

Annexure G - General Conditions

See attached.

Project Contract

General Conditions

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General Conditions of Contract

1. Definitions and interpretation

1.1 Definitions

- (a) Where this Contract incorporates a clause of the L3C Agreement by reference, each of the following terms that is used in that clause of the L3C Agreement, is to be read as if:
- (i) "Sydney Trains" is a reference to "the Principal";
 - (ii) the "L3C Contractor" is a reference to the "Contractor";
 - (iii) the "Sydney Trains' Representative" is a reference to the "Principal's Representative";
 - (iv) the "L3C Contractor's Representative" is a reference to the "Contractor's Representative";
 - (v) the "L3C Transaction Documents" or the "L3C Agreement" is a reference to the "Contract" (as applicable);
 - (vi) the "L3C Services" is a reference to the "Works" or "Contractor's Activities" (as applicable);
 - (vii) the "Execution Date" or "Extension Date" is a reference to the "Award Date";
 - (viii) the "Private Services" and any related clauses are not applicable;
 - (ix) "Associate" is a reference to "Personnel";

and the relevant L3C Agreement clause applies with any other necessary changes to reflect differing terminology adopted in this Contract (including any capitalised terms within that clause will have the meaning given to them in the L3C Agreement).

In this Contract:

Access Licence means the deed of access entered into by the Principal and the Contractor on or about 23 December 2011 (as extended from time to time).

Act of Prevention means any one of:

- (a) a breach of the Contract by the Principal;
- (b) any other act or omission of the Principal, the Principal's Representative or an Other Contractor engaged by the Principal; or
- (c) a Variation the subject of a Direction by the Principal's Representative.

Approval means any licence, permit, registration, consent, approval, determination, exemption, certificate, administrative decision, memorandum of understanding, notification, permission or other requirement of any Authority having any jurisdiction in connection with the Works or the Contractor's Activities or under any Law, which must be obtained or satisfied (as the case may be) to:

- (a) carry out the Contractor's Activities; or
- (b) occupy or use the completed Works or a completed Separable Portion.

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

ASA Charter means the document which identifies ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEO's in relation to the ASA (as amended from time to time), which is available at <http://www.asa.transport.nsw.gov.au/> or upon request from the Principal's Representative.

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

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

Asset Management Information means all maintenance plans, maintenance manuals, maintenance training documentation, special tools definition, spare parts definition and support software required by the Principal to allow it to perform maintenance (both scheduled and unscheduled) of the Works or each Separable Portion after Completion.

Asset Services means the aspects of the Contractor's Activities which relate to the Asset Lifecycle of NSW Rail Assets.

Asset Standards Authority or **ASA** means the unit within Transport for NSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets as defined in the ASA Charter.

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

Authority means any government or government department, local government, council, government or statutory authority, administrative or judicial body or tribunal, agency, minister, statutory corporation or instrumentality or any person (whether autonomous or not) who is charged with the administration of a Law which has a right to give any consent or impose any requirements in respect to the subject matter of the Contract including the Principal in its capacity as a government agency.

Award Date means the date on which the Contract came into existence as determined in accordance with the Standing Offer Deed.

Business Day means a day other than:

- (a) a Saturday, Sunday or a public holiday as gazetted in New South Wales; or
- (b) a day falling within the period:
 - (i) commencing on the Monday before 24 December in any given year; and
 - (ii) ending on the Friday following 1 January in the following year.

Cars means the cars specified in the Key Details.

Certificate of Readiness means a certificate in the form set out in Schedule 3.

Change in Law means a change in an existing Law or a new Law, but does not include a change in an existing Law, or a new Law, relating to taxes.

Change of Control means:

- (a) in respect of a Key Provider, a change in Control but does not include a change in Control of a holding company of a Key Provider; and
- (b) in respect of the Contractor, any change in:

- (i) the legal or beneficial ownership of shares in the Contractor or any issue or buyback of its shares;
- (ii) the beneficiaries of any trust of which the Contractor is, or any of the shareholders in the Contractor are, a trustee; or
- (iii) the effective ownership, management or control of the Contractor,

from that existing on the Award Date. A Change of Control may be direct or indirect, and may be as a result of or by means of any trust, agreement, arrangement or understanding whether legally enforceable or not.

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

- (a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the Contractor's Activities and the Works or either party's conduct before the Contract; or
- (c) otherwise at Law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution (including restitution based on unjust enrichment).

Code of Conduct means the Principal's Code of Conduct which is available, as at July 2019, at <https://www.transport.nsw.gov.au/about-us/who-we-are/culture-and-values> or upon request from the Principal's Representative, as updated from time to time.

Commercial in Confidence Information means:

- (a) subject to subclause (b):
 - (i) the Contractor's cost records, including cost estimates and calculations, financial statements, budgets and invoices relating to the Contractor's Activities;
 - (ii) records evidencing the Contractor's compliance with its obligations in connection with risk management and assurance systems including quality, safety, environment and probity;
 - (iii) records of the Contractor's performance against the performance standards required by the Contract;
 - (iv) all consultant's reports and opinions obtained by the Contractor in relation to the matters in paragraphs (i) — (iii); and
 - (v) legal, insurance broker and accounting reports and opinions obtained in relation to the Contractor's Activities; and
- (b) Commercial in Confidence Information does not mean:
 - (i) the identity of any supplier of any part of the Equipment or any of the Contractor's Personnel;
 - (ii) any price paid by the Contractor for any of the Equipment; or
 - (iii) any annual budget for the Contractor's Activities agreed by the parties.

Completion means the stage in the execution of the Works or a Separable Portion:

- (a) the Works are, or a Separable Portion is, complete except for minor Defects:
 - (i) which do not prevent the Works or the Separable Portion from being reasonably capable of being used for the intended purpose of the Works or the Separable Portion;
 - (ii) which can be corrected without prejudicing the convenient use of the Works or the Separable Portion or the Cars;
- (b) the Contractor has:
 - (i) carried out and passed all Tests that:
 - A. are required under this Contract to be carried out and passed before Completion; or
 - B. must necessarily be carried out and passed to verify that the Works or the Separable Portion is in the condition this Contract requires it to be in at Completion;
- (c) all documents and other information referred to in the Contract, including all Approvals, which are required for the use, training, operation, maintenance and repair of the Works or the Separable Portion have been supplied to the Principal's Representative;
- (d) the Contractor has:
 - (i) provided the Principal with a signed Certificate of Readiness;
 - (ii) provided the Principal with a Final Service Report;
 - (iii) complied with all performance requirements that this Contract requires to be verified before Completion except for minor Defects that do not prevent the Works or the Deliverables or Contractor's Activities from being reasonably capable of being used for their intended purpose;
 - (iv) trained all Personnel nominated by the Principal who are required to be trained by the Contractor prior to Completion, including in accordance with the requirements of the Statement of Work;
 - (v) provided the Principal with the Asset Management Information;
 - (vi) complied with clause 6.9 (if applicable);
 - (vii) updated the SAP system and provided the Principal with a SAP number for any items of Equipment; and
 - (viii) provided all tools, equipment, spare parts and software required by this Contract to be provided by the Contractor (including pursuant to the Statement of Work), other than any tools, equipment, spare parts or software that the Principal has expressly agreed in writing may be delivered by the Contractor after Completion; and
- (e) the Contractor has done everything which the Contract requires it to do as a condition precedent to Completion.

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

Consequential Loss or Damage means:

- (a) subject to paragraph (b), any:

(i) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect; or

(ii) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent; and

(b) Consequential Loss and Damage excludes any costs that the Principal incurs in having the Contractor's Activities provided at a location other than the Site or provided by a person other than the Contractor.

Contract means the contractual relationship between the parties constituted by:

- (a) the Purchase Order issued by the Principal in accordance with the terms of the Standing Offer Deed;
- (b) any Special Conditions (as defined in the Standing Offer Deed) forming part of the Purchase Order;
- (c) these General Conditions of Contract;
- (d) the Key Details as amended by the Purchase Order;
- (e) the Schedules;
- (f) the Statement of Work; and
- (g) the other documents (if any) referred to in the Key Details.

Contract Price means the amount specified in the Key Details as adjusted, subject to clause 17.5, under the Contract.

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

Contractor's Activities means all things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations and includes the performance of Variations, and Tests and rectification work.

Contractor's Representative means the person so named in the Key Details or any other person from time to time appointed as the Contractor's Representative in accordance with clause 3.4.

Control has the meaning given in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Date for Completion means the date, or the last day of the period of time, specified in the Key Details, as adjusted under this Contract.

Date of Completion means in respect of the Works or a Separable Portion the date of Completion set out in a Notice of Completion.

Deed of Extension and Variation means the deed entitled "Deed of Extension and Variation - L3C Agreement" between the Principal, the Contractor and RailCorp dated on or about 28 June 2019.

Deed of Novation means the deed in Schedule 13.

Defect means any aspect of the Contractor's Activities or the Works, or any part thereof, which is not in accordance with the requirements of the Contract but does not extend to Principal's failure to properly maintain

Defects Liability Period means the period which, in the case of the Contractor's Activities or the Works, commences on the Date of Completion of the Works or a Separable Portion, and which continues for the period described in the Key Details as extended by clause 9.11.

Deliverables has the meaning given in clause 1.2(d) of Schedule 5.

Design Documentation means all design documentation (including drawings, designs, specifications, manuals, patterns, models, samples, calculations and the like) and other information which is necessary for the Contractor to perform the Contractor's Activities or to prepare (if any), including in respect of any:

- (a) systems, goods, materials or parts including any Equipment, plant or parts thereof (as applicable); or
- (b) modifications or alterations of the Cars.

Direction or Direct means any approval, authorisation, decision, demand, determination, direction, instruction, notice, order, permission, request, rejection or requirement.

Diesel Fleet means the diesel Cars set out in the Statement of Work.

Electric Fleet means the electric passenger Cars owned or operated by the Principal and set out in the Statement of Work.

Equipment means any item of equipment, component or part which is to be supplied and installed in the Cars as part of the Contractor's Activities.

Escrow Agent means the escrow agent in the Escrow Agreement.

Escrow Agreement means the agreement between the Principal, the Contractor and the Escrow Agent entered into under the L3C Agreement and dated on or about the 23 December 2011.

Final Service Report means the report to be delivered by the Contractor to the Principal following completion of the Works or a Separable Portion, which contains details of:

- (a) work completed;
- (b) the Equipment changed;
- (c) known open defects with Enterprise Asset Management (EAM) notification reference;
- (d) test results; and
- (e) evidence that all safety-critical tasks and operational-critical tasks have been completed.

Formal Instrument of Agreement means the formal instrument of agreement to which these General Conditions of Contract are attached.

Force Majeure Event means:

- (a) acts of God, earthquake, cyclone, lightning or landslide;
- (b) acts of the public enemy, war, terrorism, blockade, revolution, riot;
- (c) insurrection, rebellion or civil commotion;

- (d) damage by aircraft or other airborne objects; and
- (e) in circumstances reasonably beyond the control of the Contractor:
 - (i) flood, storm, fire or explosion;
 - (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - (iii) any embargo; or
 - (iv) nation wide or state wide industrial action which does not only affect the Contractor or the Contractor and its Personnel.

General Conditions of Contract means these General Conditions of Contract.

GST or Goods and Services Tax has the meaning given under GST Law.

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

Guarantor has the meaning in the Standing Offer Deed.

Insolvency Event means:

- (f) the Contractor or a Guarantor enters a deed of company arrangement with creditors;
- (g) a controller or administrator is appointed over all or any of the Contractor's or a Guarantor's assets or undertaking;
- (h) an application is made to a court for the winding up of the Contractor or a Guarantor and is not stayed within 10 Business Days;
- (i) a winding up order is made in respect of the Contractor or a Guarantor;
- (j) the Contractor or a Guarantor resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding-up);
- (k) execution is levied against the Contractor or a Guarantor by creditors, debenture holders or trustees or under a floating charge by way of writ of execution, garnishee order, freezing order or similar order, attachment or other process against or in relation to any asset of the Contractor or a Guarantor; or
- (l) the Contractor or a Guarantor is:
 - (i) insolvent within the meaning of section 95A of the Corporations Act; or
 - (ii) taken to fail to comply with a statutory demand in accordance with s459F(1) of the Corporations Act.

Intellectual Property includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), rights in relation to registered and unregistered trade marks (including service marks), rights in relation to registered designs, confidential information (including trade secrets and know how), circuit layouts, and all other rights throughout the world resulting from intellectual activity in the industrial, scientific, or artistic fields.

Key Details means the particulars which appear in Schedule 1.

Key Provider means each of Unipart Rail Limited R/N 3038418 and UGL Rail Services Pty Limited ABN 58 000 003 136.

Key Performance Indicators or KPIs means the key performance indicators:

- (a) in Schedule 11; and
- (b) if any, set out in the Purchase Order.

Law includes:

- (a) legislation of New South Wales or the Commonwealth, including delegated legislation or policy enforceable under such legislation or delegated legislation; and
- (b) certificates, licences, consents, permits, approvals and other requirements of Authorities,

and fees and charges payable in connection with the foregoing.

Lease means the lease entered into by Rail Corporation New South Wales and the Contractor on or about 1 July 2012 for the Site (as extended from time to time).

L3C Agreement means the deed entitled L3C Agreement between the Principal and the Contractor dated on or about 23 December 2011, as extended and varied by the Deed of Extension and Variation.

Maintenance Centres means the facilities maintained by, or on behalf of, the Principal for the maintenance and servicing of railway cars located at:

- (a) OSCar Maintenance Centre - 136 Railway Parade, Eveleigh;
- (b) Flemington Maintenance Centre - Bachell Avenue Lidcombe;
- (c) Hornsby Maintenance Centre - 1B Stephens Street Hornsby;
- (d) Mortdale Maintenance Centre - Boundary Road Mortdale;
- (e) Xplorer / Endeavour Service Centre - 136 Railway Parade, Eveleigh (off Henderson Road, Alexandria);
- (f) XPT Maintenance Centre - Way Street, Sydenham; and
- (g) Endeavour Service Centre - Brown Road, Broadmeadow,

and such other sites as from time to time may be Directed by the Principal.

Minimum Operating Standard means minimum standard required for Cars to enter into and / or remain in service and set out in the Principal's manuals for the operation and management of Cars.

Moral Rights means the rights defined as such in the Copyright Act 1968 (Cth).

Notice of Completion means a notice issued under clause 13.4(b)(ii) by the Principal's Representative stating that Completion of the Works or a Separable Portion has been achieved.

NSW Trains means the corporation by that name constituted by Part 3C of the Transport Administration Act 1988 (NSW).

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

Objectives has the meaning given to it in the Formal Instrument of Agreement.

OEM has the meaning assigned to it in clause 1.1 of Schedule 5.

On Condition Works means those on condition activities required as result of the On-Condition Inspection of the Cars.

On-Condition Inspection means the inspections that the Contractor must perform on the Cars as part of the Contractor's Activities and that may result in replacement or repair activities additional to the activities described in the Statement of Work.

Other Contractor means any Rail Transport Agency or contractor, consultant, tradesperson, supplier or other person engaged to do work other than the Contractor and its Subcontractors.

Personnel means:

- (a) in respect of the Contractor, any directors, officers, employees, consultants, agents and Subcontractors of the Contractor; and
- (b) in respect of the Principal, any directors, officers, employees, consultants, agents and contractors of the Principal (other than the Contractor).

Plant, Equipment and Work means those things used, or work undertaken, by the Contractor to complete the Works or a Separable Portion but which will not:

- (a) form part of the Works or the Separable Portion; or
- (b) be incorporated into, or become part of, any of the Cars as part of the work performed by the Contractor under this Contract.

Policies, Codes and Standards means the most recent version of the following policies, codes and standards, as updated from time to time:

- (a) the policies, codes and standards that, as at the Award Date, appear on the website: <https://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors>; and
- (b) any other policies, codes and standards that appear in clause 1 of Schedule 21 of the L3C Agreement.

PPSA means the Personal Property Securities Act 2009 (Cth) and regulations made under that Act.

Preliminary Service Report means the report to be delivered by the Contractor to the Principal when a Car arrives for its final inspection, which sets out at a minimum details of:

- (a) the Equipment changed;
- (b) any work that is still to be completed;
- (c) open defects that will not be addressed with EAM notification reference; and
- (d) evidence that all safety-critical tasks and operational-critical tasks have been completed.

Principal Supplied Items means the items described in Schedule 6.

Principal's Representative means the person so nominated in the Key Details or any other person nominated by the Principal from time to time under clause 3.2 to replace that person.

Provisional Sum Work means the work or goods so described in the Key Details for which the sum of money referred to in the Key Details is included in the Contract Price.

Purchase Order means:

- (a) the 'Purchase Order' issued under the Standing Offer Deed and includes any annexures, schedules, exhibits and attachments to the Purchase Order; and
- (b) otherwise, the purchase order (or any document or documents together referred to by the Principal as the purchase order) issued by the Principal to the Contractor for the purposes of invoicing and payment.

Qualifying Cause means:

- (a) an Act of Prevention;
- (b) a Force Majeure Event; or
- (c) a Direction to suspend that satisfies clause **Error! Reference source not found..**

RailCorp means Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

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

Rail Infrastructure Facilities has the same meaning as in the Transport Administration Act 1988 (NSW) and includes "rail infrastructure " as that term is defined in the Rail Safety National Law (NSW), as defined in the Rail Safety (Adoption of National Law) Act 2012 (NSW), and any associated regulations.

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

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

Rotable Part means Equipment which is capable of being removed from its operating position at scheduled intervals or upon failure and of being replaced with serviceable Equipment.

Schedule of Prices means the document (if any) so described in Schedule 2.

Scope, Performance and Technical Requirements has the meaning assigned to it in the L3C Agreement.

Separable Portion means a separable portion of the Works identified as such in the Key Details.

Site means the land known as the Auburn service centre located at 1 Manchester Road, Auburn NSW, being Part of Folio Identifier 3802/1168594 and all buildings, improvements (including Rail Infrastructure Facilities) on that land.

Software means a set of coded instructions that performs functions or provides working data or parameters to enable a device or system to operate in a specified manner, and be loaded into a system or device dynamically by a user and includes all firmware and operating systems required by a system or subsystem to perform in a specified manner which is used by, or on behalf of, the Contractor in connection with the Contractor's Activities, the Works or the performance of its obligations under the Contract.

Standing Offer Deed means the deed entitled "Standing Offer Deed" between the Contractor and the Principal to which these General Conditions of Contract are annexed (if applicable).

Statement of Work means the Statement of Work attached to the Purchase Order.

Step-in Right has the meaning given in clause 16.

Subcontractor means any person engaged by the Contractor for the performance of any of the Contractor's Activities.

Sydney Trains means the corporation by that name constituted by Part 3B of the Transport Administration Act 1988 (NSW).

Sydney Trains Network means that part of the New South Wales rail network on which the Principal operates trains.

Tests means:

- (a) the tests and procedures specified in the Statement of Work which are to be carried out before Completion (as applicable);
- (b) any other tests reasonably required by the Principal's Representative; and
- (c) any other tests required to ascertain whether the Works or a specified part thereof meet the requirements of the Contract,

and each of them is a Test.

Third Party Software has the meaning assigned to it in clause 1.1 of Schedule 5.

Trackable Rotable Part means a Rotable Part for which a maintenance history is recorded over its life and which is to be tracked for the purpose of maintaining the Principal's asset register.

Transport for NSW or TfNSW means the corporation by that name constituted by section 3C of the Transport Administration Act 1988 (NSW).

Trial means the use and testing of the proposed item of Equipment (or a part thereof) by the Principal to determine whether the proposed item of Equipment (or part thereof) meets the requirements of the Principal and is otherwise suitable for use on the specified Electric Fleet or Diesel Fleet or as part of the Contractor's Activities.

Type Approval means an approval issued by the ASA stating that a particular item of equipment may be used in a defined aspect or component of the Works or the Cars.

Urgent Defects means any Defect which:

- (a) prevents a Car from meeting Minimum Operating Standards and becomes apparent when the Car is on the Sydney Trains Network and is not at a Maintenance Centre; or
- (b) prevents a Car from entering into or continuing in service or otherwise from being available for use by the Principal.

Variation means, unless otherwise stated in the Contract, any change to the Works or variation to the Contractor's Activities including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works and Contractor's Activities.

WHS Legislation means legislation relating to health and safety at work including:

- (a) the Work Health and Safety Act 2011 (NSW); and
- (b) the Work Health and Safety Regulation 2017 (NSW).

WHS Management Plan means the work health and safety plan to be prepared by the Contractor under clause 7.3, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities and/or the Works or any other work carried out on the Site from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities and/or the Works or any other work carried out on the Site are performed consistently with WHS Legislation; and
- (c) comply with the specific requirements of Part 6.4 of the Work Health and Safety Regulation 2017 (NSW) in relation to the matters that a WHS management plan must include.

Works means the physical works which the Contractor must complete and hand over to the Principal, including the design, supply, installation, testing and commissioning (as applicable) of the Equipment and the return of the Cars into service.

1.2 Interpretation

In the Contract:

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

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (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, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it;
- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) 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;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency;

- (m) the word "Subcontractor" will include suppliers and consultants;
- (n) any reference to the Deliverables, Contractor's Activities, Works, Design Documentation or any other document or thing being fit for their intended purpose (or any similar reference) will be read as referring to the purpose:
 - (i) having regard to the Principal's objective of operating and maintaining a safe, reliable, effective and efficient rail network; and
 - (ii) stated in or reasonably ascertainable from:
 - A. the Contract and, the Standing Offer Deed; and
 - B. to the extent relevant for determining the purpose in connection with a Variation, the Variation Order provided by the Principal to the Contractor pursuant to clause 11.2;
- (o) to the extent that:
 - (i) any amounts are payable to the Contractor under the Contract by reference to hourly or daily rates; and
 - (ii) the Contractor's Personnel is engaged in the relevant Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),

the Contractor will be entitled to payment in respect of such time on a pro rata basis; and
- (p) 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.

1.3 No bias against drafting party

No term or provision of the Contract will be construed against a party on the basis that the Contract or the term in question was put forward or drafted by or on behalf of that party.

1.4 Provisions limiting or excluding liability

Any provision of the Contract which seeks to limit or exclude a liability of a party, is to be construed as doing so only to the extent permitted by applicable Law.

1.5 Discretion

Subject to any express provision in the Contract to the contrary:

- (a) a provision of the Contract which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and

- (b) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Contract.

Without limiting the previous paragraph, neither the Principal nor the Principal's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of the Contract conferring the discretion, power or entitlement.

1.6 Authorities

- (a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter, including any functions or powers required to be exercised by the Principal or any Rail Transport Agency pursuant to any Configuration Management Framework.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under the Contract.
- (c) Subject to clause 1.6(d), the Contractor:
 - (i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal, any Rail Transport Agency or the ASA of their respective functions and powers either as an AEO or under any legislation, the ASA Charter or the Configuration Management Framework; and
 - (ii) acknowledges and agrees that:
 - A. there are many Authorities with jurisdiction over aspects of the Contractor's Activities, the Rail Corridor, and other matters affecting and affected by the Contractor's Activities;
 - B. such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
 - C. it bears the full risk of all occurrences of the kind referred to in clause 1.6(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, and Claim arising out of or in connection with such occurrences.
- (d) Clauses 1.6 (a) 1.6 (b) 1.6(c) do not limit any liability which the Principal would have had to the Contractor for any Claim by the Contractor in accordance with the Contract or as a result of any breach by the Principal of the terms of the Contract.

1.7 Separable Portions

- (a) In the Contract:

- (i) the expressions:
 - A. Completion;
 - B. Date for Completion;
 - C. Date of Completion;
 - D. Defect;
 - E. Defects Liability Period; and
 - F. Notice of Completion,

apply separately to each Separable Portion and references therein to the Works or the Contractor's Activities mean so much of the Works or the Contractor's Activities as are comprised in the relevant Separable Portion; and

- (ii) subclauses 5.1 and 5.4 and clauses 2, 9, 10 and 13 apply separately to each Separable Portion and references therein to the Works or the Contractor's Activities mean so much of the Works or the Contractor's Activities as are comprised in the relevant Separable Portion.

- (b) Separable Portions may be directed by the Principal's Representative who shall clearly identify for each Separable Portion:

- (i) the portion of the Works;
- (ii) the Date for Completion (if applicable); and
- (iii) the respective security and liquidated damages (all calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Separable Portion to the Contract Price for the Works).

1.8 Assignment, novation and other dealings

- (a) Subject to clause 9.7(e) of the Standing Offer Deed, the Contractor may only:

- (i) assign, novate, or otherwise transfer or dispose of;
- (ii) declare a trust over; or
- (iii) charge, mortgage or otherwise create an interest in,

its rights under the Contract with the prior written consent of the Principal. The Contractor agrees that the Principal may make it a condition of its consent that the Contractor and the assignee, novatee or beneficiary of the trust enter into a deed with the Principal in the form acceptable to the Principal in its absolute discretion.

Any costs that the Principal incurs in connection with the subject matter of this clause 1.8(a) are a debt due and payable by the Contractor to the Principal.

- (b) The Principal may assign, novate or otherwise transfer any of its rights or obligations to an Authority without the Contractor's consent. The Principal may only assign, novate or otherwise transfer its rights or obligations under this Contract to an entity which is not an Authority with the prior written consent of the Contractor.
- (c) The Contractor must not, without the prior written consent of the Principal, transfer any assets of the Contractor which:

- (i) are used in connection with the performance of the Contractor's Activities and/or the Works; or
- (ii) may be required by the Contractor so that the Contractor can perform the Contractor's Activities and/or the Works in accordance with this Contract or otherwise comply with its obligations under this Contract,

except for the transfer of assets of the Contractor in the usual course of daily business activity for full consideration on an arm's length basis.

2. Parties' obligations

2.1 Contractor's obligations

- (a) The Contractor must carry out the Contractor's Activities and for this purpose:
 - (i) immediately commence the performance of the Contractor's Activities; and
 - (ii) commence performance of the Works by no later than the Award Date or such later date specified in the Statement of Works.
- (b) The Contractor must ensure that:
 - (i) the Works or a Separable Portion will upon the relevant Date of Completion; and
 - (ii) the Asset Management Information, when completed, will, be fit for their intended purposes.

2.2 Cooperation

In undertaking their respective obligations under this Contract the parties will:

- (a) work collectively and collaboratively with each other and any Other Contractor;
- (b) work in a way which promotes high levels of communication, co-operation and trust between the Principal, the Contractor and any Other Contractor; and
- (c) take a cooperative approach to issues which arise in respect of this Contract to ensure, as far as possible, an agreed mutually beneficial resolution to those issues consistent with the standards and risks set out and allocated in this Contract.

2.3 Principal's obligations

The Principal must, in accordance with the requirements of the Contract:

- (a) allow the Contractor to perform the Contractor's Activities; and
- (b) pay the Contract Price.

2.4 KPIs

- (a) The Contractor in performing the Contractor's Activities must comply with the KPIs as amended in accordance with this Contract.
- (b) The Contractor must report to the Principal at the frequency specified in the Key Details in the form of a report (**KPI Performance Report**) in a form satisfactory to the Principal which:

- (i) provides an analysis of the performance of the Contractor in meeting the KPIs;
 - (ii) identifies any non-compliances;
 - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and
 - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.
- (c) The Contractor acknowledges and agrees that:
- (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
 - (ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal; and
 - (iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment.
- (d) The Principal and the Contractor must meet at the times specified in the Key Details, to monitor and review the Contractor's performance under this Contract and the KPIs and, if required by the Principal, the Contractor's compliance with any action plan.

3. Personnel

3.1 Principal's Representative

The Principal's Representative will give Directions and carry out all its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).

The Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of the Contract.

Except where the Contract otherwise provides, the Principal's Representative may give a Direction orally but will as soon as practicable within 2 Business Days confirm it in writing.

3.2 Replacement of Principal's Representative

The Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment.

Any substitute Principal's Representative appointed under this clause 3.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

3.3 Principal's Representative's representative

The Principal's Representative may:

- (a) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under the Contract;

- (b) not appoint more than one person to exercise a specific function under the Contract; and
- (c) revoke any appointment under paragraph (a) by notice in writing to the Contractor.

All references in the Contract to the Principal's Representative include a reference to a representative appointed under this clause 3.3.

3.4 Contractor's Representative

- (a) The Contractor must ensure that the Contractor's Representative is present at any location where the Contractor's Activities are being carried out at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
- (b) A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
- (c) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (d) If the Principal's Representative makes a reasonable objection to the appointment of a representative by the Contractor, the Contractor must terminate the appointment and appoint another representative, subject again to the reasonable objection of the Principal's Representative.

3.5 Key people

The Contractor must:

- (a) employ those people specified in the Key Details, including the Contractor's Representative, in the jobs specified in the Key Details;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

3.6 Removal of persons

The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Principal's Representative is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again employed in the Contractor's Activities.

3.7 Meetings

- (a) The Contractor must convene meetings at the Site or such other place (or places) as the Principal's Representative may direct:
 - (i) prior to the Date of Completion of the last Separable Portion to reach Completion (including during the design period):
 - A. weekly or such longer intervals; and
 - B. at such other times,

as may be reasonably directed in writing by the Principal's Representative; and

- (ii) at monthly intervals after the Date of Completion of the last Separable Portion to reach Completion until the expiry of the Defects Liability Period or at such other intervals as may otherwise be agreed.
- (b) The Contractor must ensure that the meetings are attended by:
- (i) the Contractor's Representative (or his or her delegate); and
 - (ii) any other person (including any Subcontractor) required by the Principal's Representative.
- (c) The Principal's Representative (or its delegate) will attend all meetings. The Principal's Representative must appoint the chairperson for the meetings.
- (d) The chairperson of the meetings must prepare and give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 3 Business Days after the meeting. The minutes of the meeting shall not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Contract.
- (e) The purpose of the meetings will include:
- (i) the receipt of reports on, and the review of the status and implementation of, the Design Documentation, Works or Contractor's Activities, and other plans and documents prepared by the Contractor under this Contract;
 - (ii) the consideration of corrective actions to prevent and rectify defective work;
 - (iii) the consideration of any other matter that the Principal's Representative requires; and
 - (iv) review of the design of the Works and review of the Design Documentation.

4. Security

4.1 PPSA

- (a) To the extent the PPSA applies to any Equipment, goods, materials or other items supplied by the Contractor to the Principal the Contractor warrants that:
- (i) the supply of Equipment, goods, materials or other items to the Principal does not breach any security agreement the Contractor has with a third party; and
 - (ii) the supply of Equipment, goods, materials or other items to the Principal is within the ordinary course of the Contractor's business.
- (b) The Contractor indemnifies the Principal against any Claims against, or costs, losses or damages suffered or incurred by the Principal directly or indirectly in connection with any infringement of, or Claim in regard to, any third party security agreement or security interest under the PPSA arising as a result of:
- (i) the Contractor carrying out the Contractor's Activities; or

- (ii) the Equipment, goods, materials or other items supplied to Principal by the Contractor infringing that third party's rights under the PPSA.

5. Risks and insurance

5.1 Risk of Works

Subject to clause 5.2, the Contractor will bear the risk of and indemnify the Principal against:

- (a) any loss of or damage to:
 - (i) the Works or a Separable Portion;
 - (ii) Plant, Equipment and Work;
 - (iii) the Equipment and any other unfixed goods and materials (whether on or off Site), including anything provided by the Principal to the Contractor or brought onto Site by a Subcontractor, used or to be used in carrying out the Contractor's Activities or intended for incorporation in the Cars but not yet incorporated; and
 - (iv) any property of the Principal or a Rail Transport Agency (including all Cars) used by the Contractor in connection with the carrying out of the Contractor's Activities,until:
 - (v) in the case of loss or damage to the Works or a Separable Portion, a Notice of Completion is issued for the Works or the Separable Portion;
 - (vi) where the Works involve the refurbishment, overhaul or repair of, or any other work in relation to, any parts, plant, equipment or goods owned by the Principal, any loss or damage to such parts, plant, equipment or goods while they are in the care, custody or control of the Contractor; and
 - (vii) in all other instances, whilst it is on the Site or otherwise in the possession of the Contractor or the Contractor's Personnel (including all Equipment in transit), and notwithstanding that the ownership of all or part of the Equipment may previously have passed to the Principal under the Contract; and
- (b) any loss or damage to the Principal Supplied Items from the collection of the Principal Supplied Items by the Contractor until the Principal Supplied Items are returned into the care, custody and control of the Principal (if applicable).

5.2 Reduction of Contractor's liability

The Contractor's liability to the Principal under any indemnity provided by the Contractor under this Contract will be reduced proportionally to the extent that an act or omission of the Principal, or the Principal's Personnel, contributed to the Claim, loss or damage.

5.3 Contractor's indemnity

Subject to clause 5.2, the Contractor:

- (a) to the extent permitted by Law, releases the Principal from any Claims against, or loss incurred by, the Contractor; and
- (b) indemnifies the Principal:

- (i) against any Claim brought against the Principal or a Rail Transport Agency by any person; and
- (ii) from any loss incurred or damage suffered by the Principal or a Rail Transport Agency,

to the extent arising under, out of or in any way in connection with the activities the subject of the Contract including:

- (c) a breach by the Contractor of the Contract;
- (d) the destruction or loss of or damage to, any property (including the Cars);
- (e) the personal injury, illness or death of any person;
- (f) claims by any person against the Principal or a Rail Transport Agency in respect of nuisance, unreasonable noise and disturbance or any other like claim other than the unavoidable result of performance of the Contractor's Activities in accordance with the Contract;
- (g) any act or omission of the Contractor in connection with the subject matter of the Contract except to the extent that the act or omission was authorised or permitted by the Contract and was done in accordance with the Contract; or
- (h) use or misuse by the Contractor or the Contractor's Personnel of the Site, any of the Principal's or any other Rail Transport Agency's property or any of the utilities,

other than a correctly rendered Claim for payment by the Contractor in accordance with the Contract.

5.4 Reinstatement

During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must, unless otherwise directed by the Principal's Representative, promptly replace or otherwise make good any loss of, or repair the damage to, the Works or a Separable Portion, any Plant, Equipment and Work or any relevant Equipment or any other unfixed goods and materials, plant or other facilities on Site, or property of the Principal or a Rail Transport Agency. The Contractor will bear the cost of such replacement, making good or repair.

5.5 Contractor insurance obligations

- (a) The Contractor must comply with the insurance obligations in Schedule 11 (Insurances) of the L3C Agreement which are incorporated by reference into this Contract, save that references to:
 - (i) L3C Inventory will be a reference to the Equipment;
 - (ii) Plant will be a reference to Plant, Equipment and Work; and
 - (iii) L3C Services Commencement Date, Transition In Commencement Date and Extension Date will be a reference to the Award Date.
- (b) The parties acknowledge and agree that:
 - (i) subject to any amendments required in clause 5.5(b)(ii) being effected, the insurance policies effected by the Contractor under the L3C Agreement may also be used to comply with the Contractor's insurance obligations under clause 5.5(a); and
 - (ii) the Contractor must procure such amendments to the insurance policies referred to in clause 5.5(b)(i) as may be necessary to ensure that those

insurance policies will satisfy the Contractor's insurance obligations under both clause 5.5(a) of this Contract and the L3C Agreement from the Award Date.

5.6 Liabilities unaffected

The effecting of insurance by the Contractor or the Principal and the approval of any insurance policy, terms of insurance or insurer by the Principal's Representative does not limit any obligations or liabilities of the Contractor (including the obligation to effect the insurances required by the Contract).

6A Design and documentation

- (a) Clause 6A applies unless the Request for Quotation specifies that clause 6 applies to the Works. Clauses 6.5 to 6.15 apply where clause 6A applies to the Works and clauses 6.1 to 6.4 do not apply.
- (b) The Contractor must:
 - (i) design the parts of the Works which the Contract requires it to design and for this purpose prepare all relevant Design Documentation; and
 - (ii) prepare all Design Documentation required for the performance of the Contractor's Activities.
- (c) The Contractor warrants that:
 - (i) any Design Documentation it prepares will be fit for its intended purpose; and
 - (ii) upon Completion the Works or each Separable Portion will, to the extent they are designed by the Contractor, be fit for their intended purpose.

Principal's Representative may review Design Documentation

- (d) The Principal's Representative may:
 - (i) review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Contractor; and
 - (ii) within 10 Business Days of the submission by the Contractor of such Design Documentation or resubmitted Design Documentation provide a written notice to the Contractor:
 - A. rejecting the Design Documentation if in its reasonable opinion the Design Documentation does not comply with the requirements of the Contract; or
 - B. stating that the Design Documentation is 'not rejected'.
- (e) If any Design Documentation is rejected, the Contractor must submit amended Design Documentation to the Principal's Representative.
- (f) The Contractor must not commence manufacture or production of the part of the Works to which any Design Documentation which it has submitted to the Principal's Representative applies, unless the Principal's Representative has not rejected the Design Documentation.

- (g) If the Principal's Representative does not issue the notice under clause 6A(d)(ii), the parties agree that the Design Documentation submitted or resubmitted is 'not rejected' by the Principal.

6. Design and documentation

6.1 Contractor's design

- (a) Clauses 6.1 to 6.4 apply if a Request for Quotation specifies that clause 6 applies to the Works.
- (b) The Contractor warrants that:
- (i) it has fully and carefully reviewed the Statement of Work;
 - (ii) the completed design of the Contractor's Activities as represented in the Design Documentation will satisfy the requirements of the Statement of Work, and the other requirements of this Contract; and
 - (iii) manufacture and installation in accordance with the completed design prepared in respect of the Contractor's Activities will satisfy the requirements of the Statement of Work, and the other requirements of this Contract.
- (c) The Contractor must:
- (i) design the Equipment or Works or parts thereof (as applicable) which the Contract requires it to design; and
 - (ii) prepare all Design Documentation required for the performance of the Contractor's Activities.

6.2 Submission for review by the Principal

- (a) The Contractor must submit the Design Documentation, the Contractor Program, results of all Tests and any other document (each of which in this clause 6.2, will be referred to as a **Document**) which is required to be submitted for the review of the Principal or the Principal's Representative under a provision of the Contract:
- (i) at the times stated in the Contract or where no times are stated progressively and in a timely manner to ensure that the Contractor's Activities are commenced, progressed and completed by the times required by the Contract; and
 - (ii) under cover of a written notice entitled "Submit for Review", which identifies:
 - A. the Document; and
 - B. the provision of the Contract under which the Document is submitted.
- (b) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:
- (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
 - (ii) the Contractor has otherwise complied with this clause 6.2, in addition to any other requirement of the Contract relating to the submission of that Document.

- (c) The Contractor must upon each submission of the Design Documentation to the Principal's Representative for review ensure that the Design Documentation is accompanied by the following documents:
- (i) a register of records of design verification and reviews applicable to the Contractor's Activities the subject of the review and other compliance records required by the Contract (all records being satisfactorily completed and signed);
 - (ii) a register of any outstanding design non-conformities, non-compliances and unresolved issues;
 - (iii) a register of deficiency notices and evidence of their close out; and
 - (iv) a register of concessions (if any) granted for non-conforming Design Documentation.
- (d) The Principal's Representative may:
- (i) direct that any Document the Contractor:
 - A. previously submitted is a Document that is to be reviewed under the provisions of this clause 6.2; and
 - B. is obliged to submit will be reviewed under the provisions of this clause 6.2;
 - (ii) after the submission of a Document that satisfies the requirements of clause 6.2(b), review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and
 - (iii) where a Document is submitted or resubmitted in accordance with a program that has not been rejected by the Principal's Representative:
 - A. review any Document, or any resubmitted Document, prepared and submitted by the Contractor;
 - B. reject the Document (and state its reasons) if in its reasonable opinion the Document (or any part) does not comply with the requirements of the Contract; or
 - C. request clarification or additional information,

within relevantly, the later of:

 - D. where a time or period is stated in the Statement of Work for a specific Document, that time or the expiry of that period; and
 - E. 20 Business Days from submission for all other Documents.
- (e) A rejection of Design Documentation under clause 6.2(d)(iii)B will constitute a Variation only to the extent that those parts of the Design Documentation submitted by the Contractor pursuant to this clause 6.2 which will need to be changed by the Contractor to accommodate the reasons given by the Principal's Representative pursuant to clause 6.2(d)(iii)B, complied with the requirements of the Contract. For the avoidance of doubt any request for clarification or additional information under clause 6.2(d)(iii)C is not a rejection or deemed to be a rejection of any Document.
- (f) If any Document is:

- (i) rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 6.2 will re-apply; or
 - (ii) not rejected and the Principal's Representative responds to the submission with requests for clarification or additional information the Contractor must respond to those requests within 10 Business Days or such other longer period as may be directed by the Principal's Representative.
- (g) If the Contractor:
- (i) responds to the Principal's Representative's request within the period referred to in clause 6.2(f)(ii), if the Principal's Representative is not satisfied with the Contractor's response, the Principal's Representative must within 10 Business Days of receipt of the Contractor's response notify the Contractor that it is not satisfied that the response adequately deals with the request; or
 - (ii) fails to respond to the Principal's Representative's request within the period referred to in clause 6.2(f)(ii) or the Principal's Representative gives a notice under clause 6.2(g)(i):
 - A. the Document will be deemed to be rejected; and
 - B. clause 6.2(f)(i) will re-apply.
- (h) The Contractor must not commence or amend for manufacture, production or installation of the part of the Equipment or Works or pre-order any materials to which any Document which it has submitted to the Principal's Representative applies, unless the Principal's Representative has had the relevant period of time in:
- (i) clause 6.2(d)(iii) to review the Document and has not rejected the Document under clause 6.2(d)(iii)B; or
 - (ii) clause 6.2(g)(i) to respond to the submission of additional information and has not notified the Contractor under this clause or the Document has not been deemed to be rejected under clause 6.2(g)(ii).
- (i) The Principal's Representative and the Principal do not assume or owe any duty of care to the Contractor to review, or in reviewing, a Document submitted by the Contractor for errors, omissions or compliance with the Contract.
- (j) No review of, approval of, rejection of, or failure to review, approve or reject, a Document prepared by the Contractor, or any other Direction by the Principal's Representative in connection with the Document will:
- (i) subject to clause 6.2(e), constitute a direction to carry out a Variation pursuant to clause 11.2, unless it is in a "Variation Order" under clause 11.2 and describes the nature of the Variation in accordance with clause 11.2(a);
 - (ii) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to Law; or
 - (iii) prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to Law.

6.3 Copies of Design Documentation

For the purposes of clauses 6.1 and 6.2, the Contractor must submit or resubmit to the Principal's Representative, the number of copies specified in the Key Details of any Design Documentation.

6.4 Fitness for purpose

The Contractor warrants that:

- (a) any Design Documentation it prepares will be fit for its intended purpose and will meet the requirements of the Contract; and
- (b) upon Completion the Works or each Separable Portion, will meet the requirements of the Contract and be fit for their intended purpose.

6.5 Intellectual Property

The parties must comply with the obligations of Schedule 4.

6.6 Intellectual Property Indemnity

Except to the extent there is no entitlement to use any Intellectual Property provided by the Principal under this Contract, the Contractor must indemnify the Principal:

- (a) against any Claim brought against the Principal or a Rail Transport Agency by any person; and
- (b) from any loss incurred or damage suffered by the Principal or a Rail Transport Agency,

to the extent arising out of or in any way in connection with any infringement, or alleged infringement, of any Intellectual Property which the Principal has a right to under this Contract by:

- (c) the Contractor or its Personnel; or
- (d) the Principal, or its Personnel, or any other Rail Transport Agency exercising any right under this Contract.

6.7 Contractor to notify errors

The Contractor shall review any documentation which makes up the Contract, and any revisions of and additions to such documentation issued by the Principal's Representative for the purposes of the Contractor's Activities, for any ambiguity, discrepancy, inconsistency, errors, contradictions or omissions and promptly notify the Principal's Representative of any ambiguity, discrepancy, inconsistency, such errors, contradictions or omissions of which the Contractor becomes aware for the attention and action of the Principal's Representative.

6.8 Resolution of ambiguities

- (a) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this Contract with those higher in the list having precedence over those lower in the list:
 - (i) the Special Conditions (as defined in the Standing Offer Deed) forming part of the Purchase Order;
 - (ii) the General Conditions of Contract (including the Schedules);
 - (iii) the Purchase Order; and

- (iv) the Statement of Work.
- (b) If either party discovers any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this Contract and any documents provided to the Contractor by or on behalf of the Principal which the Contractor is required by the Contract to use for manufacture, production or installation purposes:
 - (i) the party must promptly give notice to the other; and
 - (ii) the Principal's Representative must instruct the Contractor as to the course it must adopt within 5 Business Days of the notice under subparagraph (b)(i).
- (c) In giving a Direction in accordance with clause 6.8(b), the Principal's Representative is not required to determine whether or not there is an ambiguity or discrepancy or inconsistency in, or between the documents comprising this Contract.
- (d) Any Direction which the Principal's Representative gives in accordance with clause 6.8(b) does not in any way lessen or otherwise affect:
 - (i) the Contractor's obligations under this Contract or according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this Contract or according to Law.
- (e) The Contractor must not make, and the Principal will not be liable upon, any Claim in connection with any Direction given by the Principal's Representative under clause 6.8(b).
- (f) If any ambiguity, discrepancy or inconsistency exists between the Statement of Work and any part of the Design Documentation (which the Contractor is entitled to use for manufacture, production or installation purposes under clause 6.2) then, unless otherwise directed in writing by the Principal's Representative, the Statement of Work will prevail.

6.9 As-installed drawings

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

6.10 Disclosure, confidentiality and publicity

Clause 30 (Disclosure, Confidentiality and Publicity) of the L3C Agreement (but excluding clause 30.6 (Exchange of information between government agencies) is incorporated by reference into this Contract.

6.11 Records

The Contractor must make and keep, and must ensure that each Subcontractor makes and keeps accurate records of the Contractor's Activities and the Works, including:

- (a) all records required by Law;
- (b) all documents referred to in this Contract (including all necessary supporting documents, invoices, records and related financial statements and budgets whether in writing or stored on any other medium);

- (c) all cost estimates and calculations in relation to any aspect of the Contractor's Activities which is provided to the Principal on the basis that payment will vary according to the scope of the Contractor's Activities actually provided;
- (d) all technical data documents and records, maintenance documentation and information relating to the Contractor's Activities including all warranty claims and details of how those warranty claims were resolved;
- (e) work health and safety records;
- (f) cost to date records (including all cost records relating in any way to delays) and costs to complete calculations in relation to any aspect of the Contractor's Activities which is provided to the Principal on the basis that payment will vary according to the scope of the Contractor's Activities actually provided;
- (g) records of all procurement transactions;
- (h) all records concerning Variations;
- (i) records of any security breaches;
- (j) records evidencing the Contractor's compliance with its obligations in connection with risk management and assurance systems including quality, safety, environment and probity;
- (k) all consultants' reports and opinions obtained by the Contractor in relation to the Contractor's Activities;
- (l) register of all agreements with the Contractor's Personnel including any changes made to the Contractor's Personnel engaged in connection with the provision of the Contractor's Activities;
- (m) records of the Contractor's performance against the performance standards required by this Contract; and
- (n) such records as may be necessary to maintain and update the maintenance history of all Trackable Rotable Parts including:
 - (i) the date of installation of each Trackable Rotable Part;
 - (ii) a services completion record detailing the Contractor's Activities undertaken in respect of the Trackable Rotable Part;
 - (iii) the stock number allocated by the Contractor to each Trackable Rotable Part; and
 - (iv) other records as required to maintain a database of historical information regarding each Trackable Rotable Part,

until the later of:

- (o) the date 7 years after the date on which the Contractor last provides Contractor's Activities and/or Works; or
- (p) as required by the State Records Act 1998 (NSW).

6.12 The Principal's rights

- (a) Without limiting or otherwise restricting any other provisions of this Contract, the Principal's Representative and any other person authorised by the Principal may without notice any time during the working hours or in the case of an emergency, or on one Business Days' notice at any other time:

- (i) subject to the requirements of clause 8.9, enter the premises of the Contractor or any Personnel of the Contractor for the purposes of:
 - A. observing the performance of the Contractor's Activities;
 - B. observing, inspecting, testing or otherwise reviewing any Equipment or any Plant, Equipment and Work;
 - C. observing, inspecting, testing or otherwise reviewing the Site;
 - D. monitoring the Contractor's compliance with its obligations under this Contract; and
 - E. exercising any right or performing any obligation which the Principal has under this Contract; and
 - (ii) other than in relation to legal, insurance broker and accounting reports and opinions obtained in relation the Contractor's Activities and any document required to be kept under this Contract which is subject to legal professional privilege, carrying out an audit of and copy the Contractor's documents, accounts and other records it is required to keep under this Contract to the extent reasonably necessary to verify:
 - A. the Contractor's performance of its obligations under this Contract;
 - B. any amounts claimed by the Contractor are properly calculated; and
 - C. any queries the Principal may have relating to the Contractor's Activities.
- (b) Each party will bear its own costs incurred in complying with this clause 6.12 unless it is revealed, by the Principal exercising its rights under this clause 6.12, that:
- (i) the Contractor has committed a breach of its obligations under this Contract; or
 - (ii) there is a material discrepancy between the information that has been disclosed to the Principal by the Contractor under this Contract and the results of any audit conducted under clause 6.12(a)(ii),
- in which case any costs incurred by the Principal in connection with it exercising its rights under this clause 6.12 will be a debt due and payable by the Contractor to the Principal.
- (c) The Principal will exercise its rights under this clause 6.12 in a manner which does not unreasonably interfere with the carrying out of the Contractor's Activities or the Works.
- (d) Without limiting any other provision of this Contract:
- (i) the Principal's Representative may at any time notify the Contractor that it requires access to any information, document or material (excluding algorithms and, subject to clauses 1.7 and 1.12 of Schedule 5 and without limiting the Escrow Agreement, source code) held by the Contractor, a Key Provider or a Subcontractor which relates directly to the Contractor's Activities (including the records listed in clause 6.11);
 - (ii) upon receipt of a notice under clause 6.12(d)(i), the Contractor must promptly provide the Principal's Representative (and any person authorised by the Principal's Representative) with access to, or a copy

(including by electronic means) of, the required information, document or material except to the extent that the information, document or material:

- A. is subject to legal professional privilege;
- B. shows the cost breakdown of all fixed prices described in Appendix 1 of Schedule 20 of the L3C Agreement and Annexure B Schedule of Prices;
- C. relates to personnel information that is confidential to employees or other human resources records;
- D. relates to legal, insurance broker and accounting reports and opinions obtained in relation to the Contractor's Activities; or
- E. cannot be disclosed in accordance with any Law (including the Privacy and Personal Information Protection Act 1998 (NSW), the Privacy Act 1988 (Cth), any applicable principles, codes of conduct or directions issued under those Acts and all other applicable Laws relating to privacy or personal information), and

the Principal's Representative (and any person authorised by the Principal's Representative) may, subject to clause 6.12(e), review, copy, retain or otherwise deal with such information, document or material.

- (e) To the extent the information in clause 6.12(d) is Commercial in Confidence Information, the Principal agrees that it will not disclose such Commercial in Confidence Information to any tenderer as part of any future tender process in connection with the Contractor's Activities or the Works.
- (f) The Contractor acknowledges and agrees that it is required to provide any information, document or materials that must be provided under clause 6.12(e) whether or not it owns or has a licence to use any of the Intellectual Property contained in the requested information, documents or materials.

6.13 Contractor must assist

The Contractor must:

- (a) give the Principal's Representative and any other person authorised by the Principal access to the Site and all accounts and records relating to this Contract to the extent necessary to enable the Principal to exercise its rights under clause 6.12;
- (b) allow the Principal's Representative, and any other person authorised by the Principal, to have access to the premises and personnel of the Contractor and any Subcontractor to the extent necessary to carry out any inspection or audit;
- (c) provide the Principal's Representative, and any other person authorised by the Principal, with such assistance as they may reasonably require in connection with their inspection or audit, including making documents available and installing and operating any compatible audit software; and
- (d) supply to the Principal's Representative, and any other person authorised by the Principal, photocopies or electronic copies of information requested.

6.14 Evidence of financial standing or financial arrangements

- (e) The Contractor warrants to the Principal that the Contractor will at the Award Date have financial capacity to meet all of its obligations under the Contract.

- (f) The Contractor must promptly notify the Principal of any substantive material change in the Contractor's financial standing likely to affect its financial capacity to meet all of its obligations under the Contract.
- (g) The Contractor must assist and fully co-operate with the reasonable requirements or reasonable requests of the Principal, the Principal's Representative or their nominees in relation to any review of:
 - (i) any information provided by the Contractor under this clause 6.14; or
 - (ii) the Contractor's financial capacity to meet its obligations under the Contract.

6.15 Survive termination

Clauses 6.5, 6.6, 6.10 and 6.11, and the licences granted to the Principal under them, will survive any termination of the Contract.

7. Site and information

7.1 Site access

The parties acknowledge and agree that in carrying out the Contractor's Activities, the Contractor must:

- (a) at all reasonable times give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to the Works, Equipment, the Site or any areas off-Site where Contractor's Activities are being carried out; and
- (b) provide the Principal, the Principal's Representative and any person authorised by the Principal or the Principal's Representative with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

7.2 Principal Supplied Items

- (a) The Principal must make available the Principal Supplied Items:
 - (i) at its own cost;
 - (ii) at the respective places and by the respective dates set out in Schedule 6.
- (b) The Contractor agrees that, in respect of Principal Supplied Items, the:
 - (i) Contractor:
 - A. will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item, except under clause 10 if:
 - 1) a Principal Supplied Item is not made available by the relevant date set out in Schedule 6; or
 - 2) the Principal Supplied Item is not fit for its intended purpose and causes a delay in the achievement of Completion; and
 - B. is not otherwise relieved from and remains otherwise liable for complying with, all of its obligations under the Contract,

despite the Principal making available the Principal Supplied Items;

- (ii) Contractor must at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 6 to the Site;
- (iii) Contractor must:
 - A. not use the Principal Supplied Items for any purpose other than the performance of the Contractor's Activities; and
 - B. return the Principal Supplied Items upon completion of all Tests to the location described in Schedule 6 or such other location notified by the Principal's Representative; and
- (iv) *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligations under clause 7.2(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items.

7.3 Work health and safety

- (a) In this clause 7.3, the terms "construction work", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation.
- (b) To the extent that any of the Works constitute construction work, the Contractor is engaged as principal contractor in relation to that construction work.
- (c) Where the Principal engages the Contractor as the principal contractor:
 - (i) the Principal authorises the Contractor to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation;
 - (ii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
 - (iii) the Contractor's engagement and authorisation as principal contractor will continue while ever any Contractor's Activities that are construction work are carried out pursuant to the Contract, unless sooner revoked by the Principal terminating the Contract pursuant to any provision of the Contract or according to Law.
- (d) Prior to the Contractor commencing any construction work on the Site, the Contractor must prepare and submit a WHS Management Plan and any other relevant plans (including a traffic management plan if required) to the Principal's Representative for review. The Principal's Representative may reject the WHS Management Plan or issue a notice of no objection (such notice not to be unreasonably withheld). The parties agree that where permitted by Law, the WHS Management Plan and other relevant plans prepared by the Contractor under the L3C Agreement may apply, where appropriate, and subject to the Principal's Representative's consent.
- (e) No comment upon nor any review, acceptance or approval of the WHS Management Plan by the Principal's Representative will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.

- (f) Without limiting the Contractor's obligations under any other provision of the Contract, the Contractor must:
- (i) comply, and must ensure that its Subcontractors and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation (including any obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);
 - (ii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
 - (iii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;
 - (iv) insofar as the Contractor, in carrying out the Contractor's Activities is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and
 - (v) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation.
- (g) To the extent not prohibited by Law, the Contractor indemnifies the Principal against any Claims against, or loss suffered or incurred by, the Principal arising out of or in connection with the failure of the Contractor to discharge the duties imposed on a principal contractor under the WHS Legislation (if the Contractor has been engaged as principal contractor) or otherwise comply with this clause 7.3.
- (h) The Contractor must indemnify the Principal:
- (i) against any Claim brought against the Principal or a Rail Transport Agency by any person; and
 - (ii) from any loss incurred or damage suffered by the Principal or a Rail Transport Agency,
- to the extent arising out of or in any way in connection with any act or omission of the Contractor in connection with work health and safety at the Site except to the extent that such Claim, loss or damage arises directly from the Principal, the Principal's Personnel, or a Rail Transport Agency carrying out works in the Project Shop (as defined in the licence entered into by the parties in accordance with clause 4.7(a)(ii) of the L3C Agreement):
- (iii) negligently; or
 - (iv) in breach of this Contract.

7.4 Non-reliance

The Contractor:

- (a) warrants (unless stated otherwise in the Special Conditions) that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or

- (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,

for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;

- (b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

7.5 Condition of Car

- (a) The Principal does not warrant, guarantee, make any representation or assume any duty of care with respect to the condition of the Cars upon which the Contractor's Activities will be carried out.
- (b) The Contractor acknowledges that the condition of the Cars may differ from the condition of the Cars assumed by the Contractor.
- (c) Nothing in this clause 7.5 limits or affects the Contractor's right to make any Claim and recover against the Principal for the carrying out of On Condition Works as a Variation in accordance with:
 - (i) Schedule 20 of the L3C Agreement; and
 - (ii) Annexure B - Schedule of Prices,

for any amounts expressly payable on account of the Contract Price including where expressly required with respect to the carrying out of On Condition Works.

8. Construction

8.1 Description of Works

Subject to clause 6.8, the Contractor must:

- (a) perform the Works; and
- (b) manufacture, supply and install the Equipment required for the Contractor's Activities,

in accordance with:

- (c) the Statement of Work;
- (d) any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract and which the Contractor is entitled to use for manufacture, production or installation purposes under clause 6.2;
- (e) subject to clause 3.1, any Direction of the Principal's Representative, including any Variation directed by the Principal's Representative by a document titled "Variation Order"; and
- (f) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract).

8.2 All work included

Except in respect of any Principal Supplied Items, the Contractor warrants that it has, and it will be deemed to have, allowed for the provision of all Plant, Equipment and Work, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Statement of Work or any Design Documentation.

Any such Plant, Equipment and Work, materials and other work:

- (a) must be undertaken and provided by the Contractor; and
- (b) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

8.3 Compliance with Law

The Contractor must in carrying out the Contractor's Activities:

- (a) comply with all applicable Law;
- (b) obtain all Approvals except for those specified in the Key Details which were either obtained prior to the Award Date or will be obtained after the Award Date by the Principal;
- (c) comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or specified in the Key Details) including those conditions and requirements which the Principal is required under the terms of the Approvals specified in the Key Details to comply with, carry out and fulfil; and
- (d) prepare and give the Principal's Representative any documents that an Authority requires in order for the Principal to obtain the Approvals it requires to use the Works.

8.3A In so far as the Principal is to provide any Approvals in its capacity as a government agency or an Authority, without limiting its statutory obligations the Principal shall act reasonably and timely in providing the Contractor those Approvals and not delay the Contractor.

8.4 Change in Law

If there is a Change in Law after the Award Date and:

- (a) the Change in Law could not reasonably have been anticipated at the Award Date; and
- (b) compliance with the Change in Law by the Contractor:
 - (i) has a direct adverse effect on the Contractor in performing the Contractor's Activities; and
 - (ii) directly results in an increase in the Contractor's costs of performing the Contractor's Activities,

then the additional costs necessarily and reasonably incurred by the Contractor in complying with the Change in Law, as determined by the Principal's Representative, will be added to the Contract Price.

8.5 Subcontracting

The Contractor:

- (a) must not subcontract the whole of the Contractor's Activities;
- (b) must not subcontract any work without the prior written approval of the Principal's Representative, other than to the Subcontractors specified in the Key Details. The Principal must notify the Contractor of whether any proposed Subcontractor is approved or rejected within 10 Business Days of the Principal being notified of the proposed Subcontractor, giving reasons for any rejection;
- (c) will be fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities;
- (d) will be liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees and agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities; and
- (e) must, at the request of the Principal's Representative, give the Principal a copy of the scope of work or similar document for each agreement the Contractor enters into with a Subcontractor for the performance of the Contractor's Activities under this Contract.

8.6 Subcontractor warranties

- (a) The Contractor must, subject to clause 8.6(b), use best endeavours to procure that each Subcontractor undertaking or supplying the work or items described in the Key Details provides a warranty in the form set out in Schedule 9 in favour of the Principal at the time of execution of the subcontract.
- (b) If the Contractor has used best endeavours to procure a warranty required by clause 8.6(a), and is unable to procure a warranty in the form required, the Contractor may:
 - (i) provide copies of all relevant correspondence, records of discussions and minutes of meetings with the relevant Subcontractor to the Principal's Representative; and
 - (ii) request the Principal's Representative to:
 - A. assist with the negotiation of the terms of the warranty; and/or
 - B. alter the terms of the warranty to be issued by the Subcontractor.
- (c) These warranties will not derogate from any rights which the Principal may have against the Contractor in respect of the subject matter of these warranties.

8.7 The environment

The Contractor must ensure that in carrying out the Contractor's Activities it does not pollute, contaminate or otherwise damage the environment.

8.8 Principal may act

- (a) By prior reasonable notice (and, in the case of Urgent Defects, a telephone call will constitute reasonable prior notice), the Principal may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

- (b) The costs, expenses and damages suffered or incurred by the Principal in so carrying out such an obligation will be a debt due from the Contractor to the Principal.

8.9 Accreditation and Safety

- (a) Subject to the changes set out in paragraphs (b) and (c), Schedule 4 (Accreditation and Safety) of the L3C Agreement (except for clauses 1.9 and 1.11) is incorporated by reference into this Contract.
- (b) If the Contractor is required to work in the Rail Corridor for the performance of the Contractor's Activities under the Contract or pursuant to a Variation, the Contractor must comply with the requirements which appear in Appendix 1 of Schedule 4 of the L3C Agreement (which are incorporated by reference into this Contract, except that the words "The requirements in this Appendix only apply if the L3C Contractor is Directed as a Variation by Sydney Trains to carry out work in the Rail Corridor for the performance of the L3C Services or the Private Services" are deleted.
- (c) Clause 1.12 of Schedule 4 of the L3C Agreement is deleted and replaced with the following:

To the extent that the Contractor's Activities include the Asset Lifecycle of a NSW Rail Asset, the Contractor must carry out those aspects of the Contractor's Activities in accordance with the ASA Authorisation specified in the Key Details.

8.10 Policies, Codes and Standards

- (a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with:
 - (i) the Code of Conduct;
 - (ii) the Policies, Codes and Standards; and
 - (iii) Schedule 7.
- (b) For the purposes of clause 8.10(a), any reference to "NSW government sector employees" or "Sydney Trains employees" in the Policies, Codes and Standards is to be read as a reference to the Contractor's employees.

8.11 Co-operation with Other Contractors

The Contractor:

- (a) acknowledges that there may be a need for Other Contractors to have access to the Cars and to the Site at the same time as the Contractor is performing the Contractor's Activities; and
- (b) must:
 - (i) permit Other Contractors to carry out their work;
 - (ii) fully co-operate with Other Contractors;
 - (iii) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
 - (iv) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

8.12 Basis of Contract Price

The Contractor acknowledges that unless otherwise expressly stated in the Contract, the Contract Price:

- (a) is firm and inclusive of all taxes (other than GST), duties (including customs duty) and governmental charges imposed or levied in Australia or overseas; and
- (b) includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges, and costs of compliance with all other statutory, award or other legal or contractual requirements.

8.13 Provisional Sum Work

- (a) For each item of Provisional Sum Work, the Principal's Representative will give the Contractor an instruction either deleting that item of Provisional Sum Work from the Contract or requiring the Contractor to proceed with the relevant work.

If any item of Provisional Sum Work is deleted from the Contract:

- (i) the Contract Price will be reduced by the amount allowed for the item of Provisional Sum Work in the Key Details;
 - (ii) the Principal may engage an Other Contractor to carry out the item of Provisional Sum Work; and
 - (iii) the Principal will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with, the deletion of the item of Provisional Sum Work, provided that no work has been performed in connection with the deleted item of Provisional Sum Work.
- (b) If the Contractor is instructed to proceed with an item of Provisional Sum Work, the Contractor will progressively prepare the Design Documentation for the item of Provisional Sum Work. The Contractor must inform the Principal's Representative when the Design Documentation is being discussed at design and other meetings and the Principal's Representative may attend all meetings.
 - (c) Where the Contractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Principal's Representative, be carried out under subcontracts to be let after a competitive tender or sole source by the Contractor in accordance with such reasonable procedure as may be required by the Principal's Representative.
 - (d) If the Contractor enters into a subcontract for an item of Provisional Sum Work:
 - (i) the Contract Price will, if the amount tendered by the tenderer with whom the Contractor is instructed to enter into the subcontract is more or less than the amount allowed in the Key Details for that item of Provisional Sum Work, be adjusted by the amount of the difference, with no further allowance for overhead and profit except as set out in clause 8.13(f) ; and
 - (ii) any Variation to that work will be dealt with under clause 11.
 - (e) If the Principal's Representative directs that an item of Provisional Sum Work is not to be put out to tender in accordance with clause 8.13(c), the Contract Price will be adjusted for the item of Provisional Sum Work by the difference between:
 - (i) the amount allowed for the item of Provisional Sum Work in the Key Details; and
 - (ii) either:

- A. an amount agreed between the Contractor and the Principal's Representative; or
 - B. if they fail to agree, an amount reasonably determined by the Principal's Representative under clause 11.3(b) or 11.3(d)(ii) as if the item of Provisional Sum Work were a Variation.
- (f) If, after each and every item of Provisional Sum Work has been deleted under clause 8.13(a), put out to tender under clause 8.13(c) or priced under clause 8.13(e), the total net increase to the Contract Price after all adjustments under clauses 8.13(a), 8.13(c) and 8.13(e) [REDACTED] of the total amount allowed in the Key Details for Provisional Sum Work, the Contract Price will be further increased by the percentage set out in the Key Details of the amount by which the total net increase to the Contract Price [REDACTED] of the total amount allowed in the Key Details.

8.14 Plant, Equipment and Work

The Contractor must not remove from the Site any Plant, Equipment and Work without the Principal's Representative's prior written approval except for the purpose of achieving Completion as contemplated under clause 13.

8.15 Requirements for Software

In respect of any components of the Deliverables or other Contractor's Activities that are Software (whether developed by the Contractor or Third Party Software), the Contractor must ensure that those components:

- (a) at the time of supply or delivery to the Principal, have been checked, using industry standard anti-virus scanning and detection tools, by the Contractor (or, in the case of Third Party Software, the relevant OEM or applicable owner) for, and shown to be free of, any viruses, disabling code or other code that may cause an unauthorised change, undesired effect, security breach or damage to the Software, Deliverables, Contractor's Activities or the information technology systems of the Principal or those of any other Rail Transport Agency with which the Principal's information technology systems may interoperate or interact;
- (b) are capable of meeting, and provided properly used in accordance with any specifications or documentation relating to them, including any specified minimum system requirements, meet, all applicable functional performance requirements for those components and comply with any specifications or documentation related to the Software and as specified in the Statement of Work or any Design Documentation;
- (c) are supplied together with all relevant tools and documentation necessary to enable the Principal to use, modify, test, operate, maintain, enhance, identify faults in and adapt that Software; and
- (d) are supported and maintained, and regularly updated and upgraded, as required to maintain the standards of performance described in paragraph (b) above in respect of any equipment, systems, infrastructure, hardware or other like items, and of any other Deliverables, Contractor's Activities, on or with which those components are supplied, for the life of the Software,

and, at the Principal's request, provide (or procure as applicable, for Third Party Software) training and knowledge transfer services in relation to the support, maintenance, updating and upgrading of the Software, at the applicable rates or prices for such Contractor's Activities (or activities of the relevant OEM or applicable owner) as specified in the Schedule of Prices.

8.16 Changes and Updates to Software

The Contractor must:

- (a) prior to implementing any change, update or upgrade to any Software that forms part of any Deliverables or other Contractor's Activities (or procuring such implementation by any OEM or applicable owner, in relation to Third Party Software), advise the Principal of the nature of the proposed change, update or upgrade and its functional objectives, consult with the Principal regarding any projected impact (including on any systems or other technology or software assets of the Principal), assist the Principal in assessing implementation impacts and obtain the Principal's prior approval to the change, update or upgrade before proceeding with its implementation;
- (b) where the Principal has given its approval to a change, update or upgrade to any Software that forms part of any Deliverables or other Contractor's Activities, only implement that change, update or upgrade in consultation with the Principal, in compliance with the Principal's directions and subject to prior testing and advance notice where and as stipulated by the Principal; and
- (c) promptly notify the Principal of any changes or updates proposed to be made to any Software which may:
 - (i) alter their identification, performance, characteristics, form, fit, function or processes required for their correct or intended usage of the Software (or any of the Deliverables and other Contractor's Activities more generally); or
 - (ii) otherwise require notification to any regulator, authority or third party which provides an Approval in connection with that Software (or any of the Deliverables and other Contractor's Activities more generally).

9. Quality and Defects

9.1 Manufacture, production and installation

The Contractor must, in carrying out the Contractor's Activities:

- (a) use workmanship:
 - (i) of the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Works; and
 - (ii) which is fit for its purpose;
- (b) use materials:
 - (i) which are new (unless stated otherwise in the Contract) and comply with the requirements of the Contract, and to the extent not fully described in the Contract, which are consistent with the best industry standards for work of a nature similar to the Works; and
 - (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Works;

- (c) use care, skill, judgment and diligence to the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor's Activities;
- (d) carry out the Contractor's Activities in a manner that is safe to both people and the environment, in accordance with Law and best industry standards for work of a nature similar to the Contractor's Activities;
- (e) minimise any disruption, interference or inconvenience to the Principal or its Personnel, including the Principal's operations, or any Other Contractors;
- (f) ensure that the Contractor's Personnel engaged in carrying out the Contractor's Activities are suitably qualified and competent; and
- (g) comply with the requirements of the Contract.

9.2 Manufacturer's products

- (a) The Contractor must carry out the Contractor's Activities and for this purpose agrees that where any specific manufacturer's product is specified in the Statement of Work (or elsewhere), the Principal makes no representation as to: the quality of the specified product;
- (b) the availability of the specified product; or
- (c) the creditworthiness of the manufacturer of the specified product.

9.3 Quality assurance

The Contractor:

- (a) must implement a quality assurance system representing best industry standards;
- (b) must allow the Principal's Representative access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any Direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system;
 - (iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the quality assurance system; or
 - (iv) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any Defect including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

9.4 Right to inspect

- (a) The Principal's Representative may at any time inspect the Contractor's Activities.
- (b) The Contractor acknowledges that:

- (i) the Principal's Representative owes no duty to the Contractor to:
 - A. inspect the Contractor's Activities;
 - B. review any design or any item manufactured, supplied or installed for Defects (including errors and omissions) or compliance with the requirements of this Contract; or
 - C. review manufacture, production and installation for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
- (ii) no inspection of the Contractor's Activities or review of manufacture, production or installation or any design or any items manufactured, supplied or installed by the Principal's Representative will in any way lessen or otherwise affect:
 - A. the Contractor's obligations whether under the Contract or otherwise by Law; or
 - B. the Principal's rights against the Contractor whether under the Contract or otherwise by Law.

9.5 Trial

- (a) If the Principal's Representative (in its absolute discretion) notifies the Contractor that a Trial is required for a proposed item (or part thereof), the Contractor must participate in the Principal's conduct of the Trial.
- (b) The Contractor must provide the Principal with all reasonable assistance requested by the Principal in respect of the Trial of a proposed item including:
 - (i) participating in the Principal's testing of the proposed item;
 - (ii) participating in conducting investigations of any defect in the proposed item that becomes apparent during the Trial, or any failure to meet the relevant performance requirements determined by the Principal for the purposes of the Trial, including providing a copy of the investigative findings to the Principal; and
 - (iii) if required by the Statement of Work or as otherwise directed by the Principal as a Variation:
 - A. the provision of:
 - 1) any additional equipment (including hardware and/or Software) required by the Principal in respect of the proposed item; and
 - 2) technical expertise in support of development of test cases; and
 - B. the preparation of any Design Documentation required in connection with the Trial, including in relation to the integration of the proposed item with any other components or aspects of the Equipment or a Car.
- (c) The Principal may, in its absolute discretion:
 - (i) Direct the Contractor to procure the proposed item for use in the Contractor's Activities;

- (ii) notify the Contractor that it is not to procure the proposed item for use in the Contractor's Activities; or
- (iii) notify the Contractor that the Principal intends to procure the item in another manner, including by issuing a request for tender in relation to the supply of the proposed or a similar item.

9.6 Testing

- (a) The Contractor must carry out all Tests:
 - (i) required by the Contract; or
 - (ii) Directed by the Principal under this Contract,
 in accordance with any procedure:
 - (iii) set out in the Contract which may apply to the Tests; or
 - (iv) if no procedure exists, as reasonably directed by the Principal's Representative.
- (b) Without limiting or otherwise restricting any other term of this Contract, at any time before the expiry of the Defects Liability Period, the Principal may at its absolute discretion Direct the Contractor to:
 - (i) repeat any Test already carried out (whether or not the Test was previously passed);
 - (ii) open up or uncover any part; or
 - (iii) carry out Tests, in addition to those required under the Contract;
 of:
 - (iv) the Works; or
 - (v) the Equipment,
 in order to ensure that they are fit to allow the Contractor to perform its obligations under this Contract.
- (c) The Contractor must, if Directed by the Principal, provide the Principal's Representative with reports detailing the results of the tests carried out under clause 9.6(a) or 9.6(b).
- (d) If any part of the Works or Equipment is shown to have a Defect under a test carried out under clause 9.6(a) or 9.6(b) then the Contractor must:
 - (i) arrange for the Works or the Equipment to be replaced, or rectified, at no costs to the Principal; and
 - (ii) when the Works or the Equipment have been replaced, or the Contractor considers that they have been replaced:
 - A. give notice to the Principal's Representative; and
 - B. re-conduct the test of that part of the Works in accordance with the provisions of this clause 9.6.
- (e) If testing carried out in accordance with a Direction by the Principal under clause 9.6(b):

- (i) finds that the Works or the Equipment do not contain a Defect; and
- (ii) causes the Contractor to incur additional cost,

then the reasonable additional cost necessarily incurred by the Contractor in carrying out the testing, as reasonably determined by the Principal's Representative, will be added to the Contract Price.

- (f) If testing carried out in accordance with this clause finds that the Works or the Equipment contains a Defect, all reasonable costs that the Principal incurs under, out of or in connection with such testing is a debt due and payable by the Contractor to the Principal.

9.7 Test not passed

Neither the carrying out of a Test nor the issue of a Test report or certificate will release the Contractor from any of its responsibilities, obligations or liabilities under the Contract (including the repair or replacement or both of any part of the Works and Equipment damaged during the course of any Test).

9.8 Defects

- (a) Subject to paragraph (b), the Contractor must correct all Defects whether or not they are identified and noticed by the Principal's Representative.
- (b) If, prior to the expiry of the Defects Liability Period, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor an instruction specifying the Defect and doing one or more of the following:
 - (i) requiring the Contractor to:
 - A. investigate and report on any Defect (or any part of it) with the Contractor's proposed methods and methodologies for rectification and specifying the form of the report and the time within which this must be carried out; and
 - B. correct the Defect, or any part of it, and specifying the reasonable time within which this must occur (having regard to whether or not the Defect is an Urgent Defect);
 - (ii) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the reasonable time within which this must be carried out (having regard to whether or not the Defect is an Urgent Defect);; or
 - (iii) advising the Contractor that the Principal will accept the Works, or any part thereof, despite the Defect.

9.9 Correction of Defect

- (a) If an instruction is given under clause 9.8(b)(i), the Contractor must correct the Defect:
 - (i) within the time specified in the Principal's Representative's instruction; and
 - (ii) if after Completion, at times and in a manner which cause as little inconvenience to the occupants or users of the Works, the Separable Portion or the Cars or the public as is reasonably possible.
- (b) The Contractor acknowledges and agrees that:

- (i) due to the operational needs of any Rail Transport Agency and/or other operational needs:
 - A. access to the Cars may be limited, delayed and rescheduled from time to time;
 - B. the period of access may be compressed or limited to periods of line shutdown at night, on weekends or on public holidays; and
 - C. the Principal's Representative may direct the Contractor as to:
 - 1) the times, dates, depot, stabling yard and siding locations for; and
 - 2) the work method that must be employed in, carrying out Defect rectification works;
- (ii) if the Contractor requires the Car to be moved to a different location than that notified by the Principal's Representative under clause 9.9(b)(i)C, any costs incurred in moving a Car to that location will be a debt due from the Contractor to the Principal; and
- (iii) it will not be relieved of its liabilities or responsibilities whether under this Contract or otherwise according to Law by reason of the matters set out in this clause 9.9.

9.10 Acceptance of work

If:

- (a) an instruction is given under clause 9.8(b)(iii); and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Contract Price will be reduced by the amount reasonably determined by the Principal's Representative which represents the cost of correcting the Defect (or the relevant part of it).

9.11 Extension of Defects Liability Period

If:

- (a) the Principal's Representative gives the Contractor an instruction under clause 9.8(b)(i) during the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Defects Liability Period will be extended for the work required by the instruction for a period of 12 months, commencing upon completion of the correction of the Defect (or the relevant part of it). In no circumstances will the Defect Liability Period be extended beyond a total of 24 months from the Date of Completion.

9.12 Legal rights not affected

Neither the Principal's rights, nor the Contractor's liability, whether under the Contract or otherwise according to Law in respect of Defects, whether before or after the expiry of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon the Principal or Principal's Representative by this clause 9 or any other provision of the Contract;

- (b) the failure by the Principal or the Principal's Representative to exercise any such rights; or
 - (c) any instruction of the Principal's Representative under clause 9.8.
-

10. Time

10.1 Progress and time

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities with due expedition and without delay; and
- (b) achieve Completion of the Works or each Separable Portion by the Date for Completion.

10.2 Programming

- (a) The Contractor must within 10 Business Days of the Award Date, submit to the Principal's Representative, the Contractor Program of the Contractor's Activities which must contain:
 - (i) dates on which the Contractor proposes that the Principal provides Cars;
 - (ii) dates on which the Contractor must endeavour to return Cars to the Principal after providing the Contractor's Activities in accordance with this Contract;
 - (iii) the Date for Completion; and
 - (iv) the details required by the Contract or which the Principal's Representative otherwise reasonably directs.
- (b) Following receipt of the Contractor's Program under clause 10.1, the Principal will notify the Contractor in writing in advance as to when Cars will be made available to perform the Contractor's Activities.
- (c) The Contractor must:
 - (i) update the Contractor Program periodically at least at intervals of no less than once per month (unless otherwise reasonably required by the Principal's Representative) to take account of:
 - A. changes to the program;
 - B. Variations and any other changes to the Contractor's Activities;
 - C. delays which may have occurred, including any for which the Contractor is granted an extension of time under clause **Error! Reference source not found.**; and
 - D. extensions of time granted by the Principal's Representative under clause **Error! Reference source not found.**; and
 - (ii) give the Principal's Representative copies of all programs for its approval.

10.3 Contractor not relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Principal's Representative will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Contract, especially (without limitation) the obligation to achieve Completion of the Works or each Separable Portion by the Date for Completion;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the carrying out of the Principal's or Principal's Representative's Contract obligations.

10.4 Acceleration chosen by Contractor

If the Contractor chooses to accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Completion of the Works or each Separable Portion by the relevant Date for Completion; and
- (b) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

10.5 Delays entitling Claim

If the Contractor is or will be delayed in achieving Completion of the Works or a Separable Portion by a Qualifying Cause in a manner which will prevent it from achieving Completion of the Works or the Separable Portion by the Date for Completion unless that date is extended, the Contractor may claim an extension of time.

10.6 Extension of time Claim

To claim an extension of time under clause 10.5 the Contractor must:

- (a) within 10 Business Days of when the Contractor became aware, or ought to have become aware of the occurrence causing the delay submit a written claim to the Principal's Representative for an extension to the relevant Date for Completion which:
 - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
 - (ii) states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the Contractor has been or will be delayed in achieving Completion in the manner set out in clause **Error! Reference source not found.**; and
- (b) if the effects of the delay continue beyond the period of 10 Business Days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim for an extension to the Principal's Representative:
 - (i) every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay; and
 - (ii) containing the information required by paragraph **Error! Reference source not found.**

10.7 Conditions precedent to extension

It is a condition precedent to the Contractor's entitlement to an extension of time that:

- (a) the Contractor must give the written claims required by clause **Error! Reference source not found.** as required by that clause;
- (b) the cause of the delay was beyond the reasonable control of the Contractor; and
- (c) the Contractor must have actually been delayed in achieving Completion by a Qualifying Cause in a manner which will prevent it from achieving Completion by the relevant Date for Completion unless that date is extended.

10.8 Extension of time

Subject to clause **Error! Reference source not found.**, if the conditions precedent in clause **Error! Reference source not found.** have been satisfied, the Date for Completion will be extended by a reasonable period determined by the Principal's Representative and notified to the Principal and the Contractor within 15 Business Days of the Contractor's written claim under clause **Error! Reference source not found.**, but where further Claims are submitted under clause **Error! Reference source not found.**, then within 15 Business Days of the last of those Claims.

10.9 Reduction in extension of time

The Principal's Representative will reduce any extension of time it would otherwise have notified to the Principal and the Contractor under clause **Error! Reference source not found.** to the extent that the Contractor:

- (a) contributed to the delay; or
- (b) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.10 Concurrent Delays

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a Qualifying Cause, then to the extent that the delays are concurrent the Contractor is not, to that extent, entitled to an extension of time with respect to the relevant Date for Completion.

10.11 Unilateral extensions

Whether or not the Contractor has made, or is entitled to make, a Claim for an extension of time under this clause 10, the Principal's Representative may, in its absolute discretion at any time and from time to time by written notice to the Contractor and the Principal, unilaterally extend the Date for Completion.

The power to extend any Date for Completion under this clause **Error! Reference source not found.**:

- (a) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause **Error! Reference source not found.** for the benefit of the Contractor; and
- (b) is not a Direction which can be the subject of a dispute pursuant to clause 15 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

10.12 Delay costs

- (a) The Contractor will not be entitled to make any Claim against the Principal for delay or disruption costs arising out of or in any way in connection with delay or disruption in the execution or completion of the Contractor's Activities, however that delay or disruption may have been caused, other than under this clause **Error! Reference source not found.**
- (b) Subject to clause **Error! Reference source not found.**, where an extension of time has been granted under clause **Error! Reference source not found.** for delay caused by a breach of Contract by the Principal, the Principal will pay the Contractor such reasonable extra costs (if any) as are necessarily incurred by the Contractor as a result of that delay as reasonably determined by the Principal's Representative. The Contractor must take reasonable steps to mitigate the extra costs incurred by it as a result of the delay. Reasonable steps include redeploying the Contractor's employees (and the employees of the Key Providers seconded to the Contractor and directly engaged in the performance of the Contractor's Activities) to other projects, including to work in connection with the L3C Agreement.
- (c) The extra costs payable to the Contractor under this clause **Error! Reference source not found.** will not include any profit, loss of profit or offsite overheads.
- (d) Any delay or disruption costs payable under this clause will be a limitation upon the Principal's liability to the Contractor in respect of any Claim by the Contractor for any loss suffered or incurred by the Contractor arising out of or in any way in connection with any delay and disruption which the Contractor suffers or encounters in carrying out the Contractor's Activities as a result of a breach of Contract by the Principal.
- (e) The Principal's liability to the Contractor under clause **Error! Reference source not found.** is limited to the amount per day stated in the Key Details.

10.13 Suspension

The Principal's Representative may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities.

If a suspension under this clause **Error! Reference source not found.** arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
 - (i) an instruction to suspend under this clause **Error! Reference source not found.** will entitle the Contractor to be paid by the Principal the reasonable extra costs (not including any profit, loss of profit or offsite overheads) necessarily incurred by the Contractor as a result of the suspension as reasonably determined by the Principal's Representative;
 - (ii) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this paragraph **Error! Reference source not found.**

10.14 Instruction to accelerate

If the Contractor gives the Principal's Representative a Claim under clause **Error! Reference source not found.**, the Principal's Representative may:

- (a) instruct the Contractor to accelerate the Contractor's Activities by taking those reasonable measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve Completion of the Works or the Separable Portion by the relevant Date for Completion; and
- (b) give such an instruction whether or not the cause of delay for which the Contractor has given its Claim under clause **Error! Reference source not found.** otherwise entitles the Contractor to an extension of time to any relevant Date for Completion.

10.15 Partial acceleration

If the Principal's Representative gives the Contractor an instruction to accelerate under clause **Error! Reference source not found.** requiring it to accelerate the Contractor's Activities and it only applies to part of the delay, the Contractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay.

10.16 Acceleration

If the Principal's Representative gives an instruction to the Contractor under clause **Error! Reference source not found.** or **Error! Reference source not found.**:

- (a) the Contractor must accelerate the Contractor's Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve Completion of the Works or the Separable Portion by the relevant Date for Completion;
- (b) if the Contractor would, but for the instruction, have been entitled to an extension of time to the relevant Date for Completion for the cause of delay, the Contractor will be entitled to be paid:
 - (i) the extra costs reasonably incurred by it and directly attributable to accelerating the Contractor's Activities; and
 - (ii) that percentage of the amount under sub-paragraph **Error! Reference source not found.** stipulated in the Key Details; and
- (c) subject to clause **Error! Reference source not found.**, the Contractor will not be entitled to make any Claim against the Principal, arising out of, or in any way in connection with, the cause of delay and the instruction other than for the amount which is payable by the Principal under this clause **Error! Reference source not found.**

10.17 Principal's rights to liquidated damages not affected

The Principal's rights to liquidated damages under clause 13.6 for a failure by the Contractor to achieve Completion of the Works or a Separable Portion by any relevant Date for Completion are not affected by the Principal's Representative giving the Contractor an instruction to accelerate under clause **Error! Reference source not found.**

11. Variations

11.1 Variation price request

At any time prior to the later of the last Date of Completion of the Works or a Separable Portion, the Principal's Representative may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Price Request", the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (a) the adjustment (if any) to the Contract Price to carry out the proposed Variation; and
- (b) the effect (if any) which the proposed Variation will have on the then Contractor Program, including the relevant Date for Completion.

11.2 Variation order

Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 11.1, the Principal's Representative may at any time prior to the last Date of Completion of the Works or the Separable Portion, instruct the Contractor to carry out a Variation by issuing a written document to the Contractor titled "Variation Order" in which the Principal's Representative will state one of the following:

- (a) the proposed adjustment to the Contract Price as set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or
- (b) any adjustment to the Contract Price will be reasonably determined under clauses 11.3(b), 11.3(c) or 11.3(d).

No Variation will invalidate the Contract irrespective of the nature, extent or value of the works the subject of the Variation.

11.3 Adjustment for Variation

Subject to clause 17.1, the Contract Price will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative by:

- (a) where clause 11.2(a) applies, the agreed amount;
- (b) where clause 11.2(a) does not apply, an amount agreed between the parties;
- (c) to the extent paragraphs (a) and (b) do not apply, an amount determined by the Principal's Representative using any rates or prices which appear in the Schedule of Prices to this Contract, the Schedule of Prices in the Standing Offer Deed or Schedule 20 of the L3C Agreement, to the extent they are applicable to, or it is reasonable to use them for valuing the Variation, to which will be added any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor; and
- (d) to the extent paragraphs (a) to (c) do not apply, a reasonable amount determined by the Principal's Representative, to which will be added:
 - (i) the following percentage or percentages of the amount determined:
 - A. where the adjustment to the Contract Price is to be an increase, those percentages specified in the Key Details for non-time related overheads and profit; or

- B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details for overheads and profit; and
- (ii) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor.
- (e) For the avoidance of doubt, where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details will be applied to the amount determined to further decrease the Contract Price on account of overheads and profit.

11.4 Omissions and deletions

- (a) If a Variation the subject of a Direction by the Principal's Representative omits or deletes any part of the Works, the Principal may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.
- (b) No Variation will invalidate, or amount to a repudiation of, this Contract.

11.5 Variations requested by Contractor

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

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Principal including the amount; and
- (c) any benefits which will flow to the Principal from the Variation.

11.6 Principal's Representative's determination

After a request is made by the Contractor in accordance with clause 11.5, the Principal's Representative will, in its absolute discretion, give a written notice to the Contractor:

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

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

11.7 Variation approved by Principal's Representative

If the Principal's Representative issues a written notice under clause 11.6 approving the Contractor's request under clause 11.5:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Principal arising out of, or in any way in connection with, the Variation;
- (b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Price will be reduced by the amount offered by the Contractor in its request; and
- (c) the Contractor will be responsible for all parts of the Works which are in any way affected by the Variation.

11.8 Notification of Variation resulting in change to the L3C Agreement Scope, Performance and Technical Requirements

If the Contractor considers that a Variation will or should result in a change to the L3C Agreement Scope, Performance and Technical Requirements or the L3C Services (as those terms are defined in the L3C Agreement), the Contractor must notify the Principal's Representative in writing as soon as reasonably practicable.

12. Payment

12.1 Payment obligation

Subject to clause 12.10 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor:

- (a) the Contract Price; and
- (b) any other amounts which are payable by the Principal to the Contractor under the Contract.

12.2 Payment claims

The Contractor must give the Principal's Representative claims for payment on account of the Contract Price and any other amounts payable by the Principal to the Contractor under the Contract:

- (a) subject to clause 12.4:
 - (i) monthly on or after the 25th day of each month after the Award Date; and
 - (ii) at the time required by clause 12.8;
- (b) in the form attached at Schedule 14 or such form which the Principal's Representative reasonably requires; and
- (c) which are based on the Schedule of Prices to the extent such prices are relevant.

The Contractor cannot include in any payment claim under this clause 12.2, a Claim which is barred by clause 17.5.

The Contractor agrees with the Principal that a payment claim submitted to the Principal's Representative under this clause 12.2 is received by the Principal's Representative as agent for the Principal.

12.3 Payment statements

The Principal's Representative must within 10 Business Days of receiving a payment claim under clauses 12.2 or 12.8 give the Contractor, on behalf of the Principal, a payment statement which states:

- (a) the value of the work completed in accordance with the Contract;
- (b) the amount already paid to the Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;
- (d) the amount (if any) which the Principal's Representative believes acting reasonably to be then payable by the Principal to the Contractor on account of the Contract

Price and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and

- (e) if the amount in paragraph (d) is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in paragraph (d) is less than the amount claimed in the payment claim; and
 - (ii) if the reason for the difference is that the Principal has retained, deducted, withheld or set off payment for any reason, the reason for the retention, deduction, withholding or setting off payment.

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Contractor's Activities covered by the payment statement has been satisfactorily carried out in accordance with the Contract.

Failure by the Principal's Representative to set out in a payment statement an amount which the Principal is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set off any amount under the Contract.

Unless the Principal has notified the Contractor under clause 12.13(g) that it will issue a recipient created tax invoice (RCTI) for a taxable supply made by the Contractor to the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative, provide to the Principal a valid tax invoice that complies with the GST Legislation in respect of that taxable supply for the amount set out as payable in the payment statement. If clause 12.13(g) applies, the Principal will provide the RCTI for the amount set out as payable in the payment statement together with the payment statement.

12.4 Conditions precedent to payment

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) any Bond, replacement security and parent company guarantee required under clause 5, or under the Standing Offer Deed;
- (b) evidence of any insurance taken out by the Contractor which is required under clause 5.5;
- (c) a duly executed deed poll as required under the Standing Offer Deed (form of which is included in Schedule 8); and
- (d) documents showing compliance by the Contractor with clause 12.11.

12.5 Payment

- (a) Subject to clause 12.10, the Principal must pay the Contractor the amount set out as payable in the payment statement within 10 Business Days of the last to occur of:
 - (i) receipt by the Principal of a valid tax invoice under clause 12.3; and
 - (ii) receipt by the Principal's Representative of the documents referred to in clause 12.4.

- (b) If a payment statement issued under clause 12.3 shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 20 Business Days of receipt by the Contractor of the payment statement.

12.6 Payment on account

Any payment statement or payment of moneys is not:

- (a) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with the Contract.

Payment is only to be taken as payment on account.

12.7 Undelivered goods and materials

Unfixed goods and materials (including any Equipment) will not be included in the value of work in a payment statement under clause 12.3 unless:

- (a) the Contractor gives the Principal's Representative with its payment claim under clause 12.2:
 - (i) if requested by the Principal, an Unconditional Undertaking equal to the payment claimed for the unfixed goods and materials; and
 - (ii) such evidence as may be required by the Principal's Representative that title to the unfixed goods and materials will vest in the Principal upon payment;
- (b) the unfixed goods and materials are clearly marked as the property of the Principal and are on the Site or available for immediate delivery to the Site; and
- (c) the unfixed goods and materials are properly stored in a place approved by the Principal's Representative.

Upon payment of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Principal.

If the Contractor has given the Principal additional security for payment for unfixed goods and materials, the Principal must release it to the Contractor once the goods and materials are incorporated into the Works.

Any payment to be made to the Contractor by the Principal for undelivered goods and materials (or part thereof), whether pursuant to this clause 12.7 or otherwise, is an advance payment for the purposes of section 415D(9), 434J(8) or 451E(8) of the Corporations Act (as applicable), until such time until the goods and materials (or part thereof) in question have been delivered to the Principal in accordance with the Contract.

12.8 Title

Title in all items of Equipment, goods and materials will pass progressively to the Principal on the earlier of payment for or installation of such items within the Cars or incorporated into the Works in accordance with this Contract. Risk in all such items remains with the Contractor in accordance with clause 5.1.

12.9 Final payment claim and notice

Within 20 Business Days after the expiry of the last Defects Liability Period, the Contractor must give the Principal's Representative:

- (a) a payment claim which must include all amounts which the Contractor claims from the Principal on account of the Contract Price or otherwise under the Contract; and
- (b) notice of any other amounts which the Contractor claims from the Principal,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period.

The payment claim and notice required under this clause 12.8 are in addition to the other notices which the Contractor must give to the Principal's Representative under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 17.5.

After the date for submitting the payment claim and notice under this clause 12.8 has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period except for any Claim included in a payment claim or notice under this clause 12.8 which is given to the Principal's Representative within the time required by, and in accordance with the terms of, clause 12.8.

12.10 Right of set off

The Principal may deduct from any moneys otherwise due to the Contractor and from any security held by the Principal:

- (a) any debt or other moneys due from the Contractor to the Principal; or
- (b) any Claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

under or in connection with the Contract, or relating to the Contractor's Activities.

The rights given to the Principal under this clause 12.10 are in addition to and do not limit or affect any other rights of the Principal under the Contract or at Law and nothing in the clause affects the right of the Principal to recover from the Contractor the whole of the debt or Claim in question or any balance that remains owing.

Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 12.10, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause.

Clause 12.10 will survive any termination of the Contract.

12.11 Evidence of payment of workers and Subcontractors

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) a statutory declaration in the form of Schedule 10, together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared; and

- (b) copies of all relevant certificates of currency in respect of workers compensation insurance which the Contractor has in place in connection with the Contractor's Activities.

12.12 Interest

The Principal will pay simple interest at the 90 day bank bill rate on any amount which has been set out as payable by the Principal's Representative in a payment statement under clause 12.3, but which is not paid by the Principal within the time required by the Contract.

This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing money.

12.13 GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with the Contract, including the Contractor's Activities, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 12.13(b) will be paid to the Supplier at the same time as the other consideration for the supply is paid to the Supplier.
- (d) If any party is required under the Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Price) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of the Contract, where the Recipient is the Contractor, it will not be obliged to pay any amount on account of GST to the Principal (whether under this clause 12.13 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a valid tax invoice that complies with the GST Legislation in respect of that taxable supply.
- (f) Where the Supplier is the Contractor, subject to clause 12.13(g), the Contractor must issue a valid tax invoice to the Principal in respect of any taxable supply made by the Contractor to the Principal (including under clause 12.3) as a condition precedent to the Principal being obliged to pay any amount on account of GST to the Contractor in respect of such taxable supply.
- (g) The parties agree that, if notified in writing by the Principal, the following will apply to taxable supplies made by the Contractor to the Principal under or in connection with the Contract:
 - (i) where the GST Legislation permits, the Principal will issue to the Contractor an RCTI for each taxable supply (other than an Excluded Supply as defined in this clause) made by the Contractor to the Principal under the Contract. The parties may agree in writing from time to time on any taxable supply made by the Contractor to the Principal under the Contract for which the Principal will not issue RCTIs (**Excluded Supply**);
 - (ii) the Principal will issue to the Contractor a recipient created adjustment note for any adjustment event relating to a supply in respect of which it issues an RCTI; and

- (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal (other than in respect of a taxable supply that is an Excluded Supply).
- (h) Each party acknowledges and warrants that at the time of entering into the Contract it is registered for GST (and any entity making supplies or acquisitions under this Contract is also registered for GST) and will notify the other party if it or any relevant entity ceases to be registered for GST or ceases to comply with any of the requirements of the Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities (RCTI 2017/6) or other determination or ruling issued by a taxation authority relating to the issuance of RCTIs (**RCTI Requirement**). The Principal will not issue a document that would otherwise be an RCTI after the Principal or the Contractor cease to be registered for GST, or after the Principal or the Contractor cease to comply with any RCTI Requirement.
- (i) Where the Principal issues RCTIs to the Contractor in accordance with clause 12.13(g), the Contractor will indemnify or reimburse the Principal on demand for any loss, cost, expense, penalty, fine, interest, fee or other amount incurred in relation to the Principal issuing RCTIs while:
 - (i) the Contractor is not registered for GST and/or otherwise fails to satisfy, or comply with, any RCTI Requirement and the Principal has not been notified by the Contractor as such; or
 - (ii) the details contained in any RCTI or recipient created adjustment note issued by the Principal are incorrect, inaccurate or misleading as a result of information provided by the Contractor to the Principal.
- (j) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under clause 12.13(b) in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate), and subject to clause 12.13(g), the Supplier must issue an adjustment note to the other party where there is an adjustment event.
- (k) In this clause 12.13:
 - (i) terms defined in GST Legislation have the meaning given to them in GST Legislation, unless the context suggests otherwise;
 - (ii) GST includes amounts defined as "GST" under the GST Legislation and "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory); and
 - (iii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

12.14 Subcontractor's statement

- (a) The Contractor must:
 - (i) submit a signed subcontractor's statement, in the form set out in Schedule 10, together with any payment claims submitted under clause 12.2 or 12.8; and
 - (ii) ensure that any such subcontractor's statement is not dated before the date of the relevant payment claim.

- (b) The Contractor acknowledges that pursuant to the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW):
 - (i) the subcontractor's statement is required to be provided to the Principal; and
 - (ii) the Principal may withhold any payment due to the Contractor under this Contract until the Contractor gives a subcontractor's statement in the form of Schedule 10. Any penalty for late payment under the Contract does not apply to any payment withheld under this clause 12.14(b)(ii).

12.15 Payment of Subcontractors

The Contractor acknowledges and agrees that, without limiting clause 12.11:

- (a) the portion of each payment made by the Principal to the Contractor on account of the Contract Price which is payable by the Contractor to Subcontractors in accordance with their relevant subcontracts is held by the Contractor on trust for those Subcontractors; and
- (b) the Contractor must pay all Subcontractors promptly in accordance with the relevant subcontracts,

provided that nothing in this clause obliges the Contractor to keep such funds in a separate bank account.

13. Completion

13.1 Certificate of Readiness

- (a) The Contractor acknowledges and agrees that it must provide the Principal with a Certificate of Readiness for a Car before that Car can return to that part of the New South Wales rail network on which the Principal operates trains and operate on the railway.
- (b) At or before the time the Contractor returns a Car to the Principal, the Contractor must provide the Principal's Representative with either:
 - (i) a Certificate of Readiness in accordance with clause 13.1(c); or
 - (ii) if the Contractor considers that it cannot provide a Certificate of Readiness, it must notify the Principal and provide reasons in writing for not providing a Certificate of Readiness, and clause 13.2 will apply.
- (c) By providing the Principal with a Certificate of Readiness, the Contractor represents and warrants that the Contractor's Activities carried out by the Contractor in connection with the Car the subject of the Certificate of Readiness have, as at the date of the Certificate of Readiness, been provided:
 - (i) so as to satisfy the matters stated in that Certificate of Readiness;
 - (ii) in accordance with this Contract; and
 - (iii) so that each Car meets or exceeds the Minimum Operating Standard for that type of Car.
- (d) The Contractor acknowledges and agrees that the Principal will rely upon the Certificate of Readiness provided by the Contractor.

- (e) The Contractor may not amend or change the form or substantive content of the Certificate of Readiness without the prior written approval of the Principal.
- (f) The Contractor must indemnify the Principal against all Claims, loss and damage arising out of or as a consequence of a Certificate of Readiness to the extent that the confirmations by the Contractor in that Certificate of Readiness are either:
 - (i) a result of the Contractor's negligence, breach or default; or
 - (ii) not in accordance with the requirements of clause 13.1(c).

13.2 Consequences of not issuing a Certificate of Readiness

- (a) Following any notification by the Contractor under clause 13.1(b)(ii), the Contractor must, to the extent required by the Principal, do all things necessary to enable the Contractor to issue a Certificate of Readiness including:
 - (i) consulting with and advising the Principal on the reasons why no Certificate of Readiness was provided and how to overcome them;
 - (ii) consulting and advising on further development of options to further progress the Contractor's Activities in connection with the Certificate of Readiness;
 - (iii) providing information to the Principal to assist in overcoming issues;
 - (iv) meeting or communicating with the Principal as required; and
 - (v) otherwise doing anything reasonably requested by the Principal.
- (b) Nothing done by the Contractor pursuant to this clause 13.1 and 13.2 will relieve the Contractor of its other obligations under this Contract or at Law.
- (c) Nothing in clauses 13.1 and 13.2 will prevent the Principal from doing anything it considers necessary to achieve the successful provision of the Contractor's Activities following the receipt of a notice from the Contractor under clause 13.1(b)(ii), including amending, withdrawing or reducing the scope of the relevant Contractor's Activities or involving an Other Contractor to assist it with the Contractor's Activities.
- (d) If the Contractor provides a notice under clause 13.1(b)(ii), then the Contractor:
 - (i) must, if Directed by the Principal, promptly cease the provision of any component or aspect of the Contractor's Activities that relates to the Contractor's inability to provide a Certificate of Readiness and the Contractor will not be entitled to any further payment for that component or aspect of the Contractor's Activities;
 - (ii) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in connection with any component or aspect of the Contractor's Activities that relates to the Contractor's inability to provide a Certificate of Readiness; and
 - (iii) must immediately reimburse to the Principal all monies paid by the Principal to the Contractor in connection with any component or aspect of the Contractor's Activities that relates to the Contractor's inability to provide a Certificate of Readiness.

13.3 Contractor to Notify

The Contractor must give the Principal's Representative written notice:

- (a) at least 10 Business Days, before it anticipates achieving Completion of the Works or a Separable Portion; and
- (b) if it anticipates that it will be delayed in returning a Car to the Principal, at least 5 Business Days in advance of the Car's return date.

13.4 Inspection before Completion

- (a) The Contractor agrees that:
 - (i) by the time a Car arrives for final inspection the Preliminary Service Report must be up to date and available for inspection by the Principal; and
 - (ii) a minimum of 48 hours in advance of the date the Contractor wishes to return the Car to the Principal, the Final Service Report must be up to date and available for inspection by the Principal.
- (b) The Principal's Representative must:
 - (i) promptly, and in any event no later than 10 Business Days after receiving the Contractor's written notice under clause 13.3 or a notice under the final paragraph of this clause 13.4 (as the case may be), inspect the Works or a Separable Portion; and
 - (ii) if satisfied that Completion has been achieved, issue a notice to the Principal and the Contractor:
 - A. stating the date upon which the Principal's Representative determines Completion was achieved; and
 - B. containing a list of any minor Defect of the type described in the definition of Completion in clause **Error! Reference source not found.**; or
 - (iii) if not satisfied that Completion has been achieved, issue a notice so advising the Contractor and the Principal.
- (c) If the Principal's Representative issues a notice under clause 13.4(b)(iii) the Contractor must proceed to bring the Works or the Separable Portion to Completion and thereafter when it considers it has achieved Completion it will give the Principal's Representative written notice to that effect after which this clause 13.4 will reapply.

13.5 Take over upon Completion

Upon the issue of a Notice of Completion:

- (a) the Contractor must hand over the Works or the Separable Portion and the relevant Car to the Principal; and
- (b) the Contractor must, subject to clause 9.9, correct all minor Defect listed in the Notice of Completion as soon as possible after the Date of Completion.

13.6 Liquidated Damages for Delay in reaching Completion

- (a) If the Date of Completion of the Works or a Separable Portion has not occurred by the Date for Completion for the Works or the Separable Portion the Contractor must pay liquidated damages at the rate specified in the Key Details for every day after the Date for Completion until the Date of Completion or until the Contract is terminated, whichever occurs first.

- (b) Without limiting the Principal's rights under the Contract, the amount payable under this clause 13.6:
- (i) will be a debt due from the Contractor to the Principal;
 - (ii) is an agreed genuine pre-estimate of the Principal's damages if the Date of Completion does not occur by the Date for Completion;
 - (iii) will be the Principal's sole financial remedy for damages arising from the Contractor's delay in achieving Completion by the Date for Completion.

This clause 13.6 survives termination.

13.7 General damages if liquidated damages unenforceable

If the liquidated damages under clause 13.6 are found to be a penalty, or if clause 13.6 is found to be void or unenforceable for any reason (whether in whole or in part), then the Contractor will be liable to pay unliquidated damages at Law for the breach for which the liquidated damages under clause 13.6 would have been payable had the relevant liquidated damages or clause not been a penalty or not been void or unenforceable.

This clause 13.7 survives any termination of the Contract.

13.8 Cap on liquidated and unliquidated damages

The Contractor's total aggregate liability to the Principal under clauses 13.6 and 13.7 shall not [REDACTED] of the Contract Price.

This clause 13.8 survives any termination of the Contract.

13.9 No liquidated damages

If the rate provided in the Key Details in relation to clause 13.6 is specified as "nil", "N/A", "not applicable", "\$0" or words to similar effect:

- (a) clauses 13.6, 13.7 and 13.8 will not apply; and
- (b) the Contractor will be liable to pay unliquidated damages at law for the breach for which liquidated damages under clause 13.6/13.5 would have been payable if a rate for liquidated damages had been specified but in no circumstances shall damages for delay [REDACTED] of the Contract Price.
- (c) This clause shall survive any termination of the Contract.

14. Termination

14.1 Preservation of rights

Subject to clause 14.6, nothing in this clause 14 or that a party does or fails to do pursuant to this clause 14 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

14.2 Contractor default

The Principal may give a written notice under clause 14.3 to the Contractor, if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;

- (b) suspends the Contractor's Activities in breach of clause **Error! Reference source not found.** or otherwise does not regularly and diligently progress the Contractor's Activities with due expedition and without delay;
- (c) fails to provide security as required by clause 5 of the Standing Offer Deed;
- (d) fails to effect, have in place or otherwise maintain or provide evidence of, insurance (in the form of certificates of currency in the case of Professional Indemnity Insurance) as required by clause 5.5;
- (e) fails to use the materials or standards of workmanship required by the Contract;
- (f) does not comply with any reasonable Direction of the Principal's Representative made in accordance with the Contract;
- (g) abandons the Contractor's Activities or otherwise objectively demonstrates the intention not to continue performance of its obligations under the Contract;
- (h) is in breach of any applicable Law;
- (i) fails to comply with a KPI action plan required by the Principal under this Contract or under the Standing Offer Deed;
- (j) would become liable to pay the Principal for liquidated damages or unliquidated damages under clauses 13.6 or 13.7 for an amount exceeding the amount referred to in clause 13.8 but for the cap on liability under clause 13.8;
- (k) fails to comply with clause 6.14, 12.15(b) or 1.8; or
- (l) is otherwise in substantive breach of the Contract.

14.3 Contents of notice of default

A notice under this clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the breach relied upon; and
- (c) that the Principal requires the Contractor to remedy the breach within 15 Business Days of receiving the notice.

14.4 Termination for insolvency or breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons;
- (b) the L3C Agreement is terminated under clause 34.2 of the L3C Agreement; or
- (c) the Contractor does not remedy a breach of Contract the subject of a notice under clause 14.3 within 15 Business Days of receiving the notice under clause 14.3,

then the Principal may by written notice to the Contractor:

- (d) terminate the Contract; or
- (e) exercise a Step-In Right.

14.5 Principal's entitlements after termination

Subject to clause 14.1, if:

- (a) the Principal terminates the Contract under clause 14.4; or
- (b) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract,

then:

- (c) the Principal will:
 - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Works, subject to the Contractor's obligations under the Lease; and
 - (ii) be entitled to withhold from the Contractor any reasonable costs, losses or damages incurred or suffered or likely to be incurred or suffered, by it as a result of, or arising out of, or in any way in connection with, such termination or repudiation until the Principal's costs, losses and damages have been determined, and once determined, the Principal must pay the Contractor any amounts owing to the Contractor which exceed those costs, losses or damages; and
- (d) the Contractor must immediately hand over to the Principal all copies of any Deliverables prepared by the Contractor to the date of termination (whether complete or not).

14.6 Contractor's entitlements after termination

If the Principal repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:

- (a) be entitled to claim damages; and
- (b) not be entitled to a quantum meruit.

14.7 Termination for convenience

Without prejudice to any of the Principal's other rights, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in the Principal's notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at its absolute discretion, complete the uncompleted part of the Contractor's Activities either itself or by engaging Other Contractors.

14.8 Costs

If the Principal terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts as reasonably determined by the Principal's Representative:
 - (i) for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of termination, provided that ownership of all

goods and materials included in the value of work will vest in the Principal, free of any security interest, upon payment;

- (ii) the cost of goods or materials reasonably ordered by the Contractor for the Plant, Equipment and Work for which the Contractor is legally bound to pay or has paid provided that:
 - A. the value of the goods or materials and Plant, Equipment and Work is not included in any previous payment by the Principal or the amount payable under sub-paragraph (i); and
 - B. ownership in the goods and materials will vest in the Principal, free of any security interest, upon payment; and
- (iii) the reasonable direct costs incurred by the Contractor (excluding profit but including an amount for overheads) as a direct result of the termination,

but in no case will the total amount payable to the Contractor under the Contract (including under this clause 14.8) be more than the Contract Price; and

(b) must:

- (i) take all steps possible to mitigate the costs referred to in clause 14.8(a); and
- (ii) immediately:
 - A. deliver all items in which ownership has passed to the Principal under the Contract; and
 - B. hand over to the Principal all copies of any Deliverables (including any services and test documentation) prepared by the Contractor to the date of termination (whether complete or not).

The amount to which the Contractor is entitled under this clause 14.8 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract and the Contractor may not make any Claim against the Principal arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 14.8.

Clause 14 will survive any termination of the Contract.

15. Disputes

15.1 Notice of Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 15.

Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:

- (a) the dispute or difference;
- (b) particulars of the party's reasons for being dissatisfied; and

- (c) the position which the party believes is correct.

15.2 Negotiation

The Principal's Representative and the Contractor's Representative (or their nominees) must, within 10 Business Days of a notice being given under clause 15.1, meet and discuss the dispute or difference.

15.3 Executive negotiation

Whether or not discussions have taken place under clause 15.2, if dispute or difference is not resolved within 20 Business Days (or such longer period as the parties agree) after a notice is given under clause 15.1, it must be referred to senior executives of each party (as nominated by each party) who must:

- (a) meet and discuss the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

15.4 Expert determination

Whether or not discussions have taken place under clause 15.3, if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the dispute or difference within 25 Business Days after a notice is given under clause 15.1, either party may submit the dispute or difference to an expert determination.

15.5 The expert

The expert determination under clause 15.4 is to be conducted by an independent industry expert appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).

15.6 Not arbitration

An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

15.7 Procedure for determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

15.8 Disclosure of interest

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

15.9 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

15.10 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within 20 Business Days from the acceptance by the expert of his or her appointment.

15.11 Agreement with expert

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 12 or such other terms as the parties and the expert may agree.

15.12 Determination of expert

The determination of the expert:

- (a) must be in writing;
- (b) will be:
 - (i) substituted for the relevant Direction of the Principal's Representative (if applicable); and
 - (ii) final and binding,unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

15.13 Arbitration

- (a) If:
 - (i) the expert fails to notify the parties of his or her decision within the time required by clause 15.10; or
 - (ii) a notice of appeal is given under clause 15.12,the dispute or difference will be referred to arbitration.
- (b) The arbitration will be conducted before a person to be:
 - (i) agreed between the parties; or

- (ii) failing agreement within 20 Business Days of the referral to arbitration, appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).
- (c) To the extent that they are not inconsistent with the Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.
- (d) The seat of the arbitration will be Sydney, Australia.
- (e) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an expert under clause 15.12.
- (f) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

15.14 Survive termination

This clause 15 will survive any termination of the Contract.

15.15 Continuation of Contractor's Activities

Despite the existence of a dispute or difference between the parties, the Contractor must:

- (a) continue to carry out the Contractor's Activities; and
- (b) otherwise comply with its obligations under the Contract.

16. Step-In

16.1 The Principal's Step-In Rights

If:

- (a) the Principal exercises a Step-In Right under clause 14.4(e); or
- (b) an incident or emergency occurs, which in the Principal's reasonable opinion the Contractor is unable to prevent or overcome and which will or does materially affect the safety of people, property, the environment or the operations of any Rail Transport Agency,

(Step-In Event) then the Principal may, by written notice to the Contractor itself, or have its nominees, undertake any or all of the Contractor's Activities and otherwise exercise any of the Contractor's rights or obligations under this Contract and take such actions as are necessary to address the event giving rise to the step-in **(Step-In Rights)**.

16.2 Actions following Step-In

- (a) For the purposes of exercising the Step-In Rights:
 - (i) the Principal is not obliged to make any further payments to the Contractor for the Contractor's Activities in respect of which the Principal has exercised the Step-In Rights;
 - (ii) the Principal may use third parties to carry out and complete the whole or any part of the Contractor's Activities the subject of the Step-In Rights;
 - (iii) the Principal will be entitled to act as the Contractor's agent under all contracts entered into by the Contractor that are necessary for the Principal to exercise the Step-In Rights; and

- (iv) the Principal may:
 - A. give reasonable instructions to any employee of the Contractor (and the Contractor must ensure that such requests are complied with);
 - B. contract with such of the Subcontractors engaged by the Contractor; and
 - C. take possession of, and use, such of the Design Documentation,

as is reasonably required by the Principal to exercise the Step-In Rights.

- (b) The Contractor must take all action the Principal considers necessary to ensure that the Principal is able to exercise the Step-In Rights effectively and expeditiously including:
 - (i) provide the Principal with any assistance and access to its materials, equipment and inventory and the non-exclusive use of all rights and information available to the Contractor reasonably required to enable the Principal or its nominees to exercise the Step-In Rights;
 - (ii) giving the Principal or its nominees access to the Site and any of the land upon which the Contractor's Activities are being performed;
 - (iii) providing sufficient resources, including Personnel to assist the Principal in exercising the Step-In Rights; and
 - (iv) not doing anything to hinder, disrupt or prevent the Principal exercising the Step-In Rights.
- (c) The Principal may:
 - (i) itself exercise the Step-In Rights; or
 - (ii) nominate a third party to exercise the Step-In Rights.
- (d) If a third party is nominated to exercise the Step-In Rights in accordance with paragraph (c)(ii), the third party will be taken to be exercising the Step-In Rights itself for and on behalf of the Principal and the provisions of this clause 16 will apply as if references to the Principal were references to that third party.
- (e) Upon the Principal exercising a Step-In Right the Contractor's rights and obligations under the Contract are suspended to the extent necessary to permit the Principal to exercise that Step-In Right.

16.3 Conclusion of Step-In

- (a) Upon giving the Contractor at least 5 Business Days' prior written notice, the Principal may cease to exercise its Step-In Rights at any time.
- (b) Upon the Principal ceasing to exercise a Step-In Right the Contractor must recommence performance of the obligations under the Contractor that were suspended.
- (c) The Principal may set-off the costs reasonably incurred and losses reasonably suffered by the Principal in and for the purposes of exercising the Step-In Rights under:
 - (i) clause 16.1(a); and

- (ii) clause 16.1(b) only to the extent the Contractor caused or contributed to the Step-In Event,

against any amount due by the Principal to the Contractor under this Contract (or which may in the future be due under this Contract).

- (d) If the Contractor is indebted to the Principal under paragraph (c), the Principal may call on the Security provided in accordance with clause 4.

16.4 Not liable

The exercise of the Step-In Rights by the Principal for Step-In Events will not render the Principal liable:

- (a) for payment of damages or compensation; or
- (b) to remedy the Contractor's default or other event giving rise to the exercise of the Step-In Rights and the Principal will have no liability whatsoever if it fails to cure the relevant default or relevant event,

but nothing in this clause 16.4 will relieve the Principal of liability including for damages or compensation to the Contractor or third parties for loss, damage or liability caused by wilful default or negligence of the Principal or the Principal's agents during the exercise of the Step-In Rights.

16.5 Other rights

- (a) Except to the extent that the Contractor's obligations are suspended under clause 16.2(e), the exercise by the Principal of a Step-In Right (or the cessation of the exercise of a Step-In Right) will not relieve the Contractor of its liabilities or responsibilities whether under the Contract or otherwise according to law.
- (b) Subject to clause 16.3(c), recovery of the Principal's costs reasonably incurred and losses reasonably suffered in and for the purposes of exercising the Step-In Rights does not affect in any way the Principal's ability to claim damages in accordance with this Contract.
- (c) Nothing in this clause 16 will prejudice the rights to recover damages or exercise any other rights or remedy (including the right to terminate).

17. Notices

17.1 Notice of Variation

If the Contractor considers that a Direction by the Principal's Representative, which is not expressed to be a "Variation Order" under clause 11.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:

- (a) within 10 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;
- (b) within 20 Business Days of giving the notice under paragraph (a), submit a written claim to the Principal's Representative which includes the details required by clause 17.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 17.1.

17.2 Notice of other Claims

Except for Claims for:

- (a) an extension of time under clause **Error! Reference source not found.**;
- (b) a Variation instructed in a "Variation Order" under clause 11.2 or to which clause 17.1 applies; or
- (c) payment under clause 12.2 or 12.8 of the original Contract Price specified in the Key Details,

the Contractor must give the Principal's Representative the notices required by clause 17.3 if it wishes to make a Claim against the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the Contract or the Contractor's Activities and the Works, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Price; or
 - (ii) the Contract Price will be otherwise increased or adjusted,

as reasonably determined by the Principal's Representative.

17.3 Prescribed notices

The notices referred to in clause 17.2 are:

- (a) a written notice within 10 Business Days of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the Direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written claim within 20 Business Days of giving the written notice under paragraph (a), which must include:
 - (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

17.4 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 17.1(b) or clause 17.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 17.3(b) every 20 Business Days after the written claim under clause 17.1(b) or 17.3(b) (as the case may be) was

submitted or given to the Principal's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

17.5 Time bar

If the Contractor fails to comply with clauses 17.1, 17.2, 17.3 or 17.4:

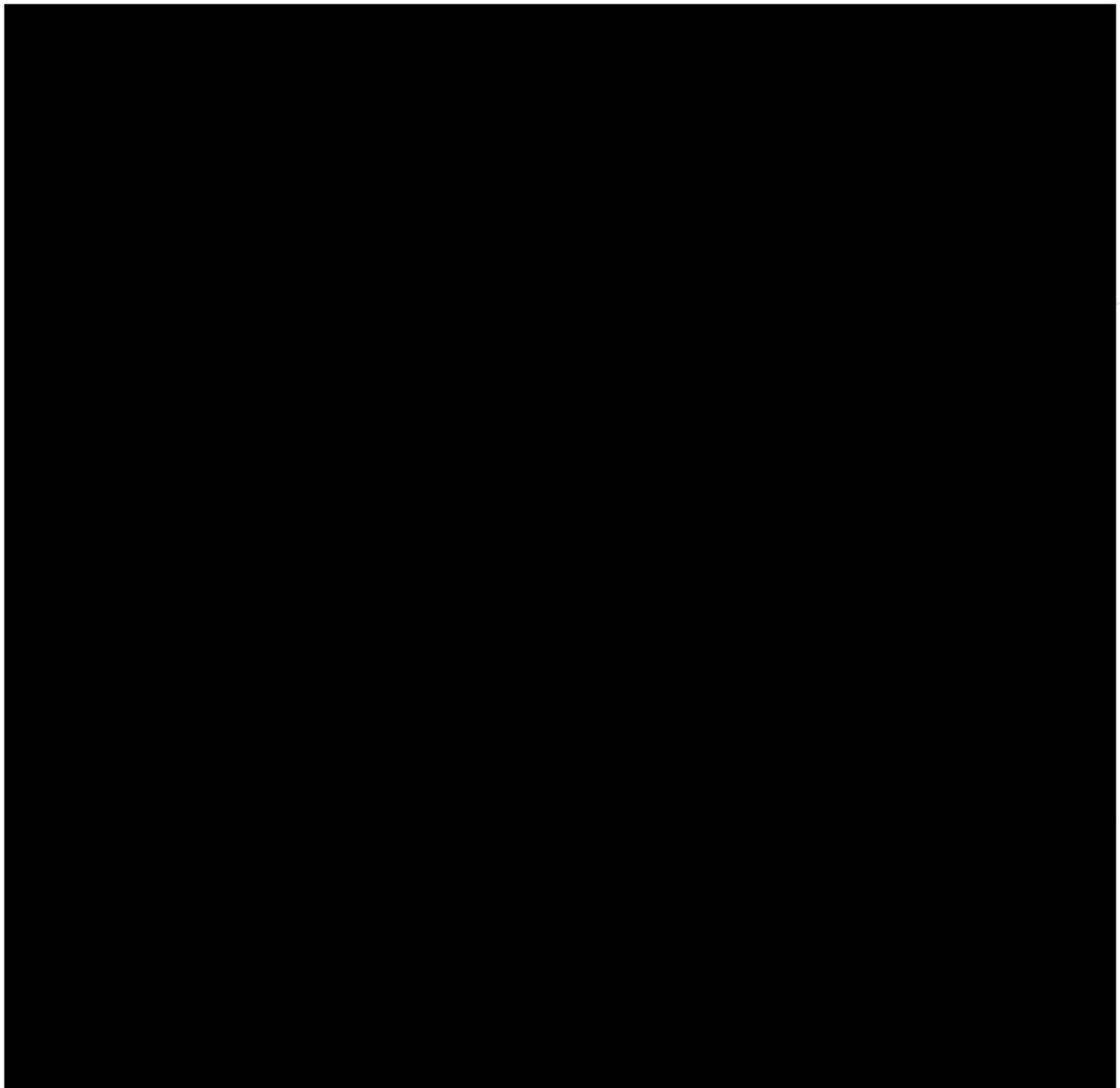
- (a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

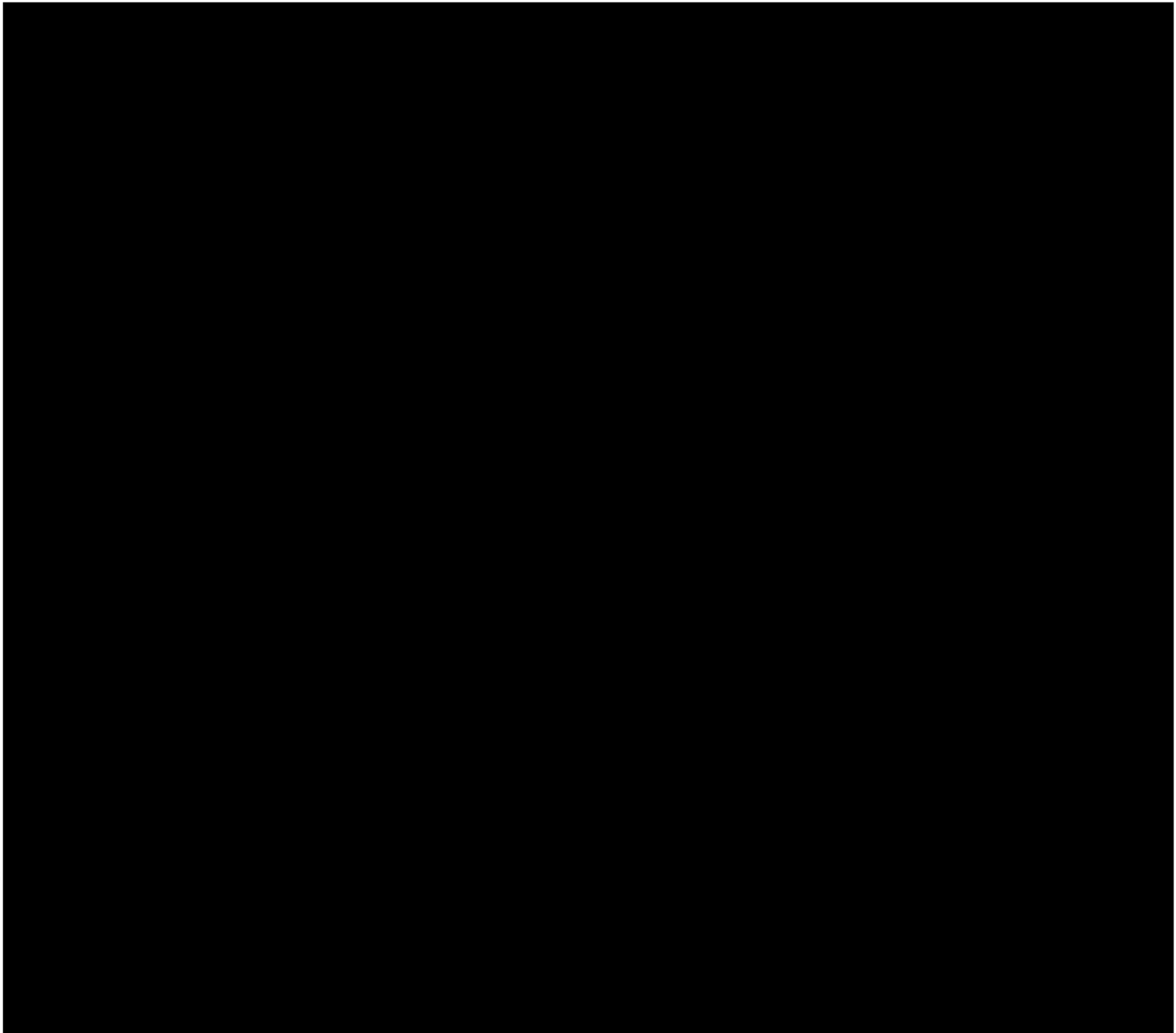
arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 17.1 or 17.2 applies.

17.6 Other provisions unaffected

Nothing in clauses 17.1, 17.2, 17.3, 17.4 or 17.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

18. Limitation of liability





19. Miscellaneous

19.1 Address for service

- (a) All communications (including notices, consents, approvals, requests and demands) under or in connection with the Contract:
 - (i) must be in writing;
 - (ii) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
 - (iii) must be:
 - A. subject to clause 19.1(b), delivered or posted by prepaid express post to the address of the Principal's Representative or the Contractor's Representative (as applicable) or such other address as may be notified in writing by a party to the other party; or
 - B. if the notice does not relate to a dispute, or a Claim in connection with this Deed, sent by email to the email address of the Principal's Representative or the Contractor's Representative, as a scanned attachment in Adobe PDF

format or such other email address as may be notified in writing by a party to the other party; and

- (iv) are taken to be received by the addressee:
- A. (in the case of prepaid express post sent to an address within Australia) on the second Business Day after the date of posting;
 - B. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 19.1(a)(iii); and
 - C. (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

- (b) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be reasonably specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.

19.2 Governing Law

- (a) The law in force in New South Wales governs this Contract.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Contract, and waives any right it might have to claim that those courts are an inconvenient forum.

19.3 Entire agreement

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

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

19.4 Amendments

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

19.5 Waiver

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

19.6 Change of Control

- (a) The Contractor is not required to obtain the Principal's prior written consent to a Change of Control of the Contractor, if that Change of Control:
 - (i) arises from the legal or beneficial transfer of shares in the Contractor between Key Providers only;
 - (ii) will result in:
 - A. the Key Providers continuing to hold all of the share capital and voting rights in the Contractor;
 - B. UGL Rail Services Pty Limited ABN 58 000 003 136 holding not less than 51% of the share capital and voting rights in the Contractor; and
 - C. Unipart Rail Limited R/N 3038418 holding not less than 21% of the share capital and voting rights in the Contractor.
- (b) The Contractor must ensure that:
 - (i) subject to clause 19.6(a), the Contractor; and
 - (ii) any Key Provider,

does not undergo a Change of Control without the prior written consent of the Principal, which can only be withheld in accordance with clause 19.6(c). The parties acknowledge and agree that:

 - (iii) in the case of a Change of Control in a Key Provider, if:
 - A. the Contractor did not ensure the prior written consent of the Principal was obtained; and
 - B. the Key Provider was:
 - 1) prohibited by Law from disclosing to the Principal the potential Change of Control for the purposes of obtaining the Principal's consent; or
 - 2) not aware, and could not have reasonably been aware, that the Change of Control was going to occur,

clause 19.6(d) applies; and
 - (iv) nothing in this clause 19.6(b) will limit the operation of clause 19.6(d) which will apply in all circumstances where a Change of Control occurs without the prior written consent of the Principal.
- (c) The Principal may withhold consent to a proposed Change of Control where, in the Principal's reasonable opinion:
 - (i) it would adversely affect the ability or capability of the Contractor to perform its obligations under any Contract;

- (ii) it would increase the liability of, or risks accepted by, the Principal under the Contract or in any other way in respect of the Contractor's Activities;
 - (iii) it would have a negative impact on the Principal's:
 - A. commercial position under the Contract;
 - B. ability to perform its statutory obligations; or
 - C. other interests in respect of the Contractor's Activities;
 - (iv) the person or entity which is proposed to control the Contractor or any Key Provider is not a reputable person or entity to properly carry out the obligations of the Contractor under the Contract; or
 - (v) as a result of the Change of Control, the Contractor no longer:
 - A. has sufficient expertise and ability; or
 - B. is of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the Contractor under the relevant Contract.
- (d) Subject to clause 19.6(a), if a Change of Control of the Contractor or a Key Provider has occurred without the prior written consent of the Principal, then:
- (i) the Contractor must immediately provide the Principal with a notice setting out:
 - A. full details of the Change of Control, including the acquisition of voting power, the change in equity interests or any other event which has caused or constituted the Change of Control; and
 - B. any other information requested by the Principal;
 - (ii) if the Principal could not have withheld its consent to that Change of Control under clause 19.6(c), then:
 - A. the Principal may terminate this Contract by notice to the Contractor and this Contract will terminate from the date specified in that notice; and
 - B. if the Principal terminates this Contract under clause 19.6(d)(ii)A the Contractor will be entitled to be paid the following amounts as determined by the Principal:
 - 1) for the Contractor's Activities carried out prior to the date of termination, the fair and reasonable value of the Contractor's Activities carried out, less any Contract Price paid to the Contractor;
 - 2) the costs and expenses (if any) reasonably incurred by the Contractor in terminating or otherwise dealing with agreements, subleases or licences entered into for any part of the Contractor's Activities prior to the termination;
 - 3) the costs and expenses incurred in redeploying its employees (and the employees of the Key Providers seconded to the Contractor and directly

engaged in the performance of the Contractor's Activities) and costs and expenses otherwise incurred for any part of the Contractor's Activities in demobilising from the Site but excluding any costs and expenses arising from or in connection with the redundancy of any person; and

- 4) the cost of materials or other items ordered by the Contractor for the Contractor's Activities and for which it is legally bound to pay provided that:
 - a) the materials or other items are not readily substitutable for materials or items under other contracts to which the Contractor is a party;
 - b) the materials or items have not been prematurely ordered;
 - c) the value of the materials and other items have not been previously paid or included in the amount payable under clause 19.6(d)(ii)B.1); and
 - d) title in the materials will vest in the Principal upon payment; and

(iii) if:

- A. the Principal may have withheld its consent to that Change of Control under clause 19.6(c); and
- B. the Change of Control relates to Unipart Rail Limited R/N 3038418,

the Principal may Direct the Contractor to:

- C. terminate the Key Provider Agreement between the Contractor and Unipart Rail Limited R/N 3038418 entered on or around 23 December 2011;
- D. ensure that UGL Rail Services Pty Limited ABN 58 000 003 136 procures legal and beneficial ownership of all of the share capital in the Contractor; and
- E. engage a third party, reasonably acceptable to the Principal, to take responsibility for all of the aspects of the Contractor's Activities previously provided by Unipart Rail Limited R/N 3038418,

at no cost to the Principal and the Contractor must comply with the terms of that notice within any time specified in that notice.

19.7 Consents

A consent or approval required under this Contract from the Principal may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Contract expressly provides otherwise.

19.8 Expense

Subject to the terms of this Contract each party must pay its own expenses incurred in negotiating, executing and registering this Contract.

19.9 Severance

If at any time a provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the Contract.

19.10 Indemnities

The indemnities in this Contract:

- (a) are a continuing obligation;
- (b) constitute a separate and independent obligation of the Contractor from its other obligations in this Contract and apply despite any indulgence granted by the Principal from time to time; and
- (c) survive termination of this Contract.

A party may recover a payment under an indemnity in this Contract before it makes any payment or incurs any expense in respect of which the indemnity is given.

19.11 United Nations Convention not applicable

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

19.12 English language

All communications between the parties and all documentation provided in connection with the Contractor's Activities (including the Deliverables) must be in the English language.

19.13 Taxes

- (a) Without limiting clause 8.3, the Contractor must pay all taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported plant, equipment and materials required for the Contractor's Activities.
- (b) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Contractor under the Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.
- (c) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax, the Contractor must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax.

19.14 No partnership, joint venture or other fiduciary relationship

Nothing in the Contract will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

19.15 Exchange of information between government agencies

- (a) The Contractor authorises the Principal to make information concerning the Contractor available to other NSW government agencies. Such information may include, but is not limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under any Contract.
- (b) The Contractor acknowledges that information about the Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by NSW government agencies considering whether to offer the Contractor future opportunities for NSW government work.
- (c) The Contractor acknowledges and agrees that the communication of such information to any NSW government agency is a communication falling within section 30 of the Defamation Act 2005 (NSW).
- (d) The Contractor releases and indemnifies the Principal and the State of New South Wales from and against any Claim in respect of any matter arising out of information provided by the Contractor to the Principal, including the use of such information by the recipient.

19.16 Proportionate liability

- (a) It is agreed that, to the extent permitted by Law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under or in relation to this Contract howsoever such rights, obligations or liabilities are sought to be enforced.
- (b) Unless otherwise agreed by the Principal (acting reasonably), the Contractor further agrees that:
 - (i) in each subcontract into which it enters for the carrying out of its obligations under this Contract, it will use reasonable endeavours to include provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities arising under or in relation to each subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
 - (ii) it will use reasonable endeavours to require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of its obligations under this Contract, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

19.17 Prior work

The terms of the Contract apply to all of the work performed by the Contractor in connection with the Contractor's Activities even if it was performed prior to the Award Date but does not extend to Contractor's Activities undertaken prior to 1 July 2019.

Any payment made to the Contractor by the Principal in connection with the Contract or the Contractor's Activities prior to the Award Date will be treated as a payment under the Contract and will be in part discharge of the Principal's obligation to pay the Contract Price.