
   (d) despite anything which, but for this provision, may operate to release, prejudicially affect, discharge, or in any way relieve the Issuer from any obligation including, without limitation:
      (i) any variation or alteration to any contract between the Supplier and TfNSW (including the TLS Deed and any other agreement between TfNSW and the Supplier); or
      (ii) the grant to any person of any remedy, waiver or other indulgence, or the discharge or release of any person; and
   (e) to an Australian dollar account in New South Wales nominated by TfNSW, or as TfNSW otherwise directs in a notice of demand given under clause 2.

4. Additional Requirements
This bond must be payable at an office of the Issuer in New South Wales (or such other place as TfNSW may approve in writing) which is open during normal business hours.

5. Expiry

The Issuer's liability under this bond will be a continuing liability and will continue until the earlier of:

(a) [Insert date];

(b) the date TfNSW notifies the Issuer in writing that this bond is no longer required; or

(c) the date the Issuer has paid the Maximum Aggregate Sum to TfNSW.

6. Issuer's liability

(a) The Issuer will have no liability in respect of any claim under this bond after the date upon which this bond expires under the above clause.

(b) However, the Issuer may at any time without being required to do so, pay to TfNSW the Maximum Aggregate Sum less any amount or amounts it may previously have paid under this bond, or such lesser sum as may be required and specified by TfNSW, and thereupon the liability of the Issuer under this bond shall immediately cease.

7. General

This bond is governed by the laws in force in New South Wales.

8. Execution

Executed and delivered as a deed.

[Insert execution clauses. Each attorney executing this deed states that he/she has no notice of revocation or suspension of his/her power of attorney.]
Schedule 24 – Form of Independent Expert Determination Agreement

Independent Expert Determination Agreement

Sydney Growth Trains

Transport for NSW

TfNSW

Supplier

Independent Expert
Details

Date

Parties

Name: Transport for NSW
Short form name: TfNSW
Notice details: Level 2, 1 Prince Albert Road, Sydney NSW 2000

Name: Downer EDI Rail Pty Limited
Short form name: Supplier
Notice details: T3, Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113

Name: [Insert name of Independent Expert agreed between the parties or appointed pursuant to the Dispute Resolution Procedures contained in paragraph 1.4 of Schedule 8]
Short form name: Independent Expert
Notice details: [Insert details]

Background

A. TfNSW, RailCorp and the Supplier (together the Parties and each a Party) are parties to a through life support deed dated [Insert date] (TLS Deed) under which the Supplier has agreed to undertake planned and unplanned maintenance of new passenger rolling stock and other related assets procured by TfNSW.

B. The Independent Expert is to be appointed in accordance with the terms of the TLS Deed.

C. TfNSW, the Supplier and the Independent Expert agree that the Independent Expert will determine each Dispute referred to it from time to time under the TLS Deed in accordance with the Dispute Resolution Procedures contained in Schedule 8 to the TLS Deed and the process set out in this agreement.

Agreed terms

1. Appointment of Independent Expert

(a) The Parties appoint the Independent Expert to determine those Disputes which are referred to the Independent Expert from time to time under the Project Deed in the manner and within the times set out in this agreement. The Independent Expert accepts the appointment on the basis set out in this agreement.

(b) The Parties agree that:
(i) the Independent Expert will act as an expert and not as an arbitrator;

(ii) neither the determination of a Dispute, nor the process required by this agreement, is an arbitration, and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;

(iii) the rules of evidence do not apply to any determination; and

(iv) the Independent Expert must conduct the determination of each Dispute in accordance with the Independent Expert Determination Rules defined in clause 1.4(h) of Schedule 8 of the TLS Deed, and as modified by the TLS Deed.

(c) If, at any time during the determination, the Independent Expert becomes aware of a circumstance that might reasonably be considered by a Party to adversely affect the Independent Expert's capacity to act independently or impartially, the Independent Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this agreement. On termination of this agreement pursuant to this clause the Parties will have no Claim against each other nor will the Independent Expert arising as a consequence of the termination but such termination will be without prejudice to Claims that the Parties or the Independent Expert may have in respect of breaches of this agreement occurring prior to the termination.

2. Confidentiality

(a) Subject to clause 2(b), all proceedings and submissions relating to any determination (including the fact that any step of the determination is occurring), and all documents prepared for the purposes of a determination (including the Independent Expert's determination), must be kept confidential between the Parties and the Independent Expert.

(b) No such proceedings, submissions or documents, nor any other information relating to or arising out of a determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to, review or enforce the Independent Expert's determination.

3. Costs and fees

(a) As between the Parties and the Independent Expert, the Parties are jointly and severally liable for the payment of the Independent Expert's fees and disbursements, calculated in accordance with Schedule 1 unless otherwise determined by the Independent Expert.

(b) The Parties agree as between themselves that:

(i) unless otherwise determined by the Independent Expert, they will each pay one half of the Independent Expert's fees and disbursements, calculated in accordance with Schedule 1; and

(ii) they will each bear their own costs of and incidental to the preparation of this agreement and their participation in any determination.

4. Exclusion of liability and indemnity

Except in the case of fraud, the Independent Expert will not be liable to either Party for any act or omission by the Independent Expert in the performance or purported performance of
this agreement. The Parties release the Independent Expert from all Claims arising out of or in any way referable to any act or omission by the Independent Expert (except fraud) in the performance or purported performance by the Independent Expert of the terms of this agreement.

5. Co-operation of the Parties

Each Party agrees to take part in each determination in good faith and to comply with the reasonable requests and directions of the Independent Expert in relation to the conduct of each determination.

6. Governing Law

This agreement is governed by and must be construed in accordance with the laws applying in New South Wales.

7. Jurisdiction

(a) The Parties and the Independent Expert irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts to which the appeals from those courts may be made.

(b) The Parties and the Independent Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

8. Definitions

In this agreement, any term defined in the TLS Deed and not defined in this agreement has the meaning given in the TLS Deed, unless the contrary intention appears.
Schedule 1 – Schedule of Fees and Disbursements

[Note: To be inserted before this Independent Expert Determination Agreement is signed.]
Sydney Growth Trains
(ISD-16-5312B)

Signing page

EXECUTED as an agreement.

Signed, sealed and delivered for and on behalf of Downer EDI Rail Pty Ltd (ABN 92 000 002 031) by its attorneys under a power of attorney dated in the presence of: 

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

Full name of attorney

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 witness

Full name of attorney

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

Signature of authorised delegate

Full name of witness (print)

Full name of authorised delegate (print)

Position held

Position held

[Note: Execution clauses Independent Expert to be inserted]
Schedule 25 – Pro Forma Notices and Certificates

1. Form of Certificate of Readiness

Certificate of Readiness

[Insert date and time]

To: Transport for NSW (ABN 18 804 239 602) (TfNSW) and

[insert] (TfNSW’s Representative)

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

This certificate is given in accordance with the TLS Deed for the Sydney Growth Trains between TfNSW, RailCorp and the Supplier dated [insert] (TLS Deed). Words defined in the TLS Deed have the same meaning in this certificate.

In accordance with the terms of Clause 16.14(a) of the TLS Deed, the Supplier certifies that [insert description of Set/s including Train and Car number(s)] [meets/meet] the Minimum Operating Standards for Available Sets and [is/are] Serviceable.

[The date for re-certification of the Set/Sets is [insert date and time]].

The Supplier hereby gives notice to TfNSW, TfNSW’s Representative, the Operator and any relevant Train Drivers of the [Set/Sets] that the condition of the [Set/Sets], including all service defects, are fully particularised in the attached list.

Signed for and on behalf of the Supplier by:

Signature: 

Name: 

Position: 

Date: 

498

Sydney Growth Trains
(20-15-53128)
Attachment – Condition Report

<table>
<thead>
<tr>
<th>No.</th>
<th>Particulars on condition (including service defects)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>[Insert]</td>
</tr>
</tbody>
</table>
2. Form of Statutory Declaration of Supplier regarding Payment of Workers and Subcontractors

(Clause 21.1(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 [Insert] ABN [Insert ABN] ('the Contractor') in the Office Bearer capacity of [Insert position title of Declarant].

2. The Contractor has a contract with Transport for NSW (ABN 18 804 239 602) and Rail Corporation of New South Wales (ABN 59 325 778 353): Sydney Growth Trains – TLS Deed ('the 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. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the
subcontractor or Supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. 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 8(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:

[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.]

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>Due amount paid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

[Insert names and addresses of the subcontractors, the names and addresses of the unpaid employees, subcontractors and Suppliers and amounts listed as unpaid or not accrued to them.]

<table>
<thead>
<tr>
<th>Employee, subcontractor or supplier</th>
<th>Amount unpaid or not accrued</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
10. 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.

11. Attached to and forming part of this declaration, as Annexure B, 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.

12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

13. 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.

14. 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.

Declared at ................................ this ........................................ day of ................................ 20.... before me

Signature of declarant

Name of witness

Address of witness

Capacity of witness [~Justice of the peace~Notary public~Legal practitioner]
And as a witness, I certify the following matters concerning the person who made this declaration (declarant):

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

15. *I saw the face of the person.*

OR

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

16. *I have known the person for at least 12 months.*

OR

*I confirm the declarant's identity using the following identification document:*

Identification document relied on (may be original or certified copy).

Declared at .................................. this ........................................... day of .................................. 20...... before me

Signature of declarant

Name of witness

Address of witness

Capacity of witness [*Justice of the peace~Notary public~Legal practitioner]*

*The declaration must be made before one of the following persons:

• where the declaration is sworn within the State of New South Wales:
  (i) a justice of the peace of the State of New South Wales;
  (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
  (iii) a notary public.

• where the declaration is sworn in a place outside the State of New South Wales:
  (i) a notary public; or
  (ii) any person having authority to administer an oath in that place.
Annexure A

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the Building and Construction Industry Security of Payment Act 1999.

Head contractor: ........................................................ [business name of head contractor]
ABN: ........................................................................... [ABN]

* 1. has entered into a contract with: ................................................ [business name of subcontractor]
ABN: ........................................................................... [ABN]

Contract number/identifier: ........................................... [contract number/identifier]

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* [Delete whichever of the above does not apply]

This statement applies for work between ........................................... [start date] and ........................................... [end date] inclusive (the construction work concerned), subject of the payment claim dated

I, ........................................................... [full name], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: ........................................................ Date: ......................................................
Full name: ........................................................ Position/Title: ...........................................

Penalties

The Building and Construction Security of Payment Act 1999 provides that:

Section 13(7) A head contractor must not serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim.

- Maximum penalty: 200 penalty units.

And:

Section 13(8) A head contractor must not serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances.
Maximum penalty: 200 penalty units or 3 months imprisonment, or both.
Schedule of subcontractors paid all amounts due and payable

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/ identifier</th>
<th>Date of works (period)</th>
<th>Date of payment claim (head contractor claim)</th>
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</tbody>
</table>

Schedule of subcontractors for which an amount is in dispute and has not been paid

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/ identifier</th>
<th>Date of works (period)</th>
<th>Date of payment claim (head contractor claim)</th>
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Sydney Growth Trains
(ISD-16-5312B)
Annexure B

SUBCONTRACTOR’S STATEMENT
REGARDING WORKER’S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

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

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

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

Subcontractor: .......................................................... ABN: ..........................................................

of ................................................................................ EB: ..........................................................

has entered into a contract with .......................................................... ABN: ..........................................................

                             (Business name of subcontractor)  (Business name of principal contractor)  (Note 2)

Contract number/identifier ..........................................................................................................................

(Note 3)

This Statement applies for work between: ........../.............. and ........../.............. inclusive,

subject of the payment claim dated: ........../..............

(Note 4)  (Note 5)

I .................................................................................................................. a Director or a person authorised by the Subcontractor

on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the

matters which are contained in this Subcontractor’s Statement and declare the following to the best of my

knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the

above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the

case that workers or subcontractors are involved or you are an exempt employer for workers

compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done

under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated

........../.............. (Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been

paid (Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the Payroll Tax Act 2007, the

Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract,

as required at the date of this Subcontractor’s Statement. (Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in

its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in

connection with that work for the period stated above. (Note 10)

(f) Signature ........................................................................ Full name..........................................................

(g) Position/Title ...................................................................... Date ........../..............

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to

comply with section 175B of the Workers Compensation Act 1987.
Notes

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

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

2. For the purpose of this Subcontractor’s Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

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

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontractor’s Statement, a subcontractor declares that workers compensation insurance premiums payable 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(6) 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;

   (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 10 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

3. **Form of Statutory Declaration of Significant Contractor regarding Payment of Workers and Subcontractors**

(Clause 21.1(b))

**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 [Insert ABN [Insert ABN] ('the Contractor') in the Office Bearer capacity of [Insert position title of Declarant].

2. The Contractor has a contract with [Insert]: Sydney Growth Trains – TLS Deed ('the 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:

<table>
<thead>
<tr>
<th>Employee:</th>
<th>Amount unpaid or not accrued:</th>
</tr>
</thead>
<tbody>
<tr>
<td>[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.]</td>
<td></td>
</tr>
</tbody>
</table>

5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.
The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

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 8(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:

[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.]

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>Due amount paid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

[Insert names and addresses of the subcontractors, the names and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.]

<table>
<thead>
<tr>
<th>Employee, subcontractor or supplier</th>
<th>Amount unpaid or not accrued</th>
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</thead>
<tbody>
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</table>
10. 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.

11. Attached to and forming part of this declaration, as Annexure B, 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.

12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

13. 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.

14. 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*.

Declared at ................................... this ................................... day of ................................... 20................................ before me

Signature of declarant

Name of witness

Address of witness

Capacity of witness [Justice of the peace/Notary public/Legal practitioner]

And as a witness, I certify the following matters concerning the person who made this declaration (declarant):
[*strike out the text that does not apply]*

1. "I saw the face of the person.

   OR

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

2. "I have known the person for at least 12 months.

   OR

   "I confirm the declarant’s identity using the following identification document:

   Identification document relied on (may be original or certified copy).

Declared at ........................................ this ........................................ day of ........................................ 20......... before me

Signature of declarant

Name of witness

Address of witness

Capacity of witness [Justice of the peace/Notary public/Legal practitioner]

*The declaration must be made before one of the following persons:

• where the declaration is sworn within the State of New South Wales:
  (i) a justice of the peace of the State of New South Wales;
  (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
  (iii) a notary public.

• where the declaration is sworn in a place outside the State of New South Wales:
  (i) a notary public; or
  (ii) any person having authority to administer an oath in that place.
Annexure B

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the Building and Construction Industry Security of Payment Act 1999.

Head contractor: ........................................................[business name of head contractor]
ABN: ........................................................[ABN]

* 1. has entered into a contract with: ................................................[business name of subcontractor]
ABN: ........................................................[ABN]
Contract number/identifier: ........................................................[contract number/identifier]

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* [Delete whichever of the above does not apply]

This statement applies for work between .............................................[start date] and .............................................[end date] inclusive (the construction work concerned), subject of the payment claim dated .............................................

I, ........................................................[full name], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: ........................................................ Date: .............................................
Full name: ........................................................ Position/Title: .............................................

Penalties

The Building and Construction Security of Payment Act 1999 provides that:

Section 13(7) A head contractor must not serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim.

Maximum penalty: 200 penalty units.

And:

Section 13(8) A head contractor must not serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances.

Maximum penalty: 200 penalty units or 3 months imprisonment, or both.
### Schedule of subcontractors paid all amounts due and payable

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/identifier</th>
<th>Date of works (period)</th>
<th>Date of payment claim (head contractor claim)</th>
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### Schedule of subcontractors for which an amount is in dispute and has not been paid

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/identifier</th>
<th>Date of works (period)</th>
<th>Date of payment claim (head contractor claim)</th>
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Annexure C

SUBCONTRACTOR’S STATEMENT
REGARDING WORKER’S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

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

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

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

Subcontractor: ........................................................................ ABN: .................................................................

of ............................................................................................................................... ABN: .................................................................

has entered into a contract with ................................................................................ ABN: ................................................................. (Note 2)

Contract number/identifier ................................................................................................. (Note 3)

This Statement applies for work between: .............................................................. and ........................................... inclusive,

subject of the payment claim dated: ................................................................. (Note 4)

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

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

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ................................................................. (Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the Payroll Tax Act 2007, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement. (Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature ......................................................................................... Full name: .................................................................

(g) Position/Title .......................................................................................... Date .................................................................

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

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1997, Schedule 2 Part 5 Payroll Tax Act 2007 and section 127 of the Industrial Relations Act 1996. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

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

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(5) of the Industrial Relations Act 1996 defines remuneration as 'remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

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

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable 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;
(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

4. **Form of Written Statement**

**SUBCONTRACTOR’S STATEMENT**

REGARDING WORKER’S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

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

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

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

Subcontractor: ........................................................ ABN: ........................................................

of ........................................................ ABN: ........................................................

has entered into a contract with ........................................................ ABN: ........................................................ 

(Business name) (Business name of principal contractor) 

(Note 2)

Contract number/identifier ........................................................ 

(Note 3)

This Statement applies for work between: ................ and ................ inclusive, 

subject of the payment claim dated: ........................ 

(Note 4)

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 the 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 5)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ..........................

(Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the Payroll Tax Act 2007, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement.

(Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

(f) Signature ........................................................ Full name ........................................................ 

(Note 10)

(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.

Sydney Growth Trains (ISD-16-5312B)
Notes

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

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

2. For the purpose of this Subcontractor’s Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 defines remuneration as

remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.’

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

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontractor’s Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor’s Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor’s Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, 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

### Schedule 26 - Delivery Deed Options

#### Option 1  Powered USB Sockets

**Description:**
This Option is for the provision of powered USB sockets at each seat location to facilitate charging of mobile devices.

**Amendments: 1. Schedule 13 is amended as follows:**

Insert an additional row at the end of the table in paragraph 3 of Schedule 13 as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Measure</th>
<th>Tolerance</th>
<th>Action</th>
<th>KPI impacted</th>
<th>Availability impacted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Into service from the Maintenance Facility</td>
<td>USB sockets powered and operational</td>
<td>All USB power supplies must be operational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Into service from Out Depot or in service</td>
<td>USB sockets powered and operational</td>
<td>All USB power supplies must be operational</td>
<td>Reset failed circuit breakers if monitored</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 2. Schedule 15 is amended as follows:

(a) Paragraph 1 definition of “Price per SAU for the Initial Fleet” is to be amended to include the incremental Increase to Price per SAU for $P(SAU)_{IF}$ for the Powered USB Sockets of

(b) Paragraph 1 definition of “Price per SAU for the Option Sets” is to be amended to include the incremental Increase to Price per SAU for $P(SAU)_{OS}$ for the Powered USB Sockets of

(c) Annexure 8, paragraph 1.1(a), Table 1.1(a), the value of Extended Term Price per SAU (Initial Fleet) is to be amended to increase the EP(SAU)$_{IF}$ for the Powered USB Sockets by the amount set out in the following table:
### Option 1: Powered USB Sockets

<table>
<thead>
<tr>
<th>Contract Term Extension Period</th>
<th>EP(SAU)$_F$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial 5 Year Extension (clause 3.2(b))</td>
<td></td>
</tr>
<tr>
<td>Subsequent 5 Year Extension (clause 3.2(c))</td>
<td></td>
</tr>
</tbody>
</table>

(d) Annexure 8, paragraph 1.1(b), Table 1.1(b), the value of **Extended Term Price per SAU (Option Sets)** is to be amended to increase the EP(SAU)$_{OS}$ for the Powered USB Sockets by the amount set out in the following table:

<table>
<thead>
<tr>
<th>Contract Term Extension Period</th>
<th>EP(SAU)$_{OS}$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial 5 Year Extension (clause 3.2(b))</td>
<td></td>
</tr>
<tr>
<td>Subsequent 5 Year Extension (clause 3.2(c))</td>
<td></td>
</tr>
</tbody>
</table>

3. Annexure 3 of Schedule 15 is amended as follows:

Insert an additional row at the end of TABLE 6 - LABOUR RATES & MATERIAL COST FOR PROJECT WORK in Annexure 3 of Schedule 15 as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Unit</th>
<th>N = New</th>
<th>R = Refurbished</th>
<th>Material Cost per unit (New/Refurbished Item)</th>
<th>Labour Cost</th>
<th>Labour overhead</th>
<th>Other costs (eg subcontractor labour)</th>
<th>Profit Margin</th>
<th>Total Unit Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Option 1 - Powered USB Sockets

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit</th>
<th>Total Unit Price</th>
<th>Delivery Lead Time</th>
<th>Initial Fleet Spares List</th>
<th>Option Fleet Spares List(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1 - Powered USB Sockets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B7.2.1 USB sockets</td>
<td>each</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B7.2.2 USB power supply</td>
<td>each</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. Schedule 29 is amended as follows:

Insert an additional row at the end of the table in Schedule 29 as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Unit</th>
<th>Total Unit Price</th>
<th>Delivery Lead Time</th>
<th>Initial Fleet Spares List</th>
<th>Option Fleet Spares List(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1 – Powered USB Sockets</td>
<td>B7.2.1 USB sockets</td>
<td>each</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option 1 – Powered USB Sockets</td>
<td>B7.2.2 USB power supply</td>
<td>each</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option 1 – Powered USB Sockets</td>
<td>B7.2.3 Special Tool – dongle for testing</td>
<td>each</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Option 2 - Integrated Condition Monitoring System

**Description**

This Option is for the provision of integrated condition monitoring systems which complies with SPR Appendix 02 - Rolling Stock Specification, section 3.15.7 (Integrated Condition Monitoring Systems) on a selected number of Option Sets.
Sydney Growth Trains
(ISD-16-5312B)

**Amendments**

1. Schedule 15 is amended as follows:

   (a) Paragraph 1 definition of “Price per SAU for the Option Sets” is to be amended to include the incremental increase to Price per SAU for P(SAU)\textsubscript{OS} for the Integrated Condition Monitoring System of [price].

   (b) Annexure 8, paragraph 1.1(b), Table 1.1(b), the value of Extended Term Price per SAU (Option Sets) is to be amended to increase the EP(SAU)\textsubscript{OS} for the Integrated Condition Monitoring System by the amount set out in the following table:

<table>
<thead>
<tr>
<th>Contract Term Extension Period</th>
<th>EP(SAU)\textsubscript{OS}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial 5 Year Extension (clause 3.2(b))</td>
<td>[price]</td>
</tr>
<tr>
<td>Subsequent 5 Year Extension (clause 3.2(c))</td>
<td>[price]</td>
</tr>
</tbody>
</table>
Schedule 27 – Form of SPR Amendment Letter

[Date]
[Addressee]
Downer EDI Pty Limited
T3, Triniti Business Campus, 39 Delhi Road
North Ryde NSW 2113

Dear [ ]
Sydney Growth Trains
Re: TLS Deed SPR

Proposed amendment to SPR pursuant to clause 51.4(b) of the TLS Deed

This is a letter pursuant to clause 51.4(b) of the "Sydney Growth Trains Project - TLS Deed" dated [insert] (TLS Deed).

Pursuant to clause 51.4(b) of the TLS Deed, and in consideration for TfNSW promising to pay [ ] to the Supplier upon the Supplier's request, TfNSW requests your agreement to make the amendments to the SPR which are set out in the Attachment to this letter.

Please sign and return every page of the enclosed copy of this letter and its attachment if you agree to the amendments.

In accordance with clause 51.4(b) of the TLS Deed, the SPR will be amended with effect from the date of your reply.

Capitalised terms used in this letter have the meanings given in the TLS Deed.

Yours faithfully

[Name]
TfNSW’s Representative
Sydney Growth Trains Project
Transport for NSW

Signed for and on behalf of the Supplier by:

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

Name: ..................................

Position: Supplier's Representative

Date: .................................
Attachment 1 - Amendments to SPR

Exhibit 1 (Scope and Performance Requirements) to the TLS Deed is amended as follows:

[insert details of proposed amendments]
# Schedule 28 - Additional Required Availability

<table>
<thead>
<tr>
<th>Number of Operational Sets</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
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<tr>
<td>3</td>
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<td>68</td>
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<tr>
<td>69</td>
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</tr>
</tbody>
</table>
### Schedule 29 – Spares Lists

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Lead Time</th>
<th>First Set Spares List</th>
<th>Initial Fleet Spares List</th>
<th>Option Fleet Spares List</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B 1.6.1 HVAC</strong></td>
<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>001</td>
<td>060500032 - AIR CONDITIONING UNIT ASSEMBLY</td>
<td>each</td>
<td></td>
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<tr>
<td>002</td>
<td>260500238 - END SALOON DUCT HEATER ASSEMBLY</td>
<td>each</td>
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<tr>
<td>003</td>
<td>360501078 - FOOT HEATER ASSY</td>
<td>each</td>
<td></td>
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</tr>
<tr>
<td>004</td>
<td>360501086 - CAB HEATER</td>
<td>each</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>005</td>
<td>360501682 - CONTROLLER A C UNIT</td>
<td>each</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>006</td>
<td>CAB AIR SUPPLY UNIT</td>
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<tr>
<td>007</td>
<td>CAB FRESH AIR SUPPLY UNIT</td>
<td>each</td>
<td></td>
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<tr>
<td><strong>B1.6.2 BRAKE SYSTEM</strong></td>
<td></td>
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<td></td>
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<tr>
<td>008</td>
<td>361000207 - RESERVOIR 2 LITRE</td>
<td>each</td>
<td></td>
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<tr>
<td>009</td>
<td>361000208 - RESERVOIR 3 LITRE</td>
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<tr>
<td>010</td>
<td>361000209 - RESERVOIR 1 LITRE</td>
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<td>011</td>
<td>361000248 - AUXILIARY AIR SUPPLY MODULE</td>
<td>each</td>
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<td>012</td>
<td>KB-A06 - AIR SUPPLY UNIT</td>
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<td>013</td>
<td>KB-B09.01 - EP COMPACT</td>
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<td>KB-B10.01 - EP COMPACT</td>
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<td>KB-B15.50 - DISTRIBUTOR VALVE</td>
<td>each</td>
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<td>KB-B11.02 - EP COMPACT</td>
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<tr>
<td>018</td>
<td>KB-C02 - BRAKE CALIP. UNIT</td>
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<td>KB-D01 - MASTER CONTROLLER</td>
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<tr>
<td>021</td>
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<tr>
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<td>KB-U09 - AIR FILTER</td>
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<tr>
<td>023</td>
<td>KB-Z04 - PISTON VALVE</td>
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<td><strong>B1.6.3 CAB DETRAINEMENT SYSTEM</strong></td>
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<tr>
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<td>157500765 - EMERGENCY DOOR EDR APPLICATION</td>
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<td>026</td>
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<td><strong>B1.6.4 COUPLERS</strong></td>
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<td>155000263 - EMERGENCY COUPLER ASSEMBLY</td>
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<tr>
<td>029</td>
<td>255000868 - SEMI PERMANENT COUPLER HALF H1</td>
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<td>030</td>
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<tr>
<td>Description</td>
<td>Unit</td>
<td>Unit Price</td>
<td>Lead Time</td>
<td>First Set Spares List</td>
<td>Initial Fleet Spares List</td>
<td>Option Fleet Spares List</td>
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**Sydney Growth Trains**

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**B.1.6.10 FIRE DETECTION & FIRE FIGHTING SYSTEMS**

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Schedule for Sydney Growth Trains (ISD-16-5312B)
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### B1.6.24 SPECIAL TOOLS

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Sydney Growth Trains
(ISD-16-5312B)

No of days | Quantity for 1 Set | Quantity for 24 Sets | Quantity for Option Sets 1 to 15 | Quantity for Option Sets 16 to 30 | Quantity for Option Sets 31 to 45
---|---|---|---|---|---

Schedule 29 TLS Deed

L1320571860.6 490666534 TLS Deed
Schedule 30 – Movement of Sets to Other Sites

1. Acknowledgements

(a) The Parties acknowledge that the Supplier intends to perform major overhaul activities, such as periodic component change out and mid-life refurbishment, and collision repairs at Other Sites including the Cardiff Maintenance Centre.

(b) Where TfNSW has agreed that the Supplier can undertake major overhaul activities or collision repairs at an Other Site, TfNSW will procure Train Paths and Train Crews from the Operator for the movement of Sets to and from the Other Site for the purposes of undertaking this work.

2. Supplier Obligations

(a) The Supplier must:

(i) provide to the Operator, from time to time, a schedule of Set movements to Other Sites for major overhaul activities and crash repairs in accordance with the Interface Protocols; and

(ii) comply with the Interface Protocols when the Supplier wishes to arrange for a Set to be moved to or from an Other Site in accordance with the Interface Protocols.

3. TfNSW Obligations

(a) TfNSW will use reasonable endeavours to procure from the Operator the Train Paths and Train Crews in accordance with the arrangements set out in the Interface Protocols.

(b) TfNSW will procure without charge to the Supplier:

(i) one Train Path per Set from the Maintenance Facility Site (or from another location agreed by TfNSW) to the Other Site; and

(ii) one Train Path per Set from the Other Site back to the Maintenance Facility Site;

for:

(iii) each maintenance activity listed in Table 1 in Annexure 10 of Schedule 15 for the Initial Fleet; or

(iv) each maintenance activity listed in Table 1 in Annexure 10 of Schedule 15 for any Option Sets purchased by RailCorp (or TfNSW on behalf of RailCorp) in accordance with the Delivery Deed; or

(v) for any Reimbursable Repairs which TfNSW has agreed (in writing) that the Supplier may perform at an Other Site.

(c) If the Supplier requires additional Set movements to or from an Other Site, TfNSW will:

(i) use reasonable endeavours to arrange for the Operator to provide Train Paths and Train Crews in respect of the excess number of Set movements; and
be entitled to payment by the Supplier as Moneys Owing for those Train Paths and Train Crews it is able to arrange, calculated in accordance with the Operator Schedule of Rates.
Schedule 32 – AMC Licence Key Terms
Exhibit 1 - Scope and Performance Requirements
Refer to folder titled:

Sydney Growth Trains Project
ISD-16-5312B
TLS DEED

Exhibit 1 – Scope and Performance Requirements
Volume 2 of 3, Folder 3 of 3