
Transport for NSW

SUPPLY OF GOODS AGREEMENT

Agreement No: **ISD-17-6333**

Supply of 1500V DC Circuit Breaker Feeder BHF30 &
BHF30B with UMLE relay

2017, 2018 Time Table and South Coast Inter-trip
Protections Project

Between

Transport for NSW

[PRINCIPAL]

ABN 18 804 239 602

and

Mitsubishi Electric Australia Pty Ltd

[SUPPLIER]

ABN 58 001 215 792

Level 5, Zenith Centre, Tower A
821 Pacific Highway
Chatswood NSW 2067

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FORMAL INSTRUMENT OF AGREEMENT

This Agreement is made on the date specified in this Formal Instrument of Agreement.

PARTIES

Transport for NSW (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 (**Principal**)

and

Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792) of 348 Victoria Road, Rydalmere, New South Wales 2116 (**Supplier**).

BACKGROUND

- A Transport for NSW is a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), and is responsible for developing certain major railway systems and other major projects.
- B The Principal is responsible for developing the 2017, 2018 Time Table and South Coast Inter-trip Protections Projects.
- C In reliance on the facts and matters above, the Principal wishes to engage the Supplier to Supply the Goods on the terms and conditions set out in this Agreement.
- D On and from 1 July 2013 RailCorp's operation and maintenance functions were transferred to Sydney Trains and NSW Trains. However, RailCorp continues to be the holder of rail assets in NSW. The Supplier therefore grants certain rights to the Principal, Sydney Trains and RailCorp in accordance with the terms and conditions set out in this Agreement.

THE PARTIES AGREE

1. Defined terms in the General Terms and Conditions have the same meaning in this Formal Instrument of Agreement.
2. The Principal engages the Supplier to Supply the Goods in accordance with the terms of this Agreement and the Supplier accepts the engagement.
3. The documents listed below (in the following order of precedence) together comprise this Agreement:
 - (a) this Formal Instrument of Agreement;
 - (b) Part 1 - Key Details;

- (c) Part 2 - General Terms and Conditions (but excluding all Schedules); and
 - (d) Schedules.
4. The parties agree that except as otherwise provided for in this Agreement and subject to a contrary direction by the Principal's Representative (acting in their absolute discretion), in the event of any inconsistency, error, omission, ambiguity or discrepancy:
- (a) between any of the documents listed in 3 above, the terms of the document with a higher precedence above will prevail.
 - (b) within a document listed in 3 above, the higher, most onerous, or more rigorous obligation imposed upon the Supplier will apply.
5. If the Supplier discovers any inconsistency, error, omission, ambiguity or discrepancy between or within the documents forming part of this Agreement then the Supplier must promptly give the Principal's Representative written notice of the inconsistency, error, omission, ambiguity or discrepancy. The Principal's Representative will then direct the Supplier as to the interpretation and construction to be followed, taking into account the order of precedence specified in this Agreement.

EXECUTION

Signed as an agreement on: 09 JUNE 2017

Signed under delegated authority for
and on beh [redacted] for NSW in
the presence [redacted]

Signature

RAJEEV NAIR

Name

PURCHASING MANAGER

Occupation

821 PACIFIC HIGHWAY, CHATSWOOD

Address

NSW 2067

Signature of authorised officer

HARRY MELLER

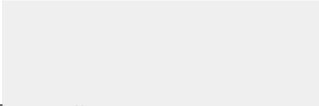
Name of authorised officer

PROGRAM DIRECTOR

Position of authorised officer

**Executed by Mitsubishi Electric
Australia Pty Ltd (ABN 58 001 215 792)**

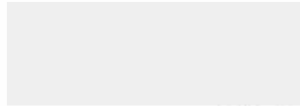
by:



Signature of director/company secretary

FE SISON

Print name



Signature of director

J. NEDHAM

Print name

PART 1 – KEY DETAILS

1. **Agreement Date** The date specified in the Formal Instrument of Agreement.

2. **Parties**

Principal

Transport for NSW is a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), and is responsible for developing certain major railway systems and other major projects.

ABN 18 804 239 602

Address

Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067

Supplier

Mitsubishi Electric Australia Pty Ltd
ABN 58 001 215 792

Address

348 Victoria Road, Rydalmere, New South Wales 2116

3. **Date(s) for Supply**
(Clauses 1.1, 5.1, 10.1 and 10.3)

Portion 1 – 26 June 2017
Portion 2 – 14 July 2017
Portion 2 – 31 August 2017
Portion 2 – 22 September 2018

4. **ASA Approval and Authorisation**
(Schedule 10)

Yes

5. **Delivery Place**
Additional Delivery Requirements
(Clauses 1.1, 4, 5.4, 10.1 and 10.5)

Building 3, Off Columbia Lane, Homebush NSW 2140

6. **Deed Poll**
(Clause 5.12)

Deed Poll required: Yes

Deed Poll is in favour of Sydney Trains and RailCorp. The Deed Poll must be in favour of RailCorp if Goods supplied will become RailCorp's property (including any Goods that will later be installed as fixtures on RailCorp's property or part of the rolling stock).

- | | | |
|------|--|--|
| 7. | Warranty Period
(Clauses 1.1,11 and 12) | [redacted] years |
| 8. | Security
(Clauses 1.1 and 3.1) | Not Applicable |
| 9. | Parent Company Guarantee
(Clause 3.5) | Not Applicable |
| 10. | Key Performance Indicators
(Clauses 1.1 and 5.9) | Not Applicable |
| 11. | Quality Management System
(Clause 6.5(a)) | AS/NZS ISO 9001 |
| 12. | Work Health & Safety System
(Clause 7.2(a)) | AS/NZS 4801 |
| 13. | Environmental Management System
(Clause 8(b)) | AS/NZS ISO 14001 |
| 13A. | Good Storage
(clause 10.1A) | \$ [redacted] per item per day |
| 14. | Liquidated Damages for Failure to Deliver the Goods to the Delivery Place by the Date for Supply
(Clause 10.5) | Liquidated damages rate: \$ [redacted] per day of late Supply of the Goods
Liquidated damages will be limited to: [redacted] % of the Contract Price. |
| 15. | Fixed Price Period
(Clauses 1.1 and 13.2) | Not Applicable

<i>If no period is specified, the default position of 12 months will apply.</i> |
| 16. | Time for Payment
(Clauses 1.1 and 14.6(a)) | On or before the last Business Day of the next month immediately following the month in which the Principal receives the payment claim |

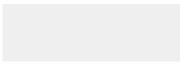
17. **Other Insurances required**
(Clause 20.1(d)) Not Applicable
18. **Principal's Representative**
(Clauses 1.1 and 21.1) Name: Harry Mercer
Street Address: Level 5, Tower A, Zenith Centre
821 Pacific Highway, Chatswood NSW 2067
Postal Address: As Above
Telephone: (02) 9422 7543
Facsimile: (02) 9200 0290
Mobile: [REDACTED]
E-mail: Harry.MERCER@transport.nsw.gov.au
19. **Supplier's Representative**
(Clauses 1.1 and 21.3) Name: [REDACTED]
Street Address: 348 Victoria Road,
Rydalmere, New South Wales 2116
Postal Address: As Above
Telephone: [REDACTED]
Facsimile: [REDACTED]
Mobile: [REDACTED]
E-mail: [REDACTED]
20. **Principal's Contract Manager**
(Clauses 1.1, 21.4 and 21.5) Name: Harry Mercer
Street Address: Level 5, Tower A, Zenith Centre, 821
Pacific Highway, Chatswood NSW 2067
Postal Address: As Above
Telephone: (02) 9422 7543
Facsimile: (02) 9200 0290
Mobile: [REDACTED]
E-mail: Harry.MERCER@transport.nsw.gov.au
21. **Supplier's Contract Manager**
(Clauses 1.1, 21.4, 21.6 and 21.7) Name: [REDACTED]
Address: 348 Victoria Road,
Rydalmere, New South Wales 2116
Postal Address: As Above
Telephone: [REDACTED]
Facsimile: [REDACTED]
Mobile: [REDACTED]
E-mail: [REDACTED]
22. **Public and Product Liability Insurance**
(Clause 20.1(a)) Minimum cover of \$ [REDACTED] per occurrence and in the annual aggregate.

Principal to be named insured on policy: No
RailCorp to be named insured on policy: No
Sydney Trains to be named insured on policy: No.

Schedule 1 - Principal's Requirements for Working (including Supplying Goods) in the Rail Corridor

23. **Rail Corridor Access** Not Applicable

24. **Limitation of Liability (Clause 19(c))**



PART 2 – GENERAL TERMS AND CONDITIONS

1 Definitions and Interpretation

1.1 Definitions

The following words have the following meanings in this Agreement, unless the context requires otherwise.

Agreement means this agreement between the Principal and the Supplier comprising of the documents listed in clause 3 of the Formal Instrument of Agreement.

Agreement Date means the date specified in Item 1 of the Key Details.

ASA means the Assets Standards Authority, which is the unit within Transport for NSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Transport Assets as defined in the ASA Charter. Information about the ASA and the network and asset standards can be found at www.asa.transport.nsw.gov.au.

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Transport Agencies and AEO's in relation to the ASA (as amended from time to time), a copy of which could be found on www.asa.transport.nsw.gov.au.

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

Authority means a statutory authority, statutory corporation, Government or semi-Government agency or body (including the ASA), utility service provider or recognised provider of emergency services.

Business Day means any day other than a Saturday, Sunday, public holiday in New South Wales, 27, 28, 29, 30 and 31 December of each year.

Code of Practice for Procurement means the NSW Government's Code of Practice for Procurement which can be obtained from the NSW Government Procurement website at:

http://www.procurepoint.nsw.gov.au/sites/default/files/documents/code_of_practice_for_procurement_2013_ir_guidelines_0.pdf

or by contacting the Principal's Contract Manager.

Competence Records means, with respect to any Rail Safety Worker engaged in connection with the Goods (including those engaged by subcontractors), the following information:

- (a) the rail safety training undertaken by the Rail Safety Worker, including when, and for how long, the training was undertaken;

- (b) the qualifications of the Rail Safety Worker, including (if applicable):
 - (i) the units of competence undertaken to achieve the qualification;
 - (ii) the level of qualification attained;
 - (iii) if, and when, a re-assessment of competence is to be conducted;
 - (iv) if, and when, any re-training is due and has been undertaken; and
 - (v) the name of any organisation conducting training or re-training;
- (c) the name and qualifications of any person who assessed the competence of the worker; and
- (d) any further information requested by the Principal with respect to the competence of the Rail Safety Worker.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Principal, including any information designated by the Principal as confidential or which by its nature ought reasonably to be considered to be confidential, that is disclosed, made available, communicated or delivered to the Supplier or of which the Supplier otherwise becomes aware, but excludes information:

- (a) that is in or that subsequently enters the public domain other than as a result of a breach of this Agreement;
- (b) that the Supplier can demonstrate was independently developed by the Supplier;
- (c) that is lawfully obtained by the Supplier from another person lawfully entitled to disclose such information; or
- (d) that is disclosed pursuant to a legal requirement or order.

Contract Manager means the Principal's Contract Manager or the Supplier's Contract Manager as the context requires.

Contract Price means:

- (a) where the Principal has accepted a lump sum, the lump sum specified in the Schedule of Prices;
- (b) where the Principal has accepted rates, the sum of the products ascertained by multiplying the Unit Prices by the corresponding quantities in the Schedule of Prices; or
- (c) the aggregate of paragraphs (a) and (b).

Corrupt Conduct has the meaning set out in section 7 of the *Independent Commission Against Corruption Act 1988* (NSW).

Date for Supply means the date(s) the Goods are required to be delivered to the Principal as stated in Item 3 of the Key Details, but if any extension is granted by the Principal's Contract Manager pursuant to this Agreement, the date(s) resulting therefrom.

Date of Supply means the date on which the Goods were delivered to the Delivery Place in accordance with this Agreement.

Defect or Defective means any defect, deficiency, fault or omission in the Goods or their materials and workmanship, including any part of the Goods which is not in accordance with the requirements of this Agreement.

Delivery Note has the meaning given in clause 5.2.

Delivery Place means the place(s) stated in Item 5 of the Key Details, or any other location(s) notified by the Principal's Representative to the Supplier.

Drug and Alcohol Policy means the Principal's Drug and Alcohol Policy which can be obtained by contacting the Principal's Contract Manager.

Environmental Management Specification means the Principal's Environmental Management Specifications listed in Schedule 6.

Fixed Price Period means any period specified in Item 15 of the Key Details during which period the Unit Prices will remain unchanged.

Formal Instrument of Agreement means the document forming part of this Agreement headed "Formal Instrument of Agreement".

General Terms and Conditions means the document forming part of this Agreement headed "Part 2 - General Terms and Conditions".

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Goods means the goods, products, materials or equipment to be Supplied by the Supplier to the Principal under this Agreement as set out in Schedule 7.

GST has the meaning given in the GST Act.

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

Insolvency Event means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under the Agreement for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holder or trustee;

- (d) in relation to a corporation any one of the following:
- (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 15 Business Days;
 - (vi) a sequestration order or winding up order is made in respect of the corporation;
 - (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
 - (viii) a mortgagee of any property of the corporation takes possession of that property; or
 - (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets,
- or
- (e) any act is done or event occurs which has an analogous or similar effect to any of the events listed in paragraphs (a), (b), (c) or (d).

Intellectual Property Rights or **IPR** means any intellectual property rights protected by statute or common law in Australia or elsewhere in the world and whether registered or unregistered, and includes copyright, design, patent, trade mark, semi-conductor and circuit layout rights.

Intended Purpose means the purpose, intended purpose or intended use stated in or contemplated by, or ascertainable from, this Agreement.

ITT means the invitation to tender, request for quotation, request for proposal or request for information issued by the Principal for the Supply of the Goods.

Key Details means the document forming part of this Agreement headed "Part 1 - Key Details".

Key Performance Indicators or **KPIs** means the key performance indicators set out in Schedule 3.

KPI Performance Report means the Supplier's report provided to the Principal in accordance with clause 5.9.

Law means any statutes, regulations, ordinances, by-laws, orders, awards, proclamations and any enforceable policy of an Authority, certificates, licences, consents, permits, approvals and requirements of Authorities, applicable codes of practice, applicable standards (including any relevant Australian Standards), obligations under the common law and in equity as well as any fees and charges payable in connection with any of the foregoing and includes the WHS Law.

Moral Rights has the meaning set out in the *Copyright Act 1968* (Cth) and includes rights of a similar nature anywhere in the world whether existing at the Agreement Date or which may come into existence after the Agreement Date.

Normal Working Hours means the hours between 9:00am and 5:00pm Sydney local time on any Business Day.

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

Option means an option referred to in Schedule 11.

Personnel means subcontractors, employees, agents, advisors and other persons engaged by a party to perform its obligations under this Agreement and includes any workers as defined in the WHS Law and any Rail Safety Workers as defined in the Rail Safety National Law.

PPSA means the *Personal Property Securities Act 2009* (Cth) and its subordinate regulations.

PPSA Security Interest means a security interest that is subject to the PPSA.

Pre-existing IPR of a party means any Intellectual Property Rights belonging to that party which are:

- (a) pre-existing as at the Agreement Date; or
- (b) brought into existence other than as a result of the performance of its obligations under this Agreement,

and brought to or used by a party in performing its obligations under this Agreement.

Principal's Contract Manager means the person identified as such in Item 20 of the Key Details, or as otherwise notified by the Principal to the Supplier.

Principal Contractor has the meaning given to it in the WHS Law.

Principal's Representative means the person identified as such in Item 18 of the Key Details, or as otherwise notified by the Principal to the Supplier.

Principal's Safety Management System means the relevant sections of the Principal's Safety Management System set out in Schedule 6.

Rail Corridor means any land used in relation to the operation of a railway station, or a railway being land defined by railway boundary fencing and in the absence of such fencing, is defined as everywhere within 15 metres of the outermost rails.

Rail Safety National Law means the Rail Safety National Law (NSW), as defined in the *Rail Safety (Adoption of National Law) Act 2012* (NSW), and any associated regulations.

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

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

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

RailCorp means Rail Corporation New South Wales ABN 59 325 778 353.

RCTI means a recipient created tax invoice as defined in the GST Act.

Safe Work Method Statement means, in relation to the Goods and the Supplier's Supply of the Goods, a document which:

- (a) identifies the Goods and their nature;
- (b) identifies the Supply and its nature;
- (c) specifies hazards associated with the Supply (including any relevant hazards associated with the Goods);
- (d) specifies the risks associated with those hazards;
- (e) describes the measures to be implemented to control the risks;
- (f) describes how the risk control measures are to be implemented, monitored and reviewed;
- (g) must be prepared taking into account all relevant matters including any circumstances at the Delivery Place that may affect the way in which the Supply takes place; and
- (h) must be set out and expressed in a way that is readily accessible and understandable to persons who will use it.

Safety Specification means the safety specification listed in Schedule 6.

Schedule of Prices means the prices for the Supply of the Goods as set out in Schedule 8.

Security Amount means the amount specified in Item 8 of the Key Details.

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

Specifications mean the specifications for the Supply of the Goods as set out in Schedule 7.

Statement of Business Ethics means the document titled "Transport for NSW Statement of Business Ethics" which can be found on the TfNSW website or can be obtained by contacting the Principal's Contract Manager.

Supplier means the party named as such in Item 2 of the Key Details.

Supplier's Contract Manager means the person identified as such in Item 21 of the Key Details, or as otherwise replaced by the Supplier in accordance with clause 21.6.

Supplier's Representative means the person identified as such in Item 19 of the Key Details, or as otherwise replaced by the Supplier in accordance with clause 21.3.

Supply or **Supplied** or **Supplying** means the supply and delivery of the Goods in accordance with this Agreement.

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

Sydney Trains Network means the rail network on which Sydney Trains operates rail passenger services bounded by Berowra in the north, Waterfall in the south east, Macarthur in the south west, Emu Plains in the west, and Richmond in the north west.

Taxable Supply has the meaning given in the GST Act.

Time for Payment means the period specified in Item 16 of the Key Details.

Unit Prices means the price per item of each of the Goods as specified in the Schedule of Prices.

Warranty Period means:

- (a) the period commencing on the Date of Supply and expiring at the end of the period identified in Item 7 of the Key Details after the Date of Supply; and
- (b) any further Warranty Period directed pursuant to clause 12.1(d).

Work Health and Safety System means the work health and safety system to be established, implemented and maintained by the Supplier in accordance with this Agreement.

WHS Law means any Law relating to occupational or work health and safety and includes the *Work Health and Safety Act 2011* (NSW), *Work Health and Safety Regulation 2011* (NSW) and the Rail Safety National Law.

1.2 Interpretation

The following apply in the interpretation of this Agreement, unless the context requires otherwise:

- (a) a reference to the Agreement means this Agreement and includes any variation or replacement of it;
- (b) a reference to a document includes a reference to that document as amended, novated, assigned or otherwise varied;
- (c) a reference to a statute or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of it;
- (d) the singular includes the plural number and vice versa;
- (e) a reference to a gender includes a reference to each gender;
- (f) the word "person" includes a firm, corporation, body corporate, unincorporated association or a government body or agency, authority, association or other legal entity;
- (g) a reference to a person includes a reference to the person's legal personal representatives, successors, liquidators, trustees in bankruptcy and the like, and permitted assigns;
- (h) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them or any one or more of them together and separately;
- (i) a reference to a party means a person who is named as a party to, and is bound to observe the provisions of, this Agreement;
- (j) the word "includes" (or similar wording) will be read as if followed by the words "without limitation";
- (k) where a word or phrase is given a defined meaning in this Agreement, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;
- (l) a reference to an act includes an omission and a reference to doing an act includes executing a document;

- (m) words not otherwise defined in this Agreement but defined in the *Corporations Act 2001* (Cth) have the meaning given in that Act;
- (n) a reference to dollars or \$ is to Australian currency. All amounts to be invoiced or paid under this Agreement are to be in Australian currency unless otherwise agreed to by the Principal's Contract Manager;
- (o) words used in this Agreement which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) ("GST Law") have the same meaning, unless the context requires otherwise;
- (p) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (q) if the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, that part of the supply is to be treated as a separate supply;
- (r) headings are for reference only and do not affect the meaning or interpretation of this Agreement;
- (s) if any day appointed or specified by this Agreement for the payment of any money falls on a day which is not a Business Day, the day so appointed or specified is deemed to be the next day which is a Business Day;
- (t) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (u) a reference to a day is to be interpreted as the 24 hour period ending at midnight at the end of that day; and
- (v) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Agreement.

1.3 **Contra proferentem**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

1.4 **Commencement Date**

Except as otherwise agreed between the parties, this Agreement commences on the Agreement Date and, unless terminated earlier in accordance with this Agreement, continues in operation until the Supplier fully discharges its obligations under this Agreement.

1.5 Entire Agreement

- (a) This Agreement forms the entire agreement between the Principal and the Supplier in respect of its subject matter and there are no other agreements collateral to this Agreement.
- (b) Except where expressly stated in this Agreement, this Agreement supersedes the ITT and any prior written, oral and other agreements between the Principal and the Supplier with respect to the Supply of the Goods.
- (c) The Supplier acknowledges and agrees that it does not enter into this Agreement in reliance on any representation or inducement by or on behalf of the Principal.

1.6 Survivorship

Clauses 1 (Definitions and Interpretation), 3 (Security), 5.6 (Title and Risk), 5.7 (Goods not Supplied by the Supplier), 5.10 (PPSA Warranties), 5.11 (Principal's Security Interest), 6 (Policies and Procedures and Related Obligations), 10.5 (Liquidated Damages), 11 (Examination and Testing), 12 (Defects), 14 (Claims and Payments), 16 (Intellectual Property), 17 (Warranties and Representations), 18 (Indemnities), 19 (Consequential Loss), 20 (Insurance), 23 (Audits and Access to Records), 24 (Confidentiality and No Public Statements), 25 (Privacy), 26 (Termination), 27 (Dispute Resolution), 28 (General Provisions) and any additional provision of this Agreement relating to warranties, liability, indemnities and termination, survive the termination or expiry of this Agreement.

2 Supplier's Obligations

- (a) The Supplier must Supply the Goods in accordance with this Agreement.
- (b) Without limiting or otherwise restricting the Supplier's obligations under this Agreement, the Supplier must:
 - (i) ensure it and its Personnel have, or will have at the relevant time, the resources, knowledge, skill, ability, expertise, competence, competencies and qualifications to Supply the Goods and comply with this Agreement;
 - (ii) Supply the Goods in a timely, diligent and efficient fashion using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from an experienced supplier of goods that are similar to the Goods;
 - (iii) ensure that the Goods will be Supplied in accordance with this Agreement, as well as all applicable Laws, including the WHS Law;
 - (iv) keep the Principal informed of all matters of which it should reasonably be made aware by a prudent supplier of goods and provide such information in relation to the Supply as the Principal is expected to reasonably require;

- (v) allocate sufficient resources to Supply the Goods;
- (vi) take all reasonable steps to ensure that the Goods, or any component of the Goods, are protected from any theft, harm, loss or damage howsoever caused (including when the Goods are stored or in transit) and will mitigate any loss or damage resulting from the same until risk and title to the Goods passes to the Principal in accordance with clause 5.6;
- (vii) ensure that the Goods will be fit and safe for their Intended Purpose at all times;
- (viii) ensure that the Goods will be made of materials that are new (unless stated otherwise in Schedule 7 or in a written notice provided by the Principal's Contract Manager);
- (ix) ensure that the Goods comply with all Specifications and any other requirements set out in this Agreement;
- (x) ensure that the Goods will be of merchantable and acceptable quality and free from any Defect;
- (xi) ensure that the Supply of the Goods will not infringe any rights of any third party or any Law;
- (xii) assist, and cooperate with, the Principal to obtain any authorisations, licences or approvals that may be reasonably required by the Principal, other Rail Transport Agency or an Authority in connection with the Supply or the Goods; and
- (xiii) act in good faith and in the best interests of the Principal in Supplying the Goods.

3 Security

3.1 Provision of Security

- (a) If the Supplier is required by Item 8 of the Key Details to provide security, the Supplier must, within 5 Business Days following the Agreement Date, provide the Principal with an unconditional undertaking:
 - (i) totalling the Security Amount;
 - (ii) issued by a bank or other financial institution acceptable to the Principal; and
 - (iii) in the form set out in Schedule 4 or as otherwise acceptable to the Principal,

as security for the performance of its obligations under this Agreement.

- (b) Compliance with clause 3.1(a) is a precondition to payment of any part of the Contract Price.
- (c) The Supplier must not take any steps whatsoever to:
 - (i) injunct the issuer of the unconditional undertaking or the Principal in respect of dealing with the unconditional undertaking; or
 - (ii) restrain the Principal from exercising its rights under the unconditional undertaking.
- (d) The Principal:
 - (i) is not obliged to pay the Supplier interest on the proceeds of the unconditional undertaking if the Principal converts them into cash; and
 - (ii) does not hold the proceeds of the unconditional undertaking on trust for the Supplier.
- (e) The Supplier is responsible for all stamp duty (including penalties if applicable) payable in connection with any unconditional undertaking and any demands made on an unconditional undertaking.

3.2 Recourse to Security

The Principal may, without notice to the Supplier, have recourse to the security provided under this clause 3 whenever the Principal claims to be entitled to the payment of monies by the Supplier whether under this Agreement or at Law.

3.3 Additional Security

If the Security Amount or any part of it is appropriated by the Principal then the Supplier must within 5 Business Days of demand by the Principal provide to the Principal replacement or additional monies so that the amount secured is not reduced below the Security Amount.

3.4 Release of Security

- (a) Subject to the terms of this Agreement, the Principal will release the Security Amount within 30 Business Days after the Principal has paid the Supplier's final payment claim in respect of the Goods Supplied.
- (b) The Principal has the right to retain security to the value of any outstanding obligations of the Supplier under this Agreement until such obligations are satisfied by the Supplier.
- (c) The Supplier acknowledges and agrees that, following the release of the balance of the Security Amount, the Supplier is not entitled to make and the Principal will not be liable to pay any further payment to the Supplier under, out of or in connection with the Supply of the Goods or this Agreement.

3.5 Parent Company Guarantee

If the Supplier is required by Item 9 of the Key Details to procure a parent company guarantee, the Supplier must, within 5 Business Days following the Agreement Date, procure that parent company guarantee to the Principal's Representative in the form set out in Schedule 5 and duly executed by a person with requisite authority.

4 The Delivery Place

4.1 Safety

- (a) The Supplier must, at its own cost, and at all times, exercise all necessary precautions for the safety of all persons in connection with the Supply of the Goods, appropriate to the nature of the Supply of the Goods and the requirements under this Agreement, including by preparing and implementing a Safe Work Method Statement.
- (b) Any safety precautions exercised must be in compliance with all Laws (including the WHS Law) and, where not inconsistent with such Laws, any requirement of this Agreement or the Principal and any direction the Principal's Contract Manager may consider necessary or desirable.

4.2 Protection of People and Property

- (a) When the Supplier enters the Delivery Place or any other premises of the Principal, the Supplier must, and must ensure that its Personnel:
 - (i) protect people and property;
 - (ii) prevent nuisance and unnecessary noise and disturbance;
 - (iii) act in a safe and lawful manner; and
 - (iv) comply with any direction of the Principal or any Principal Contractor (which may be the Principal or its appointee).

4.3 No Occupier's Liability

- (a) The Principal and its officers, employees, agents and invitees will not be responsible for any damage to the Supplier's property or to the property of the Supplier's Personnel or for any personal injury sustained by any of the Supplier's Personnel occurring at the Delivery Place or any other premises of the Principal as a result of a negligent or reckless act or omission of the Supplier's Personnel.
- (b) The Supplier unconditionally and irrevocably releases the Principal and its officers, employees, agents and invitees from all responsibility referred to in clause 4.3(a).

4.4 Competence Records

Without limiting or otherwise restricting any other provision of this Agreement, the Supplier must:

- (a) prior to any Rail Safety Worker carrying out any Rail Safety Work in connection with the Goods, provide the Principal with the Competence Records in the form directed by the Principal (which may be electronic);
- (b) ensure that any Rail Safety Worker who carries out Rail Safety Work in connection with the Principal's railway operations has the competence to carry out that work; and
- (c) ensure that each Rail Safety Worker used in connection with the Goods has a form of identification that is sufficient to enable the type of competence and training undertaken by that Rail Safety Worker to be checked by a rail safety officer or the Principal if requested.

5 The Supply

5.1 Conditions Precedent to the Supply of the Goods

Without limiting or otherwise restricting any other provision of this Agreement, the Supplier must, as a condition precedent to the Supply of the Goods:

- (a) effect any insurance required to be effected by the Supplier under this Agreement;
- (b) within a reasonable time prior to the Date for Supply, provide the Principal's Contract Manager with any documents required by the Principal, including the documents required under the Safety Specification;
- (c) if Item 6 of the Key Details requires the provision of a Deed Poll, provide a Deed Poll in accordance with clause 5.12;
- (d) if Item 8 of the Key Details requires the provision of security, provide security in accordance with clause 3.1; and
- (e) if Item 9 of the Key Details requires the provision of a parent company guarantee, provide a parent company guarantee in accordance with clause 3.5.

5.2 Delivery Note

The Supplier must provide with each consignment of Goods a Delivery Note containing the following information:

- (a) the Supplier's name and address;
- (b) description and quantity of Goods Supplied;

- (c) the reference numbers of this Agreement;
- (d) the name and contact details of the person from the Principal who issued this Agreement; and
- (e) details of the Delivery Place and Date for Supply.

5.3 **Accompanying Information**

The Supplier must include in each consignment of Goods, where applicable or requested by the Principal:

- (a) the information (including any safety data sheet) specified in or required by the WHS Law;
- (b) the results of any tests required to be carried out by the Supplier before a Date for Supply; and
- (c) all other information necessary for the proper and safe handling, transportation, storage, use, operation, maintenance, repair and disposal of the Goods.

5.4 **Packaging, Transporting, Marking and Labelling**

Without limiting or otherwise restricting any other provision of this Agreement, the Supplier must:

- (a) package all Goods to ensure reasonable protection against any theft, harm, loss or damage during transit, delivery and whilst loading and unloading;
- (b) clearly label all Goods with the reference numbers of this Agreement and details of the Delivery Place;
- (c) ensure that all Goods are packaged and secured (including in appropriate weather-proof packaging) in a safe and secure manner, in compliance with the WHS Law, and as otherwise directed by the Principal; and
- (d) comply with any additional delivery requirements set out in Item 5 of the Key Details.

5.5 **Delivery of the Goods**

- (a) Without limiting or otherwise restricting any other provision of this Agreement, delivery of the Goods shall not be effected unless and until the Goods have been delivered to the Delivery Place and a Delivery Note has been signed by the Principal's Contract Manager or his or her authorised delegate. For the purposes of this clause signing is to include the printing upon the Delivery Note of the Principal's Contract Manager or his or her authorised delegate's name together with his or her employee number.
- (b) Unless otherwise agreed to in writing by the Principal's Contract Manager, any delivery of the Goods must be made during Normal Working Hours.

- (c) Where the Goods to be delivered can be manually unloaded at the Delivery Place in accordance with applicable Laws (including the WHS Law) the Contract Price will include the cost of unloading the Goods (which will be the responsibility of the Supplier).
- (d) Where the Supplier, acting reasonably, considers that the Goods are unable to be manually unloaded in the manner described above, arrangements for unloading the Goods must be made with the Principal prior to delivery of the Goods to the Delivery Place.
- (e) The Supplier must Supply the Goods in accordance with any directions given by the Principal.

5.6 Title and Risk

- (a) Title and risk in the Goods, or any component of the Goods, passes to:
 - (i) the Principal upon the delivery of the Goods, or any component of the Goods, to the Delivery Place in accordance with this Agreement; and/or
 - (ii) the Principal or RailCorp upon the Goods, or any component of the Goods, becoming a fixture to the Principal or RailCorp's land or being incorporated into any of the Principal or RailCorp's personal property.
- (b) The Supplier warrants that the Goods are free of any title, encumbrance, mortgage, charge, security interest (including PPSA Security Interest) or lien at the time of delivery.
- (c) The Supplier is responsible for all risks associated with the Goods, or any component of the Goods, until risk and title in the Goods, or any component of the Goods, passes to the Principal in accordance with this clause 5.6.
- (d) In the case of a Defective part of the Goods required to be rectified by the Supplier and removed from the Principal's premises for the purposes of such rectification, the Supplier is responsible for all risks associated with each part of the Goods for such period as the Defective part of the Goods is in possession of the Supplier.

5.7 Goods not Supplied by the Supplier

Without prejudice to any other right or remedy of the Principal, if the Supplier fails to Supply the Goods in accordance with the requirements of this Agreement, the Principal may:

- (a) direct the Supplier to Supply the Goods so that the Supply of the Goods conforms to the requirements of this Agreement and any directions given by the Principal's Contract Manager; or
- (b) terminate this Agreement and engage a third party to supply the Goods and recover:

- (i) the actual costs incurred by the Principal to engage a third party to supply the Goods; or
- (ii) if no costs have actually been incurred, the reasonable estimated cost of the Goods being supplied by a third party,

either by an adjustment in any monies due to the Supplier under clause 14.6 or by determining such amount and that amount being a debt due and payable from the Supplier to the Principal.

5.8 Reporting

Where required by the Principal and without limiting or otherwise restricting clause 5.9, or any other reporting requirements under this Agreement, the Supplier must provide a report to the Principal's Contract Manager in the timeframe reasonably required by the Principal. The report must include the information set out in this clause 5.8 for the period requested by the Principal:

- (a) the Delivery Place where the Goods were Supplied;
- (b) the dates and times when the Goods were Supplied and a signed copy of the delivery docket;
- (c) feedback on issues such as access, security and any other information as is relevant or necessary; and
- (d) any other information reasonably required by the Principal's Contract Manager.

5.9 Key Performance Indicators

If the Supplier is required by Item 10 of the Key Details to comply with KPIs, then:

- (a) the Supplier must comply with this clause 5.9 and the KPIs specified in Schedule 3 as amended or expanded in accordance with this Agreement;
- (b) the Supplier must report to the Principal's Contract Manager at the frequency specified in Item 10 of the Key Details, in the form of a KPI Performance Report which:
 - (i) provides an analysis of the performance of the Supplier 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 Supplier has implemented any previous action plan and, if not, the extent of non-compliance;
- (c) the Supplier acknowledges and agrees that:

- (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Supplier 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 may amend the KPIs provided that the Supplier has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment,
- and
- (d) the Contract Managers must meet at the times specified in Item 10 of the Key Details, to monitor and review the Supplier's performance under this Agreement and the KPIs and, if required by the Principal, the Supplier's compliance with any action plan. The Supplier's Contract Manager must contact the Principal's Contract Manager to instigate this review.

5.10 PPSA Warranties

- (a) To the extent the PPSA applies to the Goods:
 - (i) the Supplier warrants and represents that the Supply of Goods to the Principal:
 - (A) does not breach any security agreement the Supplier has with a third party; and
 - (B) is within the ordinary course of the Supplier's business.
 - (ii) the Supplier indemnifies the Principal against any loss, damage, claim, action, expense, cost or liability (including legal fees on a solicitor-client basis) incurred by the Principal directly or indirectly in connection with any infringement of, or claim in regard to, any third party security agreement or PPSA Security Interest arising as a result of:
 - (A) the Supplier carrying out the obligations under the Agreement; or
 - (B) the Goods supplied to the Principal by the Supplier infringing that third party's rights under the PPSA.

5.11 Principal's Security Interest

- (a) The Supplier acknowledges and agrees that this Agreement may give rise to one or more PPSA Security Interests in favour of the Principal.
- (b) The Supplier acknowledges that the Principal may register one or more financing statements or financing change statements on the Personal

Property Securities Register ("PPSR") in relation to any PPSA Security Interests that arise, or may arise, under this Agreement.

- (c) The Supplier undertakes to notify the Principal in writing of any proposed changes to its name, address or any other details that have been, or are required to be, recorded on the PPSR in connection with any such PPSA Security Interest at least 5 Business Days before that change takes effect.
- (d) To the extent the law permits:
 - (i) For the purposes of sections 115(1) of the PPSA:
 - (A) the Principal need not comply with sections 95, 118, 120, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (B) sections 142 and 143 are excluded.
 - (ii) For the purposes of sections 115(7) of the PPSA the Principal need not comply with sections 127, 129(2), 129(3), 132 and 137.
 - (iii) The Supplier waives its rights under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or financing change statement on the PPSR in relation to any PPSA Security Interests that arise, or may arise, under this Agreement.
 - (iv) Nothing in this clause prohibits the Principal from giving a notice under the PPSA (including any notice under section 135 of the PPSA) or any other Law.
- (e) The Supplier must:
 - (i) do or cause to be done anything which the Principal considers necessary or desirable to perfect and protect any PPSA Security Interest that arises, or may arise, under this Agreement; and
 - (ii) provide the Principal with all information the Principal needs in order to ensure that any registration of any such PPSA Security Interest is, and remains, fully effective and with the priority that the Principal requires.
- (f) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement within the meaning of the PPSA.

5.12 Deed Poll

Where Item 6 of the Key Details states that a Deed Poll is required:

- (a) the Supplier must, within 5 Business Days following the Agreement Date, provide to the Principal an executed Deed Poll in favour of Sydney Trains and RailCorp in the form set out in Schedule 9; and

- (b) compliance with clause 5.12(a) is a precondition to payment of any part of the Contract Price.

6 Policies and Procedures and Related Obligations

6.1 Supplier's Compliance with Government Policies and Agreements

- (a) The Supplier acknowledges that when selecting the Supplier, the Principal, as a NSW Government agency, was obliged to consider the Supplier's compliance with the most current and up-to-date:
 - (i) NSW Government Local Jobs First Plan;
 - (ii) NSW Government Preference Scheme;
 - (iii) Australian New Zealand Government Procurement Agreement; and
 - (iv) Australia-United States Free Trade Agreement.
- (b) The Supplier warrants that any information it provided to the Principal under, out of or in connection with its response to the ITT in respect of its compliance with the requirements of the documents listed in clauses 6.1(a)(i) to 6.1(a)(iv) will remain true for the duration of this Agreement.

6.2 Corruption Prevention

- (a) The Supplier must at all times comply with the Code of Practice for Procurement.
- (b) The Supplier must ensure that, except as declared to the Principal prior to the Agreement Date, no officer or senior manager of the Supplier has or is engaged in Corrupt Conduct.
- (c) If the Supplier or an officer or senior manager of the Supplier is found by the Independent Commission Against Corruption or any other equivalent commission or court in any jurisdiction to have engaged in Corrupt Conduct or equivalent misconduct, or if the Supplier has engaged any person in contravention of clause 6.2(d), the Principal may terminate this Agreement for breach of a material term of this Agreement.
- (d) The Supplier must not, and must ensure that subcontractors at any level do not, engage any person to do any thing in connection with this Agreement, whether as an employee, agent, contractor or in any other capacity whatsoever, if that person has been found by the Independent Commission Against Corruption or any other equivalent Commission or court in any other jurisdiction to have engaged in Corrupt Conduct or equivalent misconduct.
- (e) If the Supplier breaches this clause 6.2, the Principal may terminate this Agreement immediately by providing notice to the Supplier.

6.3 Ethical Procurement and Supply

- (a) The Supplier must at all times comply with the Statement of Business Ethics.
- (b) Prior to the engagement of any subcontractor by the Supplier, the Supplier must obtain a written acknowledgement from such subcontractor that it has received, read, understood and will comply with the Statement of Business Ethics. The Supplier must retain the documentation required by this clause 6.3(b) for a period of 7 years and must provide such documentation to the Principal as and when requested.
- (c) Without restricting or otherwise limiting any other provision of this Agreement, if the Supplier is sourcing the Goods, any component of the Goods or any materials and equipment used to develop the Goods from a third party whether in Australia or overseas, the Supplier must ensure that all manufacturing, processing and supply operations are in compliance with all applicable Laws.
- (d) If the Supplier fails to comply with this clause 6.3, the Principal's Representative may issue a written notice to show cause why this Agreement should not be terminated if in the reasonable opinion of the Principal's Representative such non-compliance is a material breach of the Supplier's obligations under this clause 6.3.
- (e) If a person has committed a breach of this clause 6.3 and the Supplier has information, knowledge, or believes that such a breach has been committed, the Supplier must notify the Principal's Representative of such information, knowledge or belief. If the Supplier fails without reasonable excuse to notify the Principal's Representative of such information, knowledge or belief, the Principal's Representative may issue a written notice to the Supplier to show cause as to why this Agreement should not be terminated if, in the reasonable opinion of the Principal's Representative, such non-compliance is a material breach of the Supplier's obligations under this clause 6.3(e).
- (f) A notice issued by the Principal's Representative pursuant to this clause 6.3 must state:
 - (i) that it is a notice issued under this clause 6.3;
 - (ii) details of the alleged failure by the Supplier to comply with this clause 6.3;
 - (iii) that the Supplier is required to show cause as to why the Principal should not exercise the right referred to in clause 6.3(h);
 - (iv) the date and time by which the Supplier must show cause; and
 - (v) the address to which the Supplier must submit its written response to the notice issued by the Principal's Representative.

- (g) The Supplier must respond to a notice received pursuant to this clause 6.3 in writing to the Principal's Representative within 10 Business Days of the date of the notice.
- (h) If the Supplier fails to show reasonable cause within the time required by clause 6.3(g) and without limiting or otherwise restricting any other right available to the Principal, the Principal's Representative may:
 - (i) advise the Supplier that the Principal will take no further action in respect of the notice;
 - (ii) require the Supplier to provide further information or clarification by another date;
 - (iii) suspend this Agreement; or
 - (iv) terminate this Agreement for breach with immediate effect.
- (i) If the Principal's Representative suspends this Agreement under clause 6.3(h) the Principal's Representative may, at any time after such suspension, by written notice:
 - (i) lift the suspension either conditionally or unconditionally; or
 - (ii) terminate this Agreement for breach with immediate effect.
- (j) For the purposes of this clause 6.3, "Supplier" includes the Supplier's directors, officers, employees, consultants, agents, contractors and subcontractors.

6.4 Conflict of Interest

- (a) The Supplier warrants and represents that as at the Agreement Date no conflict of interest exists, or is likely to arise, in the Supply of the Goods in respect of the Supplier or any of its Personnel, except as has been disclosed in writing by the Supplier to the Principal prior to the Agreement Date.
- (b) The Supplier must use its best endeavours to ensure no conflict of interest exists, or is likely to arise, in the Supply of the Goods in respect of the Supplier or any of its Personnel, and must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of such a conflict of interest.
- (c) On receipt of a notice under clause 6.4(b), the Principal may:
 - (i) approve the Supplier to continue to Supply the Goods, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or

- (ii) where, in the Principal's view, the conflict of interest cannot be appropriately managed, terminate this Agreement by notice in writing to the Supplier effective from the date specified in the notice.
- (d) If requested by the Principal at any time, the Supplier must (and must ensure that any of its officers or Personnel involved in the Supply of the Goods) sign and deliver to the Principal a conflict of interest declaration and statement of interests and associations in the form reasonably required by the Principal.

6.5 **Quality Management**

- (a) If required by Item 11 of the Key Details, the Supplier must establish, implement and maintain for the duration of this Agreement a quality management system and Quality manual complying with the requirements of the standard specified therein.
- (b) Any quality system must be used only as an aid to achieving compliance with this Agreement and to document such compliance and does not discharge the Supplier's other obligations under this Agreement.
- (c) The Supplier will not be relieved from compliance with any of its obligations, or any of its liabilities under this Agreement or otherwise at Law as a result of:
 - (i) the implementation of, and compliance with, the quality system requirements of this Agreement;
 - (ii) any direction by the Principal's Contract Manager concerning the Supplier's quality system or its compliance or non-compliance with that system; or
 - (iii) any audit or other monitoring by the Principal's Contract Manager of the Supplier's compliance with the quality system.

7 **Work Health and Safety**

7.1 **Safety Management**

- (a) The Supplier must comply with the WHS Law and the Safety Specification.
- (b) If at any time the Supplier becomes aware of any health or safety hazard or risk in relation to the Goods Supplied either prior to or after the Supply of the Goods, the Supplier must:
 - (i) immediately advise the Principal's Representative in writing of the nature of the hazard or risk;
 - (ii) promptly review the Goods and immediately suspend the Supply of any Goods; and

- (iii) promptly devise and submit a plan to the Principal's Representative to address or rectify the hazard or risk.
- (c) The Supplier must ensure whenever performing activities in connection with this Agreement that involve entering the Rail Corridor or attendance at a Principal or other Rail Transport Agency's site or premises (including attending the Delivery Place) that its Personnel:
 - (i) are not under the influence of alcohol or any drug within the meaning of the Rail Safety National Law;
 - (ii) comply with the Drug and Alcohol Policy; and
 - (iii) comply with any request by the Principal to submit to an alcohol or drug test made in accordance with the Rail Safety National Law.
- (d) At the Principal's direction, the Supplier must immediately remove any of its Personnel from the site or premises of the Principal or other Rail Transport Agency that refuse to submit to an alcohol or drug test or have been found to be under the influence of alcohol or any other drug within the meaning of the Rail Safety National Law that is in breach of clause 7.1(c).
- (e) Without limiting or otherwise restricting any other rights of the Principal, the Supplier, to the extent permitted by Law, indemnifies the Principal against any and all claims that may be imposed under, or that may arise out of, the enforcement of any section of the Rail Safety National Law, as a result of any breach by the Supplier or its Personnel of this clause 7.1.
- (f) The Supplier's liability to indemnify the Principal under clause 7.1(e) will be reduced proportionally to the extent that the loss, expense or damage was contributed to by a negligent act or omission of the Principal or its Personnel.
- (g) The Principal may from time to time amend the obligations imposed upon the Supplier under the Safety Specification. Should any such amendment impose any additional costs, charges or expenses upon the Supplier, the Supplier must promptly notify the Principal of such additional costs, charges and expenses in the form of an updated Contract Price and/or Unit Prices. If the Principal disputes the updated Contract Price and/or Unit Prices submitted by the Supplier, such dispute will be resolved in accordance with the dispute resolution provisions of this Agreement with the agreed Contract Price and/or Unit Prices applying from the date of implementation of the amended Safety Specification.

7.2 Work Health and Safety

- (a) If required in Item 12 of the Key Details, the Supplier must establish, implement and maintain for the duration of this Agreement, a Work Health and Safety System complying with the requirements in Item 12 of the Key Details and the WHS Law.

- (b) The Supplier must comply (and ensure that all of its Personnel comply) with the WHS Law, any occupational or work health and safety policy, practice or procedure adopted or required by the Principal from time to time, and the Safe Work Method Statement, and ensure that all of its Personnel comply with the Safety Specification.

8 Environmental Management and Sustainability

- (a) The Supplier must comply with the requirements set out in the Principal's Environmental Management Specification.
- (b) If required by Item 13 of the Key Details, the Supplier must establish, implement and maintain for the duration of this Agreement an environmental management system complying with the requirements of Item 13 of the Key Details.
- (c) Notwithstanding the above the Supplier must:
 - (i) comply with all applicable environmental Laws, policies and safety standards considered in the Supplier's industry to be current best practice;
 - (ii) comply with the following provisions of this clause 8(c)(ii) in relation to the responsible management of substances:
 - (A) not discharge, without lawful authority, any substance that could be harmful to the environment;
 - (B) prevent the unlawful discharge, leakage or spillage of substances;
 - (C) immediately report any leakage or spillage of any harmful substance at the Principal or other Rail Transport Agency's site or premises to the Principal and any relevant Authority and take immediate action to contain the leakage or spillage and minimise environmental damage and clean the area affected by the discharge of any substance (unless otherwise directed by the Principal's Representative or any relevant Authority);
 - (D) comply with any direction in relation to environmental protection that may be given by any relevant Authority or the Principal;
 - (E) pay all costs associated with the clean-up, including payment of fines and labour costs; and
 - (F) indemnify the Principal for any costs incurred by the Principal to ensure compliance with this clause 8 and for any loss suffered in connection with any leakage or spillage or any costs or losses suffered by reason of the Supplier's failure to safely use or dispose of any substances.

- (d) The Supplier's liability to indemnify the Principal under clause 8(c)(ii)(F) will be reduced proportionally to the extent that the loss, expense or damage was contributed to by a negligent act or omission of the Principal or its Personnel.

9 Variations

9.1 Directing Variations

- (a) The Supplier shall not vary the Supply of the Goods except as directed in writing by the Principal's Representative pursuant to this clause 9.
- (b) The Principal's Representative may direct a variation to the Supply of the Goods including a variation to the type, extent, quantity, time for provision or any other requirement relating to the Supply of the Goods, including the Date for Supply.
- (c) The Principal may by variation omit any part of the Supply of the Goods for any purpose including for the purpose of having the omitted Supply performed by the Principal or by another party.

9.2 Proposed Variations

- (a) The Principal's Representative will give the Supplier written notice of a proposed variation.
- (b) If the Supplier receives a notice under clause 9.2(a), the Supplier must, prior to carrying out any work which is the subject of a proposed variation, promptly provide a written report to the Principal's Representative detailing any:
 - (i) additional charges caused by the proposed variation;
 - (ii) effect on the Date for Supply caused by the proposed variation;
 - (iii) effect upon the quality of the Goods being Supplied caused by the proposed variation; and
 - (iv) other impacts on the Supply of the Goods caused by the proposed variation.
- (c) Once the Principal's Representative has received and considered the report referred to in clause 9.2(b), the Principal's Representative will determine, in their sole and absolute discretion, whether to issue a variation direction to the Supplier.
- (d) The Principal will not be liable for any work provided or any associated expenditure incurred by the Supplier in relation to any proposed variation, unless:
 - (i) the Supplier has provided the report referred to in clause 9.2(b); and

- (ii) the Principal's Representative has directed the variation in writing to the Supplier.

9.3 Valuation of Variations

- (a) Where a variation is directed by the Principal's Representative in accordance with this clause 9, the Principal's Representative will:
 - (i) determine the value of the variation using the additional charges detailed by the Supplier in any written report provided by the Supplier under clause 9.2(b) to the extent those charges are applicable or it is reasonable to use them for valuing the variation;
 - (ii) to the extent that clause 9.3(a)(i) does not apply, use the Unit Prices to the extent they are applicable or it is reasonable to use them for valuing the variation; or
 - (iii) to the extent that clause 9.3(a)(ii) does not apply, determine a reasonable amount by reference to market rates and the Contract Price.
- (b) Any variation valued by the Principal's Representative pursuant to clause 9.3(a) will be added to or deducted from the Contract Price (as the case may be).

10 Time, Completion and Delay

10.1 Timeframe for Supplying the Goods

The Supplier must:

- (a) deliver the Goods to the Delivery Place in a diligent and orderly manner on the Date for Supply;
- (b) not deliver the Goods to the Delivery Place before the Date for Supply, unless otherwise directed in writing by the Principal's Contract Manager;
- (c) unless otherwise directed, give the Principal's Contract Manager reasonable advance notice of the delivery of the Goods to the Delivery Place;
- (d) give the Principal's Contract Manager notice if it considers that it will not be able to Supply the Goods by the Date for Supply; and
- (e) unless otherwise directed, promptly unload the Goods at the Delivery Place.

10.1A Goods Storage Notice

The Supplier acknowledges and agrees that the Principal may, at its sole discretion, and at any time prior to the Date for Supply, direct the Supplier to store the Goods at its premises for any period not more than 12 weeks ("Goods Storage Notice").

Any Goods Storage Notice must:

- (a) be directed by the Principal in writing; and
- (b) be given no later than the Date for Supply.

The Supplier must following any Goods Storage Notice under this clause 10.1A:

- (c) notify the Principal in writing of receipt of the Goods Storage Notice; and
- (d) promptly ensure that the Goods are stored at its premises for the period set out in the Goods Storage Notice.

The Supplier warrants and acknowledges that:

- (e) it has allowed in the Contract Price for all the costs and expenses involved with complying with any direction given under a Goods Storage Notice where the required duration of storage is no greater than 8 weeks; and
- (f) it will have no claim against the Principal under, out of or in connection with any direction given under a Goods Storage Notice where the required duration of storage is no greater than 8 weeks.

The parties acknowledge and agree that if the required duration of storage under a Goods Storage Notice is greater than 8 weeks, then the Supplier will be entitled to be paid for its direct costs resulting from the storage on and from the 57th day of that storage, based on reasonable rates and prices as determined by the Principal's Representative.

10.2 Suspension of the Supply

- (a) The Principal may, for its sole convenience and at its sole discretion, immediately direct the Supplier to suspend the Supply of the Goods and payment relating to those Goods not yet dispatched, and the Supplier must comply with the terms of any such direction, regardless of whether there has been any default by the Supplier.
- (b) The Supplier must resume the Supply of the Goods when directed by the Principal and without any unreasonable delay.

- (c) Subject to clause 28.12, if a suspension arises from a direction by the Principal's Contract Manager and that direction was not the result of any default by the Supplier or those for whom it is responsible:
 - (i) the Supplier may, subject to clause 10.3, claim an extension of time under clause 10.3 equal to the period for which the Supply of the Goods was suspended; and
 - (ii) the Principal will, subject to clause 10.4, pay the Supplier the reasonably proven, necessarily incurred costs incurred by the Supplier as a direct result of the suspension.
- (d) Payment by the Principal of any costs arising from a suspension under clause 10.2 will be the Supplier's sole and exclusive remedy in respect of the Principal suspending the Supply of the Goods.
- (e) The Supplier acknowledges and agrees that it will not be entitled to make, and the Principal will not be liable upon, any claim in relation to any direction given by the Principal under clause 10.2(a) other than as provided for in this clause 10.2.

10.3 **Extension of Time**

- (a) Subject to clause 28.12, if the Principal suspends the Supply of the Goods under clause 10.2 or if the Supplier considers that it will not be able to Supply the Goods by the Date for Supply due to any cause beyond its reasonable control it may make a claim for an extension of time by making a written application to the Principal's Representative.
- (b) An application for an extension of time must set out in reasonable detail the circumstances giving rise to the delay in the Supply of the Goods, and the likely length of such delay and provide such other information as the Principal's Representative may reasonably request.
- (c) The Principal may agree to extend the Date for Supply if, in the reasonable opinion of the Principal, the circumstances giving rise to the delay are legitimate and warrant an extension of time for the Supply of the Goods.
- (d) The Principal's Representative may at any time, for any reason and at its sole discretion, and without being under any obligation to do so, by written notice to the Supplier, extend the Date for Supply for any reason, whether or not a claim for an extension of time has been made by the Supplier. The Principal's Representative is not required to exercise its discretion under this clause 10.3(d) for the benefit of the Supplier.

10.4 **Suspension Costs**

- (a) If the Principal suspends the Supply of Goods pursuant to clause 10.2, and that suspension was not the result of any default by the Supplier or those for whom it is responsible, the Supplier will be entitled to submit a claim to the Principal's Representative in accordance with this clause 10.4 to

recover its reasonably proven, necessarily incurred costs as a direct result of the suspension.

- (b) Subject to clause 28.12, each claim made under this clause 10.4 must include full written particulars and supporting documentation to the reasonable satisfaction of the Principal's Representative, of the reasonably proven, necessarily incurred costs of the Supplier as a direct result of the suspension to enable the Principal to verify the amount claimed by the Supplier.
- (c) Where the Principal's Representative receives a claim from the Supplier under this clause 10.4, the Principal's Representative will determine the reasonably proven, necessarily incurred costs of the Supplier as a direct result of the suspension on the basis of any information or documentation provided by the Supplier as part of its claim and will consider any other information or documentation the Principal's Representative considers reasonable to use for the purpose of determining the Supplier's reasonably proven, necessarily incurred costs.
- (d) Any costs valued by the Principal's Representative pursuant to clause 10.4(c) will be added to the Contract Price.
- (e) The Supplier must, as a pre-condition to any entitlement to recover any costs due to a suspension made by the Principal under clause 10.2:
 - (i) immediately take all reasonable steps and practicable measures to mitigate all losses, costs and expenses arising from the suspension; and
 - (ii) submit a claim to the Principal's Representative in compliance with clause 10.4(b).

10.5 Liquidated Damages

- (a) Without limiting or otherwise restricting any other right or remedy that the Principal may have under this Agreement or otherwise, if Item 14 of the Key Details states that liquidated damages are applicable and if the Supplier fails to Supply the Goods to the Delivery Place by the Date for Supply, the Supplier must pay liquidated damages at the rate specified in Item 14 of the Key Details for every day (or part thereof) between the Date for Supply, and the earlier of the Date of Supply to the Delivery Place or the date that this Agreement is terminated.
- (b) The Principal and the Supplier agree that the amount of liquidated damages specified in Item 14 of the Key Details is a reasonable and genuine pre-estimate of the loss likely to be incurred by the Principal as a result of the Supplier not having Supplied the Goods to the Delivery Place by the Date for Supply.
- (c) If clause 10.5(a) is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle the Principal from recovering liquidated damages for the Supplier's failure to Supply the Goods by the Date for

Supply, the Principal shall be entitled to recover damages from the Supplier for such failure under general law, which damages will not be limited to the liquidated damages that the Principal would otherwise (but for the disentitlement) have been entitled to recover from the Supplier.

11 Examination and Testing

11.1 Tests

Without limiting or otherwise restricting any other requirement the Supplier may have at Law, the Supplier must cooperate with the Principal to undertake:

- (a) any tests set out in Schedule 7; and
- (b) at any time before the expiry of the Warranty Period, any tests that the Principal's Contract Manager may direct be undertaken.

The Supplier shall give such assistance and samples and make accessible such parts of the Goods as may be directed by the Principal's Contract Manager.

11.2 Who Conducts

Tests shall be conducted by the Principal's Contract Manager or a person (which may include the Supplier) nominated by the Principal's Contract Manager.

11.3 Notice

The Principal's Contract Manager shall give reasonable written notice to the Supplier of the date, time and place of the test. Unless the Principal's Contract Manager advises otherwise in writing:

- (a) if the Supplier conducts the test, the Principal or a person nominated by the Principal's Contract Manager must witness the test; or
- (b) if the Principal or a person nominated by the Principal conducts the test, and the Supplier does not or cannot attend to witness the test, the test may nevertheless proceed.

11.4 Completion and Results

Without limiting or otherwise restricting clause 12, on completion of the tests, the Supplier must correct any Defects in the Goods so that the Goods fully comply with this Agreement.

11.5 Costs

Costs in connection with testing pursuant to this clause 11 shall be borne by the Principal except where:

- (a) the test is consequent upon, or reveals, a failure of the Supplier to comply with this Agreement (including this clause); or
- (b) the test is a requirement set out Schedule 7 or a test that the Supplier undertakes on its own initiative or because of any other requirement at Law.

12 Defects

12.1 Rectification of Defects

- (a) Subject to clause 12.1(b), the Supplier is liable for, and must rectify, all Defects in the Goods.
- (b) The Supplier must, until the end of the Warranty Period, rectify any Defects promptly after a Defect is detected or the Supplier is notified of a Defect.
- (c) Without limiting or otherwise restricting any other right the Principal may have under this Agreement or at Law, the Principal may, at any time before the end of the Warranty Period:
 - (i) direct the Supplier by written notice to rectify any Defect, in which case the Supplier must rectify the Defect in accordance with the terms of that direction and at the Supplier's sole cost; and
 - (ii) if the Supplier fails to carry out the rectification in accordance with such a direction, direct the Supplier by written notice not to rectify the Defect, in which case the Principal may have the Defect rectified by a third party and all costs incurred by the Principal in connection with the rectification will be a debt due and payable by the Supplier to the Principal on demand.
- (d) Any direction under clause 12.1(c)(i) may provide in respect of the rectification work that there is to be an additional and separate Warranty Period commencing on the date the rectification work is completed.
- (e) The conclusion of the Warranty Period does not in any way affect the Principal's rights at Law in respect of a Defect.

12.2 Recall of Goods

- (a) If any Goods are recalled for any reason, including a recall by the manufacturer of the Goods, the Supplier must:
 - (i) immediately advise the Principal's Representative of the recall;
 - (ii) comply with any Laws relating to the recall;
 - (iii) if the recall relates to Goods already delivered to the Principal, provide to the Principal within the time required by the Principal substitute products that perform the functions and performance requirements described in Schedule 7; and
 - (iv) pay all the costs associated with the recall of the Goods.
- (b) If the Supplier fails to comply with its obligations under clause 12.2(a) then the Principal may procure substitute products that perform the functions and performance requirements described in Schedule 7, and all costs incurred

by the Principal in connection with that procurement will be a debt due and payable by the Supplier to the Principal on demand.

13 Price of the Goods

13.1 Contract Price

The Contract Price:

- (a) excludes GST; and
- (b) subject to clauses 5.5(c) and 5.5(d) and any other express term of this Agreement, includes all applicable costs and charges, duties, tariffs and similar taxes (other than GST) paid or payable in connection with Goods, any component of the Goods and the Supply, including any and all packaging, transport, delivery, insurance, loading, unloading and storage costs up to the unloading of the Goods at the Delivery Place.

13.2 Unit Prices Review

- (a) All Unit Prices are fixed for the Fixed Price Period if Item 15 of the Key Details specifies a Fixed Price Period.
- (b) For the avoidance of doubt, an increase in the Unit Prices under this clause 13.2 does not apply where the Contract Price is a lump sum amount.
- (c) Not less than 45 Business Days prior to:
 - (i) each anniversary of the Agreement Date if no Fixed Price Period is specified in Item 15 of the Key Details; or
 - (ii) the end of the Fixed Price Period specified in Item 15 of the Key Details,

the Supplier may request that the Unit Prices be adjusted in accordance with the formula set out in Schedule 2.
- (d) The Principal may, in its absolute discretion, adjust the Unit Prices in accordance with the formula set out in Schedule 2.
- (e) Any revised Unit Prices:
 - (i) must be in writing to be effective; and
 - (ii) will take effect:
 - (A) where a Fixed Price Period has not been specified in Item 15 of the Key Details, from the next 12 month anniversary of the Agreement Date; or

- (B) where a Fixed Price Period has been specified in Item 15 of the Key Details, from the expiry of the then current Fixed Price Period, and will be fixed for the new Fixed Price Period.

13.3 **Competitive and Most Favoured Pricing Principles**

The Principal and the Supplier agree that it is their common intention that the Contract Price will be (and will remain for the duration of this Agreement) commercially competitive and no less favourable in terms of:

- (a) the prices provided or offered by the Supplier to other customers whose orders for its goods are of a comparable volume to the orders for Goods placed by the Principal under this Agreement; and
- (b) prices and terms and conditions provided or offered by other providers in the market for goods that are the same as or equivalent to the Goods.

13.4 **Volume-Based Rebate**

If specified in Schedule 8, the Principal will be entitled to an annual volume-based rebate, and the Supplier shall, within 20 Business Days of each anniversary of the Agreement Date:

- (a) calculate the amount of the rebate to which the Principal is entitled; and
- (b) forward the calculation to the Principal's Representative, together with a cheque (to a NSW Government agency nominated by the Principal) for the amount of the rebate due.

13.5 **Volume-Based Discount**

If specified in Schedule 8, the Supplier shall discount the Contract Price by amounts specified in that Schedule, based upon the gross sales made to the Principal in the 12 month period commencing on each anniversary of the Agreement Date.

14 **Claims and Payments**

14.1 **General**

Subject to the Supplier carrying out its obligations under this Agreement, the Principal will pay the Supplier the Contract Price in accordance with the provisions of this Agreement, less any amount which the Principal is entitled to withhold or to set-off from any payment.

14.2 **Submission of Payment Claim**

- (a) The Supplier may only submit a payment claim to the Principal's Contract Manager on or after the first Business Day of a month for Goods delivered

to the Delivery Place in accordance with this Agreement during the previous month.

- (b) The Supplier agrees with the Principal that if the SOP Act applies to the Supply, then the date prescribed in clause 14.2(a) as the date on which the Supplier may make a claim is, for the purposes of section 8 of the SOP Act, the "reference date".

14.3 Form of Payment Claim and Tax Invoice

- (a) All payment claims or tax invoices issued under clause 14.4(f) must be addressed to the Principal and submitted, as directed by the Principal and if no such direction is given, issued in writing to the Principal's Contract Manager at the address specified in Item 20 of the Key Details.
- (b) Each payment claim or tax invoice under clause 14.4(f) must be in writing and contain the following information and evidence in respect of the Goods the subject of the payment claim:
 - (i) the reference numbers of this Agreement;
 - (ii) the date the payment claim or tax invoice under clause 14.4(f) was issued;
 - (iii) the payment claim or invoice number;
 - (iv) the Supplier's full legal name and Australian Business Number ("ABN");
 - (v) details of the Goods Supplied (including the quantities and Date of Supply);
 - (vi) the Unit Prices or portion of the lump sum Contract Price for the Goods Supplied;
 - (vii) a breakdown of how the payment claim is calculated, including:
 - (A) if the Contract Price is a lump sum, how the portion of the lump sum claimed corresponds with the Goods Supplied; or
 - (B) if the Contract Price is based on Unit Prices, the quantity of Goods claimed and the Unit Prices used;
 - (viii) the details and cost of any replacement parts used if the Goods involve this;
 - (ix) any applicable GST (to be shown separately);
 - (x) the total amount claimed; and
 - (xi) any other details, documentation or evidence, including signed declarations and statements, reasonably required by the Principal, and in the form requested by the Principal.

- (c) The Supplier's payment claim or tax invoice must be in a format required by the Principal to avoid mismatches between the payment claim and this Agreement, including matching exactly with the order of line items, the order of columns, quantities, rates and total amount payable set out in this Agreement.

14.4 Incorrect Payment Claims and Payment Statements

- (a) Subject always to clause 14.4(b), the Principal will, after receipt of a payment claim submitted under clause 14.2, notify the Supplier in writing if it considers that payment claim to be incorrectly rendered or unable to be paid by the Principal. That notice may include the information set out in clause 14.4(b).
- (b) The Principal's Representative will (on behalf of the Principal), within 10 Business Days of receiving a payment claim which complies with the requirements of clauses 14.2 and 14.3, issue to the Supplier and the Principal a payment statement which identifies the payment claim to which it relates, and which sets out:
 - (i) its determination of the value of the Goods supplied in accordance with this Agreement, using the methodology in clause 14.3(b)(vii) where the payment statement relates to a tax invoice;
 - (ii) the amount already paid to the Supplier;
 - (iii) the amount the Principal is entitled to retain, deduct, withhold or set-off under this Agreement;
 - (iv) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Supplier on account of the Contract Price and which the Principal proposes to pay to the Supplier or the amount which the Principal's Representative believes to be then payable by the Supplier to the Principal; and
 - (v) if the amount in clause 14.4(b)(iv) is less than the amount claimed in the payment claim:
 - (A) the reason why the amount in clause 14.4(b)(iv) is less than the amount claimed in the payment claim; and
 - (B) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.
- (c) The issue of a payment statement by the Principal's Representative does not constitute approval of any work or Supply nor will it be taken as an admission or evidence that the part of the Supply or Goods covered by the payment statement has been satisfactorily carried out in accordance with this Agreement.

- (d) Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Supplier by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Agreement.
- (e) The Supplier agrees that the amount referred to in the payment statement in respect of clause 14.4(b)(iv) above is, for the purposes of section 9 and 10 of the SOP Act, the amount of the "progress payment" (as defined in the SOP Act) calculated in accordance with the terms of this Agreement to which the Supplier is entitled in respect of this Agreement.
- (f) Where the Principal has notified the Supplier in accordance with clause 15(g)(iv) that it no longer proposes to issue a RCTI for a Taxable Supply made by the Supplier for the Principal, the Supplier must, within 2 Business Days after receipt of a payment statement issued by the Principal's Representative under this clause 14.4, give the Principal's Representative a tax invoice (which complies with the GST Act) for the amount of the payment statement as indicated in any notice under clause 14.4(a), or the amount referred to in clause 14.4(b).
- (g) If a tax invoice is found to have been rendered or paid incorrectly, any overpayment will, at the Principal's option, be recoverable from the Supplier as a debt due and payable, or, without limiting recourse to other available remedies, be offset against any amount subsequently due to the Supplier by the Principal.

14.5 Conditions Precedent to Payment

The Principal will not be liable to pay the Supplier for any Goods unless:

- (a) the Principal holds a copy of this Agreement executed by the Supplier;
- (b) the Supply of the Goods is in accordance with this Agreement;
- (c) all the required information under this Agreement has been provided to the Principal in accordance with this Agreement; and
- (d) the Supplier has submitted a payment claim or tax invoice under clause 14.4(f) that complies with clauses 14.2 and 14.3 or the Principal has provided the Supplier with a RCTI in accordance with clause 15(f).

14.6 Payment

- (a) Subject to the terms of this Agreement, the Principal must pay the amount specified in the tax invoice issued under clauses 14.4(f) or 15(g) within the Time for Payment.
- (b) Payments made by the Principal under this Agreement will, unless otherwise agreed by the Principal, be made by electronic funds transfer to

the bank account nominated by the Supplier in writing to the Principal's Contract Manager.

- (c) Payment of the Supplier's payment claim is deemed to have been made on the date:
 - (i) in the case of electronic funds transfer, on the day such transfer is made by the Principal; or
 - (ii) in any other case, the day upon which the Principal issues such payment.

14.7 **Set-off and Deductions**

- (a) Without limiting or otherwise restricting clause 14.9, if:
 - (i) there is a debt or other moneys due from the Supplier to the Principal; or
 - (ii) the Principal has a claim to money against the Supplier whether for damages or otherwise, arising out of or in any way in connection with this Agreement or on any other legal or equitable basis,

then the Principal may withhold, deduct or set-off the debt or other moneys due or claim against any sum which the Supplier is or may be entitled to arising out of or in any way in connection with this Agreement.

- (b) Nothing in this clause 14.7 affects or restricts the right of the Principal to recover from the Supplier the whole of the debt or claim or any balance that remains owing.

14.8 **Effect of Payment**

The Supplier acknowledges that any payment made to it by the Principal:

- (a) is a payment on account only;
- (b) is not an acknowledgment that the Goods have been Supplied in accordance with the terms of this Agreement; and
- (c) does not imply or constitute a waiver or release of the Supplier's obligations under this Agreement.

14.9 **Security of Payment Act**

- (a) When an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to the Supplier:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 14.4;
 - (ii) if it is subsequently determined pursuant to the Agreement that the Supplier was not entitled under the Agreement to payment of some

- or all of the adjudicated amount that was paid by the Principal ("overpayment"), the overpayment will be a debt due and payable by the Supplier to the Principal which the Supplier must pay to the Principal upon demand and in respect of which the Supplier is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
- (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Supplier to the Principal upon demand and in respect of which the Supplier is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iv) the Principal's Representative:
 - (A) is not bound by the adjudication determination;
 - (B) may assess the value of the work that was valued by the adjudicator; and
 - (C) may, if it disagrees with the adjudication determination, express its own valuation in any payment statement; and
 - (v) the payment statement referred to in clause 14.9(a)(iv)(C) will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 27.
- (b) For the purposes of section 17(3) of the SOP Act the Supplier irrevocably chooses the Institute of Arbitrators & Mediators Australia, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Agreement.
 - (c) Without limiting or otherwise restricting clauses 14.4 and 14.7, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
 - (d) If the Principal withholds from money otherwise due to the Supplier any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the Supplier from the Principal; and
 - (ii) the period during which the Principal retains money due to the Supplier pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:

- (A) any period for which money owed by the Principal to the Supplier has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the Supplier must be made.
- (e) The Supplier agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (f) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Supplier to the Principal.
- (g) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Supplier:
- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Supplier must so notify the Principal within 2 Business Days of the occurrence of the event in clause 14.9(g)(i) or 14.9(g)(ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

15 Goods and Services Tax

- (a) The Supplier must, for the duration of this Agreement, hold an ABN and be registered for GST and must immediately notify the Principal if it ceases to be registered for GST.
- (b) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Agreement are exclusive of GST.
- (c) If GST is or becomes payable on a Supply made by a party ("Supplier Party") under or in connection with this Agreement, the party providing consideration for the supply ("Recipient") must pay an additional amount to the Supplier Party equal to the GST payable by the Supplier Party (or representative member of a GST group of which the Supplier Party is a member) in relation to the Supply.
- (d) Any amount payable under clause 15(c) will be paid to the Supplier Party at the same time as the consideration for the Supply is paid to the Supplier Party.

- (e) If any party is required under this Agreement 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.
- (f) Notwithstanding any other provision of this Agreement, where the Recipient is the Supplier, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 15 or otherwise) in respect of a Taxable Supply made by the Principal unless the Principal issues to the Supplier a tax invoice that complies with the GST Act in respect of that Taxable Supply.
- (g) The parties agree that, unless otherwise agreed in writing, the following will apply to all Taxable Supplies made by the Supplier to the Principal under or in connection with this Agreement:
 - (i) the Principal will, within 10 Business Days of the issue of a payment statement under clause 14.4, issue to the Supplier a RCTI for each Taxable Supply made by the Supplier to the Principal under this Agreement;
 - (ii) the Principal will issue to the Supplier an adjustment note for any adjustment event;
 - (iii) the Supplier will not issue a tax invoice in respect of any Taxable Supply it makes to the Principal; and
 - (iv) the Principal may notify the Supplier that it will no longer issue a RCTI for each Taxable Supply made by the Supplier under this Agreement, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such Supplies and the Supplier will be required to issue tax invoices to the Principal as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Supplier in respect any such Taxable Supply.
- (h) Each party acknowledges and warrants that at the time of entering into this Agreement it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (i) If the GST payable in relation to a Supply made by the Supplier Party under this Agreement varies from the additional amount paid by the other party under this clause 15 in respect of that supply, then the Supplier Party 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).

- (j) In this clause 15:
 - (i) terms defined in GST Act have the meaning given to them in GST Act; and
 - (ii) any part or progressive or periodic component of a Supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate Supply.

16 Intellectual Property

16.1 Intellectual Property Warranties

The Supplier warrants and represents to the Principal that:

- (a) it owns, or is licensed by the owner to use and sub-licence, all Pre-existing IPR;
- (b) in Supplying the Goods, the Supplier will not infringe the IPR of any person; and
- (c) the use of the Goods or any component of the Goods for any purpose by the Principal or other NSW Government agency (including other Rail Transport Agency) will not infringe the IPR of the Supplier or any third party.

16.2 Ownership

- (a) The Supplier or owner will retain all of its Pre-existing IPR in the Goods and nothing in this agreement assigns, or transfers, ownership of the Pre-existing IPR of the Supplier to the Principal.
- (b) For the avoidance of doubt, the parties agree that the Supplier owns and has full title to all IPR developed by the Supplier or any of its Personnel whether before or after the Agreement Date:
 - (i) for the purposes of, or in anticipation of, Supplying the Goods or this Agreement; or
 - (ii) which are comprised in or related to any part of the Goods.
- (c) The Supplier grants to the Principal a non-exclusive, perpetual, irrevocable, transferable, royalty free, licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) the IPR in the Goods to allow the Principal or other NSW Government agency (including other Rail Transport Agency) the full benefit and enjoyment of the Goods and this Agreement.
- (d) The licence in clause 16.2(c) does not entitle the Principal or any sub- licensee or transferee to undertake or procure the construction or manufacture of the Goods.

16.3 Moral Rights

- (a) If the Goods or any component of the Goods includes any work in which copyright subsists, the Supplier:
 - (i) warrants and represents that the use of the Goods, or any component of the Goods, by the Principal or other NSW Government agency (including other Rail Transport Agency) will not infringe any author's Moral Rights and that the Supplier has obtained appropriate consents to use of the Goods or any component of the Goods:
 - (A) with or without attribution of authorship;
 - (B) with false attribution of authorship;
 - (C) in any medium; and
 - (D) in any context and in any way the Principal sees fit.
- (b) For the purposes of clause 16.3(a), the use of the Goods by the Principal or other NSW Government agency (including other Rail Transport Agency) includes their respective rights to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Goods or any component of the Goods provided by the Supplier under this Agreement.

17 Warranties and Representations

17.1 Supplier's Warranties and Representations

Without limiting or otherwise restricting any other obligation of the Supplier under this Agreement, the Supplier warrants and represents to the Principal that:

- (a) it will comply with its obligations under clause 2;
- (b) it has been duly incorporated in accordance with the Laws of the place of its incorporation and that it is validly existing under those Laws;
- (c) it has full authority and power to enter into and perform its obligations under this Agreement and can do so without the consent of any other person;
- (d) it has taken all action which is necessary to authorise the performance of this Agreement in accordance with its terms;
- (e) it is solvent;
- (f) it has not entered or taken steps to enter and does not propose to enter into any arrangement, compromise or assumption with, or assignment for, the benefit of its creditors or any class of them; and

- (g) as at the Agreement Date, it is registered for GST.

17.2 Third Party Warranties

- (a) Where the Goods incorporate material, components, parts, items or consumables obtained from a third party, the Supplier must assign to the Principal, to the extent permitted by Law, the benefits of any warranties given by such a third party.
- (b) Assignment of any third party warranties is in addition to the warranties given by the Supplier under this Agreement and does not relieve the Supplier of its own warranty obligations.

18 Indemnities

- (a) To the extent permitted by Law and without limiting or otherwise restricting any other obligation of the Supplier under this Agreement, the Supplier indemnifies the Principal and each of its officers, employees and agents (each an "Indemnified Party") against any loss, damage, claim, action, expense, cost or liability (including legal fees on a solicitor-client basis) incurred by an Indemnified Party directly or indirectly in connection with:
 - (i) any wilful misconduct or negligent act or omission in connection with this Agreement by the Supplier or its Personnel;
 - (ii) a breach of Law by the Supplier;
 - (iii) a representation made by the Supplier being incorrect or misleading in any way;
 - (iv) personal injury, death or property damage caused or contributed to by the Supplier or its Personnel; or
 - (v) any infringement of, or claim in regard to, any third party IPR or Moral Rights arising as a result of:
 - (A) the Supplier or its Personnel Supplying the Goods or carrying out obligations under this Agreement;
 - (B) the Goods provided to the Principal by the Supplier infringing that third party's IPR or Moral Rights; and
 - (C) the Principal or its Personnel carrying out its obligations under this Agreement.
- (b) The Supplier's liability to indemnify an Indemnified Party under clause 18(a), other than in respect of the indemnity under clause 18(a)(v), will be reduced proportionally to the extent that an act or omission of the Indemnified Party has contributed to the loss, damage, claim, action, expense, cost or liability.

- (c) It is not necessary for the Principal to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.

19 Consequential Loss

- (a) Subject to clause 19(b), neither party will have any liability whatsoever to the other party for any consequential loss, including loss of production, profit, revenue, business, data, contract or anticipated savings or for any financing costs or increase in operating costs.
- (b) Clause 19(a) does not apply to limit or restrict in any way:
 - (i) any liability to the extent to which the Supplier is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;
 - (ii) any liability for which, but for a failure by the Supplier to comply with its obligations under this Agreement or under an insurance policy, the Supplier would have received payment or been indemnified under an insurance policy effected in accordance with this Agreement;
 - (iii) the Supplier's liability to pay liquidated damages under clause 10.5;
 - (iv) the Supplier's liability to indemnify the Principal under this Agreement, including clause 18;
 - (v) the Supplier's liability for costs, losses and damage caused by the malicious or fraudulent acts of the Supplier or its Personnel;
 - (vi) the Supplier's liability where it abandons the performance of its obligations under this Agreement; or
 - (vii) liability out of which by Law the Supplier cannot contract out of.
- (c) Subject to clause 19(d), the Supplier's aggregate liability to the Principal in contract, tort (including negligence) or otherwise under this Agreement is limited to the amount stated in Item 24 of the Key Details.
- (d) Clause 19(c), does not apply to limit or restrict in any way:
 - (i) any liability which arises from fraud, wilful misconduct, criminal conduct or gross negligence by the Supplier or its Personnel;
 - (ii) any liability for personal injury or death caused or contributed to by the Supplier or its Personnel;
 - (iii) the Supplier's liability where it abandons the performance of its obligations under this Agreement;

- (iv) any liability to the extent to which the Supplier is (or will be) entitled to be indemnified by a third party or pursuant to an insurance policy in respect of that liability; or
- (v) any liability for which, but for a failure by the Supplier to comply with its obligations under this Agreement or under an insurance policy, the Supplier would have received payment or been indemnified under any insurance policy, including one effected in accordance with this Agreement.

20 Insurance**20.1 Insurance Policies**

The Supplier must obtain and maintain the following insurance policies:

- (a) a public and product liability insurance policy:
 - (i) to cover loss or damage to property or injury or death to persons arising out of or in connection with the Supply of the Goods;
 - (ii) for at least the amount of cover specified in Item 22 of the Key Details;
 - (iii) for the duration of this Agreement and for any additional period as is appropriate and reasonable for the type of Supply and the type of Goods;
 - (iv) which, if the Goods are to be used on or near rail, must not contain any exclusions or limitations in cover in respect of goods supplied on or near rail; and
 - (v) which, if indicated at Item 22, names the parties listed in Item 22 as insured parties;
- (b) all insurances required under statute (including employer's liability and motor vehicle insurance);
- (c) all insurances the Supplier considers appropriate and reasonable to protect the Goods from any theft, harm, loss or damage howsoever caused until risk and title to the Goods passes to the Principal in accordance with clause 5.6; and
- (d) any other insurance policies specified in Item 17 of the Key Details for the period and on the terms specified in Item 17 of the Key Details or as otherwise notified in writing by the Principal to the Supplier.

together the "Insurance Policies".

20.2 Additional Insurance Policy Requirements

Where any Insurance Policy in 20.1 above is required to name the Principal and/or RailCorp and/or Sydney Trains as an insured, the policies must include a waiver and cross liability clause in which the insurer agrees:

- (a) to waive all rights of subrogation or action that it might have or acquire against all or any persons comprising the insured;
- (b) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them; and
- (c) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under the policy.

20.3 Insurers

The Supplier must take out and keep current all of the Insurance Policies that the Supplier is required to effect and maintain under this Agreement with an insurer:

- (a) that is authorised under the *Insurance Act 1973* (Cth) to carry on an insurance business in Australia and is supervised by the Australian Prudential Regulation Authority (APRA); or
- (b) which has a security rating of at least A minus from Standard & Poor's, AM Best or an equivalent rating from another internationally recognised rating agency.

20.4 Evidence of Insurance

The Supplier must:

- (a) at the times required by the Principal, provide to the Principal certificates of currency in respect of the Insurance Policies required under this Agreement:
 - (i) that specify the "Business of the Insured" as declared to the Supplier's insurers; and
 - (ii) if the Goods are used on or near rail, must provide confirmation that the Insurance Policy does not exclude cover in respect of products used on or near rail;
- (b) promptly notify the Principal of any insurer's notice to cancel an Insurance Policy;
- (c) if requested by the Principal, promptly notify the Principal of any material circumstance that may give rise to a claim under any of the Insurance Policies which have an aggregate limit of liability, and keep the Principal's

Contract Manager informed of any subsequent action and developments which may result in further erosion of any policy aggregate limit; and

- (d) where any of the Insurance Policies are due to expire during the period required to maintain the Insurance Policies under this Agreement, prior to such expiration, obtain a replacement Insurance Policy in accordance with this clause 20 and to an equivalent or greater level than that required under clause 20.1, and provide the Principal with evidence of the replacement Insurance Policy.

20.5 Failure to Effect Insurance

- (a) If the Supplier fails to obtain or maintain, or provide evidence of, any Insurance Policy as required by this Agreement, the Principal may in its absolute discretion:
 - (i) obtain and maintain an Insurance Policy and recover the cost directly from the Supplier or by set-off in accordance with clause 14.7; or
 - (ii) terminate this Agreement for breach by the Supplier of its obligations under this Agreement.
- (b) The Principal's rights under this clause 20.5 will not have the effect of reducing the Supplier's obligations to comply with this clause 20.

21 Agreement Management

21.1 Principal's Representative

- (a) The Principal must ensure that at all times there is a Principal's Representative who:
 - (i) may exercise all of the powers of the Principal under this Agreement; and
 - (ii) may by notice in writing to the Supplier, delegate any of the Principal's Representative's powers, except the power to delegate.
- (b) The Principal may name another person as the Principal's Representative by notice in writing to the Supplier. The appointment of the person named in the notice as the Principal's Representative will be effective from the date that notice is given to the Supplier in accordance with clause 28.1.
- (c) The parties acknowledge and agree that the Principal's Contract Manager has been appointed as a delegate by the Principal's Representative to exercise the powers specifically conferred on the Principal's Contract Manager by this Agreement.

21.2 Directions by the Principal's Representative

- (a) The Principal's Representative must issue any direction to the Supplier in writing except where otherwise specified in this Agreement.
- (b) The Supplier must comply, and ensure that its Personnel comply, with all reasonable instructions given by the Principal or the Principal's Representative with respect to Supplying the Goods, including directions in relation to:
 - (i) compliance by the Supplier or its Personnel with any Law concerning safety; and
 - (ii) any practice or procedure of the Supplier or its Personnel that the Principal considers is unsafe.

21.3 Supplier's Representative

- (a) The Supplier must ensure that at all times there is a Supplier's Representative who:
 - (i) may exercise all of the powers of the Supplier under this Agreement; and
 - (ii) may by notice in writing to the Principal, delegate any of its powers except the power to delegate.
- (b) The Supplier may only replace any person named as the Supplier's Representative with the Principal's Representative's consent (which will not be unreasonably withheld) and provided that:
 - (i) the person proposed as the replacement for the Supplier's Representative is of an equal or higher seniority to the currently nominated Supplier's Representative; and
 - (ii) the change in the person proposed as the replacement for the Supplier's Representative will not adversely affect the quality of the relationship between the Principal and the Supplier.
- (c) The Supplier must obtain the Principal's consent to the person proposed as the replacement for the Supplier's Representative, prior to the person named as the Supplier's Representative ceasing to act in this role either temporarily or permanently, or as soon as practicable after the person named as the Supplier's Representative ceases to act in the role.
- (d) The Supplier must ensure that the Supplier's Representative is contactable telephonically or by email at all times and is available to meet during Normal Working Hours other than at the time of an emergency when a meeting may be required at any time by the Principal's Representative and otherwise at all other times on reasonable notice by the Principal's Representative.

- (e) The parties acknowledge and agree that the Supplier's Contract Manager has been appointed as a delegate by the Supplier's Representative to exercise the powers specifically conferred on the Supplier's Contract Manager by this Agreement.

21.4 Role of the Contract Manager

Each party must appoint a person as its Contract Manager to represent it as required under this Agreement.

21.5 Principal's Contract Manager

The Principal acknowledges that, in order for the Supplier to effectively Supply the Goods, the Principal's Contract Manager must be:

- (a) able to make day-to-day decisions relating to the Supply of the Goods;
- (b) contactable by the Supplier during Normal Working Hours other than at the time of an emergency when a meeting may be required at any time and otherwise at all other times on reasonable notice by the Supplier's Contract Manager;
- (c) available for regular meetings with managers and representatives of the Supplier; and
- (d) fully acquainted with the Supply of the Goods and all aspects of this Agreement.

21.6 Replacement of the Supplier's Contract Manager

- (a) The Principal may, in its reasonable discretion, request the replacement of the Supplier's Contract Manager.
- (b) The Supplier must replace its Contract Manager if requested to do so by the Principal.
- (c) The Supplier must not remove or replace its Contract Manager without the prior written consent of the Principal unless that Contract Manager ceases to be employed by the Supplier.

21.7 Requirements of the Supplier's Contract Manager

The Supplier must ensure that the Supplier's Contract Manager:

- (a) has the authority to make any decisions relating to the Supply of the Goods;
- (b) is contactable by the Principal during Normal Working Hours other than at the time of an emergency when a meeting may be required at any time and otherwise at all other times on reasonable notice by the Principal's Contract Manager;
- (c) is available for regular meetings with managers and representatives of the Principal as required by the Principal;

- (d) is fully acquainted with the Supply of the Goods and all aspects of this Agreement;
- (e) upon request by the Principal, prepares any required report regarding compliance with this Agreement by the Supplier;
- (f) accepts principal responsibility for preparing all necessary reports pursuant to this Agreement; and
- (g) notifies the Principal if it becomes reasonably apparent at any stage that the Goods or any component of the Goods:
 - (i) may produce inconsistent or unintended consequences for the Principal;
 - (ii) may contain a Defect;
 - (iii) may infringe, without consent, the IPR or Moral Rights of any third party; or
 - (iv) may be inappropriate for operation in conjunction with, or otherwise incompatible with, the Principal's technology, business, systems or processes.

22 Subcontracting

- (a) The Supplier must not, without the prior consent of the Principal's Representative acting in his or her absolute discretion, subcontract its obligations under this Agreement to any third party.
- (b) The Supplier must ensure that any subcontractor engaged by it complies with all obligations imposed on the Supplier by this Agreement.
- (c) The Supplier will not as a result of any subcontracting arrangement be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a subcontractor as though they were the actions of the Supplier itself.
- (d) The Supplier must ensure that every subcontractor, supplier and consultant engaged by it is insured at all times:
 - (i) for workers' compensation and related liabilities in accordance with the requirements of the *Workers Compensation Act 1987* (NSW); or
 - (ii) if workers' compensation cover cannot be legally obtained, under a personal accident policy of insurance to cover personal accidents and related liabilities.

23 Audits and Access to Records

23.1 Supplier to Retain Records

The Supplier must, for the duration of this Agreement and for a period of 7 years after the end of this Agreement, keep true and accurate accounts and records of:

- (a) all Goods Supplied under this Agreement; and
- (b) all associated accounts and records including all supporting materials used to generate and substantiate invoices submitted in respect of the Supply of the Goods.

23.2 Right to Access and Audit Records

- (a) In order to ensure compliance with its obligations under this Agreement and to identify opportunities for achieving reductions in the total cost of Supply, the Supplier acknowledges and agrees that the Supply of the Goods will be conducted and operated on an "open book" basis.
- (b) The Principal's Representative and/or any person authorised by the Principal's Representative (and notified to the Supplier's Representative) may at any time, after giving reasonable notice, inspect and/or audit the accounts, records, information and correspondence of the Supplier relating to the Supply of the Goods including all matters relevant to the calculation of the Contract Price and the Unit Prices (if any) and the elements comprising the determination of total cost.
- (c) The Principal and the Principal's Representative will be entitled (at the expense of the Principal) to take copies of or extracts from any such records.
- (d) The right of access and audit granted under this clause 23.2 may be exercised by the Principal at any time during the duration of this Agreement or in the 7 year period after the end of this Agreement.

23.3 Probity Audits

Without limiting or otherwise restricting clause 23.2, the Supplier acknowledges and agrees that:

- (a) the Principal's Representative (or any other person designated by the Principal's Representative) may carry out regular quality and probity audits on the Supplier's compliance with this Agreement, including:
 - (i) the Supplier's quality management system;
 - (ii) the Supplier's Work Health and Safety System (if applicable); and
 - (iii) the quality and standard of the Supplier's supply processes and systems,

- (b) an audit conducted under this clause 23.3 may include:
- (A) inspections of the Goods, or any premises used in connection with the Supply of Goods after the Supplier has Supplied the Goods;
 - (B) random spot inspections of the Goods, or any premises used in connection with the Supply of Goods;
 - (C) viewing CCTV footage available at the Delivery Place;
 - (D) inspecting reports prepared by the Supplier in accordance with this Agreement; and
 - (E) utilising the Principal's compliance auditors during possessions to check staff competencies, plant certifications and other relevant factors.

23.4 Supplier's Assistance with Audits

- (a) The Supplier must provide reasonable access to its premises to enable the Principal or its Personnel to carry out any audit under this clause 23 and must co-operate with and provide all assistance requested by the Principal or its Personnel when carrying out any such audit.
- (b) The Principal will be solely responsible for the costs of conducting any audit under this clause 23, unless the audit is consequent upon or reveals a failure of the Supplier to comply with this Agreement.

24 Confidentiality and No Public Statements

24.1 No Public Statements about Agreement

Without limiting or otherwise restricting clauses 24.2 and 24.3, the Supplier must not:

- (a) disclose, publish or advertise in any form or media the existence of this Agreement or any matters relating to this Agreement (unless required to do so by Law); and
- (b) use, disclose, publish or advertise in any form or media any logo or trade mark of the Principal, other Rail Transport Agency or the NSW Government,

without the prior written consent of the Principal's Representative which, if granted, will be subject to any conditions stipulated by the Principal.

24.2 Use of Confidential Information of the Principal

- (a) Subject to clause 24.3, the Supplier must ensure that it and its Personnel:

- (i) ensure that Confidential Information is kept confidential and protected against unauthorised use and access;
 - (ii) comply with any security measures required by the Principal in connection with Confidential Information;
 - (iii) use and reproduce Confidential Information of the Principal only to perform its obligations under this Agreement;
 - (iv) not disclose or otherwise make available the Principal's Confidential Information other than to Personnel who have a need to know the information to enable the Supplier to perform its obligations under this Agreement; and
 - (v) if required by the Principal, ensure that the Supplier's Personnel execute a confidentiality deed poll in a form specified by the Principal.
- (b) All of the Principal's Confidential Information will remain the property of the Principal and all copies or other records containing the Principal's Confidential Information (or any part of it) must be returned by the Supplier to the Principal on termination or expiry of this Agreement.
- (c) The Supplier acknowledges and agrees that the Principal will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier of this clause 24.2 and without the need on the part of the Principal to prove any special damages.

24.3 Disclosure of Supplier's Information

- (a) Subject to clauses 24.3(b), 28.10 and 28.11, the Principal agrees to treat as confidential all information of, or relating to, the Supplier that is provided to it, whether under this Agreement or the ITT, by or on behalf of the Supplier, which the Supplier notifies in writing to the Principal is confidential.
- (b) The Supplier hereby consents to the Principal disclosing any confidential information of the Supplier:
- (i) to external consultants and advisers of the Principal engaged with regard to this Agreement;
 - (ii) to other Authorities, including other NSW Government agencies; and
 - (iii) as required by Law or government policy.
- (c) The Supplier releases and indemnifies the Principal and the State of NSW from all claims and actions in connection with the disclosure and sharing of the Supplier's confidential information under this clause 24.3.

25 Privacy

- (a) Without limiting or otherwise restricting clauses 28.10 and 28.11, the Supplier consents (and will obtain the consents of all relevant Personnel) to the Principal collecting and using any personal information (as defined under section 4 of the *Privacy and Personal Information Protection Act 1998* (NSW)) ("Personal Information") relating to the Supplier or its Personnel that is obtained out of or in connection with this Agreement or the ITT, including disclosure to:
- (i) external consultants and advisers of the Principal engaged with regard to this Agreement; and
 - (ii) other Authorities, including other NSW Government agencies,
- for any purpose in connection with this Agreement or the exercise of an Authority's functions.
- (b) Without limiting or otherwise restricting the Supplier's obligations at Law, including under the *Privacy Act 1988* (Cth), if the Supplier is provided with, or has access to, any Personal Information in connection with this Agreement, the Supplier and its Personnel must:
- (i) comply with the *Privacy and Personal Information Protection Act 1998* (NSW) as if it was the Principal;
 - (ii) comply with all reasonable directions and any guidelines or policies of the Principal in relation to the collection, use and protection of Personal Information;
 - (iii) only use Personal Information for the purpose of fulfilling its obligations under this Agreement and not for the Supplier or its Personnel's own purposes;
 - (iv) take all reasonable steps to protect Personal Information from misuse, loss and authorised access, modification or disclosure; and
 - (v) immediately notify the Principal after it becomes aware of any actual or potential privacy breach (including any misuse, loss and authorised access, modification or disclosure of Personal Information) and provide all reasonable assistance to the Principal to investigate and respond to any such breach.
- (c) The Supplier releases and indemnifies the Principal and the State of NSW from all claims and actions in connection with:
- (i) the use and disclosure of Personal Information in accordance with clause 25(a); and
 - (ii) any breach of the Supplier's obligations under clause 25(b).

26 Termination

26.1 Termination for Cause

Without prejudice to any other right or remedy that the Principal may have under this Agreement or otherwise (including under clauses 5.7, 6 and 28.10), the Principal's Representative may by written notice terminate this Agreement with immediate effect if the Supplier:

- (a) is subject to an Insolvency Event;
- (b) breaches a material term of this Agreement that, in the reasonable opinion of the Principal, is not capable of remedy;
- (c) breaches a term of this Agreement and fails to remedy the breach within 10 Business Days after receiving written notice from the Principal to do so; or
- (d) fails to comply with a KPI action plan required by the Principal pursuant to clause 5.9.
- (e) becomes liable to the Principal under clause 10.5(a) for liquidated damages in an amount which is equal to or exceeds the limit of liquidated damages set out in Item 14 of the Key Details.

26.2 Termination without Cause by the Principal

- (a) Without limiting or otherwise restricting clause 26.1, the Principal may at any time for its sole convenience, and for any or no reason, terminate this Agreement without cause by giving the Supplier not less than 10 Business Days' notice in writing, and in such event the Principal will:
 - (i) pay the Supplier for Goods that have been Supplied up to and including the date of termination, provided that such Goods have been, in the reasonable opinion of the Principal's Representative, Supplied in accordance with this Agreement and any directions given by the Principal;
 - (ii) subject to the Supplier mitigating its costs and expenses, pay the Supplier for its reasonable costs and expenses up to and including the date of termination which have been incurred in connection with the provision of Goods not yet Supplied, provided that:
 - (A) the costs and expenses directly relate to Goods that would have been Supplied under this Agreement if this Agreement had not been terminated and the Supplier had submitted a payment claim for those Goods;
 - (B) the value of the Goods is not included in the amount payable under clause 26.2(a)(i); and
 - (C) the Supplier, if directed by the Principal's Representative, Supplies those Goods to which its costs and expenses

relate in accordance with that direction, in which case title in those Goods will vest in the Principal upon payment; and

- (iii) subject to the terms of this Agreement, return any Security Amount held as security.
- (b) Except in respect of the amount payable under clause 26.2(a), the Principal will have no liability to the Supplier for any other payment as a result of or in connection with termination under clause 26.2(a).
- (c) Upon termination of this Agreement under clause 26.2(a):
 - (i) the Supply of the Goods must cease from the time and date specified in the notice under clause 26.2(a), or if no time and date is stated, within 10 Business Days of receipt by the Supplier of the notice; and
 - (ii) the Principal, in its absolute discretion, may complete the supply of the Goods by itself or engage other contractors to carry out the uncompleted supply of the Goods.
- (d) As a condition precedent to any entitlement to payment under clause 26.2(a) the Supplier must hand over to the Principal all of the Principal's intellectual property, Confidential Information and the originals of any documents provided by the Principal.

26.3 Consequences of Termination

Termination of this Agreement will not prejudice any right of action or remedy which the Principal may have accrued prior to termination of this Agreement.

26.4 Transfer of Information following Termination

Following termination of this Agreement in accordance with clause 26:

- (a) the Supplier must hand over to the Principal all of the Principal's intellectual property, Confidential Information and the originals of any documents provided by the Principal to the Supplier; and
- (b) the Supplier's Contract Manager must meet with the Principal's Contract Manager and such other persons nominated by the Principal with a view to ensuring, among other things, that the Principal or the person nominated by the Principal has sufficient information to enable the Principal or the person nominated by the Principal to supply the Goods.

27 Dispute Resolution

27.1 Notice of Dispute

If a dispute between the Supplier and the Principal arises in connection with this Agreement:

- (a) either party may give to the other a notice specifying the nature and details of the dispute; and
- (b) the dispute will be resolved in accordance with the procedure set out in this clause 27.

27.2 Executive Negotiation

A dispute that is the subject of a notice given under clause 27.1 must be referred to a senior executive of each party who is authorised to meet with a view to resolving the dispute.

27.3 Mediation

- (a) If the senior executives do not resolve the dispute within 10 Business Days after notice is given under clause 27.1 (or such longer period as the parties may agree), then, if a party wishes to take further steps to resolve the dispute it must, prior to commencing litigation by notice in writing to the other party, refer the dispute to mediation in accordance with, and subject to, the Institute of Arbitrators & Mediators Australia Mediation Rules.
- (b) The mediator will be an independent person agreed by the parties or, failing agreement within 10 Business Days after the referral of the dispute to mediation, the mediator will be an independent person appointed by the President of the Institute of Arbitrators & Mediators Australia.
- (c) The cost of mediation will be borne equally by the parties.

27.4 Litigation

If the dispute is not resolved within 45 Business Days of the submission of the dispute to mediation (or such longer period as may be agreed upon by the parties), then, either party may commence litigation to resolve the dispute.

27.5 Continuation of Obligations

Despite the existence of a dispute, the Supplier must continue to comply with its obligations under this Agreement.

27.6 Urgent Relief

Nothing in this clause 27 will prejudice the right of either party to seek urgent injunctive, interlocutory or declaratory relief.

28 General Provisions

28.1 Notices

- (a) Notices must be in writing and delivered to or sent by pre-paid post, email or facsimile to the recipient's representative at the address, email address or fax number set out in the Key Details unless a substitute address, email address or fax number has been notified in writing by a party to the other party.
- (b) The parties agree that a notice will be deemed received:
 - (i) if delivered by hand, on the date of delivery;
 - (ii) if sent by pre-paid post, 3 Business Days after posting;
 - (iii) if sent by facsimile, on confirmation of correct transmission of the facsimile; or
 - (iv) if sent by email, the date for receipt of an "electronic communication" that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply in respect of the email,

provided that any notice personally delivered or sent by facsimile or electronically after 5.00pm on any Business Day will be deemed to have been validly delivered at 9.00am on the next Business Day.

- (c) Any notice given by email must also be delivered or sent by facsimile or by hand if it relates to a variation or dispute in connection with this Agreement.
- (d) A notice sent by facsimile or email will be deemed to be in writing for the purposes of this clause.

28.2 Governing Law and Jurisdiction

This Agreement is subject to and construed in accordance with the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

28.3 Severance

Should any part of this Agreement be or become invalid, unenforceable or illegal that part will be severed and will not affect the validity or enforceability of the remaining parts.

28.4 Amendment

This Agreement may only be amended by a written instrument executed with the requisite authority.

28.5 Waiver

No right or remedy under this Agreement will be deemed to be waived unless evidenced in writing signed by the party waiving that right or remedy, and a waiver of a breach of this Agreement does not operate as a continuing waiver or operate as a waiver of a subsequent breach, unless a contrary intention is clearly expressed in writing.

28.6 No Agency or Partnership

The Principal and the Supplier are independent contractors and nothing in this Agreement creates or constitutes a partnership, joint venture, agency or other legal relationship between the Principal and the Supplier.

28.7 Assignment and Novation

- (a) The Supplier must not assign, novate or otherwise transfer any right or interest under this Agreement without the Principal's prior written consent, which may be given or withheld at the Principal's absolute discretion.
- (b) The Principal may (without the Supplier's consent) assign, novate or otherwise transfer its rights and obligations under this Agreement to any third party, including any other Authority, to give effect to any restructure of the Principal, and the Supplier must execute any document reasonably required to give effect to the assignment, novation or transfer.
- (c) The Supplier acknowledges and agrees that the NSW Government has embarked upon a restructure of the operation and ownership of railways in NSW, and the Principal's or RailCorp's assets, rights and liabilities may at any time be transferred to other entities established by the NSW Government.
- (d) Without limiting or otherwise restricting the Principal's rights under clause 28.7(b), the Supplier agrees:
 - (i) that this Agreement, and any assets, rights or liabilities the Principal or RailCorp holds in connection with this Agreement, may be novated, assigned or otherwise transferred from the Principal or RailCorp to any other Authority or entity established by the NSW Government;
 - (ii) to undertake all actions required by the Principal or RailCorp to effect, or in connection with, such a novation, assignment or other transfer, including promptly executing any instrument in relation to the same; and
 - (iii) that it is not entitled to make, and the Principal or RailCorp and any novatee, assignee or transferee will not be liable upon, any claim arising from or in connection with any matter, transfer, novation or assignment contemplated by this clause 28.7.

28.8 Civil Liability Act

- (a) The parties agree 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 civil liabilities under or in connection with this Agreement whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting or otherwise restricting clause 28.8(a), the parties agree that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise, whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

28.9 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this Agreement by signing any counterpart.

28.10 Public Access to Government Information

- (a) The Supplier acknowledges and agrees that the Principal is subject to the GIPA Act and that the Principal may disclose information arising out of, or in connection to, this Agreement (including the entire Agreement) on a website established and used for GIPA Act disclosures. The Supplier irrevocably consents to the Principal acting in accordance with this clause.
- (b) In accordance with section 121 of the GIPA Act, the Supplier must, upon receipt of a written request by the Principal, provide the Principal with immediate access to the following information contained in records held by the Supplier:
 - (i) information that relates directly to the Supply of the Goods provided to the Principal by the Supplier;
 - (ii) information collected by the Supplier from members of the public to whom it provides, or offers to Supply, the Goods; and
 - (iii) information received by the Supplier from the Principal to enable it to Supply the Goods.
- (c) For the purposes of clause 28.10(b), information does not include:
 - (i) information that discloses or would tend to disclose the Supplier's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Supplier is prohibited from disclosing to the Principal by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or

- (iii) information that, if disclosed to the Principal, could reasonably be expected to place the Supplier at a substantial commercial disadvantage in relation to the Principal, whether at present or in the future.
- (d) The Supplier will provide copies of any of the information in clause 28.10(b), as requested by the Principal, at the Supplier's own expense.
- (e) Any failure by the Supplier to comply with any request pursuant to clause 28.10(b) or clause 28.10(d) will be considered a breach of this Agreement and will entitle the Principal to terminate this Agreement immediately in accordance with the terms of this Agreement.

28.11 Exchange of Information between Government Agencies

Without limiting or otherwise restricting clause 28.10:

- (a) the Supplier authorises the Principal to make information concerning the Supplier and its Personnel available to other NSW Government agencies. Such information may include, but is not limited to, any information provided by the Supplier to the Principal and any information relating to the Supplier or its Personnel's performance under the Agreement;
- (b) the Supplier acknowledges that information about the Supplier or its Personnel from any source, including substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies considering whether to offer the Supplier future opportunities for NSW government work;
- (c) the Supplier 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); and
- (d) the Supplier releases and indemnifies the Principal and the State of NSW from and against any claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

28.12 Notification of Claims

Subject to the provisions of this Agreement and any right the Supplier may have at Law:

- (a) If the Supplier wishes to make any claim arising out of, or in any way in connection with this Agreement, including a variation under clause 9 or a suspension under clause 10.2, the Supplier must:
 - (i) make a claim within 28 Business Days of the date of first occurrence of the direction, event, circumstance, act, omission or fact giving rise to the claim, unless otherwise agreed by the Principal's Representative in writing; and

- (ii) provide full written particulars and supporting documentation of the claim to the Principal's Representative, including:
 - (A) dates and information about the direction, event, circumstance, act or omission or fact giving rise to the claim;
 - (B) the legal basis upon which the claim is based;
 - (C) any other information or documentation required by this Agreement; and
 - (D) any other information or documentation reasonably required by the Principal's Representative in order to assess the claim.
- (b) Claims submitted by the Supplier in accordance with this clause will be considered by the Principal's Representative who may accept or reject the claim in part or in full. If within 28 Business Days after first receipt of a claim the Principal's Representative has not provided the Supplier with its decision on the claim, the claim will be deemed to have been rejected on that 28th Business Day.
- (c) If the Supplier fails to submit a claim by the date required under clause 28.12(a), the Principal will not be liable upon any claim made by the Supplier and the Supplier will be absolutely barred from making any claim against the Principal arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission or fact giving rise to the claim.

29 Option

The Principal may by written direction given to the Supplier at any time within the period stated in Schedule 11 exercise an Option. Commencing upon the issue of such a direction by the Principal, the Principal and the Supplier must perform their obligations under the Contract on the basis that the Contract Price and the provisions of the Contract will be adjusted as set out in Schedule 11 for the relevant Option.

For the avoidance of doubt:

- (a) the Principal is not under any obligation whatsoever to exercise; and
- (b) the Supplier is not entitled to make, nor will the Principal be liable upon, any claim in respect of the Principal not exercising,

any Option.

Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

The exercise of an Option by the Principal under this clause 29 will not:

- (c) relieve the Supplier from its liabilities or obligations (including those arising out of any warranties given under this Contract);
- (d) limit or otherwise affect the Principal's rights against the Supplier or the Supplier's rights against the Principal (including those arising out of any warranties given under this Contract); or
- (e) entitle the Supplier to an extension of time,
whether under this Contract or otherwise according to any law.

Schedule 1 - Not used



Schedule 2 - Not used



Schedule 3 - Not used

Schedule 4 - Form of Unconditional Undertaking

THIS DEED ("Undertaking") made on the _____ day of _____ 20

BETWEEN:

Transport for NSW, ABN 18 804 239 602 ("Principal") of the first part

AND:

_____ ("Bank") of the second part.

RECITALS:

- A. By contract dated _____ ("Agreement") between _____ ("Supplier") and the Principal, the Supplier agreed to carry out the Supply of the Goods (as defined in the Agreement).
- B. Under the Agreement, the Supplier is required to procure the provision of this Undertaking by the Bank to the Principal.

Operative:

1. The Bank unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Supplier and notwithstanding any notice given by the Supplier to the Bank not to pay same, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of \$ _____.
2. The Bank's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or the Principal notifies the Bank that this Undertaking is no longer required, provided always that the Bank may, at any time without being required to do so, pay the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Bank hereunder shall immediately cease.
3. The liability of the Bank under this Undertaking will not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Bank) in any of the stipulations or provisions of the Agreement or acts or things to be executed, performed and done under the Agreement or by reason of any breach or breaches of the Agreement by the Supplier or the Principal.
4. This Undertaking will be governed by and construed in accordance with the laws of New South Wales.

Executed as a Deed Poll

Executed by the Bank by

Signature of authorised officer

Signature of authorised officer

Print name

Print name

Schedule 5 - Not used

Schedule 6 - Safety and Environmental Management Specifications

Without limiting or otherwise restricting the Supplier's obligations under the Agreement, the Supplier must comply with any safety and environmental requirements set out in the key details 11 and 12 and that are required to ensure that the Goods are ASA Type Approved as per the requirement set out in Schedule 10.

Schedule 7 - Goods and Specifications
1500V DC Circuit Breaker Feeder with UMLE Relays fitted
PORTION 1

PART	QTY	UOM
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - New	10	each
UMLE upgrade on new Feeder DCCB type BHF-30(B) - New	10	each
Factory Acceptance Testing (FAT)		
Delivery to Chullora Stores		

PORTION 2

PART	QTY	UOM
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - New	3	each
UMLE upgrade on new Feeder DCCB type BHF-30(B) - New	3	each
Factory Acceptance Testing (FAT)		
Delivery to Chullora Stores		

PORTION 3

PART	QTY	UOM
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - Refurbished	5	each
UMLE upgrade on new Feeder DCCB type BHF-30(B) - refurbished	5	each
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - New	9	each
UMLE upgrade on new Feeder DCCB type BHF-30(B) - New	9	ch
Factory Acceptance Testing (FAT)		
Delivery to Chullora Stores		

PORTION 4

PART	QTY	UOM
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - New	42	each
UMLE upgrade on new Feeder DCCB type BHF-30(B) - New	42	each
Factory Acceptance Testing (FAT)		
Delivery to Chullora Stores		

Specifications

Document number or Drawing number	Document description or Drawing Title	Rev no.
PSU – DCCB IT – 1120	Incorporating the UMLE Relay on the 1500V DC Feeder Circuit Breaker Truck – Technical Advice	A
PSU – DCCB IT – 1120.1	Mitsubishi BHF-30B DC Circuit Breaker with UMLE Relay – Factory Testing Overview	A
PSU – DCCB IT – 1120.2	Current and Voltage Measurement Testing Templates	A
EP 04 01 00 01 SP	1500V DC High Speed Feeder Circuit Breaker: Specification	3.1
T HR EL 0002 PR	Electrical Power Equipment – Integrated Support Requirements: Procedure	1.0
EP 00 00 00 13 SP	Electrical Power Equipment – Design Ranges of Ambient Conditions: Standard	2.1
EP 00 00 00 15 SP	Common Requirements for Electrical Power Equipment: Standard	3.1
T HR EL 90003 ST	Heavy Rail Traction System – Current Ratings for 1500 V dc Equipment: Standard	1.0
T HR EL 90002 ST	Heavy Rail Traction System – Voltage Ratings	1.0
2060616	Mitsubishi Drawing: BHF-30B DCCB Truck Circuit Diagram	L
2060617	Mitsubishi Drawing: BHF-30B DCCB Truck Wiring Diagram	K
EL 0551490	Transitional Earth for Truck	B
EL 0551491	Transitional Earth for Base Frame	A
EL 0006165	1500V DCCB Base Frame Assembly	B
EL 0006166	1500V DCCB Truck Outline	B
EL 0006167	1500V DCCB Truck Front Panel Outline	B
EL 0006169	1500V DCCB Racking Handle Assembly	A
EL 0227687	1500V DCCB Busbars and Insulating Plates	C
EL 0016428	180 Relay – DC Under Voltage Card for Substations	D
EL 0016430	180 Relay – DC Under Voltage Card for Substations	D
EL 0016440	DCCB Control Card for Substations	E
EL 0016442	DCCB Control Card for Sectioning Huts	D
PSU – DCCB IT – 1028.1	Traction Feeder DC Circuit Breaker Protection Relay: Specification	C
EL 0588757	1500V Feeder DC Circuit Breaker – BHF-30B with UMLE Relay – Schematic Diagram	A
EL 0588758	1500V Feeder DC Circuit Breaker – BHF-30B with UMLE Relay – Wiring Diagram	A
EL 0588759	1500V Feeder DC Circuit Breaker – BHF-30B with UMLE Relay – Assembly Details	A
EL 0588760	1500V Feeder DC Circuit Breaker – BHF-30B with UMLE Relay –Mounting Details	A
EL 0588757 – BOM	Bill of Materials for BHF-30B Feeder DCCB with UMLE Relay	A


EL 0588757 - Bill Of
Materials.pdf


Feeder DCCB with
UMLE Relay - General


PSU - DCCB IT -
1028.1 - REV C - S1


PSU - DCCB IT -
1120 - REV A - Tec


PSU - DCCB IT -
1120.1 - REV A - Fi


PSU - DCCB IT -
1120.2 - REV A - C


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Schedule 8 - Schedule of Prices
PORTION 1

PART	QTY	UOM	UNIT PRICE	TOTAL
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - New		each	\$	\$
UMLE upgrade on new Feeder DCCB type BHF-30(B) - New		each	\$	\$
Factory Acceptance Testing (FAT)				-
Delivery to Chullora Stores				-
SUB TOTAL				\$

PORTION 2

PART	QTY	UOM	UNIT PRICE	TOTAL
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - New		each	\$	\$
UMLE upgrade on new Feeder DCCB type BHF-30(B) - New		each	\$	\$
Factory Acceptance Testing (FAT)				-
Delivery to Chullora Stores				-
SUB TOTAL				\$

PORTION 3

PART	QTY	UOM	UNIT PRICE	TOTAL
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - Refurbished		each	\$	\$
UMLE upgrade on new Feeder DCCB type BHF-30(B) - Refurbished		each	\$	\$
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - New		each	\$	\$
UMLE upgrade on new Feeder DCCB type BHF-30(B) - New		each	\$	\$
Factory Acceptance Testing (FAT)				-
Delivery to Chullora Stores				-
SUB TOTAL				\$

PORTION 4

PART	QTY	UOM	UNIT PRICE	TOTAL
1500V High Speed DC Feeder Circuit Breaker Mitsubishi type BHF-30(B) - New		each	\$	\$
UMLE upgrade on new Feeder DCCB type BHF-30(B) - New		each	\$	\$
Factory Acceptance Testing (FAT)				-
Delivery to Chullora Stores				-
SUB TOTAL				\$

PART	QTY	UOM	PRICE
PORTION 1		each	\$
PORTION 2		each	\$
PORTION 3		each	\$
PORTION 4		each	\$
GRAND TOTAL			\$5,233,374.44

Schedule 9 - Form of Deed Poll in favour of Sydney Trains and RailCorp

This deed poll ("Deed Poll") made the day of 20

By: **Mitsubishi Electric Australia Pty Ltd (ABN58 001 215 792)** of 348
Victoria Road Rydalmere NSW 2116 ("Supplier"),

in favour of: **Sydney Trains (ABN 38 284 779 682)** a corporation by that name
constituted by Part 2A of the *Transport Administration (General)
Regulation 2005* (NSW), of 477 Pitt St, Sydney, NSW 2000 ("Sydney
Trains")

and

Rail Corporation New South Wales (ABN 59 325 778 353) a
corporation constituted by section 4(1) of the *Transport Administration
Act 1988* (NSW), of 477 Pitt St, Sydney, NSW 2000 ("RailCorp").

Recitals

- A RailCorp owns the rail network and rail assets in NSW, including Building 3, Off Columbia Lane, Homebush NSW 2140 where the Supply is to be undertaken by the Supplier.
- B Sydney Trains is responsible for the operation of passenger services on the Sydney Trains Network.
- C Transport for NSW has entered into a contract with Mitsubishi Electric Australia Pty Ltd for 1500V DC Circuit Breaker Feeder BHF30B with UMLE fitted Equipment for the 2017, 2018 Time Table and South Coast Inter-trip Protections project dated [##insert date] ("Contract").
- D It is a condition of the Contract that the Supplier executes this Deed Poll.

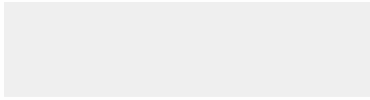
This deed witnesses that the Supplier hereby covenants, warrants and agrees with and for the benefit of Sydney Trains, RailCorp as follows:

- 1. It will comply with its obligations under the Contract.
- 2. Upon completion of the Supply, the Supply will satisfy the requirements of the Contract.
- 3. The aggregate of the Supplier's liability to RailCorp under this Deed Poll and the Supplier's liability to Sydney Trains under this Deed Poll under the Contract:
 - (a) will not exceed the liability which the Supplier would have had under the Contract if the Contract had named, in place of Transport for NSW, Sydney Trains, RailCorp and Transport for NSW jointly and severally; and
 - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Contract.

4. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Supplier is to be construed as doing so only to the extent permitted by law.
5. Sydney Trains and/or RailCorp may assign or charge the benefits and rights accrued under this Deed Poll.
6. This Deed Poll is governed by the laws of the State of New South Wales.
7. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Sydney Trains, RailCorp.
8. Where terms used in this Deed Poll are defined in the Contract, those terms have the meaning given to them in the Contract.

Executed as a deed poll.

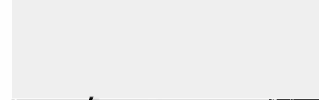
Executed by Mitsubishi Electric Australia Pty Ltd (ABN 58 001 215 792) by or in the presence of:



Signature of Director

J. NEDHAM.

Name of Director in full



Signature of Secretary/other Director

FE SYSON

Name of Secretary/other Director in full

Schedule 10 - ASA Conditions

Defined terms in this Schedule that are not defined below have the same meaning as in the General Terms and Conditions.

1 Supplier's Obligations

Without limiting or otherwise restricting the Supplier's obligations under the Agreement, the Supplier must, to the extent that the Goods include the Asset Lifecycle of a NSW Transport Asset, carry out those aspects of the Goods in accordance with this Schedule.

2 Type Approval

The ASA grants Type Approval on behalf of TfNSW to equipment which meets a minimum set of regulatory, technical and safety requirements.

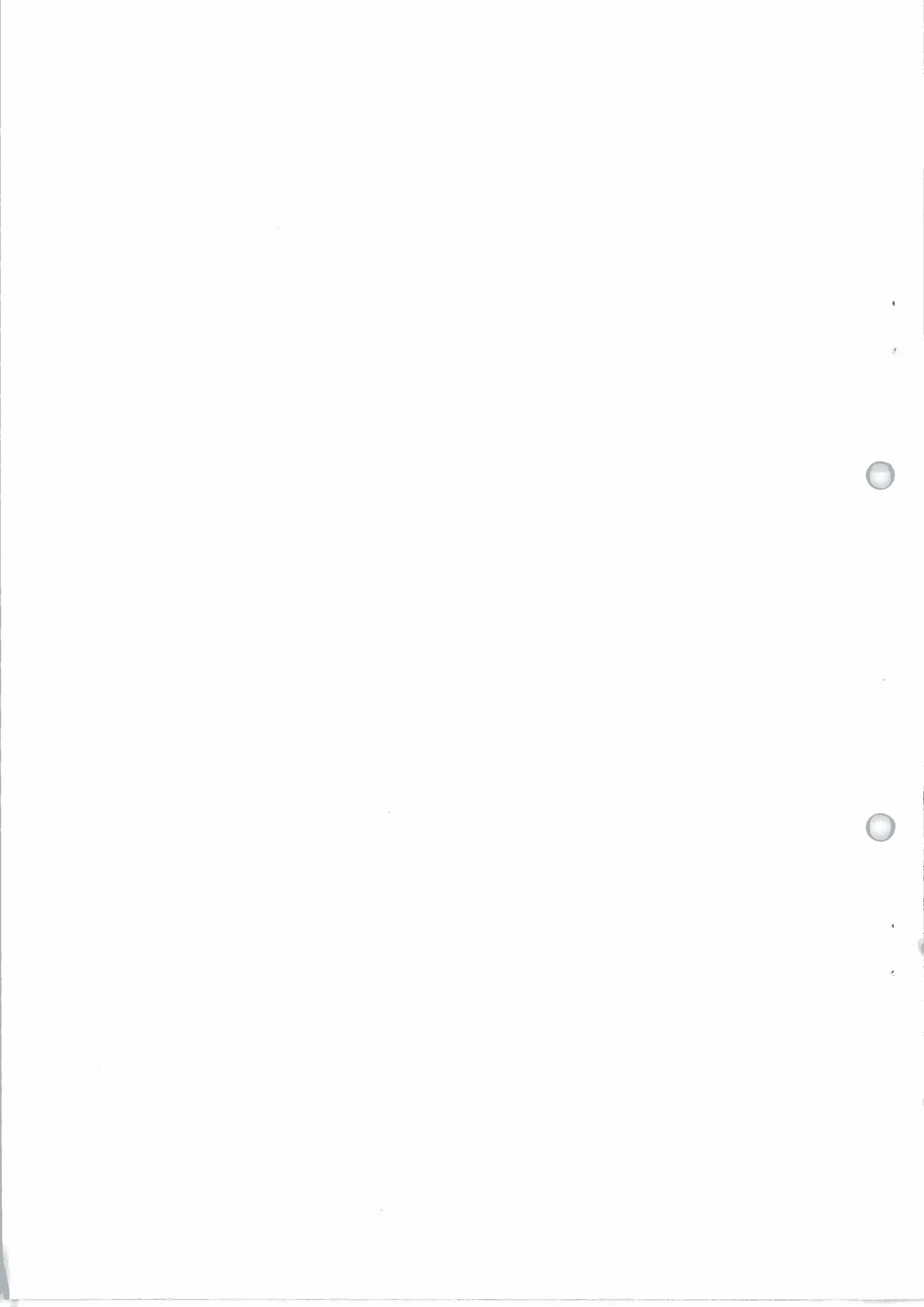
If requested by the Principal, and within any time period required by the Principal (acting reasonably), the Supplier must:

- (i) assist, and cooperate with, the Principal or the ASA to enable the Goods to obtain Type Approval; and
- (ii) provide any information and documentation that is reasonably required by the Principal or the ASA under, out of or in connection with the Type Approval process.

Schedule 11 - Option

OPTION 1	
Description	Training
Adjustment to the Contract Price	If exercised as an Option, will be \$ per training Session.
Period for exercising the Option	To be exercised by the Principal prior to the Date for Supply with training to be undertaken within 3 months after the Date of Supply.
Training	<p>The Supplier must provide training in accordance with the requirements set out below:</p> <p>Training objectives</p> <p>The training must cover and address:</p> <ul style="list-style-type: none"> a) operations b) familiarisation c) isolation d) fault diagnosis; and e) maintenance <p>of the Goods</p> <p>Training deliverables</p> <p>The Supplier must provide at each training Session:</p> <ul style="list-style-type: none"> a) 3 hardcopy approved training manuals that cover the content set out above and include a training syllabus, course outline, training notes and content plans that meet the specific training objectives set out in this Schedule 11 (<i>Training Manual</i>); and b) other training documentation, aids and material necessary to support the training. <p>The <i>Training Manual</i> and all training documentation, aids and material must be up to a good commercial standard and appropriate for the training to be conducted.</p> <p>The Supplier must submit, for the Principal's review and approval, the draft training program and the draft <i>Training Manual</i> to the Principal's Representative 14 days before the scheduled date of the training. Prior to the scheduled date of the training, the Supplier must implement any changes requested by the Principal (acting reasonably).</p>

	<p>Numbers</p> <p>Each training Session must cater to a maximum number of 8 attendees from the Principal, RailCorp or Sydney Trains.</p> <p>Location</p> <p>The training location will be arranged by the Principal.</p> <p>Training times and duration</p> <p>Times: Each training Session must be provided between the hours of 9.00am – 5.00pm during Monday to Friday.</p> <p>Duration: Each training session will run for 4 hours (<i>Session</i>)</p> <p>Other</p> <p>The training must be designed for appropriately qualified personnel requiring only specialised training on the Goods.</p> <p>The training must be conducted only by persons who are appropriately skilled, qualified, experienced and competent in the field involved, and who have completed formal training in instruction techniques.</p>
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12 April 2019

[REDACTED]
Mitsubishi Electric Australia Pty Ltd
348 Victoria Road,
Rydalmere NSW 2116

Dear [REDACTED]

Project: **Power Supply Upgrade Program**
Contract: **2017, 2018TT and South Coast Inter-trip**
Ref Doc: **Mitsubishi Variation Direction No.001**

Re: Feeder External Wiring

Further to the Supplier Invoice Pro Forma ref 91382619 (as attach) in relation to additional feeder external wiring.

Pursuant to Clause 9.1 of the Agreement, the Principal's Representative directs Variation 001 and accepts an additional total lump sum fixed price of \$ [REDACTED] (excl GST) will be adjusted to the to the Contract Price.

Should you have any queries regarding this, please contact the Project Manager, Ryan Williams by email ryan.williams@transport.nsw.gov.au.

Yours sincerely,

James Griffin
Principal's Representative

TfNSW cc: Ryan Williams, Laura Toro, Samantha Chan, Iain Gibson
Mitsubishi cc: NA
Enclosed: Mitsubishi Invoice Pro Forma ref 91382619 dated 4 April 2019.



MITSUBISHI ELECTRIC AUSTRALIA PTY LTD
 348 Victoria Road, Rydalmere, NSW 2116, Australia
 P.O. Box 7232, Silverwater, NSW 2128
 Phone +61 2 9684 7777 Fax +61 2 9898 0484
 www.mitsubishielectric.com.au A.B.N. 58 001 215 792

INVOICE
PRO FORMA
91382619

Ship-to Address

TRANSPORT FOR NSW
 L5 ,821 PACIFIC HWY,ZENITH CENTRE
 CHATSWOOD NSW 2067

Bill-to Address

TRANSPORT FOR NSW
 L5 ,821 PACIFIC HWY,ZENITH CENTRE
 CHATSWOOD NSW 2067

Invoice Date	04/04/2019
Currency	AUD
Customer Account No.	
Customer PO No.	
Payment Terms	
Sales Order No.	
Page	1 of 1

Item	Material	Description	Quantity	Unit Price	Total Amount
000001	DCCB1386G02	FEEDER EXTERNAL WIRING (UMBILICAL) P1&P2			
		ATTENTION: RYAN WILLIAMS			
		(MEA Internal Ref: H7341PA)			
		Credit Card Fee			

TOTAL (ex GST)
GST
TOTAL (GST included)

Each item supplied is fully taxable

Payment Options