



ROLLING STOCK SUPPLY CONTRACT

AMENDMENT AND
RESTATEMENT DEED

FACILITATING THE
INCORPORATION OF
ADDITIONAL LIGHT RAIL
VEHICLES AND ADDITIONAL
EQUIPMENT FOR THE
NEWCASTLE LIGHT RAIL SYSTEM

—

Transport for NSW (**Purchaser**)

Construcciones y Auxiliar de Ferrocarriles S.A.
(**Supplier**)

Background

- A. The Purchaser, Supplier and PLRC previously entered into the SLR Supply Contract.
- B. This document amends and restates the SLR Supply Contract.
- C. All assets, rights and liabilities of PLRC have been vested to the Purchaser, and as such PLRC is not a party to this document.
- D. The Purchaser is developing the Newcastle Light Rail as part of a project for the provision in Newcastle of integrated bus, ferry and light rail services (the **Project**).
- E. Pursuant to the SLR Supply Contract the Purchaser had options to procure additional light rail vehicles (**LRVs**).
- F. The Purchaser has decided to exercise its option under the SLR Supply Contract for the procurement of the additional LRVs for the Project.
- G. The Purchaser and the Supplier entered into the Terms Sheet to record the conceptual amendments that would be required to the SLR Supply Contract as a consequence of the Purchaser exercising its option to purchase additional LRVs and additional equipment
- H. The Purchaser and Supplier now enter into this Amendment and Restatement Deed to more conveniently record the combined effect of the Terms Sheet and the SLR Supply Contract. The Purchaser and Supplier intend that, following the execution of the Amendment and Restatement Deed the Terms Sheet will have no further relevance.

Agreed terms

1. Defined terms & interpretation

1.1 SLR Supply Contract defined terms

Unless the context otherwise requires or the relevant term is defined in this document, terms defined in (or incorporated by reference into) the SLR Supply Contract have the same meaning in this document.

1.2 Defined terms

In this document:

SLR Supply Contract means the document titled 'Sydney Light Rail Rolling Stock Supply Contract' dated 1 August 2012 between the Purchaser, the Supplier and Pymont Light Rail Company Limited ACN 065 183 913.

Term Sheet means the document titled 'Newcastle Integrated Services Project – NLR Rolling Stock Supply Contract Term Sheet' dated 5 May 2016 between the Purchaser and the Supplier.

Variation has the meaning given in clause 2.1.

Varied SLR Supply Contract means the SLR Supply Contract as varied by the Variation.

1.3 Interpretation

Clauses 1.2 (*Interpretation*), 1.3 (*Document or agreement*) and 1.4 (*Business Day*) to 1.3 of the SLR Supply Contract are incorporated in, and apply to, this document as if set out in full with any necessary amendments.

2. Variation

2.1 Agreement

On and from the time specified in clause 2.2:

- (a) the SLR Supply Contract is varied and restated as set out in Annexure A (**Variation**); and
- (b) each party agrees to be bound by the Varied SLR Supply Contract.

2.2 When effective

Clause 2.1 takes effect on the date of this Deed.

3. Remaining provisions unaffected

Except as specifically amended by this document, the provisions of the SLR Supply Contract remain in full force and effect.

4. General provisions

4.1 Consideration

Each party acknowledges to each other party that it enters into this document and incurs obligations and gives rights under it for valuable consideration provided by each other party.

4.2 Further action

The parties must do all things necessary or desirable to give full effect to the Variation and this document.

4.3 Severability

A provision of this document that is illegal, invalid or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of this document in any jurisdiction.

4.4 Governing law and jurisdiction

This document is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

4.5 Counterparts

This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.

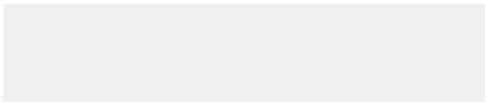
Signing page

DATED 23 May 2016

EXECUTED as a deed.

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

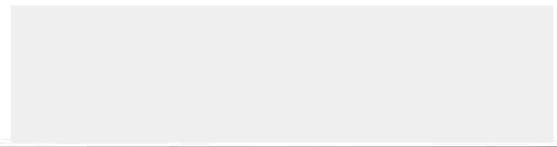
Signed, sealed and delivered for and on behalf of **Transport for NSW ABN 18 804 239 602** by **Executive Director Program Delivery, Infrastructure & Services Transport for NSW** but without incurring any personal liability in respect thereof in the presence of:



Signature of witness

ANAND THOMAS

Name of Witness



Signature

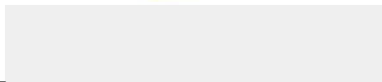
KESLEY M. HERON

Name

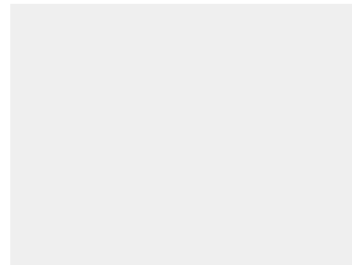
SIGNED SEALED AND DELIVERED by **Construcciones y Auxiliar de Ferrocarriles S.A. CIF A20001020** by its attorney in the presence of:



Witness



Name of Witness



Attorney

INAKI MENDIZABAL

Name of Attorney

Annexure A - Varied SLR Supply Contract

Australian/New Zealand Standard™

Amended from General conditions of contract for the supply of equipment without installation AS/NZS 4911:2003

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Association of Consulting Engineers Australia
Australian Chamber of Commerce and Industry
Australian Procurement and Construction Council
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
Institution of Engineers, Australia
Institution of Professional Engineers New Zealand
Law Council of Australia
Master Builders Australia
National Construction Council of the Australian Industry Group
Process Engineers and Constructors Association
Royal Australian Institute of Architects

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1 Interpretation and construction of Contract

1.1 Definitions

In the Contract, except where the context otherwise requires:

<i>Accreditation</i>	means accreditation under Part 3 of the Rail Safety Act or such other accreditation required under any regime replacing Part 3 of the Rail Safety Act;
<i>Additional Contract Sum</i>	means the aggregate of the amounts payable for the Additional LRVs and Additional Equipment, as set out in Annexure Part C;
<i>Additional Equipment</i>	means the insurance spares and specialist maintenance tools set out in Annexure Part D;
<i>Additional LRVs</i>	means the 6 additional light rail vehicles referred to in Option D of the SLR Supply Contract;
<i>Additional LRVs Options</i>	means the options that the Purchaser may exercise for the Supplier to supply 12 additional LRVs, as further described in clause 2.3;
<i>Additional LRV Specification</i>	means the requirements for the LRVs set out in Annexure Part E, as may be varied in accordance with the Contract;
<i>Alert</i>	means a written statement: <ul style="list-style-type: none"> (a) identifying the event or circumstance; (b) identifying the actual, or likely, time and cost implications of it to the Supplier and the Purchaser; (c) stating actions each party should take to avoid, mitigate, or take advantage of the consequences of it; and (d) stating other information necessary to permit the Purchaser to assess the issue and make a decision about it, <p>where such details are reasonably available at the time of giving the Alert;</p>
<i>Authorisation</i>	means any certification, licences, consents, permits, approvals, notices or requirements of any Authority issued or notified, or required to be issued or notified, in relation to the Equipment or the Supplier's other obligations under the Contract;
<i>Authorised User</i>	means any contractors, representatives, employees, lessees, licensees, customers or invitees of a party or their contractors, representatives, employees and agents;
<i>Authority</i>	means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance and includes ONRSR;
<i>Bank Bill</i>	means a bill of exchange (as defined in the Bills of Exchange Act 1909 (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business;

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

Business Day means a day, other than a Saturday, Sunday or a public holiday, when banks are open for business in New South Wales or 27, 28, 29, 30 or 31 December;

Certificate of Operational Completion means a certificate in the form set out in Annexure Part S issued under Clause 21A.2(a)(i) in respect of the achievement of Operational Completion;

Change in Law means:

- (a) the amendment, repeal or change of any law existing at the date of this Contract;
- (b) the enactment of any new law; or
- (c) a judgment of a relevant court of law which changes a binding precedent on the interpretation or application of any law,

which occurs after the date of this Contract but excluding:

- (d) any amendment, repeal or change of the Income Tax Assessment Act 1936 (Cth), the GST Legislation or the Income Tax Assessment Act 1997 (Cth);
- (e) any amendment, repeal, change or enactment of any law which, as at the Date of Contract:
 - (i) was published or of which public notice had been given; or
 - (ii) a party experienced and competent in the supply of equipment similar to the Equipment would have reasonably foreseen or anticipated at the date of execution of the Term Sheet dated 5 May 2016,

in substantially the same form as the amendment, repeal, change or enactment eventuating after the date of this Contract; and

- (f) any amendment, repeal, change or enactment of any law effected in response to an illegal act or omission by the Supplier (not including an act or omission which became illegal as the result of the amendment, repeal, change or enactment);

<i>Change of Control</i>	means that a holding company of a body corporate ceases to be its holding company, or a body corporate which was not a holding company of the body corporate becomes its holding company (and holding company has the same meaning as in the Corporations Act);
<i>Claim</i>	<p>means any claim, action, demand or proceeding, including for an increase in the Contract Sum, for payment of money (including damages or for an EOT):</p> <ul style="list-style-type: none"> (a) under, arising out of, or in any way in connection with, the Contract; (b) arising out of or in any way in connection with: <ul style="list-style-type: none"> (i) the work under the Contract; or (ii) any party's conduct prior to the Date of Contract; or (c) otherwise at law or in equity including: <ul style="list-style-type: none"> (i) by statute; (ii) in tort for negligence or otherwise, including negligent misrepresentation; or (iii) for restitution or quantum meruit;
<i>Commercially Sensitive Information</i>	<p>means information that discloses:</p> <ul style="list-style-type: none"> (a) the Supplier's financing arrangements; (b) the Supplier's cost structure or profit margins; (c) any intellectual property in which the Supplier's has an interest; or (d) any matter the disclosure of which would place the Supplier at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future;
<i>Communications Management Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>Compensable Cause</i>	<p>means:</p> <ul style="list-style-type: none"> (a) an act, default or omission of the Purchaser or the Purchaser's employees, consultants, other contractors or agents (not being acts or omissions authorised, permitted or in accordance with the Contract); and (b) any delay by the Purchaser in procuring the Managing Contractor to provide the Supplier access to the Site for testing and commissioning;
<i>Compliance Management Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>Concept Design</i>	means the concept design in respect of the LRV included in Annexure Part T;
<i>Configuration Management Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;

- Contaminant*** means any:
- (a) toxic or hazardous substance, gas, liquid or material, any dangerous goods, hazardous or special waste or discharge (other than properly and lawfully discharged sewage), or any Pollutant or any constituent of any such substance or waste in any water, soil or in the air including acid sulphate soils; and
 - (b) without limiting paragraph (a), substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment;
- Contract*** has the meaning in Clause 4;
- Contract Sum*** means the aggregate of the amounts set out in Annexure Part H, as may be adjusted in accordance with the Contract;
- Controller*** has the same meaning as in the Corporations Act;
- Corporations Act*** means the Corporations Act 2001 (Cth);
- Critical Design Stage*** means the stage in the development of the Design Documentation:
- (a) the purpose of which is for the Supplier to produce the Final Design Documentation; and
 - (b) in which the Purchaser may review Design Documentation to determine the compliance of the proposed Design Documentation with the Contract and the Design Documentation submitted during the Preliminary Design Stage;
- Date for Delivery*** means the date stated in Item 6, but if directed by the Purchaser to change the Date for Delivery under Clause 19.1(d), it means the date directed under Clause 19.1(d);
- Date for Operational Completion***
- (a) in respect of the LRVs, means the date set out in Item 6A, but if any EOT for Operational Completion is granted by the Purchaser or allowed in any dispute resolution, it means the resulting date; and
 - (b) in respect of the Additional LRVs and Additional Equipment, means the date set out in Item 6B, but if any EOT for Operational Completion is granted by the Purchaser or allowed in any dispute resolution, it means the resulting date;
- Date of Contract*** means the Restatement date which appears on the Formal Instrument of Agreement;
- Date of Delivery*** means:
- (a) the date upon which the Equipment was Delivered; or
 - (b) where another date is determined in any dispute resolution as the date upon which the Equipment was Delivered, that other date;

<i>Date of Operational Completion</i>	means:
	(a) the date certified by the Purchaser in a Certificate of Operational Completion to be the date on which Operational Completion was reached; or
	(b) where another date is determined in any dispute resolution as the date on which Operational Completion was reached, that other date; and
	(c) in either case may be a different date in respect of the LRVs and the Additional LRVs;
<i>Day</i>	means calendar day except a Sunday, a public holiday in New South Wales or a day which has been rostered-off for the New South Wales construction industry;
<i>Deeds of Disclaimer</i>	means the deed of disclaimer and process deed executed by the Supplier on 30 November 2011;
<i>Deed Poll</i>	means deeds in the form set out in Annexure L Part 1 and Part 2;
<i>Defect</i>	means any defect, deficiency, fault, non-conformance, error or omission in the Equipment or any aspect of the Equipment which is not in accordance with the requirements of the Contract;
<i>Defects Liability Period</i>	has the meaning in Clause 22;
<i>Deliver and Delivered</i>	have the meaning in Clause 19;
<i>Delivery Place</i>	is stated in Item 7;
<i>Design Documentation</i>	means the Original Design Documentation and the Further Design Documentation;
<i>Design Management Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>Design Review Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>Design Review Submission</i>	means a package of Design Documentation for each individual system as set out in the Design Review Work Breakdown Structure;
<i>Design Review Work Breakdown Structure</i>	means the document of that name that complies with the requirements of Appendix E of the LRV Specification;
<i>Design Stage</i>	means:
	(a) the Preliminary Design Stage; and
	(b) the Critical Design Stage;
<i>Direction</i>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
<i>Dispute</i>	has the meaning in Clause 28;
<i>Environmental Management Plan</i>	means a plan that complies with the requirements of the LRV Specification;
<i>EOT (extension of time)</i>	has the meaning in Clause 17.2;

Equipment means the goods and equipment to be supplied by the Supplier under the Contract, as described in the LRV Specification, including:

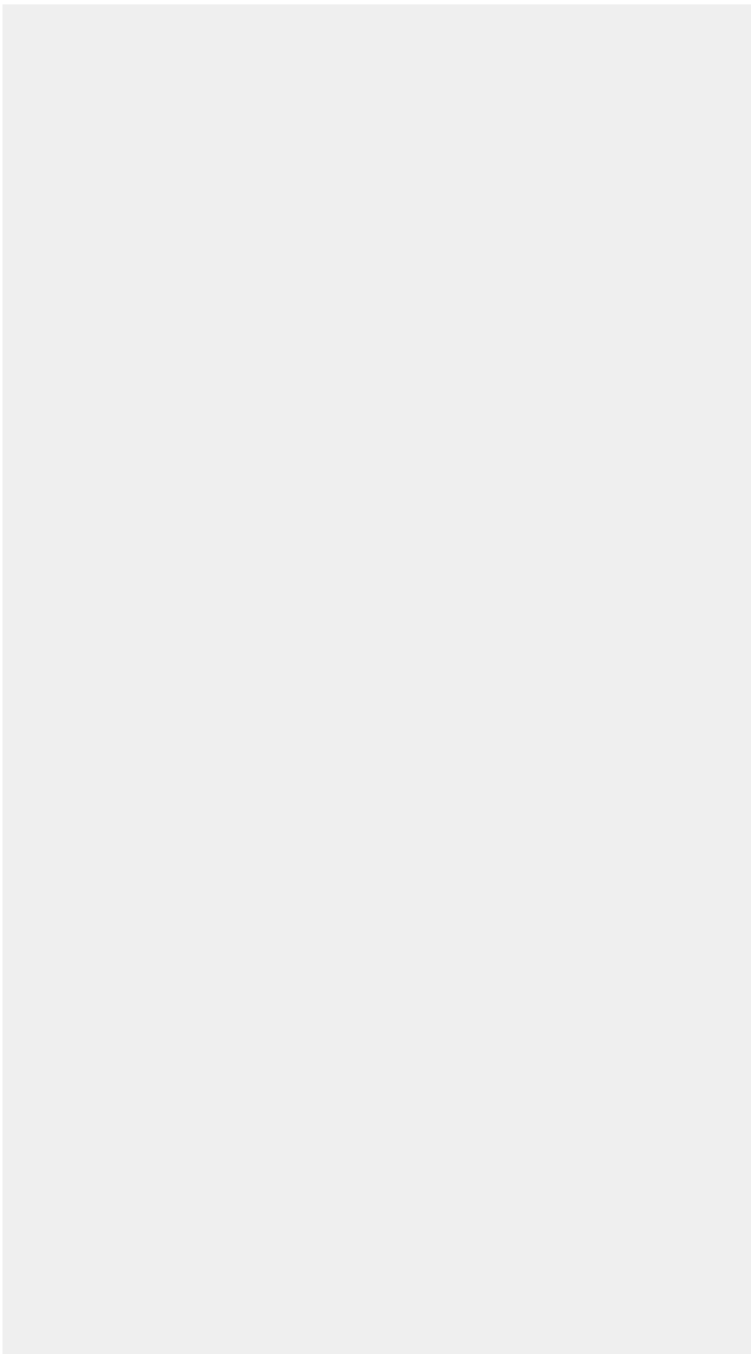
- (a) 6 LRVs and any additional LRVs to be supplied pursuant to any options exercised by the Purchaser in accordance with Clause 2.3;
- (b) the Insurance Spares; and
- (c) the Specialist Maintenance Tools;

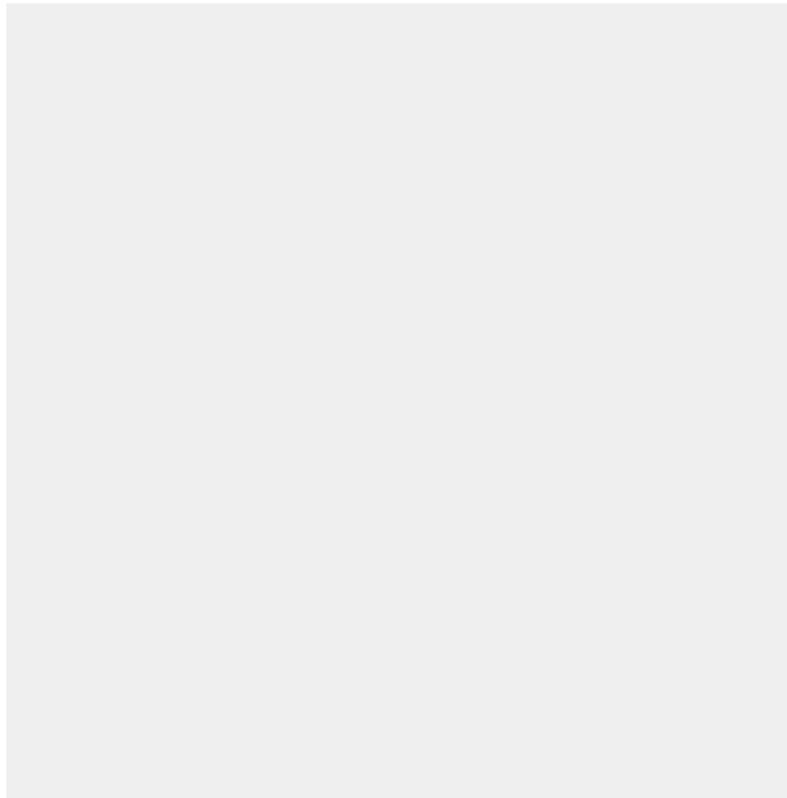
Escrow Agent means Assurex Escrow Pty Limited ABN 64 008 611 578;

Escrow Agreement means the agreement between the Purchaser, the Supplier, the Escrow Agent dated on or about the Date of Contract substantially in the form of Annexure Part U;

Event means:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)





***Failure Modes, Effects
and Criticality Analysis
(FMECA)***

means the document of that name that complies with the requirements of Appendix E of the LRV Specification;

Final Certificate

has the meaning in Clause 24.4;

***Final Design
Documentation***

means Design Documentation that has progressed through each Design Stage and has not been "Rejected" by the Purchaser under Clause 6C.3;

Final Payment Claim

means the final payment claim referred to in Clause 24.4;

Finance Costs

the reasonable internal finance costs of the Supplier incurred as a result of a Compensable Cause, Suspension or Variation;

FMECA Data

means the data and information required to be included in the Failure Modes, Effects and Criticality Analysis document required to be produced under Clause 6C.4;

***Formal Instrument of
Agreement***

means the formal instrument of agreement to which these General Conditions are attached;

Free Issue Materials

means the communications and signalling equipment to be provided free of charge by the Purchaser to the Supplier at the Supplier's manufacturing plant in Spain for installation on the Additional LRVs;

Further Design Documentation

means:

- (a) the Design Documentation updated to reflect:
 - (i) the incorporation of the Additional LRVs into the Project and all matters consequent upon the incorporation of the Additional LRVs into the Project; and
 - (ii) all design and field amendments which have occurred since the Design Documentation was submitted; and
- (a) all matters and things within the meaning of Design Documentation in relation to the Additional LRVs and all relevant matters required to be undertaken or relevant to the Additional LRVs;

Further Project Plans

means:

- (a) the Project Plans updated to reflect:
 - (i) the incorporation of the Additional LRVs into the Project and all matters consequent upon the incorporation of the Additional LRVs into the Project; and
 - (ii) all design and field amendments which have occurred since the Project Plans were submitted; and
- (b) further plans and other matters within the meaning of Project Plans in relation to the Additional LRVs and all relevant matters required to be undertaken or relevant to the Additional LRVs;

General Conditions

means these amended General Conditions of contract based upon AS 4911-2003;

GIPA Act

means the Government Information (Public Access) Act 2010 (NSW) and any regulations promulgated under it;

GST

means the tax payable on taxable supplies under the GST Legislation;

GST Legislation

means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;

Improvements

means any improvement to or modification, adaptation or development of any Purchaser Material or Supplier Material;

Incident Reporting and Response Plan

means a plan that complies with the requirements of Appendix E of the LRV Specification;

Independent Certifier

means the party engaged by the Purchaser to provide, amongst other things, certification services in relation to the design and construction elements of the Project and being the person to which Clause 15C applies;

Independent Safety Assessor

means such person or entity as may be appointed under clause 15D;

Industrial Relations Plan

means a plan that complies with the requirements of Appendix E of the LRV Specification;

Insolvency Event

means, in respect of a person:

- (a) an administrator being appointed to the person;
- (b) the person resolving to appoint a Controller or analogous person to the person or any of the person's property;
- (c) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; or
- (d) an appointment of the kind referred to in paragraph (b) being made (whether or not following a resolution or application);
- (e) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the person's property;
- (f) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (g) an application being made to a court for an order for its winding up;
- (h) an order being made, or the person passing a resolution, for its winding up;
- (i) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (j) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (k) a court or other Authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (l) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the Purchaser;

Insurance Spares

means the spare parts for the LRVs as specified in Schedule A to Annexure Part H;

<i>Intellectual Property Right</i>	means all present and future rights conferred by statute, common law or equity in or in relation to any patent, registered design, trademark or name, copyright, design, circuit layout, business name, invention, moral right or other protected right, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable;
<i>Intended Purpose</i>	means: <ul style="list-style-type: none"> (a) to convey passengers on the LRT safely and reliably; (b) to provide a similar or better level of passenger amenity to the Variotrams currently in operation on the LRT; (c) to be no less reliable than the Variotrams; (d) in respect of the Additional LRVs (in addition to paragraphs (a) to (c) above): <ul style="list-style-type: none"> (i) to convey passengers safely and reliably; (ii) to provide a similar or better level of passenger amenity to the LRVs currently in operation on the LRT following all warranty repairs; (iii) to be no less reliable than the LRVs and not fail the KPI referred to in Annexure Part AA; and (e) to operate (including as required by paragraphs (a) to (d) above) within the "Dynamic Gauge" as described in Appendix A of the LRV Specification for Sydney or Appendix A1 of the LRV Specification for the Project;
<i>Interface Annexure</i>	means the Annexure of that name, being Annexure Part W of this Amendment and Restatement Deed;
<i>Interface Management Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>IR Guidelines</i>	means the NSW Government "Industrial Relations Management Guidelines";
<i>ISO</i>	means the party engaged by the Purchaser to operate and maintain the transport services relating to the Project including the Additional LRVs;
<i>ISO Accreditation Deliverables</i>	means all the deliverables required by the LRV Specification and the Not Rejected Safety Management and Accreditation Plan to enable the ISO to obtain Accreditation to test, commission and operate the LRVs;
<i>ISO Contract</i>	means the contract between the Purchaser and the ISO in relation to the operation and maintenance of the transport services relating to the Project including the Additional LRVs;
<i>Item</i>	means an Item in Annexure Part A;
<i>IWE or Inner West Extension</i>	means the proposed light rail project along the route between Catherine Street, Lilyfield to Dulwich Hill using the existing freight rail line from Wattle Street, Pyrmont to Dulwich Hill as described in the LRV Specification;
<i>IWE Site</i>	means the site described in Annexure Part R;

<i>Key Person</i>	means each individual referred to in Annexure Part N or any appointment or replacement approved by the Purchaser under Clause 15B;
<i>KPI Regime</i>	means the regime set out in Annexure Part AA;
<i>Laws</i>	means: <ul style="list-style-type: none"> (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and New South Wales; and (b) certificates, licences, consents, permits, approvals and any other binding requirements of Authorities having jurisdiction in the relevant circumstances;
<i>Legislative Requirements</i>	includes: <ul style="list-style-type: none"> (a) Laws; (b) Acts, Ordinances, laws, regulations, by-laws, orders, awards and proclamations from any relevant jurisdiction applicable to the work under the Contract; and (c) fees and charges payable in connection with the foregoing;
<i>Licensed Intellectual Property</i>	means: <ul style="list-style-type: none"> (a) all Intellectual Property Rights in: <ul style="list-style-type: none"> (i) the Operating Instruction Manual and any other operation and maintenance manuals described in the LRV Specification; (ii) the Training Materials; (iii) the design of the Equipment; (iv) the Design Documentation; and (b) any Improvements to the Intellectual Property Rights described in paragraph (a);
<i>Loss</i>	includes: <ul style="list-style-type: none"> (a) any cost, expense, loss, damage or liability, whether direct, indirect or consequential; and (b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty;
<i>LRT</i>	means the Sydney light rail mass public transit system from Central Station, Sydney to Catherine Street, Lilyfield, and on and from the commencement of operation services of the IWE, the Inner West Extension;
<i>LRV</i>	means the light rail vehicles required to be supplied under the Contract, as specified in the LRV Specification;
<i>LRV Delivery Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>LRV Livery Design</i>	means design for the livery and colour scheme of the LRV that complies with the requirements of Appendix E of the LRV Specification;

<i>LRV Program</i>	means the program set out in Annexure Part O, as may be updated in accordance with the Contract;
<i>LRV Specification</i>	means the documents set out in Annexure Part E, as may be varied in accordance with the Contract (and includes the Additional LRV Specification);
<i>Managing Contractor</i>	means the contractor engaged by the Principal to design and construct the physical fixed infrastructure for the light rail component of the Project;
<i>Managing Contractor Contract</i>	means the contract between the Purchaser and the Managing Contractor in relation to the design and construction of the physical fixed infrastructure for the light rail component of the Project;
<i>Moral Right</i>	means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world;
<i>Not Rejected</i>	means, in respect of a Review Document, the Purchaser has issued a notice that the relevant Review Document is "Not Rejected" under Clause 6A.2(a)(ii)(A) or which is deemed "Not Rejected" under Clause 6A.2(c);
<i>NLR Handover Date</i>	means the date advised by the Purchaser to the Supplier as the date on which the lease of the LRVs to the ISO commences;
<i>ONRSR</i>	means the Office of the National Rail Safety Regulator constituted under the Rail Safety Act;
<i>Open Book Basis</i>	means the provision of any pricing, costing and other information on an open book basis to enable an assessment of actual costs and profit margins, including a breakdown of all relevant preliminaries, insurances, labour, equipment, materials, subcontract costs, margins and discount rates used to calculate net present values, in a clear and transparent manner;
<i>Operating Instruction Manual</i>	means the document by that name that complies with the requirements of Appendix E of the LRV Specification;
<i>Operational Completion</i>	means that stage in the carrying out of the work under the Contract when the requirements set out in Annexure Part F have been satisfied;
<i>Original Design Documentation</i>	means all design standards, design reports, durability reports, drawings, plans, specifications and other information, samples, models, prototypes, patterns, calculations, digital records and other relevant data and the like in electronic, computer readable and written and physical forms or stored by any other means which are required by the Contract (including the LRV Specification) or necessary to be produced by the Supplier, which describe the nature, layout or performance of the Equipment produced or required to be produced prior to the Restatement Date;
<i>Payment Claim</i>	means a payment claim submitted under Clause 24.1(a);
<i>Payment Certificate</i>	means a payment certificate provided under Clause 24.1A;

- Planning Approval*** means the approval dated 16 February 2011 issued by the Minister for Planning pursuant to Part 3A of the Environmental Planning and Assessment Act 1979 (NSW) in respect of the IWE and includes all documents incorporated by reference and the equivalent approval in respect of the Project;
- PLRC*** means Pymont Light Rail Company Pty Limited ACN 065 183 913;
- Pollutant*** includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the environment:
- (a) unsafe or unfit for habitation or occupation by persons or animals;
 - (b) degraded in its capacity to support plant life;
 - (c) contaminated; or
 - (d) otherwise environmentally degraded;
- PPS Law*** means:
- (a) the *Personal Property Securities Act 2009 (Cth)* (PPSA) and any regulation made at any time under the PPSA, including the *Personal Property Securities Regulations 2010 (Cth)* (each as amended from time to time); and;
 - (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).
- Preliminary Design Stage*** means the stage in the development of the Design Documentation:
- (a) the purpose of which is for the Supplier to develop the preliminary design for the Equipment; and
 - (b) in which the Purchaser may review Design Documentation to determine its compliance with the LRV Specification and the Additional LRV Specification and its consistency with the Concept Design;
- Prescribed Notice*** has the meaning in Clause 27.1;
- Project*** means the project which comprises:
- (a) the design, construction, testing, commissioning, operation and maintenance of a 2.7km light rail transit running from Wickham Transport Interchange to an eastern terminus adjacent to Pacific Park, in Scott Street, Newcastle; and
 - (b) adjustment to roads and road intersections to accommodate the introduction of the light rail including adjacent roads and road intersections that have been impacted by the introduction of the light rail ; and.
 - (c) the operation and maintenance of the Newcastle buses, ferries and the Newcastle light rail;

<i>Project Plan</i>	means each of: <ul style="list-style-type: none"> (a) the Project Risk Management Plan; (b) the Project Risk Register; (c) the Communications Management Plan; (d) the Interface Management Plan; (e) the LRV Delivery Plan; (f) the Variation Management System; (g) the WHS Plan; (h) the Compliance Management Plan; (i) the Systems Assurance Plan; (j) the Safety Management and Accreditation Plan; (k) the Design Management Plan; (l) the Design Review Plan; (m) the System Verification Review Plan; (n) the Testing and Commissioning Plan; (o) the Configuration Management Plan; (p) the Technical Maintenance Plan; (q) the Industrial Relations Plan; (r) the Incident Reporting and Response Plan; (s) the Environmental Management Plan; and (t) the Training Management Plan, <p>described in the LRV Specification, outlines of which are set out in Annexure Part P, as updated in accordance with the Contract;</p>
<i>Project Risk Management Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>Project Risk Register</i>	means a register that complies with the requirements of Appendix E of the LRV Specification;
<i>Purchaser</i>	means the party identified as such in the Formal Instrument of Agreement;
<i>Purchaser Event of Default</i>	means any event specified in Clause 25.5;
<i>Purchaser Insurance Policies</i>	means the insurance policies required to be effected by the Purchaser pursuant to Clause 13.1;
<i>Purchaser Material</i>	means all information and materials (in any form or media) owned by or licensed to the Purchaser, including any Purchaser policies, manuals, drawings, specifications or technical documentation;
<i>Purchaser's Representative</i>	means the person appointed to act for the Purchaser in accordance with Clause 1C;
<i>Purchaser's Safety Assurance Plan</i>	means the Purchaser's safety assurance plan for the IWE and the Project set out in Annexure Part Q;

<i>Quality Management System</i>	means the quality program referred to in Clause 11.2;
<i>Quality Guide</i>	means a description and photographs of the fit and finish for the LRVs for use in manufacture and inspection activities and which complies with the requirements of Appendix E of the LRV Specification;
<i>Rail Safety Act</i>	means the Rail Safety Act 2008 (NSW) and regulations promulgated under that Act (during the time that that Act and the relevant regulations were in place) and the Rail Safety (Adoption of National Law) Act 2012 (following the coming into force of that Act and the relevant regulations under that Act);
<i>Rail Safety Interface Agreement</i>	means a safety interface agreement as defined in section 4 of the Rail Safety Act;
<i>Related Body Corporate</i>	has the meaning given to it in the Corporations Act;
<i>Related Documents</i>	means all documents produced, used or obtained by or on behalf of the Supplier, necessary to review, approve or understand an aspect of the work under the Contract or required by the Contract to be supplied to the Purchaser;
<i>Relevant Standards</i>	means any international or Australian standards applicable or relevant to the Equipment and the Supplier's other obligations under the Contract, including any such standards set out in the LRV Specification or notified by the Purchaser to the Supplier in writing from time to time;
<i>Reliability Proving Period</i>	has the meaning given in section 33 of the LRV Specification;
<i>Restatement Date</i>	means the date that this Amendment and Restatement Deed becomes binding between the parties;
<i>Review Documents</i>	means: <ul style="list-style-type: none"> (a) the Project Plans; (b) the Safety Cases; (c) the ISO Accreditation Deliverables; (d) the LRV Livery Design; (e) the Quality Guide; (f) the Training Materials; (g) the Testing Materials; (h) any revised or updated LRV Program; (i) the Quality Management System; and (j) any other documents identified in the Contract as being required to be submitted in accordance with Clause 6A;
<i>Rolling Stock Initial Defects List</i>	means the list issued by the Purchaser under Clause 21A.4 which will list Defects of the nature described in section 1 of Annexure Part F;

<i>Safety Case</i>	means each of: <ul style="list-style-type: none"> (a) the Safety Case – Design and Construction; (b) the Safety Case – Test and Commissioning; and (c) the Safety Case – Revenue Service;
<i>Safety Case – Design and Construction</i>	means the safety case that complies with the requirements of Appendices E and F of the LRV Specification and includes the System Hazard Analysis;
<i>Safety Case – Revenue Service</i>	means the safety case that complies with the requirements of Appendices E and F of the LRV Specification and includes the System Hazard Analysis;
<i>Safety Case – Test and Commissioning</i>	means the safety case that complies with the requirements of Appendices E and F of the LRV Specification and includes the System Hazard Analysis;
<i>Safety Management and Accreditation Plan</i>	means a plan that complies with the requirements of Appendices E and F of the LRV Specification and is consistent with the Purchaser's Safety Assurance Plan;
<i>Security</i>	means security of the form contemplated by Item 12 or any other form approved by the Purchaser;
<i>Separate Contractor</i>	means any person other than the Supplier and its Subcontractors engaged by the Purchaser, who carries out work in or about the Site;
<i>Security Interest</i>	means: <ul style="list-style-type: none"> (a) a 'security interest' (as that term is defined in the PPS Law), mortgage, charge, pledge, lien, hypothecation, power of attorney or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money, a notice under section 255 of the Income Tax Assessment Act 1936 (Cth), subdivision 260–A in schedule 1 of the Taxation Administration Act 1953 (Cth) or any similar legislation; (b) any other interest or arrangement of any kind that secures the payment of money or the performance of an obligation or which gives a creditor priority over unsecured creditors in relation to any property; or (c) any agreement to create any of them or to allow any of them to exist;
<i>Senior Project Group</i>	means the group established under clause 15A.3;
<i>Shipping Event</i>	<div style="background-color: #cccccc; height: 30px; width: 100%;"></div>
<i>Site</i>	means the site described in Annexure Part R;
<i>Site Access Protocol</i>	means the protocol site described as such in Annexure Part Y;
<i>Specialist Maintenance Tools</i>	means the special maintenance tools for the maintenance of the LRVs specified in Attachment B to Annexure Part H;

<i>Stabling Facility</i>	means the stabling facility for the maintenance and stabling of light rail vehicles for the LRT located at 190 Pyrmont Street, Pyrmont NSW 2009, Australia and for the Additional LRVs means the stabling and maintenance facility, Wickham Railway Station, Station Street, Wickham NSW 2293;
<i>Supplier's Representative</i>	means the person appointed to act for the Supplier in accordance with Clause 1C;
<i>Supplier</i>	means the party identified as such in the Formal Instrument of Agreement;
<i>Supplier Counterparty Details</i>	means in respect of each person other than the Purchaser who is a party to the Contract and Indemnity: <ul style="list-style-type: none"> (a) a certified copy of its constitution (or other constituent documents); (b) a certified copy of any powers of attorney under which the person executed the relevant document to which it is a party; and (c) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations under each document to which it is a party;
<i>Supplier Event of Default</i>	means any event specified in Clause 25.2;
<i>Supplier Insurance Policies</i>	means the insurance policies required to be effected by the Supplier pursuant to Clause 13.2;
<i>Supplier Material</i>	means all information and material (in any form or media) owned by or licensed to the Supplier and used by the Supplier in carrying out its obligations under the Contract, but does not include the Purchaser Material;
<i>Supplier Termination Event</i>	means any event specified in Clause 25.3A;
<i>Systems Assurance Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>System Hazard Analysis</i>	means the system hazard analysis that complies with the requirements of Appendix E of the LRV Specification;
<i>System Specification</i>	means the document entitled "Ultimo Pyrmont Light Rail Transit System Specification Volume 1";
<i>System Verification Review Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>Tax</i>	means any income tax, payroll tax, fringe benefits tax, superannuation guarantee surcharge, stamp duty and other tax, levy, impost, duty, deduction, tax concession, fee, charge, withholding plus any interest, penalty, charge, fees or other amounts payable in respect thereof;
<i>Tax Invoice</i>	means the same as in the GST Legislation;
<i>Technical Maintenance Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;

<i>Technology Supplier</i>	means the supplier of communications or signalling systems which will be free issued to the Supplier in accordance with Clause 18.8;
<i>Test</i>	has the meaning in Clause 18 and includes examine and measure;
<i>Testing and Commissioning Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;
<i>Testing and Commissioning Responsibility Matrix</i>	means the Annexure of that name, being Annexure Part X of this Amendment and Restatement Deed;
<i>Testing Materials</i>	means: <ul style="list-style-type: none"> (a) Test Specifications which comply with the requirements of Appendix E of the LRV Specification; (b) Test Reports which comply with the requirements of Appendix E of the LRV Specification; (c) Test Report Summary which complies with the requirements of Appendix E of the LRV Specification; and (d) other materials, necessary to satisfy the requirements of the Not Rejected Testing and Commissioning Plan and the requirements set out in the LRV Specification;
<i>Test Reports</i>	means the document(s) of that name that comply with the requirements of Appendix E of the LRV Specification;
<i>Test Report Summary</i>	means the document of that name that complies with the requirements of Appendix E of the LRV Specification;
<i>Test Specifications</i>	means the document(s) of that name that comply with the requirements of Appendix E of the LRV Specification;
<i>Third Party Intellectual Property Rights</i>	means all third party Intellectual Property Rights incorporated into the Equipment or which the Supplier uses to carry out its other obligations under the Contract;
<i>Training Management Guidelines</i>	means the NSW Government Training Management Guidelines (February 2009);
<i>Training Management Plan</i>	means a plan that complies with the requirements of Appendix E of the LRV Specification;

Training Materials

means:

- (a) the Operating Instruction Manual;
- (b) user manuals;
- (c) quick reference guides;
- (d) curriculum guides;
- (e) facilitator guides;
- (f) workbooks;
- (g) assessments;
- (h) computer based desktop simulation software; and
- (i) other materials,

necessary to satisfy the requirements of the Not Rejected Training Management Plan and the requirements set out in the LRV Specification;

Variation

has the meaning in Clause 23.1;

Variation Management Plan

means a plan that complies with the requirements of Appendix E of the LRV Specification;

Variotram

means the light rail vehicle which is used on the LRT at the Date of Contract, and like words have a corresponding meaning.

WHS Legislation

means legislation relating to health and safety at work including:

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

WHS Plan

means the work health and safety plan prepared by the Supplier and finalised under Clause 10A.2, which must:

- (a) set out in adequate detail the procedures the Supplier will implement to manage the work under the Contract from a work health and safety perspective;
- (b) describe how the Supplier proposes to ensure the work under the Contract is performed consistently with Laws in relation to work health and safety; and
- (c) address the matters specified in Annexure Part A;

Wilful Default

means

- (a) a deliberate act or omission, with knowledge that the act or omission will have harmful consequences, but does not include any innocent or negligent act or omission or any other act or omission to be done in good faith; or
- (b) any fraudulent or criminal conduct.

1.2 Rules for interpreting the Contract

In the Contract:

- (a) references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) clause headings do not form part of, and must not be used in the interpretation of, the Contract;

- (c) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (d) measurements of physical quantities must be in SI;
- (e) unless otherwise provided, prices are in the currency in Item 10(a) and payments must be made in that currency at the place in Item 10(b);
- (f) the law governing the Contract, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction stated in Item 9;
- (g) not used; and
- (h) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

1A NOT USED

1B Novation to the Purchaser's Nominee

The parties acknowledge that:

- (a) Subject to Clause 1B(b), the Purchaser may, at any time, elect to assign or novate its rights and obligations under the Contract to any nominee (**Purchaser Nominee**).
- (b) If the Purchaser Nominee is not another New South Wales Government agency, then Purchaser must obtain the prior written consent of the Supplier before appointing such nominee, which approval must not be unreasonably withheld if the proposed nominee is:
 - (i) reputable and has sufficient financial and operational capacity to perform the obligations of the Purchaser under this Contract; and
 - (ii) not a competitor of the Supplier.
- (c) Subject to Clause 1B(b), if the Purchaser elects to assign or novate its rights and obligations under the Contract to a Purchaser Nominee:
 - (i) the Supplier consents to that assignment or novation;
 - (ii) the Supplier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Purchaser and Purchaser Nominee) to give effect to that assignment or novation.
- (d) From the date of such assignment or novation to Purchaser Nominee:
 - (i) Clause 1A and Clause 1B will be deleted; and
 - (ii) all references to "Purchaser" in the Contract will be deemed to be references to Purchaser Nominee.

1C REPRESENTATIVES

- (a) The Supplier must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Contract as the Supplier's Representative and must keep the Purchaser informed in writing of the name of that person, and of any change. If the Purchaser reasonably objects to the person appointed from time to time, the Supplier must replace that person.
- (b) The Purchaser must ensure that there is a person appointed to act on behalf of the Purchaser in relation to the Contract as the Purchaser's Representative and will advise the Supplier in writing of any limitations or qualifications to the powers of the Purchaser's Representative. The Purchaser must keep the Supplier informed in writing of the name of that person and of any change. The person does not act as independent certifier, assessor or valuer. The person acts only as agent of the Purchaser.

- (c) The Purchaser will advise the Supplier in writing if the Purchaser's Representative delegates any of its powers to others.

2 Nature of Contract

2.1 Performance and payment

In accordance with the requirements of the Contract:

- (a) the Supplier must:
- (i) manufacture, supply, Deliver, test and commission the Equipment;
 - (ii) manufacture, supply, Deliver, test and commission the Additional LRVs and Additional Equipment in accordance with the LRV Specification and the Additional LRV Specification; and
 - (iii) assist in facilitating the integration of the LRVs with the Project to enable the successful operation and maintenance of the LRVs as part of the Project; and
- (b) the Purchaser will, subject to the terms of the Contract:
- (i) accept the Equipment; and
 - (ii) pay the Supplier the Contract Sum adjusted by any additions or deductions made pursuant to the Contract.

2.2 No adjustment

The Supplier acknowledges and agrees that the Contract Sum is not subject to any adjustment except as expressly stated in the Contract.

2.3 Option for additional LRVs

- (a) The Supplier acknowledges and agrees that the Purchaser may, but is not obliged to:
- (i) at any time, by written notice to the Supplier, require the Supplier to supply and Deliver not less than six and not more than six additional LRVs at the price set out at Option 1a in Annexure Part J and otherwise on the terms set out in the Contract
 - (ii) at any time, by written notice to the Supplier, require the Supplier to supply and Deliver not less than one and not more than twelve additional LRVs at the price set out at Option 1b in Annexure Part J and otherwise on the terms set out in the Contract
 - (iii) at any time, by written notice to the Supplier, require the Supplier to supply and Deliver not less than one and not more than six additional LRVs at the price set out at Option 1c in Annexure Part J and otherwise on the terms set out in the Contract
- (b) If the Purchaser issues a notice under Clause 2.3(a):
- (i) the Contract Sum will be adjusted by an amount calculated in accordance with Annexure Part J on the basis that four payments will be made in respect of any option or options exercised under Clause 2.3(a) being:
 - (A) % of the total price (determined in accordance with Annexure J) in respect of the option exercised under Clause 2.3(a) (**Option Price**) will be payable on the date on which the option is exercised by the Purchaser;
 - (B) % of the Option Price will be payable on Delivery of the first LRV under the option;
 - (C) % of the Option Price will be payable on Delivery of the last LRV under the option;
 - (D) % of the Option Price will be payable on Operation Completion under the option; and

- (E) % of the Option Price will be held back and be paid in accordance with the KPI Regime;
- (ii) the parties will negotiate in good faith to agree the Date for Delivery and Date for Operational Completion.

2.4 Supplier Counterparty Details, Deed Poll and Security

- (a) The Supplier must provide the Supplier Counterparty Details to the Purchaser within 10 Business Days after the date of the Contract.
- (b) The Supplier must execute and provide Purchaser with the Deed Polls in favour of ISO and the Contractor in relation to the Project within 10 Business Days after receiving written notice from the Purchaser and the Supplier authorises the Purchaser to complete the details of the ISO and Contractor following the execution of agreements between the Principal and those parties.
- (c) The Supplier must comply with Clause 2.4(a) and 2.4(b) and Clause 3.1 as a precondition to the payment of the amount referred to as being payable in connection with "Contract Execution" in Table 1 to Annexure Part H.

2A Not used

3 Security

3.1 Provision

The Supplier must provide Security in the amount and form required by Item 12 and in accordance with this Clause 3.

3.2 Recourse

- (a) Security is provided to ensure performance of the Contract by the Supplier. The Purchaser may have recourse to the Security where:
 - (i) the Supplier is in breach of any of its obligations under the Contract;
 - (ii) the Supplier has failed to pay the Purchaser an amount due under the Contract; or
 - (iii) the Purchaser is entitled to terminate the Contract.
- (b) The Purchaser will not be liable for any Loss occasioned by any conversion of security under paragraph (a) and any such Loss will be to the account of the Supplier.

3.3 Not used

3.3A No injunction

The Supplier acknowledges that it will not at any time take steps to injunct or otherwise restrain or attempt to injunct or otherwise restrain:

- (a) any issuer of any Security contemplated in this Clause 3 from paying the Purchaser pursuant to any Security; or
- (b) the Purchaser from:
 - (i) taking any steps to obtain payment under any Security; or
 - (ii) using the moneys received under any Security.

3.4 Reduction and release

- (a) Upon the issue of the Certificate of Operational Completion, the Purchaser's entitlement to Security will be reduced to the percentage or amount in Item 12(f) as applicable, and the reduction will be released and returned within 10 Business Days to the Supplier.
- (b) The Purchaser's entitlement to Security in Item 12(e) will cease 10 Business Days after the later of delivery of the component of the Equipment for which that Security was provided.

- (c) The Purchaser's entitlement otherwise to Security will cease 10 Business Days after the date of the Final Certificate. Upon the Purchaser's entitlement to Security ceasing, the Purchaser will release and return forthwith the Security to the Supplier.

3.5 Interest

Interest earned on Security held by the Purchaser will belong to the Purchaser.

4 Evidence of Contract

The Contract comprises the following documents:

- (a) the Formal Instrument of Agreement;
- (b) these amended general conditions of contract based upon AS/NZS 4911-2003 (including Annexure Part A, Annexure Part B and Annexure Part C); and
- (c) Annexure Parts D to AA.

5 Service of notices

5.1 How to give a notice

Unless otherwise expressly stated in the Contract, a notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that person's address; or
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error.

5.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - at the local time (in the place of receipt of that fax) which equates to the time at which the fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – 9.00am on the next Business Day; and
- (b) if it is sent by pre-paid mail:
 - (i) within Australia - on the second Business Day after posting; or
 - (ii) to or from a place outside Australia - 7 Business Days after posting.

5.3 Address for notices

A person's mail address and fax number are those set out in:

- (a) for the Purchaser, Item 2;
- (b) for the Supplier, Item 4,

or as the person notifies the sender.

6 Contract documents

6.1 Discrepancies

If either party discovers any inconsistency, ambiguity or discrepancy in any documents forming part of the Contract, that party must give the other party written notice of it. The Purchaser, thereupon, and upon otherwise becoming aware, will direct the Supplier as to the interpretation and construction to be followed taking into account the priority of documents specified in Clause 6.1A.

6.1A Priority of documents

The following priority of documents applies if there is any ambiguity, discrepancy or inconsistency in, or between, the documents comprising the Contract or between the Contract and the Final Design Documentation:

- (a) where the ambiguity, discrepancy or inconsistency is in the documents which comprise the Contract, the following order of priority will apply:
 - (i) the Contract, excluding the LRV Specification and the Project Plans set out in Annexure Part P;
 - (ii) the LRV Specification; and
 - (iii) the Project Plans set out in Annexure Part P;
- (b) to the extent that paragraph (a) does not resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required standard or quality of the Equipment or the carrying out of the Supplier's obligations under the Contract, the Supplier must comply with the highest standard or quality specified or perform the more onerous obligation;
- (c) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of Final Design Documentation, the highest standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail; and
- (d) where the ambiguity, discrepancy or inconsistency is between figured and scaled dimensions, the figured dimensions will prevail.

6.2 Purchaser-supplied documents

- (a) The Purchaser will supply to the Supplier the documents and number of copies thereof, both stated in Item 14.
- (b) They will:
 - (i) remain the Purchaser's property and be returned to the Purchaser on written demand; and
 - (ii) not be used, copied nor reproduced for any purpose other than the performance of the Contract.

6.3 Supplier-supplied documents

All documents required to be submitted to the Purchaser by the Supplier must be:

- (a) in English;
- (b) clear and legible; and
- (c) thoroughly checked prior to submission to the Purchaser.

6.4 Availability

The Supplier must make available, within 5 Business Days' notice of a request from the Purchaser, a set of the documents relevant to any significant part of the Equipment.

6.5 Confidential information

- (a) Subject to paragraph (b), the Supplier must:
 - (i) keep confidential the terms of the Contract, any documents supplied by or on behalf of the Purchaser, any documents produced under the Contract and any information leading to the creation of the Contract; and
 - (ii) ensure that each of its officers, employees, subcontractors and consultants comply with the terms of paragraph (a)(i).
- (b) The Supplier is not obliged to keep confidential any information:
 - (i) which is otherwise in the public domain other than by a breach of the Contract by the Supplier; or
 - (ii) the disclosure of which is:
 - (A) required by Legislative Requirements;
 - (B) given with the prior written consent of the Purchaser; or
 - (iii) given to a court in the course of proceedings to which the Supplier is a party.
- (c) The Purchaser must ensure that, subject to clause 6.5,
 - (i) it consults with the Supplier before disclosing any of the Supplier's confidential information and gives the Supplier a reasonable opportunity to make submissions as to why the disclosure is not in accordance with this Contract or why the disclosure should not otherwise be made
 - (ii) any disclosure of the Supplier's confidential information is made on a confidential basis on a need to know basis and is subject to the recipient entering into a confidentiality deed poll materially in the form set out in Annexure Part AC which purports to:
 - (A) keep confidential the terms of the Contract, any documents supplied by or on behalf of the Purchaser or the Supplier, any documents produced under the Contract and any information leading to the creation of the Contract; and
 - (B) ensure that each of its officers, employees, subcontractors and consultants comply with the terms of paragraph (a)(i).

6.6 Media releases and publicity

- (a) The Supplier must not:
 - (i) disclose any information concerning the Contract for distribution through any communications media; or
 - (ii) make any public announcement or statement in relation to the Contract, the IWE or the Purchaser,

without the Purchaser's prior written approval.
- (b) The Supplier must refer to the Purchaser any enquiries from any media concerning the Contract and must agree the wording and timing of any public announcements and statements.

6.7 Access to information and privacy

- (a) The Supplier must, promptly on receiving a written request by the Purchaser, provide the Purchaser with access to all information reasonably requested by the Purchaser which relates directly to the performance by the Supplier of its obligations under the Contract.
- (b) The Supplier acknowledges and agrees that the Purchaser may review, copy, retain or otherwise deal with such information to enable either of them to satisfy any of its obligations under any Legislative Requirement.

- (c) The Supplier must comply with the privacy obligations of the Privacy and Personal Information Protection Act 1998 (NSW) or any Commonwealth or New South Wales legislation that replaces that Act and must assist the Purchaser in complying with that Act.

6.8 Disclosure by the Purchaser

- (a) Subject to Clauses 6.2(b) to 6.8(d), the Purchaser may publish or disclose (on the internet or otherwise):
 - (i) the terms of the Contract; and
 - (ii) any document or information arising under, out of or in connection with the Contract or relating to the performance of the Contract.
- (b) The Purchaser will consult with the Supplier before providing any person with access to information relating to this Contract, in response to an access application under the GIPA Act, or any obligation to disclose this Contract under the GIPA Act, if it appears that:
 - (i) the information:
 - (A) includes 'personal information' (as that term is defined in the GIPA Act) about the Supplier or its employees;
 - (B) concerns the Supplier's business, commercial, professional or financial interests; or
 - (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Supplier.
 - (ii) the Supplier may reasonably be expected to have concerns about the disclosure of the information; and
 - (iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (c) If, following consultation between the Purchaser and the Supplier, the Supplier objects to disclosure of some or all of the information, the Supplier must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 Business Days after the conclusion of the consultation process.
- (d) In determining whether there is an overriding public interest against disclosure of the information, the Purchaser will take into account any objection received by the Supplier.

6.9 Public Disclosure

- (a) The Supplier acknowledges and agrees that the Purchaser or any Authority may be required to make disclosures regarding the Contract:
 - (i) under Laws, including the GIPA Act;
 - (ii) to a court or tribunal; and
 - (iii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability, including:
 - (A) making the Contract available to the Auditor General in accordance with the Public Finance and Audit Act 1983 (NSW) and the New South Wales Government Memorandum 2007-01 (Public Disclosure of Information arising from NSW Government Tenders and Contracts); and
 - (B) tabling information concerning the Contract in Parliament,

(Public Disclosure Obligations).
- (b) The Supplier must, at its own cost and expense, use all reasonable endeavours to assist the Purchaser or an Authority in meeting their Public Disclosure Obligations.

6A Review documents

6A.1 Preparation and submission of Review Documents

- (a) Within the time stated in Appendix E of the LRV Specification applicable to each Review Document the Supplier must prepare and submit three hard copies and one electronic copy (in native and PDF formats) of the Review Documents and any Related Documents to the Purchaser for review and comment.
- (b) The Supplier must ensure that the Review Documents submitted under paragraph (a):
 - (i) comply with the requirements of the Contract and the LRV Specification;
 - (ii) are submitted in a form approved by the Purchaser;
 - (iii) are submitted progressively and in a timely manner in accordance with the LRV Program and any relevant Project Plan;
 - (iv) are submitted in a manner which, having regard to the quantum of Review Documents submitted, will allow the Purchaser a reasonable opportunity to review the Review Documents within the timeframes contemplated by the Contract; and
 - (v) if the relevant Review Documents are Project Plans, are consistent with the outline Project Plans set out in Annexure Part P.

6A.2 Review of Review Documents by the Purchaser

- (a) The Purchaser may:
 - (i) review any Review Document submitted under this Clause 6A;
 - (ii) within 20 Business Days of the Supplier submitting the Review Document notify the Supplier that:
 - (A) the Review Document is "Not Rejected"; or
 - (B) the Review Document is "Rejected", if:
 - (I) in the reasonable opinion of the Purchaser, the Review Document does not comply with the requirements of LRV Specification and the Contract; or
 - (II) in the case of a Project Plan, the Project Plan is not consistent with the corresponding outline Project Plan (if any) set out in Annexure Part P, and provide written reasons for the rejection.
- (b) The Supplier must, within 10 Business Days (or as agreed with the Purchaser) of receipt of notice from the Purchaser that any Review Document is "Rejected" submit an amended Review Document to the Purchaser and the provisions of this Clause 6A.2 will reapply to the amended Review Document.
- (c) If the Purchaser does not issue a notice under Clause 6A.2(a)(ii) within the required timeframe the relevant Review Document will be deemed to be "Not Rejected".
- (d) The Purchaser's exercise (or failure to exercise) any of its rights under this Clause 6A.2 will not preclude the Purchaser from subsequently asserting that a Review Document does not comply with the requirements of the Contract (even if the Purchaser previously gave a notice under Clause 6A.2(a)(ii)(A) in respect of that Review Document).

6A.3 Updating the Review Documents

- (a) The Supplier must review and if necessary, update the Review Documents:
 - (i) as required to take account of events or circumstances which will, or may, affect the manner in which the Supplier carries out its obligations under the Contract and continue to correct any defects in or omission from a Review Document (whether identified by the Purchase or the Supplier);

- (ii) when directed to do so by the Purchaser; and
 - (iii) when required by Appendix E of the LRV Specification.
- (b) All updated Review Documents must be submitted for review in accordance with this Clause 6A.
 - (c) Without limiting the generality of Clause 6A.3(a), the Supplier must regularly review and, as necessary, revise its WHS Plan in accordance with WHS Legislation and submit an amended draft of its WHS Plan to the Purchaser in accordance with Clause 6A (to the extent applicable).
 - (d) Without limiting Clause 6A.3(a), the Supplier must within 30 days after the date of the Contract update the Annexures to the Contract as reasonably required by the Purchaser to remove historical references to documentation submitted with its tender.

6A.4 Compliance with Review Documents

The Supplier must:

- (a) at all times comply with the Not Rejected Review Documents;
- (b) ensure that its employees, agents and subcontractors comply with the Not Rejected Review Documents; and
- (c) document and maintain detailed records of inspections and audits undertaken as part of any Review Document.

6A.5 No restriction on the Purchaser's rights

The Purchaser and the Supplier acknowledge and agree that:

- (a) the Purchaser owes no duty to the Supplier:
 - (i) to review the Review Documents for errors or compliance with the requirements of the Contract;
 - (ii) in any review of any Review Document it does undertake; or
 - (iii) to consult with the Supplier or to make any comments regarding any Review Document;
- (b) the Purchaser's review or rejection of, or consultation or comments on, or any other Direction or act or omission with respect to the Review Documents (including any failure by the Purchaser to review, reject, consult or comment regarding any Review Document), will not lessen or otherwise affect:
 - (i) the Supplier's warranties under Clause 8A.1 or any of its obligations or liabilities under the Contract or according to law; or
 - (ii) the Purchaser's rights against the Supplier under the Contract or according to law; and
- (c) the Purchaser's exercise of (or failure to exercise) any of its rights under Clause 6A.2 will not preclude the Purchaser from subsequently asserting that a Review Document does not comply with the requirements of the Contract (even if the Purchaser previously gave a notice under 6A.2(a)(ii)(A) in respect of that Review Document).

6A.6 No relief

- (a) The Supplier will not be relieved from any of its obligations under the Contract or from any of its liabilities under the Contract or at law as a result of:
 - (i) compliance by the Supplier with its obligations under this Clause 6A, including the implementation of and compliance with the Review Documents;
 - (ii) any direction by the Purchaser concerning a Review Document or the Supplier's compliance with a Review Document;

- (iii) any audits or other monitoring by the Purchaser of the Supplier's compliance with the Review Documents; or
 - (iv) any failure by the Purchaser, or anyone else acting on behalf of the Purchaser, to detect any non-compliance including where any failure arises from any negligence on the part of the Purchaser or any other person.
- (b) The Supplier's compliance with its obligations under this Clause 6A is not evidence of compliance by the Supplier with its other obligations under the Contract and will not discharge any of the Supplier's obligations under the Contract except those set out in this Clause 6A.

6B Project review

The Supplier shall:

- (a) meet monthly (or at such other times as the parties agree) with the Purchaser and any other persons whom the Purchaser nominates;
- (a) discuss the report it has prepared under paragraph (c) of this Clause and such other matters as the Purchaser may from time to time require;
- (b) prepare and provide the Purchaser with a written report at each meeting in accordance with paragraph (a) of this Clause, on all work health, safety and rehabilitation matters (including matters concerning or arising out of or in connection with Clause 10A), including a summary of the Supplier's compliance with WHS Legislation;
- (c) promptly and fully respond to any questions which the Purchaser asks in relation to any report; and
- (d) if it requires instructions from the Purchaser, make all necessary recommendations as to the action required.

The Purchaser shall:

- (e) before each meeting - prepare an agenda for that meeting; and
- (f) after each meeting - prepare minutes of the meeting and distribute them to all attendees of the meeting, however a resolution or communication at any meeting (or minutes recording any resolution or communication) shall not constitute a direction as defined in Clause 1.1 unless and until a separate direction is given to the Supplier in writing.

6C Design of equipment

6C.1 Supplier's obligations in relation to design

- (a) The Supplier must carry out its design obligations in relation to the Equipment to a level of skill, care and diligence reasonably expected of the design and engineering profession for works of the nature of the design and manufacture of the Equipment and so that the Equipment meets the requirements of the Contract and when complete will be fit for its Intended Purpose.
- (b) The Supplier must design and manufacture the Equipment in accordance with:
 - (i) the LRV Specification;
 - (ii) all Relevant Standards;
 - (iii) the Not Rejected Design Management Plan; and
 - (iv) the other requirements of the Contract, as the Purchaser may vary under Clause 23.

6C.2 Development and submission of Design Documentation

The Supplier must develop, submit and complete the Design Documentation for each Design Review Submission in accordance with the requirements of the Contract, the Not Rejected LRV Program and the Not Rejected Design Management Plan.

- (a) The Supplier must develop, submit and complete the Further Design Documentation prior to the expiration of 4 weeks from non rejection of the Critical Design Stage Design Documentation of the date of execution of the Amended Supply Contract.
- (b) The Supplier must give the Purchaser throughout the preparation of the Design Documentation for the Equipment the opportunity to review, comment on and monitor the design performance of the Supplier in accordance with this Clause 6C.
- (c) The Supplier must give the Purchaser, at each Design Stage for each Design Review Submission three hard copy and one electronic (native and PDF formats) sets of all Design Documentation and Related Documents complying with the requirements of the LRV Specification and the Further LRV Specification and the Not Rejected Design Management Plan relating to that Design Review Submission.
- (d) The Supplier must ensure that the Design Documentation for each Design Review Submission:
 - (i) includes all Design Documentation that is relevant to that Design Review Submission;
 - (ii) is submitted in a form approved by the Purchaser;
 - (iii) is submitted progressively and in a timely manner in accordance with the Not Rejected LRV Program and the Not Rejected Design Management Plan; and
 - (iv) is submitted in a manner which, having regard to the quantum of Design Documentation submitted, will allow the Purchaser a reasonable opportunity to review the Design Documentation within the timeframes contemplated by the Contract.
- (e) If a Design Review Submission submitted by the Supplier requires any Design Documentation submitted as part of a previous Design Review Submission to be amended in order to comply with the requirements of the LRV Specification, the Additional LRV Specification and the Contract, the Supplier must submit updated versions of the affected Design Documentation as part of the Design Review Submission.
- (f) The Supplier must, if required by the Purchaser:
 - (i) make available the appropriate design personnel to:
 - (A) explain the Design Documentation; and
 - (B) provide such information regarding the Design Documentation as the Purchaser reasonably requests; and
 - (ii) deliver design presentation workshops at times and as requested by the Purchaser and attended by all relevant personnel from the Supplier's design team to the nominees of the Supplier on the status and detail of the Design Documentation.

6C.3 Review of Design Documentation for Equipment by the Purchaser

- (a) The Purchaser may (but is not obliged to) make comments to the Supplier in respect of the Design Documentation submitted by the Supplier for the Equipment.
- (b) Within:
 - (i) during the Preliminary Design Stage, 20 Business Days; and
 - (ii) during the Critical Design Stage, 20 Business Days,
of receipt of Design Documentation for any Design Review Submission for any Equipment, the Purchaser must notify the Supplier that the Design Documentation is either:
 - (A) "Not Rejected" and that the Purchaser has no objection to the Supplier proceeding to the next Design Stage for the relevant Design Review

Submission for that Equipment or commencing manufacture or installation (as applicable) of the Design Review Submission for the Equipment to which it relates;

- (B) "Not Rejected Subject to Comments", during the Preliminary Design Stage only, if the Purchaser has no objection to the Supplier proceeding to the Critical Design Stage subject to the Supplier addressing to the Purchaser's satisfaction, in the Critical Design Stage, the comments made by the Purchaser; or
 - (C) "Rejected" if in the reasonable opinion of the Purchaser, the Design Documentation does not comply with the requirements of the Contract and provide written reasons for the rejection.
- (c) If the Purchaser does not issue a notice under paragraph (b) within the required timeframe the relevant Design Documentation will be deemed to be "Not Rejected".
 - (d) The Supplier must, promptly and in any case no later than 10 Business Days (or as agreed with the Purchaser) of receipt of notice from the Purchaser that any Design Documentation is "Rejected", submit amended Design Documentation to the Purchaser and the process set out in this Clause 6C.3 will reapply.
 - (e) A Design Stage for a Design Review Submission for any Equipment will be complete when:
 - (i) the Supplier has submitted to the Purchaser all Design Documentation applicable to the Design Review Submission for the Equipment; and
 - (ii) a period of:
 - (A) during the Preliminary Design Stage, 20 Business Days;
 - (B) during the Critical Design Stage, 20 Business Days,
 after the submission of that Design Documentation has expired and the Purchaser has not "Rejected" that Design Documentation.
 - (f) A professionally qualified engineer engaged by the Supplier must certify that the Final Design Documentation for each Design Review Submission for any Equipment is appropriate for manufacture of the Equipment to which it relates and is in accordance with the requirements of the LRV Specification and the Contract by providing the Purchaser with a certification in the form of Annexure Part G.

6C.4 Final Design Documentation

- (a) Use of any Design Documentation for the purpose of manufacturing any Equipment before the Final Design Documentation is complete is at the Supplier's risk.
- (b) The Supplier must not amend the Final Design Documentation unless it first submits the proposed amendments to the Purchaser, together with:
 - (i) a description of the amendment to the Final Design Documentation;
 - (ii) its reasons for seeking to amend the Final Design Documentation;
 - (iii) a review of safety implications (pre and post amendment);
 - (iv) a review on the impact of the amendment to the Final Design Documentation on:
 - (A) other deliverables under the Contract (including Technical Maintenance Plan, Training Materials, Systems Hazard Analysis and Failure Modes, Effects and Criticality Analysis (FMECA) and Test Specifications;
 - (B) the reliability of the LRVs;
 - (C) the number and identity of the Specialist Maintenance Tools;
 - (D) the number and identity of the Insurance Spares; and

- (E) compatibility between LRVs and certification; and
- (v) an environmental assessment of the proposed amendment to the Final Design Documentation,

and the process in Clause 6C.3 has been reapplied to the proposed amendments.

- (c) The Supplier must:
 - (i) provide to the Purchaser the FMECA data and associated information in respect of the Additional LRVs (which data and associated information must not to be disclosed to any third party) within 20 Business Days of a written notice from the Purchaser;
 - (ii) ensure that the FMECA data and associated information in respect of the Additional LRVs is consistent with the FMECA data and associated information in respect of the LRVs;
 - (iii) provide to the Purchaser the Design Work Breakdown Structure document similar to the document provided in Annexure AC and updated in accordance with the Original Design Documentation and the Further Design Documentation and which must be in a format suitable the Purchaser to pass on that document to the ISO within 20 Business Days of a written notice from the Purchaser;
 - (iv) ensure that all Technical Maintenance Plans for the Additional LRVs will be the up to date latest versions (as at the time of Delivery of the Additional LRVs); and
 - (v) ensure that all Technical Maintenance Plans for the Additional LRVs are developed using a maintenance requirements analysis or similar process.

6C.5 Design change post manufacture

If the Supplier requires to modify the LRV after manufacture, it must:

- (a) repeat the process in Clause 6C.5(b);
- (b) issue a field modification instruction (FMI) providing a step by step guide of how the modification is to be carried out including the materials and resources required; and
- (c) ensure that all as-built drawings are updated accordingly.

6C.6 Restriction on the Purchaser's rights

The Purchaser and the Supplier acknowledge and agree that:

- (a) the Purchaser owes no duty to the Supplier:
 - (i) to review any Design Documentation for errors or compliance with the requirements of the Contract;
 - (ii) in any review of the Design Documentation it does undertake; or
 - (iii) to consult with the Supplier or to make any comments regarding any Design Documentation;
- (b) no review or rejection of, or consultation or comments by the Purchaser or any failure by the Purchaser to review, reject, consult or comment regarding any Design Documentation will lessen or otherwise affect:
 - (i) the Supplier's warranties under Clause 8A.1 or any of its liabilities or responsibilities under the Contract or according to law; or
 - (ii) the Purchaser's rights against the Supplier under the Contract or according to law; and
- (c) the Purchaser's exercise of (or failure to exercise) any of its rights under Clause 6C.3 will not preclude the Purchaser from subsequently asserting that any Design Documentation (including Final Design Documentation) does not comply with the requirements of the

Contract even if the Purchaser previously gave a notice under Clause 6C.3(b)(A) in respect of that Design Documentation.

7 Assignment and subcontracting

7.1 Assignment

- (a) The Supplier must not:
- (i) assign, transfer, mortgage, charge, make the subject of any trust or otherwise deal with or encumber all or any of its rights, benefits or interest in the Contract or any obligations under it; or
 - (ii) procure or permit to exist any of the foregoing,
- without the prior written consent of the Purchaser which must not be unreasonably withheld if the proposed assignee or transferee:
- (A) is a related entity of the Supplier and is technically and financially capable of performing the Contract; and
 - (B) provides a parent company guarantee acceptable to the Purchaser.
- (b) Any anticipated or actual or material Change of Control of the Supplier must be promptly notified in writing to the Purchaser. Any Change of Control will be deemed as an assignment in accordance with paragraph (a) above.
- (c) Subject to Clause 7.1(d), the Purchaser must not assign any right, benefit or interest under the Contract without the prior written approval of the Supplier, which must not be unreasonably withheld if the proposed assignee or transferee is:
- (i) reputable and has sufficient financial and operational capacity to perform the obligations of the Purchaser under this Contract; and
 - (ii) not a competitor of the Supplier.
- (d) The Purchaser may assign any right, benefit or interest under the Contract without the prior written approval of the Supplier if the assignee or transferee is a New South Wales Government agency.

7.2 Subcontracting

- (a) The Supplier must not without the Purchaser's prior written approval:
- (i) enter into a subcontract or allow a subcontractor to enter into a subcontract with a value in excess of AUD 1 million or for any of the following subsystems (irrespective of the value of the subcontract):
 - (A) brake system;
 - (B) propulsion (traction) system;
 - (C) LRV monitoring system;
 - (D) heating, ventilation and airconditioning system;
 - (E) doors system;
 - (F) communications system (voice and data); and
 - (G) bogies and suspension system; or
 - (ii) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.
- (b) The subcontractors identified in Item 17 are approved for the work identified in Item 17 in relation to each such subcontractor.

- (c) With a request for approval, the Supplier must provide to the Purchaser particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor.
- (d) The Supplier must provide to the Purchaser other information which the Purchaser reasonably requests, including the proposed subcontract documents.
- (e) The Purchaser will notify the Supplier of approval or the reasons why approval is not given. The Purchaser's approval to the subcontract may be conditional.
- (f) The Supplier is liable to the Purchaser for the acts, defaults or omissions of subcontractors and employees and agents of subcontractors as if they were those of the Supplier.
- (g) Approval to subcontract does not relieve the Supplier from any liability or obligation under the Contract.

8 Intellectual property rights

8.1 Warranties

The Supplier warrants that:

- (a) it has appropriate licences of or title to the Licenced Intellectual Property and any other designs, materials, documents, manuals and methods of working provided by the Supplier;
- (b) it has the authority to grant the Purchaser the licence to the Licenced Intellectual Property granted under Clause 8.4; and
- (c) the use of the Equipment, the Design Documentation, the Licenced Intellectual Property and any other design, materials, documents and methods of working provided by or on behalf of the Supplier under the Contract will not infringe any Intellectual Property Right of any third party.

8.2 Indemnity

The Supplier indemnifies the Purchaser and is liable for all Claims and Losses which may arise from, or be incurred by reason of:

- (a) any infringement, violation, alleged infringement or alleged violation of any Intellectual Property Right; or
- (b) any breach of the warranties given by the Supplier under Clause 8.1,

provided that liability under this indemnity is reduced proportionately to the extent that the Purchaser or any of its agents, employees or contractors caused or contributed to the Claim or Loss.

8.3 Purchaser Material

- (a) All Intellectual Property Rights in Purchaser Material is owned by the Purchaser.
- (b) The Supplier assigns to the Purchaser, on creation, all Intellectual Property Rights in:
 - (i) Improvements of the Purchaser Material made by the Supplier, or on behalf of the Supplier by anyone other than the Purchaser; and
 - (ii) anything that is created or developed by the Supplier, or on behalf of the Supplier by anyone other than the Purchaser, using the Purchaser Material.
- (c) The Supplier must do, and procure, any further acts needed to perfect the assignment to the Purchaser of any Intellectual Property Rights contemplated by paragraph (b).

8.4 LRV Livery Design

The Supplier assigns to the Purchaser, on creation, all Intellectual Property Rights in the LRV Livery Design. The Supplier must do, and procure, any further acts needed to perfect the assignment to the Purchaser of any Intellectual Property Rights in the LRV Livery Design.

8.5 Licence of Purchaser Material

- (a) The Purchaser grants to the Supplier a non-exclusive, royalty free, non-transferable licence:
 - (i) to use; and
 - (ii) subject to the Purchaser's prior written consent, reproduce and adapt, Purchaser Material (including Improvements) for the sole purpose of performing its obligations under the Contract.
- (b) The Supplier may sublicense its rights set out in this Clause 8.5 to its subcontractors, but only for the sole purpose of the subcontractor performing its obligations under the relevant subcontract to facilitate the performance of the Supplier's obligations under the Contract.
- (c) The Purchaser reserves all other rights in the Purchaser Material (and Improvements).

8.6 Rights granted to the Purchaser in Licenced Intellectual Property

- (a) The Supplier grants to the Purchaser a non-exclusive, irrevocable, perpetual, transferable, royalty free licence to:
 - (i) use;
 - (ii) maintain;
 - (iii) repair;
 - (iv) service (including the supply of replacement parts);
 - (v) integrate other systems with;
 - (vi) further enhance or develop;
 - (vii) reproduce and adapt; and
 - (viii) sublicense,

the Licenced Intellectual Property for the purposes specified in or reasonably ascertainable from the LRV Specification and the Contract (including the commissioning, operation, maintenance and repair of the Equipment) without the need for consent from the Supplier or any third party.
- (b) The licences granted in paragraph (a) arise in respect of each component of the Licenced Intellectual Property on the later of the Date of Contract and the date of creation of that component.
- (c) The Supplier must provide to the Purchaser a copy of the licence between the Supplier and each supplier of Third Party Intellectual Property Rights.
- (d) The Purchaser acknowledges that as between the Purchaser and the Supplier, the Supplier owns any Improvements to the Licenced Intellectual Property.
- (e) The Purchaser must comply with reasonable directions given by the Supplier in relation to the protection or security of the Licenced Intellectual Property.

8.7 Terms of licence in respect of Licenced Intellectual Property

The licence granted under Clause 8.6(a) must:

- (a) survive:

- (i) fundamental breach, repudiation, rescission, frustration, suspension, termination or expiration of the Contract;
 - (ii) work being taken out of the hands of the Supplier under Clause 23;
 - (iii) any other discharge of the Contract; and
- (b) be assignable by the Purchaser to any third party.

8.8 Moral rights

The Supplier must ensure that in relation to all Moral Rights that subsist in any documents or materials provided by the Supplier under the Contract the relevant author of the documents or materials consents to the Purchaser and its respective employees, agents and subcontractors:

- (a) not identifying him or her as the author;
- (b) making any changes (material or otherwise) to the documents or materials; and
- (c) using, disclosing, reproducing, transmitting, exhibiting, communicating or publishing the documents or materials whether changes have been made to it or not, in any context and with or without any other material as the Purchaser and its respective employees, agents and contractors deems fit.

8.9 Escrow of Software

- (a) The Supplier must maintain in escrow with the Escrow Agent a copy of the source code and all documentation necessary to understand and use the source code for all Software that forms part of the Licenced Intellectual Property, from the time that the licence arises in Clause 8.6 and on the terms of the Escrow Agreement.
- (b) The Supplier must, as soon as practicable after the Restatement Date, update the material held with the Escrow Agent with the material relevant to the Additional LRVs. The Supplier acknowledges that the provisions of the Escrow Agreement apply to this additional material. The Supplier must as soon as practicable, if necessary, execute any additional documents to facilitate the application of the Escrow Agreement to the additional material.
- (c) The Purchaser may, at no cost to the Purchaser, obtain the source code if:
 - (i) the Purchaser terminates the Contract under Clause 25.4; and
 - (ii) not used.
- (d) The Purchaser must return to the Escrow Agent any source code released to the Purchaser in accordance with this Clause 8.9 as soon as practical after the Purchaser no longer reasonably requires it to exercise its rights under Clause 8 and otherwise in accordance with the Escrow Agreement.

8A Representations and warranties

8A.1 Warranties in relation to the Equipment

The Supplier represents and warrants that the Equipment:

- (a) on Delivery and at all relevant times will be fit for its Intended Purpose; and
- (b) complies with:
 - (i) all Relevant Standards;
 - (ii) all relevant Legislative Requirements; and
 - (iii) the requirements of the Contract including the LRV Specification.

8A.2 Warranties in relation to suitability of LRVs and LRT

- (a) The Supplier represents and warrants that the LRVs and Additional LRVs (respectively) can be used for their Intended Purpose.

- (b) The Supplier acknowledges and agrees that it is not entitled to make, and the Purchaser will not be liable for, any Claim arising out of or in connection with the LRT or Project not being suitable to enable the LRVs and Additional LRVs (respectively) to be used for their Intended Purpose.

8A.3 General representations and warranties by Supplier

The Supplier represents and warrants that:

- (a) it has power to execute, deliver and perform its obligations under or as contemplated by the Contract and all necessary corporate and other action has been taken to authorise such execution, delivery and performance;
- (b) the Contract constitutes valid and legally binding obligations enforceable against the Supplier in accordance with its terms, subject to the availability of equitable remedies;
- (c) the following will not contravene any existing applicable laws to which the Supplier is subject or any deed or arrangement binding the Supplier:
 - (i) execution and delivery by the Supplier of the Contract;
 - (ii) performance by the Supplier of its obligations under the Contract; and
 - (iii) compliance by the Supplier with the provisions of the Contract; and
- (d) it has the skill, competence, resources, commitment and experienced personnel available to undertake its obligations under the Contract.

8A.4 General representations and warranties by Purchaser

The Purchaser represents and warrants that:

- (a) it has power to execute, deliver and perform its obligations under or as contemplated by the Contract and all necessary corporate and other action has been taken to authorise such execution, delivery and performance;
- (b) the Contract constitutes valid and legally binding obligations enforceable against the Purchaser in accordance with its terms, subject to the availability of equitable remedies; and
- (c) the following will not contravene any existing applicable laws to which the Purchaser is subject or any deed or arrangement binding the Purchaser:
 - (i) execution and delivery by the Purchaser of the Contract;
 - (ii) performance by the Purchaser of its obligations under the Contract; and
 - (iii) compliance by the Purchaser with the provisions of the Contract.

8A.5 Non-reliance

The Supplier:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made, or provided to the Supplier, by the Purchaser or anyone on behalf of the Purchaser or any other information, data, representation, statement or document for which the Purchaser is responsible or may be responsible, whether or not obtained from the Purchaser or anyone on behalf of the Purchaser (excluding notices issued or directions given by the Purchaser under the Contract); or
 - (ii) the accuracy, adequacy, suitability or completeness of any information, data, representation, statement or document contemplated by paragraph (a)(i),
for the purposes of entering into the Contract; and
- (b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations.

8A.6 Acknowledgement

The Supplier acknowledges and agrees that:

- (a) except as expressly set out in the Contract, the Purchaser makes no representation, and gives no warranty, in respect of:
 - (i) the Contract;
 - (ii) any transaction or arrangement contemplated under the Contract; or
 - (iii) any other matter relevant to the Supplier's decision to enter into the Contract;
- (b) acknowledges that it is aware that the Purchaser has entered into the Contract relying upon the warranties, acknowledgements and agreements in this Clause 8A and in the Deed of Disclaimer; and
- (c) any receipt, acceptance, review of, comment, verification, direction on, approval, consent or endorsement of any Equipment or work under the Contract (including the Design Documentation) by the Purchaser whether under Clause 6C or otherwise will not affect the Supplier's obligations and liability under the Contract.

9 Not used

10 Authorisations, legislative requirements and compliance with guidelines

10.1 Compliance

- (a) The Supplier must comply with and satisfy all Legislative Requirements except those in Item 18 or directed by the Purchaser to be complied with or satisfied by or on behalf of the Purchaser.
- (b) The Supplier, upon finding that a Legislative Requirement is at variance with the Contract, must promptly give the Purchaser written notice thereof.

10.2 Not used

10.3 Authorisations to be obtained by the Supplier

The Supplier must expeditiously and diligently apply for and obtain from each relevant Authority all necessary Authorisations required to undertake the work under the Contract other than the Planning Approval.

10.4 Compliance by the Supplier

Except as otherwise provided by the Contract, the Supplier must comply with all Authorisations obtained in connection with the work under the Contract.

10.5 Compliance with directions of Authorities

The Supplier must comply with all lawful directions given by any Authorities in connection with their proper consideration of the application for any Authorisations and with the work under the Contract.

10.6 Supplier to bear costs

The Supplier must bear all costs incurred in connection with obtaining and complying with the conditions of all Authorisations required to be obtained in connection with the work under the Contract other than the costs associated with obtaining the Planning Approval.

10.7 Industrial relations management

- (a) The Supplier must manage all aspects of industrial relations connected with its obligations under the Contract, including compliance with the IR Guidelines, including by documenting and implementing an Industrial Relations Plan which complies with the IR Guidelines and keeping the Purchaser informed of industrial relations issues which affect or are likely to affect the performance of its obligations under the Contract.

- (b) The Supplier must inform itself of all matters relevant to the employment of labour in connection with the Contract and all industrial matters relevant to the performance of its obligations under the Contract.

10A Safety and accreditation

10A.1 Protection of persons and property

- (a) The Supplier must perform the work under the Contract safely and so as to protect persons and property.
- (b) If the Purchaser considers there is a risk of injury to people or damage to property arising from the work under the Contract, the Purchaser may direct the Supplier to change its manner of working or to cease working and the Supplier must comply with any such direction at its cost.

10A.2 Health and safety

- (a) In the Contract, unless the context otherwise indicates, in relation to any aspect of the performance of the work under the Contract that is the subject of a fitness for purpose warranty, a reference to the Intended Purpose requires, among other things, that work under the Contract, when completed, will comply with all health and safety requirements contained in the WHS Legislation.
- (b) Without limiting Clause 18A.1, it is a condition precedent to the Purchaser's obligation under Clause 18A.1 to provide the Supplier with access to, or possession of, the Site that the Supplier has prepared and submitted a WHS Plan to the Purchaser pursuant to Clause 6A and the Purchaser has had the number of days set out in Annexure Part T, or if not stated in Annexure Part T as set out in the Purchaser's Project Requirements, to review the WHS Plan and has not rejected the WHS Plan.
- (c) Without limiting Clause 7.2, the Supplier shall:
 - (i) ensure that, if any Laws, including in the State or Territory in which the work under the Contract is situated or the work under the Contract is carried out (as the case may be), require that:
 - (A) a person:
 - (I) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - (II) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of subparagraph (i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (iii) if requested by the Purchaser or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Purchaser before the Supplier or subcontractor (as the case may be) commences such work.
- (d) The Supplier shall carry out the work under the Contract:

- (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (e) If the Purchaser reasonably considers there is a risk to the health and safety of people or damage to property arising from the work under the Contract, the Purchaser may direct the Supplier to change its manner of working or to cease working to the extent required to avoid or mitigate the risk to health and safety of people or damage to property and so as not to prejudice the Supplier's ability to comply with WHS Legislation.
- (f) In this Clause the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.
- (g) Without limiting the Supplier's obligations under any other provision of the Contract:
- (i) the Supplier must provide prior written notice to the Purchaser in respect of and to the extent that any work under the Contract includes construction work. Upon receipt of any notice under this Clause 10A.2(g)(i), the Purchaser:
 - (A) engages the Supplier as the principal contractor for the work under the Contract; and
 - (B) authorises the Supplier to have management and control of each workplace at which the work under the Contract is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (ii) the Supplier accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation,
and the Supplier's engagement and authorisation as principal contractor will continue:
 - (iii) subject to subparagraph (iv), until the Date of Operational Completion unless sooner revoked by the Purchaser taking over work under this Contract or terminating the Contract pursuant to any provision of the Contract or according to Law; and
 - (iv) in respect of any rectification work under Clause 22 that is construction work, during the period any such work is carried out during the Defects Liability Period.
- (h) To the extent not prohibited by law, the Supplier indemnifies the Purchaser against any damage, expense, loss or liability suffered or incurred by the Purchaser caused by the failure of the Supplier to discharge the duties imposed on a principal contractor under the WHS Legislation or otherwise comply with this Clause 10A.
- (i) The Supplier shall:
- (i) ensure that in carrying out the work under the Contract:
 - (A) it complies with all Laws and other requirements of the Contract for work health, safety and rehabilitation management;
 - (B) all subcontractors and consultants comply with the requirements referred to in this Clause 10A and their respective obligations under the WHS Legislation; and
 - (C) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (ii) notify the Purchaser immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the work under the Contract;

- (iii) institute systems to obtain regular written assurances from all subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
 - (iv) provide the written assurances obtained pursuant to subparagraph (iii), together with written assurance(s) from the Supplier about the Supplier's ongoing compliance with the WHS Legislation, to the Purchaser;
 - (v) provide the Purchaser with a written report at each meeting in accordance with Clause 6B(c), on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in connection with, this Clause 10A), or any other relevant matters as the Purchaser may require from time to time, including a summary of the Supplier's compliance with the WHS Legislation;
 - (vi) cooperate with all Separate Contractors and the Purchaser to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of good faith to the Purchaser in carrying out the work under the Contract to enable the Purchaser to discharge the Purchaser's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause the Purchaser to be in breach of the WHS Legislation; and
 - (ix) ensure its subcontracts include provisions equivalent to the obligations of this Clause 10A (save for the engagement of the Supplier as principal contractor).
- (j) Without limiting the Supplier's obligations under any other Clause of the Contract, insofar as the Supplier, in carrying out the work under the Contract, is:
- (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the Work Health and Safety Act 2011 (NSW) applies;
 - (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the Work Health and Safety Act 2011 (NSW) applies;
 - (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the Work Health and Safety Act 2011 (NSW) applies;
 - (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the Work Health and Safety Act 2011 (NSW) applies; or
 - (v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the Work Health and Safety Act 2011 (NSW) applies,
- the Supplier shall comply with the applicable obligations under the WHS Legislation.
- (k) The failure by the Supplier to comply with any obligation under this Clause 10A will be deemed to be a substantial breach for the purposes of Clause 25.2.

10A.3 Rail Safety

- (a) To the extent required by law, the Supplier must ensure that it and any Related Body Corporate and its agents, subcontractors, consultants, nominees and licensees, obtain and maintain any Accreditation under the Rail Safety Act and comply with all conditions of such Accreditation and all relevant obligations under the Rail Safety Act required to carry out its obligations under the Contract.
- (b) The Supplier must provide to the Purchaser:

- (i) copies of any Rail Safety Interface Agreements required by the Rail Safety Act (if any) in relation to the Equipment;
- (ii) copies of all notices and all reports, documents and correspondence associated with such notices, between the Supplier and ONRSR in relation to the Equipment in connection with the following requirements of the Rail Safety Act:
 - (A) Accreditation offences;
 - (B) surrender, suspension or revocation of Accreditation;
 - (C) variation of conditions and restriction of Accreditation including determinations of application for variation of Accreditation;
 - (D) notifiable occurrences, including an accident or incident associated with railway operations that may cause significant property damage, serious injury or death, or is otherwise specified in the Rail Safety Act regulations as being a 'notifiable occurrence';
 - (E) reports into railway accidents;
 - (F) improvement notices issued under section 175 of the Rail Safety Act or prohibition notices issued under section 179 of the Rail Safety Act and correspondence from the Supplier in relation to an improvement notice or prohibition notice; and
 - (G) any undertaking to ONRSR by the Supplier.
- (c) The Supplier acknowledges that it is the Purchaser's intention to require the ISO to procure the necessary Accreditation for the Project in relation to the on-site dynamic site acceptance testing, commissioning and operation of the Additional LRVs (and Additional Equipment as applicable). The Supplier must provide all assistance reasonably required by the ISO for it to obtain such Accreditation.

10A.4 ISO's Accreditation variation

The Supplier acknowledges and agrees that:

- (a) in order to test and operate the LRVs the ISO will be required to obtain certain Accreditation from ONRSR; and
- (b) it will, in good faith, cooperate with the Purchaser and the ISO and do everything reasonably necessary to enable and assist the ISO to obtain the required Accreditation from ONRSR, including by:
 - (i) providing the Not Rejected Safety Cases and the ISO Accreditation Deliverables; and
 - (ii) providing all documents, drawings, specifications and other information or evidence requested for this purpose by the Purchaser or the ISO,

by the relevant times for submission specified in Appendix E of the LRV Specification.

10A.5 The Purchaser's Safety Assurance Plan

The Supplier must perform its obligations under the Contract to enable the Purchaser and its employees, agents and subcontractors to implement and comply with the requirements of the Purchaser's Safety Assurance Plan.

11 Quality management

11.1 Inspection and audit of the Equipment

In respect of the Equipment, the Purchaser may:

- (a) direct the Supplier to supply particulars of the mode and place of manufacture, the source of supply of materials and other components, the performance capacities and other related information; and
- (b) together with any person authorised by the Purchaser, inspect such place or sources in accordance with Clause 11A.

11.2 Quality Management System

- (a) The Supplier must prepare and submit to the Purchaser in accordance with Clause 6A a Quality Management System which:
 - (i) complies with Australian/New Zealand Standard AS/NZS ISO 9001:2008 Quality management systems – Requirements; and
 - (ii) makes provision for the implementation of a quality system in connection with performance by the Supplier of its obligations under the Contract which is in all respects in accordance with all Relevant Standards and the requirements of the Contract (including the LRV Specification).
- (b) The Supplier must ensure that its Quality Management System is properly, fully and professionally implemented during the performance of its obligations under the Contract.
- (c) The Purchaser may, on reasonable notice, inspect the Supplier's records to examine the operation and effect of the Quality Management System.
- (d) The Supplier acknowledges and agrees that:
 - (i) the Quality Management System will be used only as an aid to achieving compliance with the Contract and to document such compliance; and
 - (ii) the implementation and compliance with any Quality Management System and any failure by the Purchaser to detect any Defect in the Equipment will not relieve the Supplier of any of its other obligations under the Contract.

11A Inspection and audit

11A.1 Purchaser's rights

- (a) Without limiting any other provisions of the Contract, the Purchaser and any other person authorised by the Purchaser may, on 2 Business Days' notice (or without notice in the case of an emergency or threat to public safety) and at the Purchaser's cost:
 - (i) subject to the Supplier's reasonable safety and security constraints, enter the premises of the Supplier or any of its subcontractors for the purposes of:
 - (A) observing the performance of the Supplier's obligations under the Contract and monitoring compliance by the Supplier of its obligations under the Contract; and
 - (B) exercising any right or performing any obligation which the Purchaser has under the Contract; and
 - (ii) carry out an audit of the Supplier's documents and other records (other than Commercially Sensitive Information which the Supplier is not otherwise required to disclose under this Contract) it has related to the work under the Contract to the extent reasonably necessary to verify the Supplier's performance of its obligations under the Contract.
- (b) The Supplier will use its best endeavours to exercise its rights under this Clause 11A.1 in a manner which does not unreasonably interfere with the performance by the Supplier of its obligations under the Contract.

11A.2 Supplier to assist

The Supplier must:

- (a) give the Purchaser and any other person authorised by the Purchaser access to all records relating to the Contract to the extent necessary to enable an audit as contemplated by Clause 11A.1;
- (b) allow the Purchaser and any other person authorised by the Purchaser to have access to the premises and personnel of the Supplier and any of its subcontractors to the extent necessary to carry out any inspection or audit;
- (c) provide the Purchaser and any other person authorised by the Purchaser with such assistance as they may reasonably require in connection with their inspection or audit, including making documents available, at the reasonable cost of the Purchaser, and installing and operating any compatible audit software; and
- (d) supply to the Purchaser and any other person authorised by the Purchaser, at the reasonable cost of the Purchaser, photocopies or electronic copies of information requested.

11A.3 No duty owed to the Supplier

The Purchaser does not owe any duty to the Supplier to inspect the work under the Contract or review any construction for errors, omissions or compliance with the requirements of the Contract and any inspection will not limit the warranties given by the Supplier under the Contract, nor alter or alleviate the obligations of the Supplier under the Contract.

12 Supplier's indemnity

12.1 General indemnity

(a)

(b)

(c)

(d)

13 Insurance

13.1 Insurance to be effected and maintained by the Purchaser

- (a) The Purchaser will effect and maintain contract works insurance for the value of the Equipment (**Purchaser Insurance Policies**) from the Date of Delivery until the Date of Operational Completion;
- (b) The Supplier acknowledges and agrees that, prior to the Date of Contract, it was provided with copies of the Purchaser Insurance Policies proposed to be effected by the Purchaser and:
 - (i) it reviewed and examined the terms of those Purchaser Insurance Policies;
 - (ii) it has satisfied itself as to the nature and extent of the cover provided by those Purchaser Insurance Policies;
 - (iii) without limiting the Supplier's obligations under the Contract, it will, if it determines to it be appropriate, take out at the Supplier's cost any insurance to:
 - (A) insure any risks not insured by the insurance policies; or
 - (B) cover any exclusions, conditions, deductibles or excesses in the Purchaser Insurance Policies; and
 - (iv) where it bears the risk of the relevant loss or damage, or is required to indemnify the Purchaser, agrees to pay the cost of any excess or bear the cost of any deductibles (as applicable) in relation to a claim made by any insured under the Purchaser Insurance Policies.

13.2 Insurance to be effected and maintained by the Supplier

The Supplier must effect and maintain the following insurances (**Supplier Insurance Policies**) on or before the Date of Contract until the Date of Operational Completion:

- (a) a suitable policy against any liability, loss, claim, demand, suit or proceeding, costs and expenses arising at common law or under any statute or other legislative provision relating to workers compensation as a result of personal injury or death of any person employed by the Supplier;
- (b) a public and products liability policy of insurance which covers the Purchaser and the Supplier and any subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interest which covers their liabilities to third parties and includes liability for loss of or damage to property and death of or injury to any person (other than liability which is covered by the insurance referred to in Clause 13.2(a)) for an amount in respect of any one occurrence not less than \$ _____
- (c) a professional indemnity insurance policy for any one claim of not less than \$ _____ with a total aggregate cover of not less than \$ _____ covering all work undertaken by or on behalf of the Supplier with respect to the work under the Contract, to be maintained for a period of 10 years after the Restatement Date;
- (d) a marine cargo insurance policy:
 - (i) in respect of materials, components and things which are to be used for or incorporated in the work under the Contract; and
 - (ii) against destruction, loss or damage; and
- (e) not used;

- (f) a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased by the Supplier or its subcontractors) in connection with the carrying out of the work under the Contract;
- (g) a motor vehicle insurance policy which covers third party property damage related to any motor vehicles and unregistered vehicles and plant which are used in connection with the work under the Contract; and
- (h) compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with the work under the Contract.

13.3 Supplier Insurance Policies

- (a) The Supplier Insurance Policies must:
 - (i) be effected with an insurer approved by the Purchaser; and
 - (ii) be for such amounts and containing such conditions, endorsements and exclusions as are acceptable to the Purchaser.
- (b) The Supplier agrees to pay the cost of any excess or bear the cost of any deductibles (as applicable) in relation to a claim made under the Supplier Insurance Policies.

13.4 Copies of insurance policies to be provided to the Purchaser

The Supplier must provide, or cause to be provided to the Purchaser, a copy of each insurance policy, renewal certificate and endorsement slip of the Supplier Insurance Policies, as soon as practicable after receipt by the Supplier.

13.5 No vitiation of insurance

The Supplier and the Purchaser must not knowingly permit or suffer to be done any act, matter or thing whereby any insurance required to be effected under the Contract may be vitiated or rendered void or voidable.

13.6 Payment of premiums

The Supplier must pay or cause to be paid punctually all premiums and other moneys payable in respect of the Supplier Insurance Policies.

13.7 Disclosure

The Supplier must give full, true and particular information to the relevant insurer of all matters and things the non-disclosure of which might in any way prejudice or effect any such policy or policies of insurance or the payment of any or all moneys thereunder.

13.8 Notice to Purchaser

The Supplier must promptly notify the Purchaser of the proposed cancellation of any insurances required to be effected under the Contract and will not cancel, materially vary or allow any of the insurance policies to lapse without prior written consent of the Purchaser.

13.9 Failure to provide proof of insurance

If, after being requested in writing to do so, the Supplier fails to provide evidence of compliance with its insurance obligations under the Contract to the reasonable satisfaction of the Purchaser, without prejudice to other remedies available to the Purchaser, the Purchaser may effect and keep in force any such insurance and pay such premiums as may be necessary for the purpose and the amounts so paid will be a debt due from the Supplier to the Purchaser, which may be deducted or recovered by the Purchaser in accordance with the Contract or the Purchaser may refuse payment under the Contract until evidence of compliance with the Supplier's insurance obligations is provided to the reasonable satisfaction of the Purchaser.

13.10 Insurance claims procedures

- (a) The Supplier must immediately notify the Purchaser in writing of any occurrence or incident likely to give rise to a claim under the policies referred to in the Contract (with

the exception of claims under a liability policy in respect of a liability of the Purchaser to the Supplier) or of any other matter or thing in respect of which notice should be given by the Supplier to the Purchaser in terms of those policies.

- (b) In respect of any claim by the Supplier under the Purchaser Insurance Policies referred to in Clause 13.1(a), the Supplier authorises the Purchaser to, and agrees that the Purchaser will, have full control of the defence, conduct and settlement of such claim and will irrevocably instruct the insurers of the relevant Purchaser Insurance Policies accordingly. The Supplier must give all such information and assistance as may be reasonably practicable in all the circumstances and, if requested by the Purchaser, give to the Purchaser a statutory declaration as to any matters connected therewith.
- (c) In respect of any claim under the Purchaser Insurance Policies referred to in Clause 13.1(a), the Supplier must procure that its agents and subcontractors authorise the Purchaser to, and agree that the Purchaser will, have full control of the defence, conduct and settlement of such of such claim and will irrevocably instruct the insurers of the relevant Purchaser Insurance Policies accordingly. The Supplier must also procure that its agents and subcontractors give all such information and assistance as may be reasonably practicable in the circumstances and, if requested by the Purchaser, give to the Purchaser a statutory declaration as to any matters connected with the claim.
- (d) Notwithstanding the provisions of this Clause 13.10, the Supplier may take immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances and any such action will not prejudice the position of the Supplier under the policies of insurance in respect of any loss, destruction or damage.

13.11 Obligation to rebuild or reinstate

- (a) As often (prior to the Date of Delivery) as the Equipment is partially or wholly destroyed or damaged and, if directed by the Purchaser, the Supplier must apply all insurance moneys available and (to the extent the insurance moneys are insufficient) its own moneys, to rebuilding or reinstating the Equipment or making good the damage thereto so that the Equipment, following such reinstatement, rebuilding or making good of damage, satisfies the requirements of the Contract.
- (b) The Purchaser must pay to the Supplier all moneys received by the Purchaser in respect of any such insurance proceeds for the purpose of rebuilding or reinstating or making good the Equipment or any part thereof destroyed or damaged by progress payments as the work of rebuilding or restating or making good proceeds.
- (c) If the Purchaser does not issue a direction contemplated by paragraph (a), then the Purchaser will be entitled to the insurance proceeds and:
 - (i) the Supplier will be relieved of its obligations to achieve Operational Completion to the extent its ability to achieve Operational Completion is affected by the damage or destruction; and
 - (ii) the Supplier's payment entitlements will be adjusted accordingly.

13.12 Insurance moneys

All moneys in excess of \$ [redacted] received by the Purchaser or the Supplier in settlement of any claim under the insurance policy maintained in accordance with Clause 13.1(a) must be paid into a bank account directed by the Purchaser and such moneys must be held in that account for the purposes of rebuilding, repair, or making good, as the case may be, of the Equipment. The balance of moneys and any interest accrued thereon, if any, will be credited against any moneys owing by the Supplier to the Purchaser under the provisions of the Contract.

13.13 Liability not relieved

Neither failure to comply, nor full compliance, by the Supplier with the insurance provisions of the Contract, will limit or relieve the Supplier of its liabilities and obligations under any other term of the Contract.

14 Directions

- (a) Except where the Contract otherwise provides, the Purchaser may give a Direction orally but will within 5 Business Days confirm it in writing.
- (b) The Supplier must comply, and ensure that its Authorised Users comply, with all lawful instructions given by the Purchaser in writing with respect to the carrying out of the Supplier's obligations.

15 Programming

15.1 Information provided by the Purchaser

- (a) The Supplier must give the Purchaser reasonable advance notice of when the Supplier needs information, materials, documents or instructions from the Purchaser.
- (b) The Purchaser will not be obliged to give any information, materials, documents or instructions earlier than the Purchaser should reasonably have anticipated at the Date of Contract.

15.2 LRV Program

- (a) On the Date of Contract and within 10 Business Days after receipt of any notice under clause 2.3(a) and whenever the LRV Program is substantially changed, the Supplier will provide to the Purchaser an up-to-date LRV Program and any Related Documents which comply with the requirements of Clause 15.3.
- (b) The Supplier must not, unless permitted under Clause 17.5, depart from a Not Rejected LRV Program.
- (c) The Supplier must:
 - (i) update the LRV Program no less than weekly to take account of any:
 - (A) changes to the LRV Program;
 - (B) delays that have occurred;
 - (C) changes to the order of, or the times for, performance of the Supplier's obligations under the Contract; and
 - (D) any corrective action plans implemented by the Supplier; and
 - (ii) ensure that each update of the LRV Program:
 - (A) shows the effect of any:
 - (I) corrective action plans implemented by the Supplier; and
 - (II) extensions of time granted by the Purchaser;
 - (B) shows the timing for rectification of any Defects notified by the Purchaser; and
 - (C) allows for the submission of Review Documents and Design Documentation in the manner and at a rate which will give the Purchaser a reasonable opportunity to review the submitted Review Documents or Design Documentation within the period specified in Clause 6A.2 and 6C.3, as applicable.
- (d) Notwithstanding paragraph (b), the Purchaser may from time to time direct the Supplier to furnish to the Purchaser an updated LRV Program within the time directed by the Purchaser.

15.3 Format of the LRV Program

Each LRV Program must be in both hard copy and in an electronic version on CD in both PDF and unlocked native electronic format (with all logic links intact and nothing hidden or

protected) accompanied by all associated files so that they can be reproduced by the Purchaser using Primavera P6 as approved by the Purchaser and must show:

- (a) all principal activities relating to the design, manufacture, Delivery, testing and commissioning of the Equipment;
- (b) weekly time scales, their order and duration and interrelationship;
- (c) networks, including critical path networks;
- (d) current critical paths of, and float in, the Supplier's activities;
- (e) actual versus planned progress of the Supplier's activities;
- (f) if it is known, the impact, and the estimated potential impact of any delaying events or circumstances;
- (g) the dates or periods for and the nature of input from or instructions or decisions required by the Purchaser, including the current critical paths of, and float in such input, instructions or decisions; and
- (h) such other information as may be reasonably requested by the Purchaser or which the Supplier considers pertinent.

15.4 Purchaser directions to modify the Not Rejected LRV Program

- (a) The Purchaser may from time to time in writing direct the Supplier to modify the Not Rejected LRV Program. If compliance with a modified Not Rejected LRV Program directed in writing by the Purchaser under this Clause 15.4 causes the Supplier to incur additional cost in executing its obligations under the Contract, the Supplier will first notify the Purchaser and the provisions of Clause 23 will apply as if the Purchaser had issued a Proposed Variation Notice under Clause 23.2.
- (b) Modification may include a change to the order of, or the times for, performance of the Supplier's obligations under the Contract, including the design, manufacture, Delivery testing and commissioning of the Equipment.
- (c) If compliance with a Direction to modify the Not Rejected LRV Program is not reasonably possible, the Supplier must notify the Purchaser in writing of the reason. The Purchaser and the Supplier will then promptly meet to discuss further modifications to the Not Rejected LRV Program which are capable of compliance and the procedures contained in this Clause 15.4 must be repeated.
- (d) The parties acknowledge that the LRV Program included in the Amendment and Restatement Deed as at the Restatement Date has the status of a Not Rejected LRV Program. The Supplier:
 - (i) acknowledges that compliance with the LRV Program referred to:
 - (A) is reasonably possible; and
 - (B) will not cause the Supplier to incur additional cost in executing its obligations under the Contract; and
 - (ii) releases the Purchaser from any claim it has or may have had in respect of the matters referred to in paragraph 15.4(d)(i).

15.5 Review of updated LRV Programs

All revised LRV Programs prepared by the Supplier pursuant to this Clause 15 must be submitted to the Purchaser for review in accordance with Clause 6A.

15.6 Effect of review, comments or directions

The Supplier acknowledges that any review or comments on the LRV Program, any notification that a revised LRV Program has been "Rejected" or "Not Rejected" or a Direction to modify the LRV Program by the Purchaser (except for a Direction under Clause 15.4(a)) does not alter or

relieve the Supplier from the Supplier's obligations, liabilities and responsibilities under the Contract, nor does it:

- (a) evidence or constitute an EOT or a Direction by the Purchaser to accelerate, disrupt, prolong or vary any, or all of the work under the Contract; and/or
- (b) necessarily constitute a Variation direction.

15A Contract management

15A.1 Contract Control Group meetings

- (a) The Purchaser will establish a Contract Control Group consisting of 2 senior management representatives from each of the Purchaser and the Supplier.
- (b) The function of the Contract Control Group is to review the progress of the work under the Contract.
- (c) The Contract Control Group must meet monthly and any other time required by the Purchaser.
- (d) A representative of the Purchaser must:
 - (i) convene and chair all meetings of the Contract Control Group; and
 - (ii) prepare and promptly distribute minutes of meetings of the project control group to the members of the Contract Control Group.
- (e) If requested by the Purchaser, a senior management representative of the Supplier must attend any Contract Control Group meeting and provide any information and assistance reasonably required by a member of the Contract Control Group.
- (f) The parties must each pay all costs of their respective members and involvement in the Contract Control Group.
- (g) The Contract Control Group will have no legal responsibilities. Nothing which occurs during a meeting of the Contract Control Group will:
 - (i) relieve the Supplier from, or alter or affect, the Supplier's obligations and liabilities under the Contract or otherwise;
 - (ii) prejudice the Purchaser's rights against the Supplier whether under the Contract or at law; or
 - (iii) be construed as a direction by the Purchaser.

15A.2 Commissioning Management Team

- (a) The Supplier must cooperate, meet, liaise and share information so that the Purchaser, the Managing Contractor and the ISO are able to comply with the Managing Contractor Contract and all Laws and Authorisations relating to the performance of the Managing Contractor Contract.
- (b) The Supplier acknowledges that the Managing Contractor will establish a team including representatives of the Managing Contractor, the Purchaser, the Supplier, the ISO, the Independent Certifier and other technical advisers and contractors whose purpose will be to monitor and manage the delivery of the Project as referred to in Clause 15A.2(a) (**Commissioning Management Team**).
- (c) Where applicable to the Supplier's obligations under this Contract, the Supplier must:
 - (i) ensure that suitably qualified and representatives of the Supplier are available as reasonably required by the Purchaser's Representative to participate in the Commissioning Management Team and provide curricula vitae for those personnel; and

- (ii) attend relevant Commissioning Management Team meetings at such times as are advised by the Purchaser's, to review current and future issues, including the exchange of information, status, problems, solutions and newly identified interfaces.
- (d) The chair person of the Commissioning Management Team will be:
 - (i) prior to the NLR Handover Date, a representative of the Managing Contractor nominated by the Managing Contractor; and
 - (ii) after the NLR Handover Date, a representative of the ISO nominated by the ISO.

15A.3 Senior Project Group

- (a) A Senior Project Group will be established for the delivery of the Project consisting of:
 - (i) from the Purchaser:
 - (A) the Purchaser's Deputy Secretary (Infrastructure and Services);
 - (B) the Purchaser's Program Director Transport for Newcastle;
 - (C) two other people from TfNSW not holding positions more senior than the persons referred to in paragraph (a)(iv)(B) and (a)(iv)(B); and
 - (ii) from the Managing Contractor:
 - (A) the 'Contractor's Representative' appointed under the Managing Contractor Contract;
 - (B) two other people not holding a position more senior than the person referred to in paragraph (a)(ii)(B), with at least one person from the Managing Contractor whose primary role and expertise is in respect of the work required to be performed by the Managing Contractor under the Managing Contractor Contract; and
 - (iii) from the Supplier:
 - (A) the Suppliers Representative;
 - (B) two other people not holding a position more senior than the person referred to in paragraph (a)(iii)(B), with at least one person from the Supplier whose primary role and expertise is in respect of the obligations of the Supplier under this Contract; and
 - (iv) from the ISO:
 - (A) the 'Operator's Representative' appointed under the ISO Contract;
 - (B) two other people not holding a position more senior than the person referred to in paragraph (a)(iv)(B), with at least one person from the ISO whose primary role and expertise is in respect of the work required to be performed by the ISO under the ISO Contract; and
- (b) The objectives of the Senior Project Group are to:
 - (i) monitor the overall progress of the Project;
 - (ii) review all progress reports provided by the Managing Contractor under the Managing Contractor Contract, the ISO under the Integrated Services Contract and the Supplier under this Contract;
 - (iii) facilitate the development of a long term, collaborative working relationship between the Purchaser, the Managing Contractor, the Supplier and the ISO;
 - (iv) assist with the resolution of any matters referred to the Senior Project Group by the Purchaser, the Managing Contractor, the Supplier and the ISO; and

- (v) review and consider such other matters relating to the Project as are agreed between the Purchaser, the Managing Contractor, the Supplier and the ISO from time to time.
- (c) Unless otherwise agreed by the parties, the Senior Project Group will meet monthly until the date that is three months after the NLR Handover Date.
- (d) The Purchaser's Representative will convene the meetings of the Senior Project Group. The meetings will be chaired by the most senior attendee of the Purchaser. The Purchaser will provide the secretariat.
- (e) At the Purchaser's reasonable request, the Managing Contractor, the Supplier or the ISO must procure the attendance of representatives of any of their subcontractors at meetings of the Senior Project Group. The Supplier will use reasonable endeavours in relation to its subcontractors not established in Australia. The Purchaser is also entitled to invite representatives of the State or any Authority to attend meetings of the Senior Project Group.
- (f) The Managing Contractor, the Supplier or the ISO may, with the Purchaser's consent, have a representative of any of their respective subcontractors attend any meeting of the Senior Project Group.
- (g) All persons invited or directed to attend meetings as provided by paragraph (e) and paragraph (f) will do so as observers who:
 - (i) are not members of the Senior Project Group;
 - (ii) have no voting rights at meetings; and
 - (iii) may only present such information and participate in the meeting discussions to the extent invited by the meeting chairperson.
- (h) The Senior Project Group may establish working groups as required in relation to particular aspects of the delivery of the Project, including to prepare for commissioning and operational readiness or provide a non-binding forum for the Managing Contractor, the Supplier or the ISO to present its proposed solutions and for the members to discuss the solutions.
- (i) The Senior Project Group and each working group are consultative and advisory only and nothing which occurs during a meeting of any such group will be binding on the Purchaser, the Managing Contractor, the ISO and the Supplier.

15A.4 Alerts and directions by the Purchaser

- (a) If the Supplier becomes aware of any actual or likely event or circumstance which has, or may have, a materially adverse effect on the Supplier's obligations under the Contract (including the financial status of the Supplier), the Supplier must give the Purchaser an Alert as soon as possible, and in any case not more than 10 Business Days after the Supplier became aware of the relevant event or circumstance.
- (b) The Purchaser will issue a Direction to the Supplier in relation to what actions, if any, the Supplier must take to address the event or circumstances giving rise to the Alert.
- (c) The Supplier must promptly give to the Purchaser any other information reasonably requested for the Purchaser to assess the Alert and its consequences and to make a decision.

15A.5 Monthly reports

From the Date of Contract until the Date of Operational Completion, the Supplier must, within 5 Business Days of the end of each month, submit to the Purchaser a written report in a form reasonably required by the Purchaser providing:

- (a) details of the progress of the Supplier's obligations under the Contract, with a comparison to the progress planned in the Not Rejected LRV Program;

- (b) details of design status, status of all deliverables under the Contract, any quality issues, safety issues, outstanding correspondence and testing and commissioning status;
- (c) the Supplier's current valuation, and particulars of the valuation, of the work under the Contract completed by the Supplier;
- (d) the Supplier's current estimate, and particulars of the estimate, of the percentage of the work under the Contract which have been completed;
- (e) an up-to-date Not Rejected LRV Program in format required by Clause 15.3;
- (f) details of any issues necessary for consideration by the Purchaser and any information required by the Purchaser;
- (g) a cost report showing:
 - (i) the cost of the work under the Contract up to the date of the report;
 - (ii) the predicted cost of the work under the Contract required to bring the work under the Contract to Operational Completion; and
 - (iii) a list of all Variations (whether proposed, claimed or approved) and the cost of those Variations;
- (h) a summary of any expected delays to the work under the Contract, including any delays previously notified in accordance with Clause 17.1; and
- (i) such other information as the Purchaser may reasonably require or the Purchaser considers pertinent.

15A.6 Other reports

As soon as practicable after a reasonable request from the Purchaser, the Supplier must prepare and submit to the Purchaser a written report in relation to the design, manufacture, Delivery, testing and commissioning of the Equipment requested by the Purchaser.

15B Personnel

15B.1 Key Personnel

The Supplier must:

- (a) engage the Key Personnel specified in section 1 of Annexure Part N in the roles specified in section 1 of Annexure Part N;
- (b) if no name has been specified for a particular position in section 1 of Annexure Part N, promptly employ in that position a person:
 - (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in section 2 of Annexure Part N; and
 - (ii) approved by the Purchaser (such approval not to be unreasonably withheld or delayed);
- (c) subject to paragraph (d), not replace any Key Person without the prior written approval of the Purchaser; and
- (d) if any Key Person dies, becomes seriously ill, or resigns from the employment of the Supplier, replace, him or her with a person:
 - (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in section 2 of Annexure Part N; and
 - (ii) approved by the Purchaser, which approval must not be unreasonably withheld or delayed (except in the case of the Supplier, in which case the Purchaser may withhold its approval in its absolute discretion).

15B.1 Competence management

The Supplier must:

- (a) maintain management procedures to ensure that its employees are competent to undertake their respective roles and understand their obligations in respect of the work under the Contract; and
- (b) ensure that its subcontractors maintain management procedures to ensure that the subcontractor's employees are competent to undertake their respective roles and understand their obligations in respect of the work under the relevant subcontract.

15C Independent Certifier

15C.1 Appointment

The Supplier acknowledges that the Purchaser has engaged the Independent Certifier. The Independent Certifier must enter into a confidentiality deed poll materially in the form set out in Annexure Part AC and must ensure that each of its officers, employees, subcontractors and consultants comply with it. The Purchaser may replace the Independent Certifier.

15C.2 Role

The role of the Independent Certifier is to provide independent advice to the Purchaser in respect of the Project, including in respect of the compliance of the design of the Additional LRVs and Additional Equipment, and the compliance of the Additional LRVs and Additional Equipment with the other requirements of the Contract.

The Independent Certifier does not diminish any power, discretion or function which the Purchaser has under the Contract. The Purchaser is not obliged to adopt or agree with any opinion of the Independent Certifier.

15C.3 Supplier's Cooperation

The Supplier must:

- (a) provide the Independent Certifier with relevant assistance, information and documentation; and
- (b) allow the Independent Certifier access to premises, works, documents and information consistent with the access obligations provided to the Purchaser under the Contract.

15D Independent Safety Assessor

15D.1 Appointment

The Supplier acknowledges that the Purchaser has engaged the Independent Safety Assessor. The Independent Safety Assessor must enter into a confidentiality deed poll materially in the form set out in Annexure Part AC and must ensure that each of its officers, employees, subcontractors and consultants comply with it. The Purchaser may replace the Independent Safety Assessor.

15D.2 Role

The role of the Independent Safety Assessor is to provide independent advice to the Purchaser in respect of the Project, including in respect of the safety compliance of the design of the Additional LRVs, and the safety compliance of the Additional LRVs with the other requirements of the Contract.

The Independent Safety Assessor does not diminish any power, discretion or function which the Purchaser has under the Contract. The Purchaser is not obliged to adopt or agree with any opinion of the Independent Safety Assessor.

15D.3 Supplier's Cooperation

The Supplier must:

- (a) provide the Independent Safety Assessor with relevant assistance, information and documentation; and
- (b) allow the Independent Safety Assessor access to premises, works, documents and information consistent with the access obligations provided to the Purchaser under the Contract.

16 Suspension

16.1 Purchaser's suspension

The Purchaser may direct the Supplier to suspend supply or delivery of the whole or part of the Equipment for such time as the Purchaser thinks fit, if the Purchaser, acting reasonably, is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
 - (i) the Purchaser or its employees, consultants, agents or other contractors (not being employed by the Supplier); or
 - (ii) the Supplier, a subcontractor or either's employees or agents;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

16.2 Supplier's suspension

If the Supplier wishes to suspend supply or delivery of the whole or part of the Equipment, otherwise than pursuant to Clause 25.7, the Supplier must obtain the Purchaser's prior written approval. The Purchaser may approve the suspension and may impose conditions of approval.

16.3 Recommencement

As soon as the Purchaser becomes aware that the reason for any suspension no longer exists, the Purchaser shall direct the Supplier to recommence the suspended supply or delivery as soon as reasonably practicable.

The Supplier may recommence the supply or delivery suspended pursuant to Clause 16.2 or 25.7 at any time after reasonable notice to the Purchaser.

16.4 Cost

- (a) The Supplier shall bear the cost of suspension pursuant to paragraph (a)(ii) of Clause 16.1 and Clause 16.2.
- (b) If the Supplier made the protection, safety or court order necessary, the Supplier shall bear the cost of suspension pursuant to paragraph (b) or (c) of Clause 16.1.
- (c) If the Purchaser made the protection, safety or court order necessary, the Purchaser shall bear the cost of suspension pursuant to paragraph (b) or (c) of Clause 16.1.
- (d) If the Supplier otherwise incurs more or less cost (including Finance Costs) than otherwise would have been incurred, the difference shall be assessed by the Purchaser and added to or deducted from the Contract Sum.

16.5 Effect of suspension

Suspension will not affect the Date for Operational Completion but the suspension under Clause 16.1 or Clause 25.7 may be a ground for EOT under Clause 17.3.

17 Time

17.1A Time for Delivery and Operational Completion

The Supplier must perform its obligations under the Contract so as:

- (a) to achieve Delivery by the Date for Delivery; and

- (b) to achieve Operational Completion by the Date for Operational Completion.

17.1 Notice of delay

When it becomes evident to the Supplier that an Event may delay the work under the Contract, the Supplier must promptly:

- (a) notify the Purchaser in writing with details of the possible delay and the cause; and
- (b) provide to the Purchaser a detailed corrective action plan in accordance with Clause 17.2A.

17.2A Corrective action plan

- (a) Each corrective action plan which the Supplier must provide under Clause 17.1(b) must show how the Supplier proposes to avoid, mitigate, minimise or recover the consequences of the delay consistent with its obligations in Clause 17.1A.
- (b) The Purchaser may, within 10 Business Days of receipt of a corrective action plan, give notice (with reasons) to the Supplier that it does not accept that implementation of the corrective action plan will enable the Supplier to avoid, mitigate or minimise the consequences of the delay, consistent with the Supplier's obligations under Clause 17.1A.
- (c) If the Purchaser gives the Supplier a notice under paragraph (b), the Supplier must amend and resubmit the corrective action plan to the Purchaser within 5 Business Days after which paragraph (b) and this paragraph (c) will continue to apply until the Purchaser does not issue a notice under paragraph (b).
- (d) The Supplier must comply with a corrective action plan for which the Purchaser does not issue a notice under paragraph (b).
- (e) The Supplier will not be relieved of any liability or responsibility under the Contract or otherwise at law arising out of or in connection with:
 - (i) any notice given by the Purchaser under paragraph (b); or
 - (ii) the implementation of any corrective action plan in respect of which the Purchaser has or has not issued a notice under paragraph (b).

17.2 Claim for EOT

- (a) If the Supplier is or will be delayed in reaching Operational Completion by delays caused by an Event, the Supplier must within 10 Business Days after becoming aware of the delay issue an Alert to the Purchaser.
- (b) If the requirements of Clause 17.2(a) are satisfied and within 21 days after the date the Supplier provides the Alert under Clause 17.2(a), the Supplier gives the Purchaser a written claim for an extension of time to Operational Completion setting out:
 - (i) the facts on which the claim is based; and
 - (ii) the number of days extension to the Date for Operational Completion claimed, the Supplier will be entitled to an EOT.
- (c) The Purchaser will not be liable in connection with any Claim by the Supplier, arising out of or in any way in connection with an Event unless the Supplier gives the Purchaser the Alert required in accordance with Clause 17.2(a) and the written claim required in accordance with paragraph (b) within the times and containing the details set out in those clauses.

17.3 Grant of EOT

- (a) If the Supplier is entitled to an EOT for Operational Completion under Clause 17.2, the Purchaser will, within 28 days after receipt of the claim referred to in Clause 17.2(b), grant a reasonable EOT. If the Purchaser does not grant the full EOT claimed, the

Purchaser will give the Supplier notice in writing of the reasons for the approval of a lesser period than that claimed.

- (b) In determining a reasonable EOT for an Event causing delay, the Purchaser will have regard to whether the Supplier has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.
- (c) The Supplier will not be entitled to relief to the extent that an Event was caused by the acts or omissions of the Supplier or any Related Body Corporate, employee, agent, subcontractors, other than acts or omissions of the Supplier or any Related Body Corporate, employee, agent or subcontractors authorised or permitted in accordance with the Contract.
- (d) In determining whether the Supplier is or will be delayed in reaching Operational Completion the Purchaser will not have regard to:
 - (i) whether the Event causing the delay will, based on the current Not Rejected LRV Program, cause the Supplier to fail to reach Operational Completion by the Date for Operational Completion; or
 - (ii) whether the Supplier could, by committing extra resources or incurring extra expenditure and based on the current Not Rejected LRV Program, make up the time lost.
- (e) Notwithstanding that the Supplier is not entitled to an EOT, the Purchaser may at any time and from time to time by notice in writing to the Supplier extend the time for Operational Completion for any reason by nominating a later Date for Operational Completion. The Purchaser is not required to exercise this discretion for the benefit of the Supplier. Any exercise of this discretion does not affect the parties' respective rights and obligations under clause 21A. For the avoidance of doubt if the Purchaser wants to delay Operational Completion it must issue a Variation Order under clause 23.1(a) or a Proposed Variation Notice under clause 23.2.

17.4 Mitigation

The Supplier must take all reasonable steps to reduce, mitigate, prevent or eliminate the effects of any Event including delay costs (and ensure that its subcontractors do also) and use all reasonable endeavours to continue to perform its obligations under the Contract despite the occurrence of an Event.

17.5 Liquidated damages

- (a) If the Supplier fails to reach Operational Completion by the Date for Operational Completion, liquidated damages in Item 23 will be due and payable to the Purchaser for every day after the Date for Operational Completion to and including the earliest of the Date of Operational Completion or termination of the Contract.
- (b) If an EOT is directed after the Supplier has paid or the Purchaser has set off liquidated damages, the Purchaser shall forthwith repay to the Supplier such of those liquidated damages as represent the days the subject of the EOT.
- (c) The Supplier's liability under Clause 17.5(a) is limited to the amount stated in Item 23A.

17.6 Not Used

17.7 Delay costs

If the Supplier has been granted an EOT under Clause 17.3 for an Event which is also a Compensable Cause, the Purchaser will, subject to Clause 17.4, be liable to the Supplier,

18 Testing and commissioning

18.1A Access to and use of the IWE Site

- (a) The obligations of the Purchaser under this Clause 18.1A are subject to the Supplier satisfying any obligation which is stated to be a condition precedent to the Purchaser's obligation to provide access to, or possession of, the IWE Site and the Site to the Supplier.
- (b) The Purchaser will, on or before the expiration of the time or date stated in Item 25 of Annexure Part A, give the Supplier non-exclusive access to the IWE Site or sufficient part of the Site to enable the Supplier to carry out commissioning and installation activities in accordance with the Contract.
- (c) Despite the provisions of this Clause 18.1A, if the Supplier is in breach of Clause 13.2, the Purchaser may refuse to give the Supplier use of the IWE Site and the Site or any part of the IWE Site or Site until the Supplier has complied with the requirements of Clause 13.2.
- (d) Use of the IWE Site and the Site will confer on the Supplier a right only to such use as is necessary to enable the Supplier to carry out commissioning and installation activities in accordance with the Contract.

18.1B Provision of access to Site and Stabling Facility

- (a) Subject to Clauses 18.1B(b) and (c), the Purchaser will, on or before the expiration of the times or dates stated in Annexure Part V, provide the Supplier with:
 - (i) non-exclusive access to the Site; and
 - (ii) non-exclusive access to the Stabling Facility or, if the Purchaser in its discretion elects not to give access to the Stabling Facility, an alternative facility suitable for the commissioning and installation activities of the Supplier,to enable the Supplier to carry out commissioning and installation activities in accordance with the Contract.
- (b) The Purchaser's obligations under Clause 18.1B(a) are conditional upon the Supplier having:
 - (i) complied with its obligations under Clause 13; and
 - (ii) in place a Not Rejected Testing and Commissioning Plan.

18.1C Supplier's obligations

The Supplier acknowledges and agrees that:

- (a) when entering or using the IWE Site, the Site or the Stabling Facility, it:
 - (i) will be responsible for the supervision and safety of its Authorised Users; and
 - (ii) must comply with the Purchaser's work health and safety requirements and policies notified to the Supplier from time to time; and
- (b) after carrying out any activities at the IWE Site, the Site or the Stabling Facility, it will make good any damage caused by the Supplier's activities and reinstate the IWE Site, the Site and the Stabling Facility to the condition it was in prior to the Supplier commencing to carry out activities on the IWE Site, the Site or the Stabling Facility (as applicable) where such reinstatement is necessary due to damage caused by the Supplier's activities.

18.1 Testing and commissioning

- (a) The parties agree that the Equipment will be tested and commissioned in accordance with:
 - (i) the Not Rejected Test Specifications;

- (ii) the Not Rejected Testing and Commissioning Plan;
 - (iii) the LRV Specification; and
 - (iv) the Not Rejected LRV Program.
- (b) The Supplier must ensure that testing and commissioning activities are carried out by appropriately qualified persons.
 - (c) The Supplier must give such assistance and samples and make accessible such parts of the Equipment as may be directed by the Purchaser.
 - (d) The Supplier acknowledges and agrees that the ISO must obtain Accreditation prior to being able to carry out any commissioning activities on any rail track. The Supplier will comply with its obligations under Clause 10A.4 to assist the ISO to obtain the ISO's Accreditation.
 - (e) The Supplier must perform the tasks, undertake the obligations and comply with the requirements for which it is responsible set out in the Testing and Commissioning Responsibility Matrix.

18.2 Who conducts

- (a) The Supplier will conduct Tests specified in the Not Rejected Testing and Commissioning Plan with assistance from the Purchaser in accordance with the Not Rejected Testing and Commissioning Plan.
- (b) Subject to the Supplier complying with its obligations under Clause 19A.1, the Purchaser will supply:
 - (i) drivers;
 - (ii) train paths; and
 - (iii) power,for the LRVs for the purposes of carrying out any commissioning activities on rail track, in accordance with the Not Rejected Testing and Commissioning Plan.
- (c) Tests directed by the Purchaser under Clause 18.7(a) will be conducted by the person directed by the Purchaser.

18.3 Notice

- (a) The Supplier must give notice of any testing and commissioning activities in accordance with the LRV Specification.
- (b) If the Purchaser will conduct any testing or commissioning activities, the Purchaser must give reasonable written notice to the Supplier of the date, time and place of the test.
- (c) If the other party does not attend, the test may nevertheless proceed.
- (d) The Supplier acknowledges and agrees that any tests may be attended and witnessed by the Purchaser and any other person nominated by the Purchaser.

18.4 Interface

- (a) The Supplier acknowledges that there may be other persons carrying out work or having access to the IWE Site, the Site and the Stabling Facility, including the Purchaser, the Managing Contractor and the ISO, at the time the Supplier is testing and commissioning the Equipment.
- (b) The Supplier:
 - (i) without limiting the Supplier's obligations under paragraphs (b)(ii), (b)(iii), (b)(iv) and (c), acknowledges and agrees that the Purchaser will procure that the Managing Contractor manage any interfaces between the Supplier and any other person on the IWE Site, the Site and the Stabling Facility;

- (ii) must comply with all directions of the Purchaser in relation to interfaces at the IWE Site, the Site and the Stabling Facility;
 - (iii) must not unreasonably obstruct the Managing Contractor, the ISO and any person carrying out work at the IWE Site, Site and the Stabling Facility; and
 - (iv) must cooperate with the Managing Contractor, the ISO and any person carrying out work at the IWE Site, the Site and the Stabling Facility.
- (c) In respect of the Interface Annexure:
- (i) the Supplier must comply with the Interface Annexure;
 - (ii) where, in the Interface Annexure, the Supplier is nominated as the party with primary responsibility in respect of a matter then the Supplier must complete the performance of that obligation, or achieve the relevant outcome, by the nominated time period.
 - (iii) where, in the Interface Annexure, the Supplier is nominated as a party with secondary responsibility in respect of a matter then the Supplier must cooperate with and provide reasonable assistance to the party who has primary responsibility in respect of the matter (including the identification of errors or non compliances in respect of that matter) with a view to supporting the party who has primary responsibility in respect of the matter to perform the relevant obligation, or achieve the relevant outcome, by the nominated time period (provided that the Supplier is only required to cooperate and provide such assistance to the extent relevant to the other obligations of the Supplier under the Contract).

18.5 Completion and results

- (a) On completion of the tests, the Supplier must make good the Equipment so that it fully complies with the Contract.
- (b) The Test Reports and the Test Report Summary must be promptly submitted by the Supplier to the Purchaser in accordance with Clause 6A.

18.6 Costs

- (a) Subject to paragraph (b), all costs of and incidental to all tests and commissioning activities which the Supplier is required to carry out under the Contract are to be borne by the Supplier and are included in the Contract Sum.
- (b) If the Purchaser directs that tests be carried out in addition to those specified in the Not Rejected Testing and Commissioning Plan the costs of such tests will be allocated as follows:
 - (i) if the test demonstrates that the Equipment does not meet the requirements of the Contract, the cost of the relevant test will be borne by the Supplier; or
 - (ii) if the test demonstrates that the Equipment complies with the requirements of the Contract, the cost of the relevant test will be borne by the Purchaser.

18.7 Further testing

- (a) Notwithstanding Clause 18.1, at any time before the expiry of the Defects Liability Period the Purchaser may direct that additional tests to those specified in the Not Rejected Testing and Commissioning Plan be performed on the Equipment.
- (b) If at any time before the expiry of the Defects Liability Period:
 - (i) the Purchaser asserts that any part of the Equipment is not in accordance with the Contract; and
 - (ii) the Supplier requests permission to test the Equipment,

the Purchaser will provide the Supplier with reasonable access to test the Equipment at times notified in writing by the Purchaser.

18.8 Free issue materials

- (a) The Purchaser must supply, free of charge, the quantity and type of Free Issue Materials to the manufacturing facility of the Supplier in Spain.
- (b) Upon delivery of any Free Issue Materials, the Supplier must:
 - (i) unload, unpack or remove the Free Issue Materials;
 - (ii) visually inspect the Free Issue Materials and promptly give notice to the Purchaser of any shortage defect or fault in the Free Issue Materials; and
 - (iii) comply with any other reasonable requirements for the acceptance of the Free Issue Materials by the Purchaser.
- (c) From the date on which the Supplier accepts delivery of the Free Issue Materials until the Date of NLR Handover into which the Free Issue Materials are incorporated, the Supplier is responsible for the care and custody of the Free Issue Materials, together with the risk of loss or damage to the Free Issue Materials.
- (d) The Supplier must ensure that the Free Issue Materials are insured, properly stored and adequately protected.
- (e) Ownership of any Free Issue Materials supplied by the Purchaser remains with the Purchaser.

18A Transit of LRVs

The Supplier must ensure that when transporting any LRV within Australia at any time, whether by road or rail:

- (a) only one LRV is transported in one conveyance; and
- (b) no LRVs may be coupled together.

18B Shipping Event

(a)

(b)

(c)

19 Delivery

19.1 Mode of and date and place for Delivery

- (a) The Supplier, at its expense, shall Deliver the Equipment on the Date for Delivery to the Delivery Place using the mode of Delivery stated in Item 8. The Supplier must give the Purchaser 10 Weeks advance notice of each Delivery.
- (b) The Supplier acknowledges that it may not be permitted to Deliver the Additional LRVs prior to 30 March 2018 and the Purchaser is under no obligation to seek to facilitate Delivery prior to this date.
- (c) The party named in Item 26 shall promptly unload the Equipment at the Delivery Place. When so unloaded the Purchaser shall take delivery of the Equipment.
- (d) The Purchaser may direct the Supplier to change the Date for Delivery, Delivery Place or the mode of Delivery. If the Supplier can reasonably comply with the Direction, the Supplier must do so. If the Supplier cannot reasonably comply, the Supplier must give the Purchaser written notice of the reasons.
- (e) If compliance with any such Directions under this Clause 19.1, except those pursuant to the Supplier's default, causes the Supplier to incur more or less cost than otherwise would have been incurred had the Supplier not been given the Direction, the difference will be valued as a Variation and added to or deducted from the Contract Sum in accordance with Clause 23.5.

19A Training

19A.1 Training management

- (a) The Supplier must comply with the Training Management Guidelines including by implementing and complying with the Not Rejected Training Management Plan.
- (b) These obligations are in addition to, but are not in substitution for, any training obligations of the Supplier under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under any Commonwealth or New South Wales law.

19A.2 Training of the Purchaser's employees and contractors

The Supplier must provide training to the Purchaser's employees and contractors in accordance with the requirements of:

- (a) the Not Rejected Training Management Plan; and
- (b) the LRV Specification.

19A.3 Development of Training Materials

The Supplier must prepare all Training Materials in accordance with:

- (a) the requirements of the LRV Specification;
- (b) the Not Rejected Training Management Plan; and
- (c) the other requirements of the Contract.

19A.4 Submission of Training Materials

- (a) The Supplier must develop, submit for review (in accordance with Clause 6A) and complete the Training Materials in accordance with the requirements of the Contract and the Not Rejected Training Management Plan.
- (b) The Supplier must give the Purchaser throughout the preparation of the Training Materials the opportunity to review, comment on and monitor the performance of the Supplier in accordance with this Clause 19A.4.
- (c) The Supplier must ensure that all Training Materials are:
 - (i) in the form required by the Purchaser; and
 - (ii) where applicable, submitted in the form of a training module.
- (d) The Supplier must certify that all Training Materials are in accordance with the requirements of the LRV Specification, the Not Rejected Training Management Plan and the Contract.

19A.5 Fitness for purpose

The Supplier warrants that all Not Rejected Training Materials will at all relevant times be fit for their Intended Purpose.

19B Maintenance

The Supplier acknowledges and agrees that the Purchaser may, but is not obliged to at any time prior to the Date of Delivery of the first Additional LRV, by written notice to the Supplier, require the Supplier to maintain the LRVs during the period between Delivery and the NLR Handover Date. In consideration of the Supplier providing such maintenance services, it will be entitled to claim payment in accordance with the prices set out at Annexure Part AB.

The scope of the maintenance services prior to handover to ISO is:

- (a) preventive maintenance as described in the Technical Maintenance Plan and
- (b) corrective maintenance for all issues/faults arisen during the testing and commissioning; and
- (c) implementing all required adjustments to the LRVs.

20 Risk in and ownership of the Equipment

20.1 Risk in the Equipment

- (a) Risk in the Equipment will pass from the Supplier to the Purchaser as stated in Item 27.
- (b) Unless the Equipment is in the Supplier's possession, the Purchaser must take reasonable measures to protect the Equipment from loss or damage occurring after Delivery but before risk in the Equipment has passed to the Purchaser.

20.2 Ownership of Equipment

Ownership of, and unencumbered title in, the Equipment or any part of it will pass to the Purchaser at the time or times specified in Item 28.

21 Not used

21A Operational completion

21A.1 Notice of Operational Completion

- (a) The Supplier must give the Purchaser:
 - (i) at least 25 Business Days' notice of when it expects to achieve Operational Completion; and

- (ii) a request for a Certificate of Operational Completion when it believes that Operational Completion has been achieved.
- (b) The Supplier may not request a Certificate of Operational Completion any earlier than 25 Business Days after the date on which the Supplier gives notice under paragraph (a)(i), except with the prior written approval of the Purchaser.
- (c) The Supplier must attach to the request under paragraph (a)(ii) evidence satisfactory to the Purchaser that the Supplier has achieved all relevant requirements for Operational Completion as set out in Annexure Part F.

21A.2 Determination of Operational Completion by the Purchaser

- (a) Within 12 Business Days after receiving the request under Clause 21A.1(a)(ii) the Purchaser, acting reasonably, must either:
 - (i) if Operational Completion has been achieved, issue a Certificate of Operational Completion to the Supplier stating the date on which Operational Completion was achieved; or
 - (ii) if Operational Completion has not been achieved, either (at the discretion of the Purchaser):
 - (A) issue a notice to the Supplier listing the things remaining to be performed to achieve Operational Completion; or
 - (B) issue a written notice to the Supplier stating that Operational Completion is so far from being achieved that it is not practical to provide the list referred to in paragraph (ii)(A).
- (b) If the Purchaser fails to issue a Certificate of Operational Completion under paragraph (a)(i) or a notice under paragraph (a)(ii), Operational Completion will not be deemed to have occurred but nothing in this paragraph (b) will prejudice any right of the Supplier to damages.

21A.3 Operational Completion not achieved

If a notice is issued by the Purchaser under Clause 21A.1(a)(ii) the Supplier must continue to perform its obligations under the Contract to achieve Operational Completion and Clauses 21A.1, 21A.2 and 21A.3 will reapply.

21A.4 Rolling Stock Initial Defects List

- (a) The Purchaser will, at the time of issuing a Certificate of Operational Completion, issue the Rolling Stock Initial Defects List to the Supplier.
- (b) As soon as possible after the Date of Operational Completion, the Supplier must rectify any Defects in the Equipment, including the Defects contained in the Rolling Stock Initial Defects List.

21A.5 No restriction

In making a determination as to whether Operational Completion has been achieved the Purchaser:

- (a) will not be restricted by any notice already provided under Clause 21A.2, as applicable; and
- (b) may raise any items of work as a ground for determining that Operational Completion has not been achieved.

21A.6 Effect of Certificate of Operational Completion

A Certificate of Operational Completion:

- (a) does not constitute an approval by the Purchaser of the Supplier's performance of its obligations under the Contract;

- (b) is not to be taken as an admission or evidence that the Equipment, or any part of the Equipment, complies with the Contract; or
- (c) will not prejudice any rights or powers of the Purchaser under the Contract or otherwise according to law.

22 Defects liability

- (a) The Defects Liability Period stated in Item 31 will commence on the date of Operational Completion at 4.00 pm. The Defects Liability Period in respect to the LRVs and the Additional LRVs may commence on different dates.
- (b) The Supplier must carry out rectification at times notified in writing by the Purchaser and in a manner causing as little inconvenience to the users of the Equipment, the Managing Contractor and the ISO as is reasonably possible.

(c)

- (d) If the rectification is not commenced or completed by the stated dates and/or times, the Purchaser or the ISO may have the rectification carried out by others but without prejudice to any other rights and remedies the Purchaser or the ISO may have. The cost thereby incurred shall be moneys due and payable to the Purchaser.

22A Defects Liability – Additional LRVs and Additional Equipment

- (a) In this clause 22A the expression Additional LRV Defect Rectification Works means the rectification of Defects in the Additional LRVs and the Additional Equipment.
- (b) The Defects Liability Period in respect of the Additional LRV Defect Rectification Works commences as provided for in Clause 22(a).
- (c) Clauses 22(b), 22(c) and 22(d) apply to the Additional LRV Defect Rectification Works (provided that the Defects Liability Period is the Defects Liability Period in respect of the Additional LRV Defect Rectification Works and the rectification work is the Additional LRV Defect Rectification Works).
- (d) The Supplier must inform the Purchaser in writing within 20 Business Days of the occurrence of any defect (including any design fault) which occurs in any vehicle in the Urbos 100 fleet anywhere in the world, where that defect or design fault may impact on the safety and reliability of the Additional LRVs.
- (e) The Supplier must ensure that the Additional LRV Defect Rectification Works are fit for purpose.
- (f) The Supplier must cooperate with the ISO in relation to the Additional LRV Defect Rectification Works which is to be carried out during the Defects Liability Period in respect of the Additional LRV Defect Rectification Works. The Supplier must procure that the Additional LRV Defect Rectification Works are undertaken promptly and at times convenient to the ISO (provided the ISO is reasonable in specifying such times) and in a manner to ensure, insofar as is reasonably practicable, that the ISO's ability to comply with its obligations to the Purchaser is not prejudiced by the undertaking of the Additional LRV Defect Rectification Works. The Supplier acknowledges that it may be necessary for the Additional LRV Defect Rectification Works to be undertaken at weekends or during the night time in order to satisfy the obligation arising under this paragraph.

- (g) The Supplier must ensure that any spares required to undertake the Additional LRV Defect Rectification Works:
 - (i) are available on a just in time basis;
 - (ii) are kept separate from the Insurance Spares held by the ISO; and
 - (iii) are owned and managed by the Supplier.
- (h) The Purchaser must, subject to the constraints in the Site Access Protocol and to the extent described in the Site Access Protocol, ensure that the ISO:
 - (i) provides the Supplier with access to the Site for the purpose of the Supplier carrying out the Additional LRV Defect Rectification Works;
 - (ii) provides, to the Supplier, accommodation, at the Site, for those involved in the undertaking of the Additional LRV Defect Rectification Works.
- (i) Access to the Site by the Supplier will be governed by the Site Access Protocol and otherwise in accordance with the ISO's reasonable site access requirements.

23 Variations

23.1 Directing variations

- (a) Whether or not the Purchaser has issued a Proposed Variation Notice under Clause 23.2, the Purchaser, before Operational Completion, may, by written notice titled "Variation Order", direct the Supplier by written notice titled "Variation Order" to:
 - (i) increase or decrease the quantities of the Equipment or any part of it;
 - (ii) omit any part of the Equipment;
 - (iii) change the character, quality or performance requirements of the Equipment or of anything described in the LRV Specification or the Design Documentation pertaining to the Equipment;
 - (iv) change the dimensions of the Equipment or any part of it;
 - (v) execute additional work; and/or
 - (vi) demolish or remove material or work no longer required by the Purchaser.
- (b) The Variation Order will also state either:
 - (i) the agreed amount of the Variation; or
 - (ii) the amount of the Variation determined under Clause 23.5.
- (c) The Supplier must not vary the Equipment or the work under the Contract except as directed by the Purchaser or approved in writing under this Clause 23.1.
- (d) The Supplier is bound only to execute a Variation which is within the general scope of the Contract.

23.2 Proposed Variations

- (a) The Purchaser may give the Supplier written notice titled "Proposed Variation Notice" setting out the details of a proposed Variation which the Purchaser is considering.
- (b) The Supplier must, within the reasonable period specified in the Proposed Variation Notice, provide the Purchaser with written notice in which the Supplier sets out:
 - (i) the effect which the Supplier anticipates that the Variation will have on the Not Rejected LRV Program (including the Date for Delivery and the Date for Operational Completion) and how that effect has been assessed; and
 - (ii) an estimate of the cost or saving (including all time-related costs, if any) of the proposed Variation calculated in accordance with Clause 23.5; and

- (iii) such other information reasonably requested by the Purchaser in the proposed Variation Notice.
- (c) The Purchaser will reimburse the Supplier for the reasonable costs of complying with the requirements of this Clause 23.2.
- (d) The Purchaser is not obliged to direct a Variation under Clause 23.1 that is the subject of a Proposed Variation Notice.
- (e) If the Supplier receives a direction or instruction from the Purchaser which, although not stated to be a direction or instruction to carry out a Variation, the Supplier considers to be a direction or instruction to carry out a Variation, the Supplier must:
 - (i) within 10 Business Days after becoming aware that the direction or instruction may be a Variation notify the Purchaser that it considers the direction or instruction to be a direction or instruction to carry out a Variation;
 - (ii) as soon as practical, but in any case not later than 20 Business Days after receipt of the direction or instruction, provide the information required under Clause 23.3(b); and
 - (iii) not commence or proceed with the direction or instruction until further direction to do so is received from the Purchaser.
- (f) If the Supplier does not comply strictly with the requirements of Clause 23.2(e), the Supplier will not be entitled to any additional time cost for complying with the direction or instruction.

23.3 Pricing

Unless the Purchaser and the Supplier agree upon the price for a Variation, the Variation directed or approved by the Purchaser under Clause 23.1 will be valued under Clause 23.5.

23.4 Variations for the convenience of the Supplier

- (a) If the Supplier requests the Purchaser to direct a Variation:
 - (i) the request must be in writing and must provide:
 - (A) full details of the request;
 - (B) the additional or reduced cost or time;
 - (C) any benefits that may flow to the Purchaser;
 - (D) the future effect on operating and maintaining the LRT and Project;
 - (E) any effect on the Date for Operational Completion; and
 - (ii) the Purchaser may do so at its absolute discretion. The Direction must be in writing and may be conditional. Unless the Direction provides otherwise, the Supplier will be entitled to neither extra time nor extra money.
- (b) The Purchaser is not obliged to approve a Variation requested by the Supplier.
- (c) Despite anything in this Clause 23, the Purchaser will not be obliged to consider or approve any Variation which:
 - (i) arises or result from any matter which should have been the subject of an Alert; and
 - (ii) is claimed by the Supplier more than 3 months after the relevant matter referred to in Clause 23.1 occurred.
- (d) Despite anything in the Contract, the Purchaser will not be entitled to any payment of any kind in relation to any Variation except where such Variation:
 - (i) has been instructed by the Purchaser under Clause 23.1;

- (ii) arises from a program change directed in writing by the Purchaser under Clause 15.4; or
- (iii) is otherwise agreed by the parties in writing.

23.5 Valuation of Variations

- (a) Where the Contract provides that a valuation will be made under this Clause 23.5 (but subject always to Clause 23.4(d)), the Purchaser must pay or allow the Supplier or the Supplier must pay or allow the Purchaser, as the case may require, an amount calculated in accordance with this Clause 23.5.
- (b) Subject to Clauses 23.5(c) to 23.5(f), the Supplier must calculate the sum of the adjustment to be made to the Contract Sum in accordance with Annexure Part I.
- (c) Each amount calculated in accordance with this Clause 23.5 will be calculated on the basis of:
 - (i) the rates set out in Annexure Part I and, if required by the Contract, applying Finance Costs; or
 - (ii) to the extent that an item is not in Annexure Part I, the reasonable rate for that item, directed by the Purchaser, having regard to the reasonable market rate for that item and on the assumption that the relevant parties will take reasonable and appropriate steps to reduce, mitigate, prevent or eliminate the effects of the relevant Variation.
- (d) In valuing a Variation under this Clause 23.5, the overriding consideration is that the Purchaser receive value for money and that the valuation of the Variation is fair and reasonable and is calculated in a manner that is transparent and avoids any double counting.
- (e) The Supplier must provide (and must use reasonable endeavours to procure that its relevant subcontractors provide) all information referred to in this Clause 23.5 on an Open Book Basis.
- (f) If reasonably required by the Purchaser, the Supplier must provide (and must use reasonable endeavours to procure that its relevant subcontractors provide) the Purchaser with full access to internal cost estimation, programming, contingency and risk information used by the Supplier and its relevant subcontractors (as applicable) for their own purposes, in relation to a Variation and, to the extent the Purchaser reasonably considers the information relevant to its assessment of the impacts of the Variation, in relation to the work under the Contract generally.

24 Payment

24.1 Time for payment

- (a) The Supplier may only serve a payment claim for moneys then due to the Supplier pursuant to the Contract (**Payment Claim**) on the Purchaser:
 - (i) at the times stated in Item 32;
 - (ii) if the Supplier has complied with its obligations in Clause 24.1(b); and
 - (iii) if the Supplier has complied with its obligations under Clauses 3.1 and 13.
- (b) Each Payment Claim must be in the form required by the Purchaser and must include:
 - (i) details of the Equipment supplied and delivered;
 - (ii) details of other moneys then due to the Supplier pursuant to the provisions of the Contract;
 - (iii) a statutory declaration in the form set out in Annexure Part K; and
 - (iv) a description and breakdown of the works carried out up to the date of the Payment Claim, showing the value of the works performed since:

- (A) the Restatement Date; and
- (B) since the last Payment Claim was submitted;
- (v) if the Supplier has carried out work as a result of a Variation directed under Clause 23:
 - (A) a description and breakdown of the works carried for the Variation; and the
 - (B) the value of work for the Variation up to the date of the Payment Claim;
- (vi) details of any other separately identified payments due under the Contract; and
- (vii) the current Not Rejected LRV Program being used by the Supplier for the performance of the work under the Contract.
- (c) If the Supplier does not submit a Payment Claim in accordance with Clause 24.1(a) then the Principal's Representative will not be obliged to undertake any assessment of that purported Payment Claim the Purchaser will not be obliged to make any payment in respect of that purported Payment Claim, until a Payment Claim has been served by the Supplier on the Purchaser that complies with Clause 24.1(a).
- (d) Any Payment Claim served by the Supplier prior to the date stated at Item 32 will be invalid until that date has passed, at which point the Payment Claim will be deemed to be served on the Purchaser on the date stated at Item 32.

24.1A Payment Certificates

Subject to Clause 24.5, within 10 Business Days after receiving a Payment Claim under this clause, the Purchaser will issue a payment certificate (**Payment Certificate**) to the Supplier setting out the calculations employed to arrive at the amount and, if the amount is more or less than the Payment Claim rendered by the Supplier, the reasons for the difference. If the Supplier does not render a Payment Claim, the Purchaser may nevertheless issue a Payment Certificate to the Supplier pursuant to this Clause 24.1A. In determining the amount to be paid by the Purchaser to the Supplier (or by the Supplier to the Purchaser) the Purchaser will assess the KPI Regime and make adjustments to any payment in accordance with the KPI regime. The amount payable by the Purchaser to the Supplier in respect of Insurance Spares and Specialist Maintenance Tools ordered prior to the expiration of the last of the Defects Liability Period, shall be calculated using the rates set out in Annexure Part Z.

24.1B Tax invoice

Within 10 Business Days of receiving a Payment Certificate under this Clause 24.1B, the Supplier must issue a tax invoice to the Purchaser for the amount certified as being payable in a Payment Certificate.

24.1C Payment

Subject to the provisions of Clause 24.7, within 30 Business Days of the end of the month in which the Purchaser receives a tax invoice for the certified amount, the Purchaser must pay to the Supplier, the amount stated in the Payment Certificate plus the applicable GST. If the Supplier does not render a tax invoice, the Purchaser may nevertheless make payment to the Supplier pursuant to this Clause 24.1C.

24.2 Not used

24.3 Effect of payment

Payment of moneys under Clause 24.1 will not be evidence that the subject Equipment complies with the Contract. Payment other than final payment will be on account only.

24.4 Final payment claim and Final Certificate

Within 20 Business Days after the expiry of the last Defects Liability Period, the Supplier must give the Purchaser a written Final Payment Claim endorsed 'Final Payment Claim' being a

Payment Claim together with all other claims whatsoever in connection with the subject matter of the Contract.

Within 30 Business Days after receipt of the Final Payment Claim, the Purchaser will issue to the Supplier a Final Certificate evidencing the moneys finally due and payable between the Purchaser and the Supplier on any account whatsoever in connection with the subject matter of the Contract.

Within 5 Business Days of receiving a Final Certificate under this Clause 24.4, the Supplier must issue a tax invoice to the Purchaser for the amount certified as being payable in the Final Certificate issued under this Clause 24.4. Within 20 Business Days of the end of the month in which the Purchaser receives a tax invoice for the certified amount, the Purchaser will pay to the Supplier, the amount stated in the Final Certificate plus the applicable GST. If the Supplier does not render a tax invoice, the Purchaser may nevertheless make payment to the Supplier pursuant to this Clause 24.4.

All claims by the Supplier, whether under Clause 24.1 or this Clause 24.4, which have not already been barred will be barred after the expiration of the period for the lodging of the Final Payment Claim.

24.5 Interest

Any late payment of amounts that are properly due and payable by either the Purchaser or the Supplier to the other under the Contract (including a previously disputed amount or an amount which is not paid due to the application of set-off by the Purchaser under Clause 24.7 if the amount set-off is determined to be incorrect) will incur simple interest at the rate stated in Item 35 from the day after the date on which the payment was due to (and including) the date of payment.

24.6 Not used

24.7 Set off

- (a) The Purchaser will be entitled to set-off or deduct from any amount due from the Purchaser to the Supplier under the Contract any debt or other monies due from the Supplier to the Purchaser whether under the Contract or otherwise at law relating to the IWE or the Project.
- (b) The Supplier must make all payments due to the Purchaser under the Contract without set-off or counterclaim, and without any deduction to the extent permitted by law.
- (c) Nothing in this Clause 24.7 affects the Purchaser's right to recover from the Supplier the whole of the debt or any balance that remains owing after any set-off.

24.8 Payment on account

Any payment of moneys by the Purchaser to the Contract is not:

- (a) evidence of the value of the Equipment or that any of the Supplier's obligations under the Contract have been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; or
- (c) approval by the Purchaser of the Supplier's performance or compliance with the Contract,

but is only taken to be payment on account, and will not prejudice any rights or powers of the Purchaser whether under the Contract or otherwise according to law.

24.9 No other payment

The Supplier is not entitled to, and will have no Claim against the Purchaser in respect of, any Contract Sum payments by the Purchaser to the Supplier unless expressly provided in the Contract.

24.10 Performance Adjustment

The Supplier acknowledges and agrees that:

- (a) the performance of the Additional LRVs and the Supplier's response to any failures of the Additional LRVs will be monitored and evaluated through the application of the KPI Regime;
- (b) the Purchaser is entitled to withhold moneys until the expiration of the final Defects Liability Period, as provided for in the KPI Regime; and
- (c) the amount ultimately payable to the Supplier by the Purchaser may be reduced through the application of the KPI Regime.

24A GST

24A.1 Same meaning as GST Legislation

Words and expressions defined in the GST Legislation have the same meaning in this Clause 24A.1.

24A.2 GST payable

In addition to paying the Contract Sum and providing any other consideration under the Contract, which are exclusive of GST, the Purchaser must:

- (a) pay to the Supplier an amount equal to any GST for which the Supplier is liable on any supply by the Supplier under or in connection with the Contract; and
- (b) make that payment of that GST as and when the Purchaser must pay or provide the consideration for the supply or any part of it in accordance with the Contract.

24A.3 Invoice

The Supplier must issue a Tax Invoice (or an adjustment note) to the Purchaser for any supply in relation to which the Supplier may recover GST from the Purchaser under the Contract, on or before the due date for payment of the consideration for the supply or any part of it.

24A.4 Adjustments

The Supplier must refund to the Purchaser:

- (a) any overpayment by the Purchaser for GST; and
- (b) any refund of GST received by the Supplier for whatever reason,

in relation to the Contract within 10 Business Days of the Supplier becoming aware of the overpayment or such refund of GST is received by the Supplier, whichever is the earlier.

24A.5 GST if the Purchaser supplies the Supplier

If the Purchaser must pay GST on any supply by the Purchaser under the Contract, the Supplier must pay to the Purchaser an amount equal to that GST, and indemnify the Purchaser against that GST, in exactly the same way as the Purchaser must so do for any GST the Supplier must pay, and paragraphs 24A.1 to 24A.4 of this Clause 24A apply to that GST as if the Purchaser was the Supplier, and the Supplier was the Purchaser.

24A.6 Indemnities

- (a) If a party has a claim under or in connection with the Contract for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- (b) If a party has a claim under or in connection with the Contract whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue will be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

24A.7 Warranty by Supplier that it is registered for GST

If requested by the Purchaser, the Supplier must provide satisfactory evidence that it is registered or required to be registered for GST. The Supplier must immediately notify the Purchaser if it ceases to be registered for GST.

24A.8 Power to withhold if no ABN

The Purchaser is entitled to withhold from any payment made to the Supplier such amounts as are required for the Purchaser to comply with the provisions of the Taxation Administration Act 1953 (Cth) and related legislation.

24B Not used**25 Default and termination****25.1 Preservation of other rights**

If a party breaches (including repudiates) the Contract, nothing in this Clause 25 will prejudice the right of the other party to recover damages or exercise any other right or remedy.

25.2 Supplier's Event of Default

(a)

(b)

25.3 Purchaser's notice to remedy

A notice under Clause 25.2 must state:

- (a) that it is a notice under Clause 25.2;
- (b) specify the Supplier Event of Default; and
- (c) require the Supplier to:
 - (i) if the Supplier Event of Default relates to the non-payment of moneys which are due from the Supplier to the Purchaser under the Contract, pay those moneys within 5 Business Days after the notice is given to the Supplier; or

- (ii) in the case of any other Supplier Event of Default:
 - (A) propose a program for remedying the Supplier Event of Default which is reasonably acceptable to the Purchaser; and
 - (B) remedy the Supplier Event of Default by the time and date specified (being not less than 10 Business Days (and reasonable having regard to the nature of the Supplier Event of Default) after the notice is given to the Supplier).

25.3A Supplier Termination Event

Each of the following events is a Supplier Termination Event:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

25.4 Purchaser's rights

- (a)
- (b)

25.5 Purchaser's Event of Default

- (a) If the Purchaser commits a Purchaser Event of Default, the Supplier may give the Purchaser a written notice to show cause.
- (b) Each of the following events is a Purchaser Event of Default:
 - (i) **(Failure to insure)**: failing to produce evidence of insurance;
 - (ii) **(Failure to pay)**: failure by the Purchaser to make a payment due and payable pursuant to the Contract; and
 - (iii) **(Failure to provide access)** failure by the Purchaser to provide the Supplier with access to the Stabling Facility as required by this Contract for a continuous period of 24 months or longer.

25.6 Supplier's notice to show cause

A notice given under Clause 25.5 must state:

- (a) that it is a notice under Clause 25.6;
- (b) the alleged Purchaser Event of Default;
- (c) that the Purchaser is required to show cause in writing why the Supplier should not exercise a right referred to in Clause 25.7;

- (d) the date and time by which the Purchaser must show cause (which must not be less than 20 Business Days after the notice is received by the Purchaser); and
- (e) the place at which cause must be shown.

25.7 Supplier's rights

- (a) If the Purchaser fails to show reasonable cause by the stated date and time, the Supplier may, by written notice to the Purchaser, suspend the whole or any part of the performance of the Contract.
- (b) The Supplier must remove the suspension if the Purchaser remedies the Purchaser Event of Default.
- (c) The Supplier may, by written notice to the Purchaser, terminate the Contract, if within 30 Business Days of the date of suspension under this Clause 25.7 the Purchaser fails:
 - (i) to remedy the Purchaser Event of Default; or
 - (ii) if the Purchaser Event of Default is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Supplier.
- (d) The Supplier will be entitled to damages reasonably incurred by reason of the suspension.

25.8 Termination

If the Contract is terminated pursuant to Clause 25.4 or 25.7, the parties' remedies, rights and liabilities will be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

25.9 Not used

25.10 Procedure on termination

Upon receipt of a notice of termination under Clause 25.4 or 25.7, the Supplier must:

- (a) protect property in the possession or control of the Supplier in which the Purchaser has, or may acquire, an interest;
- (b) do all things necessary to transfer to the Purchaser all of the Supplier's right, title and interest in and to the Equipment or any plant material and equipment which forms, or which is intended to form, part of the Equipment;
- (c) deliver to the Purchaser the Design Documentation and other documents, information, materials and the like (in hard copy and native electronic format) produced by, or in the possession or control of, the Supplier relating to the Equipment together with the Intellectual Property Rights to enable the Purchaser (or the Purchaser's nominee) to operate, maintain and repair the Equipment without infringing any Intellectual Property Rights;
- (d) assign to the Purchaser all rights and benefits under contracts with third parties; and
- (e) do all things necessary in cooperation with the Purchaser and subcontractors concerned to arrange that subcontractor's contracts be novated to the Purchaser or the Purchaser's nominee; and
- (f) Deliver the Equipment to the Stabling Facility, within the times directed by the Purchaser.

25.11 Costs on Termination

(a)

(b)

25.12 Not used

25.13 Indemnity for Supplier Termination Event

Where the Contract is terminated due to a Supplier Termination Event, the Supplier indemnifies the Purchaser against any Claim brought against or Loss suffered or incurred by the Purchaser in respect of the termination of the Contract including any additional cost incurred in appointing a replacement supplier including any increase in the cost of supplying alternative equipment in excess of the balance of the Contract Sum as at the date of termination.

25.14 No other termination rights

Despite any other rule of law or equity to the contrary, the Contract may not be terminated other than as provided for in the Contract.

26 Not used

27 Notification of claims

27.1 Communication of claims

The Prescribed Notice is a written notice of the general basis and quantum of the claim.

No later than 10 Business Days after the Supplier could reasonably have been aware of any Claim the Supplier must give to the Purchaser the Prescribed Notice or a notice of Dispute under Clause 28.1.

This Clause 27.1 and Clause 27.3 will not apply to any Claim, including a claim for payment (except for claims which would, other than for this Clause 27.1, have been included in the Final Payment Claim), the communication of which is required by another provision of the Contract.

The Purchaser must give to the Supplier a Prescribed Notice within 30 Business Days of becoming aware of a Claim.

27.2 Liability for failure to communicate

If the Supplier fails to comply with the provisions of Clause 27.1 or to give a notice or communicate a claim in accordance with the relevant provision of the Contract then:

- (a) to the extent permitted by law, the Purchaser will not be liable for any Claim by the Supplier; and
- (b) the Supplier will be absolutely barred from making any Claim against the Purchaser, arising out of or in connection with the relevant direction, fact, matter or thing (as the case may be) to which the provisions of Clause 27.1, the notice or the claim applies.

27.3 Unresolved claims

If within 20 Business Days of giving of Prescribed Notice the claim has not been resolved, the Prescribed Notice will be deemed to be a notice of Dispute under Clause 28.1.

28 Dispute resolution

28.1 Notice of dispute

- (a) If a dispute or difference between the Supplier and the Purchaser arises in connection with the Contract or the subject matter of the Contract, then either party may deliver to the other party a notice of dispute (**Dispute Notice**).
- (b) Any Dispute Notice given under Clause 28.1(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under Clause 28.1(a); and
 - (iii) include or be accompanied by reasonable particulars of the dispute.
- (c) Unless otherwise expressly provided in the Contract, it is a condition precedent to the referral of a dispute to litigation that the parties to the dispute first follow and complete the procedures referred to in this Clause 28.

28.2 Executive negotiation

- (a) Within 10 Business Days of the date of a Dispute Notice (or such longer period agreed in writing by the parties), the designated officers must meet and in good faith attempt to resolve the dispute.
- (b) If a dispute is not resolved within 25 Business Days of the date of the Dispute Notice, either party may give written notice to the other party that those parts of the dispute which remain unresolved be referred to expert determination in accordance with Clause 28.3.
- (c) For the purposes of this Clause 28.2 the designated officers are:
 - (i) in respect of the Purchaser, the person nominated in item 39 of Annexure Part A (or nominated alternative if not available); and
 - (ii) in respect of the Supplier, the person nominated in item 40 of Annexure Part A (or nominated alternative if not available).

28.3 Expert Determination

- (a) If notice to refer a dispute to expert determination is given under Clause 28.2(b) the parties must seek to agree on an expert to determine the dispute. If the parties have not agreed on an expert prior to the expiration of 10 Business Days following the date of the notice the expert shall be appointed by the President of the Institute of Arbitrators and Mediators Australia.
- (b) Both parties must promptly make available to the expert all such additional information, access to the Site, and appropriate facilities, as the expert may require for the purposes of making a decision on the Dispute.
- (c) The expert is not an arbitral tribunal.
- (d) Notwithstanding anything else, to the extent permitted by law, the expert will have no power to apply or have regard to the provisions of Part 4 of the Civil Liability Act 2002 NSW.
- (e) Within 56 days after the appointment of the expert, or within such other period as may be proposed by the expert and approved by both parties, the expert must give its decision in writing, which will be reasoned and must state that it is given under this Clause 28.3(f). The decision will be immediately binding on both parties, who must give effect to it unless and until it is revised in an amicable settlement or an arbitral award as described below.

- (f) If either party is dissatisfied with the expert's determination, then either party may, within 28 days after receiving the decision, give notice to the other party of its dissatisfaction (**Notice of Dissatisfaction**).

If the expert fails to give its decision within the period of 56 days (or as otherwise approved) after the appointment of the expert, then either party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other party.

A Notice of Dissatisfaction issued under this clause must:

- (i) state that it is given under this Clause 28.3(g), and
- (ii) set out the matter in dispute and the reason(s) for dissatisfaction.

Except as stated in Clause 28.5, neither party will be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Clause 28.3(g).

- (g) If the expert has given its determination as to a dispute, and no Notice of Dissatisfaction has been given by either party within 28 days after it received the expert's determination, then the decision will become final and binding upon both parties.

28.4 Amicable settlement

Where a Notice of Dissatisfaction has been given under Clause 28.3(g), both parties must attempt to settle the dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, if no amicable settlement has been reached by the 56th day after the day on which the Notice of Dissatisfaction was served, the dispute will be taken to have been referred to arbitration under Clause 28.10.

28.5 Failure to comply with the Expert's Determination

If a party fails, within 7 days or as the parties otherwise agree in writing, to comply with the determination of the expert, then the other party may, without prejudice to any other rights it may have, refer this failure itself to arbitration under Clause 28.10. In these circumstances Clauses 28.1 to 28.3 will not apply to this reference.

28.6 Deleted

28.8 Deleted

28.9 Deleted

28.10 Arbitration

Any dispute which is referred to arbitration will be conducted before a person to be:

- (a) agreed between the parties; or
- (b) failing agreement within 21 days after the dispute has been referred to arbitration, appointed by the President for the time being of the Institute of Arbitrators and Mediators Australia.

28.11 Arbitration rules

To the extent that they are not inconsistent with the Contract, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators and Mediators Australia will apply to the arbitration.

The seat of the arbitration will be in Sydney, Australia.

The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of the expert under clause 28.3 that is not final and binding on the parties pursuant to clause 28.3.

Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

All aspects of the arbitration, including:

- (a) any proceedings or hearings;
- (b) any meetings;
- (c) any submissions;
- (d) any materials in the proceedings created for the purpose of the arbitration; and
- (e) documents produced in the proceedings which are not otherwise in the public domain, must be kept private and confidential except:
 - (f) where the parties expressly agree in writing to the contrary;
 - (g) as required by law; or
 - (h) as required in order to enforce an arbitration award.

28.12 Summary relief

Subject to Clause 5.6A, nothing will prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under Clause 28 or any matter arising under the Contract.

28.13 Continue to perform

Notwithstanding the existence of a dispute, both parties must continue to perform their respective obligations under the Contract.

29 Limitation of liability and exclusion of loss

*

29.1 Limitation of liability

- (a) Subject to paragraph (b) and Clause 29.2, the Supplier's total aggregate liability to the Purchaser for all liability arising out of or in connection with Contract whether in contract, tort (including negligence) or otherwise at law or in equity is limited to the amount stated in Item 37.
- (b) Nothing in the Contract, including paragraph (a) and Clause 29.2, will limit the Supplier's liability:

(c)

(d)

(e)

29.2 Exclusion of certain loss

(a) To the extent permitted by law and subject to Clause 29.1(b), neither party is liable for Consequential Loss.

(b)

Nothing in this clause 29.2 will exclude or limit any entitlement of the Supplier in respect of a Variation.

29.3 Civil Liability Act

(a) The operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under or in relation to the Contract howsoever such rights, obligations or liabilities are sought to be enforced.

(b) Without limiting paragraph (a), the rights, obligations and liabilities of the parties under the Contract with respect to proportionate liabilities are as specified in the Contract and not otherwise, howsoever such rights, obligations or liabilities are sought to be enforced.

(c) The Supplier agrees that:

- (i) in each subcontract into which it enters for the carrying out of its obligations under the Contract, it will include provisions that, to the extent permitted by law, effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities arising under or in relation to each subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
- (ii) it will require and ensure that each subcontractor will include in any further contract that it enters into with others for the carrying out of its obligations under the Contract, provisions that, to the extent permitted by law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

29.4 Survival

This Clause 29 will survive the expiry or termination of the Contract.

30 Waiver of rights

- (a) A right may only be waived in writing, signed by the party giving the waiver.
- (b) No conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (c) A waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again.
- (d) The exercise of a right does not prevent any further exercise of that right or of any other right.

31 General

31.1 Replacement Body

Where a reference is made to any body or authority which ceases to exist (**Former Body**), that reference will be to that body or authority (**Replacement Body**) which then serves substantially the same functions as the Former Body. Any reference to any senior office of the Former Body will be to the equivalent senior officer of the Replacement Body.

31.2 Business Day

If the day on which anything is to be done under the Contract is not a Business Day, that thing must be done no later than the next Business Day.

31.3 No bias against drafter

No provision of the Contract is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

31.4 Excluding liability

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

31.5 Certification

For the purposes of the Contract, a copy of a document will be regarded as duly certified by the Supplier if it is certified as a true copy by a director, secretary or general manager of the Supplier.

31.6 Cost of performing obligations

Each party must perform its obligations under the Contract at its own cost, unless expressly provided otherwise.

31.7 Governing law

The Contract is governed by and must be construed according to the law applying in New South Wales.

31.8 Jurisdiction

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

31.9 Amendments

The Contract may only be varied by a deed executed by or on behalf of each party.

31.10 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under the Contract.
- (b) A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of the Contract operates as a waiver of another breach of that term or of a breach of any other term of the Contract.

31.11 Survival of certain provisions; no merger

- (a) Without limiting Clause 31.18(a):
 - (i) Clauses 3, 5, 6.5, 6.6, 6.8, 6.9, 8, 12, 24, 24A.5, 25.10, 25.13, 27, 28, 29 and 31 (and any other clauses necessary for or incidental to the operation of these clauses), this Clause 31.11 and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of the Contract; and
 - (ii) if the Contract is rescinded or terminated, no party will be liable to any other party except:
 - (A) under the Surviving Clauses; or
 - (B) in respect of any breach of the Contract occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under the Contract. All rights and obligations under the Contract survive the execution and delivery of any transfer or other document which implements any transaction under the Contract.

31.12 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to the Contract.

31.13 Consents

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

31.14 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into the Contract, except for representations or inducements expressly set out in the Contract.
- (b) Each party acknowledges and confirms that it does not enter into the Contract in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in the Contract.

31.15 Severance

If at any time any provision of the Contract is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make the Contract enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of the Contract.

31.16 Exercise of remedies

- (a) If the Supplier breaches any of its obligations under the Contract, the Purchaser may exercise any or all of the rights and powers and pursue any or all of the remedies available to the Purchaser under the Contract and/or enforce any other legal or equitable remedy available under applicable law.
- (b) Each and every right, power and remedy of the Purchaser will be cumulative and in addition to any other right, power and remedy, whether under the Contract or applicable law, which may be exercised by the Purchaser and the exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy.
- (c) No delay or omission by the Purchaser in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

31.17 Entire agreement

To the extent permitted by Law, in relation to its subject matter, the Contract:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

31.18 Indemnities

- (a) Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before commencing proceedings to enforce a right of indemnity conferred by the Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

31.19 Counterparts

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

31.20 Attorneys

Each person who executes the Contract on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

31.21 Relationship between the Purchaser and the Supplier

Nothing in or contemplated by the Contract will be construed or interpreted as:

- (a) constituting a relationship between the Purchaser and the Supplier, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on the Purchaser to the Supplier in relation to or arising out of the Contract, other than to comply with the obligations (if any) expressly stated to be assumed by the Purchaser under the Contract on a good faith basis.

31.22 Contract documents to be in English

All documentation in computer readable or other written forms brought (whether before or after the date of the Contract) or required to be brought into existence as part of, or for the purpose of, carrying out the work under the Contract must be written in the English language.

31.23 Vienna convention

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to the Contract.

31.24 Expenses

- (a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating and executing the Contract.
- (b) The Supplier must pay any duty, taxes or other imposts payable in respect of the Contract or payable in connection with the performance of its obligations under the Contract.

6A	Date for Operational Completion of LRVs (Clause 1 and Clause 17.1A and Clause 21)	
6B	Date for Operational Completion of Additional LRVs (Clause 1 and Clause 17.1A and Clause 21)	31 March 2019
7	Delivery Place (Clause 1 and Clause 19.1)	Stabling Facility
8	Mode of Delivery (Clause 19.1)	Road transport from the Port of Sydney or Newcastle to the Stabling Facility in respect of the LRVs and Additional LRVs respectively.
9	Governing law (Clause 1.2(h))	New South Wales
10	(a) Currency (Clause 1.2(g)) (b) Place for payments (Clause 1.2(g))	Australian dollars If nothing stated, that of the jurisdiction where the Delivery Place is located Sydney Australia If nothing stated, the Purchaser's address
11	Not used	
†12	Supplier's security (a) Form (Clause 3)	In respect of the LRVs (other than the Additional LRVs), 2 unconditional and irrevocable undertakings in favour of the Purchaser each for half the amount stated in item 12(c) below, from a bank holding an Australian banking licence with an address for service in Sydney and of a rating not less than A- by Standard and Poors (Australia) Pty Ltd or A3 by Moody's Investment Service Inc in the form of Annexure Part B or such other form approved by the Purchaser at its absolute discretion. In respect of the Additional LRVs, 2 unconditional and irrevocable undertakings in favour of the Purchaser each for half the amount stated in item 12(c) below, from a bank holding an Australian banking licence with an address for service in Sydney and of a rating not less than A- by Standard and Poors (Australia) Pty Ltd or A3 by Moody's Investment Service Inc in the form of Annexure Part B or such other form approved by the Purchaser at its absolute discretion.

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A.

	<p>(b) Time for provision of security (Clause 3)</p> <p>(c) Amount or maximum percentage of Contract Sum (Clause 3)</p> <p>(d) If retention moneys, percentage to be retained from payment of each invoice (Clause 3 and Clause 24.1)</p> <p>(e) Time for provision (except for retention moneys) (Clause 3)</p> <p>Additional security for components of the Equipment not <i>delivered</i> (Clauses 3.4)</p> <p>(f) Supplier's security upon Operational Completion is reduced to (Clause 3.4)</p>	<p>The Supplier must provide to the Purchaser within 14 days after the Date of Contract, the security referred to in Clause 3.</p> <p>% of the Contract Sum or Additional Contract Sum as applicable (disregarding for this purpose the component of the Contract Sum or Additional Contract Sum comprised of the cost of Specialist Maintenance Tools and Insurance Spares)</p> <p>Not applicable</p> <p>No later than 2 Business Days prior to the Date of Contract</p> <p>Not applicable. Payment will only be made on delivery.</p> <p>% of the Contract Sum or Additional Contract Sum (disregarding for this purpose the component of the Contract Sum comprised of the cost of Specialist Maintenance Tools and Insurance Spares)</p>														
<p>†13</p> <p>14</p>	<p>Not used</p> <p>Purchaser-supplied documents (Clause 6.2)</p>	<table border="1"> <thead> <tr> <th data-bbox="651 972 1117 1003">Document</th> <th data-bbox="1117 972 1412 1003">No. of copies</th> </tr> </thead> <tbody> <tr> <td data-bbox="651 1003 1117 1034">1 Wheel Profile Drawing.....</td> <td data-bbox="1117 1003 1412 1034">.....</td> </tr> <tr> <td data-bbox="651 1034 1117 1066">2</td> <td data-bbox="1117 1034 1412 1066">.....</td> </tr> <tr> <td data-bbox="651 1066 1117 1097">3</td> <td data-bbox="1117 1066 1412 1097">.....</td> </tr> <tr> <td data-bbox="651 1097 1117 1128">4</td> <td data-bbox="1117 1097 1412 1128">.....</td> </tr> <tr> <td data-bbox="651 1128 1117 1160">5</td> <td data-bbox="1117 1128 1412 1160">.....</td> </tr> <tr> <td colspan="2" data-bbox="1117 1218 1412 1272">If nothing stated, 5 copies</td> </tr> </tbody> </table>	Document	No. of copies	1 Wheel Profile Drawing.....	2	3	4	5	If nothing stated, 5 copies	
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<p>16</p>	<p>Not used</p>															
<p>17</p>	<p>Subcontract work requiring approval if subcontractors differ from identified subcontractors (Clause 7.2)</p>															
<p>18</p>	<p>Legislative requirements, those excepted (Clause 10.1)</p>	<p>None</p>														
<p>19</p>	<p>Not used</p>															
<p>20</p>	<p>Not used</p>															

21	Not used	
22	Not used	
†23	Liquidated damages, rate (Clause 17.5)	(a) In respect of the LRVs, \$ _____ per day; (b) In respect of the Additional LRVs, \$ _____ per day.
23A	Cap on liquidated damages (Clause 17.5)	(a) in respect of the LRVs, _____ of the Contract Sum; and (b) in respect of the Additional LRVs, _____ % of the Additional Contract Sum.
†24	Not used	
25	Date for access to Site (Clause 18.1B)	
26	Party responsible for unloading the Equipment (Clauses 19.1)	
27	When risk in the Equipment passes (Clause 20.1)	
28	Time at which ownership of the Equipment passes to the Purchaser (Clause 20.2)	
29	Not used	
30	Not used	
31	(a) Defects liability period (Clause 22(a)) (b) Defects liability period (Clause 22(c)(ii))	
32	Time for service of payment claims (Clause 24.1)	Upon achievement of the milestones set out in Annexure Part H.
33	Not used	
34	Not used)
35	Interest rate on overdue payments (Clause 24.5)	Bank Bill Rate plus 2%

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A.

36	Not used	
†37	The Supplier's liability is limited as follows (Clause 29)	
†38	Not used	
39	Purchaser's designated officer (Clause 28.2(c))	Program Director, Transport for Newcastle
40	Supplier's designated officer: (Clause 28.2(c))	

† Delete if clause 29 is deleted.

Part A

Separable Portions

- This section should be completed if the *Contract* provides for *separable portions*.
- Complete a separate page for each *separable portion* which should be numbered appropriate. Any balance of the *Works* should also be a *separable portion*.

NOT USED

Annexure B

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part B

This form may also be used where the Purchaser is required to provide an unconditional undertaking, by substituting Purchaser for Supplier and vice versa, wherever occurring.

Approved form of unconditional undertaking

(Clause 3 - security)

At the request of
ACN ABN (the Supplier) and in consideration of
..... ACN
..... ABN (the Purchaser) accepting this
undertaking in respect of the Contract for
.....
..... for the supply of the Equipment.

ACN ABN (the Financial Institution)
unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded
by the Purchaser to a maximum aggregate sum of
..... (\$.....)

The undertaking is to continue until notification has been received from the Purchaser that the sum is no longer required by the Purchaser or until this undertaking is returned to the Financial Institution or until payment to the Purchaser by the Financial Institution of the whole of the sum or such part as the Purchaser may require.

Should the Financial Institution be notified in writing, purporting to be signed by
..... for and on behalf of the Purchaser that the Purchaser desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Purchaser forthwith without reference to the Supplier and notwithstanding any notice given by the Supplier not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Purchaser the sum of (\$.....)
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 Purchaser and thereupon the liability of the Financial Institution hereunder shall immediately cease.

Dated atthis.day of..20

Annexure C
ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003

Part C

ADDITIONAL CONTRACT SUM

(i)	<i>Price for 6 LRVs</i>
(ii)	€

Pricing for Additional Equipment is as set out in Schedule 3.

Payment milestones are set out in Part H

Annexure D

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part D

ADDITIONAL EQUIPMENT

Refer to Part Z

Annexure E

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part E**LRV Specification**

(Clause 1.1)

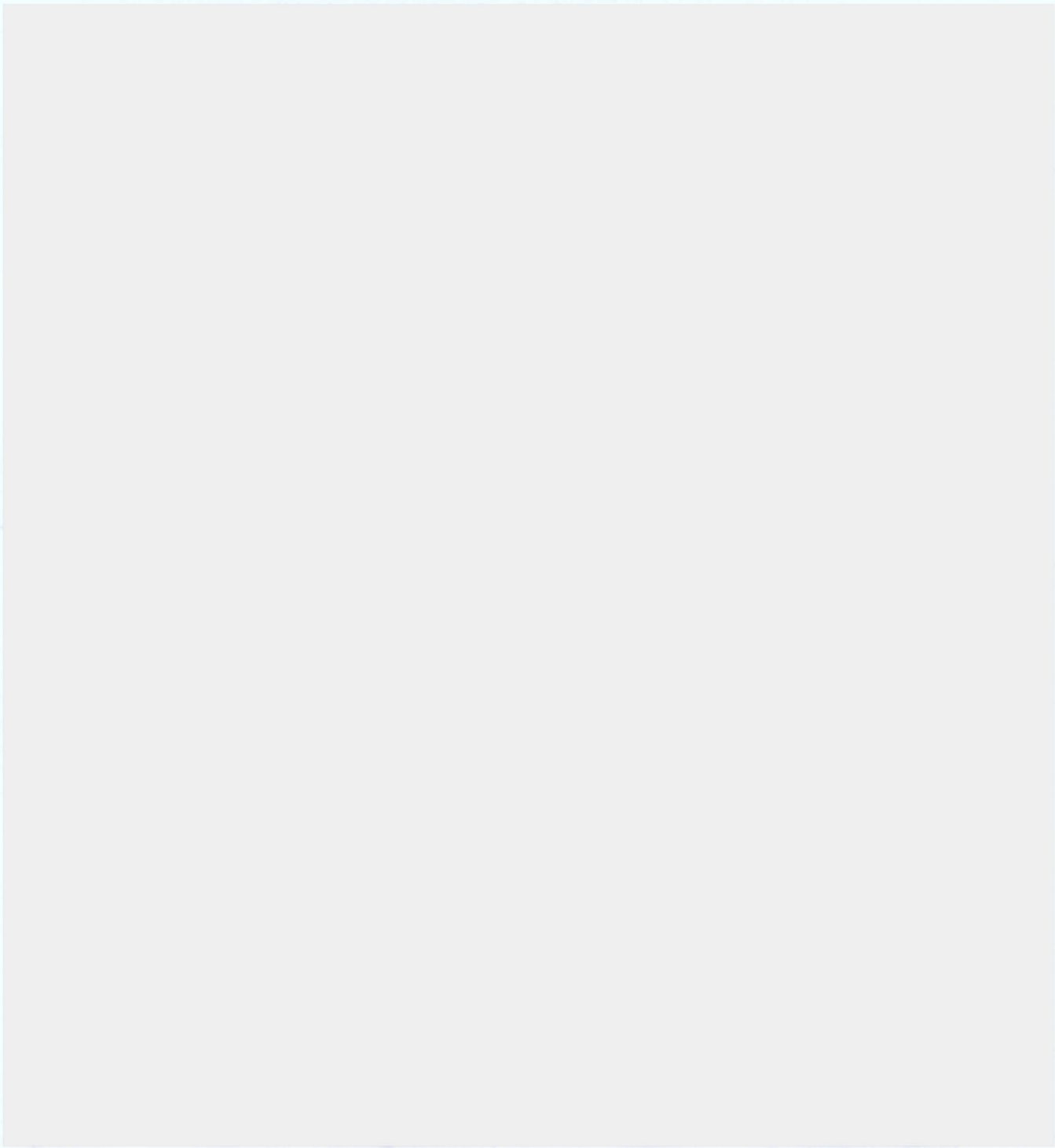


LRV Specification

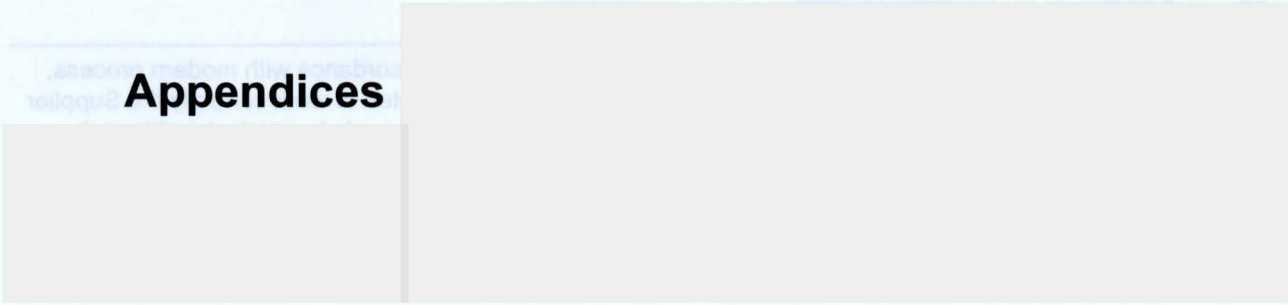
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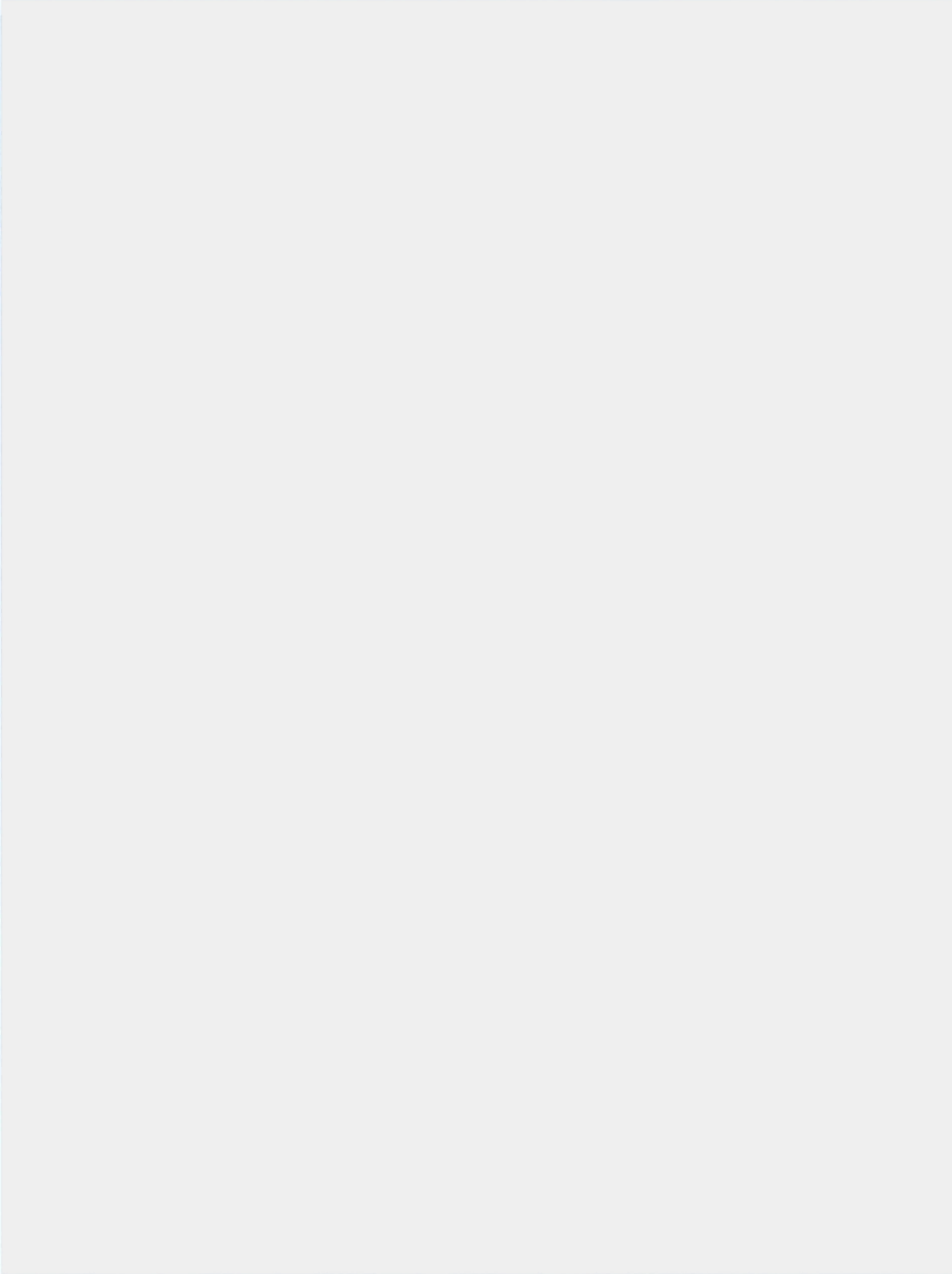


Appendices



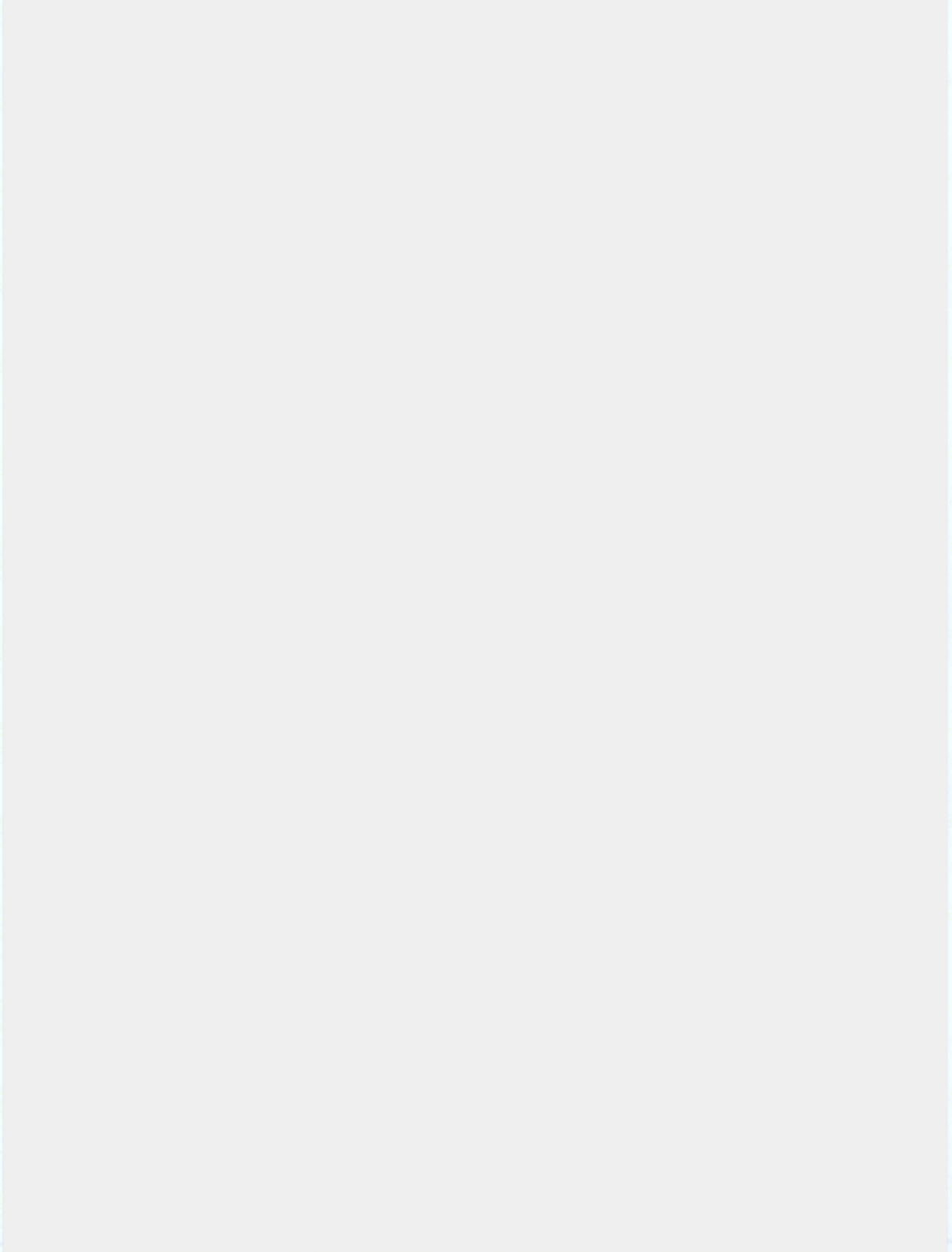
Appendix A

DYNAMIC KINEMATIC ENVELOPE FROM SYSTEM SPECIFICATION



Appendix B

SUMMARY OF KEY CURVE RADII ON SYDNEY LIGHT RAIL NETWORK



Appendix C

OPERATING ENVIRONMENT

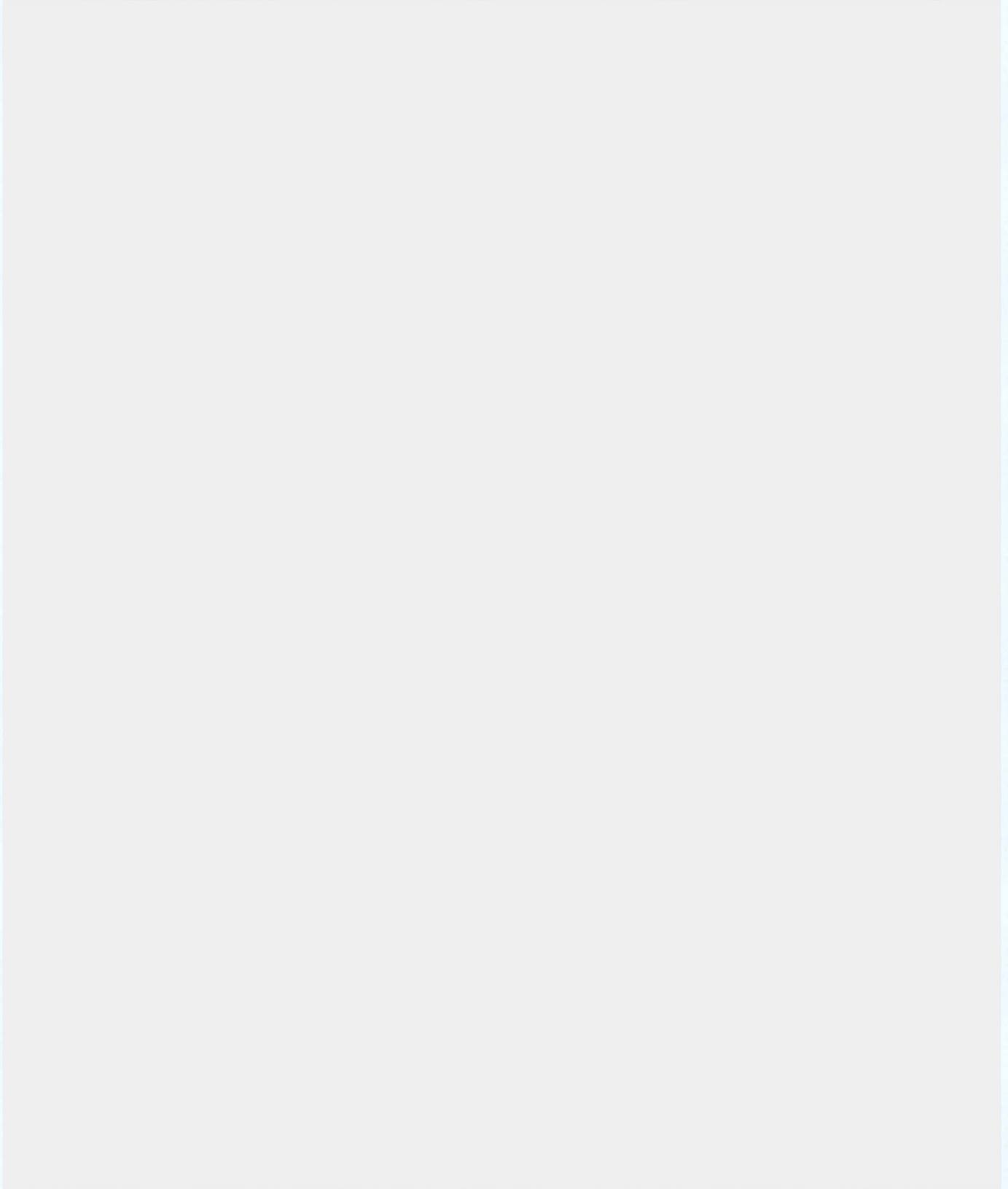
The LRVs will operate in Sydney, Australia. The Metro Transport Sydney website which provides further detail of the current operation, the extension to Dulwich Hill, and links to illustrative videos is located at the following address: <http://www.metrotransport.com.au/>

It is expected that the LRVs will be capable of continuous operation throughout the following range of climate and environmental conditions without degrading their performance or operation.

Table 4 - Key Environmental Conditions

Appendix D

VARIOTRAM TECHNICAL INFO



Appendix E

SUPPLY CONTRACT DOCUMENTATION SUBMISSION REQUIREMENTS

Document Title	Documentation content	Status at Date of Contract	Issue date ¹	Min Review Frequency

Appendix F

SAFETY AND ACCREDITATION

1. Safety Management and Accreditation Plan

The Supplier must develop, deliver, implement and maintain a Safety Management and Accreditation Plan (**SMAP**), which:

- (a) is consistent with the Supplier's Safety Management System;
- (b) is consistent with the requirements of the Purchaser's Safety Assurance Plan;
- (c) is consistent with the requirements of the Operator's Safety Management System;
- (d) complies with the requirements of the *Rail Safety Act 2008* (NSW);
- (e) complies with AS 4292:2006 - Railway Safety Management;
- (f) complies with AS 31000:2009 - Risk management - Principles and guidelines; and
- (g) otherwise complies with all Legislative Requirements.

The SMAP must also be based upon a safety management lifecycle framework that integrates safety, quality and reliability, availability and maintainability (RAM) assurance activities. An example of such an acceptable safety management lifecycle framework is identified within the group of standards that include EN50126, EN50128 and EN 50129.

A purpose of the SMAP is for the Supplier to:

- (a) demonstrate to the Purchaser that it has a clear understanding of the management of, and the processes in place to manage, rail safety in respect of the Project; and
- (b) explain to the Purchaser how it intends to comply with the requirements of the *Rail Safety Act 2008* (NSW) and achieve its obligations with respect to any Accreditation variation.

The SMAP must contain the procedures necessary for the Supplier to comply with its obligations under clause 10A of the Contract with regard to the preparation and submission of:

- (a) the applications by the Operator to vary its Accreditation; and
- (b) the deliverables required to be prepared by the Supplier to support the Operator's application for the variations to the Operator's Accreditation for the testing and commissioning and revenue service of the LRVs.

2. Safety Cases

The three key deliverables of the SMAP are the Safety Case submissions (Safety Case - Design and Construction, Safety Case - Test and Commissioning and Safety Case - Revenue Service). Each Safety Case must conform to a published standard such as that defined within EN50129 (irrespective of the technology defined). As a minimum the following sections shall be included:

- (a) Introduction;
- (b) Description of Works and Scope of Safety Assurance Report;
- (c) Safety Requirements;
- (d) Responsibilities and accountabilities;

- (e) Evidence of Quality Management;
- (f) Evidence of Safety Management;
- (g) Technical Safety Report;
- (h) Operations and Maintenance Requirements;
- (i) Recommendations and Restrictions;
- (j) Conclusions; and
- (k) References.

3. System Hazard Analysis

The Supplier must complete a system hazard analysis (**SHA**) in a format that is consistent with the Purchaser's Safety Assurance Plan (and complies with the requirements of the "data item description system safety deliverable" in the Purchaser's Safety Assurance Plan).

The SHA must identify potential hazards to the LRVs and to those persons or systems with which the LRV interfaces. The SHA must pay particular attention to innovative technologies, approaches or designs.

The SHA must be carried out in accordance with the general requirements of AS 4292.3 Railway safety management – Rolling stock. One input to the SHA is the FMECA process required of the Supplier. The SHA must include an estimate of the probability of occurrence of each hazard, identification of the possible consequences of each hazard and details of the methods proposed to eliminate or control the hazard. The SHA must as far as possible be quantitative.

The SHA must include:

- (a) a review of pertinent historical safety experience and data for similar designs;
- (b) a categorised listing of basic energy sources, hazardous substances and environmental hazards incorporated in the design;
- (c) a categorised listing of the hazards associated with operation or failure of the LRVs, including subsystems, with analysis of how these affect the overall safety of the LRV;
- (d) a categorised listing of the hazards associated with the maintenance, repair, support and disposal of the LRVs, including their subsystems and components for passengers, crew, maintainers, external systems and facilities and the environment;
- (e) combinations of more than one failure that can cause hazards to the LRVs, passengers, crew or maintainers, external systems and facilities;
- (f) examination of subsystem interfaces;
- (g) how normal operations of the LRVs can or may degrade the safety of the LRVs;
- (h) how it is planned that residual risks will be controlled; and
- (i) identification of the pertinent safety requirements and regulations with which the system must comply.

The SHA is to consider the hazards associated with all operating states and modes. The operating context for the data must be presented and full details of assumptions and methods must be included to show how the data has been modified to take account of the Purchaser's and the Operator's operational, environmental and other contexts.

The SHA must also include a thorough human factors review and analysis to the satisfaction of the Purchaser and the Operator.

Each Safety Case submission must be supported by a formal issue of the SHA.

3. System Hazard Analysis

(a) Evidence of Quality Management

(f) Evidence of Safety Management

(g) Technical Safety Report

(h) Operations and Maintenance Requirements

(i) Recommendations and Resolutions

(j) Conclusions and

(k) References

The SHA must also include a thorough human factors review and analysis to the satisfaction of the Purchaser and the Operator.

The SHA must also include a thorough human factors review and analysis to the satisfaction of the Operator's operational, environmental and other contexts.

must comply.

(f) identification of the pertinent safety requirements and regulations with which the system

(g) how it is planned that residual risks will be controlled; and

(h) how normal operations of the LRVs can or may degrade the safety of the LRVs;

(i) examination of subsystem interfaces;

(j) combinations of more than one failure that can cause hazards to the LRVs, passengers, crew or maintainers, external systems and facilities;

(k) a categorised listing of the hazards associated with the maintenance, repair, support and disposal of the LRVs, including their subsystems and components for passengers, crew, maintainers, external systems and facilities and the environment;

(l) a categorised listing of the hazards associated with operation or failure of the LRVs, including subsystems, with analysis of how these affect the overall safety of the LRVs; hazards incorporated in the design;

(m) a categorised listing of basic energy sources, hazardous substances and environmental hazards incorporated in the design;

(n) a review of pertinent historical safety experience and data for similar designs;

The SHA must include:

is eliminate or control the hazard. The SHA must as far as possible be quantitative.

identification of the possible consequences of each hazard and details of the methods proposed to eliminate or control the hazard. The SHA must include an estimate of the probability of occurrence of each hazard. One input to the SHA is the FMECA process required of the Supplier. The SHA must include an estimate of the probability of occurrence of each hazard.

The SHA must be carried out in accordance with the general requirements of AS 4526.3 Railway safety management - Rolling stock. One input to the SHA is the FMECA process required of the Supplier. The SHA must include an estimate of the probability of occurrence of each hazard.

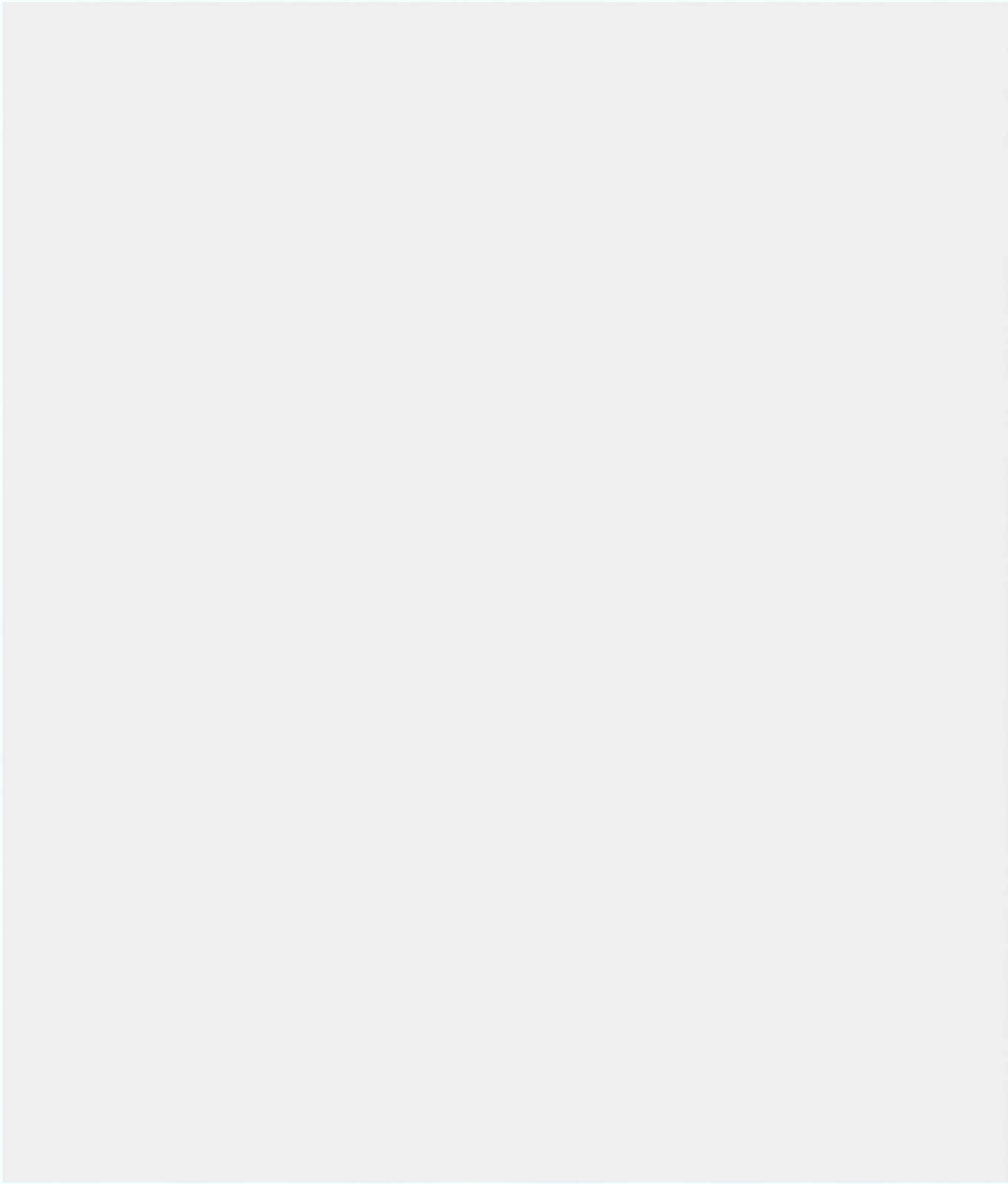
The SHA must identify potential hazards to the LRVs and to those persons or systems with which the description system safety deliverable, in the Purchaser's Safety Assurance Plan, the Purchaser's Safety Assurance Plan (and complies with the requirements of the "data item The Supplier must complete a system hazard analysis (SHA) in a format that is consistent with



Appendix G

1999-07-17 RPA Kell Watson 272 424

INTERFACE SPECIFICATION FOR THE ATP SYSTEM



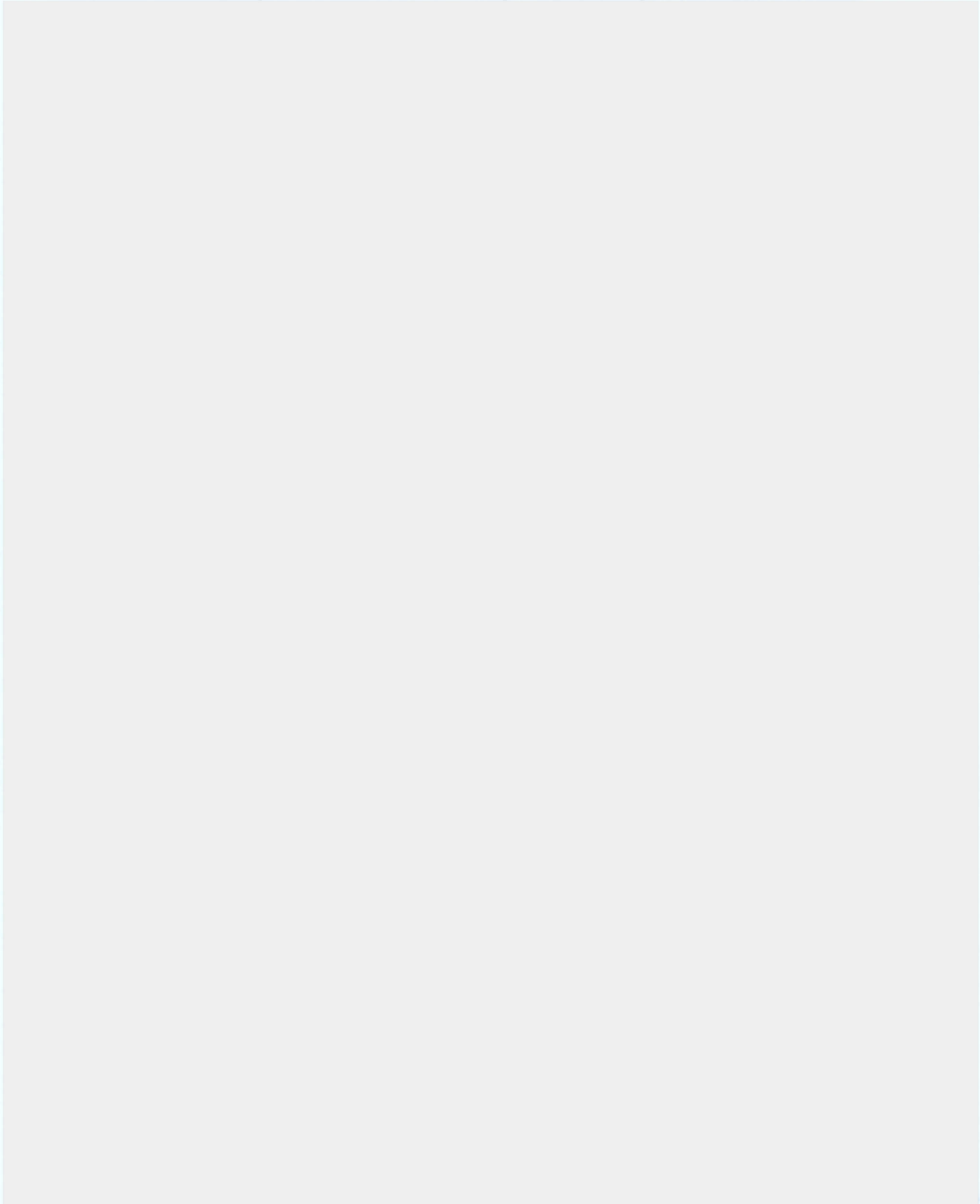
Light rail vehicle operations. The responsible and feasible shall be designed and operated to safely fit
within the receiver location included in Table 2.

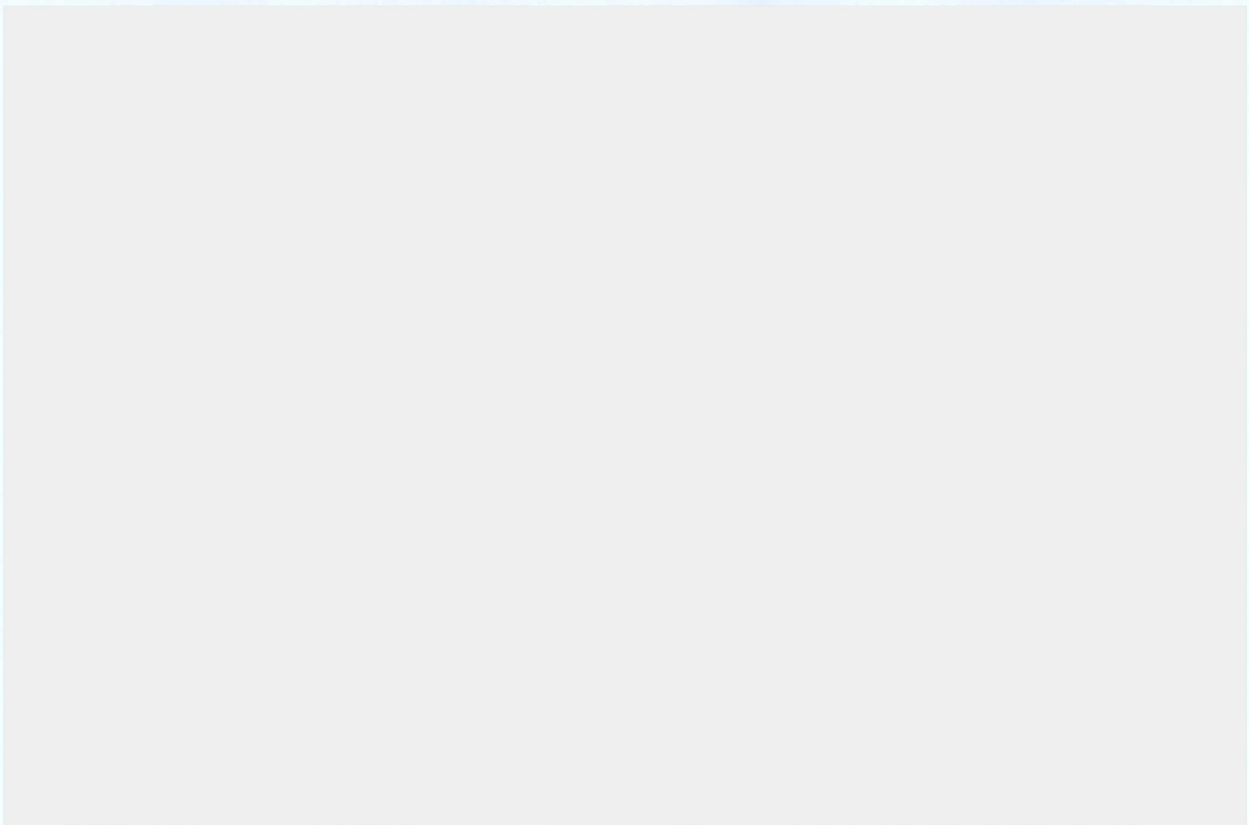
Table 2: Receiver Criteria

Appendix H

PLANNING APPROVAL

Receiver location	Time	Receiver location	Time
Receiver location	Time	Receiver location	Time



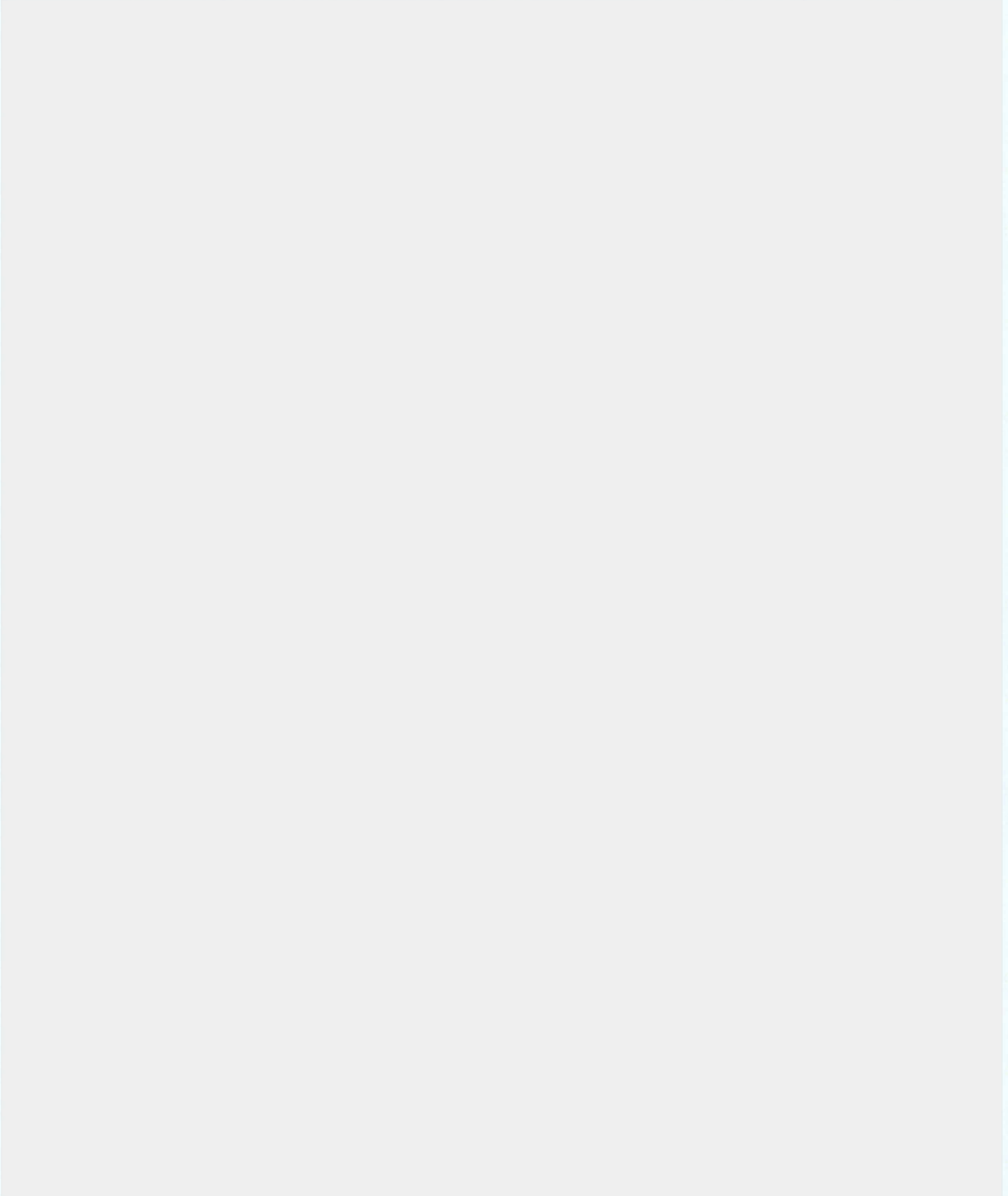


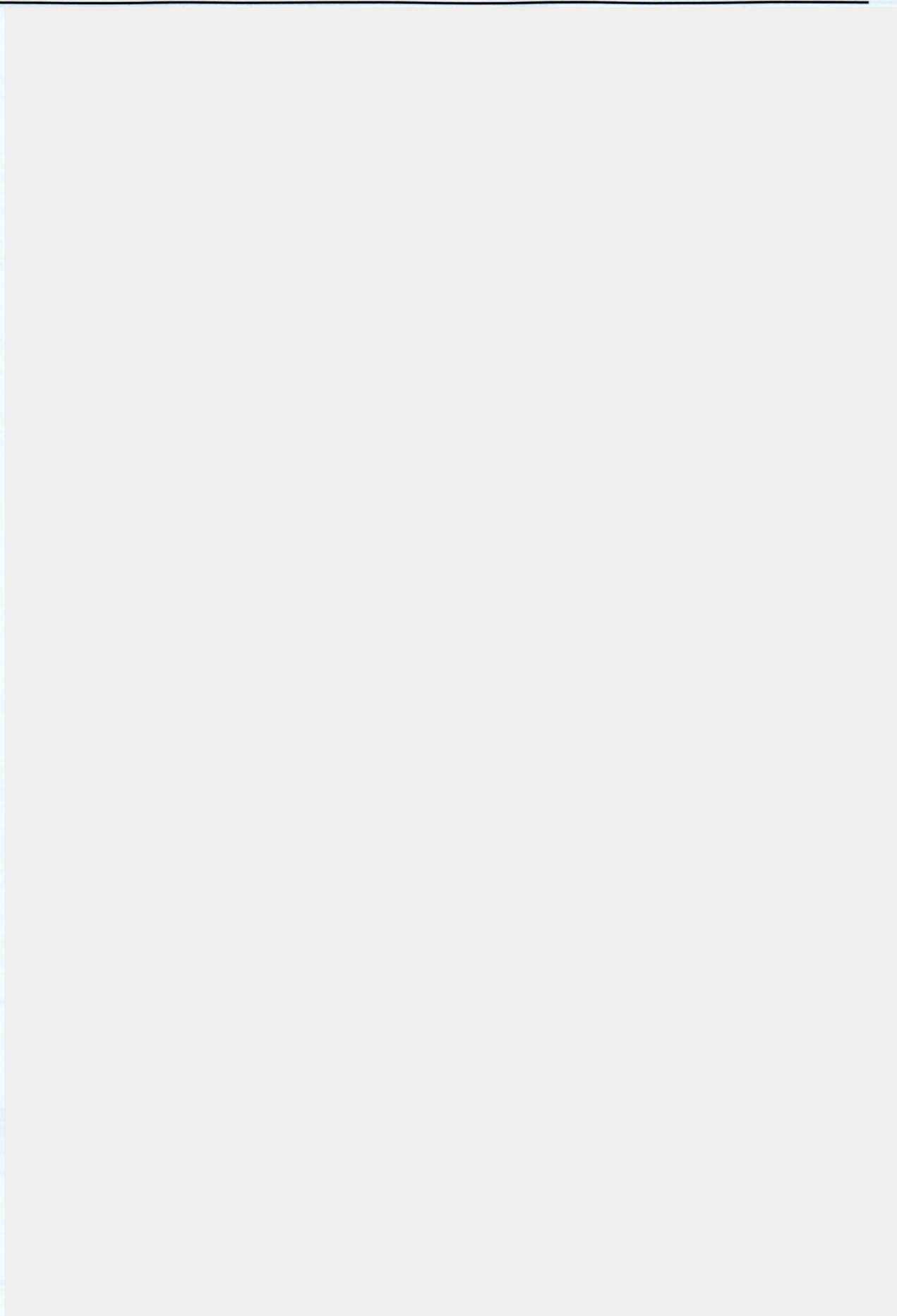
Location	Height	Distance	Notes
Location 1 (A)	1.5m	1.5m	...
Location 2 (A)	1.5m	1.5m	...
Location 3 (A)	1.5m	1.5m	...
Location 4 (A)	1.5m	1.5m	...

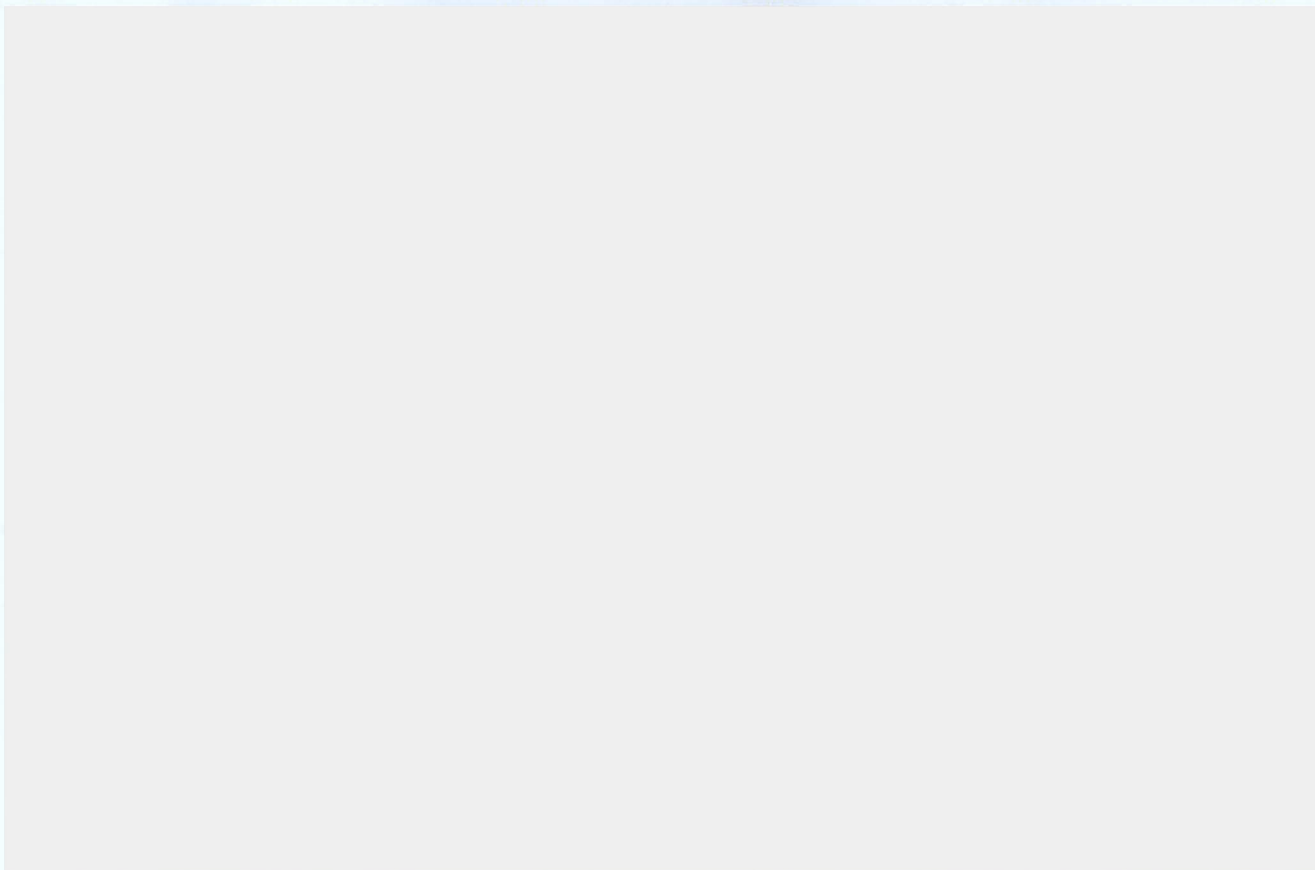
- 1 - ...
- 2 - ...
- 3 - ...
- 4 - ...

Appendix I

LRV LIVERY COLOUR PALETTE AND LOGOS







Annexure E
ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003

Part E

Part (ii) Technical Description
(Clause 1.1)

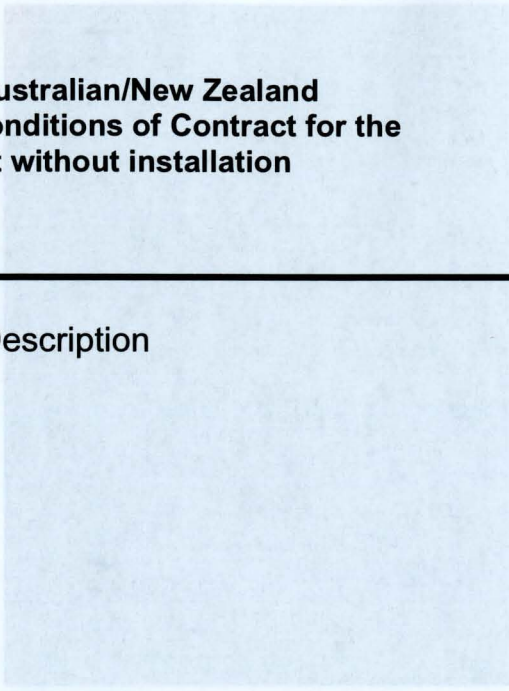


Figure 1: From Contract Part (ii) on Technical Description for relative purposes only

Annexure E
ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003

Part E

Part (iii) Design Book
(Clause 1.1)

Annexure E
ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003

Part E

Part (iv) Insurance Spares

(Clause 1.1)



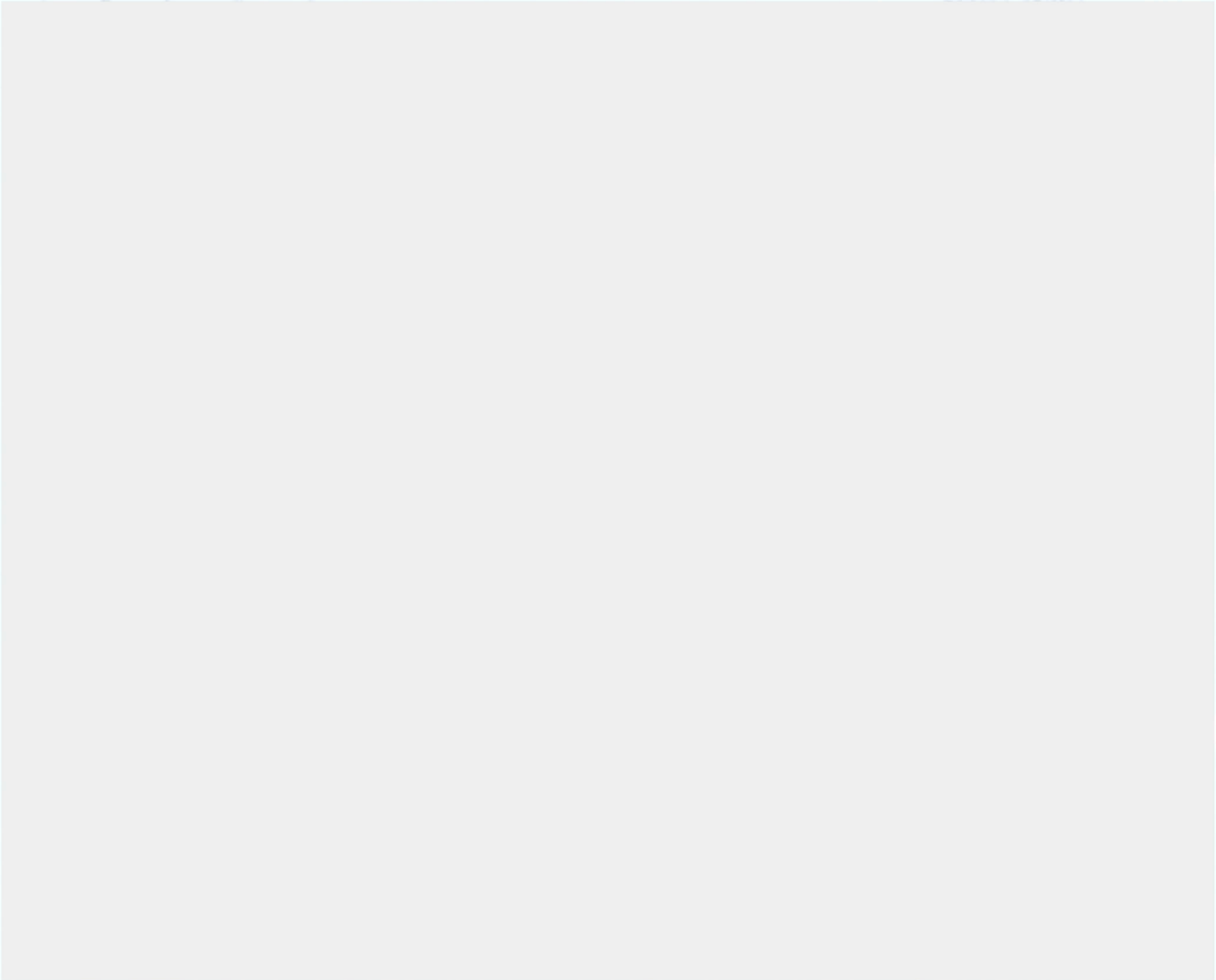
Annexure E

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part E

Part (v) Special Tools

(Clause 1.1)





Annexure E
ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003

Part E

Part (vi) Power Supply

(Clause 1.1)

T.A.S. POWER SUPPLY

Annexure F**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003****Part F**

Requirements for Operational Completion

(Clause 1.1)

Operational Completion will be achieved when:

1. the Equipment (other than any Equipment which is the subject of the Purchaser's exercise of the option in Clause 2.3) is in accordance with the requirements of the Contract except for minor Defects which do not:
 - (a) prevent the Equipment from being capable of being used for the Intended Purpose; or
 - (b) adversely affect the normal use of the Equipment or the public image of the Purchaser or the LRVs;
2. the Equipment (other than any Equipment which is the subject of the Purchaser's exercise of the option in Clause 2.3) has passed all tests specified in the Not Rejected Testing and Commissioning Plan as being applicable to Operational Completion and the Test Reports and Test Report Summary have been Not Rejected;
3. the LRVs have successfully completed the Reliability Proving Period in accordance with section 33 of the LRV Specification;
4. all Safety Cases and safety assurance documentation required by the Not Rejected Safety Management and Accreditation Plan for Operational Completion have been Not Rejected;
5. the relevant training requirements identified in the Not Rejected Training Management Plan have been satisfied;
6. all Training Materials have been Not Rejected;
7. all as-built drawings of the Equipment (other than any Equipment which is the subject of the Purchaser's exercise of the option in Clause 2.3) have been delivered to the Purchaser;
8. the Supplier has obtained all Authorisations (other than the Accreditation contemplated by Clause 10A.4) required under relevant Legislative Requirements to be issued by any Authority before the Equipment (other than any Equipment which is the subject of the Purchaser's exercise of the option in Clause 2.3) can be used for the Intended Purpose;
9. the ISO has obtained the Accreditation referred to in Clause 10A.4 from ONRSR;
10. all warranties and guarantees required to be provided by manufacturers, sub-contractors and suppliers under the Contract have been so provided; and
11. the Supplier has done everything else which the Contract requires it to have done as a pre-condition to Operational Completion.

Annexure G**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003****Part G**

Form of Design Certification

(Clause 6C.3)

To: To Transport for New South Wales (Purchaser)**From: Construcciones y Auxiliar de Ferrocarriles S.A. (Supplier)**

In accordance with the terms of Clause 6C.3 of the contract between the Purchaser and the Supplier dated [insert date] with respect of the manufacture and supply of the Equipment (**Contract**), I hereby certify that the attached Design Documentation:

- (a) is appropriate for manufacturing the applicable Equipment to which it relates;
- (b) complies with the requirements of the Contract including the LRV Specification; and
- (c) the design is safe, so far as is reasonably practicable, consistent with the general duty under the Rail Safety Act.

Terms defined in the Contract have the same meaning in this certificate.

[Insert name of professionally qualified engineer engaged by the Supplier]

Date:

Annexure H

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part H

Payment Schedule

(Clause 24)

Fleet	6
Price	
Spares+Special tools	
Surf racks	
Total price	17,258,909 €

Contract execution 23.05.2016

Amount EUR	Payment milestones	Invoice date	Payment date	Amount AUD to FWD
17,258,909 €	100%			27,926,951 AUD

Annexure I

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part I

Schedule of Rates

(Clause 23.5)

ANNEXURE I

Schedule of Rates - Clause 23.5

Number of LRV's

Role Position

Hourly Rate \$ (Excl.GST)

Role Position	Hourly Rate \$ (Excl.GST)
Commissioning Engineer	
Commissioning Technician	

Annexure J

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part J

Option Pricing Schedule

Option 1 Additional Contract Sum without production break (Production break occurs 7 months before the last LRV of the initial order exits the factory)

Additional LRV Options		Unitary LRV Price without production break(*)
Option 1a	not less than 6 additional LRVs and not more than 6 additional LRVs for SLR	€
Option 1b	not less than 1 and not more than 12 additional LRVs for SLR	€
Option 1c	not less than 1 and not more than 6 additional LRVs for the Project	€

Fleet Total Price without production break							
LRV Numbers	1	2	3	4	5	6	7
Option 1a							
Option 1b							
Option 1c							

Fleet Total Price without production break					
LRV Numbers	8	9	10	11	12
Option 1a					
Option 1b					
Option 1c					

Option 2 Additional Contract Sum with production break (Production break occurs 7 months before the last LRV of the initial order exits the factory)

Additional LRV Options		Unitary LRV Price with production break
Option 2a	not less than 6 additional LRVs and not more than 6 additional LRVs for SLR	
Option 2b	not less than 1 and not more than 12 additional LRVs for SLR	
Option 2c	not less than 1 and not more than 6 additional LRVs for the Project	

Fleet Total Price with production break							
LRV Numbers	1	2	3	4	5	6	7
Option 2a							
Option 2b							
Option 2c							

Fleet Total Price with production break					
LRV Numbers	8	9	10	11	12
Option 1a					
Option 1b					
Option 1c					

If the Purchaser exercises the Option for additional LRVs as described in Part J of this Contract, the Parties agree, on the date the Option is executed the total amount in AUD will be calculated by using the EUR to AUD forward rate applicable at the date of the agreed payment milestones.

Option 3 Testing and Commissioning an LRV in parallel with the LRVs in Newcastle from the Additional LRVs in an alternative location in Sydney: _____ €. The Purchaser is required to exercise this Option and notify the Supplier one year before the delivery of the first Additional LRV .

Option 4 Two years warrantee repair team for a single LRV from the Additional LRVs in an alternative location in Sydney: _____ €. The Purchaser is required to exercise this Option and notify the Supplier one year before the delivery of the first Additional LRV.

Option 5 To provide maintenance operations between Delivery and Operational Completion: _____ AUD per LRV per month.

Option 6 To provide a second testing and commissioning team to reduce the testing and commissioning period between completion of design and construction of all the physical fixed infrastructure and Operational Completion from 7 months to 4 months: _____. The Purchaser is required to exercise this Option and notify the Supplier one year before the delivery of the first Additional LRV.

If the Purchaser exercises any of the Options 3, 4, 5 or 6 above, the Parties agree that the amount in EUR will be added to the Additional Contract Sum identified in Part C. Subsequently, Part H will be updated accordingly.

Option 7 – Depot Equipment

Description	Recommended Qty	Unit	Amount (EURO)	Design & Manufacture	Supply DDP	Installation	Testing & Comm	Training /manuals	
		no.		√	√	√	√	√	
		no.		√	√	√	√	√	
		no.		√	√	√	√	√	
		no.		√	√	√	√	√	
		no.		√	√		√	√	
		no.		√	√		√	√	
		no.		√	√				
		no.		√	√				
		no.		√	√				
		set		√	√				
		no.		√	√				
		no.		√	√				

If the Purchaser exercises the Option for additional LRVs as described in Part J of this Contract, the Parties agree, on the date the Option is executed the total amount in AUD will be calculated by using the EUR to AUD forward rate applicable at the date of the agreed payment milestones.

Annexure K

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part K

Form of Statutory Declaration

(Clause 24)

STATUTORY DECLARATION

I,..... of, do solemnly and sincerely declare as follows:

1. I am [position held in Contractor's organisation] of [insert] ABN [insert] (Contractor).
2. The Contractor has a contract with [Insert] for [Insert] dated [date] 2010 (Contract).
3. All subcontractors, suppliers and consultants engaged by the Contractor with respect to work under the Contract have been paid all moneys due and payable to them in respect of work carried out for or materials supplied to the Contractor.
4. Attached to and forming part of this declaration is a subcontractor's statement given by the Contractor in its capacity as subcontractor (as that term is defined in the Workers Compensation Act 1987, Pay-roll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) (Acts) which is a written statement:
 - (a) under section 175B of the Workers Compensation Act 1987 (NSW), in the form and providing the detail required by that legislation;
 - (b) under Schedule 2, Section 18 of the Pay-roll Tax Act 2007 (NSW), in the form and providing the detail required by that legislation; and
 - (c) under section 127 of the Industrial Relations Act 1996, in the form and providing the detail required by that legislation.
5. The matters which are contained in this declaration and the attached subcontractor's statement are true.
6. The period of the Contract covered by this declaration and the attached subcontractor's statement is from _____ to _____.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW).

Declared at _____ on
_____ by

Signature of person making the declaration

before me: _____

Justice of the Peace/Solicitor of the Supreme Court of New South Wales

SUBCONTRACTOR'S STATEMENT
REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007, and s127 Industrial Relations Act 1996 where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor:..... ABN:.....
 (Business name)

of.....
 (Address of Subcontractor)

has entered into a contract with..... ABN:.....
 (Business name of principal contractor) (Note 2)

Contract number/identifier..... (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive,
 (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I....., a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the Payroll Tax Act 2007, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written

Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (**Note 10**)

- (f) Signature..... Full name.....
- (g) Position/TitleDate/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007 and section 127 of the Industrial Relation Act 1996. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s 127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the Industrial Relations Act 1996 states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s 127 of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s 175B of the Workers Compensation Act and Clause 18 of Schedule 2 of the Payroll Tax Act 2007 a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkerCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 can be found at www.legislation.nsw.gov.au.

Annexure L**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003****Part L****Part 1 – Deed Poll in favour of ISO**

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

By: Construcciones y Auxiliar de Ferrocarriles S.A. CIF A20001020 of José Miguel Iturrioz 26, 20200 Beasain (Spain) (**Supplier**),

in favour of: [insert name of Beneficiary of Deed Poll] (ABN [insert Beneficiary's ABN]) of [insert Beneficiary's address] (**Beneficiary**)

Transport for NSW (ABN 18 804 239 602) of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood, NSW, 2067 (**Purchaser**).

RECITALS

- A. Transport for NSW (**Purchaser**) of Level 5, Tower A Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067, is responsible for developing the Newcastle Integrated Services Project (**Program**).
- B. As part of the Program, Purchaser is responsible for procuring the supply of the Additional LRVs for the Newcastle Light Rail (the **Equipment**) that will be operated and maintained by the Beneficiary, and has entered into a contract (**Amended Supply Contract**) with the Supplier to achieve this.
- C. The Beneficiary is relying on Purchaser to procure the Supplier to execute and complete the Equipment in accordance with the Amended Supply Contract.
- D. The Beneficiary will suffer loss if Purchaser does not procure the Supplier to execute and complete the Equipment in accordance with the Amended Supply Contract.
- E. It is a requirement of the Amended Supply Contract that the Supplier executes this Deed Poll.

THIS DEED POLL WITNESSES THAT THE SUPPLIER HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the Beneficiary as follows:

1. It will comply with its obligations under the Amended Supply Contract, including with respect to Delivering each LRV by the relevant Date for Delivery and the Beneficiary may enforce the indemnities under the Amended Supply Contract on the same basis as if it was named as the Purchaser.
2. Upon Delivery of the Equipment, the Equipment will satisfy the requirements of the Amended Supply Contract.
3. The aggregate of the Supplier's liability to the Beneficiary under this Deed Poll and the Supplier's liability to Purchaser under the Amended Supply Contract:

- (a) will not exceed the liability which the Supplier would have had under the Amended Supply Contract if the Amended Supply Contract had named, as Purchaser, the Beneficiary and Purchaser jointly and severally; and
 - (b) subject to clause 11, is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Amended Supply 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. The Purchaser may at any time give notice to the Supplier that another entity has replaced the Beneficiary in relation to the Project and that such entity is to replace the Beneficiary under this Deed Poll. The Supplier agrees that on and from the date of the Purchaser's notice, that entity will replace the Beneficiary under this Deed Poll.
 6. If for any reason the Beneficiary is unable to enforce against the Supplier its promises under this Deed Poll, the Supplier agrees that the Purchaser may do so on behalf of the Beneficiary.
 7. This Deed Poll is governed by the laws of the State of New South Wales.
 8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Parties.
 9. To the extent that the Supplier has the same liability or obligation (**Common Obligation**) under both the Amended Supply Contract and this Deed Poll (each a **Contract**), the Supplier's discharge of the Common Obligation under one Contract in favour of the Purchaser or the Beneficiary (as relevant) shall (subject to clause 11) be deemed to be a discharge of the Common Obligation under both Contracts and the Purchaser or Beneficiary (as relevant) shall not be entitled to make a Claim against the Supplier in respect of the discharged Common Obligation.
 11. The Supplier acknowledges and agrees that its liability for the direct losses of the Beneficiary as a result of a breach of this Deed Poll are not excluded as a result of the exclusion of Consequential Loss in clause 29.2 of the Contract except to the extent the direct loss is a "Consequential Loss" under that clause.
 12. The obligations under the Supplier Deed Poll will be terminated in case the obligations under the Amended Supply Contract are terminated.
 13. The Beneficiary will be subject to the confidentiality clauses of the Amended Supply Contract or to similar clauses in its contract with the Purchaser.
 14. The execution of the Supplier Deed Poll does not involve to waive any previous claims brought or to be brought by the Supplier to the extent permitted by law or contract
 15. Where terms used in this Deed Poll are defined in the Amended Supply Contract, those terms have the meaning given to them in the Amended Supply Contract.

Executed as a deed poll.

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

SIGNED SEALED AND DELIVERED by
Construcciones y Auxiliar de
Ferrocarriles S.A. CIF A20001020 by its
attorney in the presence of:

Witness

Attorney

Name of Witness

Name of Attorney

Part 2 – Deed Poll in favour of Contractor

This Deed Poll made the day of 20

In favour of: [Insert name] (ABN [Insert]) of [Insert address]

(**Contractor**) and

Transport for NSW (ABN 18 804 239 602) of Level 5, Tower A, Zenith Centre,
821 Pacific Highway, Chatswood, NSW, 2067

(**Principal**)

Given by: Construcciones y Auxiliar de Ferrocarriles S.A. CIF A20001020 of José Miguel Iturrioz 26, 20200 Beasain (Spain) (**Other Contractor**)

Recitals

- A. By a contract dated [insert date] between the Principal and the Contractor (**Contract**), the Contractor agreed to design and construct certain works (**Works**), on the land more particularly described in the Contract (the **Site**).
- B. The Other Contractor has been appointed under a contract (**Other Contract**) to undertake certain testing and commissioning of light rail vehicles on the Site (**Other Contractor Works**).
- C. For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW) (together, the **WHS Legislation**), the Works and the Other Contractor Works are a 'construction project' within the meaning of the WHS Legislation.
- D. Under the Contract, the Principal engaged the Contractor as principal contractor and authorised the Contractor to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- E. Under the provisions of the Contract, the Principal is required to procure the provision of this Deed Poll from each Other Contractor that undertakes Other Contractor Works (as that term is defined in the Contract).

This Deed Poll Provides

- 1. In consideration of the Contractor accepting this Deed Poll, the Other Contractor agrees that:
 - (a) the Other Contractor, its subcontractors and their respective personnel while they are on the Site, will comply with Site safety regulations, any Site rules or regulations and with all directions of the Contractor with respect to work health and safety;
 - (b) the Other Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Contractor so that the Contractor discharges its obligations as principal contractor;
 - (c) the Other Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Contractor, the Principal

and all other persons who have a work health and safety duty in relation to the same matter;

- (d) the Other Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Contractor while on Site;
 - (e) the Contractor may exclude the Other Contractor, any of its subcontractors and their respective personnel from the Site for work health and safety reasons;
 - (f) the Contractor may direct the Other Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
 - (g) where high risk construction work is to be carried out in the performance of the Other Contractor Works, the Other Contractor must:
 - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (ii) provide a copy of the safe work method statement to the Principal and the Contractor prior to the commencement of high risk construction work;
 - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
 - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (v) where so directed by the Contractor, suspend the performance of any high risk construction work;
 - (h) the Other Contractor shall in carrying out the work under the Other Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
 - (i) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this Deed Poll.
2. The Other Contractor indemnifies the Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Contractor as a result of:
- (a) any failure by the Other Contractor to comply with any direction given by the Contractor in accordance with this Deed Poll; or
 - (b) any breach by the Other Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this Deed Poll.
3. The aggregate of the Other Contractor's liability to the Contractor under this Deed Poll and the Other Contractor's liability to Purchaser under the Amended Supply Contract:

- (a) will not exceed the liability which the Other Contractor would have had under the Amended Supply Contract if the Amended Supply Contract had named, as Purchaser, the Contractor and Purchaser jointly and severally; and
 - (b) subject to clause 4, is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Amended Supply Contract.
4. The Other Contractor acknowledges and agrees that its liability for the direct losses of the Contractor as a result of a breach of this Deed Poll are not excluded as a result of the exclusion of Consequential Loss in clause 29.2 of the Contract except to the extent the direct loss is a “Consequential Loss” under that clause.
5. This Deed Poll will be governed by and construed in accordance with the law for the time being of New South Wales.

Executed as a Deed Poll.

SIGNED SEALED AND DELIVERED by **Construcciones y Auxiliar de Ferrocarriles S.A. CIF A20001020** by its attorney in the presence of:

Witness

Attorney

Name of Witness

Name of Attorney

Annexure M**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
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AS/NZS 4911-2003****Part M**

Expert determination procedure

(Clause 28.3)

1. Introduction

This Annexure applies to any dispute referred to expert determination under Clause 28.2(b).

2. Expert determination

- (a) Any agreement for expert determination under this document will not constitute an arbitration agreement for the purposes of the Commercial Arbitration Act 1984 (NSW).
- (b) Any notice under Clause 28.2(b) must:
 - (i) be in writing;
 - (ii) state that it is a notice under Clause 28.2(b); and
 - (iii) include or be accompanied by reasonable particulars of the dispute.

3. Selection of expert

- (a) Within 5 Business Days after the date the dispute is referred to expert determination under Clause 28.2(b), the parties to the dispute must exchange written lists of 3 persons from whom the expert is to be chosen in order of preference.
- (b) If one person appears on each of those lists, that person will be the appointed expert.
- (c) If more than one person appears on each of those lists, the appointed expert will be the person given the highest preference by the Purchaser.
- (d) If a party fails to exchange a list, the person given the highest preference by the party who provided a list will be the appointed expert.
- (e) If no person appears on each of those lists then the President of The Institute of Arbitrators & Mediators Australia will appoint the expert.
- (f) It is the intention of the parties that the expert appointed to determine the dispute will be a person with appropriate skills having regard to the nature of the matter in dispute.
- (g) The parties may not challenge the appointment of an expert on the basis that the expert does not satisfy the requirements of paragraph (f).

4. Rules of expert determination

- (a) If a dispute is referred to expert determination under Clause 28.2(b) the parties must engage the expert by way of letter setting out:
 - (i) the details of the dispute;
 - (ii) the expert's fees; and
 - (iii) any other matter which is relevant to the engagement.
- (b) The expert must be engaged on terms which require it to comply with the rules of the expert determination as contained this Annexure.
- (c) The expert will:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner he or she thinks appropriate without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) take into consideration all documents, information and other material which the parties give the expert including documents, information and material relating to the facts in dispute and to arguments and submission upon the matters in dispute;

- (iv) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she think is it is appropriate;
 - (v) use his or her own expertise in forming his or her conclusions; and
 - (vi) make his or her determination of the dispute within 20 Business Days from the acceptance by the expert of the appointment, or such extended period as the parties may agree.
- (d) Within 5 Business Days of the acceptance of the expert appointment each party must provide to the other party and the expert any written submission on the dispute in support of its contentions.
- (e) Within 5 Business Days after the receipt of the written submissions provided in accordance with paragraph (d) each party must provide to the other party and the expert any written response.
- (f) The expert may, if he or she thinks appropriate:
- (i) initiate such enquiries and investigations as he or she considers necessary or desirable for the purposes of performing its functions; and
 - (ii) arrange to meet or otherwise have discussions with the parties, together but not separately, giving the parties no less than 2 Business Days' notice of the agenda of such discussions,
- (g) The expert must have no interest or duty which conflicts with his or her role as an independent expert.
- (h) The expert must keep confidential all materials and information made available to that expert in respect of the dispute.
- (i) The expert is released by the parties to this document from liability (other than for fraud, negligence or wilful misconduct) in acting as an expert.
- (j) Upon submission by either party, the expert may amend the determination to correct:
- (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or manner; or
 - (iv) a defect in form,
- otherwise the determination of the expert will be final and binding as contemplated by Clause 28.3(b).

5. Costs of expert determination

The parties must each bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the costs of the expert.

Annexure N

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Part N

Supplier's Key Personnel

(Clause 15B)

Role / Position	Name	Qualifications	Summary of experience			Years of experience	Employment Status
			Project	Role and Responsibility	From-To		
Contract Representative							
Head of International Projects Management Department							
Vehicles Manufacturing							
Engineering							

Role / Position	Name	Qualifications	Summary of experience			Years of experience	Employment Status
			Project	Role and Responsibility	From-To		
Procurement Manager							
Vehicles Quality							

Role / Position	Name	Qualifications	Summary of experience			Years of experience	Employment Status
			Project	Role and Responsibility	From-To		
Manager							
Bogies machining, painting and Final Assembly Chief							

Annexure O

**ANNEXURE to the Australian/New Zealand
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Part O

LRV Program

(Clause 1.1)

Annexure P

**ANNEXURE to the Australian/New Zealand
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Part P

Project Plans

(Clause 1.1)

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Project Plans

(Clause 1.1)

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Project Risk Management Plan

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Project Risk Register

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Communications Management Plan and Interface Management Plan

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LRV Program

Refer to Annexure O

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LRV Delivery Plan

LRV Program

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Progress Reports

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Variation Management System

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WHS Plan - Supply

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Compliance Management Plan

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Systems Assurance Plan

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Safety Management and Accreditation Plan

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System Hazard Analysis

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EMC Management Plan

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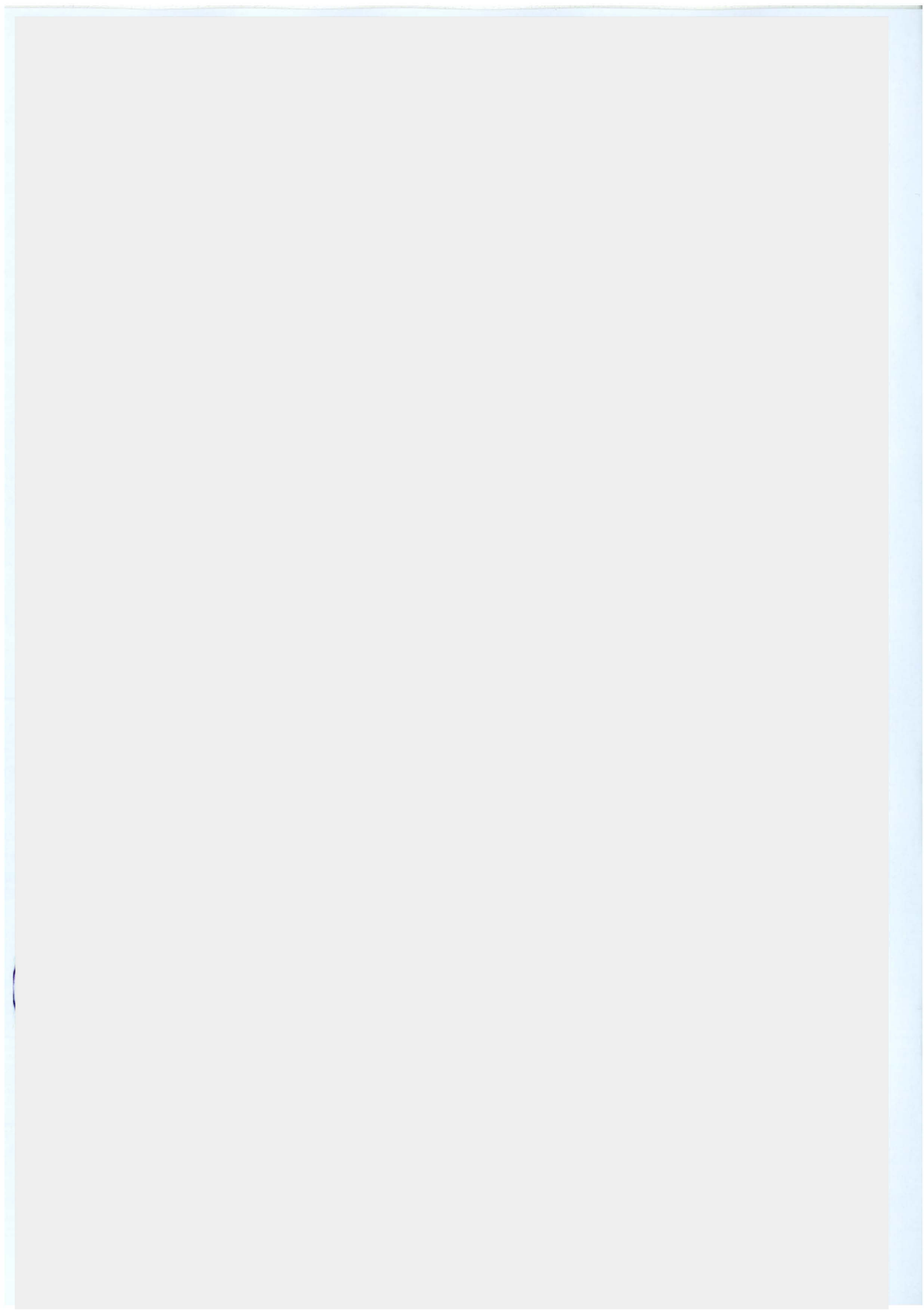
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Design Certificate

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Construction Certificate



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Accessibility Report

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Design Management Plan

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Part P

Design Review Plan

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Part P

Design Review Work Breakdown Structure

Annexure P

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part P

System Verification Review Plan

Annexure P

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Physical Configuration Audit Report

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Testing and Commissioning Plan

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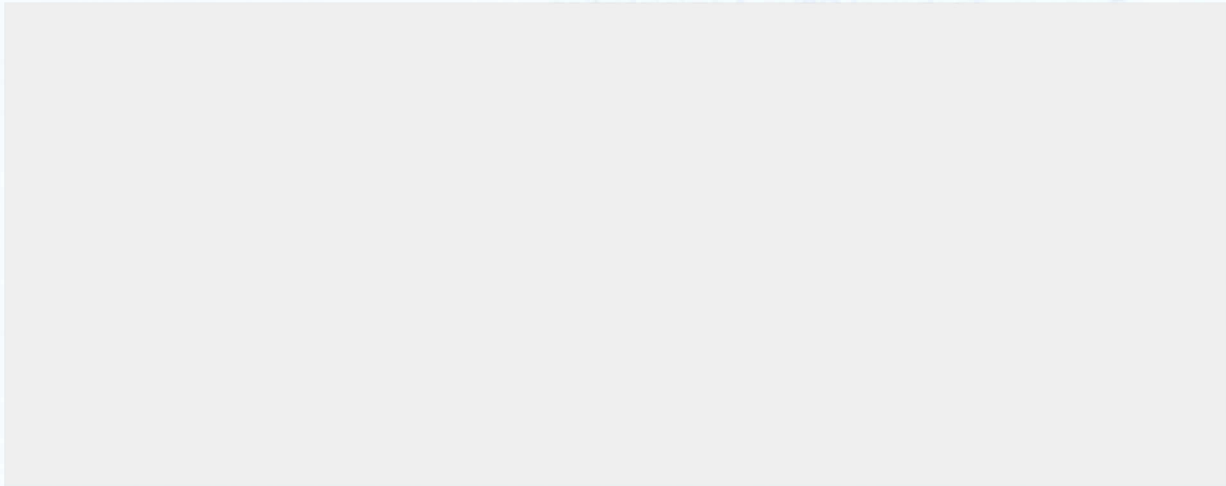
Part P

Configuration Management Plan

Annexure P
ANNEXURE to the Australian/New Zealand
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Part P

Master Configuration Status List

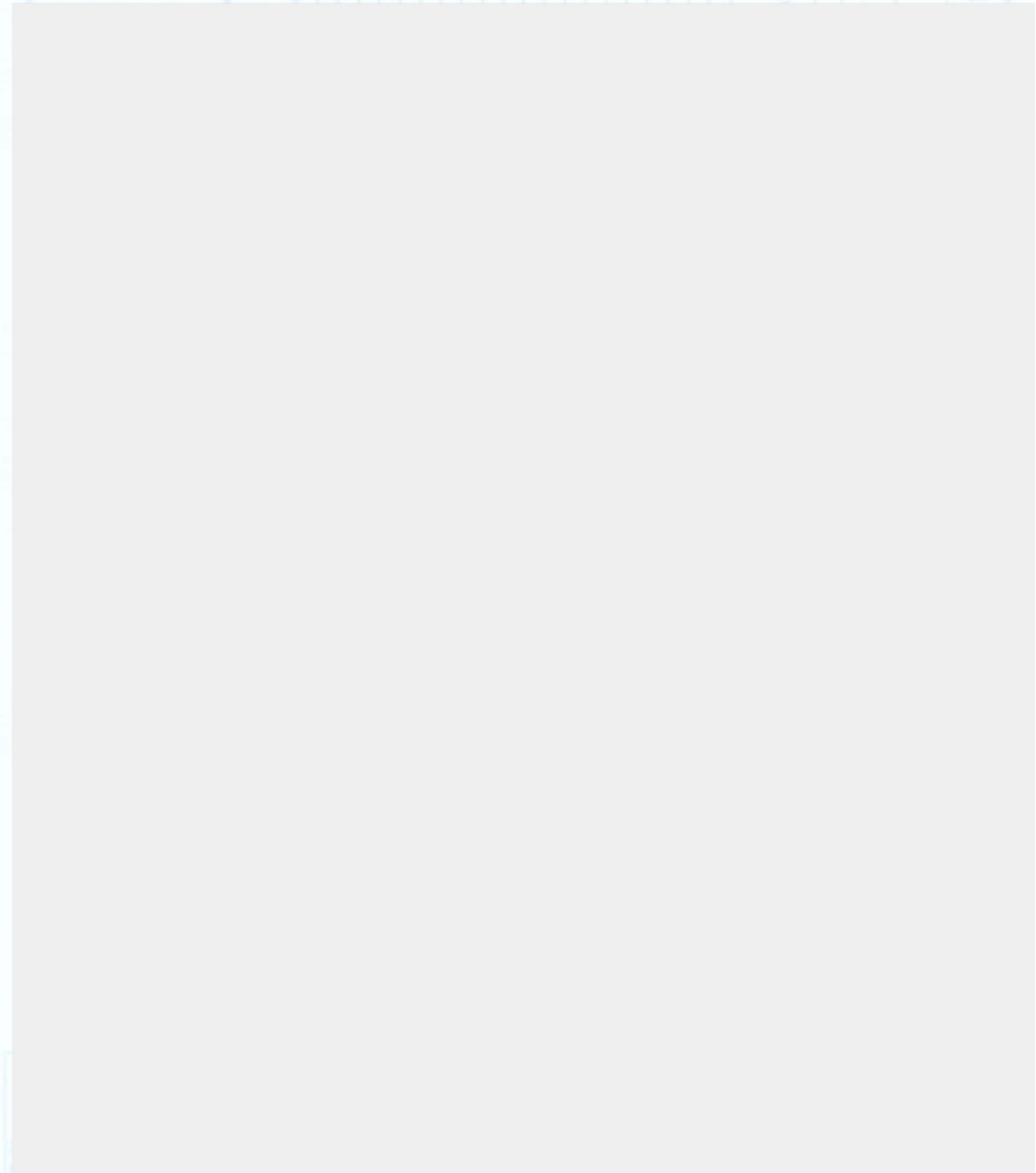


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Configuration Register

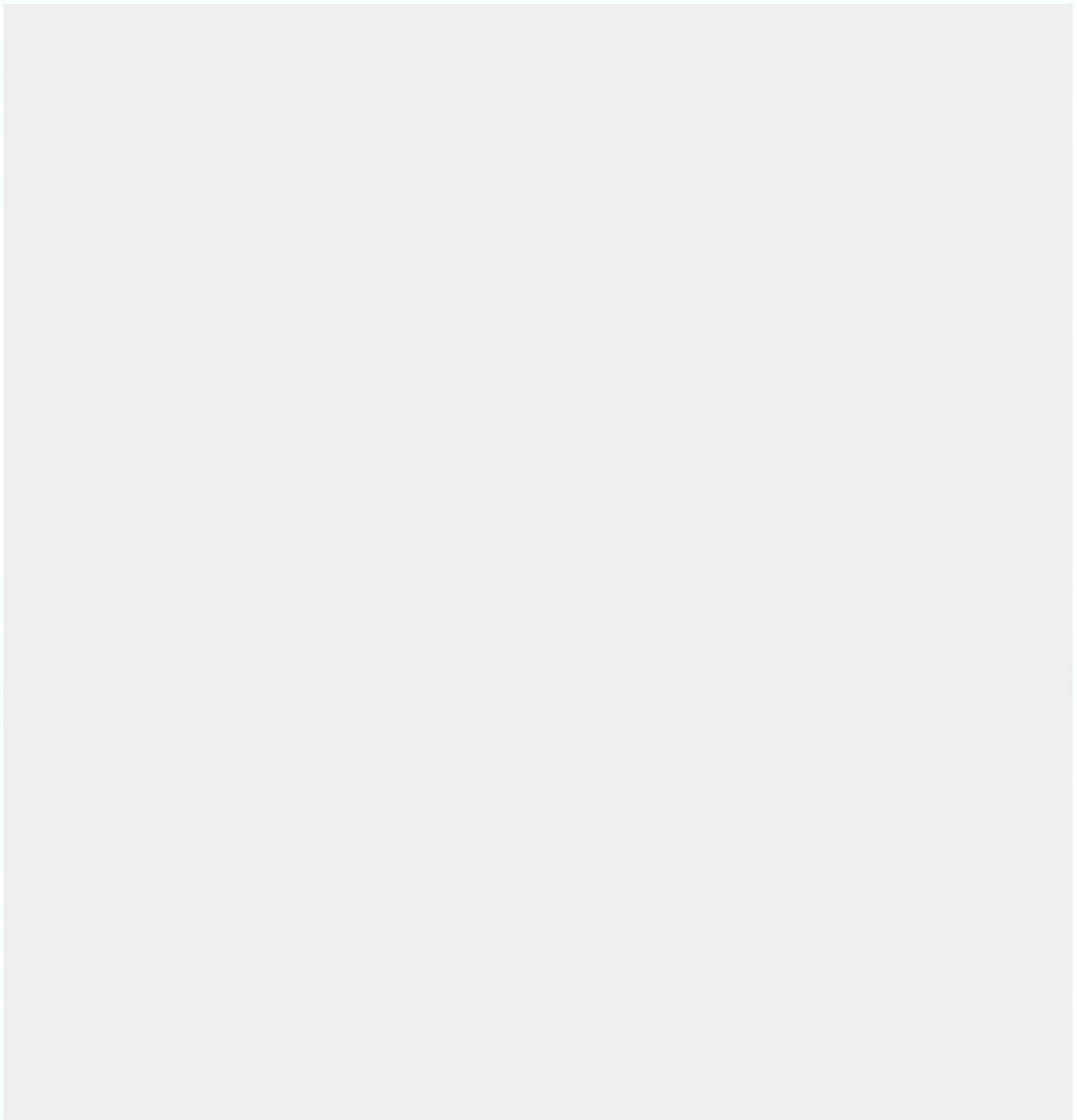


Annexure P

**ANNEXURE to the Australian/New Zealand
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Part P

System Verification Review Report



Annexure P

**ANNEXURE to the Australian/New Zealand
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supply of Equipment without installation
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Part P

Technical Maintenance Plan

Annexure P

**ANNEXURE to the Australian/New Zealand
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Part P

Reliability and Availability Prediction

Annexure P

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Part P

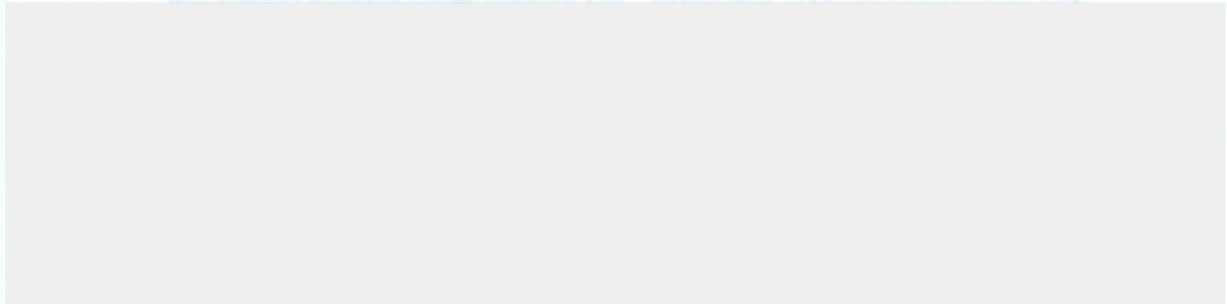
Incident Reporting and Response Plan

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Part P

Environmental Management Plan



Annexure P

**ANNEXURE to the Australian/New Zealand
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Part P

Operating Instruction Manual

Annexure P

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
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Part P

Training Management Plan

Annexure P
ANNEXURE to the Australian/New Zealand
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Part P

Training Notes

Annexure P

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Part P

Industrial Relations Plan

Annexure P

**ANNEXURE to the Australian/New Zealand
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supply of Equipment without installation
AS/NZS 4911-2003**

Part P

Quality Guide

Annexure Q

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part Q

Purchaser's Safety Assurance Plan

(Clause 10A.5)

Pyrmont Light Rail Company Safety Assurance Plan Sydney Light Rail Extension

November 2011

Abstract

This document is Pyrmont Light Rail Company's Safety Assurance Plan for the Sydney Light Rail Extension Project which involves design, construction, installation and handover of new infrastructure and rolling stock. This plan is to ensure overall risks associated with this project are identified and managed in a controlled way without increasing safety risk.

Author	Document Number	Revision	Change No.
Jeff Lee	10830	2	10141

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1. INTRODUCTION

1.1 PURPOSE

The purpose of this document is to provide the Safety Assurance Plan (SAP), the scope of which covers the Reference Design development Stage to the commencement of passenger service of the Sydney Light Rail Extension (SLRE) project. It is then anticipated that subsequent plans and their implementation in relation to the resulting operating network will be managed through the rail operator's safety management system.

1.2 SCOPE

The scope of this document covers:

- Works and deliverables from designers, manufacturers and suppliers, who design, manufacture, supply, install, commission or erect anything to be used in connection with rail infrastructure and light rail rolling stock as part of the SLRE project.
- Any goods or services procured as part of the SLRE project that ensures safety of the railway operations.

1.3 IDENTIFICATION

This document refers to contracts, tender documents and design, construction, installation and commissioning activities and deliverables which relate to the inner west extension of the current light rail system and is identified as:

- PLRC SAP – Pyrmont Light Rail Company Safety Assurance Plan.

1.4 DOCUMENT CONTEXT

PLRC, the current owner of the light rail system, has the duty to ensure safety risks associated with major change are identified, and managed in a way that the IWE and its operational implications will be implemented in a manner without increasing safety risk.

This document is PLRC's Safety Assurance Plan (SAP), the details of which, together with its implementation, are correlated to project plans for the SLRE project. This SAP will be revised as needed during the course of the project.

1.5 DEFINITIONS

The definitions used in this document are defined in the table below.

Table 1: Definitions

Term/Acronym	Definition
ADC	Assumptions, Dependencies and Caveats – System interface aspects that must be managed. Assumption – supposition or best guess, an unconfirmed item or information which can be placed on someone Dependency – information placed on someone and relies on that someone to take action before the component or system enters service. Caveat – a requirement or limitation placed on someone after the system is in operation for it to remain safe.
D&C	Design & Construction
ESM	Engineering Safety Management – a program consisting of elements or activities which is used to manage and control risk. Includes <ul style="list-style-type: none"> ▪ Safety Roles & Responsibilities; ▪ Safety Lifecycle ▪ Safety Analysis ▪ Safety Standards ▪ Safety Deliverables ▪ Configuration Management; ▪ Supplier Management ▪ Safety Audit ▪ System Modification and Maintenance ▪ Safety Reports
Final Acceptance	<ul style="list-style-type: none"> ▪ Acceptance by PLRC after the 4 week “proving period” post completion of integration testing and commissioning.
Hazard Log	<ul style="list-style-type: none"> ▪ Details hazards and potential accidents ▪ Describes actions to eliminate or control risks to an acceptable level ▪ Provides traceability to other safety records
GHD	Company contracted by PLRC to produce the Reference Design for D&C
IWE	Inner West Extension – This refers to the infrastructure components of the system
LRV	Light Rail Vehicle
OHLE	Overhead Line Equipment
PLRC	Pyrmont Light Rail Company
QMS	Quality Management System
Safety Requirements Specification	A comprehensive list of safety requirements (a requirement specification is typically expressed as a component, sub-system or system function or feature, with specified tolerance, to ensure the item (or feature) delivers safe operation and prevents hazardous situations or states.
SAP	Safety Assurance Plan , also known as Safety Plan
SP	Safety Plan – A documented set of time scheduled activities, resources and events serving to implement the organizational structure, responsibilities, procedures, activities, capabilities and resources that together ensure that an item will satisfy given safety requirements relevant to the given contract or project
SLRE	Sydney Light Rail Extension
VTS	Veolia Transport Sydney

1.6 REFERENCES

The following references are referred to by this document and/or provide input to this document specifically and/or can be used as background information.

1.6.1 REFERRED TO IN DOCUMENT

Table 2: References Used by Document

Ref No.	Doc number	Document
1		
2		

1.6.2 PROVIDING INPUT TO DOCUMENT

Table 3: References Providing Input to Document

Ref No.	Doc number	Document
1		Engineering Safety Management (The Yellow Book) Vols 1 & 2 Issue 4
2		ITSR - Guidance for Major Change - Guidance
3		ITSR – Accreditation Guidance
4		BS EN50126 1999 Railway Applications, Specification & Demonstration of Reliability, Availability, Maintainability & Safety (RAMS)

2. RESPONSIBILITIES

Definitions of responsibilities associated with this SAP are described below:

Plan Effectiveness:

- The CEO and PLRC project team members are responsible for reviewing the effectiveness of this plan at regular intervals (or as required).

Development and Ongoing Improvement:

- The Safety and Systems Assurance Manager is responsible for the development and ongoing improvement of this Plan.

Implementation:

- The CEO in conjunction with the Project Manager is responsible for the implementation of this Plan.

PLRC SAP Activities:

- The CEO and PLRC project team members are responsible for aspects of the Safety Assurance Plan activities. Note that appropriately selected and qualified personnel from VTS contribute to some of the activities as required.

3. PLAN

3.1 BACKGROUND

In February 2010 as part of its Metropolitan Transport Plan, the NSW Government announced its intention to develop extensions of the Sydney Light Rail system. The plans included a project for a 5.5km extension westwards from the existing terminus at Lilyfield to Dulwich Hill. This project is now active and is known as the Sydney Light Rail Extension (SLRE).

Pymont Light Rail Company (PLRC), which is wholly owned by Metro Transport Sydney Pty Ltd (MTS), is the current owner of the light rail system. PLRC has entered into agreements with the NSW Government to prepare a complete proposal for the SLRE. A detailed programme for the studies and works required has been prepared by PLRC, with a view to commencing construction in 2012 and begin operating in passenger service in 2013/4. Early stage design work has commenced, and various sub-contractors are being engaged to prepare the required advice and technical studies.

The extension to Dulwich Hill will capitalise on the opportunity provided by the now disused Rozelle Goods Railway line. Preliminary feasibility studies have been carried out by GHD for the NSW Government, and an outline plan for station locations has been formed. A map of the proposed extension and existing line is shown below (Figure 1).

The SLRE project includes design and construction, supply of new rolling stock, installation, testing, handover, and operations and maintenance. Safety Assurance needs to be provided for all these activities.

3.2 INTRODUCTION

The Safety Assurance Plan (SAP) is an overall plan the scope of which covers the Reference Design development Stage to the commencement of passenger service of the Inner West Extension with new rolling stock. It is then anticipated that subsequent plans and their implementation in relation to the resulting operating network will be managed through the rail operator's safety management system.

It is expected that a SAP will be produced by each subcontractor for the project, the subcontractor being responsible for their own parts of the rail system for which they are responsible to meet safety requirements.

This SAP and the evidence of implementation of this plan does not therefore cover details as would be typically expected in the major subcontractors' safety plans, e.g., detailed engineering safety specifications and analysis techniques used for evaluating risks associated with the LRV communications module, or a hazard log containing detailed hazards associated with a new signalling system. This plan rather focuses on assuring risks associated with the overall development and implementation activities conducted by subcontractors for PLRC are monitored and managed in such a way that safety is controlled.



Figure 1: Map showing proposed extension and existing light rail line

The overall objectives of this plan therefore are to:

- Describe the safety related activities which are expected to be fulfilled by the contractors involved in the SLRE project.
- Propose mitigations to project process risks affecting safety through the use of contractual obligations between parties involved in the project.
- Provide explanation behind the approach to mandatory requirements or obligations for contractors, as stated in this plan.

3.3 SAFETY PLANNING STRATEGY

The details and the effective implementation of this overall project SAP is mainly subject to available information at certain critical points in the project. In addition, implementation aspects of this SAP also need to consider other facts in relation to the project, all of which in turn governs the approach to this SAP. Considerations include:

- The project involves (in this case) developing a product which is an extension to the existing rail infrastructure and involves additional new rolling stock.
- Multiple phases within the typical asset lifecycle model (Figure 2) are involved and with this particular project, all sub-phases or activities in the Acquire Phase are involved. Figure 2 describes the activities.

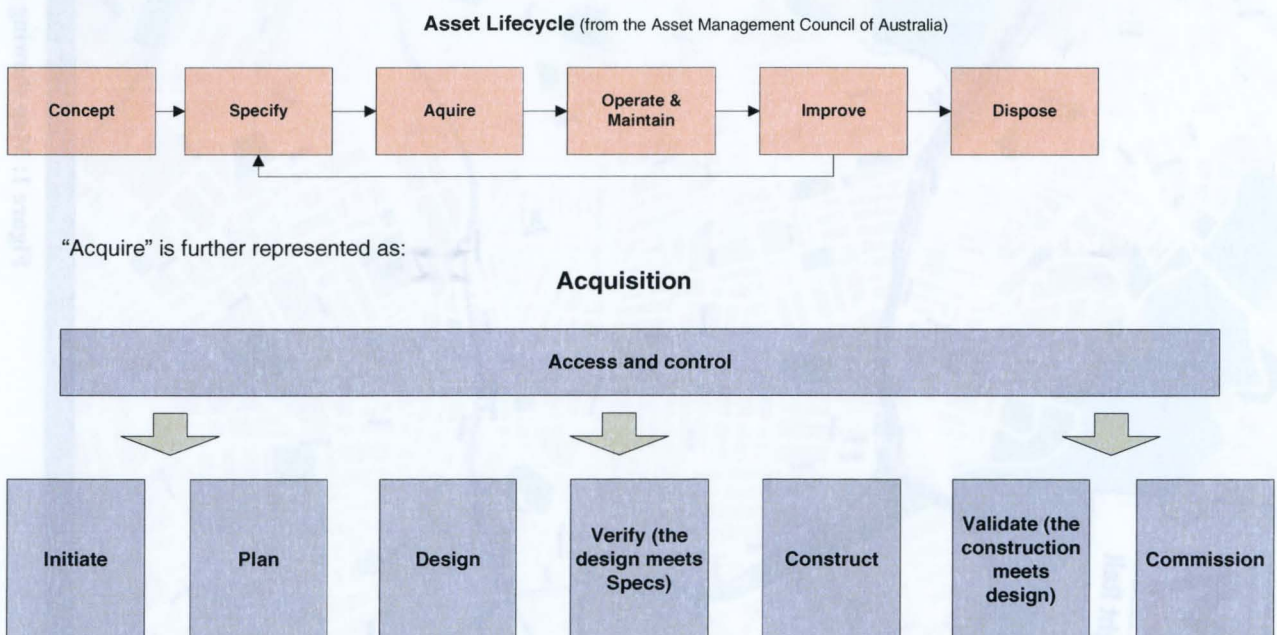


Figure 2: Asset Lifecycle Model

- Different subcontractors will be utilised by PLRC to
 1. Perform the architectural brief and prepare the tender documentation for the tendering process;
 2. Design and construct the Inner West Extension (IWE);
 3. Supply and maintain new rolling stock;
 4. Commission the IWE;
 5. Operate and maintain the current and extended system.
- The D&C contractor will be required to carry out all works other than rolling stock supply, and so will be responsible for integrating a variety of sub-systems.
- The major contractors will also engage and manage subcontractors to perform specialised work to support or fulfil an area within the major contractor's overall scope of deliverables.
- The control of risks associated with the work performed by each subcontractor is dependent on the level of awareness of the risks it is responsible for controlling, and the degree to which each subcontractor accepts safety responsibilities.
- It is an assumption, and will be a contractual requirement, that each major contractor, as well as the subcontractors who they engage, will have processes in place (example, an internal management system to support or manage ESM activities) to fulfill quality, safety performance standards, and to ensure competent staff are available to deliver the work required of them. This SAP will consider differences in management systems (e.g., emphasis on what to audit and when and by whom).
- The risk management system each subcontractor utilizes will differ in accordance with the requirements of the detailed project plan and their own internal methodologies.
- Much of the mainstream engineering steps related to identifying and reducing risks, such as redundancy and protection systems, is dependent on the whether the risks come within accepted standards, including the ways of controlling and mitigating those risks. It is expected however that there will be non-standard designs and constructions involved in elements of the infrastructure and rolling stock. The details of standard and non-standard design issues are dependent on the completion of the preliminary design and architectural surveys.

Considering the points above, and because changes will arise as a result of undertaking design and construct safety activities, this SAP will be updated throughout the project.

Many issues and risks are associated with interfaces of the phases where assumed or dependent safety responsibilities for project activities are exchanged. This SAP, in particular with ESM activities and Safety Controls, focus on the risks during transition from one phase to another and the risks associated with transfer of information between contractors. Transitions involving both contractor and project phase simultaneously occur at some points in the project timeline.

3.3.1 Safety Acceptance Approach

The approach to demonstrating overall safety considers the organizational management and project considerations described above, as well as acknowledging that operational experience has been gained with an existing system. That is, the extension is to a large extent expected to be comparable, in respect to its safety related performance, with the existing system, as the application and functionality are the same. Also, where possible, activities related to the extension will utilise accepted national or international technical standards as references. Potential and actual differences between the new and existing systems shall be determined. However, the IWE will be similar to the existing system in terms of design and operation, and all essential safety systems will be extended. Therefore, safety experience and risk ranking tables from the existing system can be utilised in relation to the establishment, management and monitoring of safety targets.

3.4 INDIVIDUAL SAFETY PLAN

The D&C contractor for infrastructure and the contractor for rolling stock shall develop their own Safety Assurance Plan to identify and control risks in a systematic way. The evidence for safety can be in the form of a safety case structured in such a way to show that risks have been controlled to an acceptable level in accordance to the contractor's safety plan. The contractor's safety assurance plan will provide for the identification and justification of any unresolved hazards and any non-conformances with the Safety Requirements Specification and Hazards Log.

The scope and coverage of the Safety Assurance Plan should be designed to be consistent with the Yellow Book Guidance (ref A1). The safety report or safety case shall include all the parts required by EN 50129:2003 which is also reproduced in EN 50126 (ref A4). Alternative headings may be appropriate in some cases but they should cover the same topics as this structure.

3.5 SAFETY CONTROLS

3.5.1 PERSONNEL ROLES & RESPONSIBILITIES

Details of the competence of originators or authors of deliverables including protocols, reports, designs, drawings and instructions and their reviewers and approvers shall be made available.

Contractors shall have procedures to review and accept the deliverables noted above. This can be established in several ways:

- organized as part of their QMS
- a matrix of responsibilities is developed for each particular project or
- documented within the deliverables

or a combination thereof.

The qualifications of the subject matter experts (SME) within each organisation conducting the detailed work and or authorities taking responsibility for the accuracy, completeness and timeliness of the deliverables shall be auditable. This also includes subcontractors engaged by the major contractor. It is the responsibility of the major contractor to ensure details of sub-contractor competence, authorities and responsibilities can be evidenced by independent audit.

3.5.2 INDEPENDENT REVIEW & ACCEPTANCE OF WORK PERFORMED

The levels of approval for the entire project and project phases shall be clear and transparent. Clarity of responsibilities for approval and acceptance is best represented against the asset lifecycle model overlaid with the responsibilities of people who are doing the work; however, other suitable means to illustrate this information such as the use of an organization chart may be acceptable and shall be made available.

The nature of some deliverables requires subject experts to independently review the accuracy and completeness of the content of the work conducted. Technical assessment (as opposed to process assessment) of engineering design and construction deliverables will usually require independent engineering review. Major contractors will also provide assurance of the mechanism of review and acceptance for work conducted by the subcontractors they engage.

PLRC shall agree with the D&C organization on those deliverables that require independent review by an expert in the subject matter, prior to acceptance by PLRC. Whilst it is recognised that the D&C organization can provide evidence for compliance to the requirement for independent review, say in accordance to the draft AS7501, PLRC shall require their own SMEs to provide independent review. As an example, the following tables (Figure 3) include safety deliverables from major contractors that may require independent review. The actual titles may differ and it is expected many of these will undergo revision updates and will be subject to internal and PLRC audit at various stages. However they shall, as a whole, provide convincing evidence that safety activities were carried out as planned and safety requirements have been met in order to attain “acceptance” from PLRC (see *Interim Safety Reports and Hazard Log*).

GHD – examples of deliverables requiring independent review.

Deliverable	Identified SME (Name & Title)
Safety Assurance Plan	TBD
Safety Requirements Specifications	TBD
Hazard Log / ADCs	TBD
Safety Reports	TBD

D&C – IWE (Infrastructure) and Rolling Stock

Deliverable	Identified SME (Name & Title)
Safety Assurance Plan	TBD
Hazard Log	TBD
Critical Design Safety Assessment	TBD
Safety Requirements Specifications	TBD
Interface Specifications	TBD
Transfer Safety Responsibilities - ADCs	TBD
Integration & Commissioning Test Reports	TBD
Configuration baselines (design and physical)	TBD
Audit Reports	TBD
Safety Reports (including safety analysis and evidence of meeting plan and safety specification requirements.	TBD

Figure 3: Examples of deliverables for independent review prior to acceptance - example

Note: The tables shall be updated in accordance with contractor project plans.

3.5.3 ACCEPTANCE OF RISKS

The deliverables shall include an identification and justification of any unresolved hazards and any non-conformances with the contractor’s Safety Requirements Specifications and Safety Assurance Plan. No responsibility shall be transferred to the next contractor (and or phase) until the accepting organization confirms in writing that it accepts the responsibility. This also is a relevant condition prior to accepting delivery of the rolling stock and at the pre-commissioning stage of the infrastructure by PLRC and the operator (VTS) with whom PLRC contracts out the operating and maintenance activities. Acceptance of unresolved hazards and ADCs (see 3.7.1) will also form part of the final completion conditions after all specification requirements related to the project have been met or waived by PLRC, and should be documented as part of the D&C’s Safety Case.

3.6 STANDARDS

Subcontractors shall reference the industry, national or international standards used. Where non standard considerations apply to the work being proposed, the contractor will ensure their safety reporting describes the justifications, verification, validation activities and consequent results for methods that do not reference a standard of design, workmanship or activity.

3.7 DELIVERABLES – MANAGEMENT OF, REVIEW AND CONTROL

The successful subcontractor that will conduct D&C activities will detail all the quality or system management controls as well as all project deliverables as part of the contractual requirements with PLRC.

The list will also include integration testing and commissioning document deliverables. The content, distribution and levels of approvals required for each deliverable shall be auditable.

When a major project phase is complete, or the completed project is handed over to the operator and maintainer, the information transferred will include:

- System description, details of interfaces and environ requirements;
- Hazards, safety features of system;
- Information for operators of equipment and LRVs;
- Instructions for operation of servicing and maintenance – appropriate maintenance practices, procedures, technical books, specifications, spares, drawings;
- Installation details;
- Design and Physical (Asset) Configuration baselines;
- Details of approval, emergency procedures, maintenance.

3.7.1 “DELIVERED ADCs”

There is the potential to introduce risks into the project at the interchange of phases, especially as one contractor completes the work and hands over to the next stage of the project. Deliverables often have assumptions and dependencies which may carry inherent risks.

Each contractor will therefore have to maintain and provide a hazard log and a register for ADCs, which are two critical deliverables that need to be accurate and complete to address all safety issues. and list residual or unmitigated risks. Each contractor or sub-contractor shall make sure that its ADC and hazard log is understood and accepted by the people who are accepting the deliverable (see *Acceptance of Risks*).

Again, the responsibilities of each contractor and subcontractors shall be documented against project tasks and phases so that the handover and integration points will be easily identified to facilitate communication of transferred risks. Figure 4 and figure 5 illustrate the relationships.

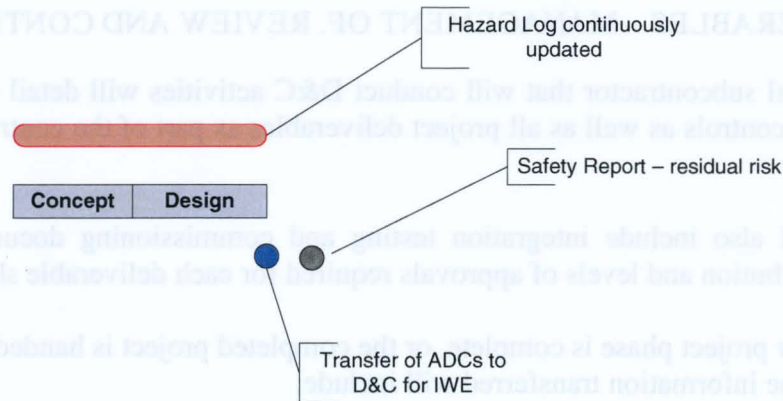


Figure 4: Transfer of identified risks – GHD deliverables

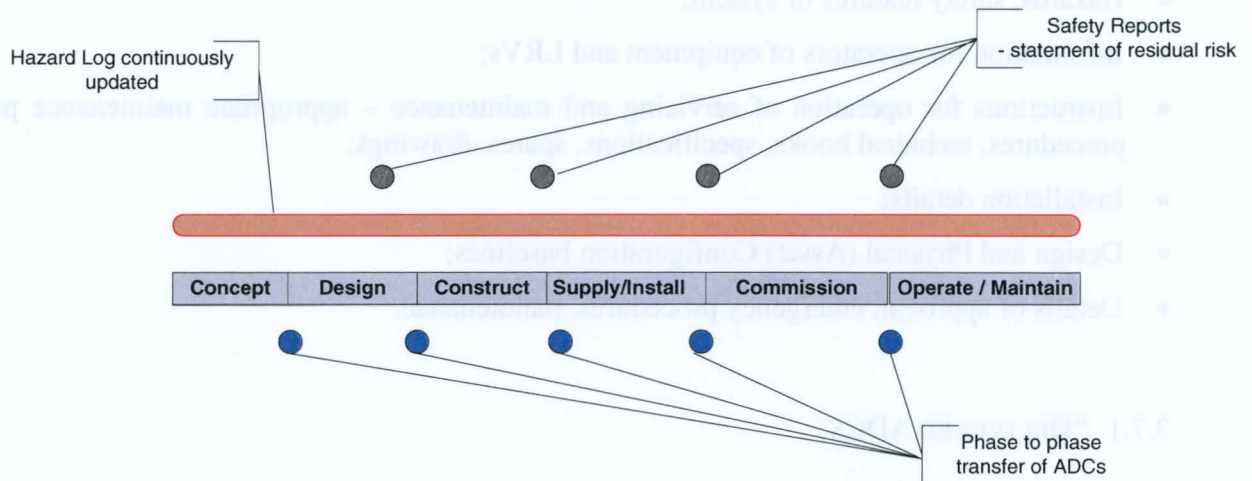


Figure 5: Transfer of identified risks – D&C deliverables

3.8 CONFIGURATION MANAGEMENT

Risks associated with inter-operability or compatibility with physical assets (including existing rail signals, gauge, OHLE, communications) shall be identified and controlled.

Integration and compatibility issues where they affect safety must be identified in the hazard log.

The subcontractors shall have a robust system for configuration management to track changes with respect to component and system status. Records shall include

- those that describe the configuration of light rail sub-systems and system **designs**.
- those that describe the **physical** configuration of components, sub-systems and systems (parts and assets)

3.9 MAINTAINABILITY

The operator shall have up-to-date information about how the rail extension is configured with the existing system.

For infrastructure components that make up the new extension it is expected the hazard log will identify hazards that may exist:

- as a result of the way system components connect to other parts of the railway;
- at the place where the new components are located.

Maintenance specifications and maintenance manuals for the system and rolling stock shall form part of the deliverable, and tolerance built into maintenance specifications should allow for system and rolling stock degradation.

A maintenance plan shall identify routine activities needed to maintain the safety of the rolling stock and the components of the system as designed.

3.10 SYSTEM INTEGRATION

Contractual obligations will as far as possible define the boundaries of responsibilities. But there is also the necessity to ensure cooperation and clarification of responsibilities between parties to ensure successful integration of engineering sub-systems and components of the project (e.g. between track and rolling stock, rolling stock and OHLE, signaling and communications), and generally the resolution of any integration issues that arise during system verification testing and commissioning to ensure system is functional in all aspects as designed.

Installation of the system components shall be followed up by field testing of the integrated system involving operation under normal and abnormal conditions as part of the validation of the design to ensure hazards identified and associated with system operation have been controlled.

3.10.1 INTEGRATION RESPONSIBILITIES

The parties responsible for system integration will be identified to address issues or non-conformances which may present themselves during integration functional testing. In particular when a nonconformance or issue arises from integrating two or more sub-system elements of the system, including integration of rolling stock with other elements of the rail infrastructure, there shall be assignment of obligations for corrective action to a particular subcontractor. Clear identification of ownership makes for clear identification of responsibilities and accountabilities for issues.

3.10.2 COMPATIBILITY OF CURRENT & NEW SYSTEM

With this in mind, the following matrix for interoperability or compatibility testing describes the approach for acceptance of the new rolling stock and new system infrastructure by PLRC (Figure 6).

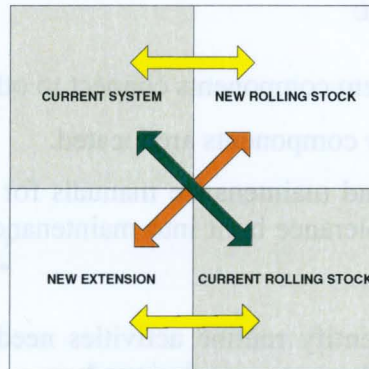


Figure 6: Compatibility testing for new system and rolling stock

Testing will follow the order as follows:

1. Current rolling stock compatibility with new infrastructure
2. Current infrastructure compatibility with new rolling stock
3. New rolling stock compatibility with new infrastructure

The new infrastructure must be compatible with the existing rolling stock. The D&C contractor for the new infrastructure is responsible for all integration issues that arise from components of the system for which it designs and manufactures and installs when tested with the current rolling stock. (This includes items which required engaging other subcontractors to fulfill system component deliverables).

The new rolling stock must be compatible with the existing infrastructure. The rolling stock provider is responsible for all integration issues that arise when the rolling stock is tested on the current infrastructure. (This includes items which required engaging other subcontractors to fulfill delivery and installation of completed rolling stock).

Note: The infrastructure and rolling stock subcontractors will have to request and engage the current operator, VTS, to operate the LRVs and system equipment as contractor staff will not be familiar with the network and safe operational procedures, nor accredited to operate LRVs. By this stage of the project it is expected that VTS will have a variation of accreditation approval to operate within the IWE.

Once compatibility to the current infrastructure and rolling stock has been demonstrated successfully and accepted by PLRC and VTS, the new LRVs will be tested on the new section of

rail. In this situation fault or issues found in the infrastructure component will be corrected by the infrastructure provider. Fault or issues found with the rolling stock will be the responsibility of the rolling stock provider.

Commissioning shall be seen as the assurance of correct functional operation leading to acceptance for unrestricted operation, not a means in which abnormal or a range of operational conditions are tested to verify individual components or validate system specifications.

3.10.3 OTHER HANDOVER ISSUES

As the extension can be considered as sharing an interface with the existing system, meetings between the D&C organization of the new rail system and those responsible for commissioning and operating the existing system will be required in order to agree on the integration testing and commissioning process, and the acceptance criteria for handover to ensure safe transition during the system change.

Activities and outcomes of the process shall include:

- Acknowledging, understanding and resolving ADCs placed on the operator;
- Dealing with any staged introduction of a component of the rail operation (e.g. signalling), where there may be multiple installation and handover phases with implementation activities in-between;
- Managing the period when the new extension is running in parallel with the existing line;
- Understanding and accepting the maintenance specification (developed by the D&C organization, and includes Maintenance Manuals, Work Instructions or Method Statements);
- Implementation of human factors and user interface safety considerations identified in the Design phase;
- Preparing generally with the impact on existing operations and maintenance.

The requirements for integration, commissioning and other handover requirements shall be accommodated for in respective contracts.

3.11 INTERIM SAFETY CASE (OR OTHER FORMS OF SAFETY EVIDENCE) & HAZARD LOG

The D&C Contractor's Safety Case, which results from implementation of their Safety Assurance Plan, may consist of multiple documents (safety reports) to cover the topics or elements that need to be addressed. However, it must, in total, clearly demonstrate that the new infrastructure is safe to operate. Interim submissions of incomplete safety reports which together make up the Safety Case from the D&C contractor together with an accessible Hazard Log will be required. This will assist PLRC's safety monitoring and management responsibilities before and during handover as it will allow PLRC to better:

- prepare for independent audits of progress against safety plan(s)
- plan changes in maintenance schedules and maintenance safety requirements (critical testing, any new equipment, spares required).
- monitor new risks throughout the design and construction phases for both infrastructure and rolling stock to facilitate “on-going acceptance” of the deliverables.

Before integration testing of the current rail line and LRVs with the new line and vehicles (see *Compatibility of Current & New System*) the contractor’s safety case shall provide safety evidence in accordance with their safety assurance plan to the satisfaction of PLRC. In the case of the rolling stock provider, the *revenue service* safety case (that is, the final safety case) shall be acceptable to PLRC prior to system integration testing and commissioning.

3.12 AUDIT

The D&C contractors for infrastructure and the rolling stock supplier shall provide for independent process assessment against their safety plan and technical safety assessment of deliverables. PLRC will provide an engineer to assess progress and technically assess deliverables throughout the course of design and development of the infrastructure components and of the rolling stock.

The Hazard Log shall be available for inspection by an independent Safety Auditor, and independent Assessors (PLRC engineers).

PLRC shall audit the management system of the contractors (process assessment) to ensure adequacy of EMS processes that control safety. There shall be an independent safety audit of the D&C Safety Plan towards the end of the detailed design phase.

The frequency and scope of audits is dependent on project plan details from the D&C contractor and rolling stock supplier. PLRC shall, as a result of a management system audit and review of the project plan, develop an audit program. Provisions shall be made to amend PLRC auditing frequency and scope based on the D&C and Rolling Stock programs.

At this stage however, on the basis of this version of the PLRC safety assurance plan, the audit elements are tabled below together with items that provide evidence of risk control and or risk control activities.

Table 4: Audit Activities

PLRC Safety Plan Element	Evidence Considerations	Phase	Comments
Individual Safety Plans	Coverage of ESM activities, documentation, records;	1.Reference Design – requirements definition	Also Audit GHD safety plan

		2.D&C Design	
Configuration Mgmt	Design & Physical Configurations during design and construction. Change Control. Asset configuration of new and existing assets.	D&C Design, Installation / Handover	For both infrastructure/system and LRVs
Independent Review	List of deliverable and reviewer qualifications; Review and approval process and identification of deliverables requiring independent review; review reports by PLRC engineers; Intermediate Safety Reports	D&C Design, Construction, Installation, Commission/Handover	For both infrastructure/system and LRVs
Personnel & Skills	CVs; Organization Chart; Independent assessors and auditors.	D&C Initiation	For both infrastructure/system and LRVs and subcontractors engaged
Standards	Identification of areas or items not referencing standards – justification and verification / validation plans.	1.Tender Design 2. D&C Design	Review GHD recommended safety standards For both infrastructure/system and LRVs
Sub-contract management	Supplier evaluation performed by major contractor; sub-contractor safety plan reviewed; sub-contractor identified hazards incorporated into hazard log.	D&C Design, Construction	For both infrastructure/system and LRVs
Safety Specifications	List of requirements, reference to Standards, information and drawings. Risk management analysis resulting in the specifications.	1.Tender Design 2.D&C Design, Construction and Integration / Handover	Audit GHD safety specs For both infrastructure/system and LRVs
Deliverables	List of deliverables (review and audit against internal list of expectations including safety reports and interim safety cases (reports). ADC's and statement of residual or unmitigated risks. Hazard Log.	D&C Design, Construction, Installation & Commissioning / Handover	For both infrastructure/system and LRVs
Integration & Commissioning	Integration Plan; Commissioning Plan; Contract provisions; Maintenance Deliverables. Hazard Log.	D&C Installation, Integration, Commissioning and Handover	For both infrastructure/system and LRVs
Audit	Implementation of Safety Plan at Design stage - risk identification and controls which influences the design specification.	Tender Design, All D&C Phases, Hazard Log, Interim Safety evidence	Detailed audit program after review of D&C project plan and Safety Plan requirements
Maintainability	Maintenance plans, manuals, asset configuration.	D&C Design, Handover	For both infrastructure/system and LRVs
Hazard Log	Up to date; Technical Assessment throughout; Accessible throughout project by PLRC auditor and assessors	D&C – all phases	For both infrastructure/system and LRVs
ADCs	Comprehensive and provides for effective transfer to persons having to accept and address them.	1. All Project phases, 2. D&C sub-system & system integration	For both infrastructure/system and LRVs
Contract Conditions	Evidence that contracts consider requirements as described in this document	D&C Initiation	For both infrastructure/system and LRVs

3.13 RAIL SAFETY ACCREDITATIONS

All major contractors involved in the design, manufacture, supply, install, commission or operation of the rail infrastructure or new LRVs are to ensure, so far as is reasonably practicable, the safety of the work or item. Risks will be further mitigated on an organizational safety management level by having an organization accredited for the work they will manage and perform for a particular project.

The purpose of accreditation is therefore to demonstrate that for this particular SLRE project, the D&C organizations have demonstrated that they have the competence and capacity to manage the risks to safety associated with the rail work for which they will be performing. Obtaining the necessary accreditation from ITSR will be a contractual requirement for the D&C contractor. The rolling stock supplier will be required to undertake all necessary work to enable the operator to obtain an accreditation to commission and operate the new vehicles. The D&C providers shall have accreditation well prior to the construction phase as depicted in Figure 7.

PLRC has the duty to ensure safety risks associated with major change are identified, and managed in a way that the IWE and its operational implications will be implemented in a manner without increasing safety risk. VTS operates and maintains the current infrastructure and rolling stock for PLRC. As the change (IWE) is outside the scope and nature of its current accreditation, VTS will apply to ITSR for a variation of accreditation under section 55 of the Act and regulatory approval will be obtained in relation to change in scope and nature of railway operations prior to carrying out new operations. VTS will apply for a variation to its existing operations and commissioning accreditation at least six months prior to beginning the commissioning process (Figure 7). VTS will supply the staff and services required by the IWE subcontractors to operate new LRVs and new system testing (see *System Integration*).

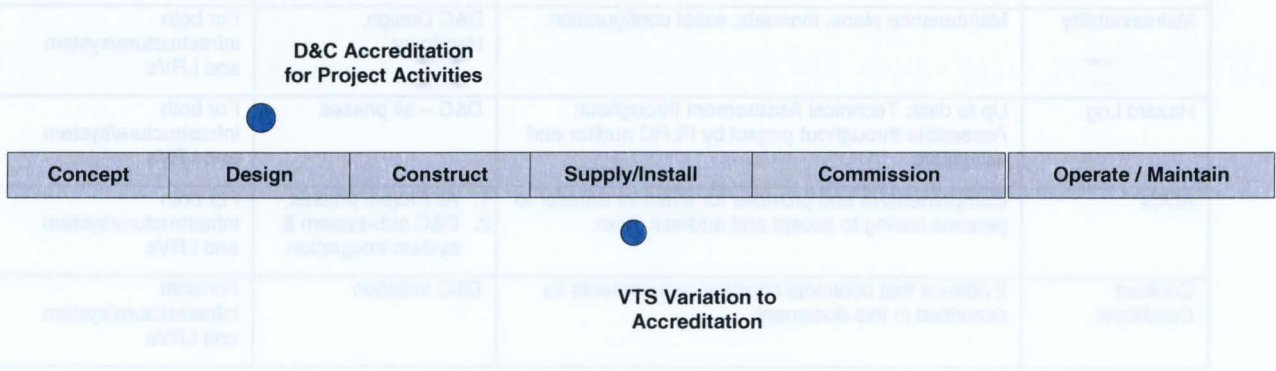


Figure 7: Regulatory Activities

3.14 VERIFICATION OF SYSTEM SAFETY

The verification of safety activities and compliance to this SAP is chiefly obtained from evidence acquired from the audit activities tabled in this document and execution of subsequent audit plans after the D&C project plan has been developed. Evidence of safety controls also includes verification of risk mitigation through contractual arrangement as discussed and obligated within this plan.

A safety assurance report will be generated at the end of the commissioning phase - however interim reports will be generated for the purpose of providing project safety assurance to management, determining on-going effectiveness of the plan and for providing provisional approval to then conduct current and new system compatibility testing as described.

4. REVISION HISTORY

The revision history including change control associated with this document is contained in the table below.

Table 5: Document Revision History

Revision	Change No.	Amendments
0	10060	Initial Release into System
1	10118	1. Removed 3.14 Greenway 2. Updated 3.15 Verification of System Safety to 3.14 Verification of System Safety
2	10141	Minor changes as part of a review prior to tender.

Annexure R**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003****Part R****IWE Site and Site**

(Clause 1.1)

The Site extends from Wickham in the west to Pacific Park in the east and includes a dedicated light rail depot facility near the existing Wickham Railway Station.



Annexure S

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part S

Form of Certificate of Operational Completion (Clause 1.1)

Annexure S**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003****Part S**

Form of Certificate of Operational Completion**(Clause 21A.2(a)(i))**

TO: The Supplier

In accordance with the Clause 21A.2(a)(i) of the contract between the Purchaser and the Supplier dated [insert date] with respect of the design and construction of LRV [*Insert Number*], I hereby certify that:

- (a) all conditions precedent to Operational Completion have been achieved; and
- (b) Operational Completion occurred on [*insert date*].

Terms defined in the Contract have the same meaning in this certificate.

[*Insert name of authorised representative of the Purchaser*]

Date:

Annexure T

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part T

Concept Design for LRVs (Clause 1.1)

Annexure U

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part U

Form of Escrow Agreement (Clause 8.9)

SOFTWARE ESCROW AGREEMENT

DATED:

PARTIES:

1. **ASSUREX ESCROW PTY LIMITED**
ABN 64 008 611 578

2.

3.

[Note to Tenderer: This is the form of escrow agreement received from Assurex. To date, no discussions have taken place between PLRC and Assurex regarding the terms of this escrow agreement. Assurex, the Tenderer, its subcontractor (that owns the relevant software) and PLRC will all be parties to this escrow agreement. PLRC will require amendments to this agreement to ensure its rights to the software under this agreement are consistent with the terms under the Contract. If the Tenderer seeks any amendments to this escrow agreement it must include such amendments in its response to Schedule 23 (Amendments to the Contract) of the RFT.]

THIS SOFTWARE ESCROW AGREEMENT is made on 2011

BETWEEN: ASSUREX ESCROW PTY LIMITED ABN 64 008 611 578, of Level 5, Suite 93, 330 Wattle Street, ULTIMO NSW 2007 AUSTRALIA ("Assurex") of the first part.

AND [INSERT DETAILS]
("Owner") of the second part

AND [INSERT DETAILS]
("Licensee") of the third part

WHEREAS:

- A. The Owner has granted or intends to grant a licence to the Licensee to use certain computer software and related material ("Software Package").
- B. Access to the Material (as defined hereunder) may be required by the Licensee.
- C. Owner has agreed to deposit with Assurex a copy of the Material to enable the Licensee to obtain access to the Material in the circumstances specified in this Agreement.

NOW THIS AGREEMENT WITNESSES:

1. **Definitions.**

In this Agreement the following terms have the following meanings:

"Deposit Package" means the Material delivered to and held by Assurex.

"Licence Agreement" means the licence between the Owner and the Licensee pursuant to which the Licensee obtains the right to use certain elements of the Software Package.

"Material" means a copy of the source code and object code together with other documentation relating to the Software Package, including any Modifications, which may be required by the Licensee for the understanding, maintaining, modifying and correcting of the Software Package and which is not furnished by the Owner to the Licensee under the Licence Agreement.

"Modification" means a change to the Software Package provided by the Owner to the Licensee under the Licence Agreement which is designed to overcome errors or malfunctions, or designed to improve the operation of the Software Package and includes a new version of the Software Package.

"Software maintenance Agreement" means an agreement between the Owner and the Licensee pursuant to which the Owner is obliged to maintain, modify, correct or update the Software Package.

2. Appointment of Escrow Holder

Assurex is hereby appointed jointly by the Owner and the Licensee to hold the Deposit Package subject to and in accordance with the terms of this Agreement.

3. Duration

This Agreement shall remain in force until the Deposit Package is released in accordance with this Agreement or the Agreement is otherwise terminated.

4. Owner's Obligations:

- (a) The Owner shall deliver to and deposit with Assurex one copy of the latest version of the Material within seven (7) days of the date of this Agreement.
- (b) Whenever any Modification is made the Owner shall deliver to and deposit with Assurex as soon as practicable whatever additional Material is required to make the Deposit Package equivalent to the latest version of the Material.

5. Assurex's Obligations:

- (a) Assurex shall accept custody of the Deposit Package on the date of delivery in accordance with Clause 4 of this Agreement and, subject to the terms of this Agreement, shall hold the Deposit Package on behalf of the Owner and the Licensee.
- (b) Assurex shall take all reasonably necessary steps to ensure the preservation, care, safe custody and security of the Deposit Package while it is in the possession, custody or control of Assurex, including storage in a secure receptacle and in an atmosphere that does not harm the Deposit Package.
- (c) Assurex shall maintain a register of all Material deposited, stored and released pursuant to this Agreement and shall promptly comply with a request by the Owner or the Licensee to be permitted to inspect the register during normal business hours, or be provided with a copy of such register.
- (d) Assurex shall be under no obligation or responsibility:
 - (i) to determine the nature, completeness or accuracy of the Deposit Package.
 - (ii) for any transaction between the Owner and the Licensee, other than the performance of its obligations under this Agreement with respect to the Deposit Package.
- (e) If the Deposit Package is lost, damaged or destroyed while in the possession, custody or control of Assurex, Assurex shall immediately notify the Owner and the Licensee;
- (f) Unless this Agreement is terminated in accordance with clause 12 (a) (ii) the Owner shall, within 14 days of receiving notice under clause 5 (e), deposit a further copy of the Deposit Package with Assurex; and

- (g) Without limitation to any other rights the Owner and the Licensee may have under this Agreement or at law, where the loss, damage or destruction of the Deposit Package is caused by a breach by Assurex of Assurex's obligations under this Agreement, Assurex must reimburse the Owner for the reasonable cost of depositing a replacement copy of the Deposit Package.

6. Confidentiality

- (a) Assurex shall not make public or disclose to any person any information about this Agreement or the Deposit Package except as permitted by this Agreement or as required by law.
- (b) Assurex shall not reproduce, allow or cause to be reproduced a copy of the Deposit Package or any part thereof.
- (c) Assurex shall ensure that its employees observe the provisions of this Clause 6.
- (d) The obligations of this Clause shall survive the termination of this Agreement.

7. Escrow Fees

- (a) The Licensee shall pay Assurex for the services provided by Assurex under the Agreement as specified in Schedule 1. Such fees shall be due in full within 30 days of the receipt by the Licensee of an invoice and such payment shall be the essence of this Agreement.
- (b) The Licensee must pay to Assurex any amount ("GST amount") which is payable by the Licensee on account of goods and services tax, value added tax or other tax ("GST") on any service or supply made by Assurex under this Agreement.
- (c) At least 14 days before the date of payment of any GST amount, Assurex must provide to the Licensee a tax invoice complying with any legislation under which the GST is imposed.
- (d) Nothing in this clause requires the Licensee to pay an amount on account of a fine, penalty, interest or other amount for which Assurex is liable as a consequence of a default of Assurex, its employees, agents or any other person acting for Assurex.

8. Verification

- (a) Upon 14 days prior written notice to Assurex and the Owner, the Licensee may, in the presence of and under the supervision of the Owner, analyse and conduct tests of the Deposit Package to verify that the Deposit Package contains the latest version of the Material.
- (b) The Licensee may engage an independent assessor to test the Deposit Package for verification purposes on its behalf.

- (c) Assurex shall release the Deposit Package, or a specified part thereof, to the Licensee or the independent assessor upon receipt of written notice signed by the Owner and the Licensee specifying the Material to be released and identifying the person to whom that Material may be released.

9. Intellectual Property

- (a) Copyright and all other intellectual property rights in the Deposit Package shall remain with the Owner.
- (b) The Owner hereby grants a licence to Assurex to deal with the Deposit Package as necessary to enable Assurex to comply with its obligations under Clause 10 of this Agreement.

10. Release of the Deposit Package

- (a) Assurex shall not release, or allow access to, the Deposit Package except in accordance with the terms of this Agreement.
- (b) Assurex shall release the Deposit Package to the Licensee upon written notice from the Owner.
- (c) If any of the events specified in paragraphs (i) to (iii) of this Clause 10 (c) occur, the Licensee may provide written notice of such event to both Assurex and the Owner. If the Owner does not, within 14 days of receiving the notice ("Objection Period"), provide to Assurex written notice objecting to the release of the Deposit Package Assurex shall release the Deposit Package to the Licensee. If the Owner gives notices objecting to the release of the Deposit Package within the Objection Period, Assurex shall provide a copy of the written objection to the Licensee. If the Licensee and the Owner cannot resolve their difference regarding the release of the Deposit Package within 24 hours, the Owner and the Licensee shall refer the matter for dispute resolution in accordance with Clause 15 and Assurex must act with respect to the Deposit Package in accordance with the determination given under that clause or as jointly directed by the Owner and the Licensee in writing.
 - (i) the Owner has become subject to any form of insolvency administration;
 - (ii) the Owner has ceased to maintain or support the Software Package in breach of its obligations under the Licence Agreement or Software Maintenance Agreement; or
 - (iii) the Owner ceases to carry on business.
- (d) Notice by the Licensee under clause 10 (c) must be in the form of a statutory declaration signed by an officer of the Licensee setting out in detail the grounds upon which release of the Deposit Package is sought. Notice by the Owner under clause 10 (c) must be in the form of a statutory declaration signed by an officer of the Owner setting out in detail the grounds upon which the Owner objects to the release of the Deposit Package.

11. Licensee's Permitted Use

In the event the Deposit Package is released to the Licensee in accordance with Clause 10, the Licensee shall only be entitled to use the Deposit Package to maintain or correct the Software

Package and shall not do or allow to be done any act which is inconsistent with the Owner's intellectual property rights in the Deposit Package or the Software Package.

12. Termination

- (a) This Agreement shall be jointly terminated by the Owner and the Licensee immediately if Assurex:
- (i) becomes subject to any form of insolvency administration; or
 - (ii) is in breach of any obligation under this Agreement so that there is a substantial failure by Assurex to perform or observe this Agreement.
- (b) Assurex may terminate this Agreement by giving 3 months written notice to the Owner and the Licensee.
- (c) The Owner and the Licensee jointly terminate this Agreement by giving 30 days written notice to Assurex.
- (d) Upon termination of this Agreement under this Clause 12, the Deposit Package shall be returned to the Owner or, if the Owner is no longer in existence, to such person or firm as reasonably appears to Assurex to be entitled thereto.

13. Amendments

This Agreement shall not be revoked, rescinded or modified as to any of its terms except by written agreement between the parties.

14. Governing Law

This Agreement shall be governed by and construed in accordance with the law in force in the State of New South Wales.

15. Dispute Resolution

All questions and matters in difference between the parties or between the Owner and the Licensee relating to the release of the Deposit Package shall be referred to the award and final determination of the President for the time being of The Law Society of New South Wales, or whomsoever that person shall appoint.

16. Force Majeure

Failure or omissions to carry out or to observe any of the conditions of this Agreement shall not give rise to any claim against a party or result in the breach of this Agreement if such failure or omission arises by reason of delay or inability to perform, caused by war whether declared or not, insurrection, strikes, inability to obtain material, fire, storm or other severe action of the elements, accidents, government restrictions or for any other cause whether like or unlike the foregoing which are unavoidable or beyond the control of the relevant party.

17. Description / Title of Software Package

18. Notices

All notices under this Agreement shall be in writing and shall be deemed to have been duly delivered:

- (a) upon physical delivery when delivered by hand;
- (b) seven (7) calendar days after mailing if mailed by registered post; or
- (c) on the next business day following transmission, when the machine on which the notice is sent reports in writing that the notice has been transmitted free from errors in transmission,

to the party to whom such notice is required to be given at the following address or other address notified in writing to the parties:

Assurex Courier Delivery:
 Suite 93, Level 5,
 330 Wattle Street
 ULTIMO NSW 2007
 AUSTRALIA

Mail:
 PO Box 8
 BROADWAY NSW 2007
 AUSTRALIA
 Telephone: (61 2) 9211 0522
 Facsimile: (61 2) 9211 5940
 Attention: Legal Counsel

Owner

Licensee

Executed as an Agreement

SIGNED for and on behalf of)
ASSUREX ESCROW PTY LIMITED)
ABN 64 008 611 578)
by a duly authorised representative in the)
presence of:)

Print name - Witness

Print name
Date:

SIGNED for and on behalf of)
by a duly authorised representative in the)
presence of:)

Print name - Witness

Print name
Date:

SIGNED for and on behalf of)
by a duly authorised representative in the)
presence of:)

Print name - Witness

Print name
Date:

SCHEDULE 1

SCHEDULE OF FEES (Excluding GST – GST will be charged at the Statutory rate)

ESTABLISHMENT FEE

(Payable first year only)

Application and processing of Assurex Standard Agreement:

or

Application and processing of non standard agreement:

ANNUAL DEPOSIT FEE

Includes controlled retention of deposits and maintenance of audit records and documentary evidentiary support of deposit movements; processing and certification of up to 4 deposits per annum. *Deposits in excess of 4 per annum will be charged at the Additional Charges rate set out below.*

Includes one Unit of Escrow Storage (one Unit equals one half cubic foot). *Additional Units of Escrow Storage will be charged at the Additional Charges rate set out below.*

Annual Deposit Fee is based on a 3 party agreement, where one of the parties is Assurex Escrow. *Where there are 4 or more parties, the additional parties will be charged at the Additional Charges rate set out below.*

ADDITIONAL CHARGES

Each Additional Unit of Escrow Storage

Each Additional deposit of Material

Each additional party to this Agreement

VERIFICATION RELEASE FEE

Release for testing and verification pursuant to clause 8 of the Agreement

DEPOSIT PACKAGE RELEASE FEE

Controlled release and delivery of Deposit Package to Licensee pursuant to Clause 10 of the Agreement
Payable at the time of request:

Courier costs to be met by requesting party

REVIEW OF FEES

Fees may be reviewed annually as at each anniversary of the date of the Escrow Agreement and notice of any increase in fees shall be given in writing 1 month prior to the anniversary date.

Annexure V

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part V

Deleted

Annexure W**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003****Part W****Interface Annexure (Clause 18.4(c))**

Primary means that party will be responsible for the performance of that obligation within the requisite time period.

Secondary means that party must provide reasonable assistance to the party with Primary responsibility, including providing such information and assistance as may be reasonably required and identifying and notifying of any errors or non-compliances in the product of the party with Primary responsibility, in order to perform the obligation.

Interface	Purchaser	ISO	Contractor	Supplier
<i>Approvals</i>				
Obtaining primary environmental approval for Project	Primary	Secondary	Secondary	Secondary
Obtaining primary Development Approval for Project	Primary	Secondary	Secondary	Secondary
Rail Safety Accreditation – RIM	Primary – Until NLR Handover Date	Primary – From NLR Handover Date		N/A
Rail Safety Accreditation – RSO	N/A	Primary - From completion of Static site Testing	Primary – in respect of defects arising during DLP	
Obtaining all other Approvals and compliance with all Approvals	N/A	Primary for operating of service	Primary for fixed infrastructure	Primary for design and construction of LRVs
<i>Design</i>				
Design of the Works and Returned Works	N/A	Secondary	Primary	Secondary
Design of the LRVs		Secondary	Secondary	Primary
Impacts on works under the Managing Contractor contract of changes in the design of the LRVs		Secondary	Primary	Secondary

Interface	Purchaser	ISO	Contractor	Supplier
Impacts on LRVs of changes in the design of the Works		Secondary	Secondary	Primary (NB: through a Variation, the Supplier is responsible for the implementation of any required changes)
Impacts on Works or LRVs of changes in the operational requirements of the LRVs		Primary	Secondary	Secondary
Construction				
Obtaining subcontractor warranties			Primary for fixed infrastructure	Primary for design and construction of LRVs
Program				
Provision of updates to the delivery phase program		Secondary	Primary	Secondary
Delay to the completion of the Works			Primary	
Delay to the completion of the LRVs				Primary
Delay to commencement of the Services		Primary	Secondary	Secondary

Annexure X

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part X

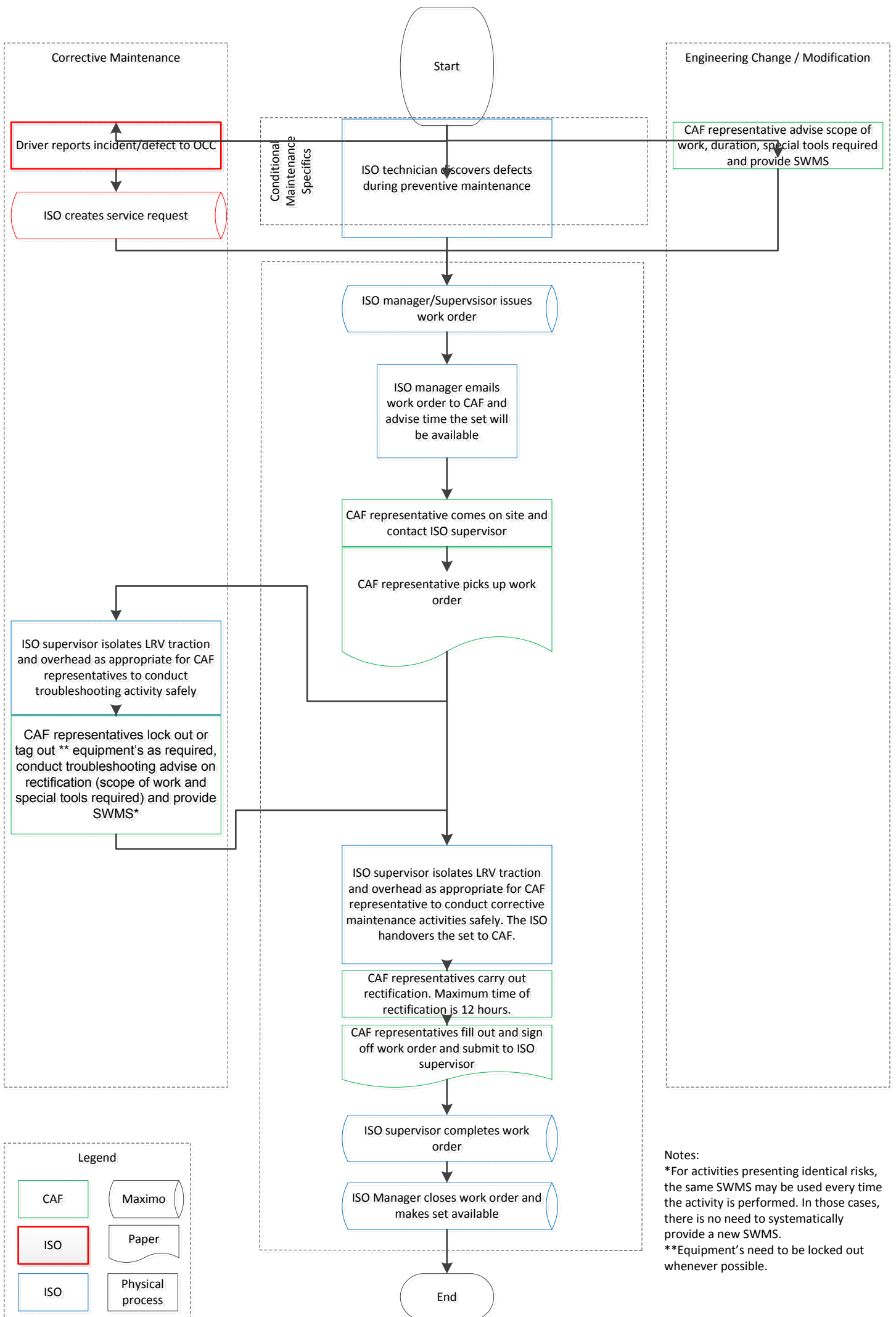
Testing and Commissioning Responsibility Matrix (Clause 18.1(e))

Annexure Y

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part Y

Site Access Protocol (Clause 22A(h))



Notes:
 *For activities presenting identical risks, the same SWMS may be used every time the activity is performed. In those cases, there is no need to systematically provide a new SWMS.
 **Equipment's need to be locked out whenever possible.

Annexure Z**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003****Part Z****Price List – Insurance Spares and Specialist Maintenance Tools
(Clause 24.1A)****All prices are standard delivery**

Spare	Offered Quantity	UNIT PRICE EUR	TOTAL PRICE	Delivery Period
Car Body				
Intercommunication Gangway				
Automatic Coupler				
Windscreen wiper				
Front Body End				
Front Anticlimber				
Shock Absorbers				
Front Skirts				
Side Skirts Bogie				
Side Skirts Lateral Bogie Type 1				
Side Skirts Lateral Bogie Type 2				
Side Skirts Suspended car				
Driver Desk (not equipped)				
Obstacle Deflector				
Windows				
Fixed Department Window - Large				
Fixed Department Window - Small				
Hopper Window - Department				
Windscreen				
Cab Lateral Window				
Cab Lateral Window small				
Bogie				

Spare	Offered Quantity	UNIT PRICE EUR	TOTAL PRICE	Delivery Period
Complete Motor Bogie				
Complete Trailer Bogie				
Motor Axle				
Trailer Axle				
Primary Suspension Kit (One Kit per bogie)				
Secondary Suspension Kit (One Kit per bogie)				
Propulsion System				
Pantograph				
Traction Converter-Inverter				
Auxiliary Converter + Battery Charger				
Traction Motor				
Master Controller				
Gearbox				
Surge Arrester				
Circuit Breaker				
Brake Resistors				
Battery				
Battery				
HVAC				
HVAC Saloon				
HVAC Cabin				
Doors				
Passenger Access Double Doors leaf (includes window)				
Passenger Access Single Doors leaf (includes window)				
Passenger Access Double Doors mechanism				
Passenger Access Single Doors mechanism				
Cab interior door (leaf + mechanism)				
Seats				
Driver 's Seat				
Department Seats				

Spare	Offered Quantity	UNIT PRICE EUR	TOTAL PRICE	Delivery Period
Tip Up Seats				
Braking System				
Air Production Unit				
Brake Caliper				
Brake Discs				
Miscellaneous				
Train control and monitoring system				
Event Register				
Rear View Exterior Cameras				
Interior Cameras				
Interior Destination Display				
Exterior Lateral Destination Display				
Exterior Front Destination Display				
Train Radio Station				

Special Tool	Offered Quantity	UNITARY PRICE EUR	TOTAL PRICE	Delivery Period
BOGIE				
Wheel Profile Measuring Tool				
Wheel Tyre Changing Tool				
Ultrasonic Test Equipment				
BRAKE, AIR PRODUCTION				
Diagnostic Equipment & Software				
Portable brake test case				
HVAC				

Special Tool	Offered Quantity	UNITARY PRICE EUR	TOTAL PRICE	Delivery Period
Diagnostic Equipment & Software				
Refrigerant Recycling Station + Special Tools				
DOORS				
Diagnostic Equipment & Software				
BATTERY				
Battery charger				
TRACTION MOTOR				
Diagnostic Equipment & Software				
TRACTION CONVERTER - INVERTER				
Diagnostic Equipment & Software				
AUXILIARY CONVERTER + BATTERY CHARGER				
Diagnostic Equipment & Software				
CONTROL AND MONITORING SYSTEM				
Diagnostic Equipment & Software				
EVENT RECORDER				
Diagnostic Equipment & Software				
PASSENGER INFORMATION SYSTEM				
Diagnostic Equipment & Software				
CCTV				
Diagnostic Equipment & Software				
DEPOT				
Re-railing equipment				

Special Tool	Offered Quantity	UNITARY PRICE EUR	TOTAL PRICE	Delivery Period
Lifting Jacks				

As set out in Part H, the Insurance Spares and Specialist Maintenance Tools listed above have been added to the Additional Contract Sum identified in Part C.

If the Purchaser decides to procure more Insurance Spares and Specialist Maintenance Tools after this Contract is executed, the Parties agree that the amount in EUR will be added to the Additional Contract Sum identified in Part C. Subsequently, Part H will be updated accordingly.

Annexure AA

**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part AA

KPI Regime (Clause 24.10)

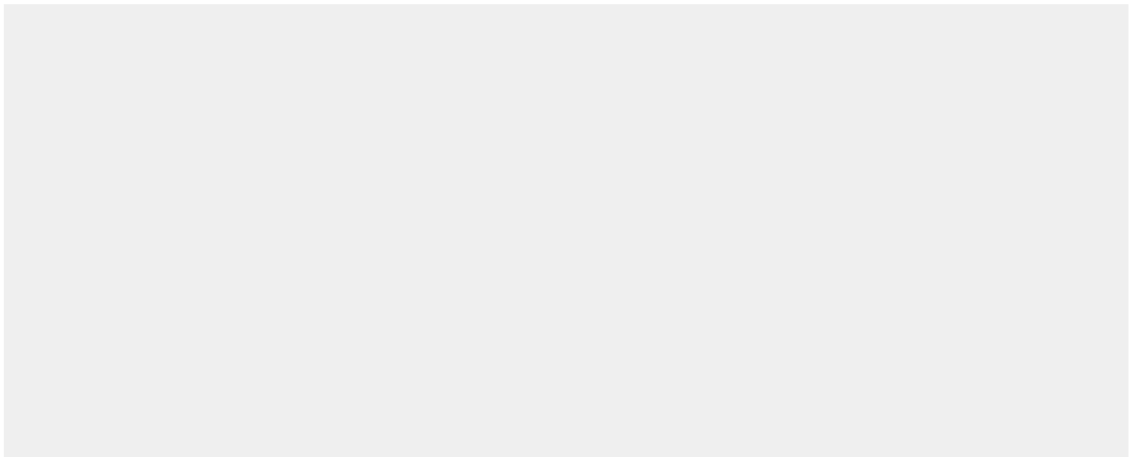
(a)

(b)

(c)

(d)

(e)



**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003**

Part AB

Maintenance (Clause19B)

The scope of the maintenance services prior to NLR Handover Date to ISO is:

- (a) preventive maintenance as described in the Technical Maintenance Plan and
- (b) corrective maintenance for all issues/faults arising during the testing and commissioning;
and
- (c) implementing all required adjustments to the Additional LRVs

Annexure AC**ANNEXURE to the Australian/New Zealand
Standard General Conditions of Contract for the
supply of Equipment without installation
AS/NZS 4911-2003****Part AC****Confidentiality Deed Poll (Clause 6.8)**

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

By: *[insert name of Contractor]* (ABN *[insert Contractor's ABN]*) of *[insert Contractor's address]* (**Contractor**),

in favour of: **Construcciones y Auxiliar de Ferrocarriles S.A. (CIF A20001020)** of Jose Miguel Iturrioz 26, Beasain, Spain (**Beneficiary**).

RECITALS

- A. Transport for NSW (**TfNSW**) of Level 5, Tower A Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067, is responsible for developing the Newcastle Integrated Services Project (**Program**).
- B. TfNSW has entered into a contract with the Beneficiary for the supply of light rail vehicles and other deliverables for the Program dated *[insert date]* (**Supply Contract**).
- C. TfNSW has engaged the Contractor to perform *[insert role]* in relation to the Program under a contract between TfNSW and the Contractor dated *[insert date]* (**Contract**).
- D. As part of the Program, TfNSW proposes provide to the Contractor confidential information of the Beneficiary supplied to TfNSW under the Supply Contract.
- E. The Beneficiary is relying on TfNSW to procure that the Contractor maintains the confidentiality of information provided to the Contractor by the Beneficiary under or in connection with the Supply Contract and the Contract.
- F. The Beneficiary will suffer loss if the Contractor does not maintain the confidentiality of information provided to it by the Beneficiary under or in connection with the Supply Contract and the Contract.

THIS DEED POLL WITNESSES THAT THE CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the Beneficiary as follows:

1. The Contractor must:
 - (a) keep confidential the Supply Contract and any designs, manuals, plans, data and other information provided by the Beneficiary or TfNSW or any of its employees, agents or contractors to the Contractor under or in connection with the Supply Contract or the Contract;
 - (b) not use the information referred to in clause 1(a) except as necessary for the performance of the Contactor's activities under the Contract; and
 - (c) ensure that each of its officers, employees and subcontractors complies with the terms of clauses 1(a) and 1(b).
2. The Contractor is not obliged to keep confidential any information:
 - (a) which is in the public domain through no default of the Contractor; or

- (b) the disclosure of which is:
 - (i) required by law;
 - (ii) consented to in writing by the Beneficiary; or
 - (iii) given to a court in the course of proceedings to which the Contractor is a party.

- 3. The Beneficiary may assign or charge the benefits and rights accrued under this Deed Poll.
- 4. This Deed Poll is governed by the laws of the State of New South Wales.
- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Beneficiary.

Executed as a deed poll.

Executed by [insert Contractor's ABN] [insert Contractor's ABN] in accordance with Section 127 of the *Corporations Act 2001*:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

AMENDMENT CONTROL SHEET
AS/NZS 4911:2003

Amendment No. 1 (2005)

REVISED TEXT

SUMMARY: This Amendment applies to Clause 36 (a) and (c) of Annexure Part A.
Published on 30 March 2005.

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GPO Box 5420 Sydney NSW 2001

Administration

Phone (02) 8206 6000

Fax (02) 8206 6001

Email mail@standards.com.au

Customer Service

Phone 1300 65 46 46

Fax 1300 65 49 49

Email sales@standards.com.au



Level 10 Radio New Zealand House

155 The Terrace Wellington 6001

(Private Bag 2439 Wellington 6020)

Phone (04) 498 5990

Fax (04) 498 5994

Customer Services (04) 498 5991

Information Service (04) 498 5992

Email snz@standards.co.nz

Internet www.standards.co.nz