



Deed of Amendment No.2
Project Deed - New Intercity Fleet
Contract Number: TPD-14-3841

Between

Transport for NSW

ABN 18 804 239 602

[TfNSW]

and

Transport Asset Holding Entity, formerly known as Rail Corporation New South Wales

ABN 59 325 778 353

[TAHE]

and

UGL Rail Services Pty Limited

ABN 58 000 003 136

Mitsubishi Electric Australia Pty Ltd

ABN 58 001 215 792

Hyundai Rotem Company

Registration Number 194211-0036336

[together the Supplier]

transport.nsw.gov.au

7 Harvest Street
Macquarie Park NSW 2113



Deed of Amendment No.2

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Date 10 September 2021

Parties

Name **Transport for NSW (ABN 18 804 239 602)**
Short form name **TfNSW**
Notice details 7 Harvest Street
Macquarie Park NSW 2113
Attention: Project Director, New Intercity Fleet

Name **Transport Asset Holding Entity, formerly known as Rail Corporation New South Wales (ABN 59 325 778 353)**
Short form name **TAHE**
Notice details 470 Pitt Street
Haymarket NSW 2000
Attention: Project Director, New Intercity Fleet

Name **UGL Rail Services Pty Limited (ABN 58 000 003 136), Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792) and Hyundai Rotem Company (a company registered in the Republic of Korea with registration number 194211-0036336)**
Short form name **Supplier**
Notice details Level 8,
40 Miller Street
North Sydney NSW 2060
Attention: Supplier's Representative

Background

- A TfNSW and TAHE entered into the Project Deed with the Supplier.
- B TfNSW, TAHE and the Supplier have agreed to vary the Project Deed on the terms of this deed.



Agreed terms

1. Definitions and interpretations

1.1 Definitions

In this deed:

Additional MF Works means all of the design and construction work to the New Intercity Fleet Maintenance Facility at Kangy Angy:

- (a) necessary to permit the maintenance and storage of the further cars contemplated by the Additional Units, being:
 - (i) the construction of road 5;
 - (ii) additional storage capacity through construction of a warehouse;
 - (iii) installation of additional train lifting jacks; and
 - (b) constructing a sound proofed enclosure to the graffiti removal area,
- as further described in Schedule 4.

Additional MF Works Activities has the meaning given in Schedule J2.

Certificate means the certificate from the model auditor (provided in accordance with paragraph 2.3(a)(iv) of Schedule E9) contained at Schedule 3.

Other Approvals means Approvals to be obtained by the Supplier for the Additional MF Works, not including the TfNSW Approvals.

Notice to Proceed has the meaning given in clause 4.1(b).

Notice to Proceed Longstop Date means [REDACTED] (or such other date as agreed in writing by the Supplier and TfNSW).

Project Deed means the deed entitled 'Project Deed - New Intercity Fleet (Contract number: TPD-14-3841)' between TfNSW, TAHE and the Supplier entered into on 18 August 2016, as varied by the deed entitled 'Deed of Amendment No.1 – Project Deed – New Intercity Fleet – Contract Number: TPD-14-3841' between TfNSW, TAHE and the Supplier on or about 17 February 2019.

TfNSW Approvals means the development approval from the relevant Authority to allow the development of the Additional MF Works at the Maintenance Facility Site, but excludes any construction certificate.

1.2 Defined terms

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

1.3 Interpretation

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

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



- (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;
- (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; and
 - (iii) a reference to the SPR includes all SPR Appendices;
- (i) a reference 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 payment whatsoever by TfNSW or TAHE in accordance with the NIF Project Agreements;
- (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;
- (m) 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;
- (n) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;



- (o) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (p) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (q) a reference to time is to Sydney, Australia time;
- (r) a month means a calendar month; and
- (s) 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.

2. Supplier obligations

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]



■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

3. [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

4. Notice to Proceed – Additional MF Works

4.1 Notice to Proceed

- (a) The parties acknowledge and agree that as at the date of Amendment Deed No. 2:
 - (i) the Supplier's Activities do not include the Additional MF Works or Additional MF Works Activities; and
 - (ii) the Supplier has no right to Claim any part of the Additional MF Works Contract Value.
- (b) On or before the Notice to Proceed Longstop Date, TfNSW may by notice in writing direct the Supplier to carry out and complete the Additional MF Works and Additional MF Works Activities (**Notice to Proceed**).
- (c) If TfNSW gives a Notice to Proceed to the Supplier in accordance with clause 4.1(b) on or before the Notice to Proceed Longstop Date, then on and from the date of the Notice to Proceed:
 - (i) the Supplier's Activities shall include the Additional MF Works and the Additional MF Works Activities, and the Supplier must carry out the Additional MF Works and the Additional MF Works Activities in accordance with this deed; and
 - (ii) the provisions contained in this deed and the Project Deed in connection with the Additional MF Works and the Additional MF Works Activities will apply.



4.2 Failure to issue a Notice to Proceed

- (a) If TfNSW does not give a Notice to Proceed to the Supplier in accordance with clause 4.1(b) on or prior to the Notice to Proceed Longstop Date, then the Supplier has no right to any Claim arising out of or in connection with TfNSW's failure to issue a Notice to Proceed other than in accordance with clause 4.3.
- (b) If TfNSW does not give a Notice to Proceed by the Notice to Proceed Longstop Date then the parties agree that:
 - (i) the Supplier's Activities will not comprise the Additional MF Works or the Additional MF Works Activities;
 - (ii) the following provisions contained in this deed and the Project Deed will not apply:
 - (A) Amendment Deed No. 2:
 - (I) clause 5; and
 - (B) Project Deed:
 - (I) clause 4.2(g);
 - (II) clause 6.1(b)(iv);
 - (III) clause 8.6(a)(v);
 - (IV) clause 11.6;
 - (V) clause 14.4(b)(ii)(C);
 - (VI) clause 15.2(g);
 - (VII) clause 18.8(e);
 - (VIII) clause 22.1(d);
 - (IX) clause 25.1(c);
 - (X) clause 25.1(d)(ii);
 - (XI) clause 25.14;
 - (XII) clause 29.2(i) and the final paragraph in clause 29.2;
 - (XIII) clause 29.2(j);
 - (XIV) clause 29.2(k);
 - (XV) clause 29.5(b);
 - (XVI) clause 29.12(b)(i);
 - (XVII) clause 33.1(m)(v);
 - (XVIII) clause 36.1(g);
 - (XIX) clause 37.18;
 - (XX) clause 39.10(a)(ii);
 - (XXI) clause 39.11;
 - (XXII) clause 46.3(f);
 - (XXIII) Schedule C2, paragraph 1.7;
 - (XXIV) Schedule C7;
 - (XXV) Schedule D6, paragraph 2.1(b)(iv);
 - (XXVI) Schedule E1, paragraph 1.7 and Table 1.7;
 - (XXVII) Schedule E3, paragraph 3.1(a)(v);



- (XXVIII) Schedule E4, paragraph 4.2(a) and Table 4.2(a);
 - (XXIX) Schedule E6, paragraph 5;
 - (XXX) Schedule E7, paragraphs 2.1(a)(iv), 2.1(a)(vii), Table 2.1(A)(iv), paragraph 2.1(b)(iii) and paragraph 2.9;
 - (XXXI) Schedule F7, Parts 8 and 9; and
 - (XXXII) Schedules J1 and J2;
- (iii) the following provisions contained in this deed and the Project Deed will not apply to the extent only that they relate to the provision of the Additional MF Works or the Additional MF Activities, as referred to below:
- (A) Amendment Deed No. 2:
 - (I) clause 2.2(b)(ii) - reference to paragraph 5.3 of Schedule J1; and
 - (B) Project Deed:
 - (I) clause 4.3(c) - reference to Additional MF Works;
 - (II) clause 4.3(e)(ii) - reference to Additional MF Works;
 - (III) clause 4.3(f) - reference to Additional MF Works Licence;
 - (IV) clauses 8.11(a) preamble, 8.11(b) preamble and 8.11(b)(iii)(A) - reference to Additional MF Works;
 - (V) clauses 8.17(b)(iii)(A) and 8.17(b)(iv)(C) - reference to Additional MF Works;
 - (VI) clause 10.1(a)(i) - reference to Additional MF Works;
 - (VII) clause 10.3(a)(vi)(A) - reference to Additional MF Works;
 - (VIII) clause 11.1 - reference to Additional MF Works;
 - (IX) clause 14.2(a)(i) - reference to Additional MF Works;
 - (X) clause 14.3(a)(i) - reference to Additional MF Works;
 - (XI) clause 14.3(b)(i) - reference to Additional MF Works;
 - (XII) clause 14.4(a)(iii) - reference to Additional MF Works;
 - (XIII) clause 14.5(b)(ii)(B) - reference to Additional MF Works;
 - (XIV) clause 15.2(f)(i) – reference to the Additional MF Works Contract Value;
 - (XV) clause 22.2 - reference to Additional MF Works and Additional MF Works Contract Value;
 - (XVI) clause 25.4(b) - reference to paragraph 5.1(b) of Schedule J1;
 - (XVII) clause 25.6 - reference to paragraph 5.1(b) of Schedule J1;
 - (XVIII) clause 25.7(a) - reference to Additional MF Works;
 - (XIX) clause 28.3(a)(i) - reference to Additional MF Works;
 - (XX) clause 29.2(c) - reference to Additional MF Works;
 - (XXI) clause 29.3(a) - reference to Additional MF Works;
 - (XXII) clause 33.1(g) – reference to liquidated damages under paragraph 12.7 of Schedule J2;
 - (XXIII) clause 34.2(a)(i)(C) – reference to Additional MF Works Practical Completion;



- (XXIV) clause 34.2(a)(i)(D) – reference to Additional MF Works;
 - (XXV) clause 39.1 - reference to Additional MF Works and Additional MF Works Contract Value;
 - (XXVI) clause 46.5(e) - reference to paragraphs 3.2 and 4 of Schedule J1;
 - (XXVII) Schedule A5 – references to Additional MF Works and UGL Engineering Pty Ltd;
 - (XXVIII) Schedule B1 – reference to the Additional MF Works;
 - (XXIX) Schedule B2 – reference to the Additional MF Works;
 - (XXX) Schedule B5 – reference to Additional MF Works Practical Completion;
 - (XXXI) Schedule B6 – reference to Additional MF Works Practical Completion;
 - (XXXII) Schedule C2, paragraph 5.4 - reference to the Additional MF Works;
 - (XXXIII) Schedule C3 - reference to the Additional MF Works;
 - (XXXIV) Schedule C5, Table 3 - reference to the Additional MF Works;
 - (XXXV) Schedule D6, paragraph 2.1;
 - (XXXVI) Schedule E1 – all references to Additional MF Works and Additional MF Works Contract Value; and
 - (XXXVII) Schedule F7, Part 18 – all references to Additional MF Works Contract Value and Additional MF Works Practical Completion;
- (iv) TfNSW must procure that the Additional MF Works are performed to deliver the Additional MF Works Scope, and may engage Other Contractor(s) to perform the Additional MF Works; and
- (v) the Additional MF Works will have a defects liability period of 12 months and the provisions of the Project Deed in relation to MFC Defects will apply.

4.3

[illegible]



■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Additional MF Works

5.1 Engage Supplier to perform Additional MF Works

If TfNSW issues a Notice to Proceed in accordance with clause 4.1(b), then the provisions of this clause 5 apply and TfNSW, TAHE and the Supplier acknowledge and agree that:

- (a) TfNSW engages the Supplier to, and the Supplier must, perform the Additional MF Works:
 - including:
 - (A) development of the detailed design for the Additional MF Works; and
 - (B) construction of the Additional MF Works in accordance with the detailed design,
 - in accordance with this deed (including Schedule J1 and Schedule J2);
 - in a manner which is consistent with the Additional MF Works requirements set out in the Additional MF Works Scope; and
 - (iii) for the Additional MF Works Contract Value.
- (b) The Additional MF Works must be completed by the Supplier by the Date for Additional MF Works Practical Completion.
- (c) The Additional MF Works Defects Liability Period will in no case exceed a period of 2 years.

5.2 Obligation to obtain Planning Approvals

- (a) TfNSW and TAHE must obtain the TfNSW Approvals by the date being six months after the last package of Technical Documents comprising the System Definition Review for the Additional MF Works has been submitted in accordance with this deed and provided that the



Technical Documents comprising the System Definition Review for the Additional MF Works have been prepared to a level of detail and quality sufficient for TfNSW and TAHE to seek the TfNSW Approvals. The Supplier must provide all reasonable assistance to TfNSW and TAHE in connection with obtaining the TfNSW Approvals required under this clause 5.2(a).

- (b) The Supplier must obtain any Other Approvals required for the Additional MF Works, other than those which TfNSW and TAHE are required to obtain under clause 5.2(a). TfNSW must provide all reasonable assistance to the Supplier in connection with obtaining the Other Approvals required under this clause 5.2(b).

6. Amendments to the Project Deed

6.1 Amendments

By this deed but subject to clause 4:

- (a) the Project Deed is amended and restated in the form attached at Schedule 1; and
(b) Schedule G (Scope and Performance Requirements) of the Project Deed is updated to include the additional Appendix 15 (Maintenance Facility Scope) contained in Schedule 4.

6.2 Confirmation of Project Deed

TfNSW, TAHE and the Supplier agree that they are bound by and will comply with the provisions of the Project Deed as amended by clause 6.1.

6.3 Continued force and effect of Project Deed

- (a) Except as amended under clause 6.1, the parties acknowledge and agree that the Project Deed continues in full force and effect.
(b) Nothing in this deed:
(i) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the Project Deed before the date of this deed; or
(ii) discharges, releases or otherwise affects any liability or obligation which arise under or in connection with the Project Deed before the date of this deed.

6.4 Deed not a Variation

The parties acknowledge and agree that the terms of this deed do not constitute a Variation for the purposes of the Project Deed.

6.5 Dispute Resolution

The parties acknowledge and agree that, in the event of any Dispute under this deed, the parties must comply with the Dispute Resolution Procedures (contained at Schedule B6 of the Project Deed).

7. Miscellaneous

7.1 Governing law

This deed is governed by and will be construed according to the laws of New South Wales.

7.2 Jurisdiction

Without prejudice to the operation of the provisions in Schedule B6 of the Project Deed, each party 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.

**7.3 Further action**

Each party must do, at its own expense, everything necessary or desirable (including executing documents) to give full effect to this deed and any transaction contemplated by it (including the amendment and restatement under this deed).

7.4 Expenses

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

7.5 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the term of this deed continue in force.

7.6 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

7.7 Entire agreement

- (a) This deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:
 - (i) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this deed; or
 - (ii) 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.
- (b) The parties acknowledge and agree that the Heads of Agreement is terminated and no longer in force from the date of this deed.

7.8 Variations

This deed may only be amended by a document signed by or on behalf of TfNSW, TAHE and the Supplier.

7.9 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts, which taken together constitute one agreement.
- (b) Either party may electronically sign a soft copy of this deed through DocuSign and in doing so will bind itself to the terms and conditions of this deed. The parties agree that electronic signing of this deed by a party to it will satisfy any statutory or other requirements for this deed to be in writing and signed by that party.

7.10 Confidentiality

The parties agree that clauses 43.1 and 43.2 of the Project Deed apply to this deed.

7.11 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.



Deed of Amendment No. 2
Project Deed – New Intercity Fleet

Contract No. TPD-14-3841

Schedule 1 – Amended Project Deed



Project Deed - New Intercity Fleet

Contract Number: TPD-14-3841

Between

Transport for NSW

ABN 18 804 239 602

[TfNSW]

and

Transport Asset Holding Entity, formerly known as Rail Corporation New South Wales

ABN 59 325 778 353

[TAHE]

and

UGL Rail Services Pty Limited

ABN 58 000 003 136

Mitsubishi Electric Australia Pty Ltd

ABN 58 001 215 792

Hyundai Rotem Company

Registration Number 194211-0036336

[together the Supplier]

Level 5, Tower A
821 Pacific Highway
Chatswood NSW 2067

Project Deed New Intercity Fleet

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Details

Date

Parties

Name **Transport for NSW (ABN 18 804 239 602)**
Short form name **TfNSW**
Notice details 7 Harvest Street
Macquarie Park NSW 2113
Attention: Project Director, New Intercity Fleet

Name **Transport Asset Holding Entity, formerly known as Rail Corporation New South Wales (ABN 59 325 778 353)**
Short form name **TAHE**
Notice details 470 Pitt Street
Haymarket NSW 2000
Attention: Project Director, New Intercity Fleet

Name **UGL Rail Services Pty Limited (ABN 58 000 003 136), Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792) and Hyundai Rotem Company (a company registered in the Republic of Korea with registration number 194211-0036336)**
Short form name **Supplier**
Notice details Level 8,
40 Miller Street
North Sydney NSW 2060
Attention: [REDACTED]

Background

- A On behalf of TAHE and the Operator, TfNSW has agreed to procure, and the Supplier has agreed to design, develop, manufacture, test, commission, supply and deliver new passenger Rolling Stock, driver training Simulators and other related Assets on the terms and conditions of this deed.
- B TAHE will own the Rolling Stock and the other Assets and the Operator will operate the Rolling Stock.
- C The Supplier has agreed:
 - (i) to equip, maintain and operate a dedicated maintenance facility for the maintenance of the Rolling Stock; and
 - (ii) to undertake maintenance of the Rolling Stock, Simulators and other related Assets, all in accordance with this deed and other relevant NIF Project Agreements.

Agreed terms

Part A – Preliminary Matters

1. Interpretation

1.1 Definitions

In this deed, unless the context otherwise requires, the following expressions have the following meanings:

Aboriginal Participation Plan means a plan that satisfies the requirements of the NSW Government Aboriginal Participation in Construction Guidelines for an "Aboriginal Participation Plan".

Aboriginal Participation Report has the meaning given in paragraph 3.2(c)(i) of Schedule C1.

Accelerated Delivery Schedule refers to Table 3 in Schedule D1.

Acceleration Notice has the meaning given to that term in clause 17.4.

Acceptance means, for a Unit or Simulator, Provisional Acceptance and **Accepted** will be interpreted accordingly.

Acceptance Criteria means, for a Unit or Simulator, any or all of the Provisional Acceptance Criteria, the Final Acceptance Criteria and the Fleet Acceptance Criteria relating to that Asset, as applicable.

Accepted Unit means a Unit for which a Provisional Acceptance Certificate has been issued under this deed.

Access Schedule means Schedule C5.

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.

Accreditation Variation has the meaning given in clause 7.1(a).

Accreditation Variation Application means all and any applications or submissions required to be made to ONRSR under or in accordance with the Rail Safety National Law or Rail Safety National Regulations in order to obtain any Accreditation Variation.

Accreditation Variation Documents means all documentation required to be prepared and submitted to ONRSR to support an Accreditation Variation Application.

Accredited Person has the meaning given in clause 7.1(a).

ACICA has the meaning given in paragraph 1.4(c)(ii) of Schedule B6.

ACICA has the meaning given in paragraph 1.4(c)(ii) of Schedule B6.

ACICA Arbitration Rules has the meaning given in paragraph 1.7(a) of Schedule B6.

ACICA Expedited Arbitration Rules has the meaning given in paragraph 1.7(a) of Schedule B6.

Actual Energy Consumption has the meaning given to it in paragraph 1.4 of Schedule E1.

Additional Fleet means the Units comprising Tranche 4.

Additional Fleet Contract Value is the amount set out in Table 1.8 of Schedule E1 being the total Nominal cost of the Additional Units in the Additional Fleet and associated Spares and Consumables.

Additional MF Works has the meaning given in Amendment Deed No.2.

Additional MF Works Aboriginal Participation Plan means the plan described in the NSW Government APIC Policy developed in relation to the Additional MF Works.

Additional MF Works Aboriginal Participation Report means the report described in the NSW Government APIC Policy, developed at completion of the Additional MF Works.

Additional MF Works Activities has the meaning given in Schedule J2.

Additional MF Works Contract Value is the amount set out in Table 1.8 of Schedule E1 being the total Nominal cost of the Additional MF Works.

Additional MF Works Documentation means, in relation to the Additional MF Works:

- (a) all as built drawings required under the SPR and this deed;
- (b) the originals of all operating and maintenance manuals for all Materials forming part of the Additional MF Works;
- (c) all original warranties;
- (d) all notices, permits, approvals and certificates required to be obtained from relevant Authorities prior to use and occupation of the Maintenance Facility Site or the Maintenance Facility for the intended purposes of such sites and facilities; and
- (e) evidence of compliance with all relevant aspects of the quality assurance system including evidence of having undertaken all final inspections and testing of the Additional MF Works required by that system.

Additional MF Works Licence is the licence granted over the Maintenance Facility Site pursuant to paragraph 1.7 of Schedule C2 and Schedule C7.

Additional MF Works Practical Completion means that stage in the execution of the Additional MF Works when:

- (a) the Additional MF Works are complete except for Minor Defects;
- (b) all Verification Activities which are required to be carried out and passed before the Additional MF Works reach Additional MF Works Practical Completion, have been carried out and passed;
- (c) the Additional MF Works Documentation has been provided to TfNSW;
- (d) all other documents, certificates and other information required under this deed and any Mandatory Requirements which, in the opinion of TfNSW's Representative, are essential for the use, operation and maintenance of the Additional MF Works have been supplied; and
- (e) all directions given by TfNSW's Representative relating to the Additional MF Works pursuant to this deed have been complied with by the Supplier.

Additional MF Works Practical Completion Certificate means, in respect of the Additional MF Works, a certificate referred to in paragraph 2.3(a)(i) of Schedule J1, and substantially in the form set out in Form 8 in Schedule F7, issued by TfNSW's Representative certifying that the Additional MF Works have reached Additional MF Works Practical Completion.

Additional MF Works Rejection Notice means, in respect of the Additional MF Works, a certificate referred to in paragraph 2.3(a)(ii) of Schedule J1, and substantially in the form set out in Form 9 in Schedule F7, issued by TfNSW's Representative giving notice that the Additional MF Works have not reached Additional MF Works Practical Completion.

Additional MF Works Scope means Schedule 4 to Amendment Deed No. 2.

Additional Network Access Right has the meaning given in clause 13.6(a).

Additional Option Units has the meaning given in clause 26.1(a).

Additional Special Event Period has the meaning given in paragraph 4.4(a) of Schedule E1.

Additional Units refers to each of the Units identified as Additional Units in Table 2 of Schedule D1.

Additional Units Delivery Schedule refers to Table 2 of Schedule D1.

Advance Payment Bond has the meaning given in paragraph 2.1(a) of Schedule E7.

Advance Payment Amount means [REDACTED].

Advance Payment Security means an unconditional undertaking:

- (a) issued by a bank approved in writing by TfNSW;
- (b) in the form set out in the Project Deed; and
- (c) for an amount equal to the Advance Payment Amount.

Affected Party has the meaning given in clause 30.1

Agreed Network Access Rights means the Network Access Rights described in and determined in accordance with clause 13.4.

Agreed Rates has the meaning given to it in paragraph 4 of Schedule E4.

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 either Provided Facility Site or any Maintenance Location; or
- (b) breaches any Environmental Law.

AM means additional maintenance.

Amendment Deed No. 1 means the deed entitled Deed of Amendment No.1 – Project Deed – New Intercity Fleet – Contract Number: TPD-14-3841' between TfNSW, TAHE and the Supplier on or about 17 February 2019.

Amendment Deed No. 2 means the deed entitled 'Deed of Amendment No.2 – Project Deed – New Intercity Fleet – Contract Number: TPD-14-3841' between TfNSW, TAHE and the Supplier on or about 10 September 2021.

AM Services means Minor Works or works and services required to rectify a TfNSW Defect pursuant to the Supplier's obligation under Schedule E5 but it excludes Variation Services.

AM Services Cost means the cost (labour and materials) of AM Services, calculated in accordance with paragraph 5.1 of Schedule E5.

AM Services Payment or **AMSP** has the meaning given to it in paragraph 3.1 of Schedule E1 and calculated in accordance with paragraph 4.6 of Schedule E1.

Annual Access Forward Lookahead has the meaning given in clause 13.4(b)(i).

Annual Performance Review means the review by TfNSW described in clause 5.13(a).

Annual Performance Review Report or **APRR** means the report provided by the Supplier in accordance with clauses 5.13(c) and 42.3 and sections 4.1 and 4.4 of the SPR.

Annual Special Event Period means:

Special Event Period	Period	Requirement
New Year's Eve	31st December Commencing at the start of the Availability Period on 31st December to the end of the Availability Period on 1st January.	Six additional Available Units for each Availability Period.
Royal Easter Show	March-April Commencing on the first calendared day and ending on the last calendared day of the Royal Easter Show.	Four additional Available Units for each Availability Period.

Applicable Cure Period has the meaning given in clause 31.3(c)(i).

Approval means any licence, permit, consent, approval, determination, permission, 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 Supplier's Activities;
- (b) for the Operator or another NSW Rail Entity to perform, or continue to perform, their respective Operations Functions; or
- (c) in connection with the occupation, development or use of either Provided Facility Site as contemplated in the NIF Project Agreements,

but does not include:

- (d) any direction given by TfNSW's Representative pursuant to a NIF Project Agreement; or
- (e) the exercise by TfNSW of its rights under a NIF Project Agreement.

Approved Cure Plan has the meaning given in clause 31.3(c).

Approved Mitigation Plan has the meaning given in clause 31.4(c).

Arbitration Expedition Notice has the meaning given in paragraph 1.7(b)(i) of Schedule B6.

Asset means each of:

- (a) the Units;
- (b) the Simulators;
- (c) the Maintenance Facility Equipment; and
- (d) the Maintenance Facility,

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

Asset Condition Assessment means the regular assessment of the condition of the Assets described in section 2.2 of SPR Appendix 05.

Asset Condition Bond has the meaning in paragraph 2.4(a) of Schedule E7.

Asset Information System or **AIS** means the system for the storage, processing, transmission and management of Asset information as referred to in clause 18.2 of this deed and section 2.16 of the SPR.

Asset Management Failure has the meaning given in clause 20.2(b).

Asset Management Plan means the Project Plan of that name.

Asset Management Policy means the policy defined in the Asset Management Plan.

Asset Management Strategy means the strategy of that name described in the Asset Management Plan which meets the requirements of section 2.15.1(a)(vi) of the SPR.

Asset Management System means the Asset management arrangements described in section 2.15 of the SPR.

Asset Register means the register as defined in ASA standard T MU AM 02001 ST.

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 the Department of Transport 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); and
- (c) in the case of the State, it includes:
 - (i) the Minister for Transport and Infrastructure;
 - (ii) the Secretary of the Department of Transport; and
 - (iii) any other person to whom the State delegates a right, power, function or duty from time to time,

but only in so far 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 either party.

Associate Relevant Escrow Information has the meaning given in paragraph 3.3(a) of Schedule A3.

ASX Listing Rules means the official rules of the Australian Securities Exchange, as operated by ASX Limited (ACN 008 624 691), as amended from time to time.

Audit Asset has the meaning given in clause 20.3(c)(i).

Australian Government National Counter Terrorism Plan means the *National Counter-Terrorism Plan 2012*.

Australian Government National Terrorism Public Alert System means the system as described in the National Counter-Terrorism Plan 2012.

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 Supplier's 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 Supplier's Activities.

Available and **Availability** have the meaning given in paragraph 2.3 of Schedule E1.

Available Unit means a Unit that is Available.

Availability Adjustment is an amount calculated under paragraph 4.1 of Schedule E2.

Availability Period or **AP** means the 24 hour period from 0:00:00 to 23:59:59 on any day of the week.

Availability Period Deduction is an amount calculated under paragraph 4.1 of Schedule E2.

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 E9 as varied from time to time in accordance with paragraph 2 of Schedule E9.

Baseline Environmental Site Assessment means a baseline environmental Contamination report:

- (a) procured for the purpose of determining the nature and extent of Contamination or Pollution existing on, in or under either Provided Facility Site prior to the commencement of the relevant Provided Facility Licence;
- (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 relevant Provided 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 Commissioning Facility Site or Maintenance Facility Site (as relevant) to establish a Contamination baseline;
 - (iv) assesses the suitability of the relevant Provided 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 either Provided Facility Site (as relevant) at the date of the Baseline Environmental Site Assessment.

Building Code means *Building Code 2013* dated 25th January 2013 issued under the *Fair Work (Building Industry) Act 2012* (Cth).

Building Code Work means any part of the MFI Works, Additional MF Works or Maintenance Services that are partially or fully funded by the Commonwealth or are otherwise subject to the Building Code.

Business Day means any day in New South Wales other than a Saturday, Sunday or public holiday.

Cancellation means, in relation to a Train, that it suffers a Type 1 Failure, a Type 2 Failure, or a Delay which results in a Type 1 Failure as described in paragraph 6.3(b) of Schedule E2, and references to **Cancelled** will be construed accordingly.

Cancellation Adjustment is an amount in respect of a Type 1 Failure or a Type 2 Failure calculated under paragraph 5.1 of Schedule E2.

Cancellation Deduction Rate is the amount specified in paragraph 5.1 of Schedule E2.

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

Certificate of Serviceability means, in respect of any Unit, a certificate in the form set out in Form 10 in Schedule F7 which is issued by the Supplier before the Handback of that Unit, in accordance with the Interface Protocols and SPR Appendix 05.

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

Change in Disability Law means a Change in Law relating specifically to the ability of persons to access and use the Assets.

Change in Law means a change to, or coming into effect or implementation:

- (a) in respect of the Additional MF Works, after the date of Amendment Deed No. 2; and
- (b) in respect of all other Supplier's Activities, after the date of this deed of a Legal Requirement.

Change in Mandatory Requirements means a Change in Law or a Change in Rail Industry Standards.

Change in Rail Industry Standards means a change to a Rail Industry Standard, or a Rail Industry Standard coming into effect or implementation:

- (a) in respect of the Additional MF Works, after the date of Amendment Deed No. 2; and
- (b) in respect of all other Supplier's Activities, after the date of this deed.

Change in Rail Safety Law means a Change in Law relating to rail safety.

Claim includes any claim, action, demand or proceeding (including by way of contribution or indemnity) including for payment of money (including damages), for suspension of obligations or for an extension of time:

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

- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Supplier's Activities or either party's conduct, including:
 - (i) in respect of the Additional MF Works or the Additional MF Works Activities, after the issue of the Notice to Proceed; and
 - (ii) in respect of all other Supplier's Activities at the date of this deed; or
- (c) otherwise at law or in equity, including:
 - (i) under or for breach of statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for strict liability, breach or for restitution including restitution based on unjust enrichment.

Claim Event has the meaning given in clause 50.1(a).

CLM Act means *Contaminated Land Management Act 1997* (NSW).

Code Monitoring Group means the group established by the Commonwealth under the '*Building Code 2013 – Supporting Guidelines for Commonwealth Funding Entities*' to monitor implementation and compliance matters with the Building Code.

Collateral Warranty Deed Poll means a deed poll in the form set out in Schedule F3.

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 A2.

Commissioning Facility means the facility within the Commissioning Facility Site.

Commissioning Facility Licence is the licence granted over the Commissioning Facility Site to undertake the Commissioning Works pursuant to paragraph 1.4 of Schedule C2, and substantially on the terms provided in Part 1 of Schedule F1.

Commissioning Facility Site means a commissioning facility site as contemplated in section 3 of SPR Appendix 04.

Commissioning Works means those parts of the Rolling Stock Supply Works and the Simulator Supply Works which occur, or are intended to occur, at the Commissioning Facility Site.

Commonwealth means the Commonwealth of Australia.

Compensable Change in Law means:

- (a) a Project Specific Change in Law;
- (b) a Change in Disability Law; or
- (c) a Change in Rail Safety Law,

but excludes any Change in Law which:

- (d) in respect of the Additional MF Works, at the date of Amendment Deed No. 2; and
- (e) in respect of all other Supplier's Activities, at the date of this deed,

has been published or of which public notice has been given or which a party experienced and competent in the delivery of works and services similar to the Supplier's Activities would have reasonably foreseen or anticipated.

Compensation Event has the meaning given in clause 29.2.

Competency Management Plan has the meaning given in clause 8.11(a)(i).

Completion Documents means:

- (a) two original copies of this deed;
- (b) two original copies of each Parent Guarantee;
- (c) an original copy of the Advance Payment Bond for the mobilisation payment;
- (d) an original copy of the Escrow Agreement required pursuant to clause 48 and paragraph 3.1 of Schedule A3;
- (e) certified copies of any Accreditation and AEO status required by the Supplier to perform the Supplier's Activities;
- (f) an original copy of each Verification Certificate from each participant of the Supplier and from each Guarantor properly completed and with all required attachments (such attachments being certified copies):
 - (i) with respect to an entity domiciled in Australia, duly signed by two directors,
 - (ii) with respect to an entity domiciled in Japan, duly signed and sealed by a representative director of that entity; and
 - (iii) with respect to an entity domiciled in Korea, affixed with the company seal in the presence of a representative director of that entity,
 and dated:
 - (iv) for each participant of the Supplier, no earlier than 2 Business Days before the date on which this deed is executed by the Supplier; and
 - (v) for each Guarantor, no earlier than 2 Business Days before the date on which the relevant Parent Guarantee is executed by that Guarantor;
- (g) if FIRB Consent is required, either:
 - (i) a certified copy of any unconditional approval from the Treasurer of the Commonwealth of Australia or his or her agent advising that there is no objection under the *Foreign Acquisitions and Takeover Act 1975* (Cth) (**FATA**) or under the Australian Government's foreign investment policy to the Supplier's participation in the Project, including entry by the Supplier into the Provided Facility Licence, each NIF Stabling Yard Licence, the MFI Works Licence and the Additional MF Works Licence; or
 - (ii) the Treasurer is, by reason of lapse of time, no longer empowered to make an order under FATA in respect of the Project;
- (h) certified copies of each power of attorney (if any) granted by a party (other than TfNSW or TAHE) to a NIF Project Agreement for the execution of the NIF Project Agreements to which that party is intended to be a party, which:
 - (i) where the entity is domiciled in Australia, has been:
 - (A) duly executed under common seal or by two directors or a director and secretary; and
 - (B) if applicable, showing evidence of stamping and/or evidence of registration in each applicable jurisdiction;
 - (ii) where the entity is domiciled in Japan, has been:
 - (A) duly executed by the representative director of that entity; and
 - (B) if applicable, showing evidence of stamping and/or evidence of registration in each applicable jurisdiction; and
 - (iii) where the entity is domiciled in Korea, has been duly executed by:

- (A) the representative director of that entity by affixing the corporate seal, as evidenced by the seal impression certificate of the representative director; or
 - (B) such other authorised director or officer of that entity; and
 - (C) if applicable, showing evidence of stamping and/or evidence of registration in each applicable jurisdiction;
- (i) a certified copy of the Consortium Agreement (including any amendments); and
 - (j) any other document that the parties agree in writing from time to time is a Completion Document.

Concept Design means the concept design for the Assets prepared by the Supplier as part of the Tender and incorporated into the SPR.

Condition Audit has the meaning given in clause 20.3(a).

Condition Auditor has the meaning given in clause 20.3(a).

Conditions Precedent means the conditions set out in Schedule A1.

Configuration Management Plan means the Project Plan of that name.

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**, **Confirmed Delivery Program** and **Confirmed Technical Document** will be interpreted accordingly.

Consortium Agreement means the document titled '*New Intercity Fleet Consortium Agreement*' between UGL Rail Services Pty Limited (ABN 58 000 003 136), Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792) and Hyundai Rotem Company (a company registered in the Republic of Korea with registration number 194211-0036336) dated 22 December 2015 as varied on or about 16 August 2016.

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

Construction Compliance Unit or **CCU** means the unit within NSW Industrial Relations established to monitor compliance with the NSW Code and NSW Guidelines.

Construction Skills Development Plan means the plan of that name published by TfNSW and provided to the Supplier from time to time in accordance with the Training Management Guidelines.

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

Contract Information means Existing Contract Information and New Contract Information.

Contract Review Meeting means a meeting held in accordance with clause 5.8.

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).

COVID-19 means the novel coronavirus disease caused by the severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**) and declared as a pandemic by the World Health Organisation on 11 March 2020.

CPI means the 'Weighted Average of Eight Capital Cities: All Groups Consumer Price Index' as maintained and published quarterly by the Australia Bureau of Statistics. If the 'Weighted Average of Eight Capital Cities: All Groups Consumer Price Index' ceases to be published quarterly or its method of calculation substantially alters, then the 'Weighted Average of Eight Capital Cities: All Groups Consumer Price Index' is to be replaced in accordance with clause 1.16 and any necessary consequential amendments are to be made.

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

Crew has the same meaning as the expression Train Crew.

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

Customer Delay Seconds means the elapsed period of Delay (in seconds) calculated at each Monitored Platform on a current trip basis and is measured from the time that a Train is scheduled in the Train Plan to be at a Monitored Platform to the time the Train actually arrives at that Monitored Platform.

Customer Impact Delay means an amount calculated under paragraph 6.2 of Schedule E2 to recognise the impact to Customers of experiencing a Delay.

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 4.2(a)(i)(A)(II) of Schedule C2.

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

Date for Additional MF Works Commencement means six months after the last package of Technical Documents comprising the System Definition Review for the Additional MF Works has been submitted in accordance with this deed and provided that the Technical Documents comprising the System Definition Review for the Additional MF Works have been prepared to a level of detail and quality sufficient for TfNSW and TAHE to seek the TfNSW Approvals, as adjusted in accordance with this deed.

Date for Additional MF Works Practical Completion has the meaning in Schedule J2.

Date for Commissioning Works Commencement means the relevant Site Access Date, being the date on which the Supplier may access the Commissioning Facility Site to commence the Commissioning Works.

Date for Additional MF Works Practical Completion has the meaning in Schedule J2.

Date of Additional MF Works Practical Completion means the date certified by TfNSW's Representative in an Additional MF Works Practical Completion Certificate in accordance with paragraph 2.3(a)(i) of Schedule J1 to be the date upon which Additional MF Works Practical Completion was achieved.

Date for Final Acceptance means, for each Unit:

- (a) that is a Stored Unit, the date that is six months after that Unit achieves Running Readiness; or
- (b) that is not a Stored Unit, the date that is six months after the Date of Provisional Acceptance of that Unit,

as may be adjusted under this deed.

Date for MFI Works Commencement means the date agreed by the parties and the MFC Contractor (in writing) through the Interface Working Group as the date on which the Supplier can commence the MFI Works pursuant to paragraph 1.1 of Schedule C2, in accordance with the

MFC Contractor's detailed coordinated program for the performance of the MFI Works and MFC Works as referred to under paragraphs 1.4(a)(iii) and 1.7(c)(iii)(C) of Schedule C1.

Date for Provisional Acceptance means, in respect of any Unit, the date for Provisional Acceptance of that Unit as set out in Schedule D1, as may be adjusted under this deed.

Date of Final Acceptance of a Unit or Simulator means the date identified by TfNSW's Representative in a Final Acceptance Certificate as the date on which Final Acceptance of the Unit or Simulator was achieved.

Date of Fleet Acceptance of the Fleet means the date identified by TfNSW's Representative in a Fleet Acceptance Certificate as the date on which Fleet Acceptance of the Fleet was achieved.

Date of MFI Practical Completion means the date certified by TfNSW's Representative in a MFI Practical Completion Certificate in accordance with Schedule C1 to be the date upon which MFI Practical Completion was achieved.

Date of MFC Practical Completion means the date on which MFC Practical Completion is certified in accordance with a MFC Practical Completion Certificate.

Date of Provisional Acceptance of a Unit or Simulator means the date identified by TfNSW's Representative in a Provisional Acceptance Certificate as the date on which Provisional Acceptance of the Unit or Simulator 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), 5.7 (Key Personnel), 10 (Information Documents), 21 (Project Security), 40 (Representations and warranties), 41 (Dispute resolution), 43 (Disclosure, confidentiality, probity and publicity), 44 (Restrictions on Dealings), 45 (Change in ownership / Control), 46 (Subcontracting), 51 (Notices), 53.2 (Taxes other than GST and duties), 54 (General), Schedule B6 (Dispute Resolution Procedures), paragraphs 1.11 (Pre-Agreed Variations), 2.3(a), (c), (d), (e) and (f) (TfNSW may approve or reject) and 2.4 (Supplier to bear risks and costs) of Schedule E3 (Variations) and Schedule E7 (Project Security).

DDA means the *Disability Discrimination Act 1992* (Cth).

Deed of Disclaimer means collectively, the document titled '*Schedule A6 Deed of Disclaimer*':

- (a) executed by Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792) on or about 18 December 2015;
- (b) executed by UGL Rail Services Pty Ltd (ABN 58 000 003 136) on or about 18 December 2015; and
- (c) executed by Hyundai Rotem Company (a company registered in the Republic of Korea with registration number 194211-0036336) on 18 December 2015.

Deemed Available and **Deemed Availability** have the meaning given to them in paragraph 2.6 and paragraph 2.9 of Schedule E1.

Default Notice has the meaning given in clause 31.2.

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, fault, error, shrinkage or omission in any of the Assets, the Deliverables or the Supplier's Activities; and
- (b) any other aspect of any of them which is not in accordance with the SPR or any other requirement of this deed.

Defect Liability Bond means each Project Bond described in paragraph 2.2(a) of Schedule E7.

Defect Rectification Principles means rectifying Defects or performing Minor Works in a manner that, as far as practicable, minimises:

- (a) Life Cycle Cost to TfNSW, the Operator or NSW Rail Entities;
 - (b) any adverse impact on the performance of other Maintenance Services by the Supplier;
 - (c) any adverse impact on the Availability or performance of Trains; and
 - (d) incidences where works are performed outside the Time to Complete, and
- that is consistent with Good Industry Practice.

Defective Prior MF Works means Prior MF Works which:

- (a) have not been properly performed or are otherwise inconsistent with the requirements of the NIF Project Agreements or MFC Works Contract; and
- (b) were not capable of being identified or anticipated by the Supplier prior to the date of Amendment Deed No. 2 if the Supplier had complied with paragraph 1.2(b)(i) of Schedule J1.

Delay occurs when a Train is behind its schedule at any point in its Journey, substantially because of a Fault affecting that Train on that Journey. It is measured in Customer Delay Seconds.

Delay Adjustment is an amount calculated under paragraph 6.1 of Schedule E2.

Delay LDs has the meaning given to it in clause 17.10(a).

Delay LDs Cap Initial Fleet has the meaning given in clause 39.3(a).

Delay LDs Cap Additional Fleet has the meaning given in clause 39.4(a).

Delay Period has the meaning given to in clause 17.10(a).

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

Delivery Activities means:

- (a) the Rolling Stock Supply Works;
- (b) the Simulator Supply Works;
- (c) the MFI Works; and
- (d) the Additional MF Works.

Delivery Location means:

- (a) for each Unit, the delivery location described in Schedule D1 for that Unit;
- (b) for each Simulator, a facility of the Operator in New South Wales to be nominated by TfNSW's Representative prior to delivery; or
- (c) for Spares and Consumables, where relevant under Schedule D6, the Maintenance Location nominated by TfNSW's Representative for delivery of that Spare or Consumable.

Delivery Milestone means a milestone described in Table 1.1, Table 1.6 or Table 1.7 of Schedule E1.

Delivery Phase means the period from the Commencement Date until the Date of Provisional Acceptance of the last Unit to be supplied by the Supplier under this deed.

Delivery Phase Performance Report or **DPPR** means the monthly report provided by the Supplier in accordance with clause 42.3(a) and sections 2.1.3(c)(i) and 4.2 of the SPR.

Delivery Program means the Program of the Delivery Activities, as updated from time to time in accordance with clause 17.3.

Delivery Schedule refers to Table 1 in Schedule D1.

Design Completion Date means the date when all Technical Documents for the Detailed Design are Confirmed Documents and the Detailed Design is otherwise completed in accordance with the SPR and the other requirements of this deed.

Design Development Process means the process for development of the Technical Documents as described in Schedule B1.

Design Development Requirements means the requirements described in Schedule B1 for the Design Development Process.

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).

Design Presentation has the meaning given in paragraph 3.1 of Schedule B1.

Design Stage means a stage in the development of the design identified in section 3.1(a) of the SPR.

Detailed Design means the design presented at the Detailed Design Review.

Detailed Design Review or **DDR** means the review conducted in accordance with sections 3.1(a)(iii) and 3.4 of the SPR.

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

Difference in Conditions has the meaning given in clause 8.17(b)(v).

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

Dispute Resolution Procedures means the procedures for hearing and resolving Disputes set out in clause 41 and Schedule B6.

Disputed Amount has the meaning given in clause 25.11.

Draft Cure Plan has the meaning given in clause 31.3(a).

Draft Minor Defect Rectification Plan means the plan submitted by the Supplier to TfNSW in accordance with clause 16.2(c) and/or paragraph 2.4(a) of Schedule C1 and/or paragraph 2.4(a) of Schedule J1 (as relevant).

Draft Mitigation Plan has the meaning given in clause 31.4(a).

DSAPT has the meaning given in section 2.15(c) of SPR Appendix 02.

DTRS has the meaning given in section 3.14.2(a) of SPR Appendix 02.

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

EMC means electromagnetic compatibility.

EMC Management Plan means the Project Plan of that name.

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 Supplier's Activities.

End Date has the meaning given in clause 3.2.

Energy Adjustment Factor means the metric of that name calculated in accordance with paragraph 1.4 of Schedule E1.

Energy Consumption Deduction has the meaning given in paragraph 1.4 of Schedule E1.

Enforcement Rules of the KOSPI Market Disclosure Regulation means the official regulations stipulating the matters necessary for the enforcement of the KOSPI Market Disclosure Regulations.

Entry Point means for an Availability Period, the place where a Train is to first enter the Network in accordance with the Train Plan.

Entry Time means for an Availability Period, the time at which a Train is to enter the Network (excluding the Provided Facilities and any NIF Stabling Yard) as set out in the Train Plan.

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.

Environment and Sustainability Management Plan means the Project Plan of that name.

Environmental Bond means the Project Bond described in paragraph 2.5(a) of Schedule E7.

Environmental Guidelines means:

- (a) Contaminated Sites: Sampling Design Guidelines (1995) published by NSW Environment Protection Authority;
- (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
- (e) Guidelines of the Duty to Report Contamination under the Contaminated Land Management Act 1997 (2009) published by Department of Environment Climate Change and Water NSW.

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/or
- (c) regulations and any lawful order, legally binding guideline, notice, direction or requirement 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 either of the Provided Facility Sites in accordance with the Environmental Guidelines which contains:

- (a) a report on the results of a detailed visual inspection of the condition of the relevant Provided Facility Site in comparison with the conditions identified in the Baseline Environmental Site Assessment for that Provided Facility Site. In particular, the report must assess the ground surfaces for signs of leaks/spills of fuels, oils and/or chemicals;
- (b) a groundwater assessment, involving the sampling and analysis of groundwater taken from the network of groundwater monitoring wells established as part of the Baseline Environmental Site Assessment for the relevant Provided Facility Site. Groundwater conditions are to be assessed in comparison with the conditions identified in the Baseline Environmental Site Assessment for that Provided Facility Site; and
- (c) where changes in conditions are identified, an assessment of any associated risks of harm, likely sources and management actions.

Environmental Representative or **ER** means the independent environmental representative appointed to the Project by TfNSW and any person appointed by TfNSW as a replacement from time to time and notified to the Supplier.

EOI means the Call for Expressions of Interest issued by TfNSW on 11 August 2014 in connection with the Project.

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

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

Escrow Agent means an escrow agent approved by TfNSW.

Escrow Agreement means a deed substantially in the form set out in Schedule F5.

Escrow Information means:

- (a) all information necessary for a manufacturer of familiar product industry sector to obtain parts and/or materials and perform manufacturing processes to fully duplicate Assets; and
- (b) all Contract Information (other than Contract Information contained within the Asset Information System or PDCS) where the Intellectual Property Rights to the Contract Information are owned by, or licensed to, the Supplier, any member of the Supplier Group or their Related Bodies Corporate.

Estimated Rectification Cost has the meaning given in clause 20.3(d)(iii).

ETCS has the meaning given in section 3.21(a) of SPR Appendix 02.

Event Recorder means the event recorder described in section 3.16.4 of SPR Appendix 02.

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

Failure means that:

- (a) a Train is Unavailable;
- (b) a Train suffers a Cancellation;
- (c) a Train suffers an incidence of Delay; or
- (d) a Simulator suffers a Simulator Failure.

Fault means a Defect in an Asset or a Deliverable which has the consequence that the Asset or Deliverable:

- (a) does not comply with a Mandatory Requirement;
- (b) in the case of a Unit, does not comply with the Minimum Operating Standards; or
- (c) is otherwise not fit for purpose.

Fault Rectification Plan has the meaning given in clause 18.10.

Final Acceptance means, in respect of any Unit or Simulator, that the Unit or Simulator complies with the Final Acceptance Criteria applicable to that Unit or Simulator.

Final Acceptance Certificate means, in respect of a Unit or Simulator, a certificate in the form set out in Form 2 in Schedule F7 issued by TfNSW certifying that the Unit or Simulator has achieved Final Acceptance.

Final Acceptance Criteria means, in respect of a Unit or Simulator, the criteria for the issue of a Final Acceptance Certificate relating to it, as set out in Schedule D2.

Final Acceptance Default Date means, for each Unit:

- (a) that is a Stored Unit, the date that is 12 months after that Unit achieves Running Readiness; or
- (b) that is not a Stored Unit, the date that is 12 months after the Date of Provisional Acceptance of that Unit,

as may be adjusted under this 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 a Provided Facility Site, and compares any such Contamination of that Provided Facility Site with any Contamination identified in the Baseline Environmental Site Assessment for that Provided 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 that Provided Facility Site and adjoining or neighbouring land or waterway to the same condition set out in the Baseline Environmental Site Assessment for that Provided Facility Site.

Final Frequent Breaches Notice means a notice given under clause 31.7(c).

Final Inspection has the meaning given in clause 20.3(a).

Final Persistent Breach Notice means a notice given under clause 31.6(c).

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

FIRB Consent means a "no-objections" letter from the Treasurer under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) to the Supplier's participation in the Project.

First Indexation Factor or **I₁** has the meaning given in clause 1.15(b).

Fixed Unit Payment or **FUP** has the meaning in paragraph 4.1(a) of Schedule E1.

Fleet means:

- (a) the Initial Fleet;
- (b) if TAHE (or TfNSW on behalf of TAHE) elects to purchase any or all of the Additional Option Units, it includes the Additional Option Units; and
- (c) the Additional Fleet.

Fleet Acceptance means in respect of the Fleet, that the Fleet complies with the Fleet Acceptance Criteria.

Fleet Acceptance Certificate means, in respect of the Fleet, a certificate in the form set out in Form 3 in Schedule F7 issued by TfNSW certifying that the Fleet has achieved Fleet Acceptance.

Fleet Acceptance Criteria means, in respect of the Fleet, the criteria for the issue of a Fleet Acceptance Certificate relating to it, as set out in Schedule D2.

Fleet Acceptance Sunset Date means the date that is three years after the Date of Provisional Acceptance of the final Unit in the Fleet.

Fleet Contract Value is the sum of:

- (a) Initial Fleet Contract Value; and
- (b) Additional Fleet Contract Value.

Fleet Longstop Date means the date that is 12 months after the Tranche 4 Milestone Date as adjusted in accordance with this deed.

Force Majeure Event means each of the following events:

- (a) flood reasonably expected to occur less frequently than once every 50 years, cyclone, mudslide, landslide, earthquakes and droughts declared as a state of emergency;
- (b) a "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this deed);
- (c) war (declared or undeclared), armed conflict, riot, civil commotion;
- (d) ionising radiations or Contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (e) fire or explosion at or affecting either Provided Facility or either Provided Facility Site caused by an event referred to in clauses (a) to (d) above,
- (f) which (either separately or together):
- (g) is beyond the reasonable control of the Affected Party and its Associates; and
- (h) directly prevents or delays the Affected Party from performing all or some of its obligations under a NIF Project Agreement (other than an obligation to pay money),
- (i) where that event or the consequences of the event:

- (j) was not otherwise caused or contributed to by the Affected Party or its Associates failing to comply with its obligations under a NIF Project Agreement; and
- (k) if the Affected Party is the Supplier, could not have been prevented, avoided, remedied or overcome by the Supplier, its Associates or the Supplier's Personnel taking those steps which a prudent, experienced and expert designer, manufacturer, supplier and maintainer of rolling stock and rolling stock maintenance facilities (as applicable) would have taken using Good Industry Practice, including the taking out of appropriate insurances.

FRACAS has the meaning given in clause 13.3(b).

Forecast Maintenance Payment means the amount calculated in accordance with clause 39.5(b).

Forecast Scheduled Maintenance Payment means the amount calculated in accordance with paragraph 2.3 of Schedule E7.

Frequent Breaches means breaches described in clause 31.7(a), regardless of whether those breaches constitute a Supplier Event of Default.

Frequent Breaches Notice means a notice given under clause 31.7(a).

General Liability Cap has the meaning given in clause 39.1.

Generally Approved AM Services means AM Services that TfNSW's Representative from time to time notifies the Supplier are generally approved. It includes, at the Commencement Date, AM Services required to rectify incidences of TfNSW Defects:

- (a) the AM Services Cost of which:
 - (i) can be calculated solely on the basis described in paragraph 5.1(a) of Schedule E5; or
 - (ii) can be calculated on the basis described in paragraphs 5.1(a) to 5.1(d) of Schedule E5 and do not exceed:
 - (A) [REDACTED]
 - (B) [REDACTED]
- (b) that will not adversely affect the Supplier's ability to ensure that TfNSW has the Required Availability of Units in any Availability Period in accordance with clause 19.1(b)(ii).

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.

Government Action means a Legal Requirement by the New South Wales government, or any other State or Territory government in Australia, the Commonwealth Government of Australia, or the governments of Germany, France or Switzerland relating to:

- (a) work stoppages;
- (b) mandatory business, service or workplace closures; or
- (c) full or partial lockdowns of affected areas,

resulting from COVID-19 which the Supplier or its Subcontractors must comply with in carrying out the Additional MF Works.

Graffiti includes any illicit writing, drawing or painting upon any surface of an Asset.

GST has the meaning given in the GST Act.

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

GST Amount has the meaning given in clause 53.1(c).

GST Supplier has the meaning given in clause 53.1(c).

Guarantor means each of:

- (a) Mitsubishi Electric Corporation (a company registered in Japan with registration number 0100-01-008772); and
- (b) UGL Pty Limited (ABN 85 009 180 287).

Handback means the process of delivery of a Train from the Supplier to the Operator from maintenance as described in the Interface Protocols.

Handback Point means the location designated by TfNSW or a NSW Rail Entity for Handback of a Train to occur.

Handover means the process of delivery of a Train from the Operator to the Supplier for maintenance as described in the Interface Protocols.

Handover Point means the location designated by TfNSW or a NSW Rail Entity for Handover of a Train to occur.

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 section 13-15 of the GST Act.

In Service has the meaning given in paragraph 2.4 of Schedule E1.

In Service Reliability Failure means a Type 1 Failure, Type 2 Failure or a Delay of more than 180 Customer Delay Seconds.

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

and each of their respective officers and employees.

Independent Expert means an Independent Expert appointed by:

- (a) TfNSW's Representative in accordance with clause 17.7(a); or
- (b) the parties in accordance with paragraph 1.4(a) of Schedule B6.

Independent Expert Determination Agreement has the meaning given in paragraph 1.4(f) of Schedule B6.

Independent Expert Determination Rules has the meaning given in paragraph 1.4(h) of Schedule B6.

Independent Safety Assessor or **ISA** means the assessor appointed by TfNSW to perform independent assurance duties in accordance with ASA standard TS 20001 and section 2.10.2 of the SPR.

Indicative Network Access Rights means, in respect of each Network Access Year, the Network Access Rights specified for that period in the Verification Plan.

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

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 A6;
- (b) issued or made available by, or on behalf of, TfNSW or the State to the Supplier in connection with the Tender Process, the Supplier's 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 Tender Process, the Supplier's Activities or the Project (including anything issued or made available through TfNSW's website), but which did not form part of the EOI or the RFT (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:

- (a) on, before or after the date of submission of the Tender (including any such information, data, document or material made available as part of the EOI); or
- (b) 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.

Initial Fleet means, together, Tranche 1, Tranche 2 and Tranche 3.

Initial Fleet Option Units means additional Units and/or Cars being purchased by TAHE pursuant to clause 26 that:

■ [REDACTED]
■ [REDACTED]

Initial Fleet Contract Value is the amount set out in Table 1.1 of Schedule E1, being the Nominal cost of all Units in the Initial Fleet and associated Spares and Consumables plus the Nominal cost of the Simulators and all associated Spares and Consumables.

Initial Project Plans has the meaning given in clause 9.2(b).

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;
- (h) with respect to an entity domiciled in Japan, a Japanese Insolvency Event;
- (i) with respect to an entity domiciled in Korea, a Korean Insolvency Event; or
- (j) 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 37.17(a).

Insurance Proceeds Account means the account referred to in clause 37.17(b).

Intellectual Property Register means the register described in paragraph 1.4 of Schedule A3.

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.

Intercity Services means rail passenger services of any of the Fleet on the Network.

Interface Protocols means the interface protocols between the Supplier, TfNSW and the NSW Rail Entities described in SPR Appendix 10, as amended from time to time in accordance with section 2.1 of SPR Appendix 10 and this deed generally.

Interface Working Group has the meaning given in paragraph 1.7(a) of Schedule C1.

Interim Final Acceptance means, in respect of a Stored Unit, that the Stored Unit complies with the Interim Final Acceptance Criteria applicable to that Stored Unit.

Interim Final Acceptance Certificate means, in respect of a Stored Unit, a certificate in the form set out in Form 19 in Schedule F7 issued by TfNSW certifying that the Stored Unit has achieved Interim Final Acceptance.

Interim Final Acceptance Criteria means, in respect of a Stored Unit, the criteria for the issue of an Interim Final Acceptance Certificate relating to it, being the Final Acceptance Criteria but excluding the criteria set out in paragraphs 1.4(b), (c) and (d) of Schedule D2.

Into Storage Notice has the meaning given in paragraph 3(a)(i) of Schedule I1.

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.

Japanese Insolvency Event means, in relation to an entity, in addition to paragraphs (a) - (g) and (j) of the definition of Insolvency Event in this clause 1.1, the occurrence of any of the following events:

- (a) it:
 - (i) becomes unable to pay its debts as they fall due (*shiharai funou*) or evidences its inability to pay its debts generally as they fall due to a creditor (*shiharai teishi*); or
 - (ii) at any time it has liabilities in excess of its assets (*saimu chouka*);
- (b) a petition for bankruptcy (*hasan*), corporate reorganisation (*kaisha kousei*), civil rehabilitation (*minji saisei*), special liquidation (*tokubetsu seisan*), specified mediation (*tokutei choutei*) or any similar proceedings in Japan are filed against it; and
- (c) a clearing house initiates procedures for suspension of transactions by that entity with banks or similar institutions.

Journey means a train service from the timetabled departure Platform to the timetabled Terminating Platform, generally reflecting the groupings and sequencing of Station Weightings.

Key Personnel means each of the persons named in Schedule A7, as replaced (if at all) in accordance with clauses 5.7(b) or 5.7(c).

Korean Insolvency Event means, in relation to an entity, in addition to paragraphs (e), (f), (g) and (j) of the definition of Insolvency Event in this clause 1.1, the occurrence of any of the following events:

- (a) an application is made (other than for a frivolous or vexatious reason) for a winding up, Workout, rehabilitation or bankruptcy and the application is not dismissed or effectively withdrawn within 30 Business Days;
- (b) a court renders a winding up, rehabilitation or bankruptcy order/decision/judgment, 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 is notified by its main creditor bank that it is showing signs of default pursuant to the *Corporate Restructuring Promotion Act of Korea*;
- (d) its qualified creditors decide to commence a Workout;
- (e) it passes a resolution of the board of directors or shareholders/equity holders for its winding up, Workout, rehabilitation or bankruptcy, 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;
- (f) a receiver or trustee (or an analogous person) in rehabilitation or bankruptcy is appointed in respect of the entity or any of its assets; or
- (g) it is suspended from transactions with a clearing house for failure to make settlement payments thereto.

KOSPI Market Disclosure Regulation means the official regulations stipulating the matters necessary for reporting, disclosing and managing the corporate information in the Korea Composite Stock Price Index (or KOSPI) Market established by the Korea Exchange pursuant to Article 391 of the *Financial Investment Services and Capital Markets Act of Korea*.

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, either Provided Facility Site or any Maintenance Location any matter whether solid, liquid or gaseous that:

- (a) causes or is likely to cause degradation of that Provided Facility Site or 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.

Late Comment has the meaning given in paragraph 2.6 of Schedule B3.

Legal Requirements includes:

- (a) any statute, law, regulation, order, rule, code, ordinance, guideline, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation;
- (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:

- (a) all Intellectual Property Rights and trade secrets and know how comprised in or related to the Project and the Deliverables including the Contract Information; and
- (b) following a Release Event (as defined in the Escrow Agreement), the Relevant Source Code and Escrow Information.

Licensor means the registered proprietor of the relevant NIF Stabling Yard.

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

Liquidated Damages Cap Additional MF Works has the meaning given in clause 39.11(a).

Local Possession Authority or **LPA** means an advertised formal authority from Sydney Trains to occupy a closed defined portion of track for a specified period.

Long Train means the Train configuration of that name which meets all requirements for that configuration as are provided in SPR Appendix 02.

Long Unit means a Unit comprised of six Cars.

Longstop Milestone means either or both of:

- (a) the issuance by TfNSW of Provisional Acceptance Certificates for every Unit in Tranche 1 by the Tranche 1 Longstop Date; or
- (b) the issuance by TfNSW of Provisional Acceptance Certificates for every Unit in the Initial Fleet by the Fleet Longstop Date.

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.

Lumpy Maintenance Payment means a Lumpy Maintenance Payment for the Initial Fleet or a Lumpy Maintenance Payment for the Additional Fleet.

Lumpy Maintenance Payment for the Additional Fleet or **LMP_{AF}** has the meaning given in paragraph 4.1 of Schedule E1.

Lumpy Maintenance Payment for the Initial Fleet or **LMP_{IF}** has the meaning given in paragraph 4.1 of Schedule E1.

Maintenance Bond means each of the Project Bonds described in paragraph 2.3(a) of Schedule E7.

Maintenance Bonding Sum has the meaning given in paragraph 2.3(a) of Schedule E7.

Maintenance Facility means the facility 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 for the purpose of undertaking the Supplier's Activities after the date on which the Supplier achieves MFI Practical Completion. It excludes plant and equipment to be installed and commissioned as part of the Other Works.

Maintenance Facility Licence is the licence granted over the Maintenance Facility Site pursuant to paragraph 1.2 of Schedule C2, and substantially on the terms provided in Part 2 of Schedule F1.

Maintenance Facility Licence Commencement Date means the date of commencement of the Maintenance Facility Licence as set out in paragraph 1.2(a) of Schedule C2.

Maintenance Facility Site means the maintenance facility site as contemplated by SPR Appendix 04, and once the Additional MF Works are completed, includes the Additional MF Works.

Maintenance Liability Cap has the meaning given in clause 39.5(c).

Maintenance Liability Period has the meaning given in clause 39.5(a).

Maintenance Location means:

- (a) the Commissioning Facility Site;

- (b) after MFC Practical Completion:
 - (i) the Maintenance Facility; or
 - (ii) the Maintenance Facility Site; and
- (c) at all times following Provisional Acceptance of the first Unit:
 - (i) a NIF Stabling Yard; or
 - (ii) an Other Site.

Maintenance Payment or **MP** has the meaning given in paragraph 4.1 of Schedule E1.

Maintenance Phase means the period:

- (a) starting on the earliest to occur of:
 - (i) Provisional Acceptance of the first Simulator; and
 - (ii) the commencing date under the Commissioning Facility Licence; and
- (b) ending on the End Date.

Maintenance Phase Performance Report or **MPPR** means the monthly report provided by the Supplier in accordance with clause 42.3 and sections 2.1.3(c)(ii) and 4.3 of the SPR.

Maintenance Services means that part of the Supplier's Activities comprising the planned and unplanned maintenance of the Assets during the Contract Term, as generally described in SPR Appendix 05 and the NIF Project Agreements.

Maintenance Services Sum means the amount calculated in accordance with clause 39.5(b).

Maintenance Works Program means the Program described in clause 18.3(c) and provided as part of the Supplier's reporting obligations under section 4 of the SPR.

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

Major Graffiti means Graffiti on a Unit covering an area in excess of 10m² using a technique that closely encloses the affected area.

Mandatory Comment has the meaning given in paragraph 2.3(b) of Schedule B3.

Mandatory Modification means a Modification required to ensure compliance of Assets with a Change in Law or Change in Rail Industry Standards.

Mandatory Requirements means Legal Requirements and Rail Industry Standards, or any of them.

Manufacturing and Procurement Plan means the Project Plan of that name.

Marginal Unit Adjustment Payment or **MUAP** has the meaning given to it in paragraph 4.4 of Schedule E1.

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

Mediation Cut Off Date has the meaning given in paragraph 1.7(a) of Schedule B6.

MDBF means the mean distance between occurrences of any In Service Reliability Failure.

MF Site has the meaning given in Schedule J2.

MFC means Maintenance Facility construction.

MFC Brief means Schedule H.

MFC Contractor means the contractor to be engaged by TfNSW to undertake the MFC Works.

MFC Defect means any defect, deficiency, fault, error, shrinkage or omission in the MFC Works arising from a breach of the MFC Works Contract, to the extent such defect, deficiency, fault, error, shrinkage or omission in the MFC Works does not occur or arise from an act or omission of the Supplier or the Supplier's Personnel in undertaking the Supplier's Activities (including a breach of a NIF Project Agreement).

MFC Defects Liability Period means the defects liability period under the MFC Works Contract.

MFC Practical Completion means that stage in the execution of the MFC Works where practical completion (or its equivalent) is achieved in accordance with the MFC Works Contract.

MFC Practical Completion Certificate means, in respect of MFC Works, a certificate issued by TfNSW's Representative under the MFC Contract certifying that MFC Practical Completion has been reached.

MFC Requirements means the requirements for the design and construction of the Maintenance Facility Site and Maintenance Facility as set out in SPR Appendix 04.

MFC Review Procedures means the procedure for review of, and comment on, material relevant to the MFC Works, in accordance with Schedule B3.

MFC Works means the works to be undertaken pursuant to the MFC Works Contract.

MFC Works Contract means the contract to be entered into between, amongst others, TfNSW and the MFC Contractor.

MFI means Maintenance Facility Equipment installation.

MFI Documentation means, in relation to the MFI Works:

- (a) all as built drawings required under the SPR, this deed or as requested by TfNSW's Representative;
- (b) the originals of all operating and maintenance manuals for all Materials forming part of the MFI Works;
- (c) all original warranties;
- (d) all notices, permits, approvals and certificates required to be obtained from relevant Authorities prior to use and occupation of the Maintenance Facility Site or the Maintenance Facility for the intended purposes of such sites and facilities; and
- (e) evidence of compliance with all relevant aspects of the quality assurance system including evidence of having undertaken all final inspections and testing of the MFI Works required by that system.

MFI Practical Completion means that stage in the execution of the MFI Works when:

- (a) the MFI Works are complete except for Minor Defects;
- (b) all Verification Activities which are required to be carried out and passed before the MFI Works reach MFI Practical Completion, have been carried out and passed;
- (c) the MFI Documentation has been provided to TfNSW;
- (d) all other documents, certificates and other information required under this deed and any Mandatory Requirements which, in the opinion of TfNSW's Representative, are essential for the use, operation and maintenance of the MFI Works have been supplied; and
- (e) all directions given by TfNSW's Representative relating to the MFI Works pursuant to this deed have been complied with by the Supplier.

MFI Practical Completion Certificate means, in respect of MFI Works, a certificate referred to in paragraph 2.3(a)(i) of Schedule C1, and substantially in the form set out in Form 5 in Schedule F7, issued by TfNSW's Representative certifying that the MFI Works have reached MFI Practical Completion.

MFI Rejection Notice means, in respect of the MFI Works, a certificate referred to in paragraph 2.3(a)(ii) of Schedule C1, and substantially in the form set out in Form 6 in Schedule F7, issued by TfNSW's Representative giving notice that the MFI Works have not reached MFI Practical Completion.

MFI Works means the works to be undertaken by the Supplier in the Maintenance Facility Site as set out in SPR Appendix 04, and any other works that are required to be undertaken (excluding the MFC Works) to ensure that the Maintenance Facility Site can be used for provision of the Maintenance Services in accordance with this deed.

MFI Works Contract Value is the amount set out in Table 1.8 of Schedule E1 being the total Nominal cost of the MFI Works.

MFI Works Licence is the licence granted over the Maintenance Facility Site pursuant to paragraph 1.1 of Schedule C2 and Schedule C4.

Minimum Operating Standard or MOS means the requirements and standards described in Schedule D4.

Minimum Simulator Available Hours means the times of day during which each Simulator is to be made available to TfNSW in a condition which meets the Minimum Simulator Operating Condition, being from 06:00 hours to 22:00 hours every day, in accordance with section 2(h) of SPR Appendix 03.

Minimum Simulator Operating Condition means each Simulator is free of Faults, fully maintained and complies with and is in accordance with the requirements of SPR Appendix 03.

Minor Defect means a Defect which:

- (a) is not a Fault; or
- (b) TfNSW's Representative determines is a Minor Defect.

Minor Defect Rectification Plan means a plan approved by TfNSW in accordance with clause 16.2(d).

Minor Works means any ad hoc or additional maintenance or other works that TfNSW or the Operator require the Supplier to undertake from time to time in relation to Units or Simulators. It excludes Variation Services.

Minor Works Order has the meaning given in paragraph 4.1(a) of Schedule E5.

Minor Works Quote has the meaning given in paragraph 4.1(b) of Schedule E5.

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

Mock-Up means a physical or virtual mock-up or model demonstrating one or more aspects of the design of an Asset as further described in SPR Appendix 02.

Model Variation Event means an event described in paragraph 2.1 of Schedule E9.

Modification means a modification or alteration to the Technical Documents for, manufacture of or construction of, an Asset after the Design Completion Date to correct a deficiency, facilitate production or maintenance, to change operational performance or to comply with a Change in Mandatory Requirements.

Moneys Owing means all moneys identified as "Moneys Owing" in any NIF 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 NIF Project Agreement or at law (including by way of principal or interest, fees, costs, charges, expenses, indemnity or damages).

Monitored Platform means a Platform identified in Table 6.2 of Schedule E2.

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.

Network means the New South Wales electrified rail 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 Unit 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 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 Access Year means:

- (a) the 12 month period starting on the date when the Supplier first requires a Network Access Right to undertake Verification Activities; and
- (b) each subsequent 12 month period thereafter, up to and including the 12 month period in which the Date of Fleet Acceptance occurs.

Network Rules means the rules and procedures issued by Sydney Trains 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 Third Party Agreement has the meaning given in clause 8.17(b)(i).

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

NIF 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) the Commissioning Facility Licence;
- (e) each Parent Guarantee;
- (f) each Escrow Agreement;
- (g) each NIF Stabling Yard Licence;

- (h) Amendment Deed No. 1;
- (i) Amendment Deed No. 2;
- [REDACTED]
- (k) any other document that the parties agree in writing from time to time is a NIF Project Agreement.

NIF Stabling Yard refers to each location identified as a NIF Stabling Yard in the Train Plan Parameters.

NIF Stabling Yard Licence means a licence granted over a NIF Stabling Yard pursuant to paragraph 1.6 of Schedule C2 and substantially on the terms provided in Schedule C6.

NIF Unit Storage Plan means the document set out in Schedule I2, as amended from time to time by agreement of the parties.

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 either Provided Facility Site or any Maintenance Location;
- (b) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside either Provided Facility Site or 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.

Notice has the meaning given in clause 51.

Notice of Arbitration has the meaning given in paragraph 1.7(d) of Schedule B6.

Notice of Dispute has the meaning given in paragraph 1.1(b) of Schedule B6.

Notice of Objection has the meaning given in clause 45.2(b)(ii).

Notice to Proceed has the meaning given in Amendment Deed No. 2.

Notifiable Incident means any incident requiring notification to an Authority or regulator under the WHS Law and/or the Rail Safety National Law.

NSW Code means the NSW Government Code of Practice for Procurement (January 2005), or any substitute for, or update to, such code as contemplated in the NSW Guidelines.

NSW Code Work means any part of the MFI Works, Additional MF Works or Maintenance Services that are building and construction work for the purposes of the NSW Code and/or the NSW Guidelines.

NSW Emergency Management Plan means the plan issued under the authority of the NSW Minister for Police and Emergency Services pursuant to the *State Emergency and Rescue Management Act 1989* (NSW).

NSW Government APIC Policy means the NSW Government Aboriginal Participation in Construction Policy dated June 2018, as amended or updated from time to time.

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (as published by the NSW Treasury on 7th June 2013).

NSW Rail Entity means TAHE, Sydney Trains, NSW Trains and any other Authority in New South Wales that owns or operates railway infrastructure or rollingstock.

NSW Rail Policies and Standards means a code of conduct, policy or standard relating to the conduct of the Supplier's 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 Amendment Deed No. 2, all such codes, policies and standards comprised in, or referred to in, the SPR or which are relevant to the Additional MF Works;
- (c) 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 Supplier's Activities (other than the Additional MF Works); and
- (d) 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.

OEM Supplier means the original equipment manufacturer or supplier of a Spare, part or sub-system of an Asset.

Off-Peak means the periods between 11:00 hours and 13:00 hours and between 20:00 hours and 03:00 hours on each Business Day and all day on Saturday and Sunday, except during an Annual Special Event Period or Additional Special Event Period.

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.

Operations and Maintenance Manual means the manual of that name described in section 2.14.2 of the SPR.

Operational Damage means damage to a Unit when the Unit is in the care, custody and/or control of the Operator where such damage is caused by:

- (a) a collision between a Unit and another rail or road vehicle or any other object outside the Unit; or
- (b) a derailment.

Operational Readiness Plan means the Project Plan of that name.

Operations Functions means:

- (a) the functions and responsibilities of TfNSW and other NSW Rail Entities as public transport operators on the Network and elsewhere or as the owners or managers of rail infrastructure or rollingstock; and

- (b) if the Operator is not a NSW Rail Entity, it includes any similar or equivalent functions and responsibilities of that Operator, including those arising under any service contract or other arrangement with TfNSW, a NSW Rail Entity or the State.

Operative Provisions means the operative provisions of this deed, being clauses 1 to 54 excluding all schedules and appendices.

Operator means NSW Trains or another entity from time to time established, constituted or appointed by the State, TfNSW or another Associate of the State to provide the Intercity Services.

Option Notice means a written notice from TfNSW to the Supplier (in the form of a 'Option Notice' set out in Form 7 in Schedule F7) detailing TfNSW's requirements to purchase Units and/or Cars from the Supplier in addition to the Initial Fleet and the Additional Fleet.

Option Order Date means the date being 31 months from the Commencement Date.

[REDACTED]

Original Bond has the meaning given in paragraph 2.7(b) of Schedule E7.

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

Other Adjustment or **OA** has the meaning given in paragraph 4.7 of Schedule E1.

Other AM Services means AM Services required to rectify incidences of TfNSW Defects, other than any Generally Approved AM Services.

Other Contractor means the MFC Contractor and any other contractor engaged by TfNSW, the Operator or another NSW Rail Entity to undertake Other Works. 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 Supplier's Activities).

Other Costs are the costs referred to in paragraph 4.4 of Schedule E4.

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 Supplier's Activities that are referred to in the SPR or which are relevant to the Supplier's Activities; and
- (b) any amendment or replacement of any of them, from time to time.
- (c) 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, Commissioning Facility Site and NIF Stabling Yards.

Other Works means:

- (a) the MFC Works; and
- (b) any works performed by Other Contractors (including the Additional MF Works where TfNSW engages Other Contractors to perform the Additional MF Works pursuant to clause 4.2(b)(iv) of Amendment Deed No. 2).

Out of Service has the meaning given in paragraph 2.4 of Schedule E1.

Out of Storage Notice has the meaning given in paragraph 3(f) of Schedule I1.

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 F2.

Partial Termination has the meaning given in clause 34.1(a).

Partial Termination Event means:

- (a) the occurrence of a Supplier Termination Event affecting one or more Separable Portions only; or
- (b) a circumstance in which TfNSW has a right to terminate this deed under clause 30.3 due to a Force Majeure Event affecting one or more Separable Portions only.

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 51.1(b).

Peak means all times that are not Off-Peak.

Performance Adjustment refers to each and any of:

- (a) the Availability Adjustment;
- (b) the Cancellation Adjustment;
- (c) the Delay Adjustment;
- (d) the Simulator Adjustment; and
- (e) the Reliability Adjustment.

Performance Data has the meaning given in paragraph 3.2 of Schedule E2.

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 Simulators and the Fleet.

Performance Operating Standards or **POS** means the performance standards set out in Table 3 in Schedule D4.

Performance Regime means Schedule E2.

Performance Review Meeting means each meeting to discuss performance described in paragraph 3.5 of Schedule E2.

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,

the Deliverables 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 Units or Simulators.

Persistent Breach has the meaning set out in clause 31.6(a), regardless of whether the breach constitutes a Supplier Event of Default.

Persistent Breach Notice means a notice given under clause 31.6(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.

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, including all conditions and documents incorporated by reference in the Development Consent or other approval, as may be modified from time to time.

Platform refers to a timetabled station stop for passengers in the course of a trip.

POEO Act means the *Protection of the Environment Operations Act 1997* (NSW).

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).

Pre-Agreed Variation means any of the Variations set out in section 2 of SPR Appendix 13.

Preliminary Design means the design presented at the Preliminary Design Review.

Preliminary Design Review or **PDR** means the review conducted in accordance with sections 3.1(a)(ii) and 3.3 of the SPR.

Prescribed Notice has the meaning given in clause 50.2.

Presentation Time means at least 30 minutes prior to the Entry Time.

Price Base Date means 30 June 2016.

Principal Contractor has the meaning given in clause 293 of the WHS Regulation.

Prior MF Works means the Maintenance Facility, including the MFC Works and MFI Works, constructed prior to the date of Amendment Deed No. 2.

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

Privacy Obligations has the meaning given in clause 42.9(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 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 of 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.

Proceed at Risk has the meaning given in paragraph 7.2(a) of the Review Procedures.

Proceed at Risk Notice has the meaning given in 7.2(b)(ii) of the Review Procedures.

Proceed Authority means a formal authority for a train to enter a length of track within defined limits in which only one train is allowed at any time.

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

Progress Payment means:

- (a) each progress payment described in paragraph 1 of Schedule E1 to be paid or procured to be paid by TfNSW to the Supplier comprising:
 - (i) each instalment of the Initial Fleet Contract Value identified in Table 1.1 of Schedule E1;
 - (ii) the MFI Works Contract Value identified in Table 1.8 of Schedule E1;
 - (iii) each instalment of the Additional Fleet Contract Value identified in Table 1.6 of Schedule E1; and
 - (iv) the component of the Additional MF Works Contract Value identified in Table 1.7 of Schedule E1; and
- (b) each progress payment contemplated by clause 25.1 of this deed to be paid or procured to be paid by TfNSW to the Supplier in respect of the balance of the Additional MF Works Contract Value identified in Table 1.8.

Project means:

- (a) the design, development, manufacture, testing, commissioning, supply and delivery of:
 - (i) new passenger Rolling Stock for the provision of the Intercity Services;
 - (ii) driver training Simulators to Train Drivers for that Rolling Stock;
- (b) equipping, maintaining and operating a dedicated Rolling Stock maintenance facility for the maintenance of that Rolling Stock;

- (c) maintenance of that Rolling Stock, those Simulators and other related Assets; and
- (d) the Other Works,

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

Project Bond means each of the bonds to be provided by the Supplier to TfNSW under clause 21 and each Renewing Bond and each Replacement Bond that replaces a Project Bond from time to time.

Project Control Group means the body described in clause 5.10.

Project Management Plan means the Project Plan of that name.

Project Plan means each plan listed in 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 21.1.

Project Specific Change in Law means a Change in Law, the terms of which expressly and exclusively apply to:

- (a) the Project;
- (b) the Supplier (but only in its capacity as a party to this deed); or
- (c) the Maintenance Facility Site or, during the term of the Commissioning Facility Licence, the Commissioning Facility Site and not to any other similarly situated land or facilities or other land and facilities where activities similar to the Supplier's Activities are carried out.

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 either Provided Facility Site prior to the commencement of the Commissioning Facility Licence or the Maintenance Facility Licence (as relevant).

Provided Facility means the Commissioning Facility or the Maintenance Facility and **Provided Facilities** means both of them.

Provided Facility Licence means the Commissioning Facility Licence or the Maintenance Facility Licence (as relevant).

Provided Facility Site means the Commissioning Facility Site or the Maintenance Facility Site and **Provided Facility Sites** means both of them.

Provisional Acceptance means, in respect of a Unit or Simulator, that the Unit or Simulator complies with the Provisional Acceptance Criteria for that Unit or Simulator.

Provisional Acceptance Certificate means, in respect of a Unit or Simulator, a certificate in the form set out in Form 1 in Schedule F7 issued by TfNSW's Representative:

- (a) certifying that the Unit or Simulator has achieved Provisional Acceptance; and
- (b) listing any Minor Defects.

Provisional Acceptance Criteria means, in respect of a Unit or Simulator, the criteria set out in Schedule D2 relating to that Unit or Simulator.

Public Disclosure Obligations has the meaning given to it in clause 43.6.

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 Supplier's 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 Supplier's 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.

Quality Plan means the Project Plan of that name.

quarter means any calendar quarter (or part of a 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 Industry Standards means either or both of:

- (a) NSW Rail Policies and Standards; and
- (b) Other Rail Industry Standards.

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).

RAM has the meaning given in section 2.9(a) of the SPR.

RAM Management Plan means the Project Plan of that name.

RAM Programme has the meaning described in EN 50126-1 Annex B.

RCTI has the meaning given in clause 53.1(h)(i).

Recipient has the meaning given in clause 53.1(c).

Recovery means the recovery of a Train because that Train 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 Train** will be interpreted accordingly.

Recovery Plan means a plan that complies with the requirements of clause 17.8(a).

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) 10 or more Units; or
 - (ii) 10 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 Period means the period specified as the Recurrent Defect Period in paragraph 1 of Schedule D5.

Recurrent Defect Rectification Plan has the meaning given in clause 18.9(c)(i).

Reference Energy Consumption has the meaning given to it in paragraph 1.4 of Schedule E1.

reimbursable expense has the meaning given in clause 53.1(e).

Rejection Certificate means a certificate issued by TfNSW's Representative under clause 16.1(g), 16.3(c)(ii), 16.3(d)(ii) or 16.3(e)(ii), or under paragraph 2.3(e) of Schedule D6, substantially in the form set out in Form 4 in Schedule F7.

Related Body Corporate:

- (a) in relation to TfNSW, means each NSW Rail Entity and any other entity controlled by the Secretary of the Department of Transport;
- (b) in relation to a NSW Rail Entity, means each other NSW Rail Entity, TfNSW and any other entity controlled by the Secretary of the Department of Transport; and
- (c) in relation to any other person, has the same meaning as in the Corporations Act.

Release has the meaning given in clause 43.7(b).

Release Date means, in respect of a Project Bond, the date specified in paragraph 2.1(b), 2.2(b), 2.3(c), 2.3(d), 2.3(e), 2.4(b) or 2.5(b) in Schedule E7 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 Deliverable.

Reliability Adjustment is an amount calculated under paragraph 8 of Schedule E2.

Reliability Measurement Period has the meaning given in clause 31.1(e).

Reliability Rate has the meaning given in paragraph 8 of Schedule E2.

Relief Event has the meaning given in clause 29.1.

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 either Provided Facility Site (as relevant);
- (b) removing, dispersing, destroying, reducing, mitigating or containing the Contamination or Pollution of either Provided Facility Site; and
- (c) eliminating or reducing any hazard arising from the Contamination of either Provided Facility Site.

Remediation Period has the meaning given in clause 20.2(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 2.7(b) of Schedule E7.

Replacement Bond has the meaning given in paragraph 2.8(b) of Schedule E7.

Replacement Third Party Agreement has the meaning given in clause 8.17(b)(ii).

Replacement Train means a Train that is accepted as a replacement in accordance with paragraph 10 of Schedule E2.

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

Required Availability has the meaning given in paragraph 2.2 of Schedule E1.

Required Availability of Additional Units or **RA_{AUS}** has the meaning given in paragraph 2.8(b) of Schedule E1.

Required Availability of Initial Fleet Units or **RA_{IF}** has the meaning given in paragraph 2.8(a) of Schedule E1.

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 has the meaning given in paragraph 8 of Schedule E2.

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

Review Period means the period for Review of a Submitted Document set out in the Review Procedures.

Review Procedures means the procedures for Review of Submitted Documents described in Schedule B2.

Reviewing Party has the meaning given in the Review Procedures.

RFT means the '*Request for Tender*' document issued by TfNSW to various shortlisted parties including the Supplier on or about 3 September 2015 and it includes all addenda and other supplementary documents to that document.

Risk Management Plan means the Project Plan of that name.

RISSB means the Rail Industry Safety and Standards Board.

Rolling Stock includes Trains, Units and Cars.

Rolling Stock Maintenance Start Date is the date of Provisional Acceptance of the first Unit in the Initial Fleet.

Rolling Stock Supply Works means all works and activities that the Supplier must undertake in accordance with this deed and the other NIF Project Agreements to design, develop, manufacture, test, commission, supply and deliver the Rolling Stock.

Running Readiness means, for any Stored Unit, that point in time where:

- (a) an Out of Storage Notice for that Unit has been issued by TfNSW to the Supplier;
- (b) the Stored Unit has been delivered to the Maintenance Facility for the purpose of commencing Intercity Services; and
- (c) 10 Business Days have elapsed since the delivery of the Stored Unit to the Maintenance Facility.

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 Supplier's 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 Supplier's Activities, the standards or codes to be complied with, the qualifications of the Supplier's Personnel doing the Supplier's Activities (including competency certificates and licences of the Supplier's Personnel) and the training required to do the Supplier's Activities.

Safety Accreditation Strategy means the strategy of that name described in the Authorisation and Accreditation Plan which meets the requirements of section 2.2.1(b) of the SPR.

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.

Safety Management System has the meaning given in clause 8.5(a).

Schedule of Rates means Schedule E4.

█ has the meaning given in section 3.11.1 of SPR Appendix 02.

█ **Capital Base Cost** means █ (as at the date of this deed).

█ **Maintenance Base Cost** means █ (as at the date of this deed).

█ **Supplier Variation Request** has the meaning given in paragraph 1(i) of Schedule A1.

Second Indexation Factor has the meaning given in clause 1.15(b).

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.

Senior Control Group means the body described in clause 5.11.

Separable Portion means any part of or any one of the Supplier's Activities, as the context requires.

Separate Work Spaces has the meaning given in paragraph 4.2(i)(i) of Schedule C2.

Serviceable means that a Train satisfies the Minimum Operating Standards.

Service Payment means, in respect of a Service Payment Period, the amount payable by TfNSW for performance of the Maintenance Services during that Service Payment Period, calculated in accordance with paragraph 3.1 of Schedule E1.

Service Payment Adjustment or **SPA** has the meaning given in paragraph 4.5 of Schedule E1.

Service Payment Adjustment Annual Cap has the meaning given in clause 39.6.

Service Payment Period means each of the following periods:

- (a) the period from the Rolling Stock Maintenance Start Date up to and including the last day of the calendar month in which the Rolling Stock Maintenance Start Date occurs;
- (b) each whole calendar month thereafter up to and including the last whole calendar month before the calendar month in which the End Date occurs; and
- (c) the period from the first day of the calendar month in which the End Date occurs up to and including the End Date.

SFAIRP has the meaning given in the Rail Safety National Law.

Short Train means the Train configuration of that name, each comprised of two Short Units, which meets all requirements for that configuration as are provided in SPR Appendix 02.

Short Unit means a Unit comprised of four Cars.

Significant Contract means a Subcontract of the kind specified in Schedule A5.

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 TAHE;
- (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 paragraph 3.1 of Schedule A3, an Escrow Agreement between the Significant Contractor, TfNSW, TAHE and an Escrow Agent.

Significant Contractor means the Subcontractor appointed under a Significant Contract.

Simulator means (as the context requires) any or all of the Crew cab Simulators or computer based Simulators described in SPR Appendix 03.

Simulator Adjustment means the sum of all Simulator Deductions for the relevant Service Payment Period.

Simulator Deduction means an amount calculated in accordance with paragraph 7 of Schedule E2 for each Simulator Failure that arises.

Simulator Failure occurs in each instance where the Simulator is not in the Minimum Simulator Operating Condition for the full duration of the Minimum Simulator Available Hours.

Simulator Maintenance Start Date means the Date of Provisional Acceptance of the first Simulator.

Simulator Price means the base price for each Simulator specified in Table 1.8 in Schedule E1.

Simulator Supply Works means all works and activities that the Supplier must undertake in accordance with this deed and the other NIF Project Agreements to design, develop, manufacture, test, commission, supply and deliver the Simulators.

Site Access Date means the date on which TfNSW gives access to, or procures access for, the Supplier for the relevant activity, in accordance with Schedule C5.

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.

Site Interface Agreement means an agreement between an Other Contractor, the Supplier and any other relevant interface party identified by TfNSW's Representative in the form agreed between the Other Contractor, the Supplier and any other relevant interface party identified by TfNSW's Representative.

SOP Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

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 Unit or other Asset, including for the replacement of any part, either on a planned basis related to time or distance travelled, or as a result of actual or suspected Failure, Defect or damage.

Spares and Consumables Strategy means the Project Plan of that name described in the Asset Management Plan which meets the requirements of section 2.15.1(b) of the SPR.

Spares List means the list of Spares described in paragraph 2.1(a) of Schedule D6 as updated from time to time in accordance with paragraph 2.1(b) of Schedule D6. The initial Spares List is set out in paragraph 5 of Schedule E4.

Spares Purchase Order has the meaning given in paragraph 2.2(a) of Schedule D6.

Specific Access Request has the meaning given in clause 13.4(b)(ii).

SPR means the Scope and Performance Requirements contained in Schedules G.

Stabling Yard Access Date means the date or time contemplated in the Access Schedule from which the Supplier is to be granted access to a NIF Stabling Yard pursuant to paragraph 1.6 of Schedule C2.

State means the State of New South Wales.

State Emergency and Rescue Management Act means *State Emergency and Rescue Management Act 1989* (NSW).

State Monitoring Systems means any IT system used by the Operator or any of the NSW Rail Entities to monitor the Rolling Stock and Network.

Station Weighting means the Station Weighting for a Platform specified in Table 6.2 of Schedule E2.

Statistical Service has the meaning given in clause 1.16.

Steady State, in the Train Plan Parameters, refers to the period when all Units in the Fleet have reached Provisional Acceptance.

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 NIF Project Agreements (whether or not subcontracted to another person) in connection with the use and enjoyment of Network Access Rights, the Maintenance Services, the MFI Works and the Additional MF Works.

Step-in Event has the meaning given in clause 32.1.

Step-in Objectives has the meaning given in clause 32.2(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 32.3.

Step-in Right has the meaning given in clause 32.2(a).

Storage Facility means any facility nominated by TfNSW, TAHE or the Operator for the storage of Stored Units located on the rail network and within the bounds of Kiama, Lithgow or Newcastle.

Stored Unit means a Unit that:

- (a) has achieved Provisional Acceptance; and
- (b) cannot commence Intercity Services on the Date of Provisional Acceptance.

Stored Unit Handover means the process of delivery of a Stored Unit from the Operator to the Supplier as described in Confirmed Document No. NIF-150010-RCN-RT-002361 Rev 1, as amended from time to time in accordance with this deed.

Subcontract means a contract under which a Subcontractor is engaged to perform any part of the Supplier's 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 Supplier's 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 Supplier's Activities after the expiry or termination of the Contract Term or termination of a Separable Portion and includes its proposed subcontractors.

Supplier Access Parties has the meaning given in paragraph 1.8(b)(i) of Schedule C1.

Supplier Daily Performance Record has the meaning given in paragraph 3.2(ii) of Schedule E2.

Supplier Event of Default means a material breach of this deed by the Supplier, including those events referred to in clause 31.1.

Supplier Fault means all Faults excluding Faults that are TfNSW Defects.

Supplier Group means each participant comprising the Supplier and any Related Body Corporate identified as a member of the Supplier Group in Schedule A4, and any Related Body Corporate which becomes a member of the Supplier Group during the Contract Term.

Supplier Initiated MFC Change has the meaning given in paragraph 1.6(a) of Schedule C1.

Supplier MFC Review Documents has the meaning given in paragraph 1.1 of Schedule B3.

Supplier Related Problem means:

- (a) a Defect that is not a TfNSW Defect; or
- (b) any other act or omission of the Supplier or its Associates.

Supplier Review Period has the meaning given in paragraph 2.1(b) of Schedule B3.

Supplier Service Payment Period Performance Record has the meaning given in paragraph 3.3 of Schedule E2.

Supplier Termination Event means any of the events listed in clause 33.1.

Supplier Variation Approval is a notice of the type described in paragraph 2.3(a)(ii)(A) of Schedule E3 issued by the Supplier to TfNSW.

Supplier Variation Request is a written request of the type described in paragraph 2.2(a) of Schedule E3 issued by the Supplier to TfNSW and includes a [REDACTED] Supplier Variation Request.

Supplier's Activities means all things or tasks which the Supplier is, or may be, required to do to comply with its obligations under the NIF Project Agreements (whether or not subcontracted to another person) including the:

- (a) Rolling Stock Supply Works;
- (b) Simulator Supply Works;
- (c) MFI Works;
- (d) Maintenance Services;
- (e) the Additional MF Works; and
- (f) Additional MF Works Activities.

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

Supplier's Variation Proposal has the meaning given in paragraph 1.3(a) of Schedule E3.

Supporting Statement means a statement that is in the form prescribed by the *Building and Construction Industry Security of Payment Regulation 2008* (NSW), as amended by the *Building and Construction Industry Security of Payment Amendment (Supporting Statement) Regulation 2014* (NSW), a copy of which at the date of this deed is contained in Form 11 in Schedule F7.

Surviving Clauses has the meaning given in clause 54.6(a).

SVP Cost Estimate has the meaning given in paragraph 1.2(b) of Schedule E3.

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.

System Definition means the system definition presented at the System Definition Review.

System Definition Review or **SDR** means the review conducted in accordance with sections 3.1(a)(i) and 3.2 of the SPR.

System Verification means the system verification presented at the System Verification Review.

System Verification Review or **SVR** means the review conducted in accordance with sections 3.1(a)(v) and 3.6 of the SPR.

Systems Engineering Management Plan means the Project Plan of that name described in section 2.8 of the SPR.

System Verification Review has the meaning given in section 3.6 of the SPR.

System Safety Plan means the Project Plan of that name.

Target Condition has the meaning given in clause 20.4.

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.

Target Engagement Rate has the meaning given in clause 8.11(a)(ii)(B).

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.

TDM Cut Off Date has the meaning given in paragraph 1.4(a) of Schedule B6.

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 NIF Project Agreements and a Technical Document;
- (b) the results of:
 - (i) the outcome of a Verification Activity; or
 - (ii) an Unplanned Verification Activity referred to in clause 13.13(c)(ii);
- (c) whether a Simulator or Unit meets:
 - (i) the Provisional Acceptance Criteria; or
 - (ii) the Final Acceptance Criteria;
- (d) whether the Fleet meets the Fleet Acceptance Criteria;
- (e) the existence of Minor Defects identified in a Provisional Acceptance Certificate issued in accordance with clause 16.1(f);
- (f) required rectification work identified in a Rejection Certificate;
- (g) items which must be rectified identified in a Rejection Certificate;
- (h) comments provided by a Reviewing Party in respect of a Technical Document, under paragraph 5 of Schedule B2;
- (i) whether MFI Practical Completion has been achieved, for the purposes of paragraph 2.3 of Schedule C1;
- (j) whether Additional MF Works Practical Completion has been achieved, for the purposes of paragraph 2.3(a) of Schedule J1;
- (k) an assertion by the Supplier that there has been a change in a Rail Industry Standard, pursuant to 28.5(b)(ii);
- (l) the occurrence of an Asset Management Failure or the steps required to remedy an Asset Management Failure in accordance with this deed; or
- (m) any other matter which the parties mutually determine, pursuant to paragraph 1.3(a) of Schedule B6, is a Technical Dispute Matter.

Technical Dispute Panel means the panel of experts described in paragraph 3 of Schedule B6.

Technical Documents means all technical documents associated with the specification, design, development, construction, verification, operation, maintenance, and disposal of the Deliverables which the Supplier or any other person requires, or is required to create, as part of, or for the purposes of, performing the Supplier's Activities under this deed. 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 Unit, a technical package of the Additional MF Works or other Asset or a particular discipline (including any design or subcontract discipline) as permitted under the Design Development Requirements and described in the Systems Engineering Management Plan.

Technical Report means a report described in section 3.8 of the SPR.

Tender means the tender provided by the Supplier in response to the RFT for the Supplier's Activities dated 23 December 2015. It also includes any amendments or additions to the tender after that date.

Tender Process means the public tender process conducted by TfNSW for the selection of a supplier to enter into this deed and to undertake the Supplier's Activities. It includes the EOI and the RFT.

Terminating Destination for a Train means the scheduled point of termination on the Network for its current Journey.

Terminating Platform for a Train means the last scheduled Platform stop for its current Journey.

Termination Payment means a termination payment calculated in accordance with Schedule E8.

Test Equipment means equipment required or convenient to perform Verification Activities on the Assets for the purposes of maintenance or commissioning.

Test Readiness means the test readiness presented at the Test Readiness Review.

Test Readiness Review or **TRR** means the review conducted in accordance with sections 3.1(a)(iv) and 3.5 of the SPR.

TfNSW Defect means:

- (a) Operational Damage;
- (b) Vandalism; or
- (c) Major Graffiti,

except where that damage:

- (d) occurs:
 - (i) during the term of the Commissioning Facility Licence, the Commissioning Facility or Commissioning Facility Site; or
 - (ii) at the Maintenance Facility or the Maintenance Facility Site; or
- (e) is, or arises as a consequence (in whole or in part) of:
 - (i) a Defect attributable to the Supplier or an Associate of the Supplier; or
 - (ii) a breach of this deed or a wrongful or negligent act or omission of the Supplier or an Associate of the Supplier.

TfNSW Defect Notice has the meaning given in paragraph 2.2 of Schedule E5.

TfNSW Initiated MFC Change has the meaning given in paragraph 1.5(a) of Schedule C1.

TfNSW MFC Change Notice has the meaning given in paragraph 1.5(a) of Schedule C1.

TfNSW Termination Event has the meaning given in clause 33.5

TfNSW Variation Request has the meaning given in paragraph 1.2(a) of Schedule E3.

TfNSW's Insurances has the meaning given in clause 37.1(a).

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

Third Party means a party to a Third Party Agreement (excluding TfNSW or any NSW Rail Entity).

Third Party Agreements means each of:

- (a) Lease from a NSW Rail Entity (granted by the State Rail Authority of New South Wales) to Interail Australia Pty Ltd (ABN 78 087 619 010) of the former yardmaster building at 'Broadmeadow Yard' dated 26 July 2004;
- (b) Licence between TAHE and Qube Logistics (Rail) Pty Ltd (ABN 63 082 313 415) (formerly South Spur Rail Services Pty Ltd) of 'The Examiners Building, Broadmeadow Yard' dated 9 January 2012;
- (c) Licence between TAHE and Qube Logistics (Rail) Pty Ltd (ABN 63 082 313 415) of 'Sheds in Yard adjoining No. 5 Marshalling Grid, Broadmeadow' dated 3 October 2013;

- (d) Section 273 Agreement between a NSW Rail Entity (granted by the State Rail Authority of New South Wales) and The Council of the Shire of Wyong for 'extension of Turpentine Road, Kangy Angy' commencing on or about 29 October 1990;
- (e) Electrical Wires Agreement between a NSW Rail Entity (granted by the Commissioner for Railways) and Sydney County Council at Kangy Angy (undated);
- (f) Tenancy Agreement between TAHE and Tabsetto Pty Ltd (ABN 94 002 215 483) of 'land at Old Port Road, Port Kembla' commencing on 1 June 2004;
- (g) New Third Party Agreements; and
- (h) Replacement Third Party Agreements.

Third Party Claim has the meaning given in clause 38.4(a).

Through Life Support Period means a period starting on the Commencement Date and ending on the date that is 30 years after the Date of Provisional Acceptance of the last Unit in the Fleet to achieve Provisional Acceptance.

Time Based Delivery Objective means each of:

- (a) Provisional Acceptance of a Unit by the Date for Provisional Acceptance of that Unit;
- (b) Provisional Acceptance of every Unit in a Tranche by the Tranche Milestone Date for that Tranche;
- (c) Final Acceptance of a Unit by the Date for Final Acceptance of that Unit;
- (d) Final Acceptance of a Unit by the Final Acceptance Default Date of that Unit; and
- (e) Fleet Acceptance by the Fleet Acceptance Sunset Date.

Time for Performance means, in relation to:

- (a) Provisional Acceptance of a Unit, the Date for Provisional Acceptance of that Unit;
- (b) Provisional Acceptance of every Unit in a Tranche, the Tranche Milestone Date for that Tranche;
- (c) Final Acceptance of a Unit, the Date for Final Acceptance of that Unit;
- (d) Final Acceptance of a Unit, the Final Acceptance Default Date of that Unit; and
- (e) Fleet Acceptance, the Fleet Acceptance Sunset Date.

Time to Complete means, as the context requires, either or both of:

- (a) the time to complete particular AM Services, as set out in paragraphs 2 and 3 of Schedule E4; or
- (b) the time to complete rectification of particular Defects, as set out in the Performance Operating Standards.

Timetable means the general timetable for Intercity Services as published or updated by TfNSW or the Operator from time to time.

TMS has the meaning given in section 3.16(a) of SPR Appendix 02.

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

Top-Up Bond has the meaning given in clause 21.3(b).

Track Occupancy Authority or **TOA** means 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.

Track Work Authority or **TWA** means a formal authority from a relevant NSW Rail Entity for non-exclusive occupancy of track by Qualified Workers within specified limits.

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 means:

- (a) a single Unit, when not coupled for operation in combination with another Unit; or
- (b) when Units are coupled for operation, those coupled Units collectively.

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 Train.

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

Train Maintenance Manual means the manual of that name described in section 2.14.2 of the SPR.

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 Operating Manual means the manual of that name described in section 2.14.2(c) of the SPR.

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

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 Train 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 19.2 and in accordance with the Train Plan Parameters.

Train Plan Parameters means the parameters for a Train Plan set out in Schedule D3 as amended from time to time in accordance with this deed.

Train Preparation means the process followed by the Operator at the start of each day for testing the Availability of a Train for service.

Train Presentation Manual means the manual of that name described in section 2.14.2(c) of the SPR.

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 Train on a Train Path for Verification Activity purposes.

Train Run Entitlement means a right to use the Network (excluding the Provided Facilities and any NIF Stabling Yards) for the purpose of conducting a Train Run.

Train Storage Lead means the person appointed by TfNSW or the Supplier (as applicable) from time to time, in accordance with the NIF Unit Storage Plan.

Train Storage Working Group means the body described in paragraph 3(b) of Schedule I1.

Train Working means the description of each railway service to be operated by the Operator over an Availability Period as set out in the Train Plan and amended from time to time in accordance with the terms of this deed.

Training means the training referred to in section 2.14 of the SPR.

Training Management Guidelines means the document titled '*Skills and Training in the Construction Industry*' issued by the NSW Procurement Board dated 30 March 2016, as updated from time to time.

Tranche means each of Tranche 1, Tranche 2 and Tranche 3.

Tranche Milestone Date means each of the Tranche 1 Milestone Date, the Tranche 2 Milestone Date and the Tranche 3 Milestone Date.

Tranche 1 means the Units identified as being in Tranche 1 in Schedule D1.

Tranche 1 Longstop Date means nine months after the Tranche 1 Milestone Date.

Tranche 1 Milestone Date means the Date for Provisional Acceptance of the last Unit in Tranche 1, as adjusted in accordance with this deed.

Tranche 2 means the Units identified as being in Tranche 2 in Schedule D1.

Tranche 2 Milestone Date means the Date for Provisional Acceptance of the last Unit in Tranche 2, as adjusted in accordance with this deed.

Tranche 3 means the Units identified as being in Tranche 3 in Schedule D1.

Tranche 3 Milestone Date means the Date for Provisional Acceptance of the last Unit in Tranche 3, as adjusted in accordance with this deed.

Tranche 4 means the Units identified as being in Tranche 4 in Schedule D1.

Tranche 4 Milestone Date means the Date for Provisional Acceptance of the last Unit in Tranche 4, as adjusted in accordance with this deed.

Transition-in Adjustment has the meaning given to it in paragraph 9 of Schedule E2.

Transition Out refers to the processes, and obligations, of the Supplier described in clause 49.

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

TSE Listing Rules means the Securities Listing Regulations (*yuuka shoken joujou kitei*) of Tokyo Stock Exchange, Inc., as amended from time to time.

Type 1 Failure means an incidence when a Train:

- (a) becomes unfit to remain In Service and is withdrawn from service before reaching its Terminating Destination substantially because of a Fault affecting that Train; or
- (b) is unable to access the Maintenance Facility Site due to the inability of the Supplier to provide access, and as a consequence the Train (in full or in part) remains on the Network.

Type 2 Failure means an incidence when a Train becomes unfit to remain In Service and the Train is withdrawn from service on or after reaching its Terminating Destination substantially because of a Fault affecting that Train.

Unavailable refers to a Train that is not Available and **Unavailability** has the corresponding meaning.

Unavailable but Used refers to an incidence when a Train is otherwise Unavailable, but TfNSW elects to treat the Train as Available for use in its absolute discretion and permits it to enter service.

Unavailable but Used Deduction Rate is the amount specified in paragraph 4.2 of Schedule E2.

Unit means a multiple Car consist, to be semi-permanently coupled together for operation as a self contained entity or as part of a Train, as more particularly described in SPR Appendix 02.

Unit Price means the individual Nominal cost per Unit (either Short Unit or Long Unit) as set out in Table 1.8 of Schedule E1.

Unplanned Verification Activity means a verification activity required by TfNSW under clause 13.11.

User means:

- (a) TfNSW's Personnel;
- (b) Customers;
- (c) NSW Rail Entities; and
- (d) 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 an Asset. It does not include Graffiti.

Variable Unit Payment or **VUP** has the meaning in paragraph 4.1(b) of Schedule E1 for the Initial Fleet and paragraph 4.1(c) of Schedule E1 for the Additional Fleet.

Variable Unit Payment Rate or **VUPR** has the meaning in paragraph 4.1(b) of Schedule E1 for the Initial Fleet and paragraph 4.1(c) of Schedule E1 for the Additional Fleet.

Variation means, except where expressly provided to the contrary in this deed, any change or variation to the requirements of this deed for the Supplier's Activities, including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (or to sequencing or timing of them).

Variation Costs means, in relation to a Variation, the reasonable direct costs (including incremental project administration costs) arising out of or in connection with the Variation after deducting all cost savings arising out of or in connection with the Variation, determined having regard to the Variation Principles.

Variation Effects means, in respect of a proposed Variation:

- (a) the Variation Costs which the Supplier will incur, or the Variation Savings which it will derive, as a result of the proposed Variation and their anticipated effect on:
 - (i) the Unit Price or Simulator Price;
 - (ii) the MFI Works Contract Value;

- (iii) the Service Payments; and
 - (iv) the Additional MF Works Contract Value;
- (b) the effect, if any, which the proposed Variation will have on all affected Programs and Project Plans;
- (c) the time within which the proposed Variation will be implemented;
- (d) the Approvals (if any) required to implement the proposed Variation;
- (e) the effects which the proposed Variation will have on:
 - (i) the workmanship, durability or functional integrity of any element of the Supplier's Activities or any Asset;
 - (ii) the safety, use, Availability and reliability of Units;
 - (iii) any Approvals (including Accreditation) held or required by an Accredited Person, the Supplier or the Supplier's Associates;
 - (iv) any Training requirements;
 - (v) the Supplier's ability to ensure the Assets are in accordance with the Target Condition in accordance with the provisions of this deed; or
 - (vi) the Supplier's ability to:
 - (A) satisfy any warranty given by the Supplier under any NIF Project Agreement; or
 - (B) perform any of its other obligations under any NIF Project Agreement;
- (f) any relief required by the Supplier from its obligations under any NIF Project Agreement to ensure that the Supplier would be left in 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.

Variation Order has the meaning given in paragraph 1.10(a) of Schedule E3.

Variation Principles means, in respect of a proposed Variation and the Supplier's Variation Proposal or Supplier Variation Request, that it is formulated:

- (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 or where it is reasonable to use them for valuing Variations, on the basis of the prices and rates set out in the Schedule of Rates, which are a maximum cap on the prices and rates, and at all times permitting a calculation using prices and rates that are less than the amounts contained in the Schedule of Rates;
- (c) where applicable, on the basis of the prices and lead times set out in the Spares List;
- (d) on a cost plus a margin of 10 per cent including profit, off-site overheads and onsite overheads and 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 Proposal or Supplier Variation Request has been prepared on a cost plus a margin of 10 per cent basis including profit, off-site overheads and onsite overheads);
- (e) assuming the Supplier is a willing, efficient and expert provider of the Variation in an efficient and competitive market;
- (f) in a manner which is consistent with any requirements of TfNSW for the implementation of the Variation;
- (g) having regard to minimising disruption to the performance of the Operations Functions;

- (h) having regard to minimising any delay in achieving Provisional Acceptance of Units and Simulators or achieving MFC Practical Completion, MFI Practical Completion or Additional MF Works Practical Completion;
- (i) having regard to minimising any adverse safety impacts of the Variation;
- (j) 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 this deed, unless TfNSW determines otherwise;
- (k) in a manner so that there is no double counting; and
- (l) in the form of an offer capable of immediate acceptance by TfNSW for 40 Business Days after the date on which TfNSW's Representative receives the Supplier's Variation Proposal or Supplier Variation Request.

Variation Savings means Variation Costs, where negative.

Variation Services means ad hoc maintenance works and services, including those required to rectify a TfNSW Defect:

- (a) the AM Services Cost of which:
 - (i) exceeds [REDACTED], indexed by the Second Indexation Factor in accordance with clause 1.15(b); or
 - (ii) cannot readily be calculated in accordance with paragraph 5.1 of Schedule E5;
- (b) that will require:
 - (i) amendment to a Project Plan; or
 - (ii) a new Approval or Accreditation, or an amendment to an existing Approval or Accreditation; or
- (c) that will adversely affect:
 - (i) the durability or functional integrity of any Asset;
 - (ii) the safety, use, Availability or reliability of any Asset; or
 - (iii) the Supplier's ability to:
 - (A) satisfy any warranty given under a NIF Project Agreement; or
 - (B) perform any of its other obligations under a NIF Project Agreement.

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 Deliverables:
 - (i) that have previously failed a Verification Activity; or
 - (ii) after the maintenance or repair of those Deliverables.

For the avoidance of doubt, it includes Unplanned Verification Activities.

Verification Certificate means:

- (a) with respect to an entity domiciled in Australia, a certificate in the form set out in Part A of Form 17 in Schedule F7;

- (b) with respect to an entity domiciled in Korea, a certificate in the form set out in Part B of Form 17 in Schedule F7; and
- (c) with respect to an entity domiciled in Japan, a certificate in the form set out in Part C of Form 17 in Schedule F7.

Verification Plan means the Project Plan of that name.

Verification Procedure means the procedure used for Verification Activities which meets the requirements in section 2.13.3 of the SPR.

Verification Program means the Program of the Verification Activities which meets the requirements of clause 13.2(e)(i) and section 2.13.2 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 13.10 and which meets the requirements of section 2.13.4 of the SPR.

Volume Adjustment or **VA** has the meaning given in paragraph 4.3 of Schedule E1.

Volume Adjustment Marginal Price has the meaning given in paragraph 4.3 of Schedule E1.

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.

WHS means work health and safety.

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

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 8.7(a).

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

Withheld refers to an incidence when a Train is Unavailable but the Supplier has given TfNSW notice more than 12 hours prior to the Entry Time that the Train will be Unavailable.

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

- (a) a Local Possession Authority;
- (b) a Track Occupancy Authority; or
- (c) a Track Work Authority.

Work Order means a work order generated in the Operator's electronic maintenance request system.

Workout means the corporate restructuring process set out in the *Corporate Restructuring Promotion Act of Korea*.

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

- (a) headings and subheadings are for convenience only and do not affect interpretation;
- (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;
- (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:
 - 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
 - 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:
 - all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - 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 party, schedule, exhibit, attachment, appendix or annexure is a reference to a party, schedule, exhibit, attachment, appendix or annexure to or of this deed;
 - 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:
 - 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 payment whatsoever by TfNSW or TAHE in accordance with the NIF Project Agreements;
- (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;
- (m) any reference to:
 - the Supplier's Activities;
 - (ii) the Deliverables;
 - (iii) the Project Plans;
 - (iv) the SPR;
 - (v) the Technical Documents; or
 - (vi) any other document or thing,
 or any part of any of them:
 - (vii) being fit for its purpose or for its intended purpose; or
 - (viii) 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;
 - (B) any document provided by TfNSW to the Supplier on or before the date of this deed (excluding the Information Documents);
 - (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 (excluding any Information Documents); or
 - (D) the RFT (excluding the Information Documents);
- (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 meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (p) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (q) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (r) a reference to time is to Sydney, Australia time;
- (s) a month means a calendar month;
- (t) a reference to **construction** includes development, manufacture, supply, installation, integration, testing and commissioning;

- (u) 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.
- (v) 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
- (w) 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

The rights and benefits of TfNSW provided for under this deed and the other NIF 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:

- (a) TAHE, to the extent it is the owner of the Assets; and
- (b) 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:
 - each indemnity and release given by the Supplier under this deed in favour of the Indemnified Parties;
 - each Project Security required to be provided by the Supplier pursuant to clause 21.1; and
 - (iii) each right in each NIF 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:
 - 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;
 - TfNSW and TAHE 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 and 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 TAHE 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 1.6(a); and
- (c) 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 NIF Project Agreement in any way limits, derogates from or affects any right, power, privilege or immunity in whatever form that TfNSW 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 NIF Project Agreement will lie against TfNSW or TAHE 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:
 - rely upon and adopt as TfNSW's Representative's own opinion, advice from TfNSW or any other person;
 - 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 TAHE):
 - relating to the satisfaction of a Condition Precedent pursuant to the terms of this deed; or
 - (ii) 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 NIF 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:
- 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;
 - 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 any Deliverable or of the performance of any Supplier 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 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 NIF Project Agreements

- (a) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency between the documents comprising the NIF Project Agreements:
- the following documents will be given precedence as follows (in decreasing order of priority):
 - [REDACTED]
 - (B) Amendment Deed No. 2;
 - (C) Amendment Deed No. 1;
 - (D) this deed; and
 - (E) the remaining NIF Project Agreements;
 - (ii) to the extent clause 1.10(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 compliance or more onerous obligation on the Supplier consistent with all Mandatory Requirements will take precedence;
 - (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 relates to the required quality or standard of any or of the

performance of any of the Supplier's Activities, the Supplier must comply with the highest quality or standard specified or perform the more onerous obligation; and

- (iv) to the extent clauses 1.10(a)(i) to 1.10(a)(iii) 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 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 1.10(a).

1.11 Resolution of ambiguities between NIF Project Agreement and Technical Documents

- (a) If there is any ambiguity, discrepancy or inconsistency between any of the documents comprising the NIF Project Agreements and a Technical Document:
 - where the ambiguity, discrepancy or inconsistency is between the provisions of a document comprising the NIF 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 NIF 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 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 NIF Project Agreement or otherwise according to law; or
- (c) prejudice or limit TfNSW's rights against the Supplier whether under a NIF 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) Unless otherwise expressly provided, a reference to "CPI Indexed" after a monetary amount in a NIF Project Agreement means that the amount will be indexed for movements in the CPI annually on the first day of each Financial Year of the Contract Term, from 1 July 2017, 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 or 1 if the reference is to CPI Index;
- CPI_{Q-1} means the value of the CPI published for the quarter ending in March of the previous Financial Year; and
- CPI_{Base} means the value of the CPI published for the quarter ending March 2016.

- (b) Amounts to be indexed by the First Indexation Factor or the Second Indexation Factor respectively will be adjusted annually on the first day of each Financial Year, from 1 July 2017, and in accordance with the following indexation calculations:

The **First Indexation Factor**, I_1 , is:

$$I_1 = \left(\frac{CPI_n}{CPI_o} \times a \right) + \left(\frac{LPI_n}{LPI_o} \times b \right)$$

Where: $a + b = 1$

and:

The **Second Indexation Factor**, I_2 , is:

$$I_2 = \frac{CPI_n}{CPI_o}$$

Where:

- I_1 means the First Indexation Factor applied in any relevant calculation;
- I_2 means the Second Indexation Factor applied in any relevant calculation;
- CPI_n means the value of the CPI published for the quarter ending in March of the previous Financial Year;
- CPI_o means the value of the CPI published for the quarter ending March 2016;
- LPI_n means the value of the Labour Index published for the month of November of the previous Financial Year;
- LPI_o means the value of the Labour Index published for the month of November 2015;
- a means 0.530574699; and
- b means 0.469425301.

1.16 Changes to indices

The following rules apply to all terms identified in this deed as being referable to an index published by the Australian Bureau of Statistics or another statistical service (**Statistical Service**):

- (a) if the index is published and there is a change in its coverage the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine:
- whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and

- (ii) if it is not, what other index should be used as a substitute index for the purpose of this deed,
and that determination is final and binds the parties;
- (b) if there is a change in the reference base of the index from that applying at the date of this deed and the relevant Statistical Service provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purposes of this deed;
- (c) if there is a change in the reference base of the index from that applying at the date of this deed and the relevant Statistical Service does not provide a conversion factor, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of this deed, and that calculation is final and binds the parties;
- (d) if the index ceases to be published and the relevant Statistical Service publishes another index which is a replacement of that index then the replacement index must be used for the purposes of this deed but re-calculated to the same reference base as the original index;
- (e) if the index ceases to be published and the relevant Statistical Service does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of this deed, and that calculation is final and binds the parties; or
- (f) if the index ceases to be published and the relevant Statistical Service does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine an appropriate index to serve as a replacement for the index, and that determination is final and binds the parties.

1.17 Authorities

- (a) The NIF 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 1.17(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 that NSW Rail Entity or TfNSW (including a breach of contract) under or in connection with the NIF Project Agreements and will not entitle the Supplier to make any Claim against TfNSW or the NSW Rail Entity.
- (c) Clauses 1.17(a) and 1.17(b) do not limit any liability which any NSW Rail Entity or TfNSW would have had to the Supplier under the NIF Project Agreement as a result of a breach by that NSW Rail Entity or TfNSW of a term of the NIF Project Agreement but for clauses 1.17(a) and 1.17(b).
- (d) The Supplier acknowledges that:
 - there are many Authorities (other than the NSW Rail Entities) with jurisdiction over aspects of the Supplier's Activities, the Network, parts of the Provided Facility Sites and other areas affected by the Supplier's 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 Supplier's Activities; and
- (iii) 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 1.17(d)(ii) and will not be entitled to make, and TfNSW and the NSW Rail Entities will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.18 Reasonable endeavours

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

- (a) TfNSW and TAHE will only be obliged to bring about the relevant outcome to the extent that they are reasonably able to do so, having regard to their resources and other responsibilities;
- (b) TfNSW and TAHE cannot guarantee the relevant outcome; and
- (c) TfNSW and TAHE, by undertaking to exercise best or reasonable endeavours, do not agree to:
 - 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 NIF Project Agreements if TfNSW or TAHE regards that exercise as not in the public interest;
 - (iii) develop policy or legislate by reference only or predominantly to the interests of the NIF Project Agreements;
 - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the NIF Project Agreements; or
 - (v) act in any other way that TfNSW or TAHE 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. TfNSW has no 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:
 - TfNSW may give Notice to the Supplier that this deed will be taken to have been terminated on the Target Contractual Close Date;
 - 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 Supplier's 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:
 - the date that is 15 years from the Date of Provisional Acceptance of the first Unit to be Provisionally Accepted under this deed (**Original Expiry Date**);
 - 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:
 - 12 months 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 12 months from the Original Expiry Date; or
 - 60 months 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 60 months from the Original Expiry Date.
- (c) If the Contract Term is extended under clause 3.2(b)(i), 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 12 months 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 12 months.

4. Objectives, primary obligations and risk allocation

4.1 Project objectives

- (a) TfNSW's strategic objectives for the Project are to achieve the following outcomes:
 - the provision of reliable, safe and high quality rail services to Customers with a level of amenity comparable with best global practice;
 - successful configuration of a standard proven Rolling Stock design for operation on the Network to satisfy the Operations Functions;

- (iii) availability of Rolling Stock to meet the Timetable and other operational and reliability requirements throughout the Design Life of the Rolling Stock;
 - (iv) a flexible interior layout of Rolling Stock which can be configured initially for Intercity Services and easily reconfigured to suit future requirements as necessary;
 - (v) provision of a distinctive 'Intercity' product for longer distance Customers, including the ability to incorporate more than one class of accommodation such as economy class and premium class with minimum reduction in seating capacity;
 - (vi) be capable of driver-only operation in passenger service, and also to allow enhanced Customer service from other on-board staff, including the capability to control passenger doors from any door location within the Train;
 - (vii) incorporate mass reduction and energy efficiency measures that are best in global industry for the operating environment and conditions of the Network; and
 - (viii) performance of the Supplier's Activities in a way that provides value for money and minimises Life Cycle Cost to TfNSW;
 - (ix) developing a long term collaborative relationship between TfNSW, the Operator and the Supplier; and
 - (x) the overall increase of Customer satisfaction and growth of passenger rail patronage in New South Wales.
- (b) TfNSW seeks to achieve Supplier and TfNSW efficiency in:
- the management of the Rolling Stock; and
 - the provision of a maintenance facility suitable for the performance of the Maintenance Services under this deed.

4.2 Supplier's primary obligations

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

- (a) design, develop, manufacture, test, commission, supply and deliver the Rolling Stock, Simulators and other related Assets under this deed;
- (b) procure, supply, install, commission and integrate the MFI Works;
- (c) during the term of the Commissioning Facility Licence, operate and maintain the Commissioning Facility Site;
- (d) from the Date of MFC Practical Completion, operate and maintain the Maintenance Facility Site;
- (e) provide the Maintenance Services;
- (f) 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; and
- (g) design, construct, commission and hand-over the Additional MF Works.

4.3 TfNSW's primary obligations

On the terms and conditions of the NIF Project Agreements, TfNSW agrees:

- (a) to procure the Other Works;
- (b) to obtain the Planning Approvals;
- (c) to procure payment for the Assets, the MFI Works and the Additional MF Works;
- (d) to procure payment for the Maintenance Services;

- (e) to provide the Supplier with access, or procure that access is provided for the Supplier, to:
 - the Commissioning Facility Site to carry out the Commissioning Works;
 - the Maintenance Facility Site to design and undertake the MFI Works, the Additional MF Works and perform relevant Maintenance Services; and
 - (iii) each NIF Stabling Yard and Other Site (as necessary) to perform relevant Maintenance Services; and
- (f) to grant (or procure the granting of) the MFI Works Licence, the Additional MF Works Licence, the Maintenance Facility Licence and the NIF Stabling Yard Licences to the Supplier.

4.4 TAHE's primary obligations

On the terms and conditions of the NIF Project Agreements, TAHE agrees:

- (a) to purchase the Assets; and
- (b) to grant the Provided Facility Licences and the NIF Stabling Yard Licences (to the extent TAHE is the owner of the relevant NIF Stabling Yard) to the Supplier.

4.5 Project risks

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

4.6 Rights do not affect risk allocation

- (a) TfNSW has various rights under this deed which are designed to give TfNSW the ability to monitor the performance of the Supplier's obligations. Those rights include:
 - the right to Review Project Plans, Technical Documents, Programs, Verification Reports, and other documents which the Supplier must submit to TfNSW for Review;
 - rights to inspect, monitor or audit the Supplier's Activities;
 - (iii) the right to notify the ASA of any non-conformance in the performance of the Supplier's 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:
 - relieve the Supplier from, or alter or affect, the Supplier's liabilities, obligations or responsibilities whether under any NIF Project Agreement or otherwise according to law;
 - prejudice or limit TfNSW's rights, or the rights of any other NSW Rail Entity, against the Supplier whether under any NIF Project Agreement or otherwise according to law; or
 - (iii) without limiting clause 4.6(b)(ii), preclude TfNSW, or any other NSW Rail Entity, from subsequently asserting that the Supplier has not fulfilled its obligations whether under any NIF Project Agreement or otherwise according to law.
- (c) Without limiting clause 4.6(b):
 - neither TfNSW, 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, 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 NIF Project Agreement or otherwise according to law;
 - (B) prejudice or limit TfNSW's or any other NSW Rail Entity's rights against the Supplier whether under any NIF Project Agreement or otherwise according to law;
 - (C) constitute an instruction to accelerate, disrupt, prolong or vary any of the Supplier's Activities (unless expressly directed in writing); or
 - (D) affect the time for the performance of TfNSW's or TAHE's obligations.
- (iii) the Supplier will not be relieved from compliance with any of its obligations under any NIF Project Agreement or from any of its liabilities whether under any NIF 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, any other NSW Rail Entity or TfNSW's Representative of the Supplier's compliance with any Project Plan; or
 - (C) any failure by TfNSW, 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, any other NSW Rail Entity, TfNSW's Representative or any other person;
- (iv) neither TfNSW, 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 Supplier's Activities or the Deliverables for errors, omissions or compliance with the requirements of any NIF Project Agreement; and
- (v) any inspection of the Supplier's Activities (or lack of inspection) by or on behalf of TfNSW, 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 NIF Project Agreement or otherwise according to law; or
 - (B) prejudice or limit TfNSW's rights, or the rights of any other NSW Rail Entity, against the Supplier whether under any NIF Project Agreement or otherwise according to law.

5. Governance

5.1 TfNSW's Representative

- (a) TfNSW must appoint and retain a natural person to be TfNSW's Representative under the NIF Project Agreements.
- (b) TfNSW may at any time by notice to the Supplier replace TfNSW's Representative with another person.
- (c) TfNSW's Representative:

- may exercise all the powers, duties, discretions and authorities to be exercised by TfNSW's Representative under all NIF 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 NIF Project Agreements.

5.2 Appointees of TfNSW's Representative

TfNSW's Representative may:

- (a) by notice to the Supplier, appoint persons to exercise any of the functions of TfNSW's Representative under any of the NIF 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;
- (b) not appoint more than one person to exercise a specific function at any one time;
- (c) revoke any appointment under clause 5.2(a) by notice to the Supplier; and
- (d) continue to exercise a function under a NIF Project Agreement despite appointing another person to exercise the function under clause 5.2(a) (provided that any directions of TfNSW's Representative take precedence over those of any appointees to the extent of any inconsistency).

All references in a NIF 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 NIF 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:
 - to comply with an obligation imposed on the Supplier by or in relation to a NIF 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 NIF 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 NIF 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 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:

- the materials, goods, workmanship and work methodology employed at any place where the Supplier's Activities are being, have been, or are to be carried out, and all related documentation, systems and certification; or
- (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.
- (c) The Supplier must, at its own cost:
 - 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;
 - 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 Supplier's 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.
- (e) 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.

5.5 Supplier's Representative

- (a) The Supplier must appoint and retain a natural person to be the Supplier's Representative under the NIF Project Agreements.
- (b) The Supplier's Representative appointed by the Supplier pursuant to clause 5.5(a) must be:
 - during the Delivery Phase, [REDACTED] or a natural person employed by Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792) or Hyundai Rotem Company (a company registered in the Republic of Korea with registration number 194211-0036336);
 - during the period commencing on the Date of Provisional Acceptance of the last Unit to be supplied by the Supplier under this deed to the end of the Maintenance Phase, a natural person employed by UGL Rail Services Pty Limited (ABN 58 000 003 136); and
 - (iii) from the End Date to the last day of the Through Life Support Period, a natural person employed by UGL Rail Services Pty Limited (ABN 58 000 003 136),
 or as otherwise agreed in writing between the parties.
- (c) The Supplier's Representative:
 - may exercise all the powers, duties, discretions and authorities to be exercised by the Supplier's Representative under all NIF Project Agreements and does so as the agent of the Supplier; and
 - must have the full power and authority to act for and on behalf of and to bind the Supplier under all the NIF Project Agreements.

- (d) The Supplier must ensure that the Supplier's Representative has full authority to execute the directions of TfNSW's Representative without delay.
- (e) On reasonable notice from TfNSW's Representative, the Supplier's Representative must attend any ad hoc or a regular meeting required by TfNSW's Representative and must provide reports and make any presentations that TfNSW's Representative reasonably requests, to either:
 - 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 Supplier's Activities.
- (f) TfNSW may direct the replacement of the Supplier's Representative if, in TfNSW's Representative's opinion:
 - 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
 - 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 Key Personnel

The Supplier must:

- (a) ensure that the Key Personnel are employed or engaged in the roles specified in the definition of Key Personnel;
- (b) subject to clause 5.7(c), not replace the Key Personnel or delegate the functions of the Key Personnel without TfNSW's prior written approval (which will not be unreasonably withheld), and any replacement or delegate must meet the criteria set out in Schedule A7 for the relevant role; and
- (c) if any of the Key Personnel die, become seriously ill, resign from the employment of the Supplier or any of its Associates, receive a promotion or are the subject of a direction under clause 8.14(g), replace the relevant Key Personnel with persons approved by TfNSW (such approval not to be unreasonably withheld) of at least equivalent qualification, experience, ability and expertise, and who meet the criteria set out in Schedule A7 for the relevant role.

5.8 Monthly Contract Review Meetings and reporting

- (a) From the Commencement Date until the End Date, the Supplier's Representative must participate in regular Contract Review Meetings to be convened by TfNSW's Representative within 10 Business Days of the end of each calendar month.
- (b) The purpose of each Contract Review Meeting will be to:
 - discuss issues relating to the progress and standard of performance of the Supplier's Activities;

- (ii) discuss any other matters of importance in relation to the Project including Safety Issues and environmental issues; and
- (iii) seek to agree, in writing, an action plan for the progress and resolution of all matters raised in this manner, which includes allocation of responsibility for each action and a date by which the action will be completed.
- (c) To facilitate the efficient conduct of each Contract Review Meeting, the Supplier must provide TfNSW's Representative with:
 - the reports described in section 4 of the SPR by the times prescribed in section 4 of the SPR; and
 - (ii) any additional performance or other reports required by TfNSW from time to time.
- (d) Reports required under clause 5.8(c)(ii) must be provided by the Supplier within five Business Days of a request from TfNSW's Representative or within an alternative time period agreed between TfNSW and the Supplier in writing having regard to the nature of the report.
- (e) Not less than three Business Days prior to each Contract Review Meeting, TfNSW will provide an agenda for the meeting based on the template agenda in Schedule B4 and any matters raised by the Supplier's Representative in a notice given under clause 5.8(f).
- (f) If the Supplier wishes to raise any matters at a Contract Review Meeting that are not contemplated in the template agenda for Contract Review Meetings at Schedule B4, the Supplier must provide TfNSW's Representative with detailed written particulars of those matters not less than five Business Days before the meeting.
- (g) TfNSW's Representative will prepare minutes of the proceedings of each Contract Review Meeting.

5.9 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:
 - neither TfNSW nor TfNSW's Representative will be obliged to provide any information, materials, documents or instructions requested by the Supplier under clause 5.9(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 Supplier's Activities; or
 - (B) make any Claim against TfNSW.

5.10 Project Control Group

- (a) A Project Control Group must be established comprising:
 - TfNSW's Representative;
 - (ii) two other representatives of TfNSW each holding a position more senior than TfNSW's Representative;
 - (iii) the Supplier's Representative;
 - (iv) two other representatives of the Supplier each holding a position more senior than the Supplier's Representative; and

- (v) any other persons agreed by the parties in writing.
- (b) A member of the Project Control Group may appoint a delegate (with an appropriate level of seniority or experience) to attend Project Control Group meetings in their absence.
- (c) The objectives of the Project Control Group are to:
 - facilitate the development of a long term, collaborative working relationship between the parties;
 - (ii) monitor the overall progress of, and the standard of performance of, the Supplier's Activities;
 - (iii) assist with the resolution of any matters referred to the Project Control Group by a party; and
 - (iv) review and consider such other matters relating to the Project as are agreed between TfNSW and the Supplier from time to time.
- (d) It is not the function of the Project Control Group to make decisions or otherwise act in a way which is binding on the parties. The Project Control Group may, however, make recommendations to the parties.
- (e) TfNSW's Representative will convene and chair meetings of the Project Control Group.
- (f) The Project Control Group will meet:
 - at least once every six months during the Delivery Phase until the end of the Delivery Phase; and
 - at any other time requested by TfNSW's Representative.
- (g) The Supplier must not suspend or delay the performance of any obligation under a NIF Project Agreement for any reason pending the occurrence of, or consideration of any matter by, a meeting of the Project Control Group.

5.11 Senior Control Group

- (a) A Senior Control Group (or Senior Control Groups) must be established comprising:
 - during the Delivery Phase, 2 persons from TfNSW, being the Executive Director, Program Delivery (or its equivalent) of TfNSW and the Executive Director, Service Delivery and Performance (or its equivalent) of TfNSW or any alternative attendees which TfNSW may, in its absolute discretion, elect;
 - during the Maintenance Phase, 2 persons from TfNSW, being the Executive Director, Service Delivery and Performance (or its equivalent) of TfNSW and a direct report to the Executive Director, Service Delivery and Performance (or its equivalent) of TfNSW or any alternative attendees which TfNSW may, in its absolute discretion, elect; and
 - (iii) during the Delivery Phase and the Maintenance Phase, the Chief Executive Officer of NSW Trains or any alternative attendee which TfNSW may, in its absolute discretion, elect;
 - (iv) a first senior executive of a participant of the Supplier as notified by the Supplier to TfNSW from time to time (and at the date of this deed being [REDACTED] (UGL Rail Services Limited));
 - (v) a second senior executive of a participant of the Supplier as notified by the Supplier to TfNSW from time to time (and at the date of this deed being [REDACTED] (Mitsubishi Electric Australia Pty Limited)); and

- (vi) a third senior executive of a participant of the Supplier as notified by the Supplier to TfNSW from time to time (and at the date of this deed being [REDACTED] [REDACTED] (Hyundai Rotem Company)).
- (b) The functions of the Senior Control Group are to:
 - consider any matters which TfNSW's Representative refers to the Senior Control Group including:
 - (A) matters relating to Annual Performance Reviews under clause 5.13; and
 - (B) generally considering any unresolved matters under any NIF Project Agreement to assist resolution; and
 - review and consider such other matters relating to the Project as are agreed between TfNSW and the Supplier from time to time.
- (c) The Senior Control Group must meet:
 - when convened by TfNSW's Representative, provided that TfNSW's Representative provides at least 10 Business Days prior written notice to the members of the Senior Control Group. Any notice given under this clause 5.11(c)(i) must state the reasons why TfNSW's Representative wishes to convene the required meeting; or
 - at other times which any member of the Senior Control Group requires, where that member provides at least 10 Business Days prior written notice to the other members of the Senior Control Group. Any notice under this clause 5.11(c)(ii) must state the reasons why the member of the Senior Control Group wishes to convene the required meeting.
- (d) At the first meeting of the Senior Control Group, the Senior Control Group must agree, in writing, and document the procedures relating to meetings of the Senior Control Group, including the requirements for and timing of distribution of:
 - agendas; and
 - meeting minutes.
- (e) TfNSW will appoint the chairperson of the Senior Control Group, being at the Commencement Date:
 - for the Delivery Phase, the Executive Director, Program Delivery (or its equivalent) or any alternative chairperson which TfNSW may, in its absolute discretion, elect; and
 - after the Delivery Phase, the Executive Director, Service Delivery and Performance (or its equivalent).
- (f) At TfNSW's request, the Supplier must procure the attendance of representatives of any Significant Contractor at meetings of the Senior Control Group as observers.
- (g) TfNSW may have representatives of the State or any Authority attend meetings of the Senior Control Group as observers.
- (h) Members of the Senior Control Group may from time to time, with the prior consent of both parties, invite:
 - other additional attendees to meetings of the Senior Control Group; or
 - (ii) in the case of the Supplier, alternative attendees to meetings of the Senior Control Group.

5.12 No legal effect

The Project Control Group and the Senior Control Group are consultative and advisory bodies only and nothing which occurs during a meeting of either group will:

- (a) affect the rights or obligations of either party under the NIF 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 NIF Project Agreement or otherwise according to law;
- (d) prejudice a party's rights against the other whether under a NIF Project Agreement or otherwise according to law; or
- (e) be construed as a direction by a party to do or not do anything.

5.13 Annual relationship review

- (a) As soon as practicable after the end of each Financial Year, in respect of that Financial Year, TfNSW will conduct a review (**Annual Performance Review**) of:
 - the overall standard of the Supplier's performance of the Supplier's Activities, including by reference to:
 - (A) the Supplier's performance against the key performance indicators set out in Schedule B5; and
 - (B) after the Rolling Stock Maintenance Start Date, the overall amount of the Service Payment Adjustments that have been applied to Service Payments; and
 - the overall health and quality of the working relationship between the parties.
- (b) The outcome of the Annual Performance Review will be a reasonable determination by TfNSW, either that:
 - the Supplier's performance and the relationship between the parties has been satisfactory; or
 - the Supplier's performance or the relationship between the parties has not been satisfactory, in which case clause 5.13(g) will apply.
- (c) To assist TfNSW to undertake its assessment, the Supplier must prepare a report (**Annual Performance Review Report**) in respect of the relevant Financial Year in compliance with section 4 of the SPR and provide that report to TfNSW within 10 Business Days after the end of that Financial Year.
- (d) The Supplier must also provide promptly any further information reasonably requested by TfNSW for the review.
- (e) TfNSW must use reasonable endeavours to complete the Annual Performance Review within 30 Business Days after receipt of the Supplier's Annual Performance Review Report and any other information requested by TfNSW.
- (f) TfNSW's Representative will confirm the outcome of the Annual Performance Review to the Supplier's Representative as soon as reasonably practicable on completion of TfNSW's assessment.
- (g) If TfNSW determines that the Supplier's performance has not been satisfactory or that the relationship between the parties has not been satisfactory:
 - TfNSW's Representative may direct the Supplier to prepare a rectification strategy setting out steps to be taken by the Supplier to improve its performance and/or to improve the working relationship between the parties; and

- (ii) within 20 Business Days of that direction, the Supplier must provide details of its proposed strategy to TfNSW's Representative for Review.
- (h) A direction given by TfNSW's Representative under clause 5.13(g) may:
 - give strategic direction to the Supplier for its performance of the Supplier's Activities in the future; or
 - (ii) identify measures that, without obligation, TfNSW is willing to implement to assist the Supplier to:
 - (A) improve its performance against the key performance indicators set out in Schedule B5;
 - (B) reduce or avoid Service Payment Adjustments; or
 - (C) improve the working relationship between the parties.

6. Mandatory Requirements and Approvals

6.1 Mandatory Requirements

The Supplier must:

- (a) perform (and procure any Subcontractors to perform) the Delivery Activities and the Maintenance Services in accordance with; and
 - (b) ensure that:
 - (i) the Units and Simulators on Provisional Acceptance;
 - the MFI Works and the Maintenance Facility Equipment on MFI Practical Completion;
 - (iii) all Spares, Tools and Consumables provisioned from time to time; and
 - (iv) the Additional MF Works on Additional MF Works Practical Completion,
 are in accordance with,
- all applicable Mandatory Requirements.

6.2 Supplier to obtain Approvals

Except to the extent expressly stated otherwise in this deed, the Supplier must:

- (a) obtain (or procure) and maintain all Approvals required for the Supplier or its Associates to perform the Supplier's Activities;
- (b) comply with, carry out and fulfil, and ensure its Subcontractors comply with, carry out and fulfil, the requirements of all such Approvals;
- (c) not cause TfNSW, the Operator or a 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
- (d) 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 Supplier's Activities).

The Supplier indemnifies TfNSW, the Operator and each 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 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:
 - Approvals which are obtained by any of them; or
 - conditions and requirements of Approvals which are required to be satisfied or fulfilled by them,

relating to the Supplier's Activities and the Project.

6.4 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 Supplier's Activities that are:

- (a) received by the Supplier or the Supplier's Subcontractors from an Authority (including Approvals and other notices) as soon as possible after they are received by the Supplier or the Subcontractor; or
- (b) given by the Supplier or the Supplier's Subcontractors to an Authority at the time that those documents are given to the Authority.

6.5 Submission of documents

If the Supplier (or a Subcontractor) 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, deliver a final version of the documents to TfNSW in order to enable TfNSW to submit the relevant document to the Authority on time.

6.6 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 Supplier's Activities, including any infringement notice, fine or penalty.

7. Rail Safety

7.1 Acknowledgement by the Supplier

The Supplier acknowledges that:

- (a) the Operator and the NSW Rail Entities (each an **Accredited Person**) may need to obtain variations to existing Accreditations (if any) in accordance with the requirements of the Rail Safety National Law and the Rail Safety National Regulations in order to facilitate

delivery of the Project including the operation and maintenance of the Rolling Stock
(**Accreditation Variations**);

- (b) a failure to obtain, or delay in obtaining, the Accreditation Variations will have a significant adverse impact on the ability of the Accredited Persons to fulfil the Operations Functions;
- (c) at the date of this deed, ONRSR's requirements in relation to the Accreditation Variations are not yet fully known, and are likely to evolve over time;
- (d) the process for obtaining the Accreditation Variations will be an iterative one, and will require the Supplier to cooperate flexibly and responsively with the Accredited Persons;
- (e) ONRSR will require the safety management systems of the Accredited Persons to:
 - cover all relevant aspects of the Supplier's Activities; and
 - include measures to address safety risks arising from the Supplier's Activities and their interfaces with related activities of the Accredited Persons including appropriate measures regarding competency, communication, risk management and continuous improvement; and
- (f) it is in the interests of the Accredited Persons, the Supplier and ONRSR for Accreditation Variation Applications to be coordinated effectively.

7.2 Coordination of Accreditation Variation Applications

Having regard to the acknowledgements by the Supplier in clause 7.1, the Supplier must:

- (a) deal with TfNSW's Representative as the single point of contact for the Supplier in providing input to Accreditation Variation Applications;
- (b) subject to clause 7.2(a), cooperate in good faith with and do all things reasonably necessary to enable and assist the Accredited Persons to obtain all relevant Accreditation Variations, including by:
 - preparing and submitting to TfNSW's Representative;
 - (A) all Accreditation Variation Documents;
 - (B) all supporting documentation and certificates referred to in clause 7.3(b); and
 - (C) any other information and documentation that TfNSW's Representative may reasonably require in connection with the Accreditation Variation, in a timely manner and when directed by TfNSW's Representative (subject to reasonable prior notice being given by TfNSW's Representative) and in a form reasonably required by TfNSW's Representative; and
 - responding to queries or requests by TfNSW's Representative within the periods reasonably required by TfNSW's Representative; and
- (c) not do, or omit to do, anything which may hinder or delay an Accredited Person from obtaining an Accreditation Variation.

7.3 Supplier to prepare documents

- (a) The Supplier must develop and submit to TfNSW's Representative for Review:
 - a Safety Accreditation Strategy; and
 - (ii) draft and final Accreditation Variation Documents that are in accordance with:
 - (A) the Supplier's Safety Accreditation Strategy;
 - (B) the Rail Safety National Law;

- (C) the safety management systems of the Accredited Persons (as the case may be);
 - (D) any requirements of ONRSR for the Accreditation Variation Document; and
 - (E) the other requirements of any NIF Project Agreement.
- (b) Each Accreditation Variation Document submitted by the Supplier for Review must be accompanied by:
 - supporting documentation in such form as TfNSW may reasonably require which demonstrates how the Accreditation Variation Document complies with the requirements of clause 7.3(a)(ii); and
 - (ii) a certificate from an appropriately qualified person issued on behalf of the Supplier stating that the Accreditation Variation Document complies with the requirements of clause 7.3(a)(ii).
- (c) If ONRSR rejects or requires changes to, or further information in respect of, an Accreditation Variation Application, the Supplier must, if requested by TfNSW's Representative, promptly make the necessary changes to the Accreditation Variation Documents and/or provide the further information.

7.4 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:
 - maintain any Accreditation; and
 - 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 Supplier's Activities;
- (b) not do, or omit to do, anything which may:
 - cause an Accredited Person to breach any term of its Accreditation; or
 - 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 Supplier's Activities, within the time requested.

7.5 Supplier's rail safety obligations

In carrying out the Supplier's Activities:

- (a) the Supplier must (and to the extent the Supplier's Activities are performed by any Subcontractor, it must ensure that the Subcontractor does):
 - 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 Supplier's Activities; and
 - (ii) comply with the conditions of that Accreditation; and
- (b) the Supplier must (and, to the extent the Supplier's Activities are performed by any Subcontractors, it must ensure that the Subcontractors) act as 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 Supplier's 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.

7.6 Copies of notices to be provided

Promptly after it is given or received the Supplier must provide TfNSW with a copy of any notice, report and other correspondence given to an Authority or received by the Supplier or its Associates from an Authority under or in connection with:

- (a) the Rail Safety National Law;
- (b) the Rail Safety National Regulations; or
- (c) any Accreditation held by the Supplier or its Associates,

if it relates to the Supplier's Activities or to matters that may adversely affect the ability of the Supplier or its Associates to perform the Supplier's Activities. The notice, report or other correspondence must be provided to TfNSW's Representative as soon as possible, but in any event no later than five Business Days after it is given or received by the Supplier or its Associates.

7.7 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.

7.8 TfNSW to cooperate

TfNSW must provide all reasonable cooperation to the Supplier:

- (a) in connection with the Supplier's obligations under clause 7.2 and clause 7.3; or
- (b) 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 Supplier's 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.

7.9 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.

7.10 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.

8. Supplier's general obligations

8.1 SPR

In the performance of the Supplier's 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 Supplier's 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 Supplier's 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) Each participant of the Supplier must:
 - obtain prior to commencing the Supplier's Activities; and
 - maintain during the Contract Term,
 AEO status:
 - (iii) necessary for completion of those parts of the Supplier's Activities for which that participant of the Supplier is responsible; and
 - (iv) in accordance with the authorisation and accreditation requirements of section 2.2 of the SPR.
- (b) The Supplier acknowledges that the Asset Standards Authority will assess, and is the body empowered to grant, AEO status to each participant of the Supplier to carry out the Supplier's Activities in accordance with SPR Appendix 08, 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.
- (c) Without limiting any other provision of the deed, the Supplier must comply with, and ensure that the Supplier's Subcontractors comply with, the Project Plans referred to in clause 9.
- (d) Notwithstanding any other provision of this deed, the Supplier must procure that AEO status is maintained by the Supplier at all times in accordance with the authorisation and accreditation requirements of section 2.2 of the SPR.

8.4 Work health and safety

- (a) The Supplier must, and must ensure that the Supplier's Personnel, carry out the Supplier's Activities:
 - safely and in a manner that does not put the health and safety of persons at risk; and
 - in a manner that protects property.

- (b) The Supplier must, and must (as relevant) ensure that the Supplier's Personnel carrying out the Supplier's Activities under this deed in Australia:
- 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 and members of the public who may be affected by, or by the performance or purported performance of, the Supplier's Activities;
 - (v) pay all fees and charges payable under the WHS Law in connection with the provision of the Supplier's Activities;
 - (vi) where the Supplier (or any participant of 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 Supplier's Activities at, any site owned or managed by TfNSW or any NSW Rail Entity, complete (at the Supplier's cost) any WHS induction process/training provided by TfNSW 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 attend a site managed or controlled by the Supplier, provide:
 - (A) TfNSW or the relevant TfNSW Associate with sufficient information regarding any hazards or risks associated with the sites or the Supplier's Activities which may affect the TfNSW'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 Supplier's 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 Supplier's 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 Subcontractor 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 Other Contractors 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 and TAHE in carrying out the Supplier's Activities to enable TfNSW to discharge its duties under the WHS Law;
 - (xxiii) ensure that it does not do anything or fail to do anything that may cause TfNSW to be in breach of the WHS Law; and
 - (xxiv) ensure that each Subcontract includes provisions equivalent to clauses 8.3(c) and 8.4 and paragraph 4.2(d) of Schedule C2.
- (c) The Supplier must liaise, cooperate and confer with TfNSW, TAHE, 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 Supplier's Activities can be performed safely and without risk to health; and
 - eliminating or minimising the risk to WHS which may arise from the design or manufacture of the Rolling Stock and Simulators.
- (d) Without limiting the Supplier's obligations in this clause 8.4, the Supplier must ensure that the Supplier's Activities occurring outside of the Commonwealth of Australia are performed consistently with all applicable laws and legal requirements in those jurisdictions in which the Supplier's 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 Rolling Stock and Simulators are designed to be, manufactured to be, and are, without risks to the health and safety of persons:
- who use the Rolling Stock and Simulators for a purpose for which they are designed or manufactured;
 - who store the Rolling Stock and Simulators;
 - (iii) who carry out any reasonably foreseeable activity in relation to the Rolling Stock and Simulators for a purpose for which they are designed or manufactured or for

the proper storage, decommissioning, dismantling or disposal of the Rolling Stock and Simulators;

- (iv) who are in the vicinity of and are exposed to the Rolling Stock and Simulators; and
- (v) whose health or safety may be affected by a use or activity referred to in this clause 8.4(e).

8.5 Safety Management System

- (a) The Supplier must prepare a safety management system in accordance with section 2.6 of the SPR and any other Mandatory Requirements (**Safety Management System**), which must:
 - set out in adequate detail the procedures the Supplier will implement to manage the Supplier's Activities from a WHS perspective for those Supplier's Activities occurring:
 - (A) within the Commonwealth of Australia; and
 - (B) outside of the Commonwealth of Australia;
 - describe how the Supplier proposes to ensure that the Supplier's Activities occurring within the Commonwealth of Australia are performed consistently with the WHS Law and any other Mandatory Requirement for those Supplier's Activities; and
 - (iii) describe how the Supplier proposes to ensure that the Supplier's Activities occurring outside of the Commonwealth of Australia are performed consistently with all applicable laws and legal requirements in those jurisdictions in which the Supplier's Activities are being performed outside of the Commonwealth of Australia.
- (b) The Safety Management System must otherwise be in accordance with the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (*Edition 5, September 2013*).
- (c) Without limiting any duties or obligations under the Rail Safety National Law, the Supplier must, upon receipt of a written request by TfNSW, make available all records relating to WHS and the Supplier's implementation of the Safety Management System within and outside of the Commonwealth of Australia and provide TfNSW or any third party appointed by TfNSW with access and copies of all records relating to the Supplier's:
 - WHS compliance;
 - (ii) WHS management systems; and
 - (iii) breaches of any laws relating to WHS within and outside of the Commonwealth of Australia.

8.6 Safety Management Plan

- (a) The Supplier acknowledges that preparation of the Safety Management Plan in accordance with clause 9 is a condition precedent to the grant of:
 - the MFI Works Licence pursuant to paragraph 1.1 of Schedule C2;
 - the Commissioning Facility Licence pursuant to paragraph 1.4 of Schedule C2;
 - (iii) the Maintenance Facility Licence pursuant to paragraph 1.2 of Schedule C2;
 - (iv) each NIF Stabling Yard Licence pursuant to paragraph 1.6 of Schedule C2; and
 - (v) the Additional MF Works Licence pursuant to paragraph 1.7 of Schedule C2.

- (b) Without limiting any requirement of the WHS Law or this deed, the Safety Management Plan must:
 - set out in adequate detail the procedures the Supplier will implement to manage the Supplier's Activities from a WHS perspective at the Commissioning Facility Site and each Maintenance Location;
 - describe how the Supplier proposes to ensure that the Supplier's Activities at the Commissioning Facility Site and each Maintenance Location are performed consistently with the WHS Law and any other Mandatory Requirement; and
 - (iii) address the matters specified in the WHS Law.
- (c) Without limiting clause 9, the Supplier must:
 - continue to correct any defects in or omissions from the Safety Management Plan (whether identified by TfNSW's Representative or the Supplier); and
 - regularly and at least no less than annually, review and, as necessary, revise the Safety Management Plan in accordance with the WHS Law,

and submit an amended draft of its Safety Management Plan to TfNSW's Representative, after which clauses 9.3 and 9.5 will reapply (to the extent applicable).
- (d) The Supplier must document and maintain detailed records of inspections or audits undertaken as part of the Safety Management Plan.
- (e) The Supplier must, and must ensure that the Supplier's Personnel, carry out the Supplier's Activities in accordance with, and otherwise implement, the latest Safety Management Plan.

8.7 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:
 - under this clause 8; and
 - under all applicable WHS Law,

(WHS Obligations) from time to time as required by TfNSW.
- (b) If the Supplier is required to conduct an audit under clause 8.7(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 8.7(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:
 - 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
 - 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.

8.8 Prevention of nuisance and interference

In performing the Supplier's 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 the Commissioning Facility Site or 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.

8.9 Industrial relations

- (a) The Supplier must, in performing the Supplier's Activities, report to TfNSW any grievance or dispute relating to industrial relations or WHS matters that may impact the carrying out of the Supplier's 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:
 - statutory obligations;
 - 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 Supplier's 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 Supplier's 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 Supplier's Activities, including by pursuing legal action where possible.

8.10 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 2.14 of the SPR.
- (b) All Training provided by the Supplier must be suitable and sufficient to enable TfNSW, any other NSW Rail Entities, their employees and other relevant persons under the authority of TfNSW or any NSW Rail Entity to safely and efficiently use the Assets for their intended purposes.

8.11 Training Management Guidelines

- (a) In undertaking the MFI Works, the Additional MF Works and the Maintenance Services, the Supplier must satisfy its obligations as a contractor under the Training Management Guidelines, including by:
 - ensuring that it has a competency management plan in accordance with the Supplier's AEO authorisation (**Competency Management Plan**);
 - complying with:
 - (A) the Competency Management Plan; and
 - (B) the requirements set out in section 1.8.1 of SPR Appendix 09 (**Target Engagement Rate**);

- (iii) co-operating with and assisting TfNSW with any reviews undertaken by TfNSW of the Supplier's compliance with the Training Management Guideline;
- (iv) maintaining records evidencing the Supplier's compliance with the Training Management Guidelines; and
- (v) making all records available to TfNSW.
- (b) The Supplier agrees, in undertaking the MFI Works, the Additional MF Works and the Maintenance Services:
 - that it has processes which actively support employees in the construction industry completing apprenticeships and traineeships;
 - that the processes referred to in clause 8.11(b)(i) will achieve a completion rate of relevant apprenticeships and traineeships undertaken by Personnel of the Supplier in relation to the Supplier's Activities of at least 65% by December 2019;
 - (iii) to comply with any Construction Skills Development Plan current at:
 - (A) in respect of the Additional MF Works, from the date of the Notice to Proceed; and
 - (B) in respect of all other Supplier's Activities, the date of this deed, and as updated from time to time;
 - (iv) to only engage apprentices and trainees in accordance with the Training Management Guidelines and Construction Skills Development Plan directly or through group training companies; and
 - (v) to, every 3 months from the Commencement Date (or at any other time required by TfNSW) and within 1 calendar month before December 2019, provide TfNSW's Representative with a traineeships and apprenticeships report which:
 - (A) demonstrates compliance with the Competency Management Plan;
 - (B) provides details of the apprentices and trainees engaged by the Supplier in relation to the Supplier's Activities;
 - (C) demonstrates compliance with the Target Engagement Rate;
 - (D) includes information which, in TfNSW's Representative's opinion, is detailed enough to enable TfNSW to assess whether the Supplier will meet its obligation under clause 8.11(b)(ii); and
 - (E) if the Supplier is of the reasonable opinion that it is not likely to meet its obligation under clause 8.11(b)(ii), includes details of the measures the Supplier is taking to ensure the satisfaction of its obligation under clause 8.11(b)(ii).

8.12 Community relations

The Supplier:

- (a) acknowledges that the areas where the Supplier's 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:
 - required by the SPR;
 - required by any Approvals; and
 - (iii) otherwise reasonably required by TfNSW from time to time.

8.13 Cooperation and coordination with Other Contractors

(a) The Supplier:



acknowledges that:

- (A) Other Contractors may be engaged to carry out Other Works upon or in the vicinity of the Commissioning Facility Site or a Maintenance Location at the same time as the Supplier;
- (B) the Supplier's Activities may interface with the Other Works;
- (C) Other Contractors may be executing work on parts of the Commissioning Facility Site or a Maintenance Location, or adjacent to the Commissioning Facility Site or a Maintenance Location, at the same time as the Supplier is performing the Supplier's Activities;
- (D) Other Contractors may require the Supplier to provide information to them to coordinate the design of the Other Works with the Supplier's Activities and this must be provided in a timely manner by the Supplier;



must at all times:

- (A) permit Other Contractors to carry out the Other Works on the applicable parts of the Commissioning Facility Site or relevant Maintenance Location or any adjacent property to the Commissioning Facility Site or relevant Maintenance Location (as the context requires);
- (B) at the same time as the Supplier is performing the Supplier's Activities; and
- (C) at the times agreed with the Other Contractor, or failing agreement at times determined by TfNSW's Representative,

and for this purpose, ensure the Other Contractors have safe, clean and clear access to those parts of the Commissioning Facility Site or relevant Maintenance Location, or property adjacent to the Commissioning Facility Site or 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 Other Contractor is carrying out any Other Works;

(iii) must fully cooperate with the Other Contractors, and do everything reasonably necessary to:

- (A) facilitate the Other Works, including providing Other Contractors with such assistance as may be directed by TfNSW's Representative;
- (B) ensure the effective coordination of the Supplier's Activities with the Other Works, including design, construction and any maintenance;
- (C) carefully coordinate and interface the Supplier's Activities with the Other Works, including design, construction and any maintenance; and
- (D) perform the Supplier's Activities so as to minimise any interference with or disruption or delay to the Other Works, including design, construction and any maintenance;

(iv) must be responsible for coordinating the Supplier's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Other Contractor's Personnel and work;

(v) must attend coordination meetings chaired by TfNSW's Representative with Other Contractors 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 Other Contractors that may have an adverse effect upon the Supplier's Activities; and
- (vii) if required by TfNSW's Representative, must enter into a Site Interface Agreement.
- (b) To the extent that the Supplier is required to:
 - carry out safety or site inductions for Other Contractors in order to comply with its obligations under clause 8.13(a);
 - provide Personnel to accompany Other Contractors in order to comply with its obligations under clause 8.13(a);
 - (iii) create information that did not previously exist for the purposes of clause 8.13(a)(i)(D);
 - (iv) provide safe, clean and clear access to areas of the Commissioning Facility Site or a Maintenance Location to which there is no previously existing safe, clean or clear access for the purposes of clause 8.13(a)(ii)(A);
 - (v) comply with a direction by TfNSW's Representative given pursuant to clause 8.13(a)(iii)(A) or paragraph 1.8(c) of Schedule C1; or
 - (vi) carry out any changes to Technical Documents for the purposes of clause 8.13(a)(iii)(B),

then subject to clause 8.13(c), TfNSW will procure payment to the Supplier for those costs calculated on an Open Book Basis and approved by TfNSW for the provision of such services.
- (c) The Supplier's entitlement to claim any costs under clause 8.13(b) will be confined to those costs that are reasonable, proven and necessarily incurred by the Supplier, and additional to what the Supplier would otherwise have incurred but for the requirements set out in this clause.
- (d) Subject to clauses 8.13(b), 29.2(b) and 29.2(c), TfNSW will not be liable upon any Claim by the Supplier arising out of or in any way in connection with:
 - the Other Contractors carrying out Other Works; or
 - any act or omission of an Other Contractor.

8.14 Personnel

- (a) The Supplier must ensure that the Supplier's Personnel engaged in or in connection with the Supplier's Activities are:
 - competent, experienced, appropriately qualified and obtain and maintain any applicable or appropriate qualifications and training; and
 - 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 NIF Project Agreements.
- (d) The Supplier must, at all times, have and maintain personnel with sufficient skills to properly perform and manage the Supplier's Activities including all required activities

related to programming, budgeting, inspecting, fault finding, repairing and maintaining for safety and serviceability.

- (e) Any of the Supplier's Personnel involved with the Supplier's 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.
- (f) 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.
- (g) If, in TfNSW's opinion, any of the Supplier's Personnel:
 - do not have the necessary qualifications or Approvals; or
 - (ii) do not otherwise display the level of competence necessary to carry out the Supplier's Activities safely or in accordance with the requirements of the NIF 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 Supplier's Activities.
- (h) TfNSW's Representative may, acting reasonably, direct the Supplier to remove any person from the performance of the Supplier's Activities.
- (i) The Supplier must ensure that any person the subject of a direction under clause 8.14(g) or clause 8.14(h) is not again involved in the performance of the Supplier's Activities.

8.15 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.

The warranties given in this clause 8.15 do not extend to any documentation prepared by or on behalf of Other Contractors.

8.16 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 NIF 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:
 - 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 of the impact of proposal 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.

8.17 Third Party Agreements

- (a) The Supplier:
 - acknowledges that TfNSW or the NSW Rail Entities have each (respectively) entered into, or may enter into, the Third Party Agreements;
 - must:
 - (A) except in relation to the agreements identified in limbs (a) to (f) of the definition of Third Party Agreements in clause 1.1 of this deed; or
 - (B) unless otherwise notified by TfNSW,

in carrying out the Supplier's Activities comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that TfNSW or each NSW Rail Entity is required, under the terms of the Third Party Agreements, to comply with satisfy, carry out and fulfil;
 - (iii) must otherwise assist TfNSW and each NSW Rail Entity in any way that TfNSW or each NSW Rail Entity reasonably requires to enable TfNSW or each NSW Rail Entity to perform the obligations identified in the Third Party Agreement for TfNSW or the NSW Rail Entity to perform;
 - (iv) must comply with any reasonable directions of TfNSW's Representative (who will have regard to any reasonable submissions made by the Supplier to TfNSW's Representative) regarding the conduct of the Supplier's Activities in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
 - (v) must, where a Third Party Agreement provides for TfNSW or a NSW Rail Entity to provide a document, notice or information to the Third Party that is required to be provided by the Supplier as part of the Supplier's Activities, provide that document, notice or information to TfNSW's Representative (and not to the Third Party) within a reasonable time sufficient for TfNSW's Representative to review and comment on the document, notice or information and provide it to the relevant Third Party within the time period required by that Third Party Agreement;
 - (vi) must, in carrying out the Supplier's Activities:
 - (A) ensure that no act or omission of the Supplier constitutes, causes or contributes to any breach by TfNSW or any NSW Rail Entity of its obligations to a relevant Third Party under the Third Party Agreements; and
 - (B) otherwise act consistently with the terms of the Third Party Agreements;
 - (vii) agrees that whenever, pursuant to the terms of a Third Party Agreement, TfNSW or a NSW Rail Entity makes an acknowledgement or gives a release or warranty, indemnity or covenant to the relevant Third Party under any clause of the Third Party Agreement then, except:

- (A) in relation to the agreements identified in limbs (a) to (f) of the definition of Third Party Agreements in clause 1.1 of this deed; or
- (B) to the extent agreed otherwise by TfNSW's Representative in writing,
the Supplier is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to TfNSW or the relevant NSW Rail Entity on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by TfNSW or the NSW Rail Entity under the relevant Third Party Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this deed for the benefit of TfNSW or that NSW Rail Entity; and
- (viii) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Supplier agrees that TfNSW and the relevant NSW Rail Entity similarly make no representation to the Supplier in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this deed.
- (b) The parties acknowledge that:
 - TfNSW or the NSW Rail Entities may enter into other Third Party Agreements (each a **New Third Party Agreement**) from time to time; and
 - certain Third Party Agreements may need to be replaced with new agreements on different terms (each a **Replacement Third Party Agreement**);
 - (iii) the Supplier has reviewed the Third Party Agreements executed at:
 - (A) in respect of the Additional MF Works, the date of Amendment Deed No. 2; and
 - (B) in respect of all other Supplier's Activities, the date of this deed,
and has made allowance for all of its costs (including the costs of all physical works and allowance for any delay or disruption) in complying with its obligations under clause 8.17(a) and TfNSW's and the NSW Rail Entities' obligations under the Third Party Agreements executed either at the date of Amendment Deed No. 2 or at the date of this deed (as applicable);
 - (iv) following:
 - (A) the execution of a New Third Party Agreement; or
 - (B) the execution of any Replacement Third Party Agreement,
in respect of:
 - (C) the Additional MF Works, after the date of Amendment Deed No. 2; and
 - (D) all other Supplier's Activities, after the date of this deed,
- TfNSW or the relevant NSW Rail Entity must promptly give the Supplier a copy of the executed version of the New Third Party Agreement or the Replacement Third Party Agreement (as applicable), (provided that nothing in this clause requires TfNSW or the relevant NSW Rail Entity to disclose any aspect of the relevant agreement that is commercial in confidence) together with (in the case of a Replacement Third Party Agreement) details of the Third Party Agreement that is replaced;
- (v) within 20 Business Days of receipt of an executed copy of a New Third Party Agreement or a Replacement Third Party Agreement (as applicable), the Supplier must inform TfNSW's Representative and any relevant NSW Rail Entities who are

party to the agreement if any terms and conditions of the executed version of the New Third Party Agreement or the Replacement Third Party Agreement (as applicable) are substantially more onerous than those contained in:

- (A) in the case of a New Third Party Agreement, other existing Third Party Agreements; or
- (B) in the case of a Replacement Third Party Agreement, the Third Party Agreement that has been replaced;

(Difference in Conditions), and

- (C) where the Difference in Conditions result in Variation Effects, details of those Variation Effects;
- (vi) if TfNSW's Representative and the relevant NSW Rail Entity do not receive a notice from the Supplier under 8.17(b)(v) within the 20 Business Days referred to in that clause, the Supplier must carry out its obligations under this deed on the basis of:
 - (A) the executed version of the New Third Party Agreement or Replacement Third Party Agreement (as applicable); and
 - (B) without any entitlement to make any Claim; and
- (vii) if TfNSW's Representative receives a notice from the Supplier under 8.17(b)(v) within the 20 Business Day period referred to in that clause, then TfNSW's Representative will be deemed to have given a TfNSW Variation Request for the Supplier to comply with the executed version of the New Third Party Agreement or the Replacement Third Party Agreement (as applicable) including the Difference in Conditions.

9. Project Plans

9.1 Purpose

The intended purposes of the Project Plans are:

- (a) to demonstrate to TfNSW that the Supplier has the understanding, capacity and capability at all times to perform the Supplier's Activities safely and in accordance with the requirements of this deed;
- (b) to ensure that the Deliverables comply with the requirements of this deed;
- (c) to define responsibilities, resources and processes for planning, performing and verifying that the Supplier's Activities satisfy the requirements of this deed; 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 this deed.

9.2 Initial Project Plans

- (a) The Supplier must develop, submit for Review and implement Project Plans in accordance with the requirements of this deed and the SPR.
- (b) Initial versions of certain Project Plans are included in SPR Appendix 11 (**Initial Project Plans**).
- (c) The Supplier must submit initial versions of the remaining Project Plans for Review at the times required by SPR Appendix 07.

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 Supplier's Activities relevant to the Project Plan, including:
 - Variations;
 - 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 07;
- (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 NIF 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:
 - 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 this deed; 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 this deed; 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

The Supplier:

- (a) subject to clause 9.7(b), must implement and comply with the Initial Project Plans; and
- (b) must:
 - implement and comply with each Project Plan; and
 - (ii) 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:
 - in respect of the Additional MF Works, the date of Amendment Deed No. 2; and
 - in respect of all other Supplier's Activities, the date of this deed,
 the Supplier:
 - (iii) examined:
 - (A) this deed (including the SPR) and the NIF Project Agreements;
 - (B) the Provided Facility Sites and the NIF Stabling Yards and their 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 Supplier's Activities, the Commissioning Facility Site, the Maintenance Locations and the Assets, (including regarding the condition of the Commissioning Facility Site and the Maintenance Locations);
 - (iv) was given the opportunity prior to submitting its Tender 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;
 - (v) has undertaken its own independent review and evaluation of the suitability and accuracy of, the information referred to in clauses 10.1(a)(iii) and (iv) without any reliance on TfNSW;
 - (vi) 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 Tender and its obligations under the NIF Project Agreements;

- (vii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all of its obligations under the NIF Project Agreements and of all matters and things necessary for the due and proper performance and completion of the Supplier's Activities;
- (viii) informed itself of all matters relevant to the employment of labour and all industrial matters at the Commissioning Facility Site and the Maintenance Locations;
- (ix) 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 Tender, the performance of its obligations and its potential liabilities under this deed; and
- (x) had sufficient access to the Commissioning Facility Site and the Maintenance Locations, undertook sufficient 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:
 - 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;
 - (C) any of the NIF Project Agreements;
 - (D) any transaction or arrangement contemplated under any of the NIF Project Agreements;
 - (E) any other matter relevant to the Supplier's decision to enter into the NIF Project Agreements; or
 - (F) any other drawings, plans, design specifications, reports or other information or data which relate, directly or indirectly, to the Supplier's Activities.
- (b) Without limiting clause 10.3 or the warranties and acknowledgements in any Deed of Disclaimer, the Supplier acknowledges and agrees that:

- 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 or completeness of such Information Document or other information, data, representation, statement, document or material,

for the purposes of entering into the NIF Project Agreements or carrying out the Supplier's Activities but nothing in this paragraph will limit or otherwise affect the Supplier's obligations under the NIF Project Agreements;

- warrants that:
 - (A) it enters into the NIF Project Agreements and has agreed to satisfy the requirements in the NIF Project Agreements based on its own evaluations, investigations, interpretations, deductions, information and determinations;
 - (B) the Supplier and any of its Associates have relied absolutely on their own opinion and professional advice based upon their own independent analysis, assessment, investigation and appraisal in deciding to enter into the Tender Process and to enter into the NIF Project Agreements; and
 - (C) neither the Supplier nor any of its Associates have relied in any way on the skill or judgment of TfNSW, any Associates of TfNSW or any person acting on behalf of or associated with any of them in deciding to enter into the Tender Process and the NIF 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 NIF 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 Associates of the Supplier, or the Supplier's Personnel when receiving the Information Documents;
- (v) acknowledges that it is aware that TfNSW has 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 Tender; and
- (vi) acknowledges and agrees that it will not be relieved of any liability or responsibility under any NIF Project Agreement because of the provision by the Supplier of any documents or any other data or information to TfNSW prior to:
 - (A) in respect of the Additional MF Works, the date of Amendment Deed No. 2; and
 - (B) in respect of all other Supplier's Activities, the date of this deed.

10.4 Liability

The Supplier releases and indemnifies TfNSW and TAHE from and against:

- (a) any Claim against TfNSW or TAHE by, or liability of TfNSW or TAHE to, any person; or
- (b) (without being limited by clause 10.4(a)) any Loss incurred by TfNSW or TAHE, 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 TAHE 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. Provided Facilities

11.1 Provided Facilities and NIF Stabling Yards

The terms of Schedule C1 and Schedule C2 apply in relation to the conduct of the Commissioning Works, MFI Works, Additional MF Works and other obligations of the Supplier relating to the Provided Facility Sites under this deed.

11.2 MFI Works Licence

TfNSW must grant, or procure the grant to the Supplier of the MFI Works Licence as further described in paragraph 1.1 of Schedule C2 and Schedule C4 and in the Access Schedule.

11.3 Commissioning Facility Licence

TfNSW must:

- (a) grant, or procure the grant to the Supplier of the Commissioning Facility Licence as further described in paragraph 1.4 of Schedule C2 and in the Access Schedule; and

- (b) if a notice is issued under clause 15.4 of the Commissioning Facility Licence, issue to the Supplier a TfNSW Variation Request prepared on the basis that the termination of the Commissioning Facility Licence is a proposed Variation.

11.4 Maintenance Facility Licence

TfNSW and TAHE must:

- (a) grant to the Supplier, or procure the grant to the Supplier of the Maintenance Facility Licence as further described in paragraph 1.2 of Schedule C2 and in the Access Schedule; and
- (b) if a notice is issued under clause 15.4 of the Maintenance Facility Licence, issue to the Supplier a TfNSW Variation Request prepared on the basis that the termination of the Maintenance Facility Licence is a proposed Variation.

11.5 NIF Stabling Yard Licence

TfNSW must grant to the Supplier, or procure the grant to the Supplier of, a licence for the Supplier to access each NIF Stabling Yard (excluding any NIF Stabling Yard within the Maintenance Facility Site or the Commissioning Facility Site) (**NIF Stabling Yard Licence**) as further described in paragraph 1.6 of Schedule C2, Schedule C6, the Train Plan Parameters and in the Access Schedule.

11.6 Additional MF Works Licence

The Additional MF Works Licence is further described in paragraph 1.7 of Schedule C2, Schedule C7 and in the Access Schedule.

12. Quality

12.1 Workmanship

In performing the Supplier's Activities, the Supplier must use workmanship of:

- (a) at least the standard set out in the SPR; or
- (b) to the extent a standard is not set out in the SPR, a standard consistent with Good Industry Practice for work of a similar nature to the relevant Supplier's Activities; and
- (c) which is fit for its intended purpose.

12.2 Materials

In performing the Supplier's Activities, the Supplier must use Materials which:

- (a) comply with the requirements of the SPR; or
- (b) if not fully described in the SPR, are consistent with Good Industry Practice for work of a similar nature to the relevant Supplier's Activities; and
- (c) are free from Defects and other imperfections; and
- (d) are safe and fit for their intended purpose.

13. Verification

13.1 Obligation to conduct Verification Activities

The Supplier must carry out the Verification 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:
 - the Verification Procedures associated with the Verification Activity not less than 20 Business Days prior to conducting the Verification Activity; and
 - 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 must give TfNSW's Representative:
 - a Verification Program which must also specify the date and time of each Verification Activity to be conducted for the following 25 Business Day period; and
 - an updated Verification Program each week during the period that the Supplier is carrying out Verification Activities.
- (f) 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 2.13 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 the Deliverables (including during the Verification Program); and
- (c) ensure that the FRACAS includes at least the following features:
 - a means of identifying and recording Faults;
 - a process for investigating and determining the primary cause of the Fault;
 - (iii) a process for determining appropriate corrective action to ensure that the Deliverable 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 Fault.

13.4 Process for determining Network Access Rights

- (a) Subject to clauses 13.4 to 13.8, TfNSW must provide or procure a relevant NSW Rail Entity to provide, and the Supplier may utilise, the configurations of Network Access Rights agreed or determined by TfNSW in accordance with clauses 13.4(b) to 13.4(d) (**Agreed Network Access Rights**), for the purposes of the Verification Activities and commissioning the Units.

- (b) The Supplier must issue to TfNSW's Representative:
- not less than 14 weeks before the start of each Network Access Year, a written request containing indicative Network Access Information in relation to the Network Access Rights which the Supplier wishes to utilise during that Network Access Year (**Annual Access Forward Lookahead**); and
 - not less than 14 weeks before the date on which the Supplier wishes to utilise any specific Network Access Right, a written request containing detailed confirmation of the Network Access Information in relation to the Network Access Rights which the Supplier wishes to utilise on that date (**Specific Access Request**).
- (c) Within 25 Business Days of TfNSW's Representative receiving a Specific Access Request, TfNSW's Representative will determine possible Network Access Rights for the Supplier to utilise, having regard to:
- the Indicative Network Access Rights for the relevant period;
 - (ii) in the case of a Specific Access Request, whether it is consistent with the relevant Annual Access Forward Lookahead previously submitted under this clause;
 - (iii) the availability of Network Access Rights during the relevant period;
 - (iv) the matters detailed in the Supplier's request; and
 - (v) any other factors TfNSW's Representative (acting reasonably) considers relevant,
- and will notify the Supplier of possible configurations for the Network Access Rights that are the subject of the relevant request.
- (d) Within five Business Days of TfNSW's Representative issuing a notice under clause 13.4(c) (or such other time as agreed in writing by the Supplier and TfNSW), TfNSW's Representative and the Supplier must meet and endeavour to agree, in writing, suitable configurations for the Network Access Rights. If the parties cannot agree suitable configurations for the Network Access Rights the configurations will be determined by TfNSW's Representative.
- (e) Where the Supplier has complied with the requirements of clauses 13.4(b) to 13.4(d), the configurations for the Network Access Rights determined by TfNSW's Representative must be at least as suitable for the activities which the Supplier proposes to carry out during the Network Access Rights as the Indicative Network Access Rights for the relevant period.

13.5 TfNSW may cancel or change rights

- (a) TfNSW may cancel or change an Agreed Network Access Right at any time.
- (b) If TfNSW does cancel or change an Agreed Network Access Right:
- TfNSW's Representative must notify the Supplier of the cancellation or change; and
 - (ii) subject to clause 13.5(c), if the Agreed Network Access Right was the subject of a Specific Access Request, accepted under clause 13.4(d), the cancellation of, or a material change to, that Network Access Right will be a Compensation Event.
- (c) The Supplier will not be entitled to make any Claim against TfNSW arising out of or in connection with the cancellation of, or a change to, an Agreed Network Access Right:
- other than as provided in clause 13.5(b)(ii); and
 - the Supplier will have no right to Claim under clause 13.5(b)(ii) to the extent that TfNSW procures equivalent Network Access Rights (having regard to the matters

referred to in clauses 13.4(c)(i) to 13.4(c)(v)) and the Supplier is reasonably able to utilise those Network Access Rights.

13.6 Additional Network Access Rights

- (a) The Supplier must minimise the need for Network Access Rights that are at different times than, on different dates from or in addition to, the Agreed Network Access Rights (**Additional Network Access Rights**).
- (b) If the Supplier wishes to request any Additional Network Access Rights:
 - as soon as reasonably practicable the Supplier must issue a written request to TfNSW's Representative setting out the Network Access Information for each Additional Network Access Right requested; and
 - TfNSW will endeavour to procure any Additional Network Access Right requested by the Supplier, but will not be under any obligation to do so.
- (c) TfNSW may cancel or change an Additional 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:
 - TfNSW's delay or refusal to grant or procure an Additional Network Access Right; or
 - the cancellation of, or a change to, any Additional Network Access Right.

13.7 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 if the Supplier considers it may be late in vacating the Network; and
- (c) indemnify TfNSW and any other relevant 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.

13.8 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, or an event described in clause 13.8(c), 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 Supplier will be relieved of its obligations under clause 13.8(b) to indemnify TfNSW and the NSW Rail Entities for a failure to utilise any Network Access Right where such failure is due to an event described in clause 29.1(b), clause 29.1(c) or clause 29.1(d), except to the extent the event:
 - occurs or arises as a result of any act or omission of the Supplier or its Associates;
 - (ii) is, or ought to have been, within the control of the Supplier or its Associates; or

- (iii) could reasonably have been prevented by a prudent, competent and experienced contractor performing work of a similar nature to the Supplier's Activities.
- (d) The following preconditions must be satisfied before the Supplier can utilise a Train Run Entitlement:
 - the Supplier's Incident and Security Management Plan must be a Confirmed Document;
 - the Supplier has demonstrated to the reasonable satisfaction of TfNSW an ability to implement its Incident and Security Management Plan;
 - (iii) the relevant Unit 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.
- (e) The Supplier must, when utilising a Train Run Entitlement:
 - ensure that the relevant Unit complies with the Train Operating Conditions Manual as varied in accordance with any Train Operating Condition Waiver;
 - where the Train is not included in the Train Operating Conditions Manual, obtain a valid Train Operating Condition Waiver relevant for the activities to be undertaken;
 - (iii) comply with, and ensure that its Associates comply with, all Train Orders, all relevant Train Operating Condition Waivers and all relevant Safe Notices;
 - (iv) prevent the relevant Unit 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.
- (f) If during a Train Run there is an Incident due to one or more Supplier Related Problems, the Supplier must:
 - promptly assist TfNSW to remove the Train from the Network causing as little disruption to the Operations Functions as possible; and
 - if the Incident results in the cancellation of train services, and there have been nine or more previous incidences where Incidents during Train Runs caused by Supplier Related Problems have led to cancellation of train services, then the Supplier must pay TfNSW [REDACTED] (CPI Indexed) in relation to that Incident.

The amount referred to in clause 13.8(f)(ii) does not exceed a genuine pre-estimate of the Loss which TfNSW will 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 Owning. The parties agree that, as between TfNSW, TAHE and the Supplier, this clause 13.8(f) is TfNSW's, TAHE's and each other NSW Rail Entity's sole monetary remedy in respect of any cancellation of a train services arising from an Incident due to a Supplier Related Problem to which this clause applies.
- (g) The Supplier acknowledges and agrees that:
 - TfNSW cannot, and will not, guarantee any configuration for a Network Access Right (including an Agreed Network Access Right) as fixed;

- (ii) TfNSW may be required to cancel or change a Network Access Right at short notice;
- (iii) Other Contractors may perform Other Works 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 Other Contractors 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.

13.9 Energy consumption verification

The Verification Plan must provide for Verification Activities to verify and demonstrate, to TfNSW's reasonable satisfaction, the Actual Energy Consumption for the Fleet.

13.10 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) Each Verification Report must comply with section 2.13.4 of the SPR.
- (c) If a Verification Activity is failed, the Supplier must:
 - submit a FRACAS report as they are generated during the course of the Verification Activities;
 - 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 clauses 13.3 and 13.4 will reapply.

13.11 TfNSW's Representative may require additional Verification Activities

- (a) At any time, on giving the Supplier reasonable notice, TfNSW's Representative may carry out, or direct the Supplier to carry out, additional Verification Activities in respect of any of the Assets (**Unplanned Verification Activities**). The Supplier must provide all reasonable assistance required by TfNSW's Representative in relation to the Unplanned Verification Activities.
- (b) TfNSW's Representative may direct that any part of an Asset not be covered up or made inaccessible without TfNSW's Representative's prior written consent.
- (c) On completion of Unplanned Verification Activities, the Supplier must promptly make good the work verified so that it fully complies with the NIF Project Agreements.

13.12 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 NIF Project Agreements of any Deliverable verified.

- (b) No participation in any Verification Activity or inspection of a Deliverable or failure to participate by TfNSW or TfNSW's Representative in any Verification Activity or inspection shall:
 - 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 NIF Project Agreement or otherwise according to law.

13.13 Costs of verification

- (a) Subject to clause 13.13(b) and clause 13.13(c), each party must bear their own costs of and incidental to Verification Activities carried out under this clause 13.
- (b) Except in the circumstances listed in clause 13.13(c), if TfNSW carries out, or directs the Supplier to carry out Unplanned Verification Activities, a Compensation Event will occur.
- (c) TfNSW's reasonable incremental costs of and incidental to conducting, participating in or witnessing any Verification Activity will be Moneys Owing to the extent that the Verification Activity:
 - involves retesting a Deliverable 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);
 - (ii) is an Unplanned Verification Activity and the results of the Verification Activity show:
 - (A) the work is not in accordance with this deed; or
 - (B) that there is a Defect; or
 - (iii) is an Unplanned Verification Activity:
 - (A) in respect of work covered up or made inaccessible without the prior written approval of TfNSW's Representative where that approval was required; or
 - (B) in respect of work undertaken to correct or overcome a Defect.

Part B – Delivery Activities

14. Design

14.1 Design

The Supplier must design the Deliverables in accordance with:

- (a) the Design Development Requirements;
- (b) the SPR;
- (c) all Mandatory Requirements;
- (d) all Approvals;
- (e) the Systems Engineering Management Plan;
- (f) any Variation directed by TfNSW; and
- (g) all other requirements under the NIF Project Agreements.

14.2 Purpose of integrated Design Development Process

The Supplier acknowledges and agrees that:

- (a) the purpose of the Design Development Process is to:
 - optimise the design of the Rolling Stock, the Simulators, the Maintenance Facility Equipment, the MFI Works, the Maintenance Facility, the Additional MF Works, the Maintenance Facility Site, the Asset Information System, the Performance Monitoring System and the Asset Management System; and
 - develop, refine and finalise all the Technical Documents through to Confirmed Document status in accordance with the Design Development Requirements and the terms of this deed;
- (b) due to the nature of the Supplier's Activities, the Design Development Process will be progressive and will involve, amongst other things, appropriate consultation with User Groups;
- (c) the Design Development Process is a consultative process between the Supplier, TfNSW and User Groups;
- (d) the Supplier has sole responsibility to manage and coordinate, and must provide all resources required for the conduct of, the Design Development Process;
- (e) TfNSW is relying on the skill, expertise and judgement of the Supplier in the development of the Technical Documents;
- (f) the Supplier has sole responsibility to ensure that the Technical Documents are fit for purpose and conform in all other respects with the SPR and with the Supplier's other obligations under this deed; and
- (g) the Design Development Process does not of itself constitute a Variation or entitle the Supplier to make any Claim arising out of or in connection with the Design Development Process.

14.3 Concept Design

- (a) The Supplier acknowledges that prior to:
 - in respect of the Additional MF Works, the date of Amendment Deed No. 2; and

- (ii) in respect of all other Supplier's Activities, the date of this deed, it prepared the Concept Design. The Supplier agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Supplier of, or the reliance by Supplier upon, the Concept Design in performing the Supplier's Activities and that the use and reliance on the Concept Design will not limit any of its obligations under this deed.
- (b) The Supplier is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
 - the performance of the MFI Works, the Additional MF Works or the design, manufacture and supply of the Assets and each Deliverable in accordance with the Concept Design costing more than or taking longer than anticipated; and
 - any differences between the Concept Design and the Assets, works or other Deliverables that are actually required to satisfy the requirements of this deed (ignoring for this purpose any differences which are the subject of a Variation Order) and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Supplier may have made in relation to the Concept Design.
- (c) The Supplier warrants that:
 - the Concept Design has been prepared by the Supplier;
 - if the Deliverables are designed and constructed in accordance with the Concept Design, the Deliverables will satisfy the requirements of this deed (but nothing in this clause 14.3(c)(ii) affects or limits clauses 14.3(a) or 14.3(b), which will prevail to the extent of any inconsistency);
 - (iii) it will carry out and complete the Supplier's Activities in accordance with the Concept Design (but nothing in this clause 14.3(c)(iii) affects or limits clauses 14.3(a) or 14.3(b), which will prevail to the extent of any inconsistency);
 - (iv) it will not depart from the Concept Design in a manner that will:
 - (A) increase Life Cycle Costs; or
 - (B) reduce the performance of the Assets including:
 - (I) quality of the Customer experience and amenity;
 - (II) safety;
 - (III) aesthetics, cleanliness, condition and visible features;
 - (IV) Design Life;
 - (V) maintainability;
 - (VI) reliability;
 - (VII) whole of life performance;
 - (VIII) environmental performance;
 - (IX) sustainability performance;
 - (X) functional performance; or
 - (XI) security.

14.4 Design warranties

The Supplier warrants that:

- (a) it has checked and carefully considered and understands the SPR and the Information Documents and that:

- it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SPR;
 - (ii) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the documents comprising the SPR;
 - (iii) the SPR is proper, adequate and fit for its intended purpose including for the purpose of enabling the Supplier to carry out the Supplier's Activities in accordance with, and to ensure that the Assets, the MFI Works, the Additional MF Works and all other Deliverables comply with, this deed;
 - (iv) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the Supplier of, or reliance upon, the SPR; and
 - (v) the use of, or reliance upon, the SPR does not affect any of its obligations under this deed or entitle the Supplier to make any Claim against TfNSW arising out of or in any way in connection with the SPR;
- (b) the Technical Documents will:
 - satisfy the requirements of the SPR and the other requirements of this deed; and
 - be fit for purpose including the purpose of enabling the Supplier to complete its design, development, procurement, manufacturing, testing, commissioning, supply, construction, maintenance and operations obligations under this deed, including by ensuring that:
 - (A) upon Provisional Acceptance, each Unit and each Simulator will be fit for purpose and be designed for its Design Life;
 - (B) on MFI Practical Completion:
 - (I) provided that the MFC Works are designed and constructed in accordance with the MFC Requirements and the MFC Brief, the MFI Works; and
 - (II) each item of Maintenance Facility Equipment; and
 - (C) on Additional MF Works Practical Completion provided that the Additional MF Works are designed and constructed in accordance with the Additional MF Works Scope,
- will be fit for purpose and designed for its Design Life; and
- (c) the warranties given in this clause 14.4 will not be affected by:
 - any design work carried out by the MFC Contractor; or
 - the termination (for any reason) of this deed.

14.5 Preparation, submission and Review of Technical Documents

- (a) The Supplier must prepare and submit Technical Documents to TfNSW for Review which:
 - are required to fully evidence that:
 - (A) contract requirements (including Variations) and all Supplier derived system requirements:
 - (I) are satisfied by the design of the Deliverables;
 - (II) will be and have been implemented by the manufacture and/or construction of the Deliverables; and
 - (III) 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 Supplier's 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;
- (ii) are listed as Technical Documents for submission in the Systems Engineering Management Plan;
- (iii) are deemed significant by TfNSW's 'Process for the Engineering Diligence Review of AEO Designs and Deliverables';
- (iv) are required to operate the Assets;
- (v) are updated or amended, having previously achieved a Confirmed Document status; or
- (vi) 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:
 - in accordance with the Systems Engineering Management Plan and the Review Procedures; and
 - 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 Simulator Supply Works, the Rolling Stock Supply Works, the MFI Works or the Additional MF Works.
- (c) The Supplier acknowledges and agrees that the incorporation of TfNSW's comments into any Technical Documents shall not:
 - constitute a TfNSW Variation Request or Variation Order;
 - constitute a Relief Event or Compensation Event or entitle the Supplier to an extension of time or otherwise entitle the Supplier to make any other Claim under this deed; or
 - (iii) in any way affect the Service Payment or otherwise entitle the Supplier to be reimbursed for any costs and expenses incurred or otherwise compensated in any form or manner.

15. Manufacture and Supply

15.1 Performance of Delivery Activities

The Supplier must:

- (a) design, develop, manufacture, test, commission, supply and deliver:
 - the Initial Fleet;
 - the Simulators; and
 - (iii) the Additional Fleet; and

- (b) undertake all other Rolling Stock Supply Works,
all in accordance with:
- (c) the SPR;
- (d) the Technical Documents prepared by the Supplier in accordance with the requirements of this deed;
- (e) any Variation Order; and
- (f) the other requirements of the NIF Project Agreements.

The Supplier accepts full responsibility for all means, methods and techniques used in the performance of the Delivery Activities.

15.2 Delivery Activities warranty

The Supplier warrants that:

- (a) the Delivery Activities will be carried out in accordance with the Confirmed Technical Documents;
- (b) work carried out in accordance with the Technical Documents will satisfy the requirements of this deed;
- (c) the Delivery Activities will be completed in accordance with, and satisfy the requirements of, this deed;
- (d) the Rolling Stock Supply Works and Simulator Supply Works will in each case:
 - upon Provisional Acceptance;
 - (ii) during the Maintenance Phase; and
 - (iii) after the Expiry Date, subject to being maintained in accordance with Good Industry Practice, at all relevant times throughout their Design Life,
 be safe and fit for their intended purposes;
- (e) the MFI Works will:
 - upon the achievement of MFI Practical Completion; and
 - during the Maintenance Phase; and
 - (iii) after the Expiry Date, subject to the MFI Works being maintained in accordance with Good Industry Practice, at all relevant times,
 be safe and fit for their intended purposes;
- (f) the Supplier has taken into account and made proper allowance for:
 - all of the risks (other than risks which, pursuant to this deed, it does not bear) in relation to the Delivery Activities and made full allowance for those risks in the Simulator Price, the Unit Price, the MFI Works Contract Value and the Additional MF Works Contract Value; and
 - all matters which might impact upon the Supplier's ability to complete the Delivery Activities or to complete the Delivery Activities within any particular time, cost or quality constraints; and
- (g) the Additional MF Works will:
 - upon the achievement of Additional MF Works Practical Completion; and
 - during the Maintenance Phase; and

- (iii) after the Expiry Date, subject to the Additional MF Works being maintained in accordance with Good Industry Practice, at all relevant times,
be safe and fit for their intended purposes as set out in or reasonably ascertainable from this deed.

16. Acceptance

16.1 Provisional Acceptance

- (a) The Supplier must present each Simulator and Unit for Provisional Acceptance by TfNSW's Representative at the Delivery Location for that Asset:
- no later than:
 - (A) for each Simulator, the date specified in the Delivery Program;
 - (B) for all Units in the Initial Fleet yet to be presented as at 30 June 2021, no earlier than 10 Business Days before and no later than 10 Business Days after the date specified in:
 - (I) the Delivery Schedule or if an acceleration direction is given under clause 17.4, the Accelerated Delivery Schedule; or
 - (II) any other Confirmed Delivery Program; and
 - (C) for all Units in the Additional Fleet, no earlier than 10 Business Days before and no later than 10 Business Days after the date specified in the Confirmed Delivery Program; and
 - in the case of a Unit, in sufficient time for the Unit to reach Provisional Acceptance no later than its Date for Provisional Acceptance.
- (b) The Supplier must provide TfNSW's Representative with a notice at least:
- one month; and
 - (ii) five Business Days,
- prior to the date on which the Supplier proposes to first present each Simulator or Unit for Provisional Acceptance advising of the proposed date and time on which the Supplier proposes to first present each Simulator or Unit for Provisional Acceptance; and
- (iii) five Business Days prior to the date and time when it proposes to re-present a Simulator or Unit for Provisional Acceptance that has previously been the subject of a Rejection Certificate under clause 16.1(g).
- (c) Without prejudice to the generality of clauses 16.3 and 16.4, the Supplier may present a Unit for Provisional Acceptance earlier than the date specified in the Confirmed Delivery Program, but TfNSW's Representative is not obliged to undertake activities required to determine whether the Provisional Acceptance Criteria in respect of a Unit have been met or issue a Provisional Acceptance Certificate in respect of a Unit:
- before the relevant date specified in the Confirmed Delivery Program; or
 - less than five Business Days after the Unit that was most recently presented for Provisional Acceptance,
- unless otherwise agreed in writing by TfNSW's Representative.
- (d) 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 determine whether the Provisional Acceptance Criteria for the Simulator or Unit have been satisfied prior to the Simulator or Unit being presented for Provisional Acceptance.

- (e) TfNSW's Representative must:
- determine whether the Provisional Acceptance Criteria for a Simulator or Unit have been met; and
 - notify the Supplier of that determination in accordance with clause 16.1(f) or clause 16.1(g) (as applicable),
- within:
- (iii) 20 Business Days after the later of
 - (A) the Simulator or Unit has been presented for Provisional Acceptance in accordance with the requirements of this clause 16.1; and
 - (B) the date when the Supplier provides TfNSW's Representative with all information required under clause 16.1(d); or
 - (iv) 20 Business Days' where the Supplier has re-presented a Simulator or Unit for Provisional Acceptance that has previously been the subject of a Rejection Certificate under clause 16.1(g).
- (f) If TfNSW's Representative is satisfied that a Simulator or Unit meets the Provisional Acceptance Criteria, TfNSW's Representative will issue a Provisional Acceptance Certificate:
- identifying the Date of Provisional Acceptance of that Simulator or Unit; and
 - listing any Minor Defects.
- (g) If TfNSW's Representative is not satisfied that a Simulator or Unit meets the Provisional Acceptance Criteria, TfNSW's Representative may issue a Rejection Certificate to the Supplier, identifying the items which must be rectified before the Simulator or Unit may be re-submitted for Provisional Acceptance.
- (h) A Rejection Certificate issued under clause 16.1(g) is a Remedial Direction.
- (i) Upon receipt of a Rejection Certificate:
- the Supplier must promptly rectify the items set out in the Rejection Certificate and any other rectification works that are necessary to ensure the Simulator or Unit meets the Provisional Acceptance Criteria; and
 - on satisfactory completion of all of those works:
 - (A) give the notice required under clause 16.1(b)(iii);
 - (B) re-submit the Simulator or Unit for Provisional Acceptance at the Delivery Location on the date and at the time specified in the notice given under clause 16.1(i)(ii)(A); and
 - (C) clauses 16.1(b) to 16.1(i) (inclusive) will reapply.
- (j) As at the date of Amendment Deed No. 2, the parties acknowledge and agree that the Confirmed Delivery Program for the Additional Units is Table 2 in Schedule D1.

16.2 Minor Defects

- (a) As a condition precedent to Final Acceptance of any Unit or Simulator or Interim Final Acceptance for any Unit that is or is to be a Stored Unit (as applicable), the Supplier must:
- in respect of all Minor Defects identified in the Provisional Acceptance Certificate for that Unit or Simulator, have rectified those Minor Defects; and
 - in respect of those Minor Defects identified after the Date of Provisional Acceptance of that Unit or Simulator:

- (A) have rectified those Minor Defects; or
 - (B) where TfNSW's Representative has, in his or her absolute discretion, agreed, by written notice, that the Supplier is not required to rectify those Minor Defects before the achievement of Final Acceptance or Interim Final Acceptance (as applicable), have been and be diligently carrying out, in accordance with clause 16.2(e), a Minor Defect Rectification Plan approved in accordance with clause 16.2(d)(i).
- (b) As a condition precedent to Fleet Acceptance of the Fleet, the Supplier must have rectified all Minor Defects in the Fleet.
- (c) If:
 - any Minor Defects are identified in respect of a Unit or Simulator:
 - (A) after the Date of Provisional Acceptance of that Unit or Simulator; and
 - (B) before the Date of Final Acceptance of that Unit or Simulator or Interim Final Acceptance (as applicable); and
 - TfNSW's Representative has, in his or her absolute discretion, agreed, by written notice, that the Supplier cannot rectify those Minor Defects before the achievement of Final Acceptance or Interim Final Acceptance (as applicable), the Supplier must provide TfNSW with a draft plan identifying its proposed schedule for the rectification of those Minor Defects to occur after the achievement of Final Acceptance or Interim Final Acceptance (as applicable) (**Draft Minor Defect Rectification Plan**).
- (d) TfNSW's Representative must, within 10 Business Days of receiving the Draft Minor Defect Rectification Plan in accordance with clause 16.2(c):
 - approve the Draft Minor Defect Rectification Plan, in which case the Draft Minor Defect Rectification Plan will be deemed the Minor Defect Rectification Plan; or
 - reject the Draft Minor Defect Rectification Plan and provide written reasons for the rejection, in which case a Draft Minor Defect Rectification Plan must be resubmitted by the Supplier to TfNSW within five Business Days in accordance with clause 16.2(c)(ii) and the process this clause 16.2(d) shall re-apply.
- (e) The Supplier must rectify all Minor Defects identified in each Minor Defect Rectification Plan in accordance with that Minor Defect Rectification Plan.

16.3 Interim Final Acceptance, Final Acceptance and Fleet Acceptance

- (a) If the Supplier considers that:
 - any Unit or Simulator meets the Final Acceptance Criteria;
 - (ii) the Fleet meets the Fleet Acceptance Criteria; or
 - (iii) any Unit that is or is to be a Stored Unit meets the Interim Final Acceptance Criteria,

it must notify TfNSW's Representative and provide TfNSW's Representative with all additional documents, details and other information reasonably required by TfNSW's Representative in order to determine whether the Final Acceptance Criteria, Fleet Acceptance Criteria or Interim Final Acceptance Criteria (as relevant) have been met.
- (b) TfNSW's Representative must:
 - determine whether the:
 - (A) Final Acceptance Criteria for the Simulator or Unit;
 - (B) Fleet Acceptance Criteria for the Fleet; or

- (C) Interim Final Acceptance Criteria, have been met; and
 - notify the Supplier of that determination in accordance with clause 16.3(c)(i) or clause 16.3(d)(i) (as applicable) within five Business Days after the later of:
 - (A) the date of the Supplier's notice under clause 16.3(a); and
 - (B) the date when the Supplier provides TfNSW's Representative with all information required under clause 16.3(a).
- (c) If TfNSW's Representative is:
 - satisfied that a Simulator or Unit meets the Final Acceptance Criteria, TfNSW's Representative must issue a Final Acceptance Certificate for that Simulator or Unit; or
 - (ii) not satisfied that a Simulator or Unit meets the Final Acceptance Criteria, TfNSW's Representative must issue a Rejection Certificate to the Supplier, identifying the items which must be rectified before the Simulator or Unit may be re-submitted for Final Acceptance.
- (d) If TfNSW's Representative is:
 - satisfied that the Fleet meets the Fleet Acceptance Criteria, TfNSW's Representative must issue a Fleet Acceptance Certificate; or
 - not satisfied that the Fleet meets the Fleet Acceptance Criteria, TfNSW's Representative must issue a Rejection Certificate to the Supplier, identifying the items which must be rectified before the Fleet may be re-submitted for Fleet Acceptance.
- (e) If TfNSW's Representative is:
 - satisfied that a Unit that is or is to be a Stored Unit meets the Interim Final Acceptance Criteria, TfNSW's Representative must issue an Interim Final Acceptance Certificate; or
 - not satisfied that a Unit that is or is to be a Stored Unit meets the Interim Final Acceptance Criteria, TfNSW's Representative must issue a Rejection Certificate to the Supplier, identifying the items which must be rectified before that Unit may be re-submitted for Interim Final Acceptance.
- (f) A Rejection Certificate issued under clause 16.3(c)(ii), clause 16.3(d)(ii) or clause 16.3(e)(ii) is a Remedial Direction.
- (g) Upon receipt of a Rejection Certificate:
 - the Supplier must promptly rectify the items set out in the Rejection Certificate and any other rectification works that are necessary to ensure:
 - (A) the Simulator or Unit meets the Final Acceptance Criteria;
 - (B) the Fleet meets the Fleet Acceptance Criteria; or
 - (C) the Unit that is or is to be a Stored Unit meets the Interim Final Acceptance Criteria; and
 - on satisfactory completion of all of those works, give notice to TfNSW's Representative and resubmit:
 - (A) the Unit or Simulator for Final Acceptance;
 - (B) the Fleet for Fleet Acceptance (as relevant); or
 - (C) the Unit that is or is to be a Stored Unit for Interim Final Acceptance,

and this clause 16.3 will reapply.

16.4 Effect of Certificates

- (a) A Provisional Acceptance Certificate is final and binding on the parties for the purposes only of establishing that Provisional Acceptance has occurred and the date on which it occurred.
- (b) A Final Acceptance Certificate is final and binding on the parties for the purposes only of establishing that Final Acceptance has occurred and the date on which it occurred.
- (c) A Fleet Acceptance Certificate is final and binding on the parties for the purposes only of establishing that Fleet Acceptance has occurred and the date on which it occurred.
- (d) An Interim Final Acceptance Certificate is final and binding on the parties for the purposes only of establishing that Interim Final Acceptance has occurred and the date on which it occurred.
- (e) Subject to clauses 16.4(a) to 16.4(d) (inclusive), a certificate issued by the TfNSW Representative will not:
 - constitute an approval by TfNSW of the Supplier's performance of its obligations under this deed;
 - be taken as an admission or evidence that the Delivery Activities have been performed in accordance with this deed; or
 - (iii) prejudice any rights or powers of TfNSW under this deed or otherwise according to law, including any rights which TfNSW may have in respect of Defects.

16.5 Stored Units

- (a) If a Unit is or is to be a Stored Unit the provisions in Schedules I will apply in respect of that Unit.
- (b) If a Unit is a Stored Unit, it will remain a Stored Unit until such time as it achieves Running Readiness.
- (c) Despite a Unit being a Stored Unit, it may still be:
 - upon request by TfNSW or the Operator, used in testing for operational readiness activities in accordance with the Train Plan Parameters; and / or
 - (ii) moved on the Network between Storage Facilities and/or the Maintenance Facility.
- (d) Once a Stored Unit achieves Running Readiness, the Unit may be presented, subject to the provisions of this deed, for Final Acceptance.

16.6 Final Acceptance for Stored Units

The parties acknowledge and agree that:

- (a) the Supplier cannot satisfy the Final Acceptance Criteria in paragraphs 1.4(b), (c) and (d) of Schedule D2 for a Unit if that Unit is or is to be a Stored Unit;
- (b) notwithstanding that a Stored Unit has achieved Interim Final Acceptance under clause 16.3, the Supplier must promptly (in accordance with clause 16.6(c)) and diligently satisfy all Final Acceptance Criteria and achieve Final Acceptance in accordance with the process under clause 16.3 and by the Date for Final Acceptance for that Unit from the date that that Stored Unit achieves Running Readiness; and
- (c) Stored Units may only achieve Final Acceptance at an average rate of 2 Units every 10 Business Days upon receipt of the first Out of Storage Notice.

17. Time

17.1 Commencement

The Supplier must promptly commence performance of the Supplier's Activities following the Commencement Date.

17.2 Dates for Completion

The Supplier must:

- (a) achieve each Time Based Delivery Objective by its relevant Time for Performance; and
- (b) consistent with its obligations under clause 17.2(a), continuously and diligently progress the Delivery Activities.

17.3 Delivery Program

- (a) The initial Delivery Program must be consistent with the Dates for Provisional Acceptance of Units set out in the Delivery Schedule.
- (b) The Supplier must:
 - not depart, without reasonable cause, from the most recent Confirmed Delivery Program;
 - update the Delivery Program periodically at intervals no less than monthly to take account of:
 - (A) the physical achieved progress of all relevant activities; and
 - (B) changes to the most recent Confirmed Delivery Program including:
 - (I) delays which have occurred; and
 - (II) any Recovery Plan submitted by the Supplier under clause 17.8 for which TfNSW does not issue any comments under the Review Procedures;
 - (iii) ensure that each update of the Delivery Program contains the details required by the SPR and any other details which TfNSW's Representative reasonably directs;
 - (iv) justify any changes to the critical path in the Delivery Program;
 - (v) ensure that each update of the Delivery Program makes allowance for the Project Plans and Technical Documents to be submitted for Review in a manner and at a rate which will give the Reviewing Party a reasonable opportunity to review the submitted Project Plans or Technical Documents within the Review Period; and
 - (vi) give TfNSW's Representative copies of each update of the Delivery Program for Review.
- (c) Nothing in the Delivery Program will bind TfNSW or otherwise affect the time for the performance of TfNSW's obligations under this deed.

17.4 Acceleration by TfNSW

- (a) TfNSW's Representative may, in his or her absolute discretion and without being under any obligation to do so, direct the Supplier to accelerate the Delivery Schedule to achieve the dates set out in the Accelerated Delivery Schedule by giving written notice to the Supplier (**Acceleration Notice**).
- (b) An Acceleration Notice must:

- state the date on which the direction to accelerate the Delivery Schedule to achieve the dates set out in the Accelerated Delivery Schedule is to take effect; and
 - (ii) give the Supplier no less than ■ notice before its direction to accelerate the Delivery Schedule to achieve the dates set out in the Accelerated Delivery Schedule is effective.
- (c) Where TfNSW's Representative directs the Supplier to accelerate by giving an Acceleration Notice to the Supplier in accordance with clause 17.4(b), the Supplier, in respect of that acceleration:
 - must carry out its obligations under this deed in accordance with the direction; and
 - acknowledges and agrees that the Supplier is not entitled to make any Claim arising out of, or in any way in connection with the direction or acceleration to the carrying out of the Supplier's Activities which the Supplier must perform at any time in order to meet its obligations under this deed.
- (d) TfNSW's rights to Delay LDs are not affected by TfNSW's Representative giving the Supplier an Acceleration Notice under clause 17.4 and any Delay LDs will continue to be assessed against the Initial Fleet Delivery Schedule in respect of the Initial Fleet.

17.5 Acceleration by the Supplier

If the Supplier chooses to accelerate progress of the Delivery Activities then:

- (a) TfNSW may assist the Supplier but will not be obliged to take any action to assist or enable the Supplier to:
 - achieve any Time Based Delivery Objective on or before its relevant Time for Performance; or
 - (ii) complete any of the other Supplier Activities at or before a particular time;
- (b) the time for the performance of TfNSW's or TfNSW's Representative's obligations will not be affected; and
- (c) the Supplier will not be entitled to make any Claim against TfNSW in relation to that acceleration (or any failure or inability by the Supplier or TfNSW to accelerate).

17.6 Delay

- (a) The Supplier must take all reasonable steps to:
 - prevent the cause of any delay to the Delivery Activities; and
 - (ii) avoid or minimise the consequences of any delay, including any delay arising from completion of Other Works.
- (b) If the Supplier becomes aware of any matter which will, is likely to, or has given rise to a delay in achieving any Time Based Delivery Objective by its relevant Time for Performance, then the Supplier must give TfNSW:
 - a notice setting out detailed particulars of the delay; and
 - (ii) a Recovery Plan in accordance with clause 17.8, in each case as soon as reasonably practicable.
- (c) If TfNSW reasonably believes that the Supplier will be, or has been, delayed in achieving any Time Based Delivery Objective by its relevant Time for Performance, then TfNSW may give notice to that effect to the Supplier, and the Supplier must then give TfNSW a detailed plan for recovery of the delay in accordance with clause 17.8.

17.7 Look forward test

- (a) If, at any time after 12 months from the Commencement Date, TfNSW's Representative considers the Supplier will not, or it is reasonably likely that the Supplier will not, achieve either of the Longstop Milestones, TfNSW's Representative may appoint an Independent Expert to formally review the progress of the Delivery Activities for the purposes of determining if the Supplier will achieve the Longstop Milestones.
- (b) The Independent Expert must prepare a preliminary report within 30 Business Days (or any longer period agreed by TfNSW's Representative in writing) of their appointment giving a preliminary opinion (acting reasonably) of whether the Supplier will be able to achieve the Longstop Milestones.
- (c) The Supplier:
 - must provide all reasonable cooperation to the Independent Expert in the preparation of their report; and
 - must promptly on request by the Independent Expert (and in any case, no later than 10 Business Days after a request by the Independent Expert), provide the Independent Expert any information reasonably requested to enable the Independent Expert to prepare the preliminary report referred to in clause 17.7(b).
- (d) Within 10 Business Days of receipt of the Independent Expert's report, the Supplier must:
 - notify TfNSW and the Independent Expert of any matters with which it disagrees with the Independent Expert's opinion together with reasons; and
 - (ii) to the extent it agrees, provide a Recovery Plan which demonstrates that the Longstop Milestones can be achieved.
- (e) Within a further 10 Business Days of provision of a Recovery Plan (and any notice) under clause 17.7(d), the Independent Expert must give notice to TfNSW and the Supplier of their final opinion, taking into account any comments, as to whether or not the Supplier has satisfactorily addressed all delay concerns about its ability to achieve the Longstop Milestones.
- (f) If the Independent Expert determines in its final report that the Supplier will be able to achieve the Longstop Milestones, then:
 - the Supplier must implement and comply with its Recovery Plan; and
 - (ii) provided the Supplier complies fully with its obligations under clause 17.7(f)(i), TfNSW may not exercise its rights under clause 17.7(a) for a further period of three months.
- (g) If the Independent Expert determines in its final report that the Supplier will not be able to achieve either of the Longstop Milestones, then a Supplier Termination Event subsists.

17.8 Recovery Plan

- (a) Each Recovery Plan which the Supplier must provide for Review pursuant to clause 17.6, clause 17.7 or clause 17.12 must:
 - describe the actions and measures which the Supplier will diligently pursue to remedy or mitigate all delay to the Delivery Activities and to ensure (as applicable):
 - (A) where the plan is required under clause 17.6 or clause 17.12, to the greatest extent practicable, the Supplier achieves each Time Based Delivery Objective by its relevant Time for Performance; or
 - (B) where the plan is required under clause 17.7, to ensure the Longstop Milestones are achieved,

and to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 17.2; and

- (ii) contain a proposed updated Delivery Program.
- (b) The Supplier must implement and comply with its Recovery Plan subject to any comments on that plan provided by TfNSW on Review.
- (c) The Supplier will not be relieved of any liability or responsibility under this deed or otherwise at law arising out of or in connection with:
 - any comments given by a Reviewing Party on Review of the Recovery Plan; or
 - the implementation of any Recovery Plan in respect of which a Reviewing Party has or has not given comments on Review.
- (d) The Supplier will not be entitled to make any Claim against TfNSW arising out of or in connection with any comments by a Reviewing Party on Review of the Recovery Plan or any Loss suffered or incurred by the Supplier in preparing, or complying with, a Recovery Plan.

17.9 Action by TfNSW

Without prejudice to the generality of clauses 17.4 and 17.8:

- (a) TfNSW is not obliged to test, inspect or witness any Verification Activity, or issue a Provisional Acceptance Certificate, in respect of:
 - a Unit:
 - (A) before the date of presentation of that Unit for Provisional Acceptance in accordance with 16.1(a);
 - (B) less than five Business Days after the Date of Provisional Acceptance of the Unit that most recently achieved Provisional Acceptance; or
 - (C) on any date prior to the date specified in the Verification Plan; and
 - (ii) a Simulator, on any date prior to the date specified in the Verification Plan, unless otherwise agreed in writing by TfNSW's Representative; and
 - (b) if the Supplier requests that:
 - (i) TfNSW's Representative test, inspect or witness a Verification Activity in respect of a Simulator or Unit on a date which is:
 - (A) before the relevant Date for Provisional Acceptance of that Simulator or Unit;
 - (B) in the case of a Unit, less than five Business Days after the Date of Provisional Acceptance of the Unit that most recently achieved Provisional Acceptance; or
 - (C) otherwise different from the date specified in the Verification Plan; or
 - TfNSW takes any other steps under a Recovery Plan,
- TfNSW's Representative may, in their discretion, agree (in writing) or refuse to do so, and:
- (iii) if TfNSW's Representative agrees, TfNSW's incremental costs and expenses incurred in facilitating the Supplier's request will be Moneys Owed; or
 - (iv) if TfNSW's Representative refuses, the Supplier will not be entitled to claim any relief or make any Claim, including a claim for an extension of time, against TfNSW.

17.10 Supplier's obligation to pay Delay LDs

- (a) Subject to clause 17.12, if any Unit fails to reach Provisional Acceptance by its Date for Provisional Acceptance, the Supplier must pay TfNSW liquidated damages (**Delay LDs**) (without the requirement for any further notice, certificate or demand) at the rate of [REDACTED] per day per Unit in respect of each day in the period between the Date for Provisional Acceptance and the Date of Provisional Acceptance of that Unit, or earlier termination of this deed (**Delay Period**).
- (b) Delay LDs will be cumulative, accrue daily and are Moneys Owing.
- (c) The rate of Delay LDs referred to in clause 17.10(a) will be CPI Indexed.
- (d) The Supplier's liability to pay Delay LDs under clause 17.10(a) in respect of Units in Tranche 1 which fail to reach Provisional Acceptance by their respective Dates for Provisional Acceptance:
 - (i) is suspended up to and including the Tranche 1 Milestone Date (provided Delay LDs shall continue to accrue during the relevant Delay Period); and
 - (ii) is waived by TfNSW if all Units in Tranche 1 achieve Provisional Acceptance on or before the Tranche 1 Milestone Date.
- (e) The Supplier's liability to pay Delay LDs under clause 17.10(a) in respect of Units in Tranche 2 which fail to reach Provisional Acceptance by their respective Dates for Provisional Acceptance:
 - (i) is suspended up to and including the Tranche 2 Milestone Date (provided Delay LDs shall continue to accrue during the relevant Delay Period); and
 - (ii) is waived by TfNSW if all Units in Tranche 2 achieve Provisional Acceptance on or before the Tranche 2 Milestone Date.
- (f) The Supplier's liability to pay Delay LDs under clause 17.10(a) in respect of Units in Tranche 3 which fail to reach Provisional Acceptance by their respective Dates for Provisional Acceptance:
 - (i) is suspended up to and including the Tranche 3 Milestone Date (provided Delay LDs shall continue to accrue during the relevant Delay Period); and
 - (ii) is waived by TfNSW if all Units in Tranche 3 achieve Provisional Acceptance on or before the Tranche 3 Milestone Date.
- (g) The Supplier's liability to pay Delay LDs under clause 17.10 in respect of Units in Tranche 4 which fail to reach Provisional Acceptance by their respective Dates for Provisional Acceptance:
 - (i) is suspended up to and including the Tranche 4 Milestone Date (provided Delay LDs shall continue to accrue during the relevant Delay Period); and
 - (ii) is waived by TfNSW if all Units in Tranche 4 achieve Provisional Acceptance on or before the Tranche 4 Milestone Date.
- (h) On termination of this deed for any reason, any suspension of the Supplier's liability to pay Delay LDs under this clause is immediately revoked and all Delay LDs accrued as at the date of termination will become due and payable immediately as Moneys Owing.

17.11 Subsequent extension of time

- (a) If the Supplier has paid Delay LDs or if TfNSW has deducted or set-off Delay LDs in respect of a Unit, under clause 17.10, clause 17.12 or general damages under clause 39.8(c), and the relevant Date for Provisional Acceptance is extended under this deed for a Relief Event, TfNSW must procure repayment to the Supplier any Delay LDs deducted or paid relating to the period of any such extension.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Part C – Maintenance Services

18. Asset Management

18.1 Supplier's Asset Management obligations

The Supplier must, for the duration of the Maintenance Phase, perform the Maintenance Services:

- (a) in accordance with:
 - the Asset Management System;
 - the SPR;
 - (iii) all Mandatory Requirements and Approvals;
 - (iv) Good Industry Practice; and
 - (v) all other requirements under the NIF Project Agreements;
- (b) in a manner that:
 - is consistent with the Supplier's Accreditation and the Accreditation of all Accredited Persons;
 - 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) minimises the application of Service Payment Adjustments under the Performance Regime by achieving a high level of performance of the Assets; and
- (c) so that each Asset, at all times:
 - complies with the requirements of this deed;
 - remains fit for purpose;
 - (iii) is in a condition consistent with or better than the Target Condition for that Asset; and
 - (iv) is capable of achieving its Design Life.

18.2 Asset Management System

- (a) The Supplier must develop, update and maintain the Asset Management System in accordance with clause 9 and the SPR.
- (b) The Asset Management System will include the:
 - Asset Management Policy;
 - Asset Management Strategy;
 - (iii) Asset Management Plan;
 - (iv) Spares and Consumables Strategy; and
 - (v) Asset Information System.

18.3 Asset Management Plan

- (a) The Supplier must prepare and update the Asset Management Plan in accordance with clause 9 and section 2.15.1 of the SPR.
- (b) The Asset Management Plan must:
 - cover all Assets; and
 - otherwise comply with the requirements of the SPR.
- (c) The Supplier must develop, submit for Review and implement a Maintenance Works Program in accordance with clause 9 and section 2.15.2 of the SPR.

18.4 Spares management

During the Contract Term the Supplier:

- (a) must manage the procurement, use, storage, security, overhaul, modification and maintenance of Spares 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 and Consumables and must provide all necessary:
 - warehouse and other storage facilities;
 - inventory control; and
 - (iii) management requirements,
 in relation to Spares and Consumables required for the Assets;
- (c) must ensure that:
 - the Spares and Consumables Strategy;
 - (A) includes details of the minimum stock of Spares required to be held for the performance of the Maintenance Services; and
 - (B) ensures 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 in accordance with the Spares and Consumables Strategy and the SPR; and
 - (iii) all Spares 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 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 and any Consumables comprised in, or required for, them.

18.5 Modifications management

The Supplier must, throughout the Contract Term, identify each and every instance where a Modification:

- (a) is required to comply with a Change in Mandatory Requirements; or
- (b) if performed, would:

- materially reduce the maintenance and repair costs of the Assets without adversely affecting the Asset's safety, operational performance, Design Life, reliability or availability; or
- (ii) materially improve the Asset's safety, operational performance, Design Life, reliability or availability,

and in each such instance it must prepare and submit to TfNSW's Representative a Supplier Variation Request and where clause 18.5(b)(i) applies, a cost benefit analysis.

18.6 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) during the term of the Commissioning Facility Licence, the Commissioning Facility and the Commissioning Facility Site;
- (b) the Maintenance Facility and the Maintenance Facility Site;
- (c) NIF Stabling Yards and Other Sites; and
- (d) the Assets,

resulting from theft, misuse or vandalism (including Vandalism) by any person:

- (e) in the case of the Provided Facility Sites and any Asset or thing located at either of them, at all times; and
- (f) in each other case, when the Supplier has care, custody and/or control of them for the purposes of a Delivery Activity or performance of Maintenance Services.

18.7 Maintenance Phase warranties

- (a) The Supplier represents and warrants that:
 - any works to, on or affecting an Asset carried out as part of the Maintenance Services will, when complete, be fit for purpose and satisfy the requirements of this deed;
 - (ii) subject to clause 18.12, each Asset will be maintained during the Maintenance Phase so that:
 - (A) it is fit for purpose at all times during the Maintenance Phase; and
 - (B) it will remain fit for purpose for the duration of its Design Life;
 - (iii) provided that the MFC Works are designed and constructed in accordance with the MFC Requirements and the MFC Brief, the Maintenance Facility Site and all Maintenance Facility Equipment will be operated and maintained during the Maintenance Phase so that:
 - (A) they are fit for purpose at all times during the Maintenance 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 18.7(a), the Supplier represents and warrants that each Spare and Consumable provisioned or supplied under this deed by the Supplier will:

- 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 Contract Term so that it is fit for purpose at all times during the Maintenance Phase; and
 - (iii) after the Expiry Date, subject to the Spare or 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 18.7 are made, and will be deemed to have been made:
 - in the case of the representations and warranties made under clause 18.7(a) on:
 - (A) the date of this deed; and
 - (B) each day thereafter until the End Date; and
 - in the case of the representations and warranties made under clause 18.7(b) on:
 - (A) the date the Spare or Consumable is provisioned or supplied; and
 - (B) each day thereafter until the End Date.
- (d) Clause 18.7(c) will survive the rescission, termination or expiry of this deed.

18.8 General obligation relating to Defects

The Supplier must:

- (a) from the Date of MFI Practical Completion, rectify all Defects in the MFI Works and the related Maintenance Facility Equipment;
- (b) from the Date of MFC Practical Completion, rectify all Defects in the Maintenance Facility Site, except:
 - for Minor Defects specified on a MFC Practical Completion Certificate which the MFC Contractor is responsible for rectifying; or
 - (ii) to the extent that TfNSW procures rectification of MFC Defects pursuant to clause 18.12;
- (c) from the Date of Provisional Acceptance of a Simulator or Unit, rectify all Defects in the Simulator or Unit;
- (d) from the date of delivery of a Spare or Consumable, rectify all Defects in that Spare or Consumable; and
- (e) from the Date of Additional MF Works Practical Completion, rectify all Defects in the Additional MF Works,

in each case, in accordance with the Asset Management System, FRACAS, the Defect Rectification Principles and the other provisions of this deed.

18.9 Recurrent Defects

- (a) The Supplier must:
 - monitor and assess the occurrence of any Recurrent Defects; and
 - within five Business Days of becoming aware of any Recurrent Defect, the Supplier must give notice of the Recurrent Defect to TfNSW.

- (b) If a Recurrent Defect occurs during the Recurrent Defect Period, the Supplier must, subject to clause 18.9(c):
- rectify that Recurrent Defect in all Assets that have suffered the Recurrent Defect;
 - undertake all necessary works to prevent the occurrence of the Recurrent Defect in the 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 that rectification,
- in each case in accordance with a Recurrent Defect Rectification Plan approved by TfNSW under clause 18.9(d).
- (c) Within 20 Business Days after the occurrence of a Recurrent Defect, the Supplier must either:
- submit to TfNSW for its approval a draft plan (**Recurrent Defect Rectification Plan**) for complying with its obligations under clause 18.9(b) as soon as practicable; or
 - if the Supplier reasonably believes that Assets will not be adversely affected by the relevant Recurrent Defect, it may make a submission to TfNSW setting out in reasonable detail the reasons why it considers that the Assets will not be adversely affected by the relevant Recurrent Defect and that its obligations under clause 18.9(b) to rectify the Recurrent Defect should be suspended.
- (d) TfNSW will give reasonable consideration to a draft Recurrent Defect Rectification Plan submitted under clause 18.9(c)(i), clause 18.9(e)(ii) or clause 18.9(f) and must within 20 Business Days of receipt of the plan, give notice confirming either:
- that it agrees to the Recurrent Defect Rectification Plan; or
 - that it does not agree with the proposed Recurrent Defect Rectification Plan (with reasons), in which case the parties must negotiate in good faith for a period of up to 20 Business Days to try to agree an alternative Recurrent Defect Rectification Plan,
- and the Supplier must as soon as reasonably practicable implement, and thereafter comply diligently with, a Recurrent Defect Rectification Plan approved or agreed, in writing, under this clause.
- (e) TfNSW will give reasonable consideration to a submission from the Supplier under clause 18.9(c)(ii) and must within 20 Business Days of receipt of the submission, give notice confirming either:
- that it agrees the Assets will not be adversely affected by the Recurrent Defect and that the Supplier's obligations under clause 18.9(b) to rectify the Recurrent Defect are suspended; or
 - (ii) that it considers the Assets will be adversely affected by the Recurrent Defect, in which case the Supplier must within 10 Business Days submit to TfNSW for its approval a draft Recurrent Defect Rectification Plan for compliance with its obligations under clause 18.9(b) as soon as practicable and clause 18.9(d) will apply to that plan.
- (f) At any time, if any Asset is adversely affected by a Recurrent Defect that was the subject of a notice given under clause 18.9(e)(i), TfNSW may give notice to the Supplier that the Asset has been adversely affected by the Recurrent Defect, in which case the Supplier must within 10 Business Days submit to TfNSW for its approval a draft Recurrent Defect Rectification Plan for compliance with its obligations under clause 18.9(b) as soon as practicable and clause 18.9(d) will apply to that plan.

- (g) If:
- the Supplier fails to submit a Recurrent Defect Rectification Plan to TfNSW pursuant to clause 18.9(c)(i) or, alternatively, a submission pursuant to clause 18.9(c)(ii);
 - (ii) the Supplier fails to submit a Recurrent Defect Rectification Plan to TfNSW pursuant to clause 18.9(e)(ii) or clause 18.9(f);
 - (iii) the Supplier fails to implement and comply with a Recurrent Defect Rectification Plan pursuant to clause 18.9(d); or
 - (iv) TfNSW and the Supplier are unable to agree a Recurrent Defect Rectification Plan,
- TfNSW may itself, or it may procure an appropriately qualified third party to undertake, the relevant rectification works contemplated under clause 18.9(b), and:
- (v) the Supplier must provide all reasonable cooperation to TfNSW and any relevant third party to assist the coordination and performance of the relevant works; and
 - (vi) the Supplier indemnifies TfNSW for all related Loss incurred by TfNSW.

18.10 Supplier Faults

- (a) Without prejudice to clauses 18.8, 18.9 and the Performance Regime, the Supplier must:
- (i) remedy and eliminate every Supplier Fault that occurs in any Asset; and
 - (ii) if the MDBF of a Unit, or Units, is more than 10% below the Required Reliability as measured over a rolling three month period, provide to TfNSW for Review a plan (**Fault Rectification Plan**) setting out the steps that the Supplier proposes to take to achieve the Required Reliability,
- in each case within five Business Days of the occurrence of the Supplier Fault (or any longer period agreed, in writing, by TfNSW).
- (b) The Supplier must diligently and as soon as reasonably practicable implement and comply with its Fault Rectification Plan.
- (c) If:
- the Supplier fails to comply with its obligations under clause 18.10(a)(i) to rectify Supplier Faults;
 - the Supplier fails to provide a Fault Rectification Plan in accordance with clause 18.10(a)(ii);
 - (iii) TfNSW reasonably considers on Review of the Fault Rectification Plan that implementation of that plan will not prevent the recurrence of the Supplier Fault to TfNSW's reasonable satisfaction, or at all; or
 - (iv) the Supplier fails to comply with its obligations under clause 18.10(b),
- TfNSW may itself rectify, or procure an appropriately qualified third party to rectify, the relevant Supplier Fault and/or prevent the recurrence of the Supplier Fault, and:
- (v) the Supplier must provide all reasonable cooperation to TfNSW and any relevant third party to assist the coordination and performance of the relevant works; and
 - (vi) the Supplier indemnifies TfNSW for all Loss incurred by TfNSW in remedying that Supplier Fault and/or preventing the recurrence of the Supplier Fault.

18.11 TfNSW Defects

Throughout the Maintenance Phase, the Supplier must remedy and eliminate every TfNSW Defect if and as required under Schedule E5.

18.12 MFC Defects

TfNSW will be responsible for procuring rectification of MFC Defects:

- (a) notified during the MFC Defects Liability Period; or
 - (b) of which TfNSW is aware,
- subject to paragraphs 1.13 and 1.14 of Schedule C1.

18.13 Recovery

- (a) If any Train requires Recovery for any reason, including if due to a Failure or the occurrence of a TfNSW Defect, TfNSW will procure all Recovery works necessary on the Network including de-coupling or coupling, providing Train Crew and movement of the Train on the Network.
- (b) The Supplier must:
 - support the Recovery of the Train 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
 - 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 Train requires Recovery:
 - AM Services;
 - 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 Train at the Maintenance Facility Site.
- (d) Subject to clause 29.2(g), the Supplier must provide the services described in this clause 18.13 at its own cost and will not be entitled to any extension of time, compensation or other relief arising from the requirement under this deed to support the Recovery.
- (e) As reasonably required by TfNSW, the Supplier must cooperate with TfNSW to develop a work plan setting out a safe and efficient method of managing any event or circumstance giving rise to a Recovery.

18.14 Through life support

- (a) The Supplier must:
 - if requested, supply Spares and Consumables to TfNSW; and
 - manage and provide support to TfNSW in respect of the Obsolescence of Spares and Consumables,

in accordance with Schedule D6.

- (b) The obligations of the Supplier under this clause 18.14 and Schedule D6 continue until the last day of the Through Life Support Period and will survive the rescission, termination or expiry of this deed.

18.15 Asset Information System

- (a) The Supplier must provide and maintain the Asset Information System in accordance with section 2.16 of the SPR.
- (b) The Asset Information System must:
- cover all Assets;
 - record the Supplier's compliance with the Asset Management Plan including:
 - (A) the condition of Assets;
 - (B) changes to the condition of Assets; and
 - (C) the remaining life of Assets;
 - (iii) be capable of producing periodic reports that allow the Supplier and TfNSW to monitor Asset condition and the Supplier's compliance with its obligations under this deed; and
 - (iv) at all times accurately represent the true status and condition of all Assets and all Maintenance Services.
- (c) Subject to clause 48 and Schedule A3, TfNSW:
- is the owner of all information held within the Asset Information System; and
 - may access the Asset Information System at any time in accordance with the SPR.

19. Train and Simulator Availability

19.1 Train Availability

- (a) TfNSW must Handover the Units to the Supplier for maintenance and repair and the Supplier must Handback the Units to TfNSW after maintenance and repair, and provide any Certificates of Serviceability required in respect of the Units, in accordance with the Train Plan and the processes and procedures set out in the Interface Protocol and SPR Appendix 05.
- (b) Without prejudice to the generality of clauses 18.1 and 18.2, the Supplier must:
- (i) perform the Maintenance Services so that the Units are capable of being operated in accordance with the Train Plan by TfNSW (or the Operator), at the times and locations and in the condition and quantities required by the Train Plan and the Train Plan Parameters; and
 - ensure that TfNSW has the Required Availability of Units in each Availability Period.

19.2 Train Plan

- (a) TfNSW will consult with the Supplier about the development of a Train Plan applicable from time to time.
- (b) The Supplier acknowledges and agrees that:
- 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 for any reason including to enable operation of any changes to the Timetable during the Contract Term;
 - (iii) if a Train Plan developed by TfNSW from time to time is within the Train Plan Parameters, the Supplier will have sufficient time to perform all relevant Supplier's Activities in accordance with this deed; and
 - (iv) subject to clause 19.2(c), the Supplier is not entitled to make any Claim or seek any change to or relief from the Performance Regime in relation to any matter arising from any change to a Train Plan.
- (c) Subject to clause 19.2(d), if TfNSW 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 Variation Effects that arise from the relevant non-compliance with the Train Plan Parameters will be determined in accordance with clause 27 and Schedule E3.
- (d) The Supplier acknowledges and agrees that:
- to the extent that any of the NIF Stabling Yards contemplated in Table (b) or Table (c) of Appendix 1 to Schedule D3 is substituted with another stabling site that is situated within a 20km radius, the Supplier will absorb all costs associated with the change; and
 - notwithstanding Schedule E3, any other changes to the NIF Stabling Yards contemplated in Table (b) or Table (c) of Schedule D3, including TfNSW making available to the Supplier an additional stabling site, will be considered a change to the Train Plan Parameters. Subject to paragraph (c) of Appendix 1 to Schedule D3, to the extent that these changes result in a genuine reduction in the costs incurred by the Supplier, TfNSW will receive 100% of the savings contemplated by Schedule E3.

19.3 Simulator Availability

In each Service Payment Period from the Simulator Maintenance Start Date, the Supplier must ensure that each Simulator meets the Minimum Simulator Operating Condition throughout the Minimum Simulator Available Hours.

20. Asset Condition

20.1 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 SPR Appendix 05.

20.2 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:
 - the Supplier failed to comply with the Maintenance Works Program; and
 - 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:
 - three months of the date on which the notice referred to in clause 20.2(c) is issued; or
 - (ii) such other period agreed, in writing, between the parties (acting reasonably), (the **Remediation Period**).

20.3 Condition Audit

- (a) Without limiting TfNSW's rights under clause 5.4, no later than 12 months prior to the Expiry Date, TfNSW's Representative may nominate an independent expert (**Condition Auditor**) to carry out an audit of the Assets:
 - under this clause 20.3 (**Condition Audit**); and
 - under clause 20.6 (**Final Inspection**).
- (b) The Condition Auditor must be:
 - chosen by agreement, in writing, between the parties; or
 - 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.
- (c) TfNSW's Representative must:
 - 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.
- (d) The Condition Auditor will inspect and assess the Audit Assets and notify TfNSW and the Supplier of:
 - whether the Audit Assets have been and are being maintained by the Supplier in accordance with this deed;
 - 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**).
- (e) 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.
- (f) TfNSW's Representative must use its reasonable endeavours to procure that the Condition Auditor minimises any disruption caused to the Supplier's Activities by the Condition Audit.
- (g) The cost of the Condition Audit will be borne by TfNSW.

20.4 Target Condition

The **Target Condition** for Assets at any given time is:

- (a) 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; and

- (b) in relation to Spares after the End Date, means those Spares are in fully refurbished, 'as new' condition.

20.5 Rectification work

The Supplier must carry out any required rectification, maintenance and remediation work notified pursuant to clause 20.3(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.

20.6 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:
- whether:
 - (A) the Supplier has complied with its obligations under clause 20.4; and
 - (B) the Assets have been maintained by the Supplier in accordance with this deed;
 - 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 20.6(a)(iii) will be Moneys Owing from the Supplier to TfNSW.

Part D – Financial

21. Project Security

21.1 Provision of Project Security by Supplier

The Supplier must provide the Project Security to TfNSW as security for the performance by the Supplier of its obligations under the NIF Project Agreements in accordance with Schedule E7.

21.2 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 E7.
- (b) The Supplier must not take any steps to injunct or otherwise restrain:
 - 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 TAHE 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 any Parent Guarantee.

21.3 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 any participant of the Supplier or any Guarantor under any Parent Guarantee, and in payment of any other monies owing by the Supplier to TfNSW (including Monies Owing) under any NIF Project Agreement.
- (b) Subject to clause 21.3(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 comply with all of the requirements for a Project Bond in paragraphs 1.3 and 2.6 of Schedule E7 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:
 - before the first day of the next Maintenance Year; and
 - for a value equal to 100% of the Maintenance Bonding Sum.

21.4 No interest

TfNSW is not obliged to pay or procure payment to the Supplier of interest on, or the proceeds of, any Project Security.

21.5 No trust

If TfNSW makes a demand under a Project Bond, it does not hold the proceeds on trust for the Supplier.

21.6 Failure to provide Project Bonds

If the Supplier fails to provide any Project Bond in accordance with its obligations under Schedule E7 or clause 21.3(b), that failure will be a Supplier Event of Default for the purposes of clause 31.1(p).

21.7 Return of Project Bonds

Subject to the provisions of clause 21.8, TfNSW must return a Project Bond to the Supplier within 10 Business Days of the Release Date for that bond.

21.8 TfNSW's rights to retain Project Bonds

Despite any other provision of any NIF Project Agreement, TfNSW may continue to hold and have recourse to a Project Bond where a NIF Project Agreement would otherwise require TfNSW to release it to the extent of any bona fide Claim by TfNSW under the NIF Project Agreement whether before or after termination of the NIF Project Agreement.

22. Payment for Delivery Activities

22.1 Prices

In consideration for:

- (a) the supply of each Unit and all associated Deliverables and other associated Rolling Stock Supply Works, TfNSW will procure payment of the Unit Price to the Supplier;
- (b) the supply of the Simulators and all associated Deliverables and other associated Simulator Supply Works, TfNSW will procure payment of the Simulator Price to the Supplier;
- (c) the supply of the Maintenance Facility Equipment, performance of the MFI Works and all associated Deliverables, TfNSW will procure payment of the MFI Works Contract Value to the Supplier; and
- (d) performance of the Additional MF Works and all associated Deliverables, TfNSW will procure payment of the Additional MF Works Contract Value to the Supplier,
- (e) as determined in accordance with Schedule E1.

22.2 Prices fixed

The Unit Price, Simulator Price, the MFI Works Contract Value and the Additional MF Works Contract Value (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 the relevant Delivery Activities;
- (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 all of its obligations under this deed;
- (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 deed; and
- (f) subject to clause 53.2, include all duties including stamp duty, Importation GST, customs duty and import duty.

22.3 Progress Payments

- (a) Subject to the claims process in clause 25, TfNSW must procure payment of Progress Payments to the Supplier in accordance with Schedule E1 on the later of:
 - the date specified for the relevant Delivery Milestones in the Delivery Program as at the date of this deed; and
 - the date the Supplier achieves the Delivery Milestones.
- (b) The parties acknowledge and agree that:
 - Schedule E1 sets out the Progress Payments agreed to be payable, on the later of:
 - (A) the date specified for the relevant Delivery Milestones in the Delivery Program as at the date of this deed; and
 - (B) the Supplier achieving the Delivery Milestones;
 - the Progress Payments for a Delivery Milestone (together with any additions or deductions expressly provided for by this deed) are the maximum cumulative payments that the Supplier may claim for achieving that Delivery Milestone;
 - (iii) the Supplier is not entitled to make a payment claim under clause 25 for, and TfNSW has no corresponding obligation to pay, any part of a Progress Payment prior to the corresponding Delivery Milestone being achieved by the Supplier; and
 - (iv) the value of the work completed by the Supplier at any time will not be subject to further assessment unless otherwise agreed in writing by TfNSW.

22.4 Payment claims for Delivery Activities

On satisfaction of each Delivery Milestone, the Supplier must provide TfNSW's Representative with a payment claim under clause 25.1 for the relevant Progress Payment.

23. Payment for Maintenance Services

23.1 Service Payment

In consideration for the performance of the Maintenance Services during each Service Payment Period, TfNSW will procure payment of the Service Payment to the Supplier.

23.2 Fixed price for Maintenance Services

The Service Payment:

- (a) is a fixed price;
- (b) includes an allowance for all costs, expenses, fees and charges incurred by the Supplier in providing the Maintenance Services (including the supply of all related Consumables, Spares, Tools and other related Materials and Parts);
- (c) includes an allowance for all related items of work under this deed (including the supply of any labour, materials or other necessary items);
- (d) 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;
- (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 deed; and

- (f) subject to clause 53.2, includes all duties including stamp duty, Importation GST, customs duty and import duty.

23.3 Performance Regime

The Supplier acknowledges and agrees that:

- (a) 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;
- (b) it is in the economic and other best interests of both TfNSW and the Supplier that formulae of the nature referred to in clause 23.3(a) be adopted;
- (c) 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;
- (d) the formulae adopted in the Performance Regime meet the requirements and objectives set out in clauses 23.3(a), 23.3(b) and 23.3(c); and
- (e) the Supplier:
 - is contracting with TfNSW and TAHE at arm's length;
 - possesses equivalent bargaining power to TfNSW;
 - (iii) possesses extensive commercial experience and expertise;
 - (iv) 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;
 - (v) having received advice, warrants that the Performance Regime is legally binding, valid and enforceable according to its terms and does not constitute a penalty in any respect;
 - (vi) 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;
 - (vii) 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, other than those stated in this deed; and
 - (viii) enters into this deed with the intention that the Performance Regime is legally binding, valid and enforceable in accordance with its terms.

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 Performance Regime or the characterisation of the Service Payment Adjustments as penalties.

23.4 Payment claims for Maintenance Services

For each Service Payment Period, the Supplier must deliver to TfNSW's Representative a payment claim under clause 25.2 for the relevant Service Payment.

24. Payment of Workers and Subcontractors

24.1 Evidence of payment of workers and Subcontractors

The Supplier is not entitled to give TfNSW a payment claim under clause 25, and TfNSW's Representative is not obliged to make any payment under clause 25, unless the Supplier has provided TfNSW's Representative with:

- (a) a statutory declaration, in the form set out in Form 12 in Schedule F7, 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):
 - 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 Supplier's Activities;

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- (c) where:
 - the payment claim includes any amount that relates, in part or whole, to Supplier's 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 24.1(a) and 24.1(b) must include 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 12 in Schedule F7 and included as Annexure B of the statutory declarations; and

- (d) copies of all relevant certificates of currency in respect of workers compensation insurance which the Supplier has in place in connection with the Supplier's Activities.

24.2 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 Supplier's 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 24.2 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).

25. Payment Terms

25.1 Payment claims for Delivery Activities

The Supplier must submit to TfNSW, within five Business Days after the end of each month in which:

- (a) subject to clauses 25.1(b) and 25.1(c), the Supplier has achieved a Delivery Milestone;
- (b) where the Supplier achieves a Delivery Milestone prior to the relevant date specified for that Delivery Milestone in the Delivery Program as at the date of this deed, the date specified for that Delivery Milestone as at the date of this deed occurs; or
- (c) in respect of the Additional MF Works to which no Delivery Milestone applies, any Additional MF Works are performed,

then:

- (d) for each Progress Payment, a separate payment claim setting out the Supplier's calculation of the Progress Payment payable on account of:
 - where clause 25.1(a) or 25.1(b) applies, satisfaction of the Delivery Milestone; or
 - where clause 25.1(c) applies, the value of works under in the prior month in respect of the Additional MF Works; and
- (e) where required under clause 21.1, an Advance Payment Bond as a condition precedent to payment of the Progress Payment.

25.2 Payment claims for Maintenance Services

The Supplier must submit to TfNSW, within five Business Days after the end of each Service Payment Period, a payment claim setting out the Supplier's calculation of the Service Payment payable for the preceding Service Payment Period.

25.3 Payment claims in respect of Compensation Events

- (a) Subject to clause 25.3(b), if a Compensation Event occurs and causes, or will cause, the Supplier to incur Loss, the Supplier may submit to TfNSW within five Business Days after the end of each calendar month, a payment claim for compensation as contemplated by clause 29.12(a)(ii) or clause 29.12(a)(iii) setting out the amount of the Supplier's Claim, calculated in accordance with the provisions of clause 29.12.
- (b) The Supplier cannot submit a payment claim under clause 25.3(a) unless the requirements of clause 29.6 and clause 29.7 have been satisfied.

25.4 Content of payment claims

- (a) For a payment claim under clauses 25.1, 25.2 or 25.3 to be valid:
 - the payment claim must set out any calculations necessary to arrive at the amount claimed; and
 - the payment claim must set out amounts previously paid by or procured to be paid by TfNSW to the Supplier in connection with this deed.
- (b) Subject to paragraph 5.1(b) of Schedule C1 and paragraph 5.1(b) of Schedule J1 (as relevant), the Supplier's payment claim must be accompanied by:

- evidence of the amount due;
 - (ii) the documents required under clause 24.1 in relation to payment by the Supplier of all monies due and payable to Subcontractors engaged in the performance of the Supplier's Activities that are the subject of the claim;
 - (iii) the documents required under clause 24.1 in relation to payment by the Supplier of all workers carrying out the Supplier's Activities;
 - (iv) evidence of payment by the Supplier of any importation GST (whether by application of the GST deferral scheme or otherwise) and customs duty (if any) on imported goods including copies of finalised import declarations;
 - (v) subject to clause 53.1(h), a valid tax invoice (addressed to TAHE or such other entity as notified by TfNSW); and
 - (vi) such other information and documents as TfNSW's Representative may reasonably require.
- (c) The Supplier's payment claim must set out the amount asserted by the Supplier to be due from TfNSW to the Supplier and the Supplier to TfNSW.

25.5 Supplier's warranties in relation to payment claim

In submitting a payment claim under clause 25.1, clause 25.2 or clause 25.3, the Supplier warrants to TfNSW that:

- (a) it has achieved the relevant Delivery Milestone and (to the extent applicable to that Delivery Milestone), it has completed all work which is the subject of the payment claim;
- (b) it has completed all work which is the subject of a payment claim for a Lumpy Maintenance Payment;
- (c) the work complies with all relevant requirements under this deed;
- (d) figures and calculations appearing in the payment claim are accurate;
- (e) 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;
- (f) it has paid its workers and employees all monies in respect of the work that is the subject of the payment claim;
- (g) it has paid all importation GST and customs duty (if any) applicable on imported goods and the documentation provided by it to TfNSW under clause 25.4(b)(iv) is complete and accurate in all material respects;
- (h) all Insurances required to be affected and maintained by the Supplier are current and in force; and
- (i) the Supplier has no Claims 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.

25.6 Late or invalid payment claims

Subject to paragraph 5.1(b) of Schedule C1 and paragraph 5.1(b) of Schedule J1 (as relevant), if the Supplier submits a claim which purports to be a payment claim under clause 25.1, clause 25.2 or clause 25.3 and:

- (a) the purported payment claim does not comply with the requirements of this deed for a valid payment claim (which includes a payment claim that is made before the proper time for lodgement of that payment claim); or

- (b) the purported payment claim is not accompanied by the documents required by this deed; or
 - (c) at the time of making the payment claim the Supplier is in breach of any warranty given under clause 25.5,
- then:
- (d) the claim will not be a valid payment claim; and
 - (e) TfNSW's Representative will not be required to issue a payment certificate under clause 25.7 or a payment schedule under paragraph 5.3 of Schedule C1 and paragraph 5.3 of Schedule J1, as the case may be; and
 - (f) TfNSW will not be obliged to make any payment in respect of the amount claimed.

25.7 Payment certificate

- (a) This clause does not apply to payment claims in respect of the MFI Works or the Additional MF Works.
- (b) Within 10 Business Days of the later of:
 - receipt of a valid payment claim under clauses 25.1, 25.2 or 25.3; or
 - five Business Days after the end of the month in which the Supplier has achieved the Delivery Milestone(s),

TfNSW's Representative must assess the claim and issue to the Supplier's Representative a payment certificate setting out:

 - (iii) the amount which, in TfNSW's Representative's opinion, is payable by TfNSW to the Supplier under this deed;
 - (iv) if the amount referred to in clause 25.7(b)(iii) is less than the amount claimed by the Supplier in its payment claim:
 - (A) the calculations employed by TfNSW's Representative to arrive at the amount referred to in clause 25.7(b)(iii); and
 - (B) the reasons for the difference.
- (c) TfNSW's Representative must also set out in each payment certificate, the allowances made for:
 - amounts otherwise due from TfNSW to the Supplier or the Supplier to TfNSW under this deed (including on account of any Delay LDs or Service Payment Adjustments); and
 - (ii) amounts set-off or deducted by TfNSW from the Supplier under this deed.
- (d) 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.
- (e) If the Supplier fails to make a payment claim, TfNSW's Representative may nevertheless, in its absolute discretion, issue a payment certificate.

25.8 MFI Works payment schedules

Paragraphs 5.3 and 5.4 of Schedule C1 apply to payment claims in respect of the MFI Works.

25.9 Payment

Subject to the provisions of this deed, within 20 Business Days of TfNSW's Representative issuing a payment certificate under clause 25.7, TfNSW will procure payment to the Supplier, or

the Supplier will pay to TfNSW (as the case may be), the amount determined by TfNSW's Representative as due to the Supplier or TfNSW (as the case may be).

25.10 Payment on account

- (a) Any payment of moneys to the Supplier (including any Progress Payment) is not:
- evidence of the value of work or services, or that any work or services have been satisfactorily carried out in accordance with this deed;
 - 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 payment certificate or payment schedule, correct any previous payment certificate or payment schedule or apply any deductions in accordance with this deed.

25.11 Disputed payments

If an amount in a payment certificate or payment schedule is the subject of a Dispute (**Disputed Amount**) and the Supplier and TfNSW subsequently agree, in writing, or it is determined in accordance with the Dispute Resolution Procedures that the Disputed Amount or another amount was or was not due:

- (a) TfNSW's Representative must amend the payment certificate or payment schedule (as applicable) and reissue the payment certificate or payment schedule (as applicable) within five Business Days of the agreement or determination; and
- (b) TfNSW must procure payment of, or the Supplier must pay (as appropriate), the amount agreed (in writing) or determined to the other party within 10 Business Days of the date of the amended payment certificate or payment schedule.

25.12 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 NIF 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 25.13 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.

25.13 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:
- Moneys Owing; and
 - any other Claim relating to the Project which TfNSW has against the Supplier, whether under this deed, any other NIF Project Agreement or at law,
- and if those amounts are insufficient, TfNSW may have recourse to the Project Security in accordance with clause 21. 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 25.13(c).

26.2 Option Notice

27. Variations

27.1 Either party may initiate Variation

At any time, TfNSW may request or require, and the Supplier may request, Variations under this deed.

27.2 Conditions

All Variations under this deed, whether:

- (a) requested or required by TfNSW;
 - (b) requested by the Supplier; or
 - (c) otherwise expressly provided for (or implied) under any provision of this deed,
- are governed by the provisions of Schedule E3.

28. Change in Mandatory Requirements

28.1 General risk allocation

Except as provided in this clause 28:

- (a) the Supplier is responsible for all effects on the Supplier's Activities of any Change in Mandatory Requirements, including the requirement to perform Mandatory Modifications, and the Supplier will not be entitled to any extension of time or additional payment or compensation for performance of any obligation under any NIF Project Agreement arising out of, or in any way in connection with, a Change in Mandatory Requirements;
- (b) notwithstanding the nature, timing or extent of any Change in Mandatory Requirements, the Supplier is not relieved from performance of any obligation under a NIF Project Agreement, and must ensure that at all relevant times during the Contract Term all Assets and other Deliverables and the Supplier's performance of its obligations under the NIF Project Agreements comply with all Mandatory Requirements; and
- (c) the Supplier must absorb all effects of any Change in Mandatory Requirements which are not compensated pursuant to this clause 28.

28.2 Effect of indexation

The Supplier is not entitled to make any Claim under this clause 28 for any increase in the cost of any goods or service, or any other thing, to the extent that the increase in cost is taken into account in the Service Payment (including in any indexation or reconciliation adjusting the Service Payment) or under clause 53.

28.3 Compensation for Compensable Change in Law

If a Change in Law:

- (a) occurs after:
 - in respect of the Additional MF Works, the date of Amendment Deed No. 2; and
 - in respect of all other Supplier's Activities, the date of this deed;
 - (b) is a Compensable Change in Law; and
 - (c) will have an effect on the Supplier's costs of complying with its obligations under clauses 6.1, 28.1(a) or 28.1(b) in respect of the Maintenance Services only,
- a Compensation Event will be deemed to have occurred.

28.4 Changes in Rail Industry Standards

The Supplier must:

- (a) diligently monitor all changes in Rail Industry Standards; and
- (b) notify TfNSW's Representative:
 - as soon as reasonably practicable if there is a change to an Other Rail Industry Standard; and
 - (ii) within 20 Business Days of becoming aware of any Change in Rail Industry Standards that affect or change, or are likely to affect or change, the design of any Asset, the performance of the Supplier's Activities or require a Modification.

28.5 TfNSW to determine required action

- (a) A notice given by the Supplier under clause 28.4(b)(ii) must include a reasonable estimate of the Variation Effects of the Change in Rail Industry Standards and include reasonable supporting information to support the estimate.
- (b) Within 20 Business Days of receiving a notice from the Supplier under clause 28.4(b)(ii):
 - if TfNSW agrees with the Supplier's assessment that there has been a Change in Rail Industry Standards that affects or changes, or is likely to affect or change, the design of any Asset, the performance of the Supplier's Activities or require a Modification, TfNSW's Representative must:
 - (A) require the Supplier to submit a Supplier Variation Request in accordance with paragraph 2.2 of Schedule E3 on the basis that TfNSW wishes to consider the full Variation Effects of the requirement to comply with the Change in Rail Industry Standards; or
 - (B) direct:
 - (I) the Supplier to comply with the Change in Rail Industry Standards and that direction will be deemed to be a Variation Order if and to the extent that the consequences of the Change in Rail Industry Standards gives rise to a Variation; or
 - (II) the Supplier not to comply with the Change in Rail Industry Standards and the Supplier will be relieved of its obligation to

comply with any term of a NIF Project Agreement which requires compliance with the Change in Rail Industry Standards contemplated by this clause 28.5(b)(i)(B)(II); or

(C) notify the Supplier in writing that:

- (I) the relevant Change in Rail Industry Standards need not be complied with; and
- (II) the Supplier is relieved of its obligation to comply with any term of a NIF Project Agreement which requires compliance with the Change in Rail Industry Standards contemplated by clause 28.5(b)(i)(C)(I); or

■ if TfNSW disputes the Supplier's assessment that there has been a change in a Rail Industry Standard that affects or changes, or is likely to affect or change, the design of any Asset, the performance of the Supplier's Activities or require a Modification, TfNSW's Representative must give notice of that Dispute which the parties must then seek to resolve in accordance with the Dispute Resolution Procedures.

(c) If the Supplier submits a Supplier Variation Request pursuant to clause 28.5(b)(i)(A):

■ if TfNSW accepts the Supplier Variation Request, the provisions of paragraph 1.10 of Schedule E3 will apply as if the Supplier Variation Approval was deemed to be a Variation Order; or

■ if TfNSW ultimately rejects the Supplier Variation Request, TfNSW must issue a direction pursuant to clause 28.5(b)(i)(B).

(d) If TfNSW issues a notice under clause 28.5(b)(i)(C), the Supplier may (in its absolute discretion) elect to implement the Change in Rail Industry Standards at its own cost and risk. Where the Supplier elects to implement the Change in Rail Industry Standards as contemplated by this clause 28.5(d), the Supplier:

■ must notify TfNSW in writing the Supplier's election within 20 Business Days of that election; and

(ii) acknowledges and agrees that:

- (A) the Supplier's obligations under this deed are not in any way altered or varied by the implementation of the relevant Change in Rail Industry Standards; and
- (B) the Supplier will not be entitled to make, and neither TfNSW nor its Associates will be liable upon, any Claim against TfNSW or its Associates arising out of or in connection with the Supplier's implementation of the relevant Change in Rail Industry Standards.

29. Relief Events

29.1 Relief Events

Each of the following events is a **Relief Event**:

- (a) a Compensation Event;
- (b) a Force Majeure Event;
- (c) any blockade or embargo, other than a blockade or embargo which only affects the Supplier and/or one or more of the Supplier's Subcontractors;
- (d) any industrial action within Australia which affects only:

- the Project;
 - (ii) the Supplier's Activities;
 - (iii) during the term of the Commissioning Facility Licence, the Commissioning Facility Site;
 - (iv) the Maintenance Facility Site;
 - (v) the Supplier or one or more of the Supplier's Subcontractors; or
 - (vi) the New South Wales public transport network or part of that network,
 - to the extent it is caused by an act or omission of TfNSW or any of TfNSW's Associates (other than an act or omission permitted or allowed for in a NIF Project Agreement);
 - (e) an act or omission by TfNSW, the Operator or another NSW Rail Entity not being an act or omission:
 - expressly permitted or allowed by a NIF Project Agreement;
 - (ii) which is within a timeframe expressly permitted or allowed by a NIF Project Agreement;
 - (iii) which is caused or contributed to by a breach by the Supplier of a NIF Project Agreement or any negligent or unlawful act or omission of the Supplier or its Associates; or
 - (iv) being the exercise by TfNSW, the Operator or another NSW Rail Entity of any of its statutory functions or powers; or
 - (f) a MFC Defect,
- except to the extent the event (or its effects):
- (g) occurs or arises as a result of any act or omission of the Supplier or its Associates;
 - (h) is, or ought to have been, within the control of the Supplier or its Associates; or
 - (i) could reasonably have been prevented by a prudent, competent and experienced contractor performing work of a similar nature to the Supplier's Activities.

29.2 Compensation Events

Each of the following events is a **Compensation Event**:

- (a) a breach by TfNSW of its obligations under this deed or any other NIF Project Agreement which adversely affects the ability of the Supplier to perform any of its obligations or exercise any of its rights under the NIF Project Agreements;
- (b) an act or omission of an Other Contractor that prevents or substantially interferes with the performance of any of the Supplier's Activities;
- (c) an Other Contractor, by its act or omission, causes Loss or damage to the MFI Works or the Additional MF Works during the period in which the Supplier is responsible for them in accordance with clause 36.1;
- (d) if:
 - there is a legal challenge brought about by way of commencement of court proceedings in relation to a Planning Approval; or
 - (ii) a Planning Approval is modified, withdrawn, revoked or replaced,
 unless the legal challenge, modification, withdrawal, revocation or replacement relates to or arises out of or in connection with (or, in the case of a legal challenge, is upheld due to) any event the subject of paragraph 2.2 of Schedule C2;

- (e) subject to clause 13.5(c), if TfNSW cancels or materially changes an Agreed Network Access Right;
- (f) except where clause 13.13(c) applies, if TfNSW carries out, or directs the Supplier to carry out, Unplanned Verification Activities;
- (g) a requirement arises under clause 18.13 for the Supplier to support a Recovery due to the occurrence of a TfNSW Defect;
- (h) the existence of the circumstances described in clause 28.3;
- (i) a Government Action occurring after the date of Amendment Deed No. 2 that causes delay to the Additional MF Works being undertaken by the Supplier;
- (j) if a New South Wales Rail Entity causes a delay to a power isolation at the MF Site scheduled under paragraph 7.12 of Schedule J2 which causes delay to the Additional MF Works; or
- (k) Additional Contamination where paragraph 3.8(e)(iii) or paragraph 3.8(f) of Schedule J2 applies,

except to the extent the event (or its effects):

- (l) occurs or arises as a result of any act or omission of the Supplier or its Associates;
- (m) is, or ought to have been, within the control of the Supplier or its Associates; or
- (n) could reasonably have been prevented by a prudent, competent and experienced contractor performing work of a similar nature to the Supplier's Activities.

The parties acknowledge and agree that clause 29.2(i) describes the Supplier's sole entitlements in connection with COVID-19 impacts in relation to the Additional MF Works being undertaken by the Supplier and the Supplier shall otherwise have no Claim arising out of or in connection with COVID-19 impacts in relation to the Additional MF Works being undertaken by the Supplier.

29.3 Entitlement to claim extension of time in Delivery Phase

During the Delivery Phase, if and to the extent that a Relief Event delays or is likely to delay an activity:

- (a) in respect of the Additional MF Works:
 - on the critical path contained and shown in the Confirmed Delivery Program; or
 - (ii) which was not on the critical path contained and shown in the Confirmed Delivery Program but which has become critical as a result of the Relief Event giving rise to the delay,

in a manner which will prevent the Supplier from achieving Additional MF Works Practical Completion by the Date for Additional MF Works Practical Completion, the Supplier may claim an extension of time to the relevant Time Based Delivery Objective in accordance with this clause 29; or

- (b) in respect of all other Delivery Activities:
 - on the critical path contained and shown in the Confirmed Delivery Program; or
 - (ii) which was not on the critical path contained and shown in the Confirmed Delivery Program but which has become critical as a result of the Relief Event giving rise to the delay,

in a manner which will prevent the Supplier from achieving any Time Based Delivery Objective by its relevant Time for Performance, the Supplier may claim an extension of time to the relevant Time Based Delivery Objective in accordance with this clause 29.

29.4 Entitlement to claim relief in Maintenance Phase

From the Rolling Stock Maintenance Start Date, if and to the extent that a Relief Event has occurred and has prevented or delayed the Supplier from performing, or will prevent or delay the Supplier from performing:

- (a) any obligation under a NIF Project Agreement, the Supplier may claim relief from the relevant Service Payment Adjustments applicable under the Performance Regime which would arise as a direct result of the obligation which has been or will be prevented or delayed from being performed under a NIF Project Agreement; or
- (b) any works or services within the Time to Complete, the Supplier may claim an extension of time to the relevant Time to Complete,

in each case in accordance with this clause 29.

29.5 Entitlement to claim compensation

- (a) Subject to clause 29.5(b), if a Compensation Event occurs and causes, or will cause, the Supplier to incur Loss, the Supplier may claim compensation in accordance with this clause 29, calculated in accordance with clause 29.12.
- (b) In relation to a Compensation Event referred to in clause 29.2(i), the only costs which the Supplier may claim under clause 29.12 are the costs of delay to the Additional MF Works, and the Supplier will have no other Claim for any other costs arising out of or in connection with a Compensation Event referred to in clause 29.2(i).

29.6 Notice of Relief Event and Claim

- (a) As soon as practicable and in any event within five Business Days after the Supplier first becomes aware that a Relief Event is likely to cause any of the consequences referred to in clause 29.3, clause 29.4 or clause 29.5, the Supplier must give to TfNSW's Representative a notice, expressly stating:
 - that a Relief Event has occurred; and
 - (ii) whether the Supplier proposes to make a Claim arising from that Relief Event.
- (b) If the Supplier wishes to make a Claim, within 10 Business Days of giving the notice under clause 29.6(a), it must give TfNSW's Representative a written Claim which must include (to the extent practicable):
 - detailed particulars concerning the Relief Event upon which the Claim is based;
 - (ii) details of the obligations which have been affected by the Relief Event;
 - (iii) if a Claim is being made under clause 29.3, details of the extension of time required to any Time for Performance and how it has been calculated;
 - (iv) if a Claim is being made under clause 29.4, details of any relief claimed from Service Payment Adjustments under the Performance Regime;
 - (v) if a Claim is being made under clause 29.5, details of the amount of any compensation claimed and calculated in accordance with clause 29.12; and
 - (vi) details of the steps which the Supplier has taken to mitigate the effects of the relevant Relief Event.

29.7 Continuing Relief Events

If the Relief Event (or its effects) are continuing, the Supplier must:

- (a) continue to update the information required by clause 29.6(b) every 10 Business Days, and until the Relief Event (or its effects) have ceased; and

- (b) provide a final written Claim within five Business Days after the Relief Event (or its effects) have ceased.

29.8 Condition precedent to entitlement

- (a) It is a condition precedent to the Supplier's entitlement to any compensation, extension of time or other relief under this clause 29 that the Supplier has complied with the requirements of clause 29.6 and clause 29.7.
- (b) If the Supplier fails to comply with the requirements of clause 29.6 and clause 29.7:
 - TfNSW will not be liable (in so far as it is possible to exclude such liability) upon any Claim by the Supplier; and
 - the Supplier will be absolutely barred from making any Claim against TfNSW, arising out of or in connection with the relevant Relief Event.

29.9 Extension of time, relief and/or compensation

If the conditions precedent in clause 29.8 have been satisfied, TfNSW must:

- (a) in respect of Claims made under clause 29.3, but subject to clause 29.13 and clause 29.14, extend the relevant Time for Performance by a reasonable period of time determined by TfNSW's Representative within 20 Business Days of the Supplier's Claim under clause 29.6(b) or clause 29.7(b) (as applicable);
- (b) in respect of Claims made under clause 29.4(a), subject to clause 29.13 and clause 29.14, grant to the Supplier reasonable relief from Service Payment Adjustments under the Performance Regime as determined by TfNSW's Representative within 20 Business Days of the Supplier's Claim under clause 29.6(b) or clause 29.7(b) (as applicable);
- (c) in respect of Claims made under clause 29.4(b), but subject to clause 29.13 and clause 29.14, extend the relevant Time to Complete by a reasonable period of time determined by TfNSW's Representative within 20 Business Days of the Supplier's Claim under clause 29.6(b) or clause 29.7(b) (as applicable); and/or
- (d) in respect of Claims made under clause 29.5, subject to clause 29.13 and clause 29.14, pay, in accordance with clause 25, compensation to the Supplier calculated under clause 29.12.

29.10 Suspension of obligations in Maintenance Phase

If and to the extent that:

- (a) a Relief Event occurs after the Rolling Stock Maintenance Start Date; and
- (b) the condition precedent in clause 29.8 has been satisfied,

the Supplier's non-financial obligations under this deed which are affected by the Relief Event will be suspended, but only to the extent and for so long as the Relief Event fully prevents the Supplier from performing those obligations.

29.11 Payment continues

Notwithstanding the suspension of any of the Supplier's obligations under clause 29.10:

- (a) TfNSW will continue to procure payment of the Service Payment to the Supplier for provision of the Maintenance Services or other related obligations affected by the Relief Event for the period of suspension;
- (b) to the extent of any relief from Service Payment Adjustments determined under clause 29.9(b), the Service Payment will not be subject to adjustment in accordance with the Performance Regime due to the Relief Event; and

- (c) TfNSW will be entitled to deduct from the Service Payment the amounts of any recurrent and other costs of the Supplier which are not being incurred by the Supplier during the period because the obligation to perform the relevant Maintenance Services or other obligations have been suspended for the period of the suspension under clause 29.10.

29.12 Calculation and payment of compensation

- (a) Subject to clause 29.13 and clause 29.14:

- for each day by which a Time for Performance is extended due to a Compensation Event and for which the Supplier makes a Claim for compensation in accordance with clause 29.5;
- where a Compensation Event causes delay or disruption to the Supplier's Activities that are not on the critical path for the Rolling Stock Supply Works and the Supplier makes a Claim for compensation costs for that delay or disruption in accordance with clause 29.5; or
- (iii) where a Compensation Event occurs and there is, or will be, an effect on the Supplier's costs of complying with its obligations under this deed (excluding any costs contemplated under clauses 29.12(a)(i) and 29.12(a)(ii)),

the Supplier will be entitled to be paid, subject to clause 29.12(b), the reasonable extra costs necessarily incurred by the Supplier determined by TfNSW's Representative and verified on an Open Book Basis.

- (b) The costs under clauses 29.12(a)(i) and 29.12(a)(ii):

- for a delay to the Additional MF Works cannot exceed [REDACTED] per day;
- for a delay to any other Delivery Activities cannot exceed [REDACTED] per day; and
- (iii) for a delay to the Maintenance Services cannot exceed [REDACTED] per day.

- (c) The quantum payable to the Supplier by TfNSW under clause 29.12(a)(iii) will be determined by TfNSW's Representative and verified on an Open Book Basis and calculated in a manner so that there is no double counting, having regard to:

- where applicable or where it is reasonable to use them, the capped labour rates set out in paragraphs 4.2 and 4.4 of Schedule E4;
- the incremental costs which the Supplier incurs or will incur as a direct result of that Compensation Event, including:
 - (A) maintenance costs; and
 - (B) additional administrative and onsite overhead costs;
- (iii) any cost savings which accrue or will accrue to the Supplier as a result of the Compensation Event;
- (iv) any insurance proceeds, damages, compensation or other revenue which the Supplier receives or is entitled to receive (or would have been entitled to receive but for a failure by the Supplier to comply with this deed or with the terms of any Insurance) as a result of the Compensation Event; and
- (v) any liability to third parties incurred by the Supplier as a direct result of the Compensation Event,

and the Supplier will not be entitled to make, nor will TfNSW be liable upon, any Claim in these circumstances other than for the amount which is payable by TfNSW under this clause 29.12(c).

- (d) The amounts referred to in clauses 29.12(a), 29.12(b) and 29.12(c):

- is the agreed costs which will be payable by TfNSW in respect of the delay and/or disruption or a Compensation Event in these circumstances; and
- (ii) is the maximum liability of TfNSW and TfNSW's Associates to the Supplier for any delay, disruption or costs which:
 - (A) the Supplier encounters in carrying out the Supplier's Activities; and
 - (B) arises out of, or in any way in connection with, a Compensation Event (including breach of this deed by TfNSW or Compensable Change in Law),

and the Supplier will not be entitled to make, nor will TfNSW be liable upon, any Claim in these circumstances other than for the amount which is payable by TfNSW under this clause 29.12.

29.13 Mitigation

- (a) The Supplier must use all reasonable endeavours to overcome or mitigate the effects of any Relief Event (including by putting in place temporary measures reasonably acceptable to TfNSW's Representative) and the Supplier's entitlement to relief and/or compensation under this clause 29 will be reduced to the extent that the Supplier fails to comply with its obligations under this clause 29.13(a).
- (b) Without limiting clause 29.13(a), the Supplier must use all reasonable endeavours to:
 - avoid or minimise the consequences of any delay caused by a Relief Event;
 - avoid or minimise any adverse impact on the performance of the Supplier's obligations under this deed including to avoid or minimise Service Payment Adjustments under the Performance Regime;
 - (iii) minimise any Loss incurred or suffered as a result of a Compensation Event; and
 - (iv) maximise any cost savings derived as a result of a Compensation Event.
- (c) The Supplier's entitlement to an extension of time to a Time for Performance will be reduced to the extent that:
 - the Supplier contributed to the delay;
 - (ii) the Supplier failed to comply with its obligations under this clause 29.13(a);
 - (iii) the Supplier has not actually been delayed by the Relief Event in a manner which prevents the Supplier from achieving any Time Based Delivery Objective by its relevant Time for Performance; and/or
 - (iv) there is a concurrent event of delay that is not a Relief Event.
- (d) The Supplier's entitlement to relief from Service Payment Adjustments under the Performance Regime will be reduced to the extent that:
 - the Supplier contributed to the failure to perform any obligation under a NIF Project Agreement at a level above that at which Service Payment Adjustments under the Performance Regime take effect; and/or
 - the Supplier failed to comply with its obligations under this clause 29.13.

29.14 Non-compliance

The Supplier's entitlement to:

- (a) an extension of time to any Time for Performance will be reduced to exclude any delay which would not have occurred;
- (b) relief from Service Payment Adjustments under the Performance Regime will be reduced to exclude any effect on the Supplier's level of performance; and

- (c) compensation will be reduced to:
- exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
 - include any cost savings or additional revenue which would have been derived,
- had the Supplier complied with its obligations under the NIF Project Agreements.

29.15 No right to common law damages

Except as provided for by this clause 29, TfNSW and TfNSW's Associates will not be liable upon any Claim by the Supplier arising out of or in connection with a Relief Event, including in respect of any breach of this deed by TfNSW.

29.16 Unilateral extension

Whether or not the Supplier has made, or is entitled to make, a claim for an extension of time to a Time for Performance under this clause 29, TfNSW's Representative may, in its absolute discretion at any time and from time to time by notice to the Supplier unilaterally extend any one or more of those dates. TfNSW's Representative is not required to exercise this discretion for the benefit of the Supplier.

30. Force Majeure Events

30.1 Force Majeure Event

If a party alleges or wishes to claim that a Force Majeure Event has occurred (**Affected Party**) it must notify the other party as soon as possible and thereafter issue to the other party a notification which includes details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party, any action proposed to overcome or mitigate its effect and, where applicable, the details of the relief sought and received in respect of the Force Majeure Event.

30.2 Meeting

As soon as practicable after a notice of a Force Majeure Event under clause 30.1 is given, the parties must meet and consult with each other in good faith, and on a continuing basis (being no less frequently than every 15 Business Days), and use all reasonable endeavours to:

- (a) determine whether a Force Majeure Event has occurred; and
- (b) if a Force Majeure Event has occurred, agree (in writing) on appropriate measures to mitigate or overcome the effects of a Force Majeure Event and facilitate the continued performance of the affected obligations under this deed.

Each party must notify the other party as soon as practicable if at any time it receives or becomes aware of any further material information relating to the Force Majeure Event, giving details of that information.

30.3 Termination for Force Majeure Event

If the parties determine that a Force Majeure Event has occurred and:

- (a) the parties are unable to agree on appropriate measures to mitigate the effects of a Force Majeure Event and facilitate the continued performance of this deed; and
- (b) the Force Majeure Event is continuing or its consequences remain such that the Affected Party:

- has been or is unable to comply with a material part of its obligations under this deed for a continuous period of more than 12 months from the date of the notice under clause 30.1; or
- (ii) is likely to be unable to comply with a material part of its obligations under this deed for a period of more than 24 months from the date of the notice under clause 30.1,

then either party may terminate this deed by giving 20 Business Days' notice to the other party.

30.4 No breach

If a Force Majeure Event has occurred, to the extent that the Affected Party has been prevented from, or delayed in, carrying out its relevant obligations by that Force Majeure Event and, if the Affected Party is the Supplier, only to the extent its obligations are suspended under clause 29.10:

- (a) a party will not be entitled to bring a Claim for a breach of obligation under any NIF Project Agreement against the Affected Party and the Affected Party will not incur any liability to the other party for any Loss incurred by that other party; and
- (b) where the Affected Party is the Supplier, the failure to perform the suspended obligations will not be a breach of any NIF Project Agreement by the Supplier, a Supplier Event of Default or a Supplier Termination Event.

30.5 Mitigation

Nothing in this clause affects the Supplier's obligations, following the occurrence of a Force Majeure Event, to comply with its obligations under clauses 29.13(a) or 29.13(b) and the parties must, at all times during which a Force Majeure Event subsists, take all reasonable steps to overcome or mitigate the consequences of a Force Majeure Event.

30.6 Event ceases

The Affected Party must notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under any NIF Project Agreement. Following such notification, the Affected Party must immediately resume performance of all its obligations under the NIF Project Agreements.

Part F – Default and Termination

31. Default

31.1 Supplier Events of Default

Each of the following events is a Supplier Event of Default:

- (a) **(Failure to progress)**: the Supplier fails to continuously and diligently progress the Supplier's Activities as required under clause 17.2;
- (b) **(Delay – Final Acceptance of a Unit)**: the Supplier fails to achieve Final Acceptance of a Unit by the Final Acceptance Default Date of that Unit;
- (c) **(Delay – Recovery Plan)**: the Supplier fails to implement, comply with or otherwise diligently pursue a Recovery Plan in accordance with clause 17.8(b);
- (d) **(Unacceptable Availability)**: [REDACTED]
[REDACTED]
[REDACTED]
- (e) **(Unacceptable Reliability)**: the calculated MDBF in any twelve month rolling period (**Reliability Measurement Period**) is lower than the MDBF default threshold set out in the following table:

Number of Accepted Units	MDBF (km)
1-30	[REDACTED]
31-68	[REDACTED]
69+	[REDACTED]

Calculated MDBF = KmT/AFR

Where:

KmT means the total kilometres travelled by all Accepted Units in the Fleet (measured to the nearest whole kilometre) over the Reliability Measurement Period; and

AFR means the actual number of In Service Reliability Failures in that Reliability Measurement Period;

- (f) **(Lack of or breach of Accreditation/Approval)**: a participant of the Supplier, the Supplier or any of Supplier's Personnel:
 - undertakes any of the Supplier's Activities which require Approval (including Accreditation) without having that Approval (including Accreditation); or
 - breaches (as determined by any Authority) the terms of its Approval (including any Accreditation) in carrying out the Supplier's Activities;
- (g) **(Lack of AEO status or breach of AEO authorisation)**: a participant of the Supplier:
 - fails to achieve AEO status;
 - loses AEO status; or

- (iii) breaches any AEO authorisation accreditation requirements provided in section 2.2 of the SPR,
in breach of its obligations under clause 8.3.
- (h) **(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 Supplier's 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 any participant of the Supplier or the NSW Rail Entity;
- (i) **(Safety breach)**: Either:
 - a Unit is involved in a collision or derailment whilst that Unit is In Service which causes injury to any person; or
 - there is a Notifiable Incident at the Commissioning Facility Site, at a Maintenance Location or in respect of Rolling Stock,
and the Incident is found to be primarily attributable to breach or negligence of any one or more of the Supplier or its Associates;
- (j) **(Asset Management Failure)**: the Supplier fails to remedy an Asset Management Failure within three months of the expiry of the Remediation Period;
- (k) **(Failure to report)**: the Supplier fails to comply with 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;
- (l) **(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;
- (m) **(Restrictions on dealings)**: the Supplier breaches its obligations under clause 44;
- (n) **(Change in Control)**: a Supplier Event of Default is deemed to have occurred under clause 45.3(c);
- (o) **(Subcontracting)**: the Supplier breaches its obligations under clause 46;
- (p) **(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;
- (q) **(Failure to reinstate)**: the Supplier fails to comply with any of its material obligations under clause 36;
- (r) **(Failure to insure)**: except as set out in clause 37, the Supplier fails to effect and maintain (or cause to be effected and maintained) the Insurances;
- (s) **(Incorrect representation or warranty)**: a representation or warranty made or given by the Supplier in this deed or any other NIF Project Agreement proves to be untrue in a material respect;
- (t) **(Breach of probity obligations)**: the Supplier fails to comply with its obligations under clauses 43.3 or 43.4;
- (u) **(Abandonment)**: a participant of the Supplier wholly or substantially abandons performance of any part of the Supplier's Activities; or
- (v) **(Other breach)**: any other material breach by the Supplier of an obligation under this deed (other than a breach which results in a Service Payment Adjustment) or any other NIF Project Agreement.

31.2 Default Notice

- (a) If a Supplier Event of Default occurs, TfNSW may give the Supplier a notice (**Default Notice**):
- stating that it is a notice under this clause 31.2; and
 - 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 31.1(d) occurs, TfNSW will be limited to issue one Default Notice per Service Payment Period.
- (c) If a Supplier Event of Default referred to in clause 31.1(e) occurs, TfNSW will be limited to issue one Default Notice per Service Payment Period.
- (d) Subject to clauses 31.2(b) and 31.2(c), the establishment of a Cure Plan or Mitigation Plan in relation to a Supplier Event of Default under either clause 31.1(d) or 31.1(e) shall not restrict TfNSW from giving the Supplier a subsequent Default Notice in another Service Payment Period.

31.3 Cure Plan

- (a) If a Default Notice has been given and:
- 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
 - if the Supplier Event of Default is not reasonably capable of being Remedied within 10 Business Days, 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 the Draft Cure Plan, TfNSW must either:
- approve the Draft Cure Plan by notifying the Supplier; or
 - 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 31.3(b)(i) (**Approved Cure Plan**):
- 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 31.3(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 31.3 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 31.3(a). This clause 31.3(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.

31.4 Mitigation Plan

- (a) If:
- 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:
 - approve the Draft Mitigation Plan by notifying the Supplier; or
 - 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 31.4(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 31.4(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 31.4 will apply to the amended Draft Mitigation Plan as if it were originally submitted under clause 31.4(a). TfNSW is not obliged to give the Supplier more than one opportunity to amend a Draft Mitigation Plan.

31.5 If Supplier fails to Remedy or comply

If a Default Notice has been given and the Supplier fails to:

- (a) if the Supplier Event of Default is capable of being Remedied:
 - Remedy the Supplier Event of Default, or submit a Draft Cure Plan, in accordance with clause 31.3;
 - (ii) if TfNSW rejects a Draft Cure Plan pursuant to clause 31.3(b)(ii), amend the Draft Cure Plan to meet TfNSW's requirements and submit the amended Draft Cure Plan in accordance with clause 31.3(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:
 - submit a Draft Mitigation Plan in accordance with clause 31.4(a);
 - if TfNSW rejects a Draft Mitigation Plan pursuant to clause 31.4(b)(ii), amend the Draft Mitigation Plan to meet TfNSW's requirements and submit the amended Draft Mitigation Plan in accordance with clause 31.4(d); or
 - (iii) comply with and implement the Approved Mitigation Plan,

a Supplier Termination Event will occur, and TfNSW may, without prejudice to its other rights under this deed, do any one or more of the following:

- (c) serve a notice on the Supplier specifying the relevant failure and requiring it to be rectified within a period specified in the notice;
- (d) require the Supplier, at the Supplier's cost, to replace any Subcontractor performing the obligations of the Supplier to which the Supplier Event of Default relates with a person that:
 - satisfies the requirements of clause 46; or

- (ii) is otherwise acceptable to TfNSW (acting reasonably);
- (e) exercise any rights pursuant to any Project Security held by TfNSW; or
- (f) exercise its Step-in Rights under clause 32.

31.6 Persistent Breach

- (a) If a breach of the same obligation of the Supplier under this deed or any other NIF Project Agreement occurs more than once in any 12 month period (**Persistent Breach**), TfNSW may issue a notice (**Persistent Breach Notice**) to the Supplier.
- (b) A Persistent Breach Notice must:
 - state that it is a Persistent Breach Notice;
 - 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;
 - (B) a breach which results in a Service Payment Adjustment; or
 - (C) failure to achieve Final Acceptance of a Unit by the Final Acceptance Default Date unless 10 or more Units have failed to achieve Final Acceptance by their relevant or applicable Final Acceptance Default Date; 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;
 - 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.

31.7 Frequent Breaches

- (a) If the Supplier commits frequent breaches of this deed which, in aggregate:
 - 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 Users; 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 issue a notice (**Frequent Breaches Notice**) to the Supplier.
- (b) A Frequent Breaches Notice must:
 - 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;
 - (B) a breach which results in a Service Payment Adjustment; or
 - (C) failure to achieve Final Acceptance of a Unit by the Final Acceptance Default Date unless 10 or more Units have failed to achieve Final Acceptance by their relevant or applicable Final Acceptance Default Date; and
 - (iv) state that, if Frequent Breaches continue to occur, they 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:
 - state that it is a Final Frequent Breaches Notice;
 - 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.

32. Step-in

32.1 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:
 - the health or safety of persons;
 - the Environment;
 - (iii) any property; or

- (iv) the safe and secure performance of the Supplier's Activities.

32.2 Step-in Rights

- (a) If:
- a Step-in Event occurs; and
 - TfNSW's Representative has given notice to the Supplier in accordance with clause 32.2(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 32.3 for the purposes of remedying 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 32.2(a)(ii):
- 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
 - 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 32.2(b)(i), but if given orally must be followed within 24 hours by a written notice under clause 32.2(b)(i).
- (c) The Step-in Right is without prejudice to TfNSW's other rights in respect of a Step-in Event, including its rights under clauses 31 and 33.

32.3 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:

- (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:
 - in connection with the performance of the Step-in Activities;
 - under or in relation to a NIF 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 32.3(a) to 32.3(d); or

- (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).

32.4 Supplier's obligations

- (a) The Supplier must:
- cooperate with the Step-in Party in the exercise of the Step-in Powers;
 - 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 32.4(a), the Supplier must:
- 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 permit TfNSW to exercise its Step-in Rights.

32.5 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 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.

32.6 Payments during step-in

- (a) If, during a period when TfNSW is exercising its Step-in Rights:

- the Supplier continues to perform obligations under this deed which affect the calculation of the Service Payment, the parts of the Service Payment affected by the performance of those obligations will continue to be calculated in accordance with Schedule E1 based on the actual performance of those obligations during the relevant period; or
 - the Supplier's performance of an obligation which affects the calculation of the Service Payment is suspended, the parts of the Service Payment which are affected by the Step-in Party's performance of those obligations will continue to be calculated in accordance with Schedule E1, 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. In other words, each Service Payment Adjustment referable to an obligation which is being performed by the Step-in Party will be calculated based on the average level of that Service Payment Adjustment 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 Service Payment payable in respect of a period when TfNSW is exercising its Step-in Rights:
- 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 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 32.6 is greater than the Service Payment payable in respect of the relevant period, the difference will be Moneys Owed from the Supplier to TfNSW.

32.7 No Claim

The Supplier acknowledges that TfNSW and TfNSW's Associates will have no liability to the Supplier, and the Supplier will not be entitled to make any Claim against TfNSW and TfNSW's 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:

- (a) arises from fraud, wilful default or gross negligence on the part of the Step-in Party; or
- (b) is a Claim under clause 29.

32.8 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:
 - 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 Supplier's 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).

33. Termination

33.1 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 31.5(a) or clause 31.5(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) **(Delay – Longstop Milestone):** the Supplier fails to achieve either of the Longstop Milestones;
- (e) **(Delay – Look Forward):** if it is determined by the Independent Expert in accordance with clause 17.7(g) that the Supplier will not be able to achieve either of the Longstop Milestones;
- (f) **(Delay – Final Acceptance):** the Supplier fails to achieve Final Acceptance of 10 or more Units by their respective Final Acceptance Default Dates;
- (g) 
- (h) **(Performance):** TfNSW has issued to the Supplier:
 - three or more Default Notices under clause 31.1(d); or
 - three or more Default Notices under clause 31.1(e),
 in any rolling two year period;
- (i) **(Abandonment):** the Supplier wholly or substantially abandons performance of the Supplier's Activities;
- (j) **(Insolvency of a participant of the Supplier):** an Insolvency Event occurs in relation to any participant of the Supplier, whether or not the Supplier is or has been in breach of any NIF Project Agreement;

- (k) **(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 Supplier's Activities;
- (l) **(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;
- (m) **(Interference with access)**:
 - TAHE terminates, suspends or revokes the Commissioning Facility Licence due to, or in relation to, any act or omission of the Supplier;
 - (ii) TfNSW terminates, suspends or revokes the MFI Works Licence due to, or in relation to, any act or omission of the Supplier;
 - (iii) TfNSW and TAHE terminate, suspend or revoke the Maintenance Facility Licence due to, or in relation to, any act or omission of the Supplier;
 - (iv) a Licensor terminates, suspends or revokes the NIF Stabling Yard Licences to three or more NIF Stabling Yards due to, or in relation to, any act or omission of the Supplier; or
 - (v) TfNSW terminates, suspends or revokes the Additional MF Works Licence due to, or in relation to, any act or omission of the Supplier;
- (n) **(Default under a Parent Guarantee)**: a Guarantor defaults in the performance of an obligation under the relevant Parent Guarantee;
- (o) **(Insolvency of a Guarantor)**: an Insolvency Event occurs in relation to a Guarantor, whether or not that Guarantor is or has been in breach of the relevant Parent Guarantee;
- (p) **(Fraud or misleading conduct)**: there is any corrupt, fraudulent or false, misleading or deceptive conduct or collusive pricing on the part of the Supplier in the performance of any of the Supplier's Activities (including any fraud or intentionally false, misleading or deceptive reporting discovered during any audit or inspection carried out by TfNSW or an Authority);
- (q) **(Illegality Event)**: the occurrence of any of the following events:
 - any NIF 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 TAHE), other than as contemplated by the NIF 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 NIF Project Agreements, and such event is not Remedied within 20 Business Days of the relevant event occurring; or
- (r) **(Consortium Agreement)**: the occurrence of any of the following events:
 - a Transition Out Notice (as defined in the Consortium Agreement) has been issued under clause 20.4 of the Consortium Agreement without TfNSW's consent;
 - the Consortium Agreement has been terminated without TfNSW's consent; or
 - (iii) an event referred to in clause 44.6(f).

33.2 Notice of Supplier Termination Event

Without limiting TfNSW's other rights 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.

33.3 TfNSW action following Supplier Termination Event

Without limiting TfNSW's other rights and remedies 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 either Provided Facility Site. The amount of any Loss incurred by TfNSW in taking such action will be Moneys Owning.

33.4 Termination for Supplier Termination Event

If a Supplier Termination Event occurs, TfNSW may give a notice to the Supplier immediately terminating this deed. The notice must set out details of the Supplier Termination Event for which TfNSW is giving the notice.

33.5 TfNSW Termination Events

Each of following events is a TfNSW Termination Event:

- (a) **(Failure to pay):** TfNSW fails to comply with its payment obligations under clause 25 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 33.5(a)); or
- (b) **(breach):** a breach by TfNSW of this deed which substantially frustrates or renders it impossible for the Supplier to perform all or a substantial part of its obligations or exercise its rights under this deed for a continuous period of two months after the Supplier has given TfNSW notice of such breach.

33.6 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 33.6(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:
 - TfNSW notifying the Supplier that it is ending the suspension period;
 - in the case of the TfNSW Termination Event referred to in clause 33.5(a), 30 Business Days after the date of receipt of the Supplier's notice under clause 33.6(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 33.6(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:

- under clause 33.6(c)(i), 33.6(c)(ii) or 33.6(c)(iii) and the TfNSW Termination Event has not been Remedied, the Supplier may immediately terminate this deed by notice to TfNSW; and
- (ii) under clause 33.6(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 33.6(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 33.6(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 33.6(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 33.6(b) until the end of the period of suspension.
- (h) TfNSW will not be entitled to give any notice under clauses 31.2 or 33.4 to the extent the occurrence or circumstance which would otherwise entitle TfNSW to give such a notice results from the relevant TfNSW Termination Event.

33.7 Termination for convenience by TfNSW

Without prejudice to any of TfNSW's other rights or entitlements under the NIF Project Agreements, TfNSW may:

- (a) at any time, for its sole convenience and without giving reasons, terminate this deed or a Separable Portion 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 Supplier's Activities (if TfNSW elects to do so).

TfNSW's right of termination for convenience under this clause 33.7 applies as a sole and unfettered discretion either to voluntarily terminate this deed as a whole or in respect of individual Separable Portions only as a Partial Termination.

33.8 Termination for Force Majeure Event

Either party may terminate this deed pursuant to clause 30.3.

33.9 Consequences of termination

Upon termination of this deed:

- (a) except as provided in Schedule E8, the Supplier is not entitled to any compensation and will have no Claim against TAHE, TfNSW or the State by virtue of or arising from the termination;
- (b) TAHE and TfNSW are entitled to the compensation (if any) and other rights and remedies set out in Schedule E8;
- (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 NIF Project Agreement, damages (including liquidated damages) or otherwise; and
- (d) the rights and obligations of the parties will otherwise cease except for:

- 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 54.6.

33.10 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 relevant Termination Payment.

34. Partial Termination and continuity

34.1 Partial Termination

- (a) TfNSW has the right, at its sole and unfettered discretion:
 - if a Partial Termination Event occurs; or
 - pursuant to clause 33.7,
 on notice to the Supplier, to elect to terminate one or more Separable Portions rather than terminate this deed as a whole (**Partial Termination**).
- (b) A reference to Partial Termination in this deed means that the requirement for any works or services or any other requirements of this deed relating to a Separable Portion that is the subject of the Partial Termination are terminated, including, subject to clause 34.2, TfNSW's obligation to make any payment to the Supplier in respect of the relevant Separable Portion.
- (c) Following a Partial Termination, all references in this deed and any NIF Project Agreement to the Supplier's Activities will be read by reference to the remaining Separable Portions for the purposes of the continued performance of this deed by both parties in relation to those remaining Separable Portions.

34.2 Consequences of Partial Termination

Where TfNSW effects a Partial Termination pursuant to clause (a):

- (a) TfNSW's notice of Partial Termination is a TfNSW Variation Order and the provisions of clause 27 will be followed accordingly except that:
 - in addition to the Variation Effects to be determined under paragraph 1.10 of Schedule E3, TfNSW's Representative will determine the effect (if any) of the Partial Termination on:
 - (A) this deed;
 - (B) the Acceptance Criteria;
 - (C) the requirements under this deed for MFI Practical Completion or Additional MF Works Practical Completion;
 - (D) the requirement that any Asset, the MFI Works or the Additional MF Works be fit for purpose;
 - (E) the SPR; and
 - (F) the Service Payments; and

- (ii) the Supplier must, within 10 Business Days of the date of TfNSW's notice of Partial Termination and any subsequent notice requesting such information, provide TfNSW's Representative with any information in respect of the impact of the Partial Termination reasonably requested by TfNSW's Representative in that notice;
- (b) except as provided in Schedule E8, the Supplier is not entitled to any compensation and will have no Claim against TAHE, TfNSW or the State by virtue of or arising from the Partial Termination;
- (c) TAHE and TfNSW are entitled to the compensation (if any) and other rights and remedies set out in Schedule E8;
- (d) TfNSW may have recourse to and apply any Project Security and any Project Bond 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, or damages (including liquidated damages), arising out of or in relation to the relevant Separable Portion or Separable Portions or arising from the Partial Termination or otherwise; and
- (e) the rights and obligations of the parties in relation to the Separable Portion or Separable Portions that are the subject of the Partial Termination will otherwise cease except for:
 - any accrued rights and obligations under this deed in respect of the relevant Separable Portion or Separable Portions, including those arising out of the Partial Termination; and
 - (ii) any rights and obligations which are expressed to continue after termination, including those referred to in clause 54.6.

34.3 Waiver and no Claim

On Partial Termination:

- (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 relevant Termination Payment.

34.4 Facilitation

- (a) Without limiting clause 49, on Partial Termination, to the extent reasonably requested by TfNSW, the Supplier must facilitate the transfer of any Assets or Materials at any location which relate to, have been allocated to, or have been wholly or partly completed as part of any Separable Portion that is terminated under clause 34.1 to TfNSW or a nominee of TfNSW.
- (b) Without limiting the generality of clause 34.4(a) or any of its other obligations under the NIF Project Agreements, but subject to clause 48, the Supplier must:
 - to the extent directed by TfNSW's Representative, comply with its obligations, and permit TfNSW to exercise all its rights under, clause 49 in relation to the Separable Portion that is the subject of the Partial Termination; and
 - do all other things reasonably requested by TfNSW to minimise any disruption to the remaining Separable Portions and to facilitate the effective transfer of relevant activities, Assets, Materials, property or works.

34.5 Continuity following Partial Termination

On Partial Termination, the Supplier must continue to comply with its remaining obligations under the NIF Project Agreements, and must ensure that its Subcontractors continue to comply with

their obligations under the NIF Project Agreements and all relevant Subcontracts in respect of the Supplier's Activities to the extent they are not the subject of the Partial Termination.

Part G – Title, Loss, liabilities and Insurance

35. Ownership of Assets

35.1 Title

Subject to the rights and title in the Contract Information expressly reserved to the Supplier pursuant to Schedule A3, title to and property in all Assets, Deliverables and any other chattels forming part of the Supplier's Activities will pass to TAHE immediately, in each case, on the earliest to occur of the following:

- (a) in relation to Units and the Simulators, Provisional Acceptance of the Unit or Simulator;
- (b) except in relation to Units and the Simulators, delivery of the Asset or Deliverable to a Provided Facility Site;
- (c) except in relation to Units and the Simulators, the date when the Supplier acquires title to the Asset or Deliverable; or
- (d) termination of this deed for any reason,

and that Asset or Deliverable shall thereafter remain the property of TAHE.

35.2 Supplier's warranty

The Supplier represents and warrants for the benefit of TfNSW, TAHE and the other NSW Rail Entities that:

- (a) the Supplier supplies all Assets and Deliverables to TfNSW and/or TAHE with full title guarantee and free from any Security Interests; and
- (b) there are no outstanding Disputes, Claims or proceedings relating to title to the Assets and Deliverables or the existence of any Security Interests in respect of the Assets and Deliverables or TfNSW's or TAHE's right to use the Assets and Deliverables, with any person.

35.3 Repetition of warranty

The representations and warranties of the Supplier under clause 35.2 are:

- (a) made and given on the date of this deed: and
- (b) taken to be repeated in relation to each Asset and Deliverable supplied under this deed on the date when title in that Asset or Deliverable is expressed to pass from the Supplier to TAHE under clause 35.1.

36. Damage and reinstatement

36.1 Supplier bears risk of loss or damage

The Supplier bears all risk of destruction, loss or damage to all works, materials, Deliverables and Assets to be designed, developed, procured, manufactured, tested, commissioned, supplied, delivered, stored, maintained, repaired, modified or refurbished under this deed:

- (a) in respect of Units and Simulators, other than for TfNSW Defects, until Provisional Acceptance;
- (b) in respect of the Maintenance Facility Equipment, until incorporation into the Maintenance Facility;

- (c) in respect of the Maintenance Facility Equipment and the MFI Works, until MFI Practical Completion has been achieved but only where the Supplier has care, custody and/or control;
- (d) in relation to all Spares and other chattels and Deliverables, until they are physically delivered to TfNSW at the relevant Delivery Location or other agreed (in writing) place for delivery;
- (e) at all other times when the Supplier has care, custody and/or control of them either under a NIF Project Agreement or in fact;
- (f) to the extent that such destruction, loss or damage is caused or contributed to by the Supplier or the Supplier's Associates; and
- (g) in respect of the Additional MF Works:
 - until Additional MF Works Practical Completion has been achieved; and
 - at any time during which the Supplier rectifies Defects in respect of the Additional MF Works.

36.2 Supplier must reinstate

Subject to clause 18.11 and clause 36.3, if any destruction, loss or damage occurs to any thing which, by virtue of clause 36.1 is at the risk of the Supplier, (without limiting the Supplier's other obligations under any NIF Project Agreement), the Supplier must:

- (a) promptly repair, replace, reinstate or remedy the destruction, loss or damage so that the Supplier continues at all times to comply with its obligations under this deed;
- (b) apply all proceeds of the Insurances towards the cost of repair, replacement reinstatement or remediation; and
- (c) if either the cost to repair, replace, reinstate or remedy the destruction, loss or damage exceeds \$100,000 or the destruction, loss or damage would reasonably be expected to materially impact on either:
 - the performance of the Operations Functions by a NSW Rail Entity; or
 - the Supplier's ability to perform its obligations under this deed,
 promptly provide TfNSW's Representative with notice of the destruction, loss or damage and any required repair, replacement, reinstatement or remediation and as soon as practicable thereafter, provide TfNSW's Representative fortnightly with a detailed report of all action being taken or to be taken to repair, replace, reinstate or remedy the destruction, loss or damage, including the estimated time that action will require;
- (d) consult with TfNSW's Representative about the programming of the works needed to effect the relevant repair, replacement, reinstatement or remediation;
- (e) in carrying out the relevant repair, replacement, reinstatement or remediation, minimise the impact on the Supplier's Activities, the Assets and the performance of the Operations Functions; and
- (f) keep TfNSW's Representative fully informed of the progress of the repair, replacement, reinstatement or remediation activities.

36.3 TfNSW may direct alternative action to be taken

If the Supplier has an obligation to repair destruction or damage to, or reinstate any thing under clause 36.2, TfNSW's Representative may, in his or her absolute discretion, give a notice directing the Supplier not to carry out its repair and replacement obligations under clause 36.2, in which case:

- (a) the Supplier waives in favour of and for the benefit of TAHE and TfNSW, the Supplier's right to make a claim under the Insurances, other than claims in respect of the Supplier's Loss or any insured legal liability to third parties;
- (b) the Supplier must pay to TfNSW all proceeds it receives from the Insurances, other than proceeds in respect of the Supplier's own Loss or any insured legal liability to third parties; and
- (c) the rights and obligations of the parties under this deed will be varied so as to leave TAHE, TfNSW and the Supplier in a 'no net gain, no net loss' position.

37. Insurance

37.1 TfNSW's Insurances

- (a) TfNSW has effected and will maintain the insurance policies set out in Schedule A6 (**TfNSW's Insurances**).
- (b) The Supplier acknowledges that TfNSW's Insurances:
 - are subject to the limits, exclusions, conditions, deductibles and excesses noted on the policies set out in Schedule A6; and
 - do not cover every risk to which the Supplier might be exposed.
- (c) The Supplier:
 - must satisfy itself of the nature and extent of the cover provided by TfNSW's Insurances; and
 - may, if it wishes to do so and at its own cost, effect appropriate insurance for any risk or liability which is not covered by TfNSW's Insurances.
- (d) Where the Supplier:
 - must, under clause 36, replace, reinstate, remedy or repair at its cost any Loss, destruction or damage, or is required to indemnify TfNSW or another Indemnified Party under clause 38, and makes a claim under any of TfNSW's Insurances in respect of the destruction or damage or the event giving rise to the indemnity; or
 - (ii) otherwise makes a claim under or in respect of any of TfNSW's Insurances, the Supplier must bear the cost of any excesses or deductibles in respect of TfNSW's Insurances or in any insurance effected by the Supplier under this clause 37.1, that may apply in those circumstances.
- (e) The Supplier must:
 - comply with the terms and conditions of TfNSW's Insurances; and
 - (ii) ensure that the Supplier's Subcontractors comply with the terms and conditions of TfNSW's Insurances.

37.2 Supplier's whole of project 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 E6 on the terms and for the periods set out in this clause 37 and Schedule E6.

37.3 Supplier's MFI Works 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 2 of Schedule E6 on the terms and for the periods set out in clause 37 and Schedule E6.

37.4 Supplier's Rolling Stock Supply Works and Simulator Supply Works 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 3 of Schedule E6 on the terms and for the periods set out in this clause 37 and Schedule E6.

37.5 Maintenance Services 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 4 of Schedule E6 on the terms and for the periods set out in this clause 37 and Schedule E6.

37.6 Subcontractors

The Supplier must ensure that all Subcontractors effect and maintain appropriate insurances (for the relevant Supplier's Activities subcontracted) including workers' compensation insurance in accordance with Legal Requirements.

37.7 Additional, increased or varied Insurances

(a) If TfNSW at any time reasonably requires the Supplier to:

- insure against a risk not specifically provided for or contemplated under clauses 37.2 to 37.5; or
- increase the extent of, or change the terms of, an existing Insurance from that set out in clauses 37.2 or 37.5,

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 37.7(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 37.7(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.

37.8 Review of Insurance limits and deductibles

The minimum sums insured and maximum deductibles for the insurances referred to in clause 37.5 will be reviewed by TfNSW's Representative on each anniversary of the Rolling Stock Maintenance 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.

37.9 Joint names

The Supplier must ensure that all Insurances effected by the Supplier in compliance with this clause 37 other than the Insurances referred to in Schedule E6 referred to as:

- (a) Professional Indemnity Insurance;
- (b) Employer's Liability and Workers' Compensation Insurance; and
- (c) Compulsory Third Party Motor Vehicle Insurance,

are in the joint names of the Supplier and each other Indemnified Party 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.

37.10 Insurance requirements generally

- (a) All Insurances effected by the Supplier in compliance with this clause 37, other than the Insurances in Schedule E6 referred to as Employer's Liability and Workers' Compensation Insurance and Compulsory Third Party Motor Vehicle Insurance:
- must be taken out with Reputable Insurers or with insurers approved by TfNSW's Representative (such approval not to be unreasonably withheld);
 - must be on the terms required by this clause 37 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;
 - (C) the Supplier allowing the policy to expire; or
 - (D) 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 the deductible is payable once 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 37.10(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 E6 referred to as Professional Indemnity Insurance, must:
- cover any legal liability contractually assumed to the extent that the Supplier and any other insureds under those Insurances have contracted 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 37.10(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 E6 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 36, 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 E6 referred to as Public and Products Liability Insurance, must not expressly exclude liability arising under clause 38 solely on the basis that it is a contractually assumed liability.
- (e) Insurances in Schedule E6 referred to as Industrial Special Risks Insurance (other than in respect of the business interruption cover referred to in Schedule E6 in relation to that Insurance), must specify TfNSW, and the Supplier as joint loss payees.

37.11 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 E6, and deductibles no greater than the 'Maximum Deductible' specified in Schedule E6.
- (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 Owed.

37.12 Evidence of insurance

In respect of the Insurances required to be effected and maintained by the Supplier under this clause 37, the Supplier must give TfNSW's Representative:

- (a) certified copies of all:
- policies (including policy schedules, wordings and endorsements), other than any policy for Professional Indemnity Insurance;
 - (ii) renewal certificates; and

- (iii) slips and cover notes,
within 10 Business Days after it receives them from the insurer or broker; and
- (b) 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 37 have been effected and maintained in accordance with the requirements of this clause 37.

37.13 Failure to produce proof of insurance

If the Supplier fails to provide evidence satisfactory to TfNSW's Representative in accordance with clause 37.12(a) or within 10 Business Days of a request under clause 37.12(b), 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 Owning.

37.14 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.

37.15 General insurance obligations

The Supplier must:

- (a) not knowingly do or permit, or omit to do, anything which prejudices any Insurance;
- (b) rectify anything which might prejudice any Insurance;
- (c) reinstate an Insurance required to be maintained under clauses 37.2 to 37.5 if it lapses;
- (d) not cancel, vary or allow any Insurance required to be maintained under clauses 37.2 to 37.5 to lapse without the prior written consent of TfNSW's Representative;
- (e) immediately notify TfNSW of any fact or circumstance or change in circumstances which may prejudice an Insurance;
- (f) without limiting clause 37.16(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.

37.16 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 37.16(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).

37.17 Insurance Proceeds Account

- (a) This clause 37.17 applies to all amounts received under:
- TfNSW's Insurances;
 - the Insurances in Schedule E6 referred to as Plant and Materials Insurance; and
 - (iii) the Insurances in Schedule E6 referred to as Industrial Special Risk Insurance, but excluding:
 - (iv) any amounts received under any construction liability insurance policy provided as part of TfNSW's Insurances; and
 - (v) any proceeds of delay in start up or business interruption insurance,
- (Insurance Proceeds).**
- (b) The Supplier must:
- establish an account to be known as the Insurance Proceeds Account;
 - 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 37.17(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 37.17(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 30.3 or 33, TfNSW will be entitled to any moneys remaining in the Insurance Proceeds Account on the date of termination.

37.18 Supplier's Additional MF Works 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 5 of Schedule E6 on the terms and for the periods set out in clause 37 and Schedule E6.

38. Indemnities

38.1 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:

- 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 act or omission of the Supplier, the Supplier's Associates or the Supplier's Personnel; and/or
- (b) any Loss incurred by an Indemnified Party arising out of or in any way connection with:
 - any breach or failure to comply with the terms of any NIF 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.

38.2 Exclusions from indemnity

The Supplier's liability under clause 38.1 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 TAHE of their obligations under a NIF Project Agreement.

38.3 Exclusion of Indirect or Consequential Loss

- (a) Subject to clause 39.7, 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 39.7(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 act or omission of any Indemnified Party (whether negligent or otherwise).

38.4 Procedure for Third Party Claims

- (a) If an Indemnified Party wishes to claim indemnity under clause 38.1 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:
 - subject to clause 38.4(c), take such actions as the Supplier may reasonably direct in defending or mitigating the Third Party Claim;
 - 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 38.1 will be reduced to the extent that a failure by an Indemnified Party to comply with clause 38.4(b) prejudices the Supplier, but not otherwise.

38.5 Obligations not affected

- (a) Clause 38.1 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 38.1 by reason of effecting Insurance or being an insured party under an insurance policy effected by TfNSW.

38.6 Indemnified Parties

The Supplier acknowledges and agrees that if the indemnity in clause 38.1 or the matters stated in clause 38.3(b) are unenforceable, all references in this clause 38 to "the Indemnified Party" or "an Indemnified Party" will be read as a reference to "TfNSW and TAHE" only.

39. Liability

39.1 General Liability Cap for Delivery Activities

Subject to clause 39.7, but notwithstanding any other provision of the NIF Project Agreements, the Supplier's aggregate liability to the Indemnified Parties or any person claiming through them under any NIF Project Agreement arising out of, or in any way in connection with the Delivery Activities (including any Claim in respect of any Defect in the Rolling Stock Supply Works, the Simulator Supply Works, the MFI Works or the Additional MF Works) and whether arising pursuant to an indemnity, in contract, in tort, in equity, by operation of law or otherwise, is limited in aggregate to an amount equal to [REDACTED] of the sum of:

- (a) the Initial Fleet Contract Value;
- (b) the MFI Works Contract Value; and
- (c) the Additional Fleet Contract Value; and
- (d) the Additional MF Works Contract Value,
- (General Liability Cap).**

39.2 Increase to General Liability Cap for CPI

The General Liability Cap will be CPI Indexed on the first day of each Financial Year.

39.3 Delay LDs Cap Initial Fleet

- (a) Subject to clause 39.7, the parties acknowledge and agree that the Supplier's liability for Delay LDs under clause 17.10(a) or general damages under clause 39.8(c) in respect of the Initial Fleet is limited to the sum of [REDACTED] **(Delay LDs Cap Initial Fleet)**.
- (b) The Delay LDs Cap Initial Fleet is a subset of the General Liability Cap.

39.4 Delay LDs Cap Additional Fleet

- (a) Subject to clause 39.7, the parties acknowledge and agree that the Supplier's liability for Delay LDs under clause 17.10(a) or general damages under clause 39.8(c) in respect of the Additional Fleet is limited to [REDACTED] of the Additional Fleet Contract Value **(Delay LDs Cap Additional Fleet)**.
- (b) The Delay LDs Cap Additional Fleet is a subset of the General Liability Cap.
- (c) The Delay LDs Cap Additional Fleet will be CPI Indexed on the first day of each Financial Year, commencing on and from 1 July 2022.

39.5 Maintenance Liability Cap and Through Life Support

- (a) The term **Maintenance Liability Period** means each of:
- the period commencing on the Rolling Stock Maintenance Start Date and ending on the last day of the fifth Maintenance Year under this deed;
 - 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; and
 - (iv) if TfNSW elects to extend the Expiry Date pursuant to clause 3.2(b) and/or clause 3.2(c), the period commencing on the first day of the sixteenth Maintenance Year under this deed and ending on the Extended Expiry Date.
- (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:
- the **Maintenance Services Sum** will be calculated by dividing the sum of the Forecast Maintenance Payment payable over the relevant Maintenance Liability Period by the number of years in that Maintenance Liability Period; and
 - the **Forecast Maintenance Payment** for each Service Payment Period during a Maintenance Liability Period will be calculated based upon the forecast Nominal Maintenance Payments calculated in row 1140 of the 'Maintenance Phase' worksheet of the Base Case Cost Model, adjusted to reflect actual indexation (rather than modelled forecast indexation), as determined in accordance with clause 1.15.
- (c) Subject to clauses 39.6 and 39.7, the Supplier's aggregate liability to the Indemnified Parties or any person claiming through them under any NIF Project Agreement arising out of, or in any way in connection with the performance of the Maintenance Services, 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) To the extent that TfNSW, TAHE or another Indemnified Party or any person claiming through them under any NIF Project Agreement suffers any Loss or Claim due to a Defect in an Asset that occurs or exists partly due to an act or omission of the Supplier or its Associates in the performance of the Delivery Activities and partly due to an act or omission of the Supplier or its Associates in the performance of the Maintenance Services, then for the purposes of clause 39.1 and clause 39.5(c), the Supplier's liability in respect of the Loss or Claim shall first be applied to reduce the General Liability Cap and only to the extent that cap is exhausted will the balance of the Supplier's liability in respect of the Loss or Claim be applied against the relevant Maintenance Liability Cap.
- (e) Subject to clause 39.7, the Supplier's aggregate liability to the Indemnified Parties or any person claiming through them under any NIF Project Agreement arising out of, or in any way in connection with the performance of, the Supplier's obligations under clause 18.14 in the period from the End Date to the end of the Through Life Support 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 liability arising in each Financial Year during that period, to an amount equal to ■ of the price of all Spares purchased from the Supplier by TfNSW, TAHE and any other NSW Rail Entity in that Financial Year.

- (f) The Maintenance Liability Cap is separate from and in addition to the General Liability Cap.

39.6 Service Payment Adjustment Annual Cap

Subject to clause 39.7, the Supplier's aggregate liability under this deed for Service Payment Adjustments, in respect of each Maintenance Year is limited to [REDACTED] of the forecast Nominal annual Maintenance Payment (excluding any Lumpy Maintenance Payment for the Initial Fleet and Lumpy Maintenance Payment for the Additional Fleet), calculated in row 213 of the 'Bonding' worksheet of the Base Case Cost Model, adjusted to reflect actual indexation (rather than modelled forecast indexation), as determined in accordance with clause 1.15, for the relevant Maintenance Year (**Service Payment Adjustment Annual Cap**). The Service Payment Adjustment Annual Cap is outside, and does not operate as a subset of, the Maintenance Liability Cap.

39.7 Exceptions to liability caps and exclusions

Nothing:

- (a) in clause 38.3(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 NIF Project Agreements:
- pursuant to clause 13.8(f)(ii);
 - in respect of Delay LDs pursuant to clause 17.10;
 - (iii) in respect of any reduction in the Supplier's entitlement to be paid the full amount of the Initial Fleet Contract Value or Additional Fleet Contract Value pursuant to paragraphs 1.1 or 1.6 of Schedule E1;
 - (iv) subject to clause 39.6, in respect of Performance Adjustments that reduce the amount of any Service Payment calculated under paragraph 3.1 of Schedule E1; or
 - (v) for Loss in respect of and liabilities of an Indemnified Party to a third party (including to another Indemnified Party);
- (b) in clause 38.3(a) or this clause 39 will limit or exclude the Supplier's liability to an Indemnified Party or any person claiming through an Indemnified Party under any of the NIF Project Agreements:
- for Moneys Owed (except in respect of clause 39 to the extent that 'Moneys Owed' under clause 39.8(d) are limited in accordance with clause 39.8(d));
 - (ii) 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, had it diligently pursued a claim against the third party,
 an amount in respect of that liability;
 - (iii) 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 if the Supplier had:
 - (I) diligently pursued a claim under the policy of insurance;
 - (II) complied with the terms and conditions of that policy of insurance;
 or

- (III) complied with its insurance obligations under this deed;
- (iv) for Loss arising from any criminal acts or fraud on the part of the Supplier or any of the Supplier's Associates;
 - (v) for Loss arising from wilful misconduct on the part of the Supplier or any of the Supplier's Associates;
 - (vi) to the extent that, by law, the parties cannot limit, or exclude by contract, that liability;
 - (vii) in respect of any fine, penalty or impost imposed by an Authority or under any Legal Requirement;
 - (viii) for Loss arising where the Supplier wholly or substantially abandons the Supplier's Activities;
 - (ix) for Loss arising from the illness, personal injury, or death of, any person to the extent caused or contributed to by the Supplier or any of the Supplier's Associates; or
 - (x) for Loss arising from any loss or damage to property to the extent caused or contributed to by the Supplier or any of the Supplier's Associates;
- (c) in clause 38.3(a) or this clause 39 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 A3 to any or all of the persons or entities identified pursuant to paragraph 2.2(b) of Schedule A3; or
- (d) in clause 38.3(b) will limit or exclude the Indemnified Parties' liability to the Supplier under any of the NIF Project Agreements:
- for Loss arising from any criminal acts or fraud on the part of TfNSW or any of TfNSW's Associates;
 - 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 TAHE under any of the NIF Project Documents to pay to the Supplier any of the following amounts:
 - (A) any Progress Payments;
 - (B) any Service Payments;
 - (C) any amounts payable under clause 8.13(b);
 - (D) any interest under clause 25.12;
 - (E) any amounts payable under and calculated in accordance with the clause 29.12; or
 - (F) the amount payable under paragraph 2.2(e) of Schedule E8; and
 - (vi) to the extent that, by law, the parties cannot limit, or exclude by contract, that liability.

39.8 Genuine pre-estimate for Delay LDs

- (a) The parties acknowledge and agree that the Delay LDs payable by the Supplier under clause 17.10 represent (and do not exceed) a reasonable and genuine pre-estimate of the Loss and damage that may be suffered or incurred by TfNSW, TAHE or any other NSW Rail Entity arising from late Provisional Acceptance of the Units.
- (b) The Supplier must not commence or bring any proceedings, or seek to rely on any argument that Delay LDs calculated in accordance with clause 17.10(a) are a penalty or are otherwise invalid or unenforceable or that clause 17.10(a), or any part of it, is otherwise invalid or unenforceable.
- (c) If any part of clause 17.10(a) is found for any reason to be void, invalid or otherwise unenforceable, so as to disentitle TfNSW, TAHE or any other NSW Rail Entity from recovering Delay LDs, TfNSW, TAHE or the relevant NSW Rail Entity 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 the Supplier's failure to achieve Provisional Acceptance of a Unit by its Date for Provisional Acceptance.
- (d) The Supplier's liability for any general law damages payable under clause 39.8(c) is:
 - Moneys Owning; and
 - limited to the total of the:
 - (A) Delay LDs Cap Initial Fleet; and
 - (B) Delay LDs Cap Additional Fleet,

39.9 Genuine pre-estimate for Payment Adjustments and non-payment

- (a) The parties acknowledge and agree:
 - that the amount that may not be paid under paragraph 1.3 of Schedule E1 represents (and does not exceed) a reasonable and genuine pre-estimate of the Loss and damage that may be suffered or incurred by TfNSW, TAHE or any other NSW Rail Entity if the Supplier fails to achieve Fleet Acceptance on or before the Fleet Acceptance Sunset Date;
 - that the Service Payment Adjustments which may be made by TfNSW as calculated under the Performance Regime represent (and do not exceed) a reasonable and genuine pre-estimate of the Loss and damage that may be suffered or incurred by TfNSW, TAHE or any other NSW Rail Entity arising from events, actions or omissions occasioning any Performance Adjustment or any events, acts or omissions related to any Performance Adjustment or otherwise contemplated or addressed under the Performance Regime;
 - (iii) that the Energy Factor Adjustment which may be made by TfNSW as calculated under paragraph 1.4 of Schedule E1 represents (and does not exceed) a reasonable and genuine pre-estimate of the loss and damage that may be suffered or incurred by TfNSW, TAHE or any other NSW Rail Entity if the Supplier fails to meet the Reference Energy Consumption for the Fleet on or before the Date of Fleet Acceptance;
 - (iv) each of the parties require formulae for calculation of that cost and diminished value that are able to be readily applied without unnecessary administrative costs, delay or difficulty;
 - (v) there are many and varied matters which form part of the cost to TfNSW and the diminished value which TfNSW, TAHE and the NSW Rail Entities may suffer, many of which are difficult or impossible to calculate with precision; and

- (vi) it is in the economic interests of the parties that formulae of the nature referred to in Schedule E1 and in the Performance Regime be adopted and the calculations referred to in this clause 39.9(a) meet the requirements of such formulae.
- (b) To the extent permissible, the Supplier excludes and expressly waives any right of the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of the adjustments made pursuant to the Performance Regime under this deed as penalties, or the enforceability or recoverability of the adjustments made pursuant to the Performance Regime or any related provision of this deed.
- (c) If any part of either:
 - the Performance Regime; or
 - the Progress Payment adjustment referred to in clause 39.9(a)(iii),
 is found for any reason to be void, invalid or otherwise unenforceable, so as to disentitle TfNSW from making that Service Payment Adjustment or Progress Payment adjustment, 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, TAHE or any NSW Rail Entity as a result of an event, action or omission which would have entitled TfNSW to make any of the Service Payment Adjustments or Progress Payment adjustments, up to the full amount of the applicable adjustment, if the relevant provision of this deed had not been found void, invalid or otherwise unenforceable.
- (d) If any non-payment of an amount specified in paragraph 1.3 of Schedule E1 is found for any reason to be void, invalid or otherwise unenforceable and TfNSW is required to make a payment that paragraph 1.3 of Schedule E1 contemplated not being made, 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 the Supplier's failure to achieve Fleet Acceptance on or before the Fleet Acceptance Sunset Date.
- (e) The Supplier's liability for any general law damages payable under clauses 39.9(c) or 39.9(d) is:
 - Moneys Owning;
 - in respect of damages that are in place of any Service Payment Adjustment, limited in respect of liability accruing in each Maintenance Year to the value of the Service Payment Adjustment Annual Cap for that Maintenance Year; and
 - (iii) in respect of damages that are in place of a Progress Payment adjustment, limited to the amount of the Progress Payment adjustment that would otherwise have applied under this deed.

39.10 Sole remedies

- (a) Subject to clause 39.10(b):
 - the Delay LDs payable under clause 17.10 (or general damages payable under clause 39.8(c)) are TfNSW's and TAHE's sole and exclusive monetary remedy for any Loss in connection with a failure by the Supplier to achieve Provisional Acceptance of a Unit by the Date for Provisional Acceptance (including any failure to diligently progress the Delivery Activities);
 - (ii) the liquidated damages payable under paragraph 12.7(a) of Schedule J2 are TfNSW's and TAHE's sole and exclusive monetary remedy for any Loss in connection with a failure by the Supplier to achieve Additional MF Works Practical Completion by the Date for Additional MF Works Practical Completion;

- (iii) the Service Payment Adjustments which may be made by TfNSW under the Performance Regime (or general damages payable under clause 39.9(c)) are TfNSW's and TAHE's sole and exclusive monetary remedy for any Loss in connection with any events, actions or omissions occasioning the Service Payment Adjustments;
 - (iv) the right not to pay the Progress Payment under paragraph 1.3 of Schedule E1 is TfNSW's and TAHE's sole and exclusive monetary remedy for any Loss due to, or in connection with, the Supplier failing to achieve Fleet Acceptance on or before the Fleet Acceptance Sunset Date; and
 - (v) the Energy Factor Adjustment under paragraph 1.4 of Schedule E1 is TfNSW's and TAHE's sole and exclusive monetary remedy for any Loss due to, or in connection with, the Supplier failing to meet the Reference Energy Consumption for the Fleet on or before the Date of Fleet Acceptance.
- (b) The Supplier acknowledges and agrees that clause 39.10(a) does not limit:
- if this deed is terminated as a result of a Supplier Termination Event, the Supplier's liability for Termination Payments;
 - TfNSW's and TAHE's rights and the Supplier's liability in respect of an event giving rise to delay in achieving any Time Based Delivery Objective by its Time for Performance, or the consequences of such event, other than the delay; or
- (iii) TfNSW's rights and liabilities under clause 32.

39.11 Liquidated Damages Cap Additional MF Works

- (a) Subject to clause 39.7, the parties acknowledge and agree that the Supplier's liability for liquidated damages under paragraph 12.7(a) of Schedule J2 or general damages under paragraph 12.7(d) of Schedule J2 in respect of the Additional MF Works is limited to [REDACTED] of the Additional MF Works Contract Value (**Liquidated Damages Cap Additional MF Works**).
- (b) The Liquidated Damages Cap Additional MF Works is a subset of the General Liability Cap.

Part H – Other Provisions

40. Representations and warranties

40.1 TfNSW and TAHE representations and warranties

TfNSW and TAHE 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 NIF Project Agreement (or will have them in full force and effect at the time the obligation is to be performed);
- (c) each NIF 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 NIF 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.

40.2 Supplier's representations and warranties

- (a) Each participant of the Supplier represents and warrants for the benefit of TfNSW and TAHE that:
 - (i) it is duly registered and remains in existence;
 - (ii) the execution, delivery and performance of each NIF 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;
 - (iii) it has taken all corporate and other action required to enter into each NIF Project Agreement to which it is a party and to authorise the execution and delivery of that NIF Project Agreement and the satisfaction of its obligations under it;
 - (iv) each NIF Project Agreement to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms;
 - (v) it subsists and is properly constituted;
 - (vi) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
 - (vii) no Supplier Event of Default or Supplier Termination Event has occurred or is subsisting;
 - (viii) it is not in default of its material obligations under any NIF Project Agreement;
 - (ix) subject to laws from time to time its obligations under each NIF Project Agreement will rank at least equally with, all its present and future unsecured obligations;
 - (x) 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);
 - (xi) there has been no material change in its financial condition (since the date of its last audited accounts) which would prejudice the ability of the Supplier to perform its obligations under the NIF Project Agreements;

- (xii) its most recently published financial statements have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of its financial condition and are unqualified for the period in question;
 - (xiii) the most recently published financial statements of the Supplier 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 each participant of the Supplier and are unqualified for the period in question;
 - (xiv) it 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
 - (xv) 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 NIF Project Agreement to which it is expressed to be a party.
- (b) UGL Rail Services Pty Limited (ABN 58 000 003 136) represents and warrants for the benefit of TfNSW and TAHE:
- that there has been no material change in UGL Pty Limited's (ABN 85 009 180 287) financial condition (since the date of its last audited accounts) which would prejudice the ability of UGL Pty Limited (ABN 85 009 180 287) to perform its obligations under the NIF Project Agreements; and
 - that the most recently published financial statements of UGL Pty Limited (ABN 85 009 180 287) 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 UGL Pty Limited (ABN 85 009 180 287) and are unqualified for the period in question.
- (c) Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792) represents and warrants for the benefit of TfNSW and TAHE:
- that there has been no material change in Mitsubishi Electric Corporation's (a company registered in Japan with registration number 0100-01-008772) financial condition (since the date of its last audited accounts) which would prejudice the ability of Mitsubishi Electric Corporation (a company registered in Japan with registration number 0100-01-008772) to perform its obligations under the NIF Project Agreements; and
 - that the most recently published financial statements of Mitsubishi Electric Corporation (a company registered in Japan with registration number 0100-01-008772) 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 Mitsubishi Electric Corporation (a company registered in Japan with registration number 0100-01-008772) and are unqualified for the period in question.

40.3 Repetition of representations and warranties

The representations and warranties contained in clauses 40.2(a)(v), 40.2(a)(vii), 40.2(a)(viii), 40.2(a)(xi), 40.2(a)(xii), 40.2(a)(xiii), 40.2(a)(xiv), 40.2(a)(xv), 40.2(b) and 40.2(c) are made on the date of this deed. Each other representation and warranty contained in this clause 40:

- (a) is made on the date of this deed; and

- (b) 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.

41. Dispute resolution

The parties must comply with the Dispute Resolution Procedures in respect of any Dispute.

42. Records, reporting obligation and privacy

42.1 Records

- (a) The Supplier must keep appropriate books of account, records, documentation and systems which evidence its performance of the Supplier's Activities and its compliance with the NIF 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.

42.2 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 in its capacity as an unincorporated joint venture under the Consortium Agreement, being the audited financial accounts contemplated in clause 14 of the Consortium Agreement;
 - (ii) each participant of the Supplier or any consolidated entity of which that participant of the Supplier forms part; and
 - (iii) each Guarantor or any consolidated entity of which that Guarantor forms part.
- (b) Each of the documents to be provided to TfNSW:
- (i) pursuant to clause 42.2(a)(i), must be accompanied by a certificate signed by two authorised officers of each participant of the Supplier; and
 - pursuant to clauses 42.2(a)(ii) and 42.2(a)(iii), 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 42.2 in compliance with all Legal Requirements and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.

42.3 Project reporting

Without limiting the Supplier's other reporting obligations under this deed, the Supplier must provide the following performance reports:

- (a) the Delivery Phase Performance Report, during the Delivery Phase;
- (b) the Maintenance Phase Performance Report, during the Maintenance Phase; and
- (c) the Annual Performance Review Report, as soon as practicable after the end of each Financial Year.

42.4 Notices under NIF 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 NIF Project Agreements from any of its co-contracting parties.

42.5 Advice on rights of third parties under NIF 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 TAHE's rights under the NIF Project Agreements by reason of the exercise of rights available to third parties arising from the NIF Project Agreements.

42.6 Notices given to or received from a corporate regulator

- (a) Subject to clauses 42.6(b), 42.6(c) and 42.6(d), 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:
- in Australia:
 - (A) the Australian Securities and Investments Commission; or
 - (B) ASX Limited;
 - in Japan:
 - (A) the Tokyo Stock Exchange;
 - (B) the Financial Services Agency;
 - (C) the Kanto Local Finance Bureau; or
 - (D) the Legal Affairs Bureau;
 - (iii) in Korea:
 - (A) the Korea Exchange;
 - (B) the Financial Services Commission; or
 - (C) the Financial Supervisory Service;
 - (iv) in Singapore:
 - (A) Singapore Exchange Limited; or
 - (B) the Accounting and Corporate Regulatory Authority; or
 - (v) any other corporate regulator or stock exchange operating in the jurisdiction in which a member of the Supplier Group is domiciled.
- (b) The Supplier is only required to provide TfNSW with copies of notices and other documents required to be provided under clause 42.6(a)(i)(B), clause 42.6(a)(iii)(A) or clause 42.6(a)(iv)(A) to the extent that those notices or other documents are required to be disclosed (whether for public release or otherwise) under:
- ASX Listing Rule 3 (other than those matters requiring disclosure under ASX Listing Rules 3.12, 3.14, 3.17B, 3.17C, 3.18 and 3.19);
 - ASX Listing Rule 4;
 - (iii) the KOSPI Market Disclosure Regulation;
 - (iv) the Enforcement Rules of the KOSPI Market Disclosure Regulation; and

- (v) any other listing rule of a recognised stock exchange operating in the jurisdiction in which that member of the Supplier Group is domiciled which is equivalent (in form or substance) to those matters referred to clauses 42.6(b)(i) and 42.6(b)(ii).
- (c) The Supplier is only required to provide TfNSW with copies of notices and other documents required to be provided under clause 42.6(a)(i)(A) to the extent that those notices or other documents are in connection with the Project but do not need to do so if the notices or other documents:
 - are marked by the Australian Securities and Investments Commission as confidential or 'Sensitive – In Confidence'; or
 - relate to an allegation of a breach of the relevant member of the Supplier Group's continuous disclosure obligations (where 'continuous disclosure obligations' has the meaning given in section 674 of the Corporations Act),
 and the Supplier may, in respect of any notices or information given:
 - (iii) to the Supplier by the Australian Securities and Investments Commission; or
 - (iv) by the Supplier to the Australian Securities and Investments Commission,
 which are required to be provided under this clause, redact any information that:
 - (v) is subject to legal professional privilege; or
 - (vi) is market sensitive information (where 'market sensitive information' has the meaning given in section 677 of the Corporations Act).
- (d) The Supplier is only required to provide TfNSW with copies of notices and other documents required to be provided under clauses 42.6(a)(ii)(B), 42.6(a)(ii)(C) or 42.6(a)(ii)(D) to the extent that those notices or other documents are in connection with the Project, and the Supplier may, in respect of any notices or information given under this clause, redact any information that is a 'material fact' (where 'material fact' has the meaning given in the TSE Listing Rules) where that material fact would not otherwise be required to be disclosed under the TSE Listing Rules.

42.7 Other information

The Supplier must promptly give TfNSW such other information relating to the NIF Project Agreements or the Supplier's Activities as TfNSW may reasonably require from time to time.

42.8 Retention of records

The Supplier must retain all records in relation to the NIF Project Agreements:

- (a) until they are delivered to TfNSW pursuant to clause 49.11(b); or
- (b) if not so delivered to TfNSW, for at least seven years after the end of the Contract Term.

42.9 Privacy

- (a) **(Definitions):** In this clause **Privacy Obligations** means:

- 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:
- comply with the Privacy Obligations and the Supplier's Privacy Management Plan; and
 - provide all reasonable assistance to enable TfNSW to comply with the Privacy Obligations.
- (d) **(Personal Information):** Without limiting clause 42.9(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 Supplier's 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;
 - 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:
- to take account of:
 - (A) events or circumstances which will, or may, affect the manner in which the Supplier carries out the Supplier's Activities; and
 - (B) any evolution in technology and in security threats; and
 - upon written request by TfNSW's Representative.
- (h) **(Submission of updated plan):** The Supplier must submit any plan updated in accordance with clause 42.9(g) to TfNSW's Representative, in which case clause 42.9(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 42.8 and 42.9.
- (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:
- the fact that their Personal Information is being disclosed to TfNSW and why;
 - 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 51; and

- (iv) any other information as reasonably directed by TfNSW.

43. Disclosure, confidentiality, probity and publicity

43.1 Disclosure by TfNSW

- (a) TfNSW or any other NSW Rail Entity may publish or disclose (on the internet or otherwise):
- the terms and conditions of this deed or any other NIF Project Agreement; and
 - any document or information arising under, out of or in connection with this deed or any other NIF Project Agreement or relating to the performance of this deed or any other NIF 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 43.6(a) (and without limiting any NSW Rail Entity's rights to publish or disclose information under clause 43.6(a)) contains Commercially Sensitive Information:
- TfNSW or any other NSW Rail Entity may publish or disclose the information under clause 43.6(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;
 - 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.

43.2 Confidentiality

- (a) Subject to clause 43.2(b), the Supplier must:
- keep confidential the NIF Project Agreements and information relating to the NIF Project Agreements, the Supplier's Activities and any discussions concerning the NIF Project Agreements; and
 - (ii) ensure that each of its Associates comply with the terms of clause 43.2(a)(i).
- (b) The Supplier is not obliged to keep confidential any information:
- which is in the public domain through no fault of the Supplier or the Supplier's Associates; or
 - the disclosure of which is:
 - (A) required by law;
 - (B) given with the written consent of TfNSW;
 - (C) given to a court in the course of proceedings to which the Supplier is a party; or
 - (D) the listing rules of any recognised stock exchange.
- (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.

43.3 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 43.3(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:
 - receives a notice under clause 43.3(a); or
 - 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 43.3(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 43.3(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).

43.4 Probity Investigation

Without limiting or otherwise restricting clause 43.3:

- (a) 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 43.4(b), the Supplier must promptly:
 - conduct that Probity Investigation; and
 - 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.

43.5 TfNSW costs of Probity Events and Probity Investigations

- (a) Subject to clause 43.5(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.

43.6 Public Disclosure Obligations

- (a) The Supplier acknowledges and agrees that disclosures regarding the NIF Project Agreements by TfNSW, any other NSW Rail Entity or any Authority may be required:

- 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 NIF Project Agreements and the Supplier's Activities.

43.7 Publicity and communications

- (a) The Supplier must:
 - subject to clause 43.7(b), not make any public announcements or statements in relation to the NIF Project Agreements or the Supplier's Activities (including by posting any information relating to the NIF Project Agreements or Supplier's Activities on any website) without TfNSW's prior written consent;
 - ensure that where an entity within the Supplier Group is domiciled in a jurisdiction other than Australia, that entity does not participate in formal or informal discussions with any recognised stock exchange or corporate regulator in relation to the NIF Project Agreements or the Supplier's Activities without first using all reasonable endeavours to obtain TfNSW's prior written approval;
 - (iii) subject to clause 43.7(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 NIF Project Agreements or the Supplier's Activities before the relevant announcement or statement is made;
 - (iv) give TfNSW a draft of any proposed:
 - (A) media release; or
 - (B) notice or announcement which the Supplier or a Guarantor is required to disclose to any recognised stock exchange,
 relating to the NIF Project Agreements or the Supplier's Activities and obtain TfNSW's prior written approval of the media release and, subject to clause 43.7(b), notice or announcement before distributing it;
 - (v) give TfNSW a copy of any notice referred to in clauses 42.6(a)(ii) or 42.6(b), announcement or media release as soon as practicable after it is made or distributed; and
 - (vi) ensure that its Associates comply with the requirements referred to in this clause 43.7.
- (b) Where, pursuant to clause 43.7(a), the Supplier is required to provide TfNSW with a proposed public announcement or statement or draft of any proposed notice or announcement which the Supplier or a Guarantor is required to disclose to any recognised stock exchange (**Release**), the parties agree that, subject to clause 43.7(c):
 - the Supplier must give TfNSW a reasonable opportunity to comment on the contents of, and the requirement for, any such Release; and
 - where TfNSW does not provide the Supplier with any comments on the contents of, or the requirement for, any such Release within 2 Business Days, TfNSW will be deemed to have 'no comment' on the Release and the Supplier or a Guarantor (as the context permits) will be permitted to issue such Release; and

- (iii) the Supplier must, acting reasonably, address TfNSW's comments where they are provided within the time referred to in clause 43.7(b)(ii).
- (c) Where the timeframe for making the Release does not allow for the process contemplated by clause 43.7(b), the Supplier will use all reasonable endeavours to provide TfNSW with an opportunity to provide comments but may issue the Release without obtaining TfNSW's approval if, in order to comply with the rules of the relevant recognised stock exchange, the Release must be made.
- (d) The parties agree that the Review Procedures do not apply to a document submitted to TfNSW pursuant to this clause.

44. Restrictions on dealings

44.1 Restrictions on amendment to NIF Project Agreements

Each participant of 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 NIF Project Agreement to which TfNSW is not a party, without TfNSW's prior written consent (which consent will not be unreasonably withheld or delayed).

44.2 Restrictions on assignment

(a) (TfNSW and TAHE):

- TfNSW and TAHE may assign, novate, transfer or otherwise deal with their rights or obligations under any NIF Project Agreement without the Supplier's prior approval.
- The Supplier hereby irrevocably agrees that if TfNSW or TAHE elects to undertake any assignment, novation, transfer or other disposal in accordance with clause 44.2(a)(i) in respect of any NIF Project Agreement to which the Supplier is a party, each participant of the Supplier:
 - (A) will enter into a new agreement upon the same terms and conditions as each such NIF Project Agreement excepting that the assignee, transferee or person to whom that other disposal is made pursuant to clause 44.2(a)(i) agrees to perform and observe TfNSW's or TAHE's obligations under those documents as if it were named in the relevant NIF Project Agreement instead of TfNSW or TAHE (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 TAHE to do so in order to enable or facilitate any assignment, novation, transfer or other disposal in accordance with this clause 44.2.

- (b) **(Supplier):** Except as expressly permitted by this deed, no participant of the Supplier may assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under any NIF Project Agreement, without TfNSW's prior written approval.

44.3 Restrictions on dealings with Assets and the Provided Facility Sites

No participant of the Supplier may:

- (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 Deliverable, or any part of any Provided Facility Site or Maintenance Location, except as expressly permitted under the NIF Project Agreements.

44.4 Restrictions on business

The Supplier must not conduct any business at either Provided Facility Site other than the performance of its obligations and the exercise of its rights under the NIF Project Agreements, without TfNSW's prior written consent.

44.5 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 Supplier's Activities with a Related Body Corporate (other than on arm's length commercial terms) without TfNSW's prior written consent.

44.6 Consortium Agreement

- (a) Where the Supplier is constituted by more than one person, each person constituting the Supplier:
 - warrants to TfNSW and TAHE that it has validly entered into the Consortium Agreement;
 - agrees not to vary or terminate the Consortium Agreement without the prior written consent of TfNSW;
- (iii) agrees that it must promptly (and in any event within 1 Business Day):
 - (A) notify TfNSW's Representative if any of the circumstances referred to in clause 20.1 of the Consortium Agreement occur; and
 - (B) provide TfNSW's Representative with a copy of any notice issued under clauses 20.2 or 20.4 of the Consortium Agreement; and
- (iv) agrees that it must keep TfNSW's Representative informed of all actions taken in respect of any of the circumstances referred to in clause 44.6(a)(iii)(A).
- (b) If the Supplier provides TfNSW's Representative with a notice under clause 44.6(a)(iii), TfNSW's Representative may request further information from the Supplier in respect of the matters contemplated by that notice and the Supplier must provide TfNSW's Representative with the information requested within 1 Business Day.
- (c) The Supplier must submit to TfNSW's Representative any proposed amendment to the Consortium Agreement.
- (d) Where TfNSW's Representative receives a notice under clause 44.6(c), TfNSW's Representative may, within 20 Business Days of receipt of the proposed amendment, notify the Supplier in writing if it does not consent to the proposed amendment.
- (e) If TfNSW's Representative does not provide a notice under clause 44.6(d) within 20 Business Days of receipt of the proposed amendment, TfNSW will be deemed to have not consented to the Supplier's proposed amendment to the Consortium Agreement.
- (f) Where a Transition Out Notice (as defined in the Consortium Agreement) may validly be issued in accordance with the Consortium Agreement, the Supplier agrees that unless TfNSW is satisfied (as determined in its sole discretion) that:

- if the Transition Out Notice were issued, the remaining participants of the Supplier are willing to, and capable of, carrying on and completing the performance of the Supplier's Activities; and
- (ii) the arrangements under which the remaining participants of the Supplier propose to carry on and complete the performance of the Supplier's Activities are acceptable to TfNSW (including the person(s), if any, with whom the participants of the Supplier propose to continue the joint venture),

the parties agree that the Supplier will be in fundamental breach of this deed (such breach going to the root of this deed) and a Supplier Termination Event will be deemed to have occurred.

45. Change in ownership / Control

45.1 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 A4.

45.2 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 any participant of the Supplier.
- (b) If the Supplier provides TfNSW with a notice under clause 45.2(a), TfNSW may acting reasonably:
 - 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
 - within the later of:
 - (A) 20 Business Days of receipt of a notice from the Supplier in accordance with clause 45.2(a); and
 - (B) 15 Business Days of receipt of further information in respect of the Change in Control in accordance with clause 45.2(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 Owning, 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 NIF Project Agreement.

45.3 Notice of Objection

- (a) TfNSW may give a Notice of Objection under clause 45.2(b)(ii) if TfNSW is of the reasonable opinion that:
 - the Supplier has not provided TfNSW with full details of the proposed Change in Control or any further information requested by TfNSW;
 - the new Controlling Entity of the relevant participant of the Supplier:
 - (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, any 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 or TfNSW, any 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 NIF Project Agreement; or
 - (C) would increase the liability of, or risks accepted by, TfNSW or TAHE under the NIF 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 45.2(b)(ii), TfNSW must specify the steps that it reasonably requires the relevant participant(s) of 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 45.3(b) within a reasonable time specified by TfNSW, a Supplier Event of Default will be deemed to have occurred.

46. Subcontracting

46.1 Subcontracting over the Contract Term

- (a) The Supplier may subcontract any part of its performance of the Supplier's Activities, but only in the manner permitted by this clause 46.
- (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 Supplier's 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 Supplier's Activities to the standards required by this deed.

46.2 Supplier remains liable

The Supplier:

- (a) is not relieved of any of its liabilities or obligations under a NIF 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 NIF Project Agreement caused or contributed to by a Subcontractor, or failure by a Subcontractor to comply with the obligations of the Supplier under the NIF 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 46.3.

46.3 TfNSW to consent to appointment of Significant Contractor

- (a) Subject to clause 46.3(f), before the Supplier may enter into any Significant Contract (including where to replace an existing Subcontractor) the Supplier must:
 - notify TfNSW's Representative that it proposes to enter into the Significant Contract;
 - 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 Supplier's 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 46.3(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 46.3(b) if:
 - (i) the Supplier has not provided to TfNSW all of the information and documents required under clauses 46.3(a) and 46.3(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 46.3(b), the Supplier must:
 - 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 46.3(a)(ii)(B); and
 - (iii) 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 46.3(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 46.3(a) to 46.3(d) will reapply.
- (f) TfNSW consent to UGL Engineering Pty Ltd (ABN 96 096 365 972) being engaged in relation to the performance of the Additional MF Works.

46.4 Termination and replacement

Subject to the terms of any Collateral Warranty Deed Poll, 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:
 - 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).

46.5 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 Fault, 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;
- (c) 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, 8.5, 42, 43, 46.9, 52, and paragraphs 3.3 and 4 of Schedule C1 and paragraphs 3.2 and 4 of Schedule J1 (as relevant);
- (f) provisions which recognise TfNSW's rights under clauses 32, 49 and Schedule C4; and
- (g) provisions which enable the Supplier to comply with its novation obligations under clause 49.9.

46.6 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):
 - 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.

46.7 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.

46.8 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.

46.9 Works on systems self-performed by a participant of the Supplier

- (a) Where Schedule A5 indicates that the work is to be performed by a participant of the Supplier, the parties agree that if a formal subcontract is not entered into with that participant of the Supplier, clauses 46.3 to 46.6 will not apply.
- (b) Where Schedule A5 indicates that the work is to be performed by a participant of the Supplier but another party is to perform that work, the provisions of this deed relating to Significant Contracts will apply.

47. PPSA

47.1 PPSA undertakings

- (a) If the interests of TAHE, TfNSW or any other NSW Rail Entity (a **Secured Party**) under this deed, any other NIF Project Agreement or any transactions contemplated by them constitute one or more Security Interests in favour of that Secured Party:

■ 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;

■ the Supplier agrees that it will bear all costs and expenses:

- (A) that it incurs in complying with clause 47.1(a)(i); and
- (B) incurred by a Secured Party for the purposes set out in clause 47.1(a)(i);

- (iii) to the extent permitted by law, and in respect of any Security Interest created by this deed, any other NIF 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;
- (v) 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;
- (vi) 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;
- (vii) except where contemplated in clause 47.2(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
- (viii) 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 NIF Project Agreement should have the benefit of this covenant.

47.2 PPSA procedures

- (a) Without limiting clause 47.1(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:
 - 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
 - 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.

48. Rights to and use of the Intellectual Property

The parties' rights and obligations in relation to Intellectual Property Rights are set out in Schedule A3.

49. Transition Out provisions

49.1 Right to appoint successor

The Supplier acknowledges that TfNSW may, on or before the End Date (or on or before termination of a Separable Portion), invite any person (including the Supplier) to perform all or any part of the Supplier's Activities for the period commencing after expiry or termination of the Contract Term (or, in the case of termination of a Separable Portion, to perform all or any part of the Supplier's Activities constituting the Separable Portion for a period commencing after termination of the Separable Portion).

49.2 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.

49.3 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 Supplier's 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 Supplier's 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 49.3(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 Supplier's Activities.
- (d) The Supplier warrants to TfNSW and TAHE that all information provided under clauses 49.2 and 49.3 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

49.4 Continuity of the Supplier's Activities

The Supplier must manage, perform and maintain the Supplier's 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 Supplier's Activities without interruption.

49.5 Non frustration of transfer

The Supplier must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer of the performance of all or part of the Supplier's Activities on the End Date (or at termination of a Separable Portion) to a Successor Supplier (or nominee of TfNSW).

49.6 Assistance in securing continuity

The Supplier must do everything, both before and after End Date (or termination of a Separable Portion as the case may be), 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 Supplier's Activities (and in the case of termination of a Separable Portion, the Supplier's Activities comprising that Separable Portion), including the provision of:

- (a) information and records related to the performance of the relevant Supplier's Activities (excluding Commercially Sensitive Information); and
- (b) training sessions to any person nominated by TfNSW in relation to the performance of the relevant Supplier's Activities.

49.7 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 Supplier's Activities; and
- (b) preparations by the prospective Successor Supplier, Successor Supplier or nominee of TfNSW to take over the performance of the relevant Supplier's Activities from the End Date (or termination of a Separable Portion as the case may be),

but only to the extent that any of the above does not unduly interfere with the performance of the Supplier's Activities.

49.8 Transfer of Assets

On the End Date (or on termination of a Separable Portion), 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:
 - all Assets whatever their then state of construction which have been allocated to the Supplier's Activities (or in the case of termination of a Separable Portion, the Supplier's Activities comprising that Separable Portion) (whether or not incorporated in or fixed to any Rolling Stock, Simulator or Maintenance Facility Site);
 - (ii) any completed or partially completed Deliverables produced under or in connection with this deed (or in the case of termination of a Separable Portion, under or in connection this deed in so far as it relates to relevant Separable Portion);
 - (iii) the Commissioning Facility Site (if the Commissioning Facility Licence is still on foot); and
 - (iv) the Maintenance Facility Site (or in the case of termination of a Separable Portion, those parts of the Maintenance Facility Site that may be required in order to enable TfNSW or its nominee to perform the Supplier's Activities comprising that Separable Portion),

in a state and condition which complies with the Target Condition and the other requirements of 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 49.8(b)(i) and clause 49.8(b)(ii) to TfNSW or its nominee free from any Security Interest; and

- (d) procure for TfNSW and/or TAHE in TfNSW's and or TAHE's name (as directed by TfNSW), a licence to any Contract Information on the same terms as the licences granted to TfNSW and or TAHE under Schedule A3, including in relation to Intellectual Property Rights to works that were begun but not yet completed at the time this deed (or any relevant Separable Portion) expired or was terminated.

49.9 Novation of, or ceasing to be a party to, Subcontracts

The Supplier must procure the novation to TfNSW or its nominee of, or execute any document required to effect the Supplier ceasing to be a party to, any Subcontract relating to the Supplier's Activities which TfNSW may nominate (in its absolute discretion), with effect from the end of the Contract Term (or from termination of a Separable Portion as the case may be) or such other date as TfNSW may agree in writing.

49.10 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 any thing required to be transferred under clause 49.8.

49.11 Hand over of documents and information

On or before the End Date (or termination of a Separable Portion as the case may be), the Supplier must:

- (a) have completed the transfer of the Asset Information System database to TfNSW or TfNSW's nominee such that:
- all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
 - 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) deliver to TfNSW or its nominee (or both, as required) all and any documents and other information concerning the Supplier's Activities (or in the case of termination of a Separable Portion, the Supplier's Activities comprising that Separable Portion) which are required for the efficient transfer of responsibility for their performance, including:
- documentation, information technology and Contract Information (including software and data not otherwise required to be provided to TfNSW under this deed);
 - any documentation or programs required to be provided under Schedule A3; and
 - (iii) any other documentation specified in the SPR.

49.12 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 49.
- (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 49.

49.13 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 Supplier's Activities and operate, maintain and repair the Assets.

50. Notice of Claims

50.1 Communication of Claims

- (a) If the Supplier wishes to make a Claim against TfNSW or TAHE, the Supplier must give TfNSW's Representative a Prescribed Notice under clause 50.2 within 20 Business Days of the earlier of:
 - the date when the Supplier was or could reasonably having 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
 - 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 50 does not apply to any Claim:
 - for payment of a Progress Payment under 25.1;
 - for payment of the Service Payment under clause 25.2; nor
 - (iii) in respect of a Relief Event under clause 29.6.
- (d) This clause 50.1 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.

50.2 The Prescribed Notice

A Prescribed Notice is a notice stating that it is a notice under this clause 50.2 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).

50.3 Failure to notify

TfNSW and TAHE shall not be liable upon any Claim by the Supplier which was not notified strictly in accordance with this clause 50, and such Claim will be absolutely barred.

51. Notices

51.1 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:
- 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:
- before the date referred to in clause 51.1(b):
 - (A) be in writing;
 - (B) be:
 - (I) in the case of a Notice from the Supplier, addressed to TfNSW's Representative; or
 - (II) in the case of a Notice from TfNSW or TAHE, addressed to the Supplier's Representative;
 - (C) 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
 - (D) be delivered or posted to the relevant address shown below (or to any new address notified by the intended recipient) 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:

TfNSW

Name: TfNSW, a New South Wales Government agency

Address: Level 5, Tower A
Zenith Centre
821 Pacific Highway
Chatswood NSW 2067

For the attention of: Project Director, New Intercity Fleet

TAHE

Name: Transport Asset Holding Entity, formerly known as Rail Corporation New South Wales, a New South Wales Government agency

Address: Level 5, Tower A
Zenith Centre
821 Pacific Highway
Chatswood NSW 2067

For the attention of: Project Director, New Intercity Fleet

Supplier

Name: UGL Rail Services Pty Limited, Mitsubishi Electric Australia Pty Ltd and Hyundai Rotem Company
Address: Level 8
40 Miller Street
North Sydney NSW 2060

For the attention of: [REDACTED]

■ on and from the commencement date for use of the PDCS referred to in clause 51.1(b):

- (A) be sent through the PDCS in accordance with the requirements set out in clause 51.3(a) and:
 - (I) in the case of a Notice from the Supplier, be addressed to TfNSW's Representative; or
 - (II) 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 51.1(c)(i).

51.2 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) 10 Business Days after the date of posting; and
- (d) (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.

51.3 Notices sent through the PDCS

- (a) With respect to Notices sent through the PDCS:
 - all Notices must be submitted 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;
 - (ii) only the text in any Notice, or subject to clause 51.3(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:
- 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 51.1(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.

52. Proportionate liability

52.1 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.

52.2 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 TAHE 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 TAHE against the Supplier (whether in contract, tort or otherwise), the Supplier will indemnify TfNSW and TAHE against any Loss, damage, cost or expense that forms part of a claim by TfNSW or TAHE against the Supplier which TfNSW or TAHE cannot recover from the Supplier because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

52.3 Subcontracts

The Supplier must:

- (a) 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 Supplier's 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.

53. Taxes

53.1 Goods and Services Tax (GST)

- (a) Except where the context suggests otherwise, terms and expressions used in this clause 53.1 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 53.1.
- (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 TAHE (as the case may be) to issue a RCTI in accordance with clause 53.1(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:
 - 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
 - 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 53.1(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 TAHE under or in connection with this deed:
- TfNSW or TAHE (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 TAHE (as the case may be) under this deed;
 - (ii) TfNSW or TAHE (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 TAHE (as the case may be); and
 - (iv) TfNSW or TAHE (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 or TAHE (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 or TAHE (as the case may be); and
 - (C) TfNSW or TAHE (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 TAHE (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.

53.2 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:
 - 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
 - account promptly to TfNSW for 50% of those savings or refunds.

Any savings or refunds that the Supplier is required to account to TfNSW under this clause will be Moneys Owed 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:
 - 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.

53.3 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 NIF Project Agreement, that amount may be withheld and:
 - 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
 - the Supplier will have no Claim against TfNSW or TAHE 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.

54. General

54.1 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.

54.2 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.

54.3 Governing law

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Without prejudice to the operation of the provisions in Schedule B6, each party irrevocably:
 - 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 54.3(b)(i).

54.4 Amendments

This deed may only be varied by a deed executed by or on behalf of each party.

54.5 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.

54.6 Survival of certain provisions; no merger

Without limiting clause 54.12:

- (a) clauses 1 (Interpretation), 5.1 (TfNSW's Representative), 10.2 (Information Documents), 10.3 (Supplier warranty), 14.4 (Design warranties), 15.2 (Delivery Activities warranty), 18.7 (Maintenance Phase warranties), 18.15 (Asset Information System), 20.6 (Final Inspection), 21 (Project Security), 22.2 (Prices fixed), 25.12 (Interest), 25.13 (Moneys Owning and set-off), 29.6 (Notice of Relief Event and Claim), 33.9 (Consequences of termination), 33.10 (Waiver and no Claim), 35.2 (Supplier's warranty), 38 (Indemnities), 39 (Liability), 40 (Representations and warranties), 41 (Dispute resolution), 42 (Records, reporting obligation and privacy), 43 (Disclosure, confidentiality, probity and publicity), 48 (Rights to and use of the Intellectual Property), 49 (Transition Out provisions), 50 (Notice of Claims), 51 (Notices), 52 (Proportionate liability), 53.1 (Goods and Services Tax (GST)), 53.2 (Taxes other than GST and duties), this clause 54 (General), Schedule A3 (Intellectual Property), paragraph 3 of Schedule C2 (Land and the Environment) and Schedule E8 (Termination Payments), 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 54.6 (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:
 - under the Surviving Clauses; or
 - 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.

54.7 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.

54.8 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.

54.9 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.

54.10 Exercise of remedies

- (a) If the Supplier breaches any of its obligations under this deed or any other NIF 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 NIF Project Agreements and/or enforce any other legal or equitable remedy available under applicable law.
- (b) Each and every right, power and remedy of TfNSW will be cumulative and in addition to any other right, power and remedy, whether under a NIF Project Agreement or applicable law, which may be exercised by TfNSW and the exercise of a right, power or remedy shall not be construed to be a waiver of the right to exercise any other right, power or remedy.
- (c) No delay or omission by TfNSW in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

54.11 Entire agreement

- (a) To the extent permitted by law, in relation to its subject matter, this deed together with the other NIF Project Agreements:
 - embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
 - 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.

54.12 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.

54.13 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.

54.14 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.

54.15 Relationship between TfNSW and the Supplier

Nothing in, or contemplated by, this deed or any other NIF Project Agreements will be construed or interpreted as:

- (a) constituting a relationship between TfNSW 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 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 under this deed or any other NIF Project Agreement on a good faith basis.

54.16 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 Supplier's 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.

54.17 Vienna convention

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this Contract.

54.18 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.



Signing page

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

Signature of authorised delegate

Name of witness (print)

Name of authorised delegate (print)

Position held

Position held

Signed sealed and delivered for and on behalf of
**Transport Asset Holding Entity, formerly
known as Rail Corporation New South Wales
(ABN 59 325 778 353)** by its authorised delegate
in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness (print)

Name of authorised delegate (print)

Position held

Position held



Signed sealed and delivered by Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792)
in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Signed sealed and delivered for UGL Rail Services Pty Limited (ABN 58 000 003 136) by
its attorney under power of attorney
dated 10 August 2016 in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signed sealed and delivered for Hyundai Rotem Company (a company registered in the Republic of Korea with registration number 194211-0036336) by its attorney under power of attorney dated 11 August 2016 in the presence of:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Schedules A – General

Schedule A1 – Conditions Precedent

1. Conditions to be satisfied by Supplier

Provision to TfNSW by the Supplier of the following:

- (a) each Completion Document (other than this deed), duly executed by all parties to them (other than TfNSW and TAHE);
- (b) original legal opinions (including foreign legal 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 TAHE), 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 each participant of the Supplier and each Guarantor (and any other party entering into any Completion Document other than TfNSW and TAHE) 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 A4, including certifications regarding shareholdings;
- (g) updated high quality visualisations in a form acceptable to TfNSW, being updates to those visualisations provided by the Supplier as part of the Tender to address the requirements of B4.1 (*Train Visualisation*) of Attachment A (*Train General Description and Technical Solution (B4, C3)*) of SPR Appendix 12, being:
 - (i) renderings or computer generated 3D models of each Car type depicting the Trains' interior and exterior styling including:
 - (A) key features including doors, seats, passenger information displays, hand/grab rails, toilets and help points; and
 - (B) the colour, finish and material type of all internal and external surfaces;
 - (ii) four internal perspectives of each Car type, including upper and lower deck and vestibules;
 - (iii) one perspective of each seat type; and
 - (iv) two external perspectives of a typical Train (front and side view), including key features, paintworks and livery,

which updates will be bound into SPR Appendix 12, Attachment A;
- (h) an updated Delivery Program acceptable to TfNSW, which acceptable update will replace the Delivery Program contained in SPR Appendix 14;

- (i) within 15 Business Days of this deed, a Supplier Variation Request (subject to paragraphs 2.3(d) and 2.3(g) of Schedule E3) which complies with paragraph 2.2(b) of Schedule E3 which is not a change or variation to the requirements of this deed for the Supplier's Activities, but is the things or tasks required to comply with section 3.11.1(b) of SPR Appendix 02 (**Supplier Variation Request**); and
- (j) any other opinion, certificate or other documents that TfNSW reasonably requests.

Schedule A2 – Commercially Sensitive Information

- (a) The Supplier's financing arrangements for the Project in relation to providing Project Security, export credit agency arrangements and customs import duties.
- (b) The Supplier's cost structure or profit margins for the Project.
- (c) The terms and conditions of the Consortium Agreement.
- (d) The Base Case Cost Model.
- (e) Any Intellectual Property Rights:
 - (i) to be used by Significant Contractors for:
 - (A) train body design;
 - (B) train management systems; and
 - (C) the technical maintenance plan;
 - (ii) owned by the Supplier or its Associates, as set out below:
 - (A) Car Body:
 - (I) Finite Element Analysis;
 - (II) Crashworthiness;
 - (III) Design and Modification;
 - (IV) Manufacturing Methodology Modification;
 - (V) Strength;
 - (VI) Design; and
 - (VII) Vehicle dynamics.
 - (B) Train:
 - (I) Dynamic Analysis (Carbody / Bogies);
 - (II) Test Plan / Procedure Report;
 - (III) Reliability; and
 - (IV) Availability.
 - (C) Cab Design.
 - (D) System Integration:
 - (I) Equipment Arrangement;
 - (II) Piping Arrangement; and
 - (III) Electrical Schematic.
 - (E) Bogies:
 - (I) Structural engineering; and
 - (II) Vehicle dynamics.
 - (F) Total Maintenance Plan.
 - (G) Subsystem Integration:

- (I) Design of wiring; and
 - (II) Software.
- (H) Train Management System.
- (I) Traction System.
- (J) Auxiliary Power System.
- (K) Battery Charger.
- (L) Surveillance System Recording, Display and Review Software.
- (M) Public Address System.
- (iii) Source Code and Escrow Information
- (f) The Concept Design.
- (g) The following management plans:
 - (i) Project Management Plan;
 - (ii) Authorisation and Accreditation Plan;
 - (iii) Configuration Management Plan;
 - (iv) Systems Engineering Management Plan;
 - (v) Systems Safety Plan;
 - (vi) Manufacturing and Procurement Plan;
 - (vii) Verification Plan; and
 - (viii) Asset Management Plan.

The parties agree that the information:

- (h) in paragraphs (a) to (f) above is to remain confidential for a period of 15 years from the date of this deed; and
- (i) in paragraph (g) above is to remain confidential for a period of 10 years from the date of this deed.

Schedule A3 – Intellectual Property

1. Intellectual Property Rights

1.1 Licensed Intellectual Property

- (a) The Supplier grants to TfNSW and TAHE and any entity nominated by TfNSW or TAHE 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) The licence granted in paragraph 1.1(a):
 - (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 delivery of any Deliverables, 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 or TAHE's use and enjoyment of the Deliverables; and
- (c) TfNSW's or TAHE's use and exercise of the Intellectual Property Rights in 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 Supplier's 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 TAHE and TfNSW or persons authorised by them.
- (b) The Supplier must do all things requested by TfNSW or TAHE, 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 TAHE 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 NIF Project Agreements;
- (b) its design, development, manufacture, delivery, supply or use of the Deliverables and the Licensed Intellectual Property in accordance with, or as contemplated by the NIF Project Agreements will not infringe any Intellectual Property Rights or Moral Rights or other protected rights of any person;
- (c) the use of the Deliverables and the Licensed Intellectual Property in accordance with, or as contemplated by the NIF Project Agreements by TfNSW or a NSW Rail Entity will not infringe any Intellectual Property Rights or Moral Rights or other protected rights of any person;
- (d) the Licensed Intellectual Property is all the Intellectual Property Rights that are required for the Supplier to carry out its obligations under this deed;
- (e) it is not aware of any claims that any of the Deliverables, the Licensed Intellectual Property or Source Code and their use in accordance with, or as contemplated by, the NIF Project Agreements infringe or will infringe any Intellectual Property Rights or Moral Rights or other protected rights of any person;
- (f) it has the authority to grant the rights granted under paragraph 1.1; and

- (g) in respect of each computer program forming part of 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 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 TAHE, TfNSW and anyone receiving a right through them to exercise any Intellectual Property Right assigned, granted or licensed to TAHE 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 Deliverables or continued conduct of the Supplier's 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, TAHE, TfNSW, 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 TAHE and TfNSW and any other entity that has been nominated by TfNSW or TAHE 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 TAHE or TfNSW or any other entity that has been nominated by TfNSW or TAHE 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

As a Condition Precedent to this deed, the Supplier must enter into an Escrow Agreement with TAHE, TfNSW and the Escrow Agent to set out the terms on which all Relevant Source Code and Escrow Information will be held in escrow by the Escrow Agent.

3.2 Deposit of Relevant Source Code

- (a) Within 20 Business Days of the Commencement Date, the Supplier must deposit a copy of all Relevant Source Code and Escrow Information existing at the Commencement Date with the Escrow Agent on the terms of the Escrow Agreement.
- (b) The Supplier must thereafter, within 10 Business Days of the end of each quarter during the Contract Term, update the Relevant Source Code and Escrow Information deposited with the Escrow Agent by depositing with the Escrow Agent:
 - (i) a copy of all Relevant Source Code and Escrow Information which has been created or newly incorporated into any Deliverable during that quarter; and
 - (ii) an updated copy of any Relevant Source Code and Escrow Information to which modifications have been made.
- (c) The Supplier must ensure that the Relevant Source Code and Escrow Information deposited with the Escrow Agent is current as at the end of each quarter.

3.3 Deposit of Associate Relevant Escrow Information

- (a) The Supplier must secure rights from each of its Associates to enable the Supplier to comply with its obligations under paragraphs 3.1 and 3.2 in respect of all Relevant Source Code and Escrow Information for each Deliverable developed or delivered by that Supplier's Associate (**Associate Relevant Escrow Information**).

- (b) At the request of the Supplier, TfNSW may, in its absolute discretion, agree (in writing) to an Escrow Agreement being entered into directly between TAHE, TfNSW, the Supplier's Associate and the Escrow Agent. If TfNSW so agrees, the Supplier must procure that the Supplier's Associate:
 - (i) enters into an Escrow Agreement with TAHE, TfNSW and the Escrow Agent substantially in the form, and on substantially the same terms, as is set out in Schedule F5, with all required amendments made to bind the Supplier's Associate directly; and
 - (ii) complies with the obligations in paragraph 3.2 in respect of the Associate Relevant Escrow Information as if it were the Supplier.

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 Supplier's Activities.

4.2 Restrictions

The Supplier must not:

- (a) use the Trade Marks for any purposes other than for the purposes of the Supplier's 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 A4 – Supplier Group Structure



Schedule A5 – Significant Contracts

System to which the Significant Contract relates	Nominated Significant Contractor
Trains	
Air supply system	[REDACTED]
Automatic passenger counting system	[REDACTED]
Automatic [REDACTED]	[REDACTED]
Automatic Train protection system	[REDACTED]
Battery chargers	[REDACTED]
Bodyshell	[REDACTED]
Bogie	[REDACTED]
Bogie frame	[REDACTED]
Braking system	[REDACTED]
Cables	[REDACTED]
Carbon steel	[REDACTED]
Couplers	[REDACTED]
Crew seating	[REDACTED]
Detrainment door and ramp	[REDACTED]
Energy metering system	[REDACTED]
Event recorder	[REDACTED]
External GRP	[REDACTED]
Flooring	[REDACTED]
Gangway	[REDACTED]
Gearbox	[REDACTED]
HVAC system	[REDACTED]
Internal GRP	[REDACTED]
Jumpers	[REDACTED]
Lighting	[REDACTED]
Master controller	[REDACTED]
On-train communications system	[REDACTED]
Overhead line measurement system	[REDACTED]
Pantograph	[REDACTED]
Passenger information system	[REDACTED]
Passenger seating	[REDACTED]

System to which the Significant Contract relates	Nominated Significant Contractor
Passenger wi-fi systems	[REDACTED]
Power protection & conditioning	[REDACTED]
Remote data communications	[REDACTED]
Saloon and cab door systems	[REDACTED]
Smart card system	[REDACTED]
Smoke detection system	[REDACTED]
Stainless steel	[REDACTED]
Static inverters	[REDACTED]
Surveillance system	[REDACTED]
Toilet system	[REDACTED]
Track geometry measurement system	[REDACTED]
Traction system	[REDACTED]
Train management system	[REDACTED]
Train radio	[REDACTED]
Vigilance system	[REDACTED]
Wheelsets	[REDACTED]
Windows	[REDACTED]
Mockups	
Mockups	[REDACTED]
Simulators	
Simulators	[REDACTED]
Maintenance Facility Equipment	
Asset Information System	[REDACTED]
Bogie exchange equipment	[REDACTED]
Performance Management System	[REDACTED]
Tandem underfloor wheel lathe	[REDACTED]
Wheel condition monitoring equipment	[REDACTED]
Additional MF Works	
Performance of Additional MF Works	[REDACTED]

Schedule A6 – Information Documents

The parties acknowledge and agree that the version of the Information Documents contained in the Project Deed is incorporated into this deed.

Schedule A7 – Key Personnel

Where a role below does not have a named person these are to be approved by TfNSW (such approval not to be unreasonably withheld):

1. Delivery Phase

1.1 Supplier's Representative: [REDACTED]

- (a) Provide leadership and accountability for the complete Project through its continuous phases.
- (b) Required for the Delivery Phase and beyond through the Maintenance Phase.
- (c) Act as the single point leader, manager and co-ordinator for the Supplier and for all communication with TfNSW.
- (d) Act independently of any participant of the Supplier and in the best interests of TfNSW and the Supplier.
- (e) Identify, analyse and mitigate issues and risks.
- (f) Lead Integrated Management Office (**IMO**) team (as contemplated by the Consortium Agreement) as one which is focused on TfNSW as a customer, and one which takes on a Supplier specific work focus.
- (g) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years senior management experience; and
 - (ii) professional experience in a project director role for projects of a similar scope and size to the Project.

1.2 Chief Engineer, [REDACTED]

- (a) Act as the senior most leader of all tasks, issues, risks, deliverables and outcomes which relate to technical, engineering and fitness for purpose.
- (b) Act on behalf of the Supplier as the leader of the IMO engineering function and key technical relationship manager with TfNSW, and ensure that the IMO meets its charter to both TfNSW and the participants of the Supplier and in that regard lead the independence of the IMO in balance with its needs to be obtained from participants of the Supplier.
- (c) Provide leadership to the Supplier's Representative.
- (d) This role is a position to be permanently based in Sydney, NSW.
- (e) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years' experience in the rail industry with rolling stock experience;
 - (ii) 5 years' experience in a chief engineer role; and
 - (iii) professional experience in a chief engineer role for projects of a similar scope and size to the Project.

1.3 Commercial Manager, [REDACTED]

- (a) Provide commercial and contractual support to the IMO, ensuring that Intellectual Property Rights relating to TfNSW and the Supplier are developed and maintained for and on behalf of the Supplier such that commercial policies, procedures and processes as well as

outcomes are on behalf of the Supplier and specifically not transferred to one or any of the participants of the Supplier.

- (b) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 10 years' experience in the rail, engineering or manufacturing industry;
 - (ii) 10 years' experience in a commercial management role; and
 - (iii) professional experience in a commercial management role for projects of a similar scope and size to the Project.

1.4 Project Director, [REDACTED]

- (a) Provide leadership and accountability for the Project through its continuous phases.
- (b) Required for design, manufacture, test, commission, deliver, verify to final acceptance.
- (c) Act as the single point of contact for the IMO into HRC Korea.
- (d) This role is a Korean based position.
- (e) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years' experience as a project manager; and
 - (ii) professional experienced in a project manager role for projects of a similar scope and size to the Project.

1.5 Project Manager, [REDACTED]

- (a) Provide leadership and accountability for the Project through its continuous phases.
- (b) Required for design, manufacture, test, commission, deliver, verify to final acceptance.
- (c) Act as the single point of contact for the IMO into HRC Australia.
- (d) This role is a position to be permanently based in Sydney, NSW.
- (e) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 10 years' experience in the rail (or a comparable) industry; and
 - (ii) professional experience in a project manager role for projects of a similar scope and size to the Project.

1.6 Test and Commission Manager, [REDACTED]

- (a) Provide leadership and accountability for the Project through test, commission, deliver, verify to final acceptance.
- (b) Act as the single point of contact for the IMO into HRC test and commission team.
- (c) This role is a position to be permanently based in Sydney, NSW.
- (d) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 15 years' experience in manufacture, quality, test and commissioning and defect liability of rolling stock products; and
 - (ii) professional experience in a test and commissioning role for projects of a similar scope and size to the Project.

1.7 Maintenance Manager, [REDACTED]

- (a) Provide leadership and accountability for the Project through its Maintenance Phase.

- (b) Act as the single point of contact for the IMO into UGL Rail.
- (c) This role is a position to be permanently based at Kangy Angy, NSW.
- (d) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years of manufacturing and/or maintenance experience in the rail (or comparable) industry; and
 - (ii) professional experience in a maintenance manager role for projects of a similar scope and size to the Project.

1.8 IMO Secretariat and Project Controls, [REDACTED]

- (a) Act as the Project Management Office (**PMO**) for the Supplier and the IMO, ensuring that best practice project management systems and controls are deployed, with integration into TfNSW systems as key.
- (b) Develop such systems independently of any specific participant of the Supplier, ensuring that Intellectual Property Rights relating to TfNSW and the Supplier are developed and maintained for and on behalf of the Supplier such that Project policies, procedures and processes as well as outcomes are on behalf of the Supplier and specifically not transferred to one or any of the participants of the Supplier.
- (c) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 10 years of senior planning and project controls experience in the rail (or comparable) industry; and
 - (ii) professional experience in a project controls role for projects of a similar scope and size to the Project.

1.9 Project Scheduler, [REDACTED]

- (a) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 10 years of project scheduling/planning experience in the rail (or comparable) industry; and
 - (ii) professional experience in a project scheduling role for projects of a similar scope and size to the Project.

1.10 General Manager Asset Management, [REDACTED] – [REDACTED]

- (a) Unless otherwise agreed by TfNSW's Representative, minimum requirements for this position are:
 - (i) 15 years of asset management experience in the rail (or comparable) industry; and
 - (ii) professional experience in an asset manager role for projects of a similar scope and size to the Project.

1.11 RailConnect NSW Board Members, [REDACTED]

- (a) Act as senior leaders of the Supplier, ensuring the Supplier as a whole is established and operated in accordance with its charter and the Consortium Agreement including but not limited to providing the joint venture with adequate and appropriately skilled people, systems, policies, procedures and processes that allow it to act independently of any specific participant of the Supplier and in the best interests of TfNSW and the Supplier.

- (b) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years' experience in the rail, engineering or transport industry;
 - (ii) 10 years' experience in senior executive roles; and
 - (iii) professional experience in a board member role for projects of a similar scope and size to the Project.

1.12 RailConnect NSW Board Members, [REDACTED]

- (a) Act as senior leaders of the Supplier, ensuring the Supplier as a whole is established and operated in accordance with its charter and the Consortium Agreement including but not limited to providing the joint venture with adequate and appropriately skilled people, systems, policies, procedures and processes that allow it to act independently of any specific participant of the Supplier and in the best interests of TfNSW and the Supplier.
- (b) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years' experience in the rail, engineering or transport industry;
 - (ii) 10 years' experience in senior executive roles; and
 - (iii) professional experience in a board member role for projects of a similar scope and size to the Project.

1.13 RailConnect NSW Board Members, [REDACTED]

- (a) Act as senior leaders of the Supplier, ensuring the Supplier as a whole is established and operated in accordance with its charter and the Consortium Agreement including but not limited to providing the joint venture with adequate and appropriately skilled people, systems, policies, procedures and processes that allow it to act independently of any specific participant of the Supplier and in the best interests of TfNSW and the Supplier.
- (b) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years' experience in the rail, engineering or transport industry;
 - (ii) 10 years' experience in senior executive roles; and
 - (iii) professional experience in a board member role for projects of a similar scope and size to the Project.

2. Maintenance Phase

2.1 Supplier's Representative: [REDACTED]

- (a) Provide leadership and accountability for the complete Project through its continuous phases.
- (b) Required for the Delivery Phase and beyond through the Maintenance Phase.
- (c) Act as the single point leader, manager and co-ordinator for the Supplier and for all communication with TfNSW.
- (d) Act independently of any specific participant of the Supplier and in the best interests of TfNSW and the Supplier.
- (e) Identify, analyse and mitigate issues and risks.

- (f) Lead IMO team (as contemplated by the Consortium Agreement) as one which is focused on TfNSW as a customer, and one which takes on a Supplier specific work focus.
- (g) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years senior management experience; and
 - (ii) professional experienced in a project director role for projects of a similar scope and size to the Project.

2.2 Maintenance Manager, [REDACTED]

- (a) Provide leadership and accountability for the project through its Maintenance Phase.
- (b) Act as the single point of contact for the IMO into UGL Rail.
- (c) This role is a position to be permanently based at Kangy Angy, NSW.
- (d) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years of manufacturing and/or maintenance experience in the rail (or comparable) industry; and
 - (ii) professional experience in a maintenance manager role for projects of a similar scope and size to the Project.

2.3 General Manager Asset Management, [REDACTED] – [REDACTED]

- (a) Unless otherwise agreed by TfNSW's Representative, minimum requirements for this position are:
 - (i) 15 years of asset management experience in the rail (or comparable) industry; and
 - (ii) professional experience in an asset manager role for projects of a similar scope and size to the Project.

2.4 Chief Engineer, [REDACTED]

- (a) Act as the senior most leader of all tasks, issues, risks, deliverables and outcomes which relate to technical, engineering and fitness for purpose.
- (b) Act on behalf of the Supplier as the leader of the IMO engineering function and key technical relationship manager with TfNSW, and ensure that the IMO meets its charter to both TfNSW and the participants of the Supplier and in that regard lead the independence of the IMO in balance with its needs to be obtained from participants of the Supplier.
- (c) Provide leadership to the Supplier's Representative.
- (d) This role is a position to be permanently based in Sydney, NSW.
- (e) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years' experience in the rail industry with rolling stock experience;
 - (ii) 5 years' experience in a chief engineer role; and
 - (iii) professional experience in a chief engineer role for projects of a similar scope and size to the Project.

2.5 Commercial Manager, [REDACTED]

- (a) Provide commercial and contractual support to the IMO, ensuring that Intellectual Property Rights relating to TfNSW and the Supplier are developed and maintained for and on

behalf of the Supplier such that commercial policies, procedures and processes as well as outcomes are on behalf of the Supplier and specifically not transferred to one or any of the participants of the Supplier.

- (b) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 10 years' experience in the rail, engineering or manufacturing industry;
 - (ii) 10 years' experience in a commercial management role; and
 - (iii) professional experience in a commercial management role for projects of a similar scope and size to the Project.

2.6 RailConnect NSW Board Members, [REDACTED]

- (a) Act as senior leaders of the Supplier, ensuring the joint venture as a whole is established and operated in accordance with its charter and the Consortium Agreement including but not limited to providing the participants of the Supplier with adequate and appropriately skilled people, systems, policies, procedures and processes that allow it to act independently of any specific participant of the Supplier and in the best interests of TfNSW and the Supplier.
- (b) Unless otherwise agreed by TfNSW's Representative, minimum requirements for this position are:
 - (i) 20 years' experience in the rail, engineering or transport industry;
 - (ii) 10 years' experience in senior executive roles; and
 - (iii) professional experience in a board member role for projects of a similar scope and size to the Project.

2.7 RailConnect NSW Board Members, [REDACTED]

- (a) Act as senior leaders of the Supplier, ensuring the joint venture as a whole is established and operated in accordance with its charter and the Consortium Agreement including but not limited to providing the participants of the Supplier with adequate and appropriately skilled people, systems, policies, procedures and processes that allow it to act independently of any specific participant of the Supplier and in the best interests of TfNSW and the Supplier.
- (b) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:
 - (i) 20 years' experience in the rail, engineering or transport industry;
 - (ii) 10 years' experience in senior executive roles; and
 - (iii) professional experience in a board member role for projects of a similar scope and size to the Project.

2.8 RailConnect NSW Board Members, [REDACTED]

- (a) Act as senior leaders of the Supplier, ensuring the joint venture as a whole is established and operated in accordance with its charter and the Consortium Agreement including but not limited to providing the participants of the Supplier with adequate and appropriately skilled people, systems, policies, procedures and processes that allow it to act independently of any specific participant of the Supplier and in the best interests of TfNSW and the Supplier.
- (b) Unless otherwise agreed by TfNSW's Representative, the minimum requirements for this position are:

- (i) 20 years' experience in the rail, engineering or transport industry;
- (ii) 10 years' experience in senior executive roles; and
- (iii) professional experience in a board member role for projects of a similar scope and size to the Project.

Schedules B – Project Administration

Schedule B1 – Design Development Requirements

1. General

1.1 Design Development Requirements

This Schedule sets out TfNSW's requirements (**Design Development Requirements**) for the process to be adopted by the Supplier to develop the Technical Documents (**Design Development Process**).

1.2 Related provisions

These Design Development Requirements should be read in conjunction with the other parts of this deed that relate to the development of the Technical Documents, including in particular, the following:

- (a) clause 14;
- (b) Schedule B2;
- (c) section 2.8 of the SPR;
- (d) section 3 of the SPR; and
- (e) Schedule J1 and Schedule J2 in respect of the Additional MF Works.

1.3 Design Stages

- (a) The Technical Documents are to be progressed:
 - (i) for the Additional MF Works, through the following stages, being:
 - (A) System Definition Review;
 - (B) CCB Gate 2;
 - (C) PDR;
 - (D) CCB Gate 3;
 - (E) CDR;
 - (F) CCB Gate 4;
 - (G) Approved For Construction (AFC); and
 - (H) CCB Gate 5,
 as described in the SPR and TfNSW's Technical Requirements; and
 - (ii) for all other Delivery Activities, through five stages being:
 - (A) System Definition Review;
 - (B) Preliminary Design Review;
 - (C) Detailed Design Review;
 - (D) Test Readiness Review; and
 - (E) System Verification Review,
 as described in section 3 of the SPR.
- (b) The purpose of the Design Stages is to provide a staged framework for the development of the Technical Documents:

- (i) in a way that enables TfNSW, User Groups and other stakeholders to review and comment on relevant aspects of the design as it develops; and
 - (ii) recognising the Supplier's obligations to progress the Delivery Activities in a timely manner,
- whilst ensuring sufficient time is also available for TfNSW to review the Technical Documents under the Review Procedures.
- (c) It is acknowledged that in respect of the Additional MF Works, if it is possible to combine the PDR and CDR in respect of any package, the Supplier is entitled to do so.

2. Design Development Process

2.1 Process Overview

The Supplier must:

- (a) develop, document and comply with a Systems Engineering Management Plan for the conduct of the Design Development Process in accordance with clause 9, this Schedule B1 and the SPR;
- (b) except as set out in the Verification Plan or agreed by TfNSW's Representative in writing:
 - (i) develop the Technical Documents progressively through each of the Design Stages until it is a Confirmed Document;
 - (ii) for each Design Stage, as relevant:
 - (A) develop, consult on, submit for Review, respond to the Reviewing Party's comments on and refine the Technical Documents all in accordance with paragraph 2.3 and the Review Procedures; and
 - (B) facilitate and participate in the Design Presentations contemplated in paragraph 3 and the User Group interactions contemplated in paragraph 4; and
- (c) design, manufacture and provide the Mock-Ups as contemplated in paragraph 5.

2.2 Design Pre-Start Meeting

- (a) To commence the Design Development Process, within 20 Business Days of the Commencement Date, the Supplier and TfNSW must coordinate and participate in one or more collaborative pre-start meetings.
- (b) The purpose of the pre-start meetings is to assist the Supplier to finalise the Systems Engineering Management Plan and for TfNSW and the Supplier to discuss and develop:
 - (i) appropriate protocols and processes for the Supplier to submit Technical Packages for Review electronically (in accordance with the information and document management requirements in SPR section 2.1.3) and (if required by TfNSW) also in hard copy format;
 - (ii) a nominal schedule for Design Presentations and User Group meetings; and
 - (iii) appropriate protocols and processes for conducting the meetings and recording their outcomes.

2.3 Technical Packages

- (a) For each Design Stage, the Supplier must, as a minimum, develop for Review the Technical Packages described in the Systems Engineering Management Plan.

- (b) Except to the extent TfNSW's Representative agrees otherwise (in writing), each Technical Package must be submitted for Review in the sequence and at the time described in the Systems Engineering Management Plan and, on submission, must be developed to the level described in the Systems Engineering Management Plan.
- (c) In developing and refining Technical Documents:
 - (i) the Supplier must document how all previous comments made by a Reviewing Party on the relevant Technical Documents have been considered, incorporated or otherwise closed out; and
 - (ii) for each Review and Design Stage, the Supplier must highlight all amendments to the Technical Documents, clearly demonstrating the changes made to the Technical Documents from the:
 - (A) Concept Design; or
 - (B) version of the Technical Document that was submitted for the previous Review or Design Stage.
- (d) The Supplier must submit with each Technical Package a statement from the Supplier, in the form set out in Form 15 in Schedule F7, warranting that the Technical Package:
 - (i) has been prepared, checked and verified so that when complete and constructed or manufactured in accordance with the Technical Package, the relevant aspect of the Asset or other Deliverable will be fit for purpose; and
 - (ii) complies with the requirements of clause 14.1.

2.4 Form in which documents to be submitted

The Supplier must ensure that Submitted Documents comply with the requirements of this deed and section 2.1.3 of the SPR.

2.5 TfNSW may require Technical Documents to be resubmitted

If the Supplier does not properly co-ordinate the submission of Technical Documents (whether due to the level of development, content, or timing of submission or otherwise not in accordance with the Systems Engineering Management Plan or any NIF Project Agreement):

- (a) TfNSW may require the Supplier to re-submit nominated Technical Documents or Technical Packages in a compliant and co-ordinated way within a time period determined by TfNSW's Representative; and
- (b) the Supplier will not be entitled to make any Claim against TfNSW in respect of any resulting delay.

2.6 Changes to Systems Engineering Management Plan

Without prejudice to any other requirements of this deed in relation to the Systems Engineering Management Plan, if the Supplier is required to, or wishes to, vary the Systems Engineering Management Plan it must:

- (a) demonstrate to TfNSW's Representative's satisfaction that its alternative proposal will not prejudice the effectiveness of TfNSW's overall Review of the Technical Documents within any relevant Review Period; and
- (b) incorporate a description of its alternative approach and justification in its Systems Engineering Management Plan, or a revised version of that plan, which in either case must be submitted for Review in accordance with the Review Procedures.

3. Design Presentations

3.1 Supplier to organise

The Supplier must organise and manage, in collaboration with TfNSW, appropriate meetings (**Design Presentations**):

- (a) within 10 to 15 Business Days after the submission of each Technical Package; and
- (b) at any other times reasonably requested by TfNSW,

and in all cases, at convenient times to facilitate attendance by all relevant stakeholders.

3.2 Purpose of Presentation

The purpose of the Design Presentations is:

- (a) for the Supplier to present the content and intent of a relevant Technical Package to TfNSW after TfNSW has first had reasonable opportunity to familiarise itself with the Technical Package;
- (b) to give TfNSW the opportunity to provide input into the development of the Technical Package by participating in a consultative process between the Supplier, any nominated Associate of the Supplier, TfNSW, the Operator and TfNSW's Associates; and
- (c) to enable TfNSW to obtain a better understanding of, and to query, the Supplier's proposed approach to each Technical Package before completion of TfNSW's Review.

4. Input from User Groups

4.1 User Groups

The parties will engage in design consultation processes with User Groups as set out in the Systems Engineering Management Plan to provide input into the Technical Documents and assist any relevant Reviewing Party in Reviewing the Technical Documents submitted for Review.

4.2 User Group Meetings

- (a) In consultation with TfNSW, and in accordance with the requirements of the Systems Engineering Management Plan, the Supplier must organise, schedule and manage appropriate meetings with User Groups during each Design Stage.
- (b) The purpose of meetings is to:
 - (i) ensure the User Groups have appropriate opportunity to provide input into the Technical Documents; and
 - (ii) provide TfNSW with the opportunity to understand the views of User Groups about relevant aspects of the Technical Documents in a timely manner to ensure the logical and orderly progression of the Design Development Process and efficient Review of Technical Documents.
- (c) The Supplier must not directly contact User Group members outside of scheduled meetings to discuss design issues, except to the extent otherwise agreed in writing by TfNSW's Representative.

4.3 Outcomes from meetings

In developing Technical Documents for Review, the Supplier must ensure that the input of TfNSW and other stakeholders arising from prior User Group meetings is addressed in accordance with the SPR.

5. Mock-Ups

5.1 When to be provided

The Supplier must provide the Mock-Ups required as part of the Design Development Process for Review when specified in the Systems Engineering Management Plan and in accordance with the logic of the Systems Engineering Management Plan.

5.2 Purpose

The Supplier acknowledges and agrees that the purpose of any Mock-Ups is:

- (a) for the benefit of TfNSW, to illustrate, in physical or virtual form:
 - (i) materials, finishes (including colour), fittings and any other matter where the SPR entitles TfNSW to make a selection or requires TfNSW's approval in relation to the relevant materials, finishes, fittings or other matter; and
 - (ii) the status of the design development, how the design incorporates the outcomes agreed or otherwise required by TfNSW and the User Groups and otherwise meets the Supplier's obligations in relation to design under this deed;
- (b) to illustrate how the design and layout of Assets is likely to impact on, or is otherwise consistent with, the:
 - (i) performance of the Operations Functions; and
 - (ii) performance of the Supplier's Activities by the Supplier;
- (c) to assist in confirming whether the design is consistent with the requirements of this deed such that the Assets will be fit for purpose; and
- (d) to identify and define key outstanding design development issues including the proposed process for their resolution.

Schedule B2 – Review Procedures

1. General

1.1 Application

This Schedule applies:

- (a) where any documents, plans, processes, programs, manuals, samples, Mock-Ups, models, approvals or conditions 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:

- (a) for Technical Documents in respect of the design for the Additional MF Works, 15 Business Days; and
- (b) in all other cases, 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 the Submitted 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; 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 NIF 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 or another NSW Rail Entity under this deed or another NIF Project Agreement or its ability to enforce any such right;
- (d) the ability of TfNSW, TAHE, the Operator or another NSW Rail Entity to perform their respective obligations under this deed or another NIF Project Agreement would be adversely affected by the implementation of the Submitted Document;
- (e) the ability of TfNSW, the Operator or a 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 TfNSW's or TAHE's liabilities or potential or contingent liabilities under this deed or another NIF 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) not allow for any Time Based Delivery Objective to be achieved by its relevant Time for Performance;
- (b) adversely affect the safety of any person;
- (c) mean that the period for carrying out programmed work exceeds or falls short of the period reasonably required for that work; or
- (d) 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 Supplier's 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 Concept Design 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; or
- (e) is not in accordance with Good Industry Practice.

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.

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 submitted, 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

7.1 Commented Submitted Document

Where the Reviewing Party comments on a Submitted Document under paragraph 5 then:

- (a) subject to paragraph 7.2; and
- (b) provided that the Supplier does not give notice of a Technical Dispute Matter in accordance with paragraph 1.1 of Schedule B6 in relation to the Reviewing Party's comments on that Submitted Document,

the Supplier must, prior to proceeding with any relevant part of the Supplier's Activities (or anything else the subject of the Submitted Document) in accordance with the Submitted Document:

- (c) 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
- (d) 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'.

7.2 Proceed at Risk to implement Technical Package

- (a) Subject to paragraph 7.2(b), the Supplier may proceed with the development, procurement, engineering, manufacture, construction, testing, commissioning or supply of a Technical Package at its own risk notwithstanding that:
 - (i) a Reviewing Party has not reviewed one or more Technical Documents related to that Technical Package in accordance with the Review Procedures; or
 - (ii) a Reviewing Party has issued comments in respect of one or more Technical Documents related to that Technical Package in accordance with paragraph 5 and the Supplier has not completed the process required to be completed under paragraph 7.1,

(Proceed at Risk).
- (b) The Supplier may only Proceed at Risk if the Supplier has:
 - (i) complied with its obligations under the Review Procedures (other than completion of the process required to be completed under paragraph 7.1); and
 - (ii) submitted to TfNSW's Representative notice of its intention to Proceed at Risk in relation to the relevant Technical Package (**Proceed at Risk Notice**).
- (c) If the Supplier Proceeds at Risk in accordance with paragraph 7.2(a):
 - (i) the Supplier must prepare the Technical Documents required for the next stage (if any) of Review contemplated in the Systems Engineering Management Plan for Review and submit it to the Reviewing Party within the times and in the manner required by this deed notwithstanding that the Supplier may have Proceeded at Risk in relation to that Technical Package;
 - (ii) the Reviewing Party may review any Submitted Documents in respect of that Technical Package in accordance with paragraph 5 notwithstanding that the Supplier may have Proceeded at Risk in relation to that Technical Package;
 - (iii) TfNSW's Representative may, in addition to the rights of a Reviewing Party under paragraph 5 of the Review Procedures, direct the Supplier to amend, rectify, change or modify any as-built (or partially completed) works which relate to that Technical Package to resolve any issues identified by the Reviewing Party as part of its review under paragraph 5 of the Review Procedures with respect to the relevant Submitted Documents; and
 - (iv) the Supplier must promptly comply with any direction given by TfNSW's Representative in accordance with paragraph 7.2(c)(iii).
- (d) The Supplier is not entitled to make any Claim against TfNSW and TAHE arising out of or in connection with the exercise by the Supplier of its right to Proceed at Risk in accordance with paragraph 7.2(a).

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 NIF 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 NIF Project Agreement or otherwise according to a Mandatory Requirement;

- (ii) prejudice TfNSW's rights against the Supplier whether under any NIF 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 Technical Documents submitted by the Supplier for errors, omissions or compliance with the NIF Project Agreements or any Mandatory Requirement.

Schedule B3 – MFC Review Procedures

1. General

1.1 Application

This Schedule B3 applies to any review by the Supplier of any documents, plans, processes, programs, manuals, samples, Mock-Ups, models, approvals or conditions in any format, or any other document or thing provided by TfNSW, TfNSW's Representative or another person (as applicable) for comment by the Supplier in relation to the MFC Works or the Maintenance Facility Site (**Supplier MFC Review Documents**).

2. Review and comment

2.1 Review

- (a) The Supplier must undertake any review of the Supplier MFC Review Documents and provide any comments in writing to TfNSW's Representative in accordance with these MFC Review Procedures within the Supplier Review Period.
- (b) The period for the Supplier's review of the Supplier MFC Review Documents (**Supplier Review Period**) is ten Business Days from the date the Supplier receives the Supplier MFC Review Documents, subject to any extension under paragraph 2.1(c).
- (c) The Supplier acknowledges that TfNSW may have limited time in which to provide comments on any Supplier MFC Review Documents (including any of the Supplier's comments that TfNSW elects to forward) to the MFC Contractor under the MFC Works Contract and because of other constraints. If the Supplier requests an extension to the Supplier Review Period in respect of specified Supplier MFC Review Documents, giving reasons in writing, TfNSW will consider that request and to the extent that it will not be detrimental to the Project, may, but will be under no obligation to, elect to extend the Supplier Review Period on a case by case basis in relation to any of the specified Supplier MFC Review Documents.

2.2 Further Information

If the Supplier considers that it needs further or other information, data or documents in order to be able to review the Supplier MFC Review Documents and respond in accordance with these MFC Review Procedures:

- (a) the Supplier must as soon as reasonably practicable after the Supplier receives the Supplier MFC Review Documents and within the Supplier Review Period, request TfNSW's Representative to provide such further or other information, data or documents; and
- (b) TfNSW's Representative will take such action in relation to the Supplier's request as TfNSW's Representative considers appropriate in the circumstances.

2.3 Comments on the Supplier MFC Review Documents

- (a) Subject to paragraph 2.3(b), the Supplier may return a Supplier MFC Review Document to TfNSW with or without comment.
- (b) The Supplier must return a Supplier MFC Review Document to TfNSW within the Supplier Review Period with any comment that the Supplier has in relation to the grounds in paragraphs 2.8(a) or 2.8(b) (each a **Mandatory Comment**).

- (c) Without limiting clause 18.12 but despite any other provision of this deed, to the extent the Supplier fails to comply with paragraph 2.3(b), the Supplier releases and waives any Claim it has or may otherwise have had in relation to the Maintenance Facility Site or the Maintenance Facility not being fit for purpose arising out of or in connection with:
 - (i) failure by the Supplier to provide any Mandatory Comment; or
 - (ii) provision of any Mandatory Comment at any time,
 in relation to the relevant Supplier MFC Review Document.
- (d) If the Supplier has no comments on a Supplier MFC Review Document, the Supplier must mark that document with a statement 'No comment' and the Supplier will be deemed, in respect of that Supplier MFC Review Document, to have accepted that the MFC Works, to the extent constructed in accordance with that Supplier MFC Review Document, will be suitable to the Supplier for the purposes of the Supplier performing the Maintenance Services at the Maintenance Facility Site.

2.4 No intention to comment

To the extent the Supplier is not required to review a Supplier MFC Review Document, if the Supplier decides that it does not intend to review, comment on or respond to any Supplier MFC Review Document, then the Supplier must use reasonable endeavours to advise TfNSW's Representative as soon as possible after making that decision, and if it does so, the Supplier will be deemed to have returned the Supplier MFC Review Document to TfNSW's Representative marked with the statement 'No comment'.

2.5 Failure to comment

Subject to paragraph 2.6, if the Supplier fails to comment on or respond within the Supplier Review Period to any Supplier MFC Review Document provided to it, then the Supplier will be deemed to have returned the Supplier MFC Review Document to TfNSW's Representative marked with the statement 'No comment'.

2.6 Late comments

If the Supplier fails to comment on or respond to any Supplier MFC Review Document within the relevant Supplier Review Period, or otherwise wishes to raise a comment on a Supplier MFC Review Document after the expiry of the Supplier Review Period applicable to the Supplier MFC Review Document, it will nevertheless be entitled to later make comments on the relevant Supplier MFC Review Document (**Late Comment**).

The Supplier agrees that:

- (a) paragraphs 2.7 to 2.11 will apply to those Late Comments but the Late Comments will be deemed to have not been provided in accordance with the MFC Review Procedures; and
- (b) TfNSW's Representative will not be obliged to have regard to the Late Comments and may deal with the Late Comments in whatever way TfNSW's Representative sees fit in its absolute discretion.

2.7 Substantiate comments

If the Supplier provides TfNSW with comments in respect of the Supplier MFC Review Documents under paragraph 2.3(a) or 2.6, the Supplier must provide sufficient detail to TfNSW to substantiate those comments.

2.8 Grounds on which the Supplier may make comments

The only grounds on which the Supplier may provide comments in respect of a Supplier MFC Review Document are where:

- (a) the Supplier MFC Review Document:
 - (i) is not consistent with the MFC Brief;

- (ii) does not comply with relevant Mandatory Requirements or Approvals; or
 - (iii) is otherwise not in accordance with the requirements of this deed;
- (b) the Supplier, acting reasonably, considers that its ability to perform its obligations under this deed or another NIF Project Agreement would be adversely affected by the implementation of the Supplier MFC Review Document, including where in the opinion of the Supplier, acting reasonably, implementing the Supplier MFC Review Document would render the Maintenance Facility or the Maintenance Facility Site not fit for purpose; or
- (c) the Supplier considers that:
 - (i) the implementation of the Supplier MFC Review Document or proceeding on the basis of the Supplier MFC Review Document would adversely affect any right of TfNSW or a NSW Rail Entity under this deed or another NIF Project Agreement or its ability to enforce any such right;
 - (ii) the ability of TfNSW, TAHE, the Operator or a NSW Rail Entity to perform their respective obligations under this deed or another NIF Project Agreement would be adversely affected by the implementation of the Supplier MFC Review Document; or
 - (iii) the ability of TfNSW, the Operator or a NSW Rail Entity to undertake the Operations Functions would be adversely affected by the implementation of the Supplier MFC Review Document; or
- (d) the Supplier, acting reasonably, considers that the implementation of the Supplier MFC Review Documents would be likely to result in an increase to the Supplier's liabilities or potential or contingent liabilities under this deed or another NIF Project Agreement.

2.9 Programs

Where the Supplier MFC Review Document is a program in connection with the work under the MFC Works Contract, in addition to the grounds under paragraph 2.8, the Supplier may provide comments in respect of the Supplier MFC Review Document on the grounds that compliance with the program would (on the balance of probabilities):

- (a) not allow for any Time Based Delivery Objective to be achieved by its relevant Time for Performance;
- (b) adversely affect the safety of any person;
- (c) mean that the period for carrying out programmed work exceeds or falls short of the period reasonably required for that work; or
- (d) increase the likelihood of disruption to the conduct of the Operations Functions by TfNSW, the Operator or another NSW Rail Entity.

2.10 Proceed without comment

The Supplier acknowledges that TfNSW may proceed with the development, procurement, engineering, manufacture, construction, testing, commissioning or supply of the MFC Works notwithstanding that:

- (a) the Supplier has not reviewed the Supplier MFC Review Documents; or
- (b) the Supplier has reviewed the Supplier MFC Review Documents and has issued comments in respect of the Supplier MFC Review Documents in accordance with the MFC Review Procedures and:
 - (i) TfNSW has not provided the Supplier's comments to the MFC Contractor; or
 - (ii) the MFC Contractor has not taken those comments into account for whatever reason.

2.11 Significance of Reviews

- (a) The parties acknowledge and agree that these MFC Review Procedures are solely for the purpose of seeking the collaborative involvement of the Supplier in the development of the design of the MFC Works.
- (b) Nothing which occurs under these MFC Review Procedures will require TfNSW to direct the MFC Contractor to complete the MFC Works in accordance with the Supplier's comments.

Schedule B4 – Contract Review Meetings

The following schedule provides the basis for an agenda to be followed by the attendees of the monthly Contract Review Meeting. As it is contemplated that the various stages will overlap over time, the agenda content will vary from time to time as agenda items from earlier stages continue through to later stages.

Stage	Definition of the Project Stage	Items to be discussed/addressed
General	Every meeting, regardless of the stage of the Supplier's Activities.	TfNSW's Representative shall issue the agenda prior to each meeting. A monthly report is to be presented by the Supplier. Review of an action list, in terms of progress on agreed actions from past monthly meetings. A list of new actions to be added to the action list for the progress and resolution of all matters raised at the meeting is to be determined, including an allocation of responsibility for each action and a date by which the action is to be completed.
During the Delivery Phase	From the Commencement Date but prior to the Date of Final Acceptance of the final Unit.	Supplier to present the Delivery Phase Performance Report and discuss, as a minimum: (a) Design progress – (comparison of baseline vs agreed vs actual) and any major issues requiring resolution. (b) Procurement of the materials status (comparison of baseline vs agreed vs actual). (c) Status of the manufacture (comparison of baseline vs agreed vs actual). (d) Status of the design, development, verification and expected delivery of the Simulators. (e) Status of the verification, commissioning and acceptance program. (f) Status of Training, manuals and technical library. (g) Any quality issues including inspection reports and non-conformances. (h) Status of any variations and/or extension of time claims.
During the Maintenance Phase	On and from the Rolling Stock Maintenance Start Date until the End Date.	Supplier to present the Maintenance Phase Performance Report and discuss, as a minimum: (a) Review of planned maintenance schedules vs actual maintenance performed. (b) Review of Initial Fleet and Additional Fleet kilometrage for previous period. (c) Review of Unit reliability. (d) Review of Faults in traffic in previous period. (e) Recurrent Defect trends.

Stage	Definition of the Project Stage	Items to be discussed/addressed
		(f) Spares and Consumable stock status and usage trends, including any upcoming Obsolescence issues. (g) Review of Maintenance Facility Site and Equipment planned maintenance vs actual maintenance performed. (h) Variations and AM Services. (i) Review of Supplier's current performance under the Performance Regime.
Each Financial Year	Immediately after the end of each Financial Year.	Supplier to present the Annual Performance Review Report and discuss, as a minimum, each of the Project Bonds (for the purpose of satisfying TfNSW that each Project Bond rating is valid and the amount of each Project Bond is sufficient).
12 months prior to Expiry Date	Preparation for Transition Out.	Review of performance of Transition Out obligations and processes.

Schedule B5 – Annual Performance Review

The following schedule provides a basis for the criteria TfNSW intends to use when undertaking an Annual Performance Review in accordance with clause 5.13 of this deed. TfNSW may consider and adopt varied or additional criteria to assess the Supplier's performance, at different stages of the Contract Term.

No.	Criteria	Definition of the Criteria Description	Criteria Measurement
1.	Safety	The Supplier and its Associates have complied with the Safety Management System.	No significant breaches of the Safety Management System.
2.	Environment and risk	The Supplier has appropriately managed Environment and risk issues at all levels of the Project activities, and can demonstrate such compliance.	The occurrence of any breaches of environmental legislation and regulations. Effectiveness of the Supplier's Safety Management Plan and Risk Management Plan and processes. Evidence of attainment and/or maintenance of any necessary accreditations. Provisional improvement notices or any other relevant notices from an Authority. The occurrence of environmental incidents.
3.	Quality	The Supplier and its Subcontractors have complied with quality assurance standards and supplied Deliverables in accordance with the requirements set out in this deed.	Assessment based on internal and external quality audits. Balanced assessment of quality audit reports, including non-conformance reports, configuration management, rework, endemic/epidemic Defects, audits and inspections. Assessment of the effectiveness of the Supplier's Quality Plan.
4.	Timeliness	The Supplier has performed the Supplier's Activities in the past year with due expedition and without delay and in accordance with contractually agreed timelines.	Assessment of any departures from the Delivery Program and other relevant programs and reasons given. Assessment of any failures to achieve agreed dates (including the dates for MFI Practical Completion, Date for Additional MF Works Practical Completion, Date for Provisional Acceptance and Date for Final Acceptance and consequences. Assessment of recovery arrangements.
5.	Scheduled maintenance compliance	The Supplier has complied with its Maintenance Works Program.	Target is 99% compliance with the Maintenance Works Program.
6.	Performance	Units and other Assets have met agreed performance	The extent to which the Supplier achieves operational performance requirements (for example delay, availability and reliability).

No.	Criteria	Definition of the Criteria Description	Criteria Measurement
		requirements. Maintenance Services are being performed to agreed standards.	Assessment of the effectiveness of the Supplier's implemented systems and plans.
7.	Relationship management	Supplier has demonstrated appropriate behaviours and fostered an appropriate Project culture.	The occurrence of any issues/Disputes between TfNSW and Supplier and time taken to resolve each occurrence. Assessment of whether the Supplier has effectively communicated with TfNSW to ensure 'no surprises'.
8.	Delay	The difference between the customer actual arrival time and the customer planned arrival time at the customer destination station.	Less than or equal to three minutes.

Schedule B6 – 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, within 20 Business Days of the Dispute arising, 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 51. 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(l) 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 is a Technical Dispute Matter then, within five Business Days of a party issuing a Notice of Dispute to the other party:
 - (i) the parties must each nominate a suitably qualified person to consult on behalf of that party in relation to the relevant Technical Dispute Matter; and
 - (ii) the persons nominated pursuant to paragraph 1.3(b)(i) must consult in person and use reasonable endeavours to resolve the Dispute by joint discussions and negotiations.

- (c) If the parties determine that the Dispute is not about a matter that is a Technical Dispute Matter, or do not agree on a determination as to whether the Dispute is or is not a Technical Dispute Matter within the timeframe specified in paragraph 1.3(a) then, within 15 Business Days of a party issuing a Notice of Dispute to the other party, suitably authorised senior representatives of the parties must consult in person and use reasonable endeavours to resolve the Dispute by joint discussions and negotiations.

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 (**TDM Cut Off Date**) 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 TDM Cut Off Date 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 Related Body Corporate 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 Related Body Corporate of that party or who holds any significant financial interest in any party.
- (f) The parties shall enter into an agreement with the expert on the terms contained in Schedule F6 or such other terms as may be agreed between the parties and the Independent Expert (**Independent Expert Determination Agreement**).
- (g) 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.
- (h) 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 NIF Project Agreement,

(Independent Expert Determination Rules).

- (i) An expert determination conducted in accordance with the Independent Expert Determination Agreement is not an arbitration.
- (j) 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.
- (k) 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.
- (l) 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, TAHE 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(l), 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(l), the determination of the Independent Expert will not be final and binding on TfNSW, TAHE or the Supplier where:
 - (i) the Dispute is about whether any relevant Technical Document, Deliverable or Asset:
 - (A) is fit for purpose; or
 - (B) complies with the requirements of any NIF Project Agreement; or
 - (ii) the Dispute is about whether any of the following have occurred:
 - (A) Provisional Acceptance or Final Acceptance of a Unit or Simulator;
 - (B) Fleet Acceptance;
 - (C) MFI Practical Completion; or
 - (D) Additional MF Works Practical Completion.

- (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 TAHE 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 NIF 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 NIF Project Agreements.
- (b) Notwithstanding any provision of the ACICA Expedited Arbitration Rules to the contrary (including any 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, within two Business Days of the issue of the 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 will be 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 TAHE 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 NIF 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 NIF Project Agreement has been terminated and does not prevent TfNSW from exercising its rights of set-off under a NIF 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 NIF Project Agreements, including any Dispute as to the Supplier's liability under or in connection with the NIF 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. Disputes under Third Party Agreements

- (a) TfNSW and the Supplier acknowledge that:
 - (i) disputes under the Third Party Agreements may be concerned with the Supplier's rights and obligations under the NIF Project Agreements; and
 - (ii) it is their intention that disputes concerning those matters:
 - (A) need not in all cases be resolved by reference to the dispute resolution procedures under both the relevant Third Party Agreement and the relevant NIF Project Agreement; and
 - (B) may be appropriately resolved by means of the dispute resolution procedures set out in the relevant Third Party Agreement alone.
- (b) Where a dispute arises between TfNSW or any NSW Rail Entity and a party to a Third Party Agreement under the relevant Third Party Agreement, and that dispute is concerned with the Supplier's rights and obligations under the NIF Project Agreements, TfNSW or the relevant NSW Rail Entity may elect to have TfNSW's or TAHE's and the Supplier's rights and obligations determined in that dispute under the relevant Third Party Agreement, in which case:
 - (i) the Supplier must give TfNSW and the relevant NSW Rail Entity all necessary assistance and cooperation in respect of the dispute; and
 - (ii) TfNSW or the relevant NSW Rail Entity must ensure that any Claims of the Supplier are included in the dispute resolution procedures referred to in the relevant Third Party Agreement.
- (c) The Supplier agrees that it will be bound by any determination in the dispute resolution procedures under the relevant Third Party Agreement that affects the Supplier's rights and obligations as though that determination had been made under the Dispute Resolution Procedures in this deed.

3. Technical Dispute Panel

The Technical Dispute Panel is comprised of the following persons:

Name	Telephone Number	Email Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

4. 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 arbitrator appointed in accordance with these Dispute Resolution Procedures.
- (b) The arbitrator has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this paragraph, have applied to any Dispute referred to the arbitrator.

Schedules C – Commissioning, MFI Works, Maintenance Locations and Third Parties

Schedule C1 – MFI Works integration and other obligations

1. Integration with MFC Works

1.1 TfNSW to procure MFC Works

TfNSW will engage the MFC Contractor to perform the MFC Works, including:

- (a) development of the detailed design for the MFC Works; and
 - (b) construction of the MFC Works in accordance with the detailed design,
- in a manner which is consistent with the MFC Requirements and the requirements of this Schedule C1 in respect of the design and construction of the MFC Works.

1.2 Supplier changes to the MFC Brief

- (a) The Supplier:
 - (i) acknowledges that its Tender was based on the MFC Brief which the Supplier submitted as part of its Tender; and
 - (ii) agrees that any change to the MFC Brief requested by the Supplier after the date of this deed may have an impact on:
 - (A) the cost or risk to TfNSW under the MFC Works Contract; or
 - (B) the time required to complete the MFC Works.
- (b) If the Supplier proposes a change to the MFC Brief:
 - (i) the Supplier's proposal must include a Supplier Variation Request in accordance with paragraph 2.2 of Schedule E3 (to the extent that the Supplier is able, given that the impact under the MFC Works Contract of the proposed variation to the MFC Works may not be known at that time) and in addition to the requirements under paragraph 2.2 of Schedule E3 must specify:
 - (A) any impact on the Supplier's ability to perform its obligations under this deed or any other NIF Project Agreement; or
 - (B) that the change will have no impact on the Supplier's ability to perform its obligations under this deed or any other NIF Project Agreement; and
 - (ii) except to the extent that TfNSW otherwise accepts, in its absolute discretion, the Supplier's proposal must be a development of, and consistent with the MFC Requirements.
- (c) TfNSW will consider and may approve or reject the Supplier's proposal received under paragraph 1.2(b) in accordance with paragraph 2.3 of Schedule E3. If and to the extent that TfNSW in its absolute discretion issues a Supplier Variation Approval to the Supplier, despite:
 - (i) the provisions of clause 8.13(b) of this deed; and
 - (ii) the MFC Works not forming part of the Supplier's Activities under the definition of 'Variation' in clause 1.1 of this deed,

the cost and risk of any:

 - (iii) incremental difference between:

- (A) the works to be undertaken under the MFC Works Contract with the MFC Brief before making the Supplier's change; and
- (B) the works to be undertaken under the MFC Works Contract with the MFC Brief after making the Supplier's change;
- (iv) variation under the MFC Works Contract; or
- (v) change to the MFC Works,

as assessed by TfNSW (acting reasonably), will be deemed to be part of the Variation referred to in any such Supplier Variation Approval that TfNSW's Representative issues in relation to the Supplier's change proposed pursuant to paragraph 1.2(b).

1.3 MFC Works are fit for Supplier's purposes

The Supplier warrants that:

- (a) it has reviewed and carefully considered the MFC Requirements and has diligently prepared the MFC Brief applying the standard of skill and care that would reasonably be expected of a professional organisation experienced in the provision of projects of similar size and scope to the Project; and
- (b) provided that the MFC Works are designed and constructed in accordance with the MFC Requirements and the MFC Brief, the MFC Works and the Maintenance Facility Site will be fit for the purpose of enabling the Supplier to comply with its obligations under this deed.

1.4 MFC Works Design Review and programming

- (a) Without limiting clause 8.13 of this deed, the Supplier must cooperate with the MFC Contractor to enable the MFC Contractor to develop and finalise the design of the MFC Works and to develop and update the MFC Contractor's program, including by:
 - (i) participating collaboratively in the Interface Working Group established in accordance with paragraph 1.7;
 - (ii) providing information and documents as and when requested by the MFC Contractor and, without limiting paragraph 1.2, keeping that information updated for any changes, including in relation to:
 - (A) specifications of, and design and installation requirements for, the Maintenance Facility Equipment; and
 - (B) design requirements in relation to the MFI Works that may impact on the MFC Contractor's ability to perform its obligations under the MFC Works Contract;
 - (iii) planning and scheduling the MFI Works to:
 - (A) coordinate with the MFC Works to enable the MFC Contractor to prepare and keep updated a detailed coordinated program for the performance of the MFI Works to the extent they are concurrent, or interdependent, with the MFC Works;
 - (B) the maximum extent possible, avoid inefficient work, lost time, rework or redundant work in carrying out the MFC Works and the MFI Works; and
 - (C) avoid work of a quality not in accordance with the MFC Works Contract; and
 - (iv) notifying TfNSW's Representative promptly of any event of which the Supplier is aware that may impact on the ability of the MFC Contractor or TfNSW to meet their obligations under the MFC Works Contract.

- (b) TfNSW will provide the Supplier with the MFC Contractor's design documentation to enable the Supplier to provide its input to the design of the MFC Works in accordance with the MFC Review Procedures.
- (c) TfNSW will have regard to the Supplier's input provided in accordance with the MFC Review Procedures in providing TfNSW's own review of, and comments to the MFC Contractor on, the design of the MFC Works.

1.5 TfNSW initiated changes to MFC Works

- (a) Where:
 - (i) TfNSW does not adopt the Supplier's input in relation to the design of the MFC Works provided in accordance with the MFC Review Procedures in providing to the MFC Contractor TfNSW's review of, comment on, or directions in relation to, the design of the MFC Works;
 - (ii) TfNSW proposes to initiate a Modification as a result of the MFC Works;
 - (iii) TfNSW proposes to initiate a Variation as a result of the MFC Works; or
 - (iv) TfNSW proposes a variation to the MFC Works under the MFC Works Contract, (each a **TfNSW Initiated MFC Change**) and the TfNSW Initiated MFC Change:
 - (v) has as a consequence that either:
 - (A) the MFC Works would not comply with the MFC Brief; or
 - (B) the MFC Brief would require amendment; and
 - (vi) has, or in TfNSW's opinion could be expected to have, an effect on the Supplier's ability to carry out the MFI Works or other obligations under this deed, including the cost, time or level of performance of those obligations,

TfNSW must give the Supplier a notice (**TfNSW MFC Change Notice**) as soon as reasonably practicable which:

- (vii) specifies the TfNSW Initiated MFC Change and any other information that TfNSW considers necessary to understand the change or the reasons for the change; and
 - (viii) at TfNSW's sole discretion, may be accompanied by a TfNSW Variation Request.
- (b) Where TfNSW gives the Supplier a TfNSW MFC Change Notice under paragraph 1.5(a) which is accompanied by a TfNSW Variation Request, the provisions of Schedule E3 apply in respect of the matters referred to in paragraphs 1.5(a)(i) to 1.5(a)(iv) as if they were a proposed Variation.
- (c) Where TfNSW gives the Supplier a TfNSW MFC Change Notice under paragraph 1.5(a) which is not accompanied by a TfNSW Variation Request and in the Supplier's opinion the TfNSW Initiated MFC Change referred to in the TfNSW MFC Change Notice gives rise to (or would, if implemented, give rise to) a change in circumstances provided for under Part E of this deed, the Supplier must:
 - (i) promptly and within the time (if any) prescribed under Part E give TfNSW's Representative any notice or information that the Supplier is required or entitled to give under Part E; and
 - (ii) consult with TfNSW's Representative in relation to any alternatives that the Supplier considers are reasonably available and that will provide better value for money for TfNSW than implementation of the TfNSW Initiated MFC Change referred to in the TfNSW MFC Change Notice.

1.6 Supplier initiated changes to MFC Works

- (a) Where the Supplier:
- (i) wants to change the MFC Brief or wishes TfNSW to propose a change to the MFC Works that would entail a variation under the MFC Works Contract; or
 - (ii) proposes a Modification or a Mandatory Modification that would entail a change to the MFC Works,
- (each a **Supplier Initiated MFC Change**), the Supplier must promptly give TfNSW a notice:
- (iii) in the case of a Supplier Initiated MFC Change under paragraph 1.6(a)(i):
 - (A) giving sufficient details of the proposed change or variation to the MFC Works to enable TfNSW to request a variation proposal from the MFC Works Contractor pursuant to the MFC Works Contract;
 - (B) giving reasons for the proposed Supplier Initiated MFC Change; and
 - (C) providing a Supplier Variation Request in accordance with paragraph 2.2 of Schedule E3 (to the extent that the Supplier is able, given that the impact under the MFC Works Contract of the proposed variation to the MFC Works may not be known at that time); and
 - (iv) in the case of a Supplier Initiated MFC Change under paragraph 1.6(a)(ii), without limiting the Supplier's obligations under clause 28.4 or 28.5 of this deed:
 - (A) giving sufficient details of the change required to the MFC Works to enable TfNSW to request a variation proposal from the MFC Works Contractor pursuant to the MFC Works Contract; and
 - (B) specifying whether the relevant Modification is a Mandatory Modification or otherwise.
- (b) Despite:
- (i) the provisions of clause 8.13 of this deed; and
 - (ii) the MFC Works not forming part of the Supplier's Activities under the definition of 'Variation' provided in clause 1.1 of this deed,

for the purposes of paragraphs 1.6(a)(iii) and 1.6(a)(iv) and Schedule E3, the cost and risk of any variation under the MFC Works Contract or change to the MFC Works will be deemed to be part of any Variation proposed in a Supplier Variation Request given pursuant to paragraph 1.6(a) and subsequently in any Supplier Variation Approval that TfNSW's Representative issues in relation to that proposed Variation, except that paragraph 2.3(c)(ii) of Schedule E3 will not apply.

1.7 Interface Working Group

- (a) In addition to the meetings held pursuant to clause 5 of this deed and without limiting clause 8.13 of this deed, TfNSW and the Supplier agree that the following meetings will be held:
- (i) site works meetings pursuant to paragraph 1.7(b); and
 - (ii) coordination and interface meetings pursuant to paragraph 1.7(c),
- and will be attended by:
- (iii) one or two representatives from TfNSW (at TfNSW's discretion);
 - (iv) one or two representatives from the Supplier (at the Supplier's discretion);
 - (v) any other person reasonably requested by TfNSW's Representative; and

- (vi) any other person reasonably requested by the Supplier and approved by TfNSW's Representative (such approval not to be unreasonably withheld),

(the **Interface Working Group**).
- (b) Site works meetings:
 - (i) will be held daily from the commencement of the MFI Works until the Date of MFI Practical Completion;
 - (ii) will be chaired by a representative from TfNSW; and
 - (iii) will have as their purpose, to proactively resolve day to day issues which impact or have the potential to impact on any Delivery Milestone or the cost of the Project.
- (c) Coordination and interface meetings:
 - (i) will be held weekly, or at such other times as agreed by TfNSW and the Supplier, from the commencement of the MFC Works until the later of:
 - (A) the Date of MFI Practical Completion; or
 - (B) the expiry of the MFC Defects Liability Period;
 - (ii) will be chaired by a representative from TfNSW; and
 - (iii) will have as their purpose to:
 - (A) identify work interfaces between the MFC Works, the Supplier's Activities (including the MFI Works) and the work of any Other Contractors over the following three week period;
 - (B) agree how those work interfaces are to be managed; and
 - (C) enable the:
 - (I) MFC Contractor to prepare and keep updated a detailed coordinated program for the performance of the MFI Works; and
 - (II) Supplier to coordinate the Supplier Activities having regard to the progress of the MFC Works.
- (d) To assist in identification and management of work interfaces, the Supplier must provide to TfNSW's Representative, at least two Business Days prior to each coordination and interface meeting, the following:
 - (i) the Supplier's three week look ahead program for the MFI Works and the Supplier's Activities;
 - (ii) the Supplier's current and projected manning levels for the performance of the MFI Works; and
 - (iii) a detailed list of upcoming work interfaces of which the Supplier is aware.
- (e) No determinations are to be made at the meetings referred to in paragraphs 1.7(b) and 1.7(c) that:
 - (i) have or may have any time or cost impacts for TfNSW; or
 - (ii) may give rise to any of the following effects:
 - (A) prevent the MFC Contractor from providing any warranties under the MFC Works Contract;
 - (B) prevent the provision of any warranties in relation to any of the MFI Equipment;

- (C) compromise the performance of any of the Supplier's obligations under this deed in any way;
- (D) increase the operating or capital costs of the Project;
- (E) impact negatively on any performance guarantees given by the Supplier under this deed;
- (F) impact negatively upon the MFC Contractor's program; or
- (G) negatively deviate from the SPR or any Rail Industry Standards.

1.8 Access during performance of the MFC Works

- (a) TfNSW will, subject to paragraph 1.8(b), use its best endeavours to procure that the MFC Contractor provides regular access for the Supplier to the relevant part of the Maintenance Facility Site during the performance of the MFC Works, to enable the Supplier to inspect and monitor the progress of the MFC Works.
- (b) In respect of the Supplier's access to the relevant part of the Maintenance Facility Site during the performance of the MFC Works:
 - (i) the Supplier must notify TfNSW's Representative of the identity of the Supplier Personnel, Supplier's Associates and any other persons proposed to access the Maintenance Facility Site (**Supplier Access Parties**) and any other details about such persons as reasonably required by the MFC Contractor, so that TfNSW can provide that information to the MFC Contractor;
 - (ii) the Supplier must arrange for all Supplier Access Parties to comply with the requirements of the MFC Contractor including in relation to Maintenance Facility Site induction, safety and security;
 - (iii) the Supplier Access Parties must:
 - (A) cooperate with the MFC Contractor and any Other Contractor in relation to co-ordination of their work with the MFC Works as a whole;
 - (B) not hinder or impede execution of the work of the MFC Contractor or any Other Contractor; and
 - (C) not cause any damage to the work of the MFC Contractor or any Other Contractor; and
 - (iv) without prejudice to the Supplier's obligation to exercise due care, all costs properly incurred by the Supplier in:
 - (A) providing the amenities and facilities required by the Supplier Access Parties (including providing accommodation for Supplier Access Parties); and
 - (B) protection of the work of the MFC Contractor and any Other Contractor, will be the responsibility of the Supplier and will not entitle the Supplier to make any Claim, Variation or to an adjustment the MFI Works Contract Value.
- (c) Subject to the Supplier complying with its obligations under paragraph 4.2 of Schedule C2:
 - (i) the Supplier must fully comply with all directions issued by TfNSW's Representative regarding cooperation by the Supplier with the MFC Contractor and any Other Contractor and coordination of the MFI Works with the works to be undertaken by the MFC Contractor and any Other Contractor; and
 - (ii) if differences arise with regard to priorities on the Maintenance Facility Site between the Supplier, the MFC Contractor and any Other Contractor, and if the meetings contemplated in paragraphs 1.7(b) and 1.7(c) are not able to resolve

those differences, then TfNSW's Representative will determine the issue and TfNSW's Representative's determination will be binding on the Supplier.

- (d) Except as expressly set out in this deed, the Supplier agrees that it is not entitled to make any Claim arising out of or in connection with any direction or determination made by TfNSW's Representative as contemplated under paragraph 1.8(c).

1.9 MFC Works Asset Management System

Where the Supplier (acting reasonably) considers that it requires any information or documents from, or to work collaboratively with, the MFC Contractor for the purposes of complying with the Supplier's obligations in relation to development of an Asset Management System under clause 18.2 of this deed:

- (a) the Supplier may request TfNSW to obtain that information or those documents from the MFC Contractor, or to require the MFC Contractor to work collaboratively with the Supplier for the purposes of enabling the Supplier to comply with its obligations under clause 18.2; and
- (b) to the extent that TfNSW (acting reasonably) considers the information, documents or the Supplier's request to work collaboratively with the MFC Contractor necessary to avoid or minimise any impact on the Supplier's ability to comply with its obligations under clause 18.2,

TfNSW will use its best endeavours to have the MFC Contractor comply with the Supplier's request.

1.10 MFC Works documentation

- (a) Without limiting clause 8.13 of this deed, the Supplier must provide reasonable and timely assistance to the MFC Contractor in the completion of any documents, reports, manuals or the like required to be prepared by the MFC Contractor under the MFC Works Contract.
- (b) Promptly following their receipt from the MFC Contractor, to the extent not already provided, TfNSW must give the Supplier copies of any 'as-built' drawings and any other documents, manuals, instructions or plans relating to the MFC Works that are necessary for the Supplier to comply with its obligations under this deed.

1.11 Completion of the MFC Works

- (a) TfNSW must:
 - (i) give the Supplier's Representative at least five Business Days' notice of the date on which the MFC Contractor expects to achieve MFC Practical Completion; and
 - (ii) notify the Supplier when the MFC Contractor has requested TfNSW's Representative to issue a MFC Practical Completion Certificate for the MFC Works.
- (b) TfNSW must notify the Supplier when TfNSW's Representative intends to inspect the MFC Works for the purpose of determining:
 - (i) whether MFC Practical Completion has been achieved, including identifying any MFC Defects; or
 - (ii) if MFC Practical Completion has not been achieved, identifying what work remains to be done.
- (c) The Supplier will be entitled to:
 - (i) attend any inspections referred to under paragraph 1.11(b); and
 - (ii) provide any comments in relation to whether, in the Supplier's reasonable opinion, there is any further work to be done to complete the MFC Works before they have reached the stage where:

- (A) they have been constructed in accordance with the MFC Requirements and the MFC Brief (subject to any changes contemplated under this Schedule C1); and
 - (B) rectifying any MFC Defects will not have an effect on the Supplier's ability to carry out the Maintenance Services or other obligations under this deed.
- (d) TfNSW will:
 - (i) consider the Supplier's comments in good faith; and
 - (ii) if TfNSW considers, acting reasonably, that it is necessary to do so, take the Supplier's comments into account in determining whether MFC Practical Completion has been achieved.
- (e) Nothing which occurs under this paragraph 1.11 will:
 - (i) require TfNSW to direct the MFC Contractor to comply with the Supplier's comments; or
 - (ii) prevent TfNSW from issuing a MFC Practical Completion Certificate.

1.12 Care and maintenance of MFC Works

- (a) The Supplier is responsible for the care and maintenance of any parts of the MFC Works located within a part of the Maintenance Facility Site over which a MFI Works Licence is granted, from the time that a MFI Works Licence is granted in respect of that part of the Maintenance Facility Site pursuant to paragraph 1.1 of Schedule C2 for the term of that MFI Works Licence.
- (b) If required by TfNSW's Representative and without limiting clause 8.13 of this deed, the Supplier must:
 - (i) witness any tests conducted by the MFC Contractor; or
 - (ii) attend any training given by the MFC Contractor,
 which may be relevant to the Supplier's Activities.

1.13 MFC Defects

- (a) Where, during the MFC Defects Liability Period, the Supplier is of the view that an MFC Defect exists, the Supplier must promptly, and in any event no later than 15 Business Days prior to the end of the MFC Defects Liability Period, notify TfNSW's Representative of the matter which the Supplier considers to be a MFC Defect.
- (b) If TfNSW considers, acting reasonably, that a matter notified under paragraph 1.13(a) is a MFC Defect, TfNSW must liaise with the Supplier and determine whether:
 - (i) TfNSW will require the MFC Contractor or an Other Contractor to rectify the MFC Defect; or
 - (ii) TfNSW will issue a Variation in relation to:
 - (A) the Supplier rectifying the MFC Defect; or
 - (B) varying the Supplier's obligations to accommodate the continued existence of the MFC Defect,

having regard (without limitation) to the extent to which the Supplier indicates that the rectification work may disrupt operations that are being conducted at the Maintenance Facility Site.

1.14 Access by MFC Contractor

After the Date of MFC Practical Completion if:

- (a) a MFC Practical Completion Certificate is issued by TfNSW specifying MFC Defects that are to be rectified by the MFC Contractor; or
- (b) the MFC Contractor or an Other Contractor is required to rectify MFC Defects, subject to the MFC Contractor or Other Contractor complying with the Supplier's site safety and security rules, the Supplier must provide access to the MFC Contractor or Other Contractor to the Maintenance Facility Site for the purpose of enabling the MFC Contractor or Other Contractor to rectify MFC Defects.

2. MFI Works

2.1 Performance of MFI Works

- (a) The Supplier must procure, supply, install, commission and integrate the MFI Works in accordance with:
 - (i) the SPR;
 - (ii) the Technical Documents prepared by the Supplier in accordance with the requirements of this deed;
 - (iii) any Variation Order; and
 - (iv) the other requirements of the NIF Project Agreements.
- (b) The Supplier warrants that the Supplier has fully informed itself as to:
 - (i) the nature of the work, materials and construction plant and equipment necessary for the execution of the MFI Works;
 - (ii) the facilities at the Maintenance Facility Site;
 - (iii) the constraints imposed on the manner in which the MFI Works may be performed (including under Rail Industry Standards);
 - (iv) the means of access to and egress from the Maintenance Facility Site and transport facilities for deliveries to the Maintenance Facility Site and the constraints thereon applying or to apply from time to time; and
 - (v) the availability of car parking and parking for other vehicles both on and off the Maintenance Facility Site and the restrictions thereon.

2.2 MFI Practical Completion of MFI Works

The Supplier must give TfNSW's Representative:

- (a) at least 10 Business Days' notice of the date on which the Supplier expects to achieve MFI Practical Completion; and
- (b) a written request for TfNSW's Representative to issue a MFI Practical Completion Certificate for the MFI Works, which request must not be given earlier than 10 Business Days after the date on which the Supplier gives notice under paragraph 2.2(a)).

2.3 Issue of MFI Practical Completion Certificate for MFI Works

- (a) Within 10 Business Days of the receipt of a request under paragraph 2.2(b) and confirmation from the Supplier that, in its opinion, MFI Practical Completion has been achieved, TfNSW's Representative must either:
 - (i) if MFI Practical Completion in respect of the MFI Works has been achieved, issue a certificate (**MFI Practical Completion Certificate**) for such MFI Works:
 - (A) certifying the Date of MFI Practical Completion; and

- (B) specifying any Minor Defects; or
 - (ii) if MFI Practical Completion has not been achieved in respect of the MFI Works, issue a notice (**MFI Rejection Notice**) to the Supplier stating the reasons why a MFI Practical Completion Certificate has not been issued for such MFI Works. If TfNSW's Representative notifies the Supplier under this paragraph 2.3(a)(ii), then the Supplier must undertake such works as are necessary to address the reasons and the procedure described in this paragraph 2.3 will reapply.
- (b) If the Date of MFI Practical Completion occurs in respect of the MFI Works before the anticipated date for MFI Practical Completion for such MFI Works in the Delivery Program as at the Commencement Date, TfNSW:
 - (i) must issue a MFI Practical Completion Certificate stating the Date of MFI Practical Completion for such MFI Works as the date on which the MFI Practical Completion was achieved in respect of those MFI Works; and
 - (ii) may, in its sole and absolute discretion, exercise its rights under paragraph 5.4(b).
- (c) When TfNSW's Representative is of the opinion (acting reasonably) that MFI Practical Completion has been achieved in respect of the MFI Works, TfNSW's Representative may issue a MFI Practical Completion Certificate for the MFI Works, whether or not the Supplier has made a request for it to be issued.
- (d) TfNSW's Representative may exercise its right under paragraph 2.3(c) in its absolute discretion and is not obliged to do so for the benefit of the Supplier.
- (e) A MFI Practical Completion Certificate is final and binding on the parties for the purposes only of establishing that the requirements for MFI Practical Completion for the relevant MFI Works have been satisfied and the date on which it occurred.

2.4 Rectification of Minor Defects in MFI Works

- (a) If any Minor Defects are identified in a MFI Practical Completion Certificate in respect of any part of the MFI Works, the Supplier must within 10 Business Days provide TfNSW with a draft plan identifying its proposed schedule for the rectification of those Minor Defects (**Draft Minor Defect Rectification Plan**).
- (b) TfNSW must, within 10 Business Days of receiving the Draft Minor Defect Rectification Plan in accordance with paragraph 2.4(a):
 - (i) approve the Draft Minor Defect Rectification Plan, in which case the Draft Minor Defect Rectification Plan will be deemed the Minor Defect Rectification Plan; or
 - (ii) reject the Draft Minor Defect Rectification Plan and provide written reasons for the rejection, in which case:
 - (A) within five Business Days of TfNSW's notice of rejection, the Supplier must submit a revised Draft Minor Defect Rectification Plan to TfNSW for approval;
 - (B) the Supplier's revised Draft Defect Rectification must address the matters identified in TfNSW's reasons for rejection referred to in paragraph 2.4(b)(ii); and
 - (C) the process in this paragraph 2.4(b) shall re-apply.
- (c) The Supplier must rectify all Minor Defects identified in a MFI Practical Completion Certificate in accordance with a Minor Defect Rectification Plan approved under this paragraph 2.4.

3. Legal Requirements for construction work

3.1 Long service leave levy

Before commencing any part of the MFI Works that is building or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW), the Supplier must:

- (a) pay (or procure payment) to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building and/or construction work; and
- (b) produce to TfNSW's Representative the document evidencing payment of the levy.

3.2 Aboriginal participation in construction

- (a) Where TfNSW notifies the Supplier that this clause applies, the Supplier must prepare and submit to TfNSW's Representative and the NSW Procurement Board (nswbuy@finance.nsw.gov.au), its Aboriginal Participation Plan, showing how the Supplier intends to direct the target project spend to appropriate Aboriginal education and employment opportunities.
- (b) The Supplier must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan in accordance with the *NSW Government Aboriginal Participation in Construction Policy* (May 2015 or any later update).
- (c) The Supplier must:
 - (i) when the project reaches 90% of MFI Practical Completion and as a condition precedent to MFI Practical Completion, provide to TfNSW's Representative and the NSW Procurement Board (nswbuy@finance.nsw.gov.au), a report (**Aboriginal Participation Report**) which explains how the Aboriginal Participation Plan has been implemented and what outcomes have been achieved; and
 - (ii) at the end of the 12 month period after the Date of MFI Practical Completion, provide to TfNSW's Representative its final Aboriginal Participation Report which includes the details of actual expenses incurred from the date of this deed to 12 months after the Date of MFI Practical Completion. Details included in the final Aboriginal Participation Report must explain how the Aboriginal Participation Plan has been implemented within the specified period and what actual outcomes have been achieved.
- (d) The Aboriginal Participation Plan and the Aboriginal Participation Reports must be prepared in accordance with the with the *NSW Government Aboriginal Participation in Construction Policy* and in the format prescribed by the NSW Procurement Board (<https://www.procurepoint.nsw.gov.au/aboriginal-participation-construction-information-contractors>).
- (e) The Supplier must demonstrate to TfNSW, whenever requested, that it has met and is meeting at all times its obligations under paragraphs 3.2(a) to 3.2(d).

3.3 Building Code

- (a) This paragraph 3.3 applies if any part of the MFI Works or the Maintenance Services are Building Code Work.
- (b) The Supplier must comply, in the performance of the MFI Works and the Maintenance Services, with the Building Code. Copies of the Building Code are available at <https://employment.gov.au/building-code>.
- (c) Compliance with the Building Code shall not relieve the Supplier from responsibility to perform its obligations under this deed, or from liability for any Defect in the MFI Works or the Maintenance Services arising from compliance with the Building Code.

- (d) Where a change in this deed is proposed and that change would affect compliance with the Building Code, the Supplier must submit a report to the Commonwealth specifying the extent to which the Supplier's compliance with the Building Code will be affected.
- (e) The Supplier must maintain adequate records of the compliance with the Building Code by:
 - (i) the Supplier;
 - (ii) the Supplier's Subcontractors; and
 - (iii) the Supplier's other related entities (as defined in section 3(2) of the Building Code and referred to in section 8 of the Building Code).
- (f) If the Supplier does not comply with the requirements of the Building Code in the performance of this deed such that sanction is applied by the Minister for Employment, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Supplier or a related entity in respect of work funded by the Commonwealth or its agencies.
- (g) While acknowledging that value for money is the core principle underpinning decisions on government procurement, when assessing tenders, the Supplier may give preference to Subcontractors that have a demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous population exists.
- (h) The Supplier must not appoint a Subcontractor in relation to the MFI Works where:
 - (i) the appointment would breach a sanction imposed by the Minister for Employment; or
 - (ii) the Subcontractor has had an adverse court or tribunal decision (not including decisions under appeal), for a breach of workplace relations law, WHS law, or workers' compensation law and the Subcontractor has not fully complied, or is not fully complying, with the order.
- (i) The Supplier agrees to require that it and its Subcontractors and its related entities (as defined in section 3(2) of the Building Code) provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the MFI Works; and
 - (iii) interview any person,
 as is necessary to demonstrate its compliance with the Building Code.
- (j) Additionally, the Supplier agrees that the Supplier and its related entities (as defined in Section 3(2) of the Building Code) will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person or by post.
- (k) The Supplier must ensure that all Subcontracts impose obligations on subcontractors equivalent to the obligations under this paragraph 3.3.

3.4 Crown Building Work

- (a) The Supplier must, in relation to any part of the MFI Works that is Crown Building Work (as defined in section 109R of the EP&A Act), certify (on behalf of TfNSW) the Crown Building Work (on behalf of TfNSW) as required by section 109R of the EP&A Act.
- (b) Any certification under paragraph 3.4(a) will not lessen or otherwise affect:
 - (i) the Supplier's other liabilities or responsibilities under this deed or otherwise according to law; or
 - (ii) TfNSW's rights against the Supplier, whether under this deed or otherwise according to law.

4. NSW Code

4.1 NSW Code and NSW Guidelines

In addition to terms defined in this deed, terms used in this paragraph 4 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

4.2 Primary obligation

- (a) In carrying out any NSW Code Work, the Supplier must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (b) The Supplier must notify the CCU and TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) The Supplier must ensure that each Subcontract imposes on the relevant Subcontractor equivalent obligations to those in this paragraph 4, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Supplier must not appoint or engage any Subcontractor in relation to any NSW Code Work where that appointment or engagement would breach a sanction imposed on the Subcontractor in relation to the NSW Code or NSW Guidelines.

4.3 Access and information

- (a) The Supplier must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it and its Subcontractors.
- (b) The Supplier must allow, and take reasonable steps to facilitate, authorised persons (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by Supplier, including the Maintenance Facility Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the project;
 - (v) have access to Supplier's Personnel; and
 - (vi) interview any person,

as is necessary for the authorised person to monitor and investigate compliance with the NSW Code and NSW Guidelines by the Supplier and its Subcontractors.

- (c) The Supplier must comply with any request from an authorised person (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

4.4 Sanctions

- (a) The Supplier warrants that, at the time of entering into this deed, neither it, nor any of its Associates, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Supplier does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties to this deed; and
 - (ii) the State (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Supplier, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

4.5 Compliance

- (a) The Supplier bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Supplier is not entitled to make, and TfNSW and TAHE will not be liable upon, any Claim against TfNSW or TAHE arising out of or in any way in connection with the Supplier's compliance with the NSW Code and the NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Supplier from responsibility to perform any NSW Code Work or any other obligation under this deed, or from liability for any Defect in the NSW Code Work or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a Variation is proposed that may be likely to affect compliance with the NSW Code and NSW Guidelines, the Supplier must immediately notify TfNSW's Representative of the Variation, or likely Variation, and specify:
 - (i) the circumstances of the proposed Variation;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Variation; and
 - (iii) what steps the Supplier proposes to take to mitigate any adverse impact of the Variation (including any amendments it proposes to the workplace relations management plan).
- (d) TfNSW will direct the Supplier as to the course it must adopt within 10 Business Days of receiving notice from the Supplier under paragraph 4.5(c).

5. Payment

5.1 Application

- (a) This paragraph 5 applies only to payment claims in respect of the MFI Works.
- (b) Clauses 25.4(b) and 25.6 of this deed will only apply in relation to any payment claim in respect to the MFI Works to the extent they are not contrary to any law.

5.2 Security of Payment legislation

- (a) When an adjudication occurs under the SOP Act and TfNSW has paid, or procured to be paid, an adjudicated amount to the Supplier:
 - (i) the amount will be taken into account by TfNSW's Representative in issuing a payment schedule under paragraph 5.3; and
 - (ii) if it is subsequently determined pursuant to this deed that the Supplier was not entitled under this deed to payment of some or all of the adjudicated amount that was paid or procured by TfNSW ("overpayment"), the overpayment will be a debt due and payable by the Supplier to TfNSW which the Supplier must pay to TfNSW upon demand and in respect of which the Supplier is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (b) For the purposes of section 17(3) of the SOP Act, the Supplier irrevocably chooses The Institute of Arbitrators and Mediators Australia, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this deed.
- (c) If TfNSW receives a payment withholding request from a Subcontractor under section 26A of the SOP Act, TfNSW will be entitled to withhold the amount in the request from any payment due to the Supplier without any obligation on TfNSW to consider whether the notice is valid and whether section 26B(2) of the SOP Act applies.
- (d) The Supplier must promptly (and in any event within 24 hours of receipt by the Supplier) give TfNSW a copy of any notice to suspend, adjudication application or adjudication determination pursuant to the SOP Act that the Supplier receives from another person under the SOP Act.
- (e) The Supplier must provide TfNSW with regular updates in respect of the progress of any notice to suspend, adjudication application or adjudication determination provided to TfNSW under paragraph 5.2(d).
- (f) If TfNSW becomes aware that a Subcontractor is entitled to suspend, or has suspended, any part of the MFI Works pursuant to the SOP Act, TfNSW may (in its absolute discretion) pay the Subcontractor such money that is or may be owing to the Subcontractor.

5.3 Payment schedule for MFI Works

- (a) Within 10 Business Days of receipt of a valid payment claim under clause 25.1 of this deed for any MFI Works, TfNSW's Representative will assess the claim and issue to TfNSW and the Supplier's Representative a payment schedule setting out:
 - (i) the amount determined by TfNSW's Representative as payable by TfNSW to the Supplier under this deed; and
 - (ii) if the amount referred to in paragraph 5.3(a)(i) is less than the amount claimed by the Supplier in its payment claim:
 - (A) the calculations employed by TfNSW's Representative to arrive at the amount referred to in paragraph 5.3(a)(i); and
 - (B) the reasons for the difference.

- (b) Any failure by TfNSW's Representative to set out in a payment schedule an amount which TfNSW is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Supplier by TfNSW will not prejudice the rights of TfNSW (including to subsequently exercise its rights to retain, deduct, withhold or set-off any amount).
- (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.
- (d) If the Supplier fails to make a payment claim, TfNSW's Representative may nevertheless, in its absolute discretion, issue a payment schedule.

5.4 Payment in respect of MFI Works

- (a) Subject to the provisions of this deed, within the earlier of:
 - (i) five Business Days of TfNSW's Representative issuing a payment schedule under paragraph 5.3; or
 - (ii) 15 Business Days of receipt of a valid payment claim under clause 25.1 of this deed,

TfNSW will procure payment to the Supplier, or the Supplier will pay to TfNSW (as the case may be), the amount determined as due to the Supplier or TfNSW (as the case may be) in respect of the MFI Works.
- (b) If prior to the date for payment as specified in paragraph 5.4(a), the Supplier has not provided a payment claim which complies with the requirements set out in clause 25.4, then TfNSW:
 - (i) must pay (or procure the payment of) to the Supplier the amount specified in the payment schedule as being due to the Supplier in respect of the MFI Works; and
 - (ii) may withhold (or procure the withholding) of the amount paid in accordance with paragraph 5.4(b)(i) from the next payment to be made to the Supplier by (or on behalf of) TfNSW for the Supplier's failure to comply with TfNSW's requirements under clause 25.4 until the Supplier has provided a payment claim which complies with the requirements set out in clause 25.4.

5.5 Evidence of payment of workers and Subcontractors

The Supplier is not entitled to give TfNSW a payment claim under clause 25 of this deed, unless the Supplier has in respect of the MFI Works provided TfNSW's Representative with a signed Supporting Statement. The signed Supporting Statement is to be included as Annexure A to the statutory declarations that are to be provided in accordance with clauses 24.1(a) and 24.1(b).

5.6 Business Day

In paragraphs 5.3 and 5.4, '**Business Day**' means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December.

Schedule C2 – Provided Facilities and NIF Stabling Yards

1. Access and tenure

1.1 MFI Works Licence

TfNSW must procure the grant to the Supplier, and the Supplier accepts the grant, of a non-exclusive right to access the Maintenance Facility Site for the purposes of the Supplier and the Supplier's Personnel undertaking the MFI Works and rectifying Minor Defects in accordance with the terms set out in Schedule C1 and this Schedule C2 and on the terms and conditions set out in Schedule C4 (**MFI Works Licence**).

1.2 Maintenance Facility Licence

On and from the Date of MFC Practical Completion, TfNSW and TAHE 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 MFC Practical Completion;
- (b) until the End Date;
- (c) substantially on the terms set out in Part 2 of Schedule F1; and
- (d) to be formally completed in accordance with paragraphs 1.4 and 1.5.

1.3 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.

- (a) Commissioning Facility Licence

On and from the Date for Commissioning Works Commencement, TfNSW must grant (or procure the grant) to the Supplier and the Supplier accepts a licence (**Commissioning Facility Licence**) over the Commissioning Facility Site:

- (b) commencing on the Date for Commissioning Works Commencement;
- (c) until the End Date;
- (d) substantially on the terms set out in Part 1 of Schedule F1; and
- (e) to be formally completed in accordance with paragraphs 1.4 and 1.5.

1.4 Preparation and execution of the Provided Facility Licences

- (a) The Supplier must, as soon as practicable after the date of this deed and before the Date of MFC Practical Completion, provide TfNSW with all information necessary for TfNSW to prepare the Maintenance Facility Licence.
- (b) TfNSW must prepare and deliver execution copies of:
 - (i) the Commissioning Facility Licence (in triplicate) to the Supplier for execution not later than five Business Days after the Date for Commissioning Works Commencement; and
 - (ii) the Maintenance Facility Licence (in triplicate) to the Supplier for execution not later than five Business Days after the Maintenance Facility Licence Commencement Date.

- (c) The Supplier must execute the relevant Provided Facility Licence (in triplicate) 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 by TfNSW's Representative:
 - (i) TAHE must execute the Provided Facility Licences and provide the executed licences to TfNSW; and
 - (ii) TfNSW must execute the Maintenance Facility Licence.
- (e) Following TAHE's execution of the Provided Facility Licences, TfNSW will provide a counterpart of each executed licence to the Supplier.

1.5 Completion of licence details

- (a) The Supplier and TAHE authorise TfNSW to complete the details in the reference schedules of each of the Provided Facility Licences.
- (b) TAHE and the Supplier agree to be bound by the provisions of the Commissioning Facility Licence on and from the Date for Commissioning Works Commencement even if the Commissioning Facility Licence has not been executed by the relevant date.
- (c) TfNSW, TAHE 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.

1.6 Licence to Access NIF Stabling Yards

TfNSW must procure the grant to the Supplier, and the Supplier accepts the grant, of a non-exclusive right to access each NIF Stabling Yard (excluding any NIF Stabling Yard within the Maintenance Facility Site or the Commissioning Facility Site) for the purposes of the Supplier and the Supplier's Personnel:

- (a) carrying out repairs and maintenance to the Trains when they are on the Network;
- (b) recovering Trains which have broken down in service; and
- (c) stabling any Trains (subject to the requirements of the NIF Project Agreements),

in accordance with the terms of this deed and on the terms and conditions set out in Schedule C6.

1.7 Additional MF Works Licence

- (a) TfNSW and TAHE grant to the Supplier, and the Supplier accepts the grant, of a non-exclusive right to access the Maintenance Facility Site for the purposes of the Supplier and the Supplier's Personnel undertaking the Additional MF Works and rectifying Minor Defects in accordance with the terms set out in Schedule J1, Schedule J2 and this Schedule C2 and on the terms and conditions set out in Schedule C7 (**Additional MF Works Licence**).
- (b) TfNSW and TAHE confirm that entry into Amendment Deed No. 2 constitutes approval pursuant to clause 8.5 of the Maintenance Facility Licence.

2. Planning Approvals

2.1 TfNSW to obtain Planning Approvals

- (a) TfNSW has obtained, or will obtain, the Planning Approvals.
- (b) The Supplier is responsible for providing any information required to obtain the Planning Approvals.

2.2 Compliance with Planning Approvals

The Supplier must:

- (a) comply with all relevant conditions and requirements of the Planning Approvals in connection with performance of the Supplier's Activities;
- (b) ensure that the Supplier's Personnel, its Associates and their Personnel comply with all relevant conditions and requirements of the Planning Approvals in connection with performance of the Supplier's Activities;
- (c) provide TfNSW and its Associates with such assistance as may be reasonably required by TfNSW or its Associates to enable TfNSW and its Associates to satisfy and fulfil those conditions and requirements of the Planning Approvals for the Maintenance Facility Site which conditions can only be satisfied by TfNSW; and
- (d) indemnify TfNSW and TAHE against any Loss suffered by TfNSW or TAHE arising out of or in any way in connection with any failure of the Supplier, the Supplier's Personnel, its Associates and their Personnel to comply with any relevant conditions and requirements of the Planning Approvals in connection with performance of the Supplier's Activities.

The Supplier will not be entitled to make, and neither TfNSW nor its Associates will be liable upon, any Claim against TfNSW or its Associates arising out of or in connection with the provision of assistance by the Supplier as contemplated by paragraph 2.2(c) of Schedule C2.

2.3 Changes to Planning Approvals

Notwithstanding clause 28 of this deed, if, arising out of or in connection with a Variation requested by the Supplier or any failure by the Supplier to comply with its obligations under this deed or any other NIF Project Agreement:

- (a) any further environmental impact assessment is required under the EP&A Act (or their equivalents) in connection with the Project;
- (b) TfNSW determines that it is necessary to carry out any further environmental impact assessment under Part 4, Part 5 or Part 5.1 of the EP&A Act (or their equivalents) in connection with the Project;
- (c) a Planning Approval is modified and/or amended under the EP&A Act or the EPBC Act;
- (d) a new Planning Approval is issued under the EP&A Act or the EPBC Act in respect of the Project, either in substitution for or replacement of a Planning Approval or otherwise; or
- (e) any such new Planning Approval is modified under the EP&A Act or the EPBC Act,

then any such events and any actions or additional work arising out of or in connection with any such events will be at the Supplier's cost and risk.

2.4 Legal challenge to Planning Approvals

If there is a legal challenge brought about by way of commencement of court proceedings in relation to the grant of, or compliance with, the Planning Approval, the Supplier must continue to perform the Supplier's Activities unless, as a result of that legal challenge, it is otherwise ordered by a court or directed by TfNSW.

3. Land and the Environment

3.1 Environmental liability and obligations

The Supplier must:

- (a) comply with all Environmental Laws;

- (b) promptly remove any Waste, including rubbish, refuse, debris and other materials, resulting from the Supplier's Activities;
- (c) not cause any Contamination of either Provided Facility Site, any Maintenance Location or any other land;
- (d) not cause any Pollution to either Provided Facility Site or any Maintenance Location unless it is authorised pursuant to any Environmental Law or Approval;
- (e) take reasonable steps to prevent the spillage or escape of Hazardous Materials or other materials onto, from or into either Provided Facility Site or any Maintenance Location;
- (f) immediately notify TfNSW and any relevant Authority of any event or incident which may result in Pollution or Contamination of either Provided Facility Site or any Maintenance Location or involves the spillage or escape of Hazardous Materials or injury or damage to persons or property;
- (g) take immediate steps to stop, control, and clean up any Pollution and/or spillage or escape of any Hazardous Materials arising out of or in connection with the Supplier's Activities or at or around a Provided Facility or Maintenance Location;
- (h) 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
- (i) comply with the directions of TfNSW in accordance with paragraph 3.5.

3.2 Baseline Environmental Site Assessment

- (a) TfNSW must obtain and provide to the Supplier the Baseline Environmental Site Assessment(s):
 - (i) for the Commissioning Facility Site, no later than one month prior to the commencement of the Commissioning Facility Licence; and
 - (ii) for the Maintenance Facility Site, no later than one month prior to the commencement of the Maintenance Facility Licence.
- (b) TfNSW and the Supplier acknowledge and agree that each Provided Facility Site will be in the condition at the Commencement Date as set out in the relevant Baseline Environmental Site Assessment(s) for that Provided Facility Site at the commencement of the relevant Provided Facility Licence.
- (c) The Supplier accepts each Provided Facility Site in its condition (including any Baseline Pre Existing Contamination) at the commencement of the relevant Provided Facility Licence and as set out in the Baseline Environmental Site Assessment(s).

3.3 Environmental Monitoring Report

The Supplier must obtain and provide to TfNSW the Environmental Monitoring Report:

- (a) for the Commissioning Facility Site, every three years from the commencement of the Commissioning Facility Licence; and
- (b) for the Maintenance Facility Site, every three years from the commencement of the Maintenance Facility Licence.

3.4 Responsibility for Contamination

- (a) TfNSW is responsible for any Baseline Pre Existing Contamination (including the soils and groundwater) on, in or under:
 - (i) the Commissioning Facility Site, prior to the relevant Site Access Date in respect of a part or parts of the Commissioning Facility Site; and
 - (ii) the Maintenance Facility Site, prior to the relevant Site Access Date in respect of a part or parts of the Maintenance Facility Site.

- (b) Subject to paragraph 3.4(c), the Supplier is responsible for all Contamination (including the soils and groundwater) present on, in or under either Provided Facility Site or any Maintenance Location from the relevant Site Access Date in respect of a part or parts of the Provided Facility Site or the Maintenance Location, including Contamination:
 - (i) which is disturbed by or interfered with in the carrying out of the Supplier's Activities;
 - (ii) migrates to or from either Provided Facility Site or any Maintenance Location as a result of the Supplier's Activities; or
 - (iii) otherwise arises out of or in connection with the Supplier's Activities.
- (c) The Supplier is not responsible for Contamination from the relevant Site Access Date if the Supplier establishes on reasonable evidence that the Contamination:
 - (i) migrated to the relevant Provided Facility Site or Maintenance Location 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 Supplier's 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.

3.5 Remediation

- (a) The Supplier must do whatever is necessary or TfNSW reasonably requires to:
 - (i) Remediate any Contamination on, in or under either Provided Facility Site or a Maintenance Location, if it:
 - (A) arises in connection with the Supplier's Activities;
 - (B) in the case of the Provided Facility Sites, if the Contamination 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 relevant Provided Facility Site or Maintenance Location is in a state as close as practicable to the state which that Provided Facility Site or Maintenance Location was in before the act or omission in connection with the Supplier's Activities occurred or the state of the Provided 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 either Provided Facility Site or Maintenance Location arising in connection with the Supplier's Activities;
 - (B) in the case of the Provided Facility Sites, if the Pollution 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 relevant Provided Facility Site or Maintenance Location is in a state as close as practicable to the state which that Provided Facility Site or Maintenance Location was in before the act or omission in connection with the Supplier's Activities occurred or the state of the Provided Facility Site or Maintenance Location 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 either of the Provided Facility Site or any Maintenance Location:
 - (A) arising in connection with the Supplier's Activities; or
 - (B) in the case of the Provided Facility Sites, after the Commencement Date, as soon as it occurs (including by restoring the Provided Facility Site or Maintenance Location to a state as close as practicable to the state which that Provided Facility Site or Maintenance Location was in before that breach);
 - (iv) in the case of:
 - (A) the Maintenance Facility Site; and
 - (B) the Commissioning Facility Site during the term of the Commissioning Facility Licence,
 address any Environmental Hazard that has arisen, or in respect of which the condition has changed, after the Commencement Date; and
 - (v) remedy any breach of this paragraph 3.
- (b) The Supplier must provide TfNSW with:
- (i) a draft Final Environmental Site Assessment:
 - (A) for the Commissioning Facility Site, at least six months before the termination date of the Commissioning Facility Licence referred to in paragraph 1.4(b); and
 - (B) for the Maintenance Facility Site, at least twelve months prior to the End Date; and
 - (ii) the Final Environmental Site Assessment:
 - (A) for the Commissioning Facility Site, at least three months before the termination date of the Commissioning Facility Licence referred to in paragraph 1.4(b); and
 - (B) for the Maintenance Facility Site, at least six months prior to the End 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 to TfNSW prior to:
 - (A) for the Commissioning Facility Site, the termination date of the Commissioning Facility Licence referred to in paragraph 1.4(b); and
 - (B) for the Maintenance Facility Site, the End Date,
 certifying that the relevant Provided Facility Site is in the same condition as set out in the Baseline Environmental Site Assessment for that site.

3.6 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 Supplier's Activities under the NGER Legislation and/or EEO Act.

3.7 Provision and reporting of Emissions and Energy Data

- (a) This clause applies if, despite the operation of paragraph 3.6, TfNSW or TAHE incurs liability under or in connection with the NGER Legislation as a result of or in connection with the Supplier's Activities.
- (b) The Supplier must:
 - (i) assist TfNSW and TAHE to comply with the NGER Legislation in relation to the Supplier's Activities; and
 - (ii) provide Emissions and Energy Data to TfNSW within 10 Business Days of receiving a written request for such data from TfNSW.

3.8 Environment Protection Licence

- (a) Subject to paragraph 3.8(c), the Supplier must:
 - (i) if required by Legal Requirements, obtain an Environment Protection Licence in respect of the Supplier's Activities from the earliest to occur of:
 - (A) the date on which the Supplier is first given access to the Commissioning Facility Site pursuant to clause 11.3;
 - (B) the date on which the Supplier is first given access to the Maintenance Facility Site pursuant to clause 11.2;
 - (C) the date on which the Supplier is first given access to a NIF Stabling Yard pursuant to clause 11.5; and
 - (D) the date on which the Supplier is first given access to an Other Site;
 - (ii) ensure that:
 - (A) from each Site Access Date in respect of a part or parts of either Provided Facility Site; and
 - (B) from each Stabling Yard Access Date in respect of a part or parts of any NIF Stabling Yard,

any required Supplier's Environment Protection Licence is varied so as to include each part of the relevant Provided Facility Site or NIF Stabling Yard to which the Supplier has been given access; and
 - (iii) hold any required Environment Protection Licence in respect of the Supplier's Activities until the End Date.
- (b) The Supplier must ensure that any Environment Protection Licence is consistent with the Planning Approvals.
- (c) To the extent that the Supplier's 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.

3.9 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 Approvals;
 - (iii) is required to oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approvals and shall advise

- TfNSW upon achievement of the outcomes contemplated in the Planning Approvals; and
- (iv) is required to advise TfNSW and TfNSW's Representative on the Supplier's compliance with the Planning Approvals.
- (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 Approvals; 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 Approvals; 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 TAHE.

3.10 No warranty or representation

Neither TfNSW nor TAHE warrants or represents:

- (a) that either Provided Facility Site or any Maintenance Location is suitable for any use or any particular use, including the Supplier's Activities;
- (b) anything about the condition of either Provided Facility Site or any Maintenance Location, including in respect of Contamination or Pollution;
- (c) whether or not there are any Hazardous Materials on either Provided Facility Site or any Maintenance Location;
- (d) that any information about any past use of either Provided Facility Site or any Maintenance Location is accurate; or
- (e) that either Provided Facility Site or any Maintenance Location is or is not Contaminated or Polluted, or the nature or extent of any Contamination or Pollution.

3.11 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 3.

3.12 Survival

The rights and obligations contained in this paragraph 3 survive the termination or expiration of this deed.

4. Other obligations

4.1 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 Supplier's 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 and any Third Party Agreement 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.

4.2 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 a Provided Facility Site (or a part) in accordance with this deed, except where the Access Schedule provides that the Supplier will not have control of the relevant Provided Facility Site:
 - (i) TfNSW:
 - (A) engages UGL Rail Services Pty Limited (ABN 58 000 003 136) as Principal Contractor (except where the Supplier is commissioning a construction project and has itself engaged a Principal Contractor):
 - (I) for the MFI Works at the Maintenance Facility Site; and
 - (II) to the extent that any other Supplier's Activities at a Provided Facility Site include a construction project involving construction work costing at least [REDACTED] (**CW Activities**);
 - (B) authorises UGL Rail Services Pty Limited (ABN 58 000 003 136) to have management and control, for the purposes only of the WHS Law, of each workplace at which MFI Works or 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 UGL Rail Services Pty Limited (ABN 58 000 003 136) prior notice of any Other Contractor undertaking work:
 - (I) at the Maintenance Facility Site during the Maintenance Facility Licence; or

- (II) at the Commissioning Facility Site during the Commissioning Facility Licence,
before such work commences; and
- (ii) except where the Supplier is commissioning a construction project and has itself engaged a Principal Contractor, UGL Rail Services Pty Limited (ABN 58 000 003 136) accepts the engagement as Principal Contractor and agrees to discharge the duties imposed on a Principal Contractor by the WHS Law and UGL Rail Services Pty Limited (ABN 58 000 003 136) 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) UGL Rail Services Pty Limited (ABN 58 000 003 136)'s engagement as Principal Contractor under the WHS Regulation:
 - (i) will be in force until the completion of the MFI Works or CW Activities (as the case may be); and
 - (ii) may be revoked prior to that date by TfNSW giving 10 Business Days' notice to the UGL Rail Services Pty Limited (ABN 58 000 003 136) of its revocation or on termination of this deed.
- (c) In this paragraph 4.2 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 MFI Works are situated or the Supplier's Activities are carried out (as the case may be) requires that:
 - (A) a person:
 - (I) 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
 - (II) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS 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 4.2(d)(i) are met (including any requirement to be authorised, licensed, qualified 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 UGL Rail Services Pty Limited (ABN 58 000 003 136) as Principal Contractor under this paragraph 4.2 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,
- UGL Rail Services Pty Limited (ABN 58 000 003 136) 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 4.2(b).
- (f) At any time when the Access Schedule provides that UGL Rail Services Pty Limited (ABN 58 000 003 136) or the Supplier will not have control of a part of either Provided Facility Site, the Supplier:
- (i) acknowledges that an Other Contractor who is specified in the Access Schedule as being in control of the part of the Provided Facility Site is the Principal Contractor in respect of all construction work carried out by or on behalf of TfNSW on the relevant part of the Provided Facility Site during the period in which that Other Contractor is in control of that part of the Provided Facility Site; and
 - (ii) must comply with any exercise by the Other Contractor referred to in paragraph 4.2(f)(i) of such authority as is necessary to enable that Other Contractor to discharge the responsibilities imposed on a Principal Contractor by the WHS Law.
- (g) To the extent that UGL Rail Services Pty Limited (ABN 58 000 003 136) is engaged as the Principal Contractor, UGL Rail Services Pty Limited (ABN 58 000 003 136)'s obligations as Principal Contractor under the WHS Law include, among other things:
- (i) preparation and maintenance of a WHS management plan for the relevant Provided Facility Site;
 - (ii) preparation of and compliance with appropriate Safe Work Method Statements; and
 - (iii) displaying signs that are clearly visible from outside the relevant Provided Facility Site identifying UGL Rail Services Pty Limited (ABN 58 000 003 136) as the 'principal contractor' for the purposes of the WHS Law and stating the contact telephone numbers of UGL Rail Services Pty Limited (ABN 58 000 003 136) (including an after-hours emergency telephone number).
- (h) If UGL Rail Services Pty Limited (ABN 58 000 003 136) is not engaged as the Principal Contractor for a particular site or UGL Rail Services Pty Limited (ABN 58 000 003 136)'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.
- (i) UGL Rail Services Pty Limited (ABN 58 000 003 136) must ensure that where UGL Rail Services Pty Limited (ABN 58 000 003 136) and an Other Contractor (or any other person engaged as a Principal Contractor) are engaged to work in the same vicinity:

- (i) the areas for which UGL Rail Services Pty Limited (ABN 58 000 003 136) and the Other Contractor 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 Other Contractor, in consultation with TfNSW.

4.3 Sustainability

- (a) The Supplier must comply with the sustainability requirements set out in the SPR, including those in SPR Appendix 09.
- (b) Without limiting paragraph 4.3(a), the Supplier must achieve:
 - (i) a "Design" rating score of at least 65 for the design of the MFI Works; and
 - (ii) an "Operating" rating score of at least 65 for the MFI Works, from ISCA.
- (c) In order to achieve the ratings referred to in paragraph 4.3(b), but without limiting that paragraph, the Supplier must:
 - (i) register with the ISCA for the purposes of obtaining a rating;
 - (ii) cooperate and liaise with the ISCA, TfNSW and the MFC Contractor as required; and
 - (iii) provide any documentation required by the ISCA and TfNSW.
- (d) The Supplier must not do anything that prevents:
 - (i) a "Design" rating score of at least 65 for the design of the MFC Works; or
 - (ii) an "As-Built" rating of at least 65 for the construction of the MFC Works,
 and must give all reasonable assistance to TfNSW and the MFC Contractor to achieve the above.

4.4 EP&A Act and Limitation Act waiver

- (a) The Supplier waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 109ZK of the EP&A Act in respect of the Design Life of any Asset or other Deliverable to which those Acts apply where that Design Life is for a period longer than provided for in those Acts.
- (b) If the waiver referred to in paragraph 4.4(a) is held to be without effect or otherwise unenforceable, or if it is severed from this deed, the Supplier indemnifies each Indemnified Party against all Loss incurred by the Indemnified Party arising out of the loss of the benefit of the waiver.
- (c) The indemnity in paragraph 4.4(b) is to continue and remain in full force and effect in respect of each relevant Asset or other Deliverable until the expiry of the Design Life of that Asset or other Deliverable.
- (d) The parties agree that any action by an Indemnified Party on the indemnity in paragraph 4.4(b) is not a "building action" for the purposes of section 109ZI of the EP&A Act.
- (e) Nothing in this paragraph 4.4 limits the operation of any other indemnity in this deed.

4.5 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 Supplier's Activities at the Maintenance Facility and Maintenance Facility Site;

- (b) must pay for any Utility Services and all connections, if required, for all Utility Services (including electricity) it requires to perform the Supplier's Activities at the Commissioning Facility and Commissioning Facility Site;
- (c) must investigate, protect, relocate, modify and provide for all Utility Services necessary for it to comply with its obligations under the NIF Project Agreements in relation to the MFI Works, the Additional MF Works, the Maintenance Services, Rolling Stock Supply Works and the Simulator Supply Works;
- (d) must not, without TfNSW's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the Provided Facilities or Provided Facility Sites that are not necessary to allow the Supplier to carry out the Supplier's Activities;
- (e) 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 Provided Facilities or Provided Facility Sites;
- (f) must consult with and keep TfNSW fully informed as to the Supplier's dealings with the providers of Utility Services;
- (g) must ensure there are no unplanned disruptions to the Utility Services in carrying out Supplier's Activities at the Provided Facilities or Provided Facility Sites 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 Supplier's Activities;
- (h) must ensure that maintenance points for Utility Services are located within the Provided Facilities or Provided Facility Sites and only as approved in writing in advance by TfNSW's Representative (such approval not to be unreasonably withheld or delayed);
- (i) assumes the risk of the existence, location, condition and availability of Utility Services (in so far as they affect the Supplier's Activities); and
- (j) 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; or
 - (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 C3 – Planning Approvals

Abbreviations

CEMP	Construction environmental management plan
CLP	Community liaison plan
EIA	Environmental impact assessment
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i> (NSW)
EPL	Environment protection licence issued by the EPA under the <i>Protection of the Environment Operations Act 1997</i> (NSW)
EMR	Environmental management representative
ISO	International Standards Organisation
OEH	NSW Office of Environment and Heritage
OOHWP	Out of hours work protocol
PMEM	Principal Manager Environment Management, TfNSW (or nominated delegate)
PMS	Principal Manager Sustainability, TfNSW (or nominated delegate)
REF	Review of environmental factors
TfNSW	Transport for NSW

Definitions

construction

Where used, includes all work in respect of the construction of the Maintenance Facility, any MFI Works and any Additional 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 representative appointed to the Project or a delegate nominated by TfNSW.

Facility

Has the meaning given in paragraph 1.

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 Facility but does not include commissioning trials of equipment or temporary use of parts of the 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, TfNSW.

General assumptions

1. A purpose built maintenance facility will be constructed on the Central Coast of New South Wales and will be integrated with the NSW electrified rail network (**Facility**). The Facility will enable the minor assembly finishing of electric trains prior to entry into service, and the servicing and maintenance of electric trains for approximately 15 years. The Facility will continue to be used for these purposes beyond the contract with the Supplier.
2. The construction and operation of a proposed Facility on the Central Coast of New South Wales would be subject to an assessment and determination under either Part 5 or Part 5.1 of the EP&A Act, which is currently underway. The Supplier will need to comply with the conditions of the Planning Approval which are applicable to the Supplier's 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.
3. Where and if applicable, works and activities pertaining to the construction, operation and maintenance of the Facility must comply with the relevant conditions of the Sydney Trains' Environmental Protection Licence 12208, in particular Operating Conditions No's. O1, O2, O3, and O4. The current version is held on the following EPA website
<http://www.epa.nsw.gov.au/prpoeoapp/ViewPOEOLicence.aspx?DOCID=51333&SYSUID=1&LICID=12208>.
4. The Facility will play an important role in ensuring that fleet assembly is finished, that engineering and safety specifications of rolling stock are met and that rolling stock is adequately maintained, cleaned and repaired. An additional objective of the Facility is to enable future upgrades of existing or future rolling stock as required.
5. The Planning Approval for the Facility will permit the construction and operation of the Facility for rolling stock maintenance, repair, train washing, wheel profiling, decanting and water tanking facilities located at the site.
6. The Facility will be constructed on land owned by TAHE and/or TfNSW, and operated and maintained by the Supplier (who will have obtained the requisite accreditation from ONRSR) for the duration of the Contract Term.

7. It is envisaged that the Planning Approval would permit operation of the Facility on a 24 hours per day, 7 days per week basis.

Condition														
General														
Terms of approval The Project shall be carried out generally in accordance with the environmental impact assessment (EIA) for this Project, which comprises the following documents: <table border="1"> <thead> <tr> <th>DOCUMENT</th> <th>AUTHOR</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>New Intercity Fleet Maintenance Facility Project – Review of Environmental Factors</td> <td>WSP Parsons Brinckerhoff</td> <td>2 June 2016</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.			DOCUMENT	AUTHOR	DATE	New Intercity Fleet Maintenance Facility Project – Review of Environmental Factors	WSP Parsons Brinckerhoff	2 June 2016	[Insert project name] Project – Submissions Report [if relevant]	[author]	[DD MM YYYY]	[Insert project name] Project – Determination Report	TfNSW	[DD MM YYYY]
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[Insert project name] Project – Submissions Report [if relevant]	[author]	[DD MM YYYY]												
[Insert project name] Project – Determination Report	TfNSW	[DD MM YYYY]												
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 Legal Requirement 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 Technical Director Project Communications prior to the commencement of construction and implemented, reviewed and revised as appropriate during construction of the Project.														

Condition
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 Technical Director Project Communications 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.
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

Condition
(n) non-compliance and corrective/preventative action procedures The CEMP shall: (a) comply with the Conditions of Approval, conditions of any licences, permits or other Approvals issued by government authorities for the Project, all Legal Requirements, and accepted best practice management (b) comply with the relevant requirements of the <i>Guideline for Preparation of Environmental Management Plans</i> (Department Infrastructure, Planning and Natural Resources, 2004) (c) include an Environmental Policy 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 <i>Guide to Preparing ECMs</i> 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 construction activities and monitoring implementation (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 (d) reporting weekly to the Proponent, or as required by the PMEM

Condition	
(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
(f)	requiring reasonable steps to be taken to avoid or minimise unintended or adverse environmental impacts
(g)	reviewing corrective and preventative actions to ensure the implementation of recommendations made from the audits and site inspections
(h)	providing reports to the Proponent on matters relevant to the carrying out of the EMR role as necessary
(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
(j)	reviewing and approving updates to the CEMP
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 5dBA 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)
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 <i>Construction Noise Strategy</i> and the EPA <i>Interim Construction Noise Guideline</i> (July 2009). The mitigation measures shall include, but not necessarily be limited to:	
(a)	details of construction activities and an indicative schedule for construction works
(b)	identification of construction activities that have the potential to generate noise and/or vibration impacts on surrounding land uses, particularly sensitive noise receivers
(c)	detail what reasonable and feasible actions and measures shall be implemented to minimise noise impacts (including those identified in the EIA)
(d)	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
(e)	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

Condition
delegate) or as approved by EPA (where relevant to the issuing of an EPL). The OOHWP should be consistent with the TfNSW <i>Construction Noise Strategy</i> (f) 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.
Vibration criteria Vibration (other than from blasting) resulting from construction and received at any structure outside of the Project shall be limited to: (a) for structural damage vibration - German Standard DIN 4150:Part 3 – 1999: <i>Structural Vibration in Buildings: Effects on Structures</i> (b) for human exposure to vibration – the acceptable vibration values set out in the <i>Environmental Noise Management Assessing Vibration: A Technical Guideline</i> (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 laying of [rail track/ relevant surface] or the 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 NSW 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 [rail track/ relevant surface] operations plan 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 laying of [rail track/relevant mode] or the 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. 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. [insert any site specific considerations as relevant]

Condition
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) <i>The National Environment Protection (Assessment of Site Contamination) Amendment Measure (NEPM) 2013</i> (b) <i>NSW EPA (1995) Sampling Design Guidelines</i> (c) <i>AS4482 Guide to investigation and sampling of site with potentially contaminated soil (2005)</i> (d) <i>CLM Act</i> (e) any applicable portions of <i>State Environmental Planning Policy 55 – Remediation of Land</i>. The report shall be prepared in accordance with the DECCW's <i>Guidelines for Consultants Reporting on Contaminated Sites</i> (2011). The report shall include a preliminary waste classification in accordance with the NSW EPA <i>Waste Classification Guidelines</i> (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 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 <i>Guidelines for Consultants Reporting on Contaminated Sites</i>. 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: <i>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].</i>
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 SafeWork NSW 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: <i>In circumstances where both previously unidentified asbestos Contamination and other Contamination are discovered within a common area, nothing in these conditions shall prevent the</i>

Condition
<i>preparation of a single investigation report to satisfy the requirements of both Condition [X] and Condition [X].</i>
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 <i>Chemical Storage and Spill Response Guideline</i> and Australian and ISO standards. These measures shall include: (a) 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 (b) 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 (c) all Hazardous Materials spills and leaks to be reported to site managers and actions to be immediately taken to remedy spills and leaks (d) 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) <i>Demolition of Structures</i> would be undertaken by an appropriately qualified environmental scientist prior to the demolition of <u>[insert relevant element to be demolished]</u>. Subsequent removal of any Hazardous Material is to be undertaken in accordance with Environmental Law and applicable EPA and SafeWork NSW guidelines.
Erosion and sediment control
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 <i>Managing Urban Stormwater; Soils and Construction 4th Edition</i> (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. <u>Unexpected Heritage Finds Guideline - 3TP-SD-115</u>
Aboriginal Cultural Heritage Assessment Report The Proponent shall prepare an Aboriginal cultural heritage assessment report for the portion of the site which has been identified as having the potential for moderate or high potential archaeological significance, and must include Aboriginal community consultation and archaeological test excavation.
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:

Condition
(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 (f) details of the percentage of waste diverted from landfill and the percentage of spoil beneficially reused (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) (h) details of any review and amendments to the CEMP resulting from construction during the reporting period (i) any other matter as requested by the PMEM. 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

Condition	
(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 concealed within a month
(d)	any unauthorised advertising material will be removed or concealed within 24 hours.
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 Facility 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 Supplier.	
Flora and fauna Removal of trees or vegetation Separate approval, in accordance with TfNSW's Application for Removal or Trimming of Vegetation, 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.	
Vegetation management plan Prior to construction, the Proponent must prepare and implement a vegetation management plan incorporating the following measures to minimise the ecological impact of the Project: (a) implementation of pre-clearing and clearing protocols by an experienced fauna ecologist; (b) adequately informing site personnel, prior to construction, of environmental management procedures including issues related to flora and fauna management, weed control, erosion and sediment control; (c) implementation of flora and fauna control measures; (d) clear demarcation on-site of the limits to clearing prior to construction to avoid unnecessary vegetation and habitat removal (such as through the installation of fencing around the Project site); and (e) managing weed species within the study area to control further spread.	
Biodiversity Offsets <i>[Subject to outcomes of EIA]</i>	
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 <i>[Insert project type]</i> (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 Projects Delivery Office Urban Design Team.	

Condition
Property Property condition surveys <i>[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.]</i> 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 <i>Sustainable Design Guidelines Version 3.0</i> (b) a statement outlining the Proponent's own corporate sustainability obligations, goals, targets, in house tools, etc (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 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:

Condition	
(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 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 [<i>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</i>] and mitigation measures proposed
(b)	assessment of the [<i>identify relevant intersection</i>] 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 to the proposed design with respect to the existing surrounding landscape, built form, behaviours and use-patterns
(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 <i>Sustainable Design Guidelines Version 3.0</i>

Condition	
(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
(b)	prepared in consultation with Council and relevant stakeholders
(c)	prepared by a registered architect and/or landscape architect
(d)	accepted by TfNSW – Transport Projects Delivery Office Urban Design Team.
Hydrology	
Flood Impact Assessment	
Prior to commencing construction, the Proponent shall prepare a detailed 'Flood Impact Assessment' of the site regarding the impact of the Project on the regional flood and local drainage processes.	
Other hydrological and flooding measures	
The Proponent shall ensure:	
(a)	all Project elements are designed above the 1 in 100 flood event (including consideration of climate change impacts);
(b)	a hydrologic and hydraulic assessment is undertaken to confirm that additional structures within the Project area would not have substantial adverse effects on existing drainage; and
(c)	the existing track drainage system remains operational throughout the construction of the main line siding and turnouts within the Facility.

Proposed assumptions applicable to both construction and operational phases assumptions

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 the construction or operation of the 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 Legal Requirements.
3. The Supplier shall be responsible for Environmental impacts 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.
5. The Proponent shall provide scour protection at both ends of culvert extensions to reduce erosion impacts.
6. The Proponent must:
 - a. restrict clearing of vegetation to those areas where it is necessary;
 - b. ensure a vegetation buffer of existing planting remains between, within or outside the Project boundary to provide visual screening of the Facility where possible;
 - c. as soon as is practicable, rehabilitate vegetated areas where ground is disturbed by the Project;
 - d. plant native trees and shrubs at varied heights to screen the built form of the Facility and reduce the scale of the Facility; and
 - e. reinforce the local semi-rural landscape character through the use of appropriate native vegetation, including that from identified endangered vegetation communities.

7. The Proponent's TMP must address measures:
 - a. to manage traffic flows around Enterprise Drive and the proposed access road to the Maintenance Facility; and
 - b. measures to provide construction communication to inform the community and local residents of vehicle movements and anticipated effects on the local road network relating to the site works, where required.

Waste

8. Any hazardous waste must be stored in an environmentally safe manner and not come into contact with any incompatible waste.
9. If the Planning Approval for the Project is subject to an approval process under Part 5.1 of the EP&A Act, 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.
10. The Supplier must ensure that wastes generated as a result of the Supplier's activities on the site is assessed and classified in accordance with the Waste Classification Guidelines (EPA, 2014) prior to disposal.
11. 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.
12. Transport vehicles must be kept in a clean condition and be constructed and maintained so as to prevent waste spillage.
13. 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:

14. The Supplier is to comply with Part 5.7 of the POEO Act (Duty to Notify Pollution Incidents).
15. The Supplier shall notify TfNSW of any pollution incident requiring notification under section 148 of the POEO Act within 48 hours of 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.
16. 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 Legal Requirement. 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).
17. For the purposes of the POEO Act, the Supplier is taken to be the occupier of the Facility, from the commencement of the Maintenance Facility Licence.
18. For the purposes of the CLM Act, the Supplier is taken to be the occupier of the 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 after the completion of the Contract Term).

Compliance tracking:

19. 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 duration of the Contract Term. The Program must include:

- a. provisions for periodic review of the compliance status of the 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 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:

20. The Supplier shall ensure that all licences, permits and Approvals are obtained as required by any Legal Requirement and maintained with respect to the Facility. None of these conditions removes the obligation of the Supplier to obtain, renew or comply with such licences, permits or Approvals.
21. The Supplier shall, where reasonable and feasible, offset carbon emissions generated by the operation of the Facility.

Planning Approval – Draft Assumptions for the Operation of the Maintenance Facility

Operational phase proposed conditions:

22. An operational environmental management plan (**OEMP**) for the operational phase of the 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 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.
- 23. 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 CEMP;
 - b. submit a copy of the OEMP to TfNSW for approval after it has been endorsed by the EMR.
- 24. 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.
- 25. The following management and mitigation measures would be implemented during operation, where these are reasonable and feasible:
 - a. where possible or practicable, limiting of vehicle trips to outside of the road network peak hour for improved safety and intersection operation;
 - b. where possible or practicable, scheduling delivery and service vehicles to the site out of peak hour periods;
 - c. informing staff and visitors to the site of the preferred travel route and primary access;
 - d. monitoring intersection access and obtaining feedback from staff on its operation; and
 - e. monitoring any parking overflow on the surrounding road network (if any).
- 26. A hazardous material procedure, including procedures for managing spills and refuelling, is to be developed and implemented to minimise groundwater contamination from chemical spills and leaks.

Noise and Vibration:

- 27. Compliance monitoring shall be undertaken within 3 months of commencement of operations of the Facility 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 Facility will lead to greater noise impacts than that prescribed in the Industrial Noise Policy, the Supplier is to identify and implement additional reasonable and feasible noise mitigation measures in consultation with relevant stakeholders and the affected residents/receivers.
- 28. 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. Noise generated from the Facility shall also include associated traffic movements.
- 29. The Supplier shall ensure that warning sounds associated with the movements of rolling stock occur only in emergency traffic or pedestrian safety situations but not as part of normal operations of the Facility. Testing of warning sounds on rolling stock in the Facility shall only be undertaken wholly within the Maintenance Building. No testing of warning sounds is permitted to take place at the Facility unless it meets the noise goals in the Industrial Noise Policy.
- 30. The Supplier is not to undertake any testing of train horns within the Facility unless otherwise approved by TfNSW following development of a satisfactory low volume horn testing process.
- 31. The maintenance shed doors would remain closed when activities are occurring inside the sheds, where reasonable.

Schedule C4 – MFI Works Licence

1. Grant of MFI Works Licence

Without limiting the terms of this deed, TfNSW grants (or must procure the grant) to the Supplier a non-exclusive licence to access and occupy the Maintenance Facility Site for the purposes specified in paragraph 1.1 of Schedule C2 and in accordance with the terms of Schedule C2 governing the MFI Works Licence and for the term specified in paragraph 2, subject to the conditions contained in this Schedule C4 and this deed generally.

2. Licence term

The term of the licence referred to under paragraph 1:

- (a) commences on the Date for MFI Works Commencement and endures until the Date of MFI Practical Completion; and
- (b) enlivens prior to the grant of the Maintenance Facility Licence and after the Date of MFI Practical Completion if and to the extent required in accordance with a Minor Defect Rectification Plan approved under paragraph 2.4 of Schedule C1, in respect of the Maintenance Facility Site, subject to any extension to the licence term agreed by TfNSW in writing.

3. Use of the Maintenance Facility Site

- (a) Prior to the Date of MFI Practical Completion, the Supplier must not use any part of the Maintenance Facility Site for any purpose other than as provided in paragraph 1.1 of Schedule C2.
- (b) The Supplier must not do anything in or about the Maintenance Facility Site which may constitute a breach of the Supplier's obligations under a Legal Requirement.

4. Supplier obligations

4.1 No proprietary interest

The Supplier:

- (a) does not have exclusive possession or occupation of the Maintenance Facility Site; and
- (b) is not a tenant of TfNSW.

4.2 Care of Maintenance Facility Site

From the commencement date of the MFI Works Licence, the Supplier:

- (a) must not, subject to the work health and safety requirements of the Supplier and the MFC Contractor, do anything to interfere with TfNSW's or TfNSW's employees' or Other Contractors' rights of access to the Maintenance Facility Site;
- (b) must not make any structural additions to the Maintenance Facility Site other than in accordance with this deed; and

- (c) must ensure that at the expiry of the licence term (on the date determined in accordance with paragraph 2 above), the part of the Maintenance Facility Site the subject of the licence is in no worse condition than it was when the licence commenced, except to the extent that the relevant change has been unavoidably altered by MFI Works or the MFC Works.

4.3 Transfer and other dealings

The Supplier must not transfer, assign, sub-licence or grant an encumbrance over or otherwise deal with the Maintenance Facility Site the subject of this licence except with TfNSW's prior written approval.

Schedule C5 – Access Schedule

1. General

- (a) Without limiting the Supplier's other obligations under this deed in relation to the Maintenance Locations and Commissioning Facility Site, the Supplier must, in executing the Supplier's Activities, comply with the requirements set out in this Schedule C5.
- (b) The Supplier will be given access to the parts of the Maintenance Locations and Commissioning Facility Site at the times and subject to compliance by the Supplier with the conditions set out in this Schedule C5.
- (c) In this Schedule C5:

"Supplier's MFI Works Notice" means a written notice issued by the Supplier to TfNSW that provides at least 10 Business Days' notice of the date that the Supplier requires access to a particular Worksite to perform the MFI works. The Supplier's MFI Works Notice must include the following details:

 - (i) The date the Supplier requires access to the particular Worksite;
 - (ii) The period of time the Supplier requires access to the particular Worksite; and
 - (iii) Details of the nature of the works and or temporary works to be carried out in the particular Worksite.

"Worksite" means those worksites identified in Table 1 below.

2. Worksite

The Maintenance Locations include the Worksites identified in Table 1 below.

Table 1 – Worksites

Worksite description	Party in control of the Worksite	Indicative Worksite reference identified on drawing
Decant connection points will be located on 'maintenance roads 2, 3 and 4'.	MFC Contractor	A
Wheel condition monitoring equipment will be located on the 'arrival road' between 'chainage 94km200 and 94km300'.	MFC Contractor	B
Bogie exchange will occur on 'maintenance road 1', with a separate bogie storage location in the north east section of the Maintenance Facility.	MFC Contractor	C & D
Wheel lathe will be located adjacent to the Maintenance Facility on the 'wheel lather road' between 'chainage 94km850 to 94km950'.	MFC Contractor	E
Storage area will be located in the north eastern section of the Maintenance Facility.	MFC Contractor	F
Office fitout and 'administration building' will be located in the north eastern section of the Maintenance Facility, adjacent to the 'storage area'.	MFC Contractor	G
Laydown area for MFI Works will be located at 'chainage 95km200'.	MFC Contractor	H

3. Access and Use Conditions

- (a) The Supplier must comply with the following general conditions in relation to the Maintenance Locations and the Commissioning Facility Site:
 - (i) the Supplier must comply with the relevant licence issued to the Supplier in respect of the Maintenance Location or Commissioning Facility Site (as relevant);
 - (ii) the Supplier must comply with the conditions of all leases, licences and easements under which TfNSW or NSW Rail Entity is entitled (as against the owner of a part of the Maintenance Location or the Commissioning Facility Site) to have access to a part of the Maintenance Location or the Commissioning Facility Site (including any Third Party Agreements);
 - (iii) property owners and/or their tenants shall have access to the Maintenance Facility Site and the Commissioning Facility Site, including any Worksites, to facilitate the undertaking of emergency repairs or maintenance on their properties or premises or emergency response in general; and
 - (iv) the Supplier must protect all existing Utility Services within and adjacent to the Worksites in accordance with the requirements of the respective utility companies.
- (b) The Supplier acknowledges that the Maintenance Facility Site, the Commissioning Facility Site and NIF Stabling Yards may include vehicular driveways or access and egress points that are shared with property owners, their tenants and/or Other Contractors. The Supplier must not impede or interfere with the function and use of these driveways or access and egress points.
- (c) The Supplier acknowledges that the Maintenance Facility Site, the Commissioning Facility Site and NIF Stabling Yards may extend across, over and under railways. The Supplier will not have exclusive use of these railways. The Supplier must coordinate its use of these railways with the NSW Rail Entities, the MFC Contractor and Other Contractors.
- (d) TfNSW's Representative may, in its absolute discretion at any time, and from time to time, by notice to the Supplier unilaterally extend or vary any one or more of the access periods identified in Table 2 by a period of no more than three months. TfNSW's Representative is not required to exercise this discretion for the benefit of the Supplier.
- (e) Where TfNSW's Representative exercises its rights under paragraph 3(d) within 12 months of the Commencement Date, the Supplier acknowledges and agrees that it will not be entitled to make, and TfNSW and TfNSW's Associates will not be liable upon, any Claim against TfNSW or TfNSW's Associates arising out of or in connection with the exercise by TfNSW's Representative of its rights under paragraph 3(d).
- (f) The Supplier must provide to TfNSW's Representative a Supplier's MFI Works Notice.
- (g) The Supplier acknowledges and agrees that notwithstanding any other provision of this deed, it will not be entitled to make, and TfNSW and TfNSW's Associates will not be liable upon, any Claim against TfNSW or TfNSW's Associates arising out of or in connection with the Supplier's failure to obtain access to the Maintenance Facility Site before 31 December 2019.

Table 2 – Maintenance Facility Site (Worksite) Indicative Access Dates for MFI Works

Worksite identified on drawing	Indicative access dates	General description of Supplier's activities to be performed within Worksite
A and H		Installation of decant fittings

Worksite identified on drawing	Indicative access dates	General description of Supplier's activities to be performed within Worksite
B and H	[REDACTED]	Delivery and installation of wheel conditioning monitoring equipment
C, D and H	[REDACTED]	Delivery and installation of bogie turntables, train jacks, bogie storage equipment
E and H	[REDACTED]	Delivery and installation of underfloor wheel lathe
F and H	[REDACTED]	Delivery and installation of store racking equipment
G and H	[REDACTED]	Installation of office furniture and information and communications technology equipment

Table 3 – Maintenance Facility, the Commissioning Facility and NIF Stabling Yards Access Dates

Facility/Yard	Access dates	General description of Supplier's activities to be performed within the facility or yard
Maintenance Facility	[REDACTED]	Assist with the commissioning of the facility and installation of specialist equipment
Maintenance Facility	[REDACTED]	1. Maintenance Services 2. Commissioning Works 3. Additional MF Works
Commissioning Facility	[REDACTED]	1. Mobilisation work at the Commissioning Facility, including office and stores fitout, deliveries for rotobles and consumables, and staff training 2. Commissioning Works 3. Maintenance Services
Commissioning Facility	[REDACTED]	1. No Commissioning Works are to be performed 2. Subject to Schedules I, Maintenance Services
Wickham Station	[REDACTED]	Carry out checks and rectify Defects
Wickham Stabling	[REDACTED]	Carry out checks and rectify Defects
Broadmeadow	[REDACTED]	1. Install facilities for mobile maintenance crews 2. Carry out checks and rectify Defects
Kangy Angy Standing Roads* within the Maintenance Facility Site	[REDACTED]	Carry out checks and rectify Defects
Gosford	[REDACTED]	Carry out checks and rectify Defects
Mt Victoria	[REDACTED]	1. Install facilities for mobile maintenance crews 2. Carry out checks and rectify Defects

Facility/Yard	Access dates	General description of Supplier's activities to be performed within the facility or yard
Lithgow		Carry out checks and rectify Defects
Kiama		Carry out checks and rectify Defects
Port Kembla		Carry out checks and rectify Defects
Wollongong		1. Install facilities for mobile maintenance crews 2. Carry out checks and rectify Defects
Sydney Terminal		Carry out checks and rectify Defects
Eveleigh		Carry out checks and rectify Defects

Note:

"Kangy Angy Standing Roads*" denotes external standing roads 6 and 7.

Appendix 1

This appendix contains the following drawings:

1. NIF-MF-WORKSITE-2 REV.*A1 Sheet 2 of 4
2. NIF-MF-WORKSITE-3 REV.*A1 Sheet 3 of 4
3. NIF-MF-WORKSITE-4 REV.*A1 Sheet 4 of 4

Schedule C6 – Access to NIF Stabling Yards

1. Grant of NIF Stabling Yards Licences

Without limiting the terms of this deed, the Licensor will grant (or TfNSW must procure the grant) to the Supplier and its Associates a non-exclusive licence in respect of each individual NIF Stabling Yard (excluding any NIF Stabling Yard within the Maintenance Facility Site), to access and use that NIF Stabling Yard for the periods set out in the Access Schedule and the Train Plan Parameters and for the term specified in paragraph 3, subject to the conditions contained in this Schedule C6 and this deed generally.

2. Description

Each NIF Stabling Yard Licence will include an appropriate description and plan identifying the area or areas of the NIF Stabling Yard to which the Supplier is granted access under the licence and any restrictions on that access that are particular to the relevant NIF Stabling Yard.

3. Licence term

The term of each NIF Stabling Yard Licence will:

- (a) commence on the commencement date; and
- (b) continue in force for the relevant period,

in respect of each NIF Stabling Yard, as set out in the Access Schedule and Train Plan Parameters for that NIF Stabling Yard. Any extension to the licence term agreed by TfNSW and the Licensor must be in writing.

4. Use of a NIF Stabling Yard

- (a) The Supplier is not permitted to use any part of a NIF Stabling Yard for any purpose other than:
 - (i) for carrying out repairs and maintenance to the Trains when they are on the Network;
 - (ii) recovering Trains which have broken down in service; and
 - (iii) stabling any Trains (subject to the requirements of this deed).
- (b) Each NIF Stabling Yard Licence will require the Supplier to:
 - (i) comply with, and ensure that its Associates comply with:
 - (A) the Train Operating Conditions Manual;
 - (B) the Network Rules;
 - (C) the Interface Protocols;
 - (D) all reasonable requirements and directions of TfNSW and any other NSW Rail Entity (which may include the development of procedures for access

to Trains at NIF Stabling Yards which will need to be endorsed by TfNSW or any other NSW Rail Entity prior to implementation); and

- (E) the other requirements of this deed;
- (ii) without limiting or otherwise restricting any of its obligations under this deed, ensure that all of its Personnel accessing Trains at any NIF Stabling Yard:
 - (A) are fully aware of any requirements of the NSW Rail Entities for accessing Trains at the NIF Stabling Yard, including advising their presence to the relevant officer in charge when in attendance;
 - (B) have the necessary safety qualifications and certifications and understanding of their roles as required by the Network Rules; and
 - (C) are familiar with the local emergency procedures for the relevant NIF Stabling Yard; and
- (iii) not do anything in or about a NIF Stabling Yard which may constitute a breach of the Supplier's obligations under a Legal Requirement.

5. Supplier obligations

5.1 No proprietary interest

A NIF Stabling Licence:

- (a) will not grant the Supplier exclusive possession, occupation or use of any NIF Stabling Yard; and
- (b) will not constitute the Supplier to be a tenant of the Licensor.

5.2 Care of NIF Stabling Yard

A NIF Stabling Yard Licence will require that, from the commencement date of the NIF Stabling Yard Licence, the Supplier:

- (a) must not, subject to any contrary requirement of the WHS Law, do anything to interfere with any rights of TfNSW, any NSW Rail Entity or Other Contractors' rights of access to the relevant NIF Stabling Yard;
- (b) must not make any structural alterations to the relevant NIF Stabling Yard; and
- (c) must ensure that at the expiry of the term of the relevant NIF Stabling Yard Licence (on the date determined in accordance with paragraph 3 above), the part of the NIF Stabling Yard that is the subject of the licence is in no worse condition than it was when the licence commenced.

5.3 Transfer and other dealings

The NIF Stabling Yard Licence will mandate that the Supplier must not transfer, assign, sub-licence or grant an encumbrance over or otherwise deal with any NIF Stabling Yard the subject of the relevant NIF Stabling Yard Licence except with TfNSW's and the Licensor's prior written approval.

Schedule C7 – Additional MF Works Licence

1. Grant of Additional MF Works Licence

Without limiting the terms of this deed, the parties acknowledge and agree that the 'Licence for Permitted Use (Maintenance Facility) – New Intercity Fleet' between TfNSW, TAHE and the Supplier dated 21 October 2021 (being the Maintenance Facility Licence) will apply in respect of the MF Site and for this purpose:

- (a) the 'Permitted Use' is deemed to include construction of the Additional MF Works, and rectification of Defects in the Additional MF Works; and
- (b) the term for this licence is as specified in paragraph 2,

subject to the conditions contained in the Maintenance Facility Licence, this Schedule C7 and this deed generally.

2. Licence term

The term of the licence referred to under paragraph 1:

- (a) commences on the Date for Additional MF Works Commencement and endures until the Date of Additional MF Works Practical Completion; and
- (b) enlivens after the Date of Additional MF Works Practical Completion for the rectification of Defects in accordance with this deed.

3. Use of the Maintenance Facility Site

- (a) Except as expressly permitted pursuant to this deed and the Maintenance Facility Licence, prior to the Date of Additional MF Works Practical Completion, the Supplier must not use any part of the MF Site for any purpose other than as provided in paragraph 1.7 of Schedule C2.
- (b) The Supplier must not do anything in or about the MF Site which may constitute a breach of the Supplier's obligations under a Legal Requirement.

4. Supplier obligations

4.1 No proprietary interest

The Supplier:

- (a) does not have exclusive possession or occupation of the MF Site; and
- (b) is not a tenant of TfNSW.

4.2 Care of Maintenance Facility Site

From the commencement date of the Additional MF Works Licence, the Supplier:

- (a) must not, subject to the work health and safety requirements of the Supplier, do anything to interfere with TfNSW's or TfNSW's employees' or Other Contractors' rights of access to the MF Site;

- (b) must not make any structural additions to the MF Site other than in accordance with this deed; and
- (c) must ensure that at the expiry of the licence term (on the date determined in accordance with paragraph 2 above), the part of the MF Site the subject of the licence is in no worse condition than it was when the licence commenced, except to the extent that the relevant change has been unavoidably altered by Additional MF Works.

4.3 Transfer and other dealings

The Supplier must not transfer, assign, sub-licence or grant an encumbrance over or otherwise deal with the MF Site the subject of this licence except with TfNSW's prior written approval.