



Execution version

Sydney Light Rail

Inner West Light Rail Vehicle remediation deed

Transport for New South Wales

ABN 18 804 239 602

and

Construcciones y Auxiliar de Ferrocarriles

CIF A20001020

28 November

2022

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THIS DEED is made on 28 November 2022

BETWEEN:

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 231 Elizabeth Street, Sydney NSW 2000 (**TfNSW**); and
- (2) **Construcciones y Auxiliar de Ferrocarriles S.A.** (CIF A20001020) a company incorporated under the laws of Spain having its registered office at Jose Miguelturrioz 26, 20200 Beasain (Spain) (**CAF**).

RECITALS:

- (A) TfNSW and CAF are parties to a Supply Contract dated 1 August 2012 under which, amongst other things, CAF agreed to supply twelve light rail vehicles for use on the Inner West Light Rail.
- (B) TfNSW and ALTRAC are parties to the Sydney Light Rail Project Deed dated 17 December 2014, under which ALTRAC agreed (amongst other things) to operate and maintain the Inner West Light Rail.
- (C) On or around 26 October 2021, serious and extensive cracking was discovered in the light rail vehicles supplied pursuant to the Supply Contract, causing a temporary shutdown of the Inner West Light Rail.
- (D) As at the date of this deed, the light rail vehicles supplied pursuant to the Supply Contract have not been returned to service.
- (E) The parties have agreed that CAF will repair the cracking in the light rail vehicles, subject to the terms of this deed.
- (F) The parties have not reached agreement as to the cause of the cracking and are entering into this deed without prejudice to their positions as to the cause of the cracking.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this deed.

Access Requirements means the conditions of access to the IWLR Site set out at **Schedule 6**.

Accreditation means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from the same).

Alert means a written statement:

- (a) identifying the event or circumstance;
- (b) identifying the actual, or likely, time and cost implications of the event or circumstance;
- (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 TfNSW to assess the issue and make a decision about it,

where such details are reasonably available at the time of giving the Alert.

ALTRAC means the ALTRAC Light Rail Partnership, a partnership between ALTRAC Light Rail 1 Pty Ltd ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Ltd ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Ltd ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3, being the party engaged by TfNSW to operate and maintain the Sydney Light Rail under the SLR Project Deed.

AMB Compliance Report means the report referred to in clause 5.6.

AMB Requirements means:

- (a) the standards produced by the Asset Management Branch under its remit to set standards for NSW transport assets and published by the Asset Management Branch on its website; and
- (b) the obligations, standards and guidelines with which a Technically Assured Organisation must comply as set out in the following documents published on the Asset Management Branch website entitled:
- (i) "Technical Supplier Assurance Framework" dated 30 March 2022;
 - (ii) "TAO Authorisation Scheme" dated 30 March 2022;
 - (iii) "TAO Authorisation Requirements" dated 30 March 2022; and
 - (iv) "TAO Engineering Services" dated 30 March 2022,

and that are relevant to the performance of the Remediation Works.

Asset Management Branch (formerly **ASA** or **Asset Standards Authority**) means the TfNSW Authority the functions of which include setting, controlling, maintaining, owning and publishing the network and asset standards for NSW rail assets and includes any successor Authorities as may be established by TfNSW from time to time that fulfil substantially the same function as the Asset Management Branch.

Authority means any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality (including TfNSW carrying out any statutory authority or function).

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, NSW.

Certificate of Handover Completion means a certificate in the form set out at **Schedule 11**.

Claim means, in relation to a person, any claim, allegation, cause of action, proceeding, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Commercially Sensitive Information means information that discloses:

- (a) CAF's cost structure or profit margins; or

- (b) any technical information in its possession that is proprietary to it or its suppliers, is by its nature confidential and does not satisfy the requirements set out in clauses 11.1(d) and 11.1(e).

Configuration Control Board means the body of that name comprising the general managers of the O&M Contractor, with representatives of TfNSW and ALTRAC attending as observers.

Consolidated Arbitration has the meaning given to that term in clause 14.5(a)

COVID-19 Delay means any delay or disruption to the Remediation Works directly caused by an Australian Authority exercising its legal powers to direct or restrict the movement or activities of persons (including the supply of goods or services) in relation to the COVID-19 pandemic after the date of this deed.

Date for Handover Completion means 3 January 2025, or such other date as may be determined accordance with clause 6.2.

Date of Handover Completion means the date on which Handover Completion is achieved, as certified in accordance with clause 7.5 or as otherwise determined in accordance with the dispute resolution procedure set out at clause 7.7.

Defect means any:

- (a) failure of the Remediation Works to resolve the LRV Cracking;
- (b) defect, deficiency, fault, non-conformance, error or omission in the Remediation Works; or
- (c) damage, defect, deficiency, fault or non-conformance caused to the LRVs by the Remediation Works.

Defects Liability Period means the period during which CAF may be required to carry out remedial works in respect of any Defects pursuant to clause 8 of this deed.

Design Requirements means all design requirements and obligations required to be undertaken by CAF under or in connection with:

- (a) this deed, including to comply with the warranties at clause 9; and
- (b) the Supply Contract, including the LRV Specification.

Design Documentation 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 this deed or necessary to be produced by CAF, which describe the nature, layout or performance of the LRVs.

Design Review Delay means a delay caused by a failure by TfNSW to issue a notice under paragraph 2(a) of the Submission Review Process with respect to the Remediation Proposal or any Design Documentation within the timeframe required in the Submission Review Process, provided that such failure was not caused or contributed to by an act, default or omission of CAF (including a failure by CAF to satisfy the Design Requirements or to comply with clause 4.6(c)).

Dispute means any dispute or difference between the parties, including any dispute or difference as to the formation, validity, existence or termination of this deed.

Door and Window Frame Repair Costs means the cost to CAF of repairing the LRV Cracking in the door and window frames.

EOT means an extension of time to the Date for Handover Completion.

EOT Event means:

- (a) a TfNSW Delay Event; or
- (b) a Neutral Delay Event.

Final Design Documentation means Design Documentation that has been submitted by CAF in accordance with clause 4.6(a) and has been "Not Rejected" by TfNSW under the Submission Review Process.

Final Handover Activities means all activities required to be carried out in respect of the handover of the Stage 4 LRVs, including under the Handover Plan, in order:

- (a) to satisfy the relevant Handover Requirements; and
- (b) that the Stage 4 LRVs may be accepted back into service and safely operated on the IWLR.

Force Majeure Event means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo or action or inaction by an Authority, which is beyond the reasonable control of CAF and the effects of which cannot be avoided by CAF.

Further Cracking means any LRV Cracking not listed or described in Schedule 1 of this deed or forming the subject matter of the Stage 1 Works, the Stage 2 Works, the Stage 3 Works or the Stage 4 Works.

Further Cracking Remediation Plan means a Remediation Plan that may be required in respect of Further Cracking under clause 4.8(b)(ii)(A).

Further Cracking Remediation Proposal a remediation proposal that may be required in respect of Further Cracking under clause 4.8(b)(ii)(A).

Further Cracking Remediation Works means all Remediation Works required to repair the Further Cracking.

Handover Activities means, in respect of the:

- (a) Intermediate LRVs, the Intermediate Handover Activities; and
- (b) Repaired LRVs, the Final Handover Activities.

Handover Completion means the stage of the work under this deed when:

- (a) all Remediation Works have been completed;
- (b) the Final Handover Activities have been performed; and
- (c) each LRV complies with all requirements of this deed.

Handover Delay means a delay to the Handover Activities caused by:

- (a) a failure by TfNSW, ALTRAC or the O&M Contractor to comply with their respective obligations under the Handover Plan; or
- (b) the exercise by TfNSW of its power under clause 7.1(d) to direct CAF to perform Handover Activities not provided for under the Handover Plan,

provided that such delay was not caused or contributed to by an act, default or omission of CAF (including a failure by CAF to satisfy the Handover Requirements).

Handover Plan means the procedure for testing and handing over the Intermediate LRVs and the Repaired LRVs as agreed between the parties or determined in accordance with clause 7.1(b).

Handover Requirements means the requirements set out at **Schedule 9**.

Indemnified Parties means TfNSW and the Crown in right of the State of New South Wales, jointly and severally.

Initial Remediation Program means the program set out at **Schedule 3**.

Inner West Light Rail or **IWLR** means the light rail system in the inner west of Sydney from Central Station to Dulwich Hill, including:

- (a) the infrastructure, systems and power infrastructure forming part of the light rail system;
- (b) the LRVs and other moveable assets;
- (c) all physical equipment forming part of the legacy ticketing system including the ticketing assets, hardware, software, computer network and data; and
- (d) the maintenance depot at Lilyfield and the depot at Pyrmont.

Intended Purpose means:

- (a) to convey passengers on the IWLR safely and reliably;
- (b) to provide a similar or better level of passenger amenity to the Urbos 100 LRVs formerly in operation on the IWLR;
- (c) to be no less reliable than the Urbos 100 LRVs formerly in operation on the IWLR; and
- (d) to operate (including as required by paragraphs (a) to (c) above), within the "Dynamic Gauge" as described in Appendix A of the LRV Specification.

Intermediate LRV means an LRV in respect of which one or more Intermediate Works Stages have been completed.

Intermediate Handover Activities means all activities required to be carried out in respect of the handover of an Intermediate LRV, including under the Handover Plan, in order:

- (a) to satisfy the relevant Handover Requirements; and
- (b) that the Intermediate LRVs may be temporarily accepted back into service and safely operated on the IWLR.

Intermediate Handover Completion means the stage of the work under this deed when:

- (a) an Intermediate Works Stage has been completed;
- (b) the relevant Intermediate Handover Activities have been performed; and
- (c) the Intermediate LRV in question complies with all requirements of this deed for the relevant Intermediate Works Stage(s).

Intermediate Works Stage means (as applicable):

- (a) the Stage 1 Works;
- (b) the Stage 2 Works;
- (c) the Stage 3 Works;
- (d) the Stage 4 Works; and
- (e) any Further Cracking Remediation Works,

performed on an LRV in respect of which further Remediation Works remain to be performed under this deed in order to achieve Handover Completion.

IWLR Site means that land (including subsurface land) and airspace upon which the Inner West Light Rail is situated, and includes (without limitation):

- (a) the IWLR stops;
- (b) the permanent light rail corridor; and
- (c) the maintenance depot at Lilyfield and the depot at Pymont.

Law means any law (including subordinate or delegated legislation or statutory instruments of any kind) of Australia or New South Wales and also any judgment, order, policy, guideline, official directive or request (even if it does not have the force of law) of any Government Agency or regulatory body, including a stock exchange within Australia.

Liability means, in relation to a person, any liability, responsibility or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Loss includes any:

- (a) loss, damage, liability or obligation incurred; and
- (b) compensation, fine, penalty, charge, payment, cost or expense paid or payable (including any legal cost and expense on a full indemnity basis),

however it arises and whether it is present or future, fixed or unascertained, actual or contingent and including any loss of revenue.

LRV means a CAF Urbos 3 light rail vehicle:

- (a) procured by TfNSW from CAF pursuant to the Supply Contract and delivered on or before 31 December 2016; and
- (b) licensed to and operated and maintained by ALTRAC pursuant to the SLR Project Deed.

LRV Cracking means all cracking, damage or breakage in the bogie boxes and suspension, carbody (including the bodyshell and structure), underframes, waistline, door and window frames of the LRVs identified before the date of this deed, including the cracking, damage or breakage identified at **Schedule 1**.

LRV Specification means the documents set out in Annexure Part E of the Supply Contract (as applicable to the LRVs).

Neutral Delay Event means:

- (a) a COVID-19 Delay;
- (b) a Force Majeure Event;
- (c) a Design Review Delay; or
- (d) a Handover Delay.

O&M Contractor means Transdev Sydney Pty Ltd (ABN 34 096 046 052) of Level 6, 550 Bourke Street, Melbourne VIC 3000.

Programming Requirements means the requirements for the Remediation Program set out in **Schedule 5**.

Project Deed Arbitration has the meaning given to that term in clause 14.5(b).

Project Management and Interface Requirements means the obligations of the parties set out at **Schedule 7**.

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

Redesign means any redesign, variation, amendment, change or update required to be made to any "Final Design Documentation" (as that term is defined in the Supply Contract) produced by CAF in respect of the LRVs under the Supply Contract.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001 (Cth)*.

Remediation Plan means (as applicable):

- (a) the Stage 1 Remediation Plan;
- (b) the Stage 2, 3 and 4 Remediation Plan; and/or
- (c) any Further Cracking Remediation Plan.

Remediation Price means the sum of:

- (a) [REDACTED], in respect of the Stage 1 Works; and
- (b) an amount (in AU \$) equal to the costs incurred by CAF in performing all Remediation Works other than:
 - (i) the Stage 1 Works; and
 - (ii) any Further Cracking Remediation Works for which a price is agreed in accordance with clause 4.8,plus a margin of [REDACTED]; and

- (c) any amount (in AU \$) for the cost of Further Cracking Remediation Works that may be agreed in accordance with clause 4.8,

minus the Door and Window Frame Repair Costs

Remediation Program means:

- (a) the Initial Remediation Program; or
- (b) (if applicable) the most recent Remediation Program as updated in accordance with Schedule 5.

Remediation Works means all works necessary to remedy the LRV Cracking and, if agreed in accordance with clause 4.8, any Further Cracking, including:

- (a) any Redesign;
- (b) the Stage 1 Works;
- (c) the Stage 2 Works;
- (d) the Stage 3 Works;
- (e) the Stage 4 Works; and
- (f) any Further Cracking Remediation Works.

Repaired LRV means an LRV in respect of which all Remediation Works have been performed and completed as required by and in accordance with this deed.

Senior Management Representatives means:

- (a) in respect of CAF, [REDACTED]; and
- (b) in respect of TfNSW, Terry Brown,

or such other persons as are notified to and by the parties from time to time.

Stage 1 Remediation Plan means the documents prepared by CAF that describe the Stage 1 Works listed in and appended to **Schedule 2**.

Stage 1 Works means all Remediation Works necessary to:

- (a) fully repair the C module bogie boxes, L-brackets, bump-stop rotation brackets and waistline cracking;
- (b) undertake C module single door inspections; and
- (c) effect such temporary repairs in respect of:
 - (i) the R module bogie boxes; and
 - (ii) the C module door frame cracking,as are sufficient to:
 - (iii) allow each LRV to be safely returned to service on the IWLR; and

- (iv) mitigate any further cracking or damage to each LRV during the operation of that LRV on the IWLR prior to the completion of all outstanding Remediation Works,

not including the Handover Activities.

Stage 2, 3 and 4 Remediation Plan has the meaning given to it at clause 4.5(a).

Stage 2, 3 and 4 Remediation Proposal means the document that CAF is required to prepare and submit in accordance with clause 4.3.

Stage 2 Works means all Remediation Works required to:

- (a) fully repair the LRV Cracking in the in the S module window frames of the LRVs; and
- (b) effect such temporary repairs in respect of the waistlines as are sufficient to:
 - (i) allow each LRV to be safely returned to service on the IWLR; and
 - (ii) mitigate any further cracking or damage to each LRV during the operation of that LRV on the IWLR prior to the completion of all outstanding Remediation Works.

Stage 3 Works means all Remediation Works required to replace the C module door frames.

Stage 4 Works means all Remediation Works required to fully repair the LRV Cracking in the:

- (a) C and R module window frames;
- (b) waistlines; and
- (c) R module bogie boxes.

Submission Review Process means the document management and review process set out at **Schedule 4** in respect of:

- (a) the Remediation Plans; and
- (b) any Design Documentation,

required to be produced by CAF under this deed.

Supply Contract means the Sydney Light Rail Rolling Stock Supply Contract between the Director General of the Department of Transport for and on behalf of Transport for NSW, Pymont Light Rail Company Pty Ltd and CAF dated 1 August 2012, as varied from time to time.

Supplier's Obligations means the obligations of CAF (as the "**Supplier**") under the Supply Contract that are listed in and adopted by **Schedule 8** as applicable to the work under this deed.

SLR Project Deed means the Sydney Light Rail PPP Project Deed between TfNSW and ALTRAC dated 17 December 2014, as varied from time to time.

Technical Maintenance Plan has the same meaning as is given to that term in the Supply Contract.

Technically Assured Organisation means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering organisation status by the Asset Management Branch.

TfNSW Delay Event means an act, default or omission of TfNSW or TfNSW's employees, consultants, contractors (other than CAF or CAF's subcontractors) or agents (other than acts or omissions authorised, permitted or performed in accordance with this deed) that prevents or delays CAF in performing its obligations under this deed.

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 this deed**

- (a) The following rules apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply.
- (b) Headings are for convenience only, and do not affect interpretation.
- (c) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this deed) or agreement, or a provision of a document (including this deed) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this deed or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (d) A singular word includes the plural, and vice versa.
- (e) A word which suggests one gender includes the other genders.
- (f) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (g) 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.

1.3 Non Business Day

If the day on or by which a person must do something under this deed is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 Multiple parties

If a party to this deed is made up of more than one person, or a term is used in this deed to refer to more than one party, then unless otherwise specified in this deed:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

1.5 The rule about "contra proferentem"

This deed is not to be interpreted against the interests of a party merely because that party proposed this deed or some provision in it or because that party relies on a provision of this deed to protect itself.

1.6 Requirement on a person not a party to this deed

If a provision of this deed requires a person that is not a party to this deed to do, or not to do, a thing, each party must use its best efforts to ensure that the person does, or does not, do that thing.

1.7 Consideration

Each party acknowledges that it has received valuable consideration for entering into this deed.

2. EFFECT OF THIS DEED ON PARTIES' RIGHTS UNDER THE SUPPLY CONTRACT

2.1 No admission and reservation of rights by the parties

Unless expressly and specifically provided for under this deed, each party enters into this deed:

- (a) without accepting any Liability in respect of the LRV Cracking; and
- (b) without prejudice to and in reservation of their respective rights and Liabilities under the Supply Contract, arising out of this deed or otherwise at law.

2.2 No extension of Liability

Save in respect of any breach of this deed by a party or unless otherwise expressly and specifically provided, nothing in this deed:

- (a) expands or extends any party's Liability to another party; or
- (b) gives any party any additional rights of Claim against another party,

under or in connection with the Supply Contract.

2.3 **No amendment to the Supply Contract**

Except as expressly provided for in this deed, the Supply Contract is unamended and remains in full force and effect.

3. **COOPERATION BETWEEN TfNSW, ALTRAC AND CAF**

3.1 **Acknowledgement by CAF**

CAF acknowledges and agrees that:

- (a) the LRVs are an integral part of the IWLR, which is being operated and maintained on behalf of TfNSW by ALTRAC under the SLR Project Deed;
- (b) ALTRAC in turn subcontracts its operations and maintenance obligations under the SLR Project Deed to the O&M Contractor pursuant to an operations and maintenance contract;
- (c) ALTRAC and the O&M Contractor and other third party stakeholders will from time to time be reliant on CAF's proper and timely performance of its work under this deed; and
- (d) any delay in:

- (i) the performance of CAF's work under this deed; or
- (ii) CAF providing information to, or cooperating and coordinating with ALTRAC, the O&M Contractor or any other third party stakeholders,

may adversely impact upon, delay or disrupt such stakeholders in a way which may lead to:

- (iii) that party; or
- (iv) TfNSW,

suffering or incurring additional costs, Losses, damages and other harm including reputational damage.

3.2 **Cooperation**

TfNSW and CAF must:

- (a) cooperate with each other, ALTRAC, the O&M Contractor and (when reasonably requested by TfNSW) any other parties in respect of:
 - (i) the performance of the Remediation Works;
 - (ii) the Handover Activities; and
 - (iii) any interface between:
 - (A) the Remediation Works;
 - (B) the Handover Activities; and
 - (C) the operation and maintenance activities of the O&M Contractor; and

- (b) provide each other with such reasonable assistance as may be required in connection with the work and activities provided for by this deed.

3.3 **Project Management and Interface Requirements**

- (a) The parties will comply with, and ensure that their representatives attend the meetings required by, the Project Management and Interface Requirements.
- (b) The meetings conducted under the Project Management and Interface Requirements and any working groups established between the parties in relation to the subject matter of this deed are consultative and advisory only and nothing that occurs during a meeting of any such group will:
 - (i) be binding on TfNSW or CAF (as the case may be); or
 - (ii) prejudice any party's rights or Liabilities in connection with the LRV Cracking.

3.4 **Reporting by CAF**

From the date of this deed until the end of the calendar month after the Date of Handover Completion in respect of the last Stage 4 LRV to reach Handover Completion, CAF must, within 5 Business Days of the end of each month, submit to TfNSW a written report in a form reasonably required by TfNSW providing in connection with the Remediation Works:

- (a) details of the progress of CAF's obligations under this deed, with a comparison to the progress planned in the Remediation Program;
- (b) details of design status, status of all deliverables under this deed, any quality issues, safety issues, outstanding correspondence and testing and investigations status;
- (c) CAF's current estimate, and particulars of the estimate, of the percentage of the Remediation Work that has been completed;
- (d) details of any issues necessary for consideration by TfNSW and any information required by TfNSW;
- (e) a cost report (which must be updated not less frequently than every two months) showing:
 - (i) the actual cost to CAF of the Remediation Works (other than the cost of the Stage 1 Works) up to the date of the report on an open book basis; and
 - (ii) the predicted cost required to complete only the Remediation Work (other than the cost of the Stage 1 Works);
- (f) a summary of any expected delays to the Remediation Works;
- (g) the anticipated Date of Handover Completion;
- (h) a report on all work health, safety and rehabilitation matters, including a summary of CAF's compliance with WHS Legislation; and
- (i) such other information as the TfNSW may reasonably require or considers pertinent.

4. **REMEDIATION PLANS**

4.1 **Warranties in respect of Stage 1 Remediation Plan**

- (a) CAF warrants and agrees that:
- (i) it has prepared, checked and verified the Stage 1 Remediation Plan in accordance with the standard of skill, care and diligence reasonably expected of:
 - (A) the rolling stock design and engineering profession; and
 - (B) a Technically Assured Organisation,for works of the nature of the design, manufacture, repair and maintenance of the LRVs; and
 - (ii) CAF carried out its Redesign activities in relation to the Stage 1 Works:
 - (A) with the standard of skill, care and diligence reasonably expected of:
 - (aa) the rolling stock design and engineering profession; and
 - (bb) a Technically Assured Organisation,for works of the nature of the design, manufacture, repair and maintenance of the LRVs; and
 - (B) in accordance with the Design Requirements.
- (b) TfNSW makes no comment, and provides no endorsement, with respect to the suitability, safety or results of the Stage 1 Remediation Plan or the Stage 1 Works.

4.2 **Testing and investigations**

CAF warrants and agrees that:

- (a) it has conducted and/or will conduct all inspections, testing and investigation activities reasonably necessary to identify the necessary Remediation Works for the LRV Cracking;
- (b) it has performed and/or will perform any inspection, testing and investigation activities:
 - (i) with the standard of skill, care and diligence reasonably expected of:
 - (A) the design and engineering profession; and
 - (B) a Technically Assured Organisation,for works of the nature of the design, manufacture, repair and maintenance of the LRVs;
 - (ii) in accordance with good industry practice; and
 - (iii) in such a manner as to minimise risk of any loss or damage to:
 - (A) the IWLR Infrastructure;
 - (B) the LRVs; and

- (C) any persons and third parties; and
- (c) in carrying out the inspection, testing and investigation activities, it has complied or will comply with:
 - (i) all Laws;
 - (ii) the lawful requirements of any relevant Authorities; and
 - (iii) the reasonable lawful directions and requirements of ALTRAC (including directions in relation to operating standards, procedures and safety) in relation to the LRVs and the IWLR Site.

4.3 **Development of Stage 2, 3 and 4 Remediation Proposals**

- (a) CAF warrants and agrees that it must develop, complete and submit a Stage 2, 3 and 4 Remediation Proposal in accordance with the requirements of this deed.
- (b) The Stage 2, 3 and 4 Remediation Proposal must record detailed particulars of:
 - (i) the LRV Cracking in respect of each LRV;
 - (ii) CAF's proposed Stage 2, Stage 3 Works and Stage 4 Works, including:
 - (A) a method statement in respect of the Stage 2, Stage 3 Works and Stage 4 Works; and
 - (B) details of any labour, subcontractors, materials and resources required for the performance of the Stage 2, Stage 3 Works and Stage 4 Works;
 - (iii) any necessary Redesign;
 - (iv) an updated Remediation Program in respect of the Stage 2, Stage 3 Works and Stage 4 Works that complies with the Programming Requirements; and
 - (v) such other information as may be reasonably required by TfNSW.
- (c) CAF must prepare the Stage 2, 3 and 4 Remediation Proposal:
 - (i) with the standard of skill, care and diligence reasonably expected of:
 - (A) the rolling stock design and engineering profession; and
 - (B) a Technically Assured Organisation,for works of the nature of the design, manufacture, repair and maintenance of the LRVs; and
 - (ii) in accordance with the Design Requirements.

4.4 **Review of Stage 2, 3 and 4 Remediation Proposal**

- (a) CAF may submit the Stage 2, 3 and 4 Remediation Proposal in three separate parts, provided that:
 - (i) the first part contains CAF's entire proposal in respect of the Stage 2 Works;
 - (ii) the second part contains CAF's entire proposal in respect of the Stage 3 Works; and

- (iii) the third part contains CAF's entire proposal in respect of the Stage 4 Works.
- (b) A Stage 2, 3 and 4 Remediation Proposal must be submitted to TfNSW for review:
 - (i) in respect of the Stage 2 Works, on or before the date of this deed;
 - (ii) in respect of the Stage 3 Works, on or before 27 January 2023; and
 - (iii) in respect of the Stage 4 Works, on or before 1 May 2023.
- (c) The Stage 2, 3 and 4 Remediation Proposal will be reviewed in accordance with the Submission Review Process.
- (d) TfNSW may (but is not obliged to) make comments to CAF in respect of the Stage 2, 3 and 4 Remediation Proposal submitted by CAF, including in accordance with the Submission Review Process.
- (e) TfNSW does not owe any duty to CAF:
 - (i) to review the Stage 2, 3 and 4 Remediation Proposal for errors or compliance with the requirements of this deed;
 - (ii) in any review of the Stage 2, 3 and 4 Remediation Proposal that they do undertake; or
 - (iii) to consult with CAF or to make any comments regarding the Stage 2, 3 and 4 Remediation Proposal.
- (f) TfNSW's review or rejection of, or consultation or comments on, or any other direction or act or omission with respect to, the Stage 2, 3 and 4 Remediation Proposal (including any failure by TfNSW to review, reject, consult or comment regarding the Remediation Proposal) will not lessen or otherwise affect:
 - (i) CAF's warranties or any of its obligations or liabilities under this deed, the Supply Contract or otherwise at law; or
 - (ii) TfNSW's rights against CAF under this deed, the Supply Contract or otherwise at law.
- (g) TfNSW's exercise of (or failure to exercise) any of its rights under clause 4.4(d) will not preclude TfNSW from subsequently asserting that a Stage 2, 3 and 4 Remediation Proposal or Remediation Plan does not comply with the requirements of this deed (even if TfNSW previously gave a notice under paragraph 2(a)(i) of the Submission Review Process that the Remediation Proposal was "Not Rejected").

4.5 **Stage 2, 3 and 4 Remediation Plan**

- (a) Once:
 - (i) a Stage 2, 3 and 4 Remediation Proposal has satisfactorily completed the Submission Review Process; and
 - (ii) CAF has satisfied any requirements imposed by the Submission Review Process in respect of the Stage 2, 3 and 4 Remediation Proposal,
- the parties agree that a not rejected Stage 2, 3 and 4 Remediation Proposal will be the Stage 2, 3 and 4 Remediation Plan.

- (b) CAF must not amend the Stage 2, 3 and 4 Remediation Plan unless it first submits the proposed amendments to TfNSW in accordance with the Submission Review Process.

4.6 **Redesign of the LRVs**

- (a) If CAF is required to perform Redesign activities as part of the Stage 2 Works, Stage 3 Works and/or Stage 4 Works:
 - (i) CAF must develop, complete and submit Design Documentation in respect of the Redesign in accordance with clause 4.6(c)(i); and
 - (ii) TfNSW will review the Design Documentation in accordance with the Submission Review Process.
- (b) CAF must carry out its Redesign activities in relation to the LRVs:
 - (i) with the standard of skill, care and diligence reasonably expected of:
 - (A) the design and engineering profession; and
 - (B) a Technically Assured Organisation,for works of the nature of the design, manufacture, repair and maintenance of the LRVs; and
 - (ii) in accordance with the Design Requirements.
- (c) CAF must:
 - (i) ensure that any Design Documentation submitted under clause 4.6(a):
 - (A) complies with the requirements of this deed, including all applicable Design Requirements;
 - (B) is submitted in a form required by TfNSW or the Configuration Control Board (as applicable);
 - (C) is submitted in a timely manner in accordance with the Remediation Program and the Remediation Plans (as applicable); and
 - (D) is submitted in a manner which, having regard to the quantity and/or complexity of Design Documentation submitted, will allow TfNSW a reasonable opportunity to review the Design Documentation and for the Configuration Control Board to complete any processes (including any meetings and reviews) in respect of the Design Documentation within the timeframes contemplated by this deed;
 - (ii) cooperate with and provide all reasonable assistance to TfNSW and, where applicable, the Configuration Control Board to procure the review of any Design Documentation submitted by CAF under clause 4.6(a) in accordance with the Submission Review Process; and
 - (iii) if at any time required by TfNSW, make available the appropriate personnel to:
 - (A) explain any Design Documentation; and

- (B) provide any further information required by TfNSW or the Configuration Control Board in relation to any Design Documentation.
- (d) CAF must not amend the Final Design Documentation unless it first submits the proposed amendments to TfNSW in accordance with the Submission Review Process.
- (e) Any use by CAF of any Design Documentation produced for the purpose of carrying out Remediation Works is at CAF's sole risk regardless of whether the Design Documentation was:
 - (i) produced before or after the date of this deed; and/or
 - (ii) used before or after the date of this deed.
- (f) TfNSW may (but is not obliged to) make comments to CAF in respect of the Design Documentation submitted by CAF, including in accordance with the Submission Review Process.
- (g) TfNSW does not owe any duty to CAF:
 - (i) to review any Design Documentation for errors or compliance with the requirements of this deed;
 - (ii) in any review of the Design Documentation it does undertake; or
 - (iii) to consult with CAF or to make any comments regarding any Design Documentation;
- (h) No review or rejection of, or consultation or comments by TfNSW or any failure by TfNSW to review, reject, consult or comment regarding any Design Documentation will lessen or otherwise affect:
 - (i) CAF's warranties under clause 9 or any of its liabilities or responsibilities under this deed, the Supply Contract or otherwise at law; or
 - (ii) TfNSW's rights against CAF under this deed, or otherwise at law; and
- (i) TfNSW's exercise of (or failure to exercise) any of its rights under clause 4.6(f) or the Submission Review Process will not preclude TfNSW from subsequently asserting that any Design Documentation (including Final Design Documentation) does not comply with the requirements of this deed (even if TfNSW previously gave a notice under paragraph 2(a)(i) of the Submission Review Process that the Design Documentation was "Not Rejected").

4.7 **Updates to the Technical Maintenance Plan**

- (a) CAF warrants that:
 - (i) it has reviewed the current "Not Rejected" Technical Maintenance Plan in light of the Stage 1 Remediation Plan; and
 - (ii) the Technical Maintenance Plan does not require to be updated in order to fulfil the requirements for that document as set out in the Supply Contract and the AMB Requirements.

- (b) CAF must not later than 40 Business Days after the Stage 2, 3 and 4 Remediation Plan achieves "Not Rejected" status:
 - (i) conduct a review of the then-current "Not Rejected" Technical Maintenance Plan in light of the Stage 2, 3 and 4 Remediation Plan; and
 - (ii) if required (having regard to any changes to the LRVs that are anticipated by the Stage 2, 3 and 4 Remediation Plan) make any necessary updates to the Technical Maintenance Plan:
 - (A) in accordance with the requirements of:
 - (aa) the Submission Review Process;
 - (bb) this deed;
 - (cc) the AMB Requirements; and
 - (dd) the Supply Contract, including Appendix E of the LRV Specification; and
 - (B) using a maintenance requirements analysis or similar process.
- (c) If CAF does not update the Technical Maintenance Plan in accordance with clause 4.7(b)(ii), CAF will be deemed to have warranted on the date 40 Business Days after the Stage 2, 3 and 4 Remediation Plan achieves "Not Rejected" status that:
 - (i) it has reviewed the current "Not Rejected" Technical Maintenance Plan in light of the Stage 2, 3 and 4 Remediation Plan; and
 - (ii) the Technical Maintenance Plan does not require to be updated in order to fulfil the requirements for that document as set out in the Supply Contract.

4.8 Further Cracking

- (a) CAF warrants that as at the date of this deed, CAF is not aware of any Further Cracking in the LRVs.
- (b) If, prior to the Date of Handover Completion, Further Cracking is discovered:
 - (i) the parties shall meet and negotiate in good faith to seek to agree whether CAF shall rectify the Further Cracking under this deed;
 - (ii) if TfNSW and CAF agree that CAF shall rectify the Further Cracking:
 - (A) CAF must prepare a Remediation Plan in respect of the Further Cracking by following the procedure set out at clauses 4.3 to 4.6 above, and for that purpose references in clauses 4.3 to 4.6 above to:
 - (aa) the "Stage 2, 3 and 4 Remediation Proposal" shall be read as a reference to the "Further Cracking Remediation Proposal";
 - (bb) the "Stage 2, 3 and 4 Remediation Plan" shall be read as a reference to the "Further Cracking Remediation Plan"; and
 - (cc) any of the "Stage 2 Works", the "Stage 3 Works" and/or the "Stage 4 Works" shall be read as a reference to the relevant "Further Cracking Remediation Works";

- (B) CAF must prepare a revised Remediation Program that includes the Further Cracking Remediation Works;
 - (C) the parties shall agree:
 - (aa) the revised Remediation Program;
 - (bb) the revised Date for Handover Completion;
 - (cc) the Remediation Price applicable to the Further Cracking Remediation Works either as an agreed sum (in AU \$) or to be equal to the costs incurred by CAF in performing the Further Cracking Remediation Works, plus a margin of [REDACTED]; and
 - (dd) any adjustment to the limitation of CAF's total aggregate Liability to TfNSW under clause 13.1 of this deed and/or the limit on TfNSW's entitlement to liquidated damages under clause 6.5(b)(i) of this deed;
 - (D) CAF must update the Technical Maintenance Plan in accordance with the process set out in clause 4.7;
 - (E) if CAF does not update the Technical Maintenance Plan in respect of any Further Cracking Remediation Plan, CAF will be deemed to make the same warranty in respect of Further Cracking Remediation Plan as given in respect of the Stage 2, 3 and 4 Remediation Plan under clause 4.7(c); and
 - (F) the terms of this deed shall apply to any Further Cracking Remediation Works, which shall form part of the Remediation Works.
- (c) For the avoidance of doubt, CAF shall not be required to carry out any Further Cracking Remediation Works except as agreed under clause 4.8(b).

5. **PERFORMANCE OF THE REMEDIATION WORKS**

5.1 **Access to the IWLR Site**

- (a) TfNSW must give CAF access to the IWLR Site in accordance with and subject to the Access Requirements for the purpose of performing its obligations under this deed.
- (b) TfNSW will provide access to the LRVs:
 - (i) for the purposes of the Stage 2 Works and Stage 3 Works, in the condition they were in when last used for passenger services prior to access being granted; and
 - (ii) for the purposes of the Stage 4 Works, in the condition they were in when last used for passenger services prior to access being granted, subject to the removal of the R-module bogies.
- (c) CAF must return the LRVs to TfNSW in the same condition in which the LRVs were received from TfNSW, other than to the extent the condition is modified by the performance of the relevant Remediation Works in accordance with this deed.
- (d) Upon the occurrence of each of:
 - (i) TfNSW delivering each LRV to CAF prior to the performance each Intermediate Works Stage (not including the Stage 1 Works); and

- (ii) the completion of each Intermediate Works Stage (not including the Stage 1 Works),

TfNSW and CAF will conduct a joint inspection of each LRV.

- (e) Within ten Business Days of conducting the inspections referred to at clause 5.1(d), TfNSW will prepare and give to CAF a photographic report recording the condition of each LRV:
 - (i) at the time it is handed over to CAF prior to the relevant Intermediate Works Stage; and
 - (ii) following completion of the relevant Intermediate Works Stage.
- (f) TfNSW and CAF acknowledge and agree that they each must comply with the Access Requirements in respect of access to and use of the IWLR Site.

5.2 **Warranties in respect of Stage 1 Works**

CAF warrants and agrees that, prior to the date of this deed, it has performed the Stage 1 Works:

- (a) in a proper and workmanlike manner;
- (b) in accordance with:
 - (i) the Stage 1 Remediation Plan;
 - (ii) the Design Requirements;
 - (iii) good industry practice;
 - (iv) all Laws;
 - (v) the lawful requirements of any relevant Authorities;
 - (vi) the reasonable lawful directions and requirements of ALTRAC (including directions in relation to operating standards, procedures and safety) in relation to the LRVs and the IWLR; and
 - (vii) the O&M Contractor's reasonable induction requirements.

5.3 **Compliance with Remediation Plans, Final Design Documentation and Remediation Program**

CAF must:

- (a) perform the Remediation Works in accordance with:
 - (i) the Remediation Plans; and
 - (ii) the Final Design Documentation; and
- (b) not depart from the Remediation Program, as updated from time to time in accordance with Programming Requirements, without reasonable cause.

5.4 Standard of Remediation Works

CAF must perform the Remediation Works:

- (a) with the standard of skill, care and diligence reasonably expected of:
 - (i) the rolling stock design and engineering profession; and
 - (ii) a Technically Assured Organisation,for works of the nature of the design, manufacture, repair and maintenance of the LRVs;
- (b) in a proper and workmanlike manner;
- (c) in accordance with:
 - (i) good industry practice;
 - (ii) the Access Requirements;
 - (iii) the Project Management and Interface Requirements;
 - (iv) all Laws;
 - (v) the lawful requirements of any relevant Authorities;
- (d) in such a manner as to minimise risk of any loss or damage to:
 - (i) the IWLR Infrastructure;
 - (ii) the LRVs; and
 - (iii) any persons and third parties.

5.5 Compliance with the Supplier's Obligations

In performing the Remediation Works, CAF must comply with and perform the Supplier's Obligations.

5.6 Compliance with AMB Requirements

- (a) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]
 - (A) [REDACTED]
 - (B) [REDACTED]
 - (C) [REDACTED]
 - (aa) [REDACTED]

[Redacted]

(bb) [Redacted]

[Redacted]

(b) [Redacted]

(c) [Redacted]

(d) [Redacted]

5.7 Audit by Asset Management Branch

(a) [Redacted]

(b) [Redacted]

6. TIME FOR COMPLETION OF THE REMEDIATION WORKS

6.1 Time for Handover Completion

CAF must achieve Handover Completion in respect of every LRV on or before the Date for Handover Completion.

6.2 Extensions of time for EOT Events

(a) If it becomes evident to CAF that an EOT Event may delay the work under this deed, CAF must promptly notify TfNSW in writing with details of the possible delay and the cause.

(b) Provided that CAF:

(i) is or will be delayed in achieving Handover Completion by the Date for Handover Completion, due to delays caused by an EOT Event; and

(ii) gives TfNSW:

(A) an Alert not more than 10 Business Days after becoming aware of the delay; and

- (B) a written Claim for an EOT setting out:
 - (aa) the facts on which the claim is based (including the affected LRVs); and
 - (bb) the number of days EOT claimed,

CAF will be entitled to an EOT.

- (c) CAF will not be entitled to, and TfNSW will not be required to grant, an EOT in respect of an EOT Event unless CAF gives TfNSW:
 - (i) the Alert required in accordance with clause 6.2(b)(ii)(A); and
 - (ii) the written Claim required in accordance with clause 6.2(b)(ii)(B),within the times and containing the details set out in those clauses.
- (d) If CAF is entitled to an EOT, TfNSW will, within 20 Business Days after receipt of the claim referred to in Clause 6.2(b)(ii)(B), grant a reasonable EOT.
- (e) If TfNSW does not grant the full EOT claimed, TfNSW will give CAF notice in writing of the reasons for the approval of a lesser period than that claimed.
- (f) In determining a reasonable EOT for an EOT Event causing delay, TfNSW will have regard to whether CAF has taken all reasonable steps to minimise the consequences of the delay.
- (g) CAF will not be entitled to an EOT to the extent that an EOT Event was caused by the acts or omissions of CAF or any Related Body Corporate, employee, agent, subcontractors, other than acts or omissions of CAF or any Related Body Corporate, employee, agent or subcontractors authorised or permitted in accordance with this deed.
- (h) In determining whether CAF is or will be delayed as described in clause 6.2(b)(i), TfNSW will not have regard to whether CAF could, by committing extra resources or incurring extra expenditure, make up the time lost.
- (i) If or notwithstanding that CAF may not be entitled to an EOT, TfNSW may at any time and from time to time by notice in writing to CAF grant an EOT. TfNSW is not required to exercise this discretion for the benefit of CAF and any exercise of this discretion does not affect the parties' respective rights and obligations under clause 7.

6.3 **Mitigation**

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

6.4 **Liquidated Damages**

- (a) If CAF fails to achieve Handover Completion on or before the Date for Handover Completion, CAF must pay to TfNSW liquidated damages for each calendar day after

the Date for Handover Completion up to and including the Date of Handover Completion in the amount of [REDACTED].

- (b) TfNSW's entitlement to liquidated damages under this clause 6.4:
 - (i) shall not exceed [REDACTED] of the amount referred to at clause 13.1; and
 - (ii) is TfNSW's sole and exclusive monetary remedy for a failure by CAF to achieve Handover Completion by the relevant dates for Handover Completion.

6.5 **Delay costs**

- (a) If CAF is granted an EOT in respect of the Date for Handover Completion by reason of a TfNSW Delay Event, CAF will be entitled to be paid its delay costs in the agreed amount of [REDACTED] for each day that an EOT is so granted.
- (b) CAF will not be entitled to be paid any delay costs under clause 6.5(a) if and to the extent that the period of delay in respect of which the EOT was awarded overlapped with:
 - (i) a Neutral Delay Event or its effects; or
 - (ii) any other cause or event for which CAF is not or would not be entitled to an EOT under clause 6.2 or the effects of such cause or event.
- (c) CAF's entitlement to delay costs under this clause 6.5 is CAF's sole and exclusive monetary remedy in respect of any delay or disruption to the Remediation Works.

7. **HANDOVER**

7.1 **Cooperation and development of the Handover Plan**

- (a) The parties must cooperate with one another and provide any assistance reasonably required in respect of the Handover Activities.
- (b) **(Development of the Handover Plan)**
 - (i) Not later than 30 Business Days after the date of this deed, CAF will prepare a draft Handover Plan that must set out:
 - (A) a statement of all Handover Activities that must be performed in respect of:
 - (aa) the Intermediate LRVs (having regard to particular Handover Requirements applicable to the Intermediate LRVs); and
 - (bb) the Repaired LRVs;
 - (B) details of any reasonable assistance required by CAF from TfNSW, ALTRAC or the O&M Contractor in the performance of the Handover Activities; and
 - (C) a program specifying the timing and sequencing of the Handover Activities in respect of:
 - (aa) the Intermediate LRVs; and
 - (bb) the Repaired LRVs.

- (ii) The Handover Plan must:
 - (A) satisfy the Handover Requirements;
 - (B) satisfy the requirements of TfNSW standard T MU AM 01005 ST "*Asset Handover Requirements*"; and
 - (C) program and sequence the Handover Activities in such a manner as to cause minimal interruption to services on the IWLR.
 - (iii) Not later than 20 Business Days after receipt of the draft Handover Plan, TfNSW may:
 - (A) accept the draft Handover Plan without comment or amendment; or
 - (B) provide any comments and suggested amendments to the draft Handover Plan that TfNSW considers are necessary in order to achieve compliance with the Handover Requirements and terms of this deed.
 - (iv) TfNSW and CAF must in good faith attempt to agree the contents of the Handover Plan.
 - (v) If the parties are unable to agree the Handover Plan within 10 Business Days of TfNSW providing comments and suggested amendments under clause 7.1(b)(iii)(B), the contents of the Handover Plan will be as set out in the draft Handover Plan provided by CAF in accordance with clause 7.1(b)(i) as modified to reflect any agreement reached in accordance with clause 7.1(b)(iv).
 - (vi) TfNSW's acceptance of, or agreement to, the Handover Plan will not preclude TfNSW from subsequently asserting that the Handover Plan does not comply with the requirements of this deed and TfNSW shall not be responsible in any way for the content of the Handover Plan.
- (c) CAF must perform the Handover Activities:
- (i) in accordance with the Handover Plan; and
 - (ii) in satisfaction of the Handover Requirements.
- (d) TfNSW may at any time direct CAF to perform Handover Activities not provided for in the Handover Plan and CAF must comply with such directions.

7.2 **Handover of the Intermediate LRVs**

- (a) CAF must give TfNSW not less than 20 Business Days' notice of the date on which CAF reasonably expects that:
 - (i) the relevant Intermediate Works Stage will be complete in respect of a given LRV; and
 - (ii) the Intermediate LRV in question will be available for the Intermediate Handover Activities.

- (b) As a condition precedent to the completion of the Intermediate Handover Activities in respect of the Intermediate LRVs, CAF must give to TfNSW a certificate in the form set out at **Schedule 10**.

7.3 Handover of the Repaired LRVs

- (a) CAF must give TfNSW not less than 20 Business Days' notice of the date on which CAF reasonably expects that:
 - (i) all Remediation Works will be complete in respect of a given LRV; and
 - (ii) the Repaired LRV in question will be available for the Final Handover Activities.
- (b) As a condition precedent to the completion of the Final Handover Activities, CAF must give to TfNSW:
 - (i) a certificate in the form set out at **Schedule 10**; and
 - (ii) a request that TfNSW issues a Certificate of Handover Completion.

7.4 Costs of Handover Activities

- (a) [REDACTED]
 - (i) [REDACTED]
 - (ii) [REDACTED]
- (b) [REDACTED]
 - (i) [REDACTED]
 - (ii) [REDACTED]

7.5 Certification by TfNSW

- (a) Within 10 Business Days after receiving the documents referred to in clause 7.3(b), TfNSW must, acting reasonably, either:
 - (i) if Handover Completion has been achieved, issue a Certificate of Handover Completion to CAF stating the date on which Handover Completion in respect of that LRV was achieved; or
 - (ii) if Handover Completion has not been achieved in respect of the relevant LRVs, issue a notice to CAF listing the things remaining to be performed to achieve Handover Completion.
- (b) Any Certificate of Handover Completion will be binding on CAF unless and until such Certificate of Handover Completion or notice is amended or set aside in accordance with clause 7.7.

- (c) If TfNSW fails to issue:
 - (i) a Certificate of Handover Completion; or
 - (ii) a notice under clause 7.5(a)(ii),within the time required by clause 7.5(a) above, then:
 - (iii) Handover Completion will not be deemed to have occurred; and
 - (iv) TfNSW must proceed to issue a Certificate of Handover Completion or a notice under clause 7.5(a)(ii) (as applicable).
- (d) If a notice is issued by TfNSW under clause 7.5(a)(ii), CAF must continue to perform its obligations under this deed to achieve Handover Completion and clauses 7.2 or 7.3 (as applicable) will reapply.
- (e) Nothing in clause 7.5(b) will prejudice any right of:
 - (i) TfNSW to damages (whether liquidated or otherwise); or
 - (ii) CAF to an extension of time pursuant to clause 6.2 and delay costs under clause 6.5.

7.6 Effect of Certificate of Handover Completion

A Certificate of Handover Completion:

- (a) does not constitute an approval by TfNSW of CAF's performance of its obligations under this deed;
- (b) is not to be taken as an admission or evidence that the LRV complies with this deed; and
- (c) will not prejudice any rights or powers of TfNSW under this deed or otherwise according to law.

7.7 Disputing a certificate or notice in respect of Handover Completion

If a party disagrees (whether in whole or in part) with a certificate or notice given pursuant to clause 7.5, that party may seek to have the certificate amended or set aside pursuant to the dispute resolution procedure set out at clause 14.

8. DEFECTS LIABILITY PERIOD

8.1 Commencement and duration

The Defects Liability Period for:

- (a) each Intermediate Works Stage will:
 - (i) commence at 4:00pm on the relevant date of Intermediate Handover Completion; and
 - (ii) expire on the Date of Handover Completion; and
- (b) the whole of the Remediation Works will:
 - (i) commence at 4:00pm on the relevant Date of Handover Completion; and

- (ii) expire two years after the relevant Date of Handover Completion of each LRV.

8.2 **Access for testing**

If at any time before the expiry of the Defects Liability Period:

- (a) TfNSW asserts that any part of the Remediation Works is not in accordance with this deed; and
- (b) CAF requests permission to test the relevant LRVs,

TfNSW will provide CAF with reasonable access to test the relevant LRVs at times reasonable agreed between CAF and TfNSW.

8.3 **Defect rectification works**

- (a) During the Defects Liability Period:

- (i) TfNSW may give CAF a direction to rectify a Defect that:

- (A) will identify the Defect and the reasonable date and/or reasonable time for completion of its rectification; and
- (B) may state a date for commencement of the rectification and whether there will be a separate Defects Liability Period therefore (no longer than one year, commencing at 4.00 pm on the date the rectification is completed and governed by this clause);

- (ii) CAF must, at its own cost:

- (aa) rectify any Defects notified by TfNSW; and
- (bb) ensure that the Defects rectification works comply with the warranties given at clauses 9;
- (cc) carry out rectification activities:
 - (a) as soon as reasonably practicable and at times convenient to TfNSW;
 - (b) at the IWLR Site;
 - (c) so as not to unreasonably disrupt the operation of the IWLR; and
 - (d) without limiting any other part of this deed, in accordance with the requirements of the Project Management and Interface Requirements; and

- (iii) if the rectification is not commenced or completed by the stated reasonable dates and/or reasonable times, TfNSW may have the rectification carried out by others at CAF's expense and without prejudice to any other rights and remedies TfNSW may have.

- (b) For the avoidance of doubt, any costs incurred by CAF in rectifying Defects under this clause 8.3 will not count towards the calculation of CAF's total aggregate Liability to TfNSW for the purposes of clause 13.1.

9. **REPRESENTATIONS AND WARRANTIES**

CAF represents, warrants and agrees that:

- (a) upon Intermediate Handover Completion for each Intermediate Works Stage, the Intermediate LRVs will:
 - (i) be safe to operate and suitable to return to passenger service on the IWLR until such time as the outstanding Remediation Works are performed; and
 - (ii) comply with the Rail Safety National Law,

provided that this clause 9(a) does not apply to the extent that the reason that an LRV is not safe to operate and suitable to return to passenger services and/or does not comply with the Rail Safety National Law is that the LRV:
 - (iii) was not operated and maintained in accordance with the Technical Maintenance Plan and good industry practice by a party other than CAF; or
 - (iv) was (prior to the date on which the LRV was provided to CAF to perform the relevant Remediation Works) damaged, defective, deficient or non-conformant as a result of an event unrelated to the LRV Cracking, the Remediation Works or the original supply of the LRVs under the Supply Contract;
- (b) upon Handover Completion of each Repaired LRV:
 - (i) CAF will have identified and remedied all LRV Cracking;
 - (ii) those parts, components and systems of the LRVs that were the subject of the Remediation Works will:
 - (A) be fit for the Intended Purpose for the remainder of their design life as originally specified in the Supply Contract; and
 - (B) comply with the:
 - (aa) Design Requirements; and
 - (bb) the Rail Safety National Law; and
 - (iii) the Repaired LRV will be safe to operate in accordance with the Rail Safety National Law and suitable to return to passenger service on the IWLR (provided that this clause 9(b)(iii) does not apply to the extent that the reason that an LRV is not safe to operate and suitable to return to passenger services and/or does not comply with the Rail Safety National Law is a reason set out in clause 9(a)(iii) or 9(a)(iv));
- (c) the Remediation Works will not negatively impact or damage any other parts, components or systems of the LRVs; and
- (d) CAF's performance of the Remediation Works:
 - (i) does not limit, reduce, affect or alter; and
 - (ii) shall not be relied on by CAF to limit, reduce, affect or alter its liability under,

the warranties given by CAF under the Supply Contract in respect of:

- (iii) any part, component or system of the LRVs that was not subject to the Remediation Works; and
- (iv) each of the LRVs as a whole.

10. COSTS OF AND PAYMENT FOR THE REMEDIATION WORKS

10.1 Costs of Remediation Works to be borne by CAF

Unless otherwise expressly provided by this deed and subject to clause 10.2, CAF will bear the costs it incurs in respect of the Remediation Works and any other work or activities it must perform under or in connection with this deed, irrespective of whether such costs are incurred directly in the performance of or incidentally to such work and activities.

10.2 Payment for the Remediation Works

- (a) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]
- [REDACTED]
- (b) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]
- (iii) [REDACTED]
- [REDACTED]
- (c) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]
- (A) [REDACTED]
- (B) [REDACTED]

- (d) [REDACTED]
- (i) [REDACTED]
- (ii) [REDACTED]

11. INFORMATION SHARING AND CONFIDENTIALITY

11.1 Provision of information by CAF

CAF will provide to TfNSW any documents or information in relation to:

- (a) the LRVs;
- (b) the LRV Cracking; and
- (c) any work or activities provided for under this deed,
reasonably requested and required by TfNSW:
- (d) for the purpose of assisting ALTRAC in satisfying its obligations in connection with the National Rail Safety Law (including in respect of obtaining or maintaining Accreditation under the National Rail Safety Law); or
- (e) otherwise strictly necessary for the operation and maintenance of the IWLR,

provided that such documents and information are not subject to legal professional privilege.

11.2 Use of information

Any information provided by one party to another under or in connection with this deed, may only be used for:

- (a) the purpose of performing, facilitating, testing, checking, reviewing or verifying the Remediation Works and any other work or activity provided for under this deed;
- (b) the purpose of operating and maintaining the LRVs on the IWLR;
- (c) the purpose of any insurance claim in connection with the LRV Cracking; and
- (d) any other purpose expressly provided for:
 - (i) under this deed; or
 - (ii) under the Supply Contract.

11.3 Confidentiality

- (a) Subject to clause 11.3(b), CAF and TfNSW must:
 - (i) keep confidential this deed and any information produced pursuant to, or relating to, the Remediation Works and this deed; and
 - (ii) ensure that each of its contractors, employees, agents, advisors and other associated parties comply with the terms of clause 11.3(a)(i).

- (b) Neither party is obliged to keep confidential any information:
 - (i) that is in the public domain through no fault of the disclosing party; or
 - (ii) the disclosure of which is:
 - (A) required by law;
 - (B) required by any recognised stock exchange or a New South Wales or Commonwealth regulator;
 - (C) given with the written consent of the discloser;
 - (D) given to a court in the course of proceedings to which CAF is a party; or
 - (E) in the case of TfNSW, required by a House of Parliament, a Committee of a House of Parliament.
- (c) Notwithstanding any other provision in this deed, TfNSW may make any disclosure of any information produced pursuant to, or relating to the Remediation Works and this deed (including this deed):
 - (i) to ALTRAC and the O&M Contractor, provided that:
 - (A) TfNSW provides CAF with 5 Business Days prior written notice of its intention to disclose the information;
 - (B) such disclosure is strictly necessary for the operation and maintenance of the IWLR; and
 - (C) TfNSW shall not be entitled to disclose any of CAF's Commercially Sensitive Information;
 - (ii) to any other Authority or government agency (provided the recipient undertakes to keep such information confidential by executing a Deed Poll in the form required by clause 6.5(c)(ii) of the Supply Contract); or
 - (iii) to any person for a legitimate government purpose.

11.4 **Public Disclosure Obligations**

- (a) CAF acknowledges and agrees that disclosures regarding the Remediation Works and this deed by TfNSW, the State or any Authority may be required:
 - (i) under law, including the *Government Information (Public Access) Act 2009* (NSW) or any similar or replacement legislation; and/or
 - (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,

(Public Disclosure Obligations).
- (b) CAF must use all reasonable endeavours to assist TfNSW, the State or an Authority in meeting their Public Disclosure Obligations in connection with the Remediation Works and this deed.

11.5 **Publicity**

Except for notices that CAF are required to disclose to any recognised stock exchange, CAF must:

- (a) not make any public announcements or statements in relation to the Remediation Works, the Inner West Light Rail and this deed without TfNSW's prior consent;
- (b) give TfNSW a draft of any proposed media release relating to the Remediation Works, the Inner West Light Rail and this deed and obtain TfNSW's approval of the media release before distributing it;
- (c) prior to release, revise the wording and timing of all media releases, public announcements and statements by CAF relating to the Remediation Works, the Inner West Light Rail and this deed as requested by TfNSW; and
- (d) ensure that their contractors, employees, agents, advisors and other associated parties comply with the requirements referred to in this clause 11.5 (*Publicity*).

12. **INDEMNITIES**

- (a) CAF must indemnify the Indemnified Parties from and against any loss of any kind incurred by an Indemnified Party as a result of any:
 - (i) damage to, loss of, destruction of, loss of use of, or loss of access to (whether total or partial):
 - (A) the LRVs;
 - (B) any IWLR Infrastructure; or
 - (C) any other real or personal property belonging to an Indemnified Party or in respect of which an Indemnified Party has an interest; and
 - (ii) Claim made against an Indemnified Party by a third party (including by ALTRAC) in respect of any:
 - (A) illness, personal injury or death of any person; and/or
 - (B) damage to, loss of, destruction of, loss of use of, or loss of access to (whether total or partial) any real or personal property (including the LRVs),

caused by any breach of any contract (including this deed) or unlawful or negligent act or omission of CAF or its contractors in performing the Remediation Works.
- (b) CAF's liability to an Indemnified Party under clause 12(a) will be reduced to the extent that the loss incurred by an Indemnified Party is caused or contributed to by a fraudulent, negligent or other wrongful act or omission of that Indemnified Party or its contractors.

13. **LIMITATION OF LIABILITY**

13.1 **Total aggregate liability**

Subject to clause 13.3, CAF's total aggregate Liability to TfNSW arising out of or in connection with the performance of CAF's obligations under this deed shall not exceed [REDACTED] of the sum of:

- (a) the Remediation Price; and
- (b) the Door and Window Frame Repair Costs.

13.2 **Consequential loss**

To the extent permitted by law and subject to clause 13.3, neither party is liable for:

- (a) any loss of opportunity, loss of revenue, loss of anticipated savings, loss of value of equipment, loss of profit or anticipated profit, loss of contract, loss of goodwill, an amount payable under a contract with a third party by way of liquidated damages, abatement or penalty for non-performance, or loss from business interruption; and
- (b) any loss not described in clause 13.2(a), which is consequential upon another loss, other than a loss which may fairly and reasonably be considered as arising naturally (that is, according to the usual course of things) from the event,

arising out of or in connection with this deed, under statute, in tort (for negligence or otherwise) or any other basis in law or equity.

13.3 **Exclusions from limitation**

Nothing in this deed, including clauses 13.1 and 13.2, will limit CAF's liability:

- (a) to the extent that the liability:
 - (i) cannot be limited at law;
 - (ii) arises from CAF's abandonment of its obligations under this deed;
 - (iii) arises under the indemnities in clause 12(a)(ii);
 - (iv) arises out of any injury to, illness or death of any person;
 - (v) is due to the Wilful Default of CAF or its employees, agents or subcontractors;
or
- (b) to the extent that CAF is:
 - (i) indemnified under a policy of insurance;
 - (ii) required to be indemnified under a policy of insurance under the Supply Contract; or
 - (iii) would have been indemnified under a policy of insurance but for any act or omission of CAF (or any person for whom CAF is responsible),

and amounts of any liability referred to in this clause 13.3 will not be included in any calculation of the limit of CAF's total aggregate liability under clause 13.1.

14. **DISPUTE RESOLUTION**

14.1 **Application**

Any Dispute:

- (a) arising under or in connection with this deed; or
- (b) (notwithstanding clause 28 of the Supply Contract) in relation to CAF's Liability for the LRV Cracking,

must be determined in accordance with the procedure in this clause 14.

14.2 **Negotiation**

- (a) If any Dispute arises, a party (**Referring Party**) may, by giving notice to the other party (**Dispute Notice**), refer the Dispute to the Senior Management Representatives for resolution.
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 14.2;
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this deed; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (c) Within 20 Business Days of the Referring Party giving the Dispute Notice (**Resolution Period**), the Senior Management Representatives must meet at least once to attempt to resolve the Dispute.
- (d) The Senior Management Representatives may meet more than once to resolve a Dispute.
- (e) The Senior Management Representatives may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (f) Where requested by TfNSW, the parties agree to permit a senior representative of ALTRAC and/or the O&M Contractor to attend meetings of the Senior Management Representatives under this clause 14.2.
- (g) Each party warrants that their Senior Management Representative has full authority to resolve any Dispute.

14.3 **Condition precedent to arbitration**

A party must not commence arbitration under clause 14.4 in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

14.4 **Arbitration**

- (a) Any Dispute must be resolved by arbitration in accordance with the *ACICA Arbitration Rules*, which are deemed to be incorporated by reference into this clause 14.4.

- (b) The seat of the arbitration will be Sydney, Australia and the language of the arbitration will be English.

14.5 **Consent to consolidation of LRV Cracking arbitrations**

- (a) Where TfNSW:

- (i) is a party to; or
- (ii) commences,

an arbitration under the SLR Project Deed the subject matter of which relates to the Liability for the LRV Cracking (the **Project Deed Arbitration**), CAF hereby irrevocably consents to:

- (iii) a consolidation of the Project Deed Arbitration and any arbitration commenced or underway in respect of Liability for the LRV Cracking under this clause 14; and
- (iv) the appointment of the same tribunal to an arbitration commenced or underway in respect of the LRV Cracking under this clause 14 as is appointed (or may be appointed) in respect of the Project Deed Arbitration, regardless of whether the tribunal in the Project Deed Arbitration is:

- (A) appointed before; or
- (B) to be appointed at the same time as,

the tribunal in an arbitration commenced or underway in respect of the LRV Cracking under this clause 14.

- (b) If there is a consolidation of a Project Deed Arbitration and an arbitration between TfNSW and CAF pursuant to clause 14.5(a) (the **Consolidated Arbitration**):

- (i) TfNSW must request, and TfNSW and CAF will use their best endeavours to procure, agreement from the other parties to the Project Deed Arbitration; or
- (ii) in the absence of such agreement, TfNSW must apply to the tribunal in the Consolidated Arbitration for, and TfNSW and CAF will use their best endeavours to procure, a direction,

in respect of the following procedural matters:

- (iii) if requested by CAF, the confidentiality of the Consolidated Arbitration and any information disclosed and/or produced in the Consolidated Arbitration;
- (iv) copies of all documents made and produced in respect of either arbitration (including the parties' pleadings, witness statements, expert reports and other submissions) will be served upon and made available to all parties to the Consolidated Arbitration, and (subject to any other right of disclosure arising under this deed or the Supply Contract) CAF's written consent is required for disclosure in the Project Deed Arbitration of any documents produced under the Supply Contract that are not otherwise produced in an arbitration under this deed;
- (v) redactions by CAF of Commercially Sensitive Information from:
 - (A) copies of the Supply Contract; or

- (B) documentation produced pursuant to:
 - (aa) the Supply Contract;
 - (bb) this deed; and/or
 - (cc) the arbitration under this deed,

that are to be provided to the parties to the Project Deed Arbitration to the extent that such information is not relevant to the determination of the matters in dispute under the Project Deed Arbitration; and

- (vi) redactions by TfNSW or ALTRAC of commercially sensitive information from copies of the SLR Project Deed or documentation produced pursuant to the Project Deed that are to be provided to CAF to the extent that such information is not relevant to the determination of the matters in dispute in an arbitration conducted under this deed;
- (vii) all parties to the Consolidated Arbitration will be entitled to attend, be represented, make submissions and lead evidence at any hearing (including any directions or procedural hearing), meeting, conference or conclave conducted in connection with the Consolidated Arbitration and to cross examine any witness led in connection with the Consolidated Arbitration; and
- (viii) the tribunal will separately publish:
 - (A) its findings of common facts in the Project Deed Arbitration and the arbitration under this deed; and
 - (B) its findings of law:
 - (aa) in respect of the Project Deed Arbitration; and
 - (bb) in respect of the arbitration under this deed,

each of which will be made available to all parties to the Consolidated Arbitration.

14.6 **Optional provisions apply**

The optional provisions in Division 3 of Part III of the *International Arbitration Act 1974* (Cth) apply to any arbitration conducted under this clause 14.

14.7 **Survive termination**

This clause 14 survives the expiry or termination of this deed.

15. **GENERAL**

15.1 **Replacement Body**

- (a) 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.
- (b) Any reference to any senior office of the Former Body will be to the equivalent senior officer of the Replacement Body.

15.2 **Excluding liability**

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

15.3 **Certification**

For the purposes of this deed, a copy of a document will be regarded as duly certified by CAF, TfNSW or ALTRAC if it is certified as a true copy by a director, secretary or general manager of the relevant party.

15.4 **Cost of performing obligations**

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

15.5 **Governing law**

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

15.6 **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 dispute resolution process under clause 14 of this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

15.7 **Amendments**

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

15.8 **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 this deed 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 this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

15.9 **Survival of certain provisions and no merger**

- (a) Without limiting clause 15.16(a):
 - (i) clauses 9, 11, 12, 13 and 14, this clause 15.9 and any other provisions which are expressed to survive termination (and any other clauses necessary for or incidental to the operation of these clauses) (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed; and
 - (ii) if this deed 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 this deed occurring before such rescission or termination.

(b) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

15.10 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 this deed.

15.11 Consents

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

15.12 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 this deed, except for representations or inducements expressly set out in this deed.

(b) Each party acknowledges and confirms that it does not enter into this deed 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 this deed.

15.13 Severance

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

15.14 Exercise of remedies

(a) If CAF breaches any of its obligations under this deed, TfNSW may exercise any or all of the rights and powers and pursue any or all of the remedies available to TfNSW under this deed and/or enforce any other legal or equitable remedy available under applicable law.

(b) Each and every right, power and remedy of TfNSW will be cumulative and in addition to any other right, power and remedy, whether under this deed or applicable law, which may be exercised by TfNSW 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 TfNSW in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

15.15 Entire agreement

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

(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.

15.16 Indemnities

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

15.17 Counterparts

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

15.18 Attorneys

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

15.19 Relationship between TfNSW and CAF

Nothing in or contemplated by this deed will be construed or interpreted as:

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

15.20 Contract documents to be in English

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

15.21 Vienna convention

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

15.22 Expenses

- (a) Subject to paragraph 15.22(b), each party must pay its own expenses incurred in negotiating and executing this deed.
- (b) CAF must pay any duty, taxes or other imposts payable in respect of this deed or payable in connection with the performance of its obligations under this deed, other than in respect of GST on imported goods.

15.23 **TfNSW as an Authority**

- (a) CAF acknowledges and agrees that:
 - (i) nothing in this deed will in any way restrict or otherwise affect the unfettered discretion of TfNSW to exercise any of its statutory functions or powers pursuant to any law; and
 - (ii) except as expressly provided for in this deed and without affecting TfNSW's obligations under this deed, anything that TfNSW does, fails to do, or purports to do, pursuant to its statutory functions or powers under any law will be deemed not to be an act or omission by TfNSW and will not entitle CAF to make any Claim against TfNSW arising out of this deed.
- (b) The acknowledgement in clause 15.23(a) does not limit TfNSW's liability with respect to any breach of this deed

EXECUTED as a deed.

Each person who executes this document 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.

Executed on behalf of **Transport for NSW ABN 18 804 239 602** by its authorised delegate in the presence of:

DocuSigned by:

 010F0E191F13434...

 Signature of witness

Campbell Rice

Name of Witness

DocuSigned by:

 00A1F6B8EB77499...

 Signature of authorised delegate

Liz Ward Executive director,
public transport
contracts & partners

Name and position of authorised delegate

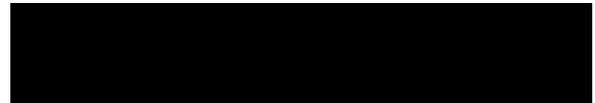
I witnessed the signatory sign this document by Microsoft Teams audio-visual platform and in accordance with section 14G of the Electronic Transactions Act 2020 (NSW)

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





Name of Witness



Attorney



Name of Attorney

SCHEDULE 1

LRV Cracking

As at the date of this deed, the following LRV Cracking has been identified:

1. CARBODY BOXES OVER BOGIES (named "bogie box") IN C MODULE CARS

- (a) Cracks in the support of the rotation stop;
- (b) Cracks in the trace welds of the union of the upper part with the lower part of the bogie box including the vertical and horizontal plates; and
- (c) Cracks in welds and in parent metal.

2. DOOR CORNERS

Cracks in the door corners of C module cars.

3. WINDOW CORNERS

- (a) Cracks in the corners (central pillar) of Windows in C and R module cars;
- (b) Cracks at the union of the window central pillar with the horizontal waistline in C and R module cars; and
- (c) Cracks in the corners of the windows in S module cars.

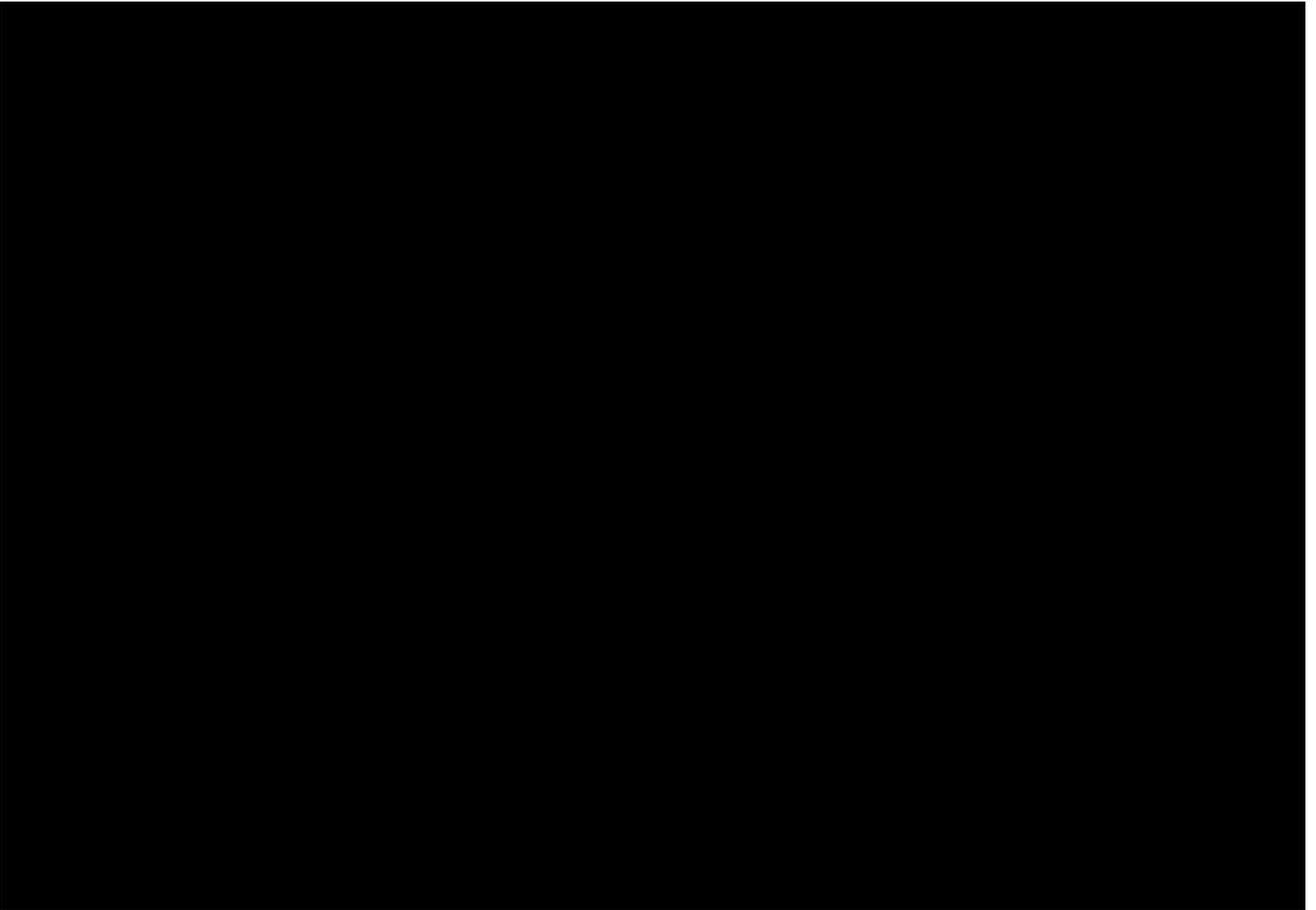
4. WAISTLINE JUNCTION WITH SIDEWALL PILLARS

In C and R module cars, the junction of the waistlines with the extreme upright sidewall pillars present cracks from their lower end.

5. CARBODY BOXES OVER BOGIES (named "bogie box") IN R CARS

Cracks in the upper part of the bogie box, starting at the ends of the welding traces of the rails for fixing the seats and the reinforcements and extending into the parent material, in the area above the suspension spring.

The locations of the cracks are identified in the following diagram:



SCHEDULE 2

Stage 1 Remediation Plan

The Stage 1 Remediation Plan comprises the following documents:

1. Q43.95.011.00 bogie box – Received 4/2/22
2. Q43.95.013.00 – window and doors portals - received 29/4 (door portal crack mitigation)
3. Q43.ISRS-22-009 - R module temp repair - - received

SCHEDULE 3

Initial Remediation Program

1. [REDACTED]
[REDACTED] - [REDACTED]
2. [REDACTED].

SCHEDULE 4

Submission Review Process

1. DEFINITIONS

In this Schedule 4:

Submission means:

- (a) a Remediation Proposal submitted by CAF in accordance with clause 4.4(a) of this deed;
- (b) any Design Documentation submitted by CAF in accordance with clause 4.6(a) of this deed; and
- (c) any other documentation required to be submitted by CAF for the purpose of obtaining the acceptance or approval of the Configuration Control Board.

2. FORMAL REQUIREMENTS FOR SUBMISSIONS

- (a) CAF must not submit a Submission for review under this Schedule unless and until, in CAF's reasonable opinion, the Submission is capable of being "Not Rejected".
- (b) If CAF intends for a Submission to be reviewed under this Schedule 4, CAF must include a clear label on the front page of the Submission that reads "*Final Submission for review in accordance with the IWLRV Remediation Deed – Schedule 4*", or words to that effect.
- (c) CAF may provide to TfNSW and/or the Configuration Control Board initial or draft versions of Submissions for the purposes of obtaining those parties' informal comment or feedback and this Schedule 4 will not apply to such initial or draft Submissions.
- (d) Any Submission not given to TfNSW and labelled in accordance with paragraph 2(b) will be deemed an initial or draft version for the purposes of clause 2(c).

3. REVIEW OF SUBMISSIONS BY TFNSW

- (a) Within 20 Business Days of receipt of any Submission, TfNSW must notify CAF that the Submission is either:
 - (i) "Not Rejected"; or
 - (ii) "Rejected" if:
 - (A) in the reasonable opinion of TfNSW, the Submission does not comply with the requirements of this deed;
 - (B) in respect of any Submission that must be submitted to and approved by the Configuration Control Board, the Submission has not been approved by the Configuration Control Board; or
 - (C) the Submission is not sufficiently complete to enable TfNSW or, if applicable, the Configuration Control Board, to form a view on whether it is compliant,

and provide written reasons for the rejection.

- (b) If a Submission is "Rejected" by TfNSW under paragraph 3(a)(ii), CAF must promptly, and in any case no later than 10 Business Days after receipt of notice from TfNSW that the relevant Submission is "Rejected" (or such longer period as agreed with TfNSW), either:
 - (i) submit an amended Submission to TfNSW and the process set out in this paragraph 3 will reapply; or
 - (ii) provide TfNSW with a notice setting out any matters in relation to which it disagrees with TfNSW's opinion or, if applicable, the Configuration Control Board's opinion that the Submission does not comply with the requirements of this deed together with its reasons for doing so.
- (c) If CAF gives a notice under paragraph 3(b)(ii), the parties must promptly meet and in good faith seek to resolve the disagreement within 10 Business Days of CAF's notice under paragraph 3(b)(ii).
- (d) If the parties are unable to resolve a disagreement contemplated by paragraph 3(b)(ii) within 10 Business Days of first meeting in relation to the disagreement, either TfNSW or CAF may refer the disagreement for resolution in accordance with clause 14 of this deed.
- (e) CAF's sole and exclusive remedy in respect of a failure by TfNSW to issue a notice under paragraph 3(a) within the required timeframe is its entitlement to:
 - (i) an EOT under clause 6.2; and
 - (ii) delay costs under clause 6.5,provided that the requirements of those clauses are satisfied.
- (f) TfNSW may, at any time (including after TfNSW has "Not Rejected" any Submission pursuant to this Submission Review Process), direct CAF to make amendments to any Submission which TfNSW considers to be required to ensure the Submission complies with this deed and, if it does so, CAF must submit an amended Submission to TfNSW and the process set out in this paragraph 3 will apply.

4. **THIRD PARTIES**

- (a) TfNSW may distribute the whole or a part of any Submission to third parties, including the Configuration Control Board, ALTRAC and the O&M Contractor.
- (b) TfNSW may, but is not obliged to:
 - (i) consult with third parties in relation to any Submission; and
 - (ii) take into account the comments of third parties in relation to any Submission when responding to CAF.
- (c) No comment or instruction from a third party in relation to a Submission is binding on TfNSW, or will have any effect on CAF's obligations under this deed (unless it is also a direction from TfNSW).

SCHEDULE 5

Programming Requirements

1. REMEDIATION PROGRAM

1.1 No changes to the Remediation Program

The parties acknowledge and agree that the Remediation Program cannot be amended otherwise than in accordance with this Schedule 5.

1.2 Updates to the Remediation Program to reflect the status of the Remediation Works

(a) Within 10 Business Days of receiving the information referred to in clause 3.4(a) of this deed, TfNSW will issue to CAF an updated Remediation Program that records the status of the Remediation Works by identifying:

- (i) the actual commencement dates of any activities commenced during the month in question; and
- (ii) the actual completion dates of any activities completed during the month in question.

(b) If CAF disagrees with the status of any Remediation Works activities recorded in the updated Remediation Program issued by TfNSW pursuant to paragraph 1.2(a) of this Schedule, CAF must give a notice of disagreement identifying:

- (i) any actual commencement dates; or
- (ii) any actual completion dates,

that CAF considers to have been wrongly recorded by TfNSW and the dates that CAF considers should have been recorded by TfNSW.

(c) If and to the extent that CAF does not give a notice of disagreement in respect of an updated Remediation Program within 5 Business Days of receiving the updated Remediation Program from TfNSW, the status of the Remediation Works recorded in the updated Remediation Program will be deemed to be an accurate record of the progress of the Remediation Works.

1.3 Changes to the Remediation Works activities sequencing or durations by CAF

(a) If CAF requires to make a change to the sequence, number, logic links or duration of any Remediation Works activities described in the Remediation Program, CAF must give notice in writing to TfNSW of any changes to the Remediation Program that it considers should be made.

(b) TfNSW must make any changes proposed by CAF provided that:

- (i) the changes to the Remediation Program do not result in any Date for Handover Completion occurring at a date later than had the change not been made; and
- (ii) the changes proposed are not unreasonable, unrealistic or unworkable.

- (c) Notwithstanding paragraph 1.3(b)(i), TfNSW must not unreasonably refuse to make changes to the Remediation Program proposed by CAF.
- (d) If TfNSW is required to make or otherwise agrees to the amendments to the Remediation Program proposed by CAF, TfNSW must reflect the amendments in the next iteration of the updated Remediation Program that is due to be given (under paragraph 1.2(a) of this Schedule) at least 10 Business Days after receipt of the notice given under clause 1.3(a).
- (e) If TfNSW is not required to and does not approve the changes notified by CAF under clause 1.3(a), TfNSW must give CAF notice within 10 Business Days of receiving notice from CAF under clause 1.3(a) specifying:
 - (i) that CAF's proposed changes are not agreed; and
 - (ii) the reasons for TfNSW's disagreement.
- (f) Any notice given by TfNSW under paragraph 1.3(e) of this Schedule will be deemed to be a Notice of Dispute to be resolved in accordance with clause 14 of this deed.

1.4 Changes to the Remediation Works activities sequencing or durations by TfNSW

- (a) TfNSW may, from time to time, in writing request a modification to the Remediation Program. Such modification may include a change to the order of, or the times for, performance of CAF's obligations under this deed.
- (b) If CAF considers that compliance with a request by TfNSW:
 - (i) is not reasonably possible; or
 - (ii) would cause CAF to incur material additional costs in executing its obligations under this deed,CAF must promptly notify TfNSW in writing of the reason(s).
- (c) If CAF gives a notice under paragraph 1.4(b), TfNSW and CAF must promptly meet to discuss the modifications directed by TfNSW and any further or alternative modifications to the Remediation Program that would:
 - (i) make it possible for CAF to comply with the modifications directed by TfNSW (as modified by agreement of the parties); or
 - (ii) remove or mitigate the impacts described in CAF's notice under paragraph 1.4(b).
- (d) CAF must use reasonable endeavours to identify further or alternative modifications to the Remediation Program in paragraph 1.4(b) and to agree appropriate modifications to the Remediation Program.
- (e) If the parties are unable to agree on the modifications to the Remediation Program within 10 Business Days of first meeting in accordance with paragraph 1.4(b), TfNSW may refer the disagreement for executive negotiation in accordance with clause 14.2 of this deed.
- (f) If agreement is not reached by executive negotiation within the Resolution Period for the dispute under clause 14.2 of this deed, TfNSW's request for the modification to the Remediation Program will be deemed to be withdrawn and the Remediation Program will not be modified as requested by TfNSW.

2. FORMAT OF THE REMEDIATION PROGRAM

Each update to the Remediation Program must:

- (a) be produced in both hard copy and in an electronic format in both PDF and unlocked native '.xer' electronic format (with all logic links intact and nothing hidden or protected) accompanied by all associated files so that they can be reproduced using Primavera P6 and to allow integration with Remediation Programs previously produced; and
- (b) show:
 - (i) all principal activities relating to the performance of the Remediation Work;
 - (ii) the submission and review dates of the Remediation Proposal and Design Documentation and associated deliverables;
 - (iii) networks, including critical path networks;
 - (iv) current critical paths of, and float in, CAF's activities;
 - (v) actual versus planned progress of CAF's activities;
 - (vi) if it is known, the impact, and the estimated potential impact of any delaying events or circumstances;
 - (vii) the dates or periods for, and the nature of, input from or instructions or decisions required by TfNSW, including the current critical paths of, and float in such input, instructions or decisions;
 - (viii) the submission, review and approval periods associated with reviews and approvals to be provided by the Configuration Control Board; and
 - (ix) such other information as may be reasonably requested by TfNSW or which CAF considers pertinent.

3. EFFECT OF REVIEW, COMMENTS OR DIRECTIONS OR DEPARTURE FROM REMEDIATION PROGRAM

CAF acknowledges that:

- (a) any update made to the Remediation Program under paragraph 1.2 of this Schedule;
- (b) any change to the Remediation Program proposed by CAF and made by TfNSW under paragraph 1.3 of this Schedule;
- (c) (except where the parties have otherwise agreed) any request to modify the Remediation Program by TfNSW under paragraph 1.4 of this Schedule; or
- (d) any departure by CAF from the Remediation Program,

does not:

- (e) alter or relieve CAF from CAF's obligations, liabilities and responsibilities under this deed;
- (f) evidence or constitute an EOT or a direction by TfNSW to accelerate, disrupt, prolong or vary any, or all of the work under this deed; or

- (g) bind TfNSW or affect the time for performance of TfNSW's obligations under this deed.

SCHEDULE 6

Access Requirements

1. DEFINITIONS

In this Schedule 6:

Equipment means the equipment that belongs to the O&M Contractor or ALTRAC (or that the O&M Contractor or ALTRAC has the benefit of) and that CAF may use in the performance of the Remediation Works, as notified to CAF from time to time.

2. ACCESS AND USE RIGHTS

- (a) TfNSW must give, or ensure that CAF is provided with, access to the LRVs and those parts of the IWLR Site necessary for the performance of the Remediation Works at the times specified in the Remediation Program.
- (b) CAF acknowledges and agrees that:
 - (i) the IWLR Site is occupied, used and managed by the O&M Contractor;
 - (ii) CAF may only use the IWLR Site and the Equipment for the performance of the Remediation Works and must not carry on any other business or activity at, or from, the IWLR Site;
 - (iii) CAF will not have exclusive access to or use of the IWLR Site;
 - (iv) when entering or using the IWLR Site:
 - (A) CAF will be responsible for the supervision and safety of its employees, agents and subcontractors; and
 - (B) CAF must comply with TfNSW's and the O&M Contractor's work health and safety requirements and policies, as notified to CAF from time to time;
 - (v) this deed is not, and will not be interpreted to be, a lease or licence of the IWLR Site and does not confer on CAF any proprietary rights in respect of the IWLR Site and/or the Equipment;
 - (vi) CAF's right to access the IWLR Site, and its right to use the IWLR Site and the Equipment, will automatically cease upon completion of the Remediation Works or earlier termination of this deed;
 - (vii) CAF must permit the O&M Contractor, ALTRAC and TfNSW to enter the IWLR Site at any time and for any purpose (including to inspect the condition of the IWLR Site and/or the Equipment);
 - (viii) CAF must not make, or allow to be made, any structural or non-structural alterations or additions to any part of the IWLR Site or alter the external appearance of the IWLR Site in any way; and
 - (ix) CAF accesses the IWLR Site, and uses the IWLR Site and the Equipment, entirely at its own risk.

3. Materials and Equipment

CAF acknowledges and agrees that:

- (a) it must procure, or otherwise obtain, at its own cost all materials and equipment that it requires in order to perform the Remediation Works;
- (b) Equipment may be made available to CAF for use in performing the Remediation Works;
- (c) it has no right or entitlement as against TfNSW, ALTRAC or the O&M Contractor for any particular type (or quantity) of Equipment to be made available; and
- (d) TfNSW makes no representation, and gives no warranty, in respect of the availability or suitability of any such Equipment for any purpose to which it may be put by CAF.

4. Vacating the IWLR Site

Prior to completion of the Remediation Works or immediately upon the earlier termination of this deed, and notwithstanding any other clause of this deed, CAF must, at its own cost:

- (a) remove, or cause to be removed, all materials and equipment (other than the Equipment) that CAF, or any of its employees, agents and subcontractors, brought onto the IWLR Site; and
- (b) make good any damage to the IWLR Site and/or the Equipment caused by CAF, or any of its employees, agents or subcontractors, such that the IWLR Site and the Equipment are returned in a clean and tidy state and in the same order, repair and condition as they were in prior to CAF commencing to carry out activities on the IWLR Site, but only to the extent such reinstatement is necessary due to damage caused by CAF's activities.

5. No impact on IWLR

5.1 CAF must ensure that its access to and use of the IWLR Site and/or the Equipment will not adversely impact or affect:

- (a) the safety of any person;
- (b) the safe and efficient operation of the IWLR; and/or
- (c) any activities of the O&M Contractor or ALTRAC, or any works being carried out by the O&M Contractor or ALTRAC.

5.2 CAF must not, under any circumstances:

- (a) place material over or against masts, signals, rail ballast or track;
- (b) remove or interfere in any way with any rail facilities including, without limitation, masts, signals or track ballast; or
- (c) place materials or equipment where the unobstructed view of signals or normal rail operations would be affected.

5.3 Subject to the other provisions in this deed, CAF must not, and must ensure that its employees, agents and subcontractors do not, do anything that interferes with the normal operation of the IWLR.

6. No warranty

CAF acknowledges and agrees that TfNSW makes no representation, and gives no warranty, as to:

- (a) the condition of the IWLR Site and/or the Equipment;
- (b) the suitability of the IWLR Site and/or the Equipment for the purpose of carrying out the Remediation Works; and/or
- (c) the existence, adequacy or availability of utilities at the IWLR Site.

SCHEDULE 7

Project Management and Interface Requirements

1. REVIEW GROUPS

1.1 IWLR Progress Meeting

(a) An IWLR Progress Meeting must be established for the delivery of the Remediation Works and may be attended by the following (or any replacement personnel having similar roles):

(i) from TfNSW, one or more of:

- (A) Howard Collins;
- (B) Liz Ward;
- (C) Terry Brown;
- (D) James Keane;
- (E) Christian Christodoulou;
- (F) Michael Uhlig;
- (G) Harry Snaith; and
- (H) Ross Gliddon;

(ii) from CAF, [REDACTED] and/or [REDACTED] and one or more of:

- (A) [REDACTED];
- (B) [REDACTED];
- (C) [REDACTED]; and
- (D) [REDACTED];

(iii) from ALTRAC (whose attendance is optional):

- (A) [REDACTED]; and/or
- (B) [REDACTED]

(iv) from the O&M Contractor (whose attendance is option):

- (A) [REDACTED];
- (B) [REDACTED]; and/or
- (C) [REDACTED].

(b) The objectives of the IWLR Progress Meeting are to:

(i) monitor production and the overall progress of the Remediation Works; and

- (ii) assist with the resolution of any matters referred to the IWLR Progress Meeting from the Engineering Assurance Meeting.
- (c) Unless otherwise agreed in writing by the parties, the IWLR Progress Meetings will occur virtually:
 - (i) fortnightly until the Date of Handover Completion in respect of the last Repaired LRV to reach Handover Completion;
 - (ii) quarterly following the Date of Handover Completion in respect of the last Repaired LRV to reach Handover Completion until the expiry of the last Defects Liability Period in respect of the Repaired LRVs; and
 - (iii) at any other time required by TfNSW.
- (d) A representative of TfNSW will convene the IWLR Progress Meetings. The meetings will be chaired by the most senior attendee of TfNSW. TfNSW will provide the secretariat.
- (e) TfNSW is entitled to invite representatives of the State, any Authority, ALTRAC and the O&M Contractor to attend IWLR Progress Meetings.
- (f) CAF may, with TfNSW's prior written consent, have a representative of any of its subcontractors attend IWLR Progress Meetings.

1.2 Engineering Assurance Meeting

- (a) An Engineering Assurance Meeting must be established and may be attended by the following (or any replacement personnel having similar roles):
 - (i) from TfNSW, Christian Christodoulou, Harry Snaith, Michael Uhlig, Terry Brown, James Keane, Ross Gliddon and consultants or advisors to TfNSW;
 - (ii) from CAF, [REDACTED];
 - (iii) from ALTRAC, [REDACTED] and consultants or advisors to ALTRAC; and
 - (iv) from the O&M Contractor, [REDACTED].
- (b) The function of the Engineering Assurance Meeting is to review and resolve engineering assurance and design issues.
- (c) Unless otherwise agreed by the parties, the Engineering Assurance Meeting will take place weekly until the Date of Handover Completion in respect of the last Repaired LRV to reach Handover Completion.
- (d) A representative of TfNSW will:
 - (i) convene and chair all Engineering Assurance Meetings; and
 - (ii) prepare and promptly distribute minutes and actions of Engineering Assurance Meetings.

1.3 Costs

Each party must each pay all costs of their respective members and involvement in the Senior Project Group and the Handover Steering Group.

SCHEDULE 8

Supplier's Obligations

1. SUPPLIER'S OBLIGATIONS

For the purposes of clause 5.5 of this deed, the clauses of the Supply Contract listed in the first column of the table below are incorporated into this Schedule 8 by reference, subject to the amendments listed in the second column of the table below.

Clause	Amendments to drafting of Supply Contract
7.1 (Assignment)	Nil.
7.2 (Subcontracting), except for clause 7.2(b)	Nil.
8 (Intellectual property rights), excluding clause 8.4 (LRV Livery Design) and clause 8.9 (Escrow of Software)	<ol style="list-style-type: none"> 1. Clause 8.6(b) is amended to read as follows: <i>"(b) The licences granted in paragraph (a) arise in respect of each component of the Licenced Intellectual Property on the later of:</i> <ol style="list-style-type: none"> <i>(i) the date of this deed; and</i> <i>(ii) the date of creation of that component."</i> 2. Clause 8.7(a)(ii) is deleted and replaced with <i>"not used;"</i>.
10 (Authorisations, legislative requirements and compliance with guidelines)	<ol style="list-style-type: none"> 1. Clause 10.1(a) is amended to read as follows: <i>"(a) CAF must comply with and satisfy all Legislative Requirements except those directed by TfNSW to be complied with or satisfied by or on behalf of TfNSW."</i> 2. Clause 10.3 is amended to read as follows: <i>"CAF must expeditiously and diligently apply for and obtain from each relevant Authority all necessary Authorisations required to undertake the work under this deed."</i> 3. Clause 10.7(a) is amended to read as follows: <i>"(a) The Supplier must manage all aspects of industrial relations connected with its obligations under this deed."</i>
10A (Safety and accreditation), excluding clause 10A.4 (ISO's Accreditation variation) and clause 10A.4A (Accredited Entity's Accreditation variation)	<ol style="list-style-type: none"> 1. Clause 10A.2(b) is amended to read as follows: <i>"(b) Without limiting the Access Requirements, it is a condition precedent to TfNSW's obligation under clause 5.1(a) to provide CAF with access to the IWLR Site that CAF has prepared and submitted a WHS Plan to TfNSW and, following the review period referred to in paragraph 3(a) of the Submission Review Process, TfNSW has not "Rejected" the WHS Plan under paragraph 3(a)(ii) of the Submission Review Process."</i> 2. Clause 10A.2(g) is amended to read as follows:

Clause	Amendments to drafting of Supply Contract
	<p><i>"(g) Without limiting CAF's obligations under any other provision of this deed:</i></p> <p><i>(i) CAF must provide prior written notice to TfNSW in respect of and to the extent that any work under this deed includes construction work;</i></p> <p><i>(ii) upon receipt of any notice under paragraph (i), TfNSW will provide CAF with written notice setting out details of the person who has been engaged by TfNSW as the principal contractor in respect of all construction work carried out by or on behalf of TfNSW on that part of the IWLR Site ("Appointed Principal Contractor")</i>; and</p> <p><i>(iii) CAF:</i></p> <p><i>(A) acknowledges that the Appointed Principal Contractor is the principal contractor in respect of all construction work carried out by or on behalf of TfNSW on the relevant part of the IWLR Site;</i></p> <p><i>(B) must comply with all requirements of the Appointed Principal Contractor in executing the Remediation Works and its other obligations under this deed so as to enable the Appointed Principal Contractor to meet its obligations under the WHS Legislation; and</i></p> <p><i>(C) must refrain from doing anything that may impede upon the Appointed Principal Contractor's ability to comply with its obligations under the WHS Legislation.</i></p> <p>3. In Clause 10A.2(h), the words <i>"discharge the duties imposed on a principal contractor under the WHS Legislation or otherwise"</i> are deleted.</p> <p>4. Clause 10A.2(i)(v) is deleted and replaced with <i>"Not used"</i>.</p> <p>5. In Clause 10A.2(i)(ix), the words <i>"(save for the engagement of the Supplier as principal contractor)"</i> are deleted.</p> <p>6. Clause 10A.2(k) is deleted and replaced with <i>"Not used"</i>.</p> <p>7. Clause 10A.3(c) is deleted and replaced with <i>"The Supplier must provide all assistance reasonably required by the ISO or the Accredited Entity (as applicable) to obtain any required Accreditation in respect of the on-site dynamic testing, commissioning and operation of the LRVs"</i>.</p>
11 (Quality management)	In Clause 11.2(a), the words <i>"in accordance with Clause 6A"</i> are deleted.
11A (Inspection and audit)	Nil.
13 (Insurance), excluding clause 13.1 (Insurance to be effected and	1. The preamble to clause 13.2 is amended to read as follows:

Clause	Amendments to drafting of Supply Contract
maintained by the Purchaser) and clause 13.12 (Insurance moneys)	<p><i>"Subject to Clause 13.2, CAF must effect and maintain the following insurances (Supplier Insurance Policies) on or before the date of this deed until the Date of Handover Completion:"</i></p> <p>2. Clause 13.2(c) is amended to read as follows:</p> <p><i>"(c) a professional indemnity insurance policy for any one claim of not less than \$20,000,000 with a total aggregate cover of not less than \$20,000,000, covering all work undertaken by or on behalf of CAF with respect to the work under this deed, to be maintained for a period of 10 years after the date of this deed;"</i></p> <p>3. Clause 13.2(i) is amended to read as follows:</p> <p><i>"(i) contract works insurance for the replacement value of the LRVs."</i></p> <p>Clause 13.10(b) is deleted and replaced with "Not used".</p> <p>4. Clause 13.10(c) is deleted and replaced with "Not used".</p> <p>5. In clause 13.11(a), the words "(prior to the Date of Delivery)" are deleted.</p> <p>6. Clause 13.11(b) is deleted and replaced with "Not used".</p> <p>7. Clause 13.11(c)(i) is amended to read as follows:</p> <p><i>"(i) CAF will be relieved of liability to pay liquidated damages for failure to achieve Handover Completion to the extent its ability to achieve Handover Completion is affected by the damage or destruction, where such damage or destruction is beyond the reasonable control of CAF and the effects of which cannot be avoided by CAF; and"</i></p>
14 (Directions)	Nil.
15B.2 (Competence management)	Nil.
16 (Suspension)	<p>1. In clause 16.2, the words "otherwise than pursuant to Clause 25.7," are deleted.</p> <p>2. In clause 16.3, the words "or 25.7" are deleted.</p> <p>3. Clause 16.5 is amended to read as follows:</p> <p><i>"Suspension will not affect the Date for Handover Completion but suspension under Clause 16.1 may be grounds for an EOT under clause 6.2."</i></p>
29.3 (Civil Liability Act)	Nil.

2. **DEFINITIONS AND INTERPRETATION**

2.1 **Defined terms**

- (a) Except as otherwise defined in paragraph 2.1(b), terms used in the relevant clauses of the Supply Contract that are defined in the Supply Contract have the same meaning in this Schedule 8 as is provided for in the Supply Contract.
- (b) In the relevant clauses of the Supply Contract, any reference to:
 - (i) "the Supplier" shall be read as a reference to "CAF";
 - (ii) "the Purchaser" shall be read as a reference to "TfNSW";
 - (iii) "the Contract" shall be read as a reference to "this deed";
 - (iv) a "Clause" shall be read as a reference to a clause of the Supply Contract;
 - (v) "Defect" shall be read as a reference to "Defect" as defined in clause 1.1 of this deed;
 - (vi) "Design Documentation" shall be read as a reference to "Design Documentation" as defined in clause 1.1 of this deed;
 - (vii) "Equipment" shall be read as a reference to "Remediation Works" as defined in clause 1.1 of this deed; and
 - (viii) "LRV Specification" shall be read as a reference to "LRV Specification" as defined in clause 1.1 of this deed.

2.2 **Order of precedence**

- (a) If either party discovers any inconsistency, ambiguity or discrepancy between the Supplier's Obligations and CAF's other obligations under this deed, that party must give the other party written notice of it.
- (b) Thereupon, and upon otherwise becoming aware, TfNSW will direct CAF as to the interpretation and construction to be followed taking into account the priority of documents specified in paragraph (c).
- (c) The following priority of documents applies if there is any ambiguity, discrepancy or inconsistency between the Supplier's Obligations and CAF's other obligations under this deed:
 - (i) to the extent that the ambiguity, discrepancy or inconsistency relates to the required standard or quality of the Remediation Works or the carrying out of CAF's obligations under this deed, CAF must comply with the highest standard or quality specified or perform the more onerous obligation; and
 - (ii) to the extent that paragraph (i) does not resolve the ambiguity, discrepancy or inconsistency, the terms of this deed (other than this Schedule 8) will prevail.

SCHEDULE 9

Handover Requirements

1. HANDOVER REQUIREMENTS FOR EACH INTERMEDIATE LRV

- (a) The relevant Intermediate Works Stages have been completed to the LRV.
- (b) CAF has complied and/or the Intermediate LRV has achieved compliance (as applicable) with the requirements of TfNSW standard T MU AM 01005 ST "*Asset Handover Requirements*", save that CAF will not perform (whether before or after handover of the LRVs) any:
 - (i) testing (static or dynamic) of the LRVs; or
 - (ii) any repair or modification,that is not related to the LRV Cracking.
- (c) CAF has provided the following design documentation deliverables in respect of the Remediation Works:
 - (i) detailed design and drawings for replacement components;
 - (ii) repair/MOD/replacement procedure;
 - (iii) WPS - Welding procedure/ Specification;
 - (iv) NDT procedure/specification;
 - (v) surface treatment application procedure;
 - (vi) any modified operating and/or infrastructure requirements; and
 - (vii) any modified maintenance requirements (TMP) for repaired components.
- (d) CAF has provided the following reports or verification documents as to the quality and validation of any design (including any design calculations and valid design test results showing that the design for the relevant Intermediate Works Stage will be effective) and efficacy of the relevant Remediation Works:
 - (i) a report detailing working stresses in the vehicle car body under operating loads recorded during test campaigns before applying the relevant Remediation Works, and fatigue evaluation of the measured stress levels; and
 - (ii) a report detailing working stresses, margins of safety and displacements in the vehicle car body under operating loads recorded during test campaigns after applying the relevant Remediation Works, and fatigue evaluation of the measured stress levels.
- (e) CAF has provided a Manufacturer's Data Record (**MDR**) containing the following evidence as to the quality of the relevant Remediation Works:
 - (i) QC records for OEM supplied components;
 - (ii) repair/MOD/replacement procedure;
 - (iii) WPS - Welding procedure/ Specification;

- (iv) WPQR - Weld Procedure Qualification Records (proves the weld procedure/s work);
 - (v) WQR - Welder qualifications records (evidence that the Welders have undertaken the weld procedure successfully);
 - (vi) NDT procedure/specification;
 - (vii) NDT Technician Qualifications;
 - (viii) NDT reports;
 - (ix) material identification data sheet (including material certificates for new components);
 - (x) weld maps with traceability ID link to Tram/location/Welder/NDT/weld procedure/weld consumables report;
 - (xi) consumables traceability records;
 - (xii) surface treatment application procedure;
 - (xiii) surface treatment inspection records;
 - (xiv) as-built dimensional records;
 - (xv) Inspection & Test Plan; and
 - (xvi) Hold & Witness points.
- (f) CAF has provided its Dynamic test report for LRV 2117 indicating that repairs have repairs have been validated.
- (g) CAF has provided evidence that the Inspection and Test Plan provided as part of the MDR for the relevant Intermediate Works Stage has been completed successfully.
- (h) CAF has provided its post-repair inspection regime that sets out inspection tasks, frequency of inspections and location of inspection points based on the post structural failure risk analysis, and as detailed in an updated Technical Maintenance Plan (**TMP**), and/or other updated technical documents including Maintenance Manuals and Technical Instructions requirements for post repair requirements.
- (i) CAF has provided confirmation of any additional requirements for maintenance (including of infrastructure) or operating conditions, or confirmation that there are no additional requirements.
- (j) CAF has provided a post repair structural failure risk analysis containing:
- (i) identified risks;
 - (ii) assessed risk profile against risk acceptance criteria;
 - (iii) mitigations for risks that exceed the acceptance criteria;
 - (iv) re-assessment of mitigated risks to verify adequate mitigations are in place; and
 - (v) assessment of any non-conservative assumptions and design methods employed by CAF.

- (k) CAF has provided any other documents or information requested by ONRSR to satisfy ALTRAC's accreditation requirements.

2. HANDOVER REQUIREMENTS FOR EACH REPAIRED LRV

- (a) The Remediation Works have been completed to the LRV.
- (b) CAF has complied and/or the Repaired LRV has achieved compliance (as applicable) with the requirements of TfNSW standard T MU AM 01005 ST "*Asset Handover Requirements*", save that CAF will not perform (whether before or after handover of the LRVs) any:
 - (i) testing (static or dynamic) of the LRVs; or
 - (ii) any repair or modification,that is not related to the LRV Cracking.
- (c) CAF has provided the following design documentation deliverables in respect of the Remediation Works:
 - (i) detailed design and drawings for replacement components and deliverables that CAF must provide in respect of the Remediation Works;
 - (ii) repair/MOD/replacement procedure;
 - (iii) WPS - Welding procedure/ Specification;
 - (iv) NDT procedure/specification;
 - (v) surface treatment application procedure;
 - (vi) any modified operating and/or infrastructure requirements; and
 - (vii) any modified maintenance requirements (TMP) for repaired components.
- (d) CAF has provided the following reports or verification documents as to the quality and validation of any design (including any design calculations and valid design test results showing that the design for the Remediation Works will be effective against the FEA) and efficacy of the Remediation Works:
 - (i) a report detailing working stresses in the vehicle car body under operating loads recorded during test campaigns before applying the Remediation Works, and fatigue evaluation of the measured stress levels; and
 - (ii) a report detailing working stresses, margins of safety and displacements in the vehicle car body under operating loads recorded during test campaigns after applying the Remediation Works, and fatigue evaluation of the measured stress levels.
- (e) CAF has provided an MDR containing the following evidence as to the quality of the Remediation Works:
 - (i) QC records for OEM supplied components;
 - (ii) repair/MOD/replacement procedure;
 - (iii) WPS - Welding procedure/ Specification;

- (iv) WPQR - Weld Procedure Qualification Records (proves the weld procedure/s work);
 - (v) WQR - Welder qualifications records (evidence that the Welders have undertaken the weld procedure successfully);
 - (vi) NDT procedure/specification;
 - (vii) NDT Technician Qualifications;
 - (viii) NDT reports;
 - (ix) material identification data sheet (including material certificates for new components);
 - (x) weld maps that comply with traceability ID link to Tram/location/Welder/NDT/weld procedure/weld consumables report;
 - (xi) consumables traceability records;
 - (xii) surface treatment application procedure;
 - (xiii) surface treatment inspection records;
 - (xiv) as built dimensional records;
 - (xv) Inspection & Test Plan; an
 - (xvi) Hold & Witness points.
- (f) CAF has provided evidence that the Inspection and Test Plan provided as part of the MDR for the Remediation Works has been completed successfully.
- (g) CAF has provided its post-repair inspection regime that sets out inspection tasks, frequency of inspections and location of inspection points based on the post structural failure risk analysis, and as detailed in an updated Technical Maintenance Plan (TMP), and/or other updated technical documents including Maintenance Manuals and Technical Instructions requirements for post repair requirements
- (h) CAF has provided confirmation of any additional requirements for maintenance (including of infrastructure) or operating conditions, or confirmation that there are no additional requirements .
- (i) CAF has provided a post repair structural failure risk analysis containing:
- (i) identified risks;
 - (ii) assessed risk profile against risk acceptance criteria;
 - (iii) mitigations for risks that exceed the acceptance criteria;
 - (iv) re-assessment of mitigated risks to verify adequate mitigations are in place; and
 - (v) assessment of any non-conservative assumptions and design methods employed by CAF.
- (j) CAF has provided any other documents or information requested by ONRSR to satisfy ALTRAC's accreditation requirements.

SCHEDULE 10

CAF's certificate of compliance with the Remediation Deed and assurance

To: [TfNSW's Representative]

In accordance with clause 7.3(b)(i) of the deed between CAF and TfNSW titled "Inner West Light Rail Vehicle Remediation Deed" dated [date] (the **Deed**), I hereby certify on behalf of CAF, the Technically Assured Organisation authorised to provide assured services for the Remediation Works, that in respect of LRV number [insert]:

- (a) the **ALT**[Stage 1/2/3/4 Remediation Works]**OR**[Remediation] Works have been performed in accordance with the Remediation Plans and the requirements of the Deed;
- (b) those parts, components and systems of the LRV that were the subject of the [Stage [1/2/3/4] /Remediation] Works:
 - (i) are fit for the Intended Purpose for the remainder of its design life as originally specified in the Supply Contract; and
 - (ii) comply with the:
 - (A) Design Requirements; and
 - (B) the Rail Safety National Law;
- (c) the [Stage [1/2/3/4]/ Remediation] Works will not negatively impact or damage any other parts, components or systems of the LRVs;
- (d) the [Intermediate LRV/Repaired LRVs] is:
 - (i) safe to operate and suitable to return to passenger service on the IWLR until such time as the outstanding Remediation Works are performed; and
 - (ii) complies with the Rail Safety National Law,

subject to our assumption that the LRV has not been made unsafe or unsuitable to return to passenger services and/or non-compliant with the Rail Safety National Law by reason of the fact that it:

 - (iii) was not operated and maintained in accordance with the Technical Maintenance Plan and good industry practice by a party other than CAF; or
 - (iv) was damaged prior to the date on which the LRV was provided to CAF to perform the relevant Remediation Works by an event unrelated to the LRV Cracking, the Remediation Works or the original supply of the LRVs under the Supply Contract.]
- (e) the Handover Requirements have been satisfied and copies of all required documents are appended to this certificate (as listed in **Annexure A**);
- (f) **ALT FOR REPAIRED LRVs**[all LRV Cracking has been identified and resolved; and
- (g) Handover Completion occurred on [date].]

Terms used in this certificate have the same meaning as given to them in the Deed.

Yours sincerely,

.....

CAF's Representative

Date: [insert]

SCHEDULE 11

Certificate of Handover Completion

To: *[CAF's Representative]*

*In accordance with clause 7.5 of the deed between CAF and TfNSW titled "Inner West Light Rail Vehicle Remediation Deed" dated [date] (the **Deed**), I hereby certify that to the best of my reasonable knowledge and belief Handover Completion in respect of LRV number [insert] occurred on [date].*

Terms used in this certificate have the same meaning as given to them in the Deed.

Yours sincerely,

.....

TfNSW's Representative

Date: [insert]