



**Transport
for NSW**

**ATP C-SET, K-SET AND V-SET FLEETS ONBOARD
INSTALLATION CONTRACT**

**Contract Number: ISD-17-6606 & ISD-17-6607
Automatic Train Protection Program**

Between

Transport for NSW

[PRINCIPAL]

ABN 18 804 239 602

And

Downer EDI Rail Pty Ltd

[CONTRACTOR]

ABN 92 000 002 031

Contents

1.	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	19
1.3	Ambiguous Terms	22
1.4	Order of Precedence	22
1.5	Authorities	23
1.6	Associated Deeds	23
1.7	Deed Commencement Date	24
2.	Contractor's Obligations	24
2.1	General	24
2.2	Subcontracts	26
2.3	Compliance with Law	28
2.4	Rail safety obligations	33
2.5	Unconditional Undertakings and Parent Company Guarantee	33
2.6	Collusive Arrangements	36
2.7	Third Party Agreements	37
2.8	Co-operation with Other Contractors	39
2.9	Disputes with Other Contractors	40
2.10	No Claims Arising out of Other Contractor Work	40
2.11	Incident Management	41
2.12	Working Days and Hours of Work	42
3.	Installation Facility, Principal Arranged Matters and Latent Conditions	43
3.1	Installation Facility	43
3.2	Principal Arranged Matters	44
3.3	Latent Conditions	44
3.4	Contractor Entitlement upon Latent Condition	45
3.5	Information Documents and Materials	46
3.6	Principal's Right to Access and Inspect	48
3.7	Waste Disposal	49
3.8	Principal not in Control	49
4.	Compliance	50
4.1	Quality of Work	50

4.2	Works Brief	50
4.3	Environmental Management	52
4.4	WHS Management	53
4.5	No Relief from Obligations	53
4.6	Engineering Authorisation	54
4.7	ASA Compliance	54
4.8	Contractor's Tender Management Plans	55
4.9	TfNSW Standard Requirements	56
5.	Contract Documentation	56
5.1	Ownership of Contract Documentation and Methods of Working	56
5.2	Delivery Up of Contract Documentation	57
5.3	Moral Rights	58
6.	Variations	58
6.1	Proposed Variations	58
6.2	Variation Orders	60
6.3	Options	61
6.4	Valuation	61
6.5	Omissions	62
6.6	Variations Requested by Contractor	63
6.7	Determination by Principal's Representative	63
6.8	Variation Approved by the Principal's Representative	63
6.9	Contractor's Entitlements	64
6.10	No Variation or Claim	64
6.11	Authority Approvals for Variations	65
7.	Installation and Delivery Obligations	66
7.1	General installation obligations	66
7.2	All Work Included	66
7.3	Provisional Sum Work	66
7.4	Co-operation with Other Contractors	67
7.5	Set Return to Service Documentation	68
7.6	Safety	68
7.7	Contractor's Plant and Equipment and Materials Removal	70
7.8	Principal Supplied Items	70

8.	Defects and Warranty Period	71
8.1	Defects Liability	71
8.2	Defect Notification	71
8.3	Rectification of Defect	72
8.4	Claim for Variation	75
8.5	Acceptance of Work	75
8.6	Extension of Warranty Period	76
8.7	Defect Rectification by Other Contractor	76
8.8	Rights Not Affected	77
9.	Administration	77
9.1	Principal's Representative	77
9.2	Replacement of the Principal's Representative	78
9.3	Delegation of Functions	78
9.4	NSW Guidelines	78
9.5	Contractor's Personnel	78
9.6	Meetings	80
9.7	Contract Control Group	81
9.8	Contract Control Group Functions	82
9.9	Contract Control Group Meetings	82
9.10	Contractor's Reporting Obligations	82
9.11	Complaints and Notification	83
9.12	Industrial Relations	83
9.13	Document Management and Transmission	84
9.14	Submission for Review by the Principal	84
9.15	Work Method	88
9.16	Exchange of Information between Government Agencies	89
9.17	National Greenhouse and Energy Report Act 2007 (Cth)	89
10.	Time and Progress	90
10.1	Rate of Progress	90
10.2	The Contractor's Programming Obligations	92
10.3	Contractor Not Relieved	93
10.4	Compression by Contractor	94
10.5	Importance of Works Completion on Time	94
10.6	Risk and Notice of Delay	94

10.7	Entitlement to Claim Extension of Time	94
10.8	Claim for Extension of Time	95
10.9	Conditions Precedent to Extension of Time	95
10.10	Extension of Time	96
10.11	Reduction in Time	97
10.12	Unilateral Extensions	97
10.13	Delay Damages	98
10.14	Suspension	98
10.15	Direction to Compress	99
10.16	Withdrawal of Compression Direction	100
10.17	Partial Compression	100
10.18	Compression	100
10.19	Principal's Right to Liquidated Damages not Affected	101
10.20	Deferred Commencement of ETCS Installation	101
10.21	Contractor's Entitlements	104
11.	Payment	104
11.1	Contractor's Payment Entitlements	104
11.2	Payment Claims	104
11.3	Payment Statements	105
11.4	Payment	107
11.5	Payment on Account	107
11.6	Conditions Precedent	108
11.7	Payment of Employees and Subcontractors	109
11.8	Completion Payment Claim	109
11.9	Release after Completion Payment Claim	111
11.10	Final Payment Claim	111
11.11	Release after Final Payment Claim	112
11.12	Interest	113
11.13	Correction of Payment Statements	113
11.14	Costs Allowed by Contractor	113
11.15	Title	114
11.16	Payment of Subcontractors	115
12.	Completion	115
12.1	Progressive Inspection and Testing	115

12.2	Contractor to Notify	116
12.3	Inspection before Completion	116
12.4	Unilateral Issue of Notice of Completion	118
12.5	Handback upon Completion	118
12.6	Liquidated Damages for Delay in reaching Completion	118
12.7	Liquidated Damages a genuine pre-Estimate	119
12.8	Final Completion	119
12.9	Effect of Notice of Completion or Final Completion	120
12.10	Deferral of Completion Requirement	121
13.	Risks and Insurance	121
13.1	Risk	121
13.2	Other Risks	121
13.3	Reinstatement	122
13.4	Works and Public Liability Insurance	122
13.5	Contractor's Insurance Obligations	123
13.6	General Insurance Policies	126
13.7	Period of Insurance	128
13.8	Notice of Potential Claim	128
13.9	Cross Liability	129
13.10	Loss or Damage to Third Party Property	129
13.11	Risk of Deductibles	130
14.	Default or Insolvency	130
14.1	Default	130
14.2	Contents of Notice	131
14.3	Rights following Notice	131
14.4	Immediate Termination or Immediate Take Out	131
14.5	Principal's Common Rights After Termination	132
14.6	Parties' Rights after Termination	133
14.7	Contractor's Rights after Repudiation or Wrongful Termination	134
14.8	Termination for Convenience	134
14.9	Payment with Termination under Clause 14.8	134
14.10	Preservation of Rights	135
14.11	Termination by Frustration	136
14.12	Codification of Contractor's Entitlements	136

15. Disputes	136
15.1 Dispute	136
15.2 Notice of Dispute	137
15.3 Request for further particulars	137
15.4 Time for Submitting Notice of Dispute Concerning Principal's Representative's Direction	137
15.5 Determination of Schedule 1 Disputes by the Principal's Representative	138
15.6 Response to Notice of Dispute	139
15.7 Executive Negotiation	139
15.8 Expert Determination	140
15.9 The Expert	140
15.10 Rules of Expert Determination	140
15.11 Agreement with Expert	141
15.12 Determination of Expert	141
15.13 Arbitration Agreement	141
15.14 Arbitration	142
15.15 Survive Termination	142
15.16 Continuation of Work	142
15.17 Urgent Relief	142
15.18 Disputes under Third Party Agreements	142
16. General	145
16.1 Notices	145
16.2 Law and Jurisdiction	147
16.3 No Waiver	148
16.4 Assignment	148
16.5 Entire Agreement	148
16.6 Joint and Several Liability	149
16.7 Severability	149
16.8 Indemnities to Survive	149
16.9 Stamp Duty and Other Fees	149
16.10 Taxes	149
16.11 Confidentiality	149
16.12 Right of Set-Off	151
16.13 Entire Contract	151
16.14 Principal May Act	151

16.15	Unlimited Discretion	151
16.16	No Partnership, Joint Venture or Other Fiduciary Relationship	152
16.17	Process Agent	152
16.18	Indemnity	153
16.19	Variations	153
16.20	Provisions Limiting or Excluding Liability	153
16.21	Limit of Contractor's Liability	153
16.22	No Liability for Certain Matters	153
16.23	Qualification on Limitation of Liability	153
16.24	No Circularity	154
16.25	Proportionate Liability	155
16.26	Prior Work	157
16.27	Counterparts	157
16.28	Personal Property Securities Act	157
16.29	Vienna Convention	158
17.	Notification of Claims	158
17.1	Notice of Variation	158
17.2	Notice of Other Claims	159
17.3	Prescribed Notices	159
17.4	Submission of Claims	160
17.5	Continuing Events	160
17.6	Bar	160
17.7	Other Provisions Unaffected	161
18.	General Provisions Relating to GST	161

Schedules

1. Contract Particulars
2. Payment Schedule
3. Principal Arranged Matters
4. Form of Confidentiality Undertaking
5. Contractor's Certificate of Installation Compliance
6. Contractor's Certificate of Completion
7. Contractor's Certificate of Final Completion
8. Interface Agreement Deed Poll
9. Tender Management Plans

10. Action in complying with Authority Approvals and Third Party Agreements
11. Form of Other Contractor Interface Deed
12. Installation Facility Access Deed
13. Authority Approvals to be obtained by the Principal
14. Form of Unconditional Undertaking
15. Information Documents and Materials
16. Information from Contractor's Proposal Schedules
17. Form of Statutory Declaration
18. Principal Supplied Items
19. Form of Subcontractor Deed
20. Parent Company Guarantee
21. Options
22. Form of Contractor Deed Poll
23. Expert Determination Agreement
24. Overhead Costs
25. Project Team and Time Allocation

Deed Execution Page

List of Exhibits

- A Works Brief
- B Principal's Insurance Policies
- C Probity and Process Deed Poll
- D Reports
- E Third Party Agreements
- F TfNSW Standard Requirements

Date	
Parties	
1.	Transport for NSW (ABN 18 804 239 602), a corporation established by section 3C of the <i>Transport Administration Act 1988</i> (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (Principal).
2.	Downer EDI Rail Pty (ABN 92 000 002 031), of 39 Delhi Road, North Ryde NSW 2113 (Contractor).
Recitals	
A	The Principal is a corporation constituted under the <i>Transport Administration Act 1988</i> (NSW), and is responsible for developing certain major railway systems and other major projects.
B	The Principal is responsible for developing the Automatic Train Protection Program.
C	The Project comprises the installation, testing, commissioning and handover of the European Train Control System (ETCS) on the C-Set, K-Set and V-Set fleets as part of the Automatic Train Protection Program.
D	The Contractor has agreed to undertake the Works and Services for the Principal in accordance with this Deed.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context otherwise indicates:

Abandonment means where the Contractor wholly or substantially abandons the performance of the Works and Services.

Accreditation means accreditation to carry out railway operations under the Rail Safety National Law.

Act of Prevention means:

- (a) a breach of this Deed by the Principal;

- (b) any other act or omission of the Principal or the Principal's Representative, or (subject to clause 2.10) an Other Contractor engaged by the Principal, except where such act or omission is expressed as not constituting an Act of Prevention pursuant to the provisions of this Deed; or
- (c) a Variation the subject of a direction by the Principal's Representative under clause 6.2, except where that Variation is directed in the circumstances described in clause 8.2(c) or approved under clause 6.7(b).

The valuation of entitlements to money under clauses 3.4, 8.4(a), 10.1, and 13.3 is not a Variation for the purposes of this definition of Act of Prevention.

Alstom means Alstom Transport Australia Pty Limited (ABN 68 165 157 451), being the person that is supplying the Principal Supplied Items Category A to the Principal.

Alstom Installation Design means the CCB Current Gate Design and the Final CCB Gate 5 Design.

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

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which appears at <http://www.asa.transport.nsw.gov.au>.

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

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

Asset Services means the aspects of the Works and Services which relate to the Asset Lifecycle of NSW Rail Assets.

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

Assumed ETCS Installation Start Date means, in respect of a Fleet, the date specified in Schedule 1 or such other date as is agreed by the parties.

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

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes ASA and ONRSR).

Authority Approval means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to:

- (a) carry out the Works and Services; or
- (b) to use for its intended purpose, a completed Set.

Baseline Condition Documents means the documents referred to in Schedule 1, which form part of the Information Documents and Materials, and a copy of which is located in Exhibit D, Reports and Exhibit A, Works Brief.

Business Day means any day other than a Saturday, Sunday, public holidays in New South Wales or 27, 28, 29, 30 or 31 December.

CCB Current Gate Design means the drawings contained in Appendix A and the documents contained in Appendix B2 and B3, Appendix C and Appendix D to the Works Brief.

Change in Authority Approval means a change:

- (a) in an Authority Approval which is in existence as at the date of this Deed; and
- (b) which occurs after the date of this Deed.

Change in Codes and Standards means a change in the Codes and Standards taking effect after the date of this Deed, excluding a change in the Codes and Standards which, as at the date of this Deed:

- (a) was published or of which public notice had been given (even as a possible change in the Codes and Standards); or
- (b) a party experienced and competent in the delivery of works and services similar to the Works and Services would have reasonably foreseen or anticipated,

in substantially the same form as the change in the Codes and Standards eventuating after the date of this Deed.

Change in Law means (if it takes effect after the date of this Deed):

- (a) a change in a Law existing as at the date of this Deed (other than a change in an Authority Approval); or
- (b) a new Law (other than a new Authority Approval),

compliance with which:

- (c) has a direct effect on the Contractor carrying out the Works and Services; and

- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Works and Services, or a delay to the Contractor achieving Works Completion of a Fleet by the relevant Date for Works Completion in accordance with clause 10.7(a),

but excludes:

- (e) a change in a Law existing as at the date of this Deed in respect of Taxes or a new Law in respect of Taxes; and
- (f) a change in a Law existing as at the date of this Deed or a new Law which, as at the date of this Deed:
- (i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or
 - (ii) a party experienced and competent in the delivery of works and services similar to the Works and Services would have reasonably foreseen or anticipated,

in substantially the same form as the change in an existing Law or new Law eventuating after the date of this Deed.

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

- (a) under, arising out of, or in any way in connection with, this Deed, including any direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the Works and Services or either party's conduct prior to the date of this Deed; or
- (c) otherwise at Law including:
 - (i) under or for breach of any statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Codes and Standards means any standard, code, specification, guide, manual or other document (howsoever described) that:

- (a) specifies requirements or standards for the performance of the Works and Services; and
- (b) is referred to in the Works Brief or elsewhere in this Deed as a standard, code, specification, guide, manual or other document with which the Contractor must comply in performing the Works and Services.

Commencement Date means the date identified in Schedule 1.

Common Dispute has the meaning given to that term in clause 15.18(a).

Completion means the stage in the execution of the Works and Services when, in relation to a Set:

- (a) the Works and Services in respect of that Set are complete in accordance with this Deed except for minor Defects:
 - (i) that do not prevent the Set from being reasonably capable of being used for the intended purpose of the Set;
 - (ii) that can be rectified without prejudicing the convenient intended use of the Set; and
 - (iii) in respect of which the Contractor has reasonable grounds for not promptly rectifying;
- (b) the Contractor has:
 - (i) carried out and passed all Tests that:
 - (A) are required under this Deed to be carried out and passed before Completion; or
 - (B) must necessarily be carried out and passed to verify that a Set is in the condition this Deed requires the Set (as the case may be) to be in at Completion;
 - (ii) without limiting clause 2.3(c)(v), obtained all Authority Approvals that it is required under this Deed to obtain before Completion and provided such Authority Approvals to the Principal's Representative;
 - (iii) given to the Principal's Representative all other documents and information that are to be handed over to the Principal's Representative before Completion;
 - (iv) complied with all performance requirements that this Deed requires to be verified before Completion;
 - (v) provided all equipment and spare parts required by this Deed to be provided by the Contractor, other than any equipment or spare parts that the Principal has expressly agreed in writing may be delivered by the Contractor after Completion; and
 - (vi) provided the Principal's Representative with the Contractor's Certificate of Completion in respect of the relevant Set; and
- (c) the Contractor has done everything else that it is required to do under this Deed before Completion including those things referred to in Schedule 1.

Completion Payment Claim has the meaning given to that term in clause 11.8.

Confidentiality Undertaking means a confidentiality undertaking in the form provided for in Schedule 4.

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

Contract Control Group means the group described in clause 9.7.

Contract Documentation means all documentation in computer readable or written forms brought into (or required to be brought into) existence as part of, or for the purpose of, performing the Works and Services (whether before or after the date of this Deed) including all plans, manuals, programs and other documents.

Contract Management Plan means the documents required to be provided and implemented by the Contractor pursuant to the Works Brief, as developed, amended or updated from time to time in accordance with this Deed.

Contract Particulars means Schedule 1.

Contract Sum means the Original Contract Price increased or decreased by the amounts by which this Deed requires the Contract Sum to be increased.

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

Contractor's Certificate of Installation Compliance means a certificate from the Contractor in the form provided for in Schedule 5 certifying that the Works and Services complies with the requirements of this Deed.

Contractor's Certificate of Completion means a certificate from the Contractor in the form provided for in Schedule 6 certifying that Completion in respect of a Set has been achieved in accordance with this Deed.

Contractor's Plant and Equipment means all plant and equipment used by the Contractor for the purposes of the Works and Services but which will not be incorporated into, or become part of, any of the Sets as part of the work performed by the Contractor under this Deed.

Contractor's Representative means the person notified to the Principal's Representative in accordance with clause 9.5(a)(i) as being the Contractor's Representative.

C-Set Fleet means the fleet of 13 Sets of 4 single C-Set cars.

Date for Works Completion means, in respect of a Fleet, the date, or the last day of the period of time, specified in Schedule 1, as adjusted under this Deed by an extension of time determined by the Principal's Representative or pursuant to any expert determination, any arbitration or any other final and binding dispute resolution procedure under clause 15.

Date of Completion means, in respect of a Set:

- (a) the date of Completion of the Works and Services in respect of that Set, as set out in the Notice of Completion for that Set; or
- (b) where another date is determined in any expert determination, any arbitration or any other final and binding dispute resolution procedure under clause 15 as the date upon which Completion of the Works and Services in respect of that Set was achieved, that date.

Date of Final Completion means:

- (a) the date determined in accordance with clause 12.8(e)(i) as the date Final Completion was achieved; or
- (b) where another date is determined in any expert determination, any arbitration or any other final and binding dispute resolution procedure under clause 15 as the date upon which Final Completion was achieved, that date.

Date of Works Completion means:

- (a) the Date of Completion of the final Set of a Fleet in respect of which Completion was achieved, as set out in the Notice of Completion for that Set; or
- (b) where another date is determined in any expert determination, any arbitration or any other final and binding dispute resolution procedure under clause 15 as the date upon which Works Completion was achieved, that date.

Deed means the General Conditions, Schedules 1 to 25 and Exhibits A to F, however Exhibits B, C, D and E only form part of this Deed to the extent necessary for the proper operation of the relevant provisions of the General Conditions and Schedules 1 to 25.

Defect means any:

- (a) defect or deficiency in materials or workmanship; or
- (b) any defect in or omission from the Works and Services or any other aspect of the Works and Services that is not in accordance with the requirements of this Deed, including non-compliances, non-conformances and non-conformities.

Delivery Point means the location described in Schedule 1.

Dispute has the meaning given to that term in clause 15.1.

Electronic Portal means the electronic portal or document management system (if any) referred to in a notice by the Principal's Representative under clause 16.1(a).

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and
- (e) interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

Equipment means any item of equipment which is to be installed in the Sets as part of the Works and Services.

ETCS means the European Train Control System.

ETCS Installation Deferral Date means, in respect of a Fleet, the date stated in Schedule 1 or such other date as is agreed by the parties.

ETCS Installation Start Date means, in respect of a Fleet:

- (a) where the Principal's Representative does not give a Notice of ETCS Installation Deferral for that Fleet, the Assumed ETCS Installation Start Date for that Fleet; or
- (b) where the Principal's Representative gives a Notice of ETCS Installation Deferral for that Fleet, the date:
 - (i) specified in the Notice of ETCS Installation Deferral for that Fleet; or
 - (ii) where there is no date specified in the Notice of ETCS Installation Deferral, the date specified in a Notice of ETCS Installation Commencement for that Fleet.

Excepted Risk means any one of:

- (a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, act of terrorism, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its Subcontractors or either's employees or agents; or
- (c) any other event so described in Schedule 1.

Excluded Claim means any claim:

- (a) with respect to a Change in Law under clause 2.3(d);
- (b) for a Variation directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 17.1 applies;

- (c) for an extension of time to a Date for Works Completion under clause 10.8;
or
- (d) for payment under clause 11, including a claim under clause 11.8.

Final CCB Gate 5 Design means:

- (a) the Initial CCB Gate 5 Design; and
- (b) any updates or variations to the Initial CCB Gate 5 Design as contemplated by clause 4.2(b)(ii).

Final Completion means the stage in the execution of the Works and Services when:

- (a) all Warranty Periods (including any extension under clause 8.6) have expired;
- (b) the Contractor has:
 - (i) carried out and passed all Tests which:
 - (A) are required under this Deed to be carried out and passed before Final Completion; or
 - (B) must necessarily be carried out and passed to verify that each Set is in the condition this Deed requires it to be in at Final Completion;
 - (ii) obtained all Authority Approvals that it is required under this Deed to obtain which:
 - (A) were not obtained before the Date of Works Completion of the last Fleet to reach Works Completion; or
 - (B) are to be obtained prior to Final Completion, and provided such Authority Approvals to the Principal's Representative;
 - (iii) given to the Principal's Representative all other documents or information referred to in this Deed:
 - (A) which are required for the use, operation, maintenance and repair of the Sets but which were not obtained before the Date of Works Completion of the last Fleet to reach Works Completion; or
 - (B) which are required to be handed over to the Principal's Representative before Final Completion; and
 - (iv) complied with all performance requirements under this Deed that must be verified before Final Completion; and

- (c) the Contractor has done everything else which it is required to do under this Deed before Final Completion.

Final Payment Claim has the meaning given to that term in clause 11.10.

First Statement of Outstanding Claims has the meaning given to that term in clause 11.8(b).

Fleet means:

- (a) the C-Set Fleet;
(b) the K-Set Fleet; and
(c) the V-Set Fleet.

Force Majeure Event means earthquake, act of terrorism, act of a public enemy, war (declared or undeclared) or revolution.

General Conditions means clauses 1-18 of this Deed.

Good Industry Practice means the practices, methods, specifications, standards of safety, engineering, procurement, manufacturing, installation, testing, commissioning and performance which are engaged in or observed by experienced professional consultants and contractors in the international engineering and manufacturing industries with respect to the engineering, manufacturing, installation, testing and commissioning of rollingstock (including upgrades thereto) and which, with respect to any objective, may be expected, in the exercise of reasonable judgment, to accomplish the same in a manner consistent with, reliability, safety, environmental protection, economy and expediency and all applicable Laws.

Greenhouse Data means all data, information, records and reports of the type that a registered corporation or any other person may be required or entitled to provide under the NGER Legislation, including as to:

- (a) greenhouse gas emissions, energy production or energy consumption; and
(b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project,

relating to any aspect of any Relevant Matters.

GST or Goods and Services Tax means the tax payable on taxable supplies under the GST Legislation.

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

Hazardous Materials means any natural or artificial substance whether solid, liquid or gas (alone or in combination with any other substance), which is toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment

including, but not limited to, asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals.

Handback Point means the place described in Schedule 1.

Incident means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Works and Services including:
 - (i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;
 - (ii) any public complaint;
 - (iii) any fire or dangerous event;
 - (iv) a security breach; or
 - (v) a non-compliance with an Authority Approval or Third Party Agreement; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

- (c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and
- (d) "occurrences" and "notifiable occurrences" under the WHS Legislation and the Rail Safety National Law.

Information Documents and Materials means:

- (a) the items specified in Schedule 15; and
- (b) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Deed,

including anything which is expressly stated by this Deed to form part of the Information Documents and Materials.

Initial CCB Gate 5 Design means:

- (a) the updates to the drawings contained in Appendix A and the documents contained in Appendix B2 and B3, Appendix C and Appendix D to the Works Brief (excluding the Outstanding Testing and Commissioning Documents) contemplated by clause 4.2(b)(i); and
- (b) the Outstanding Testing and Commissioning Documents.

Insolvency Event means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
 - (vi) a sequestration order or winding up order is made in respect of the corporation;
 - (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
 - (viii) a mortgagee of any property of the corporation takes possession of that property; or
 - (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

Inspection includes auditing, surveillance, monitoring, testing, review, examination and measuring.

Installation Facility means the facility and such other workshops or places provided by the Contractor as described in Schedule 1 where the Works and Services are performed.

Institution means any authorised deposit taking institution holding an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth).

Intellectual Property means all rights in copyright, inventions (including patents and innovation patents), registered and unregistered trademarks or name, registered and registrable designs, confidential information, trade secrets, technical data and know-how, circuit layout rights, and all other protected rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Interface Agreement means the Third Party Agreement of that name set out in Exhibit E.

K-Set Fleet means the fleet of 39 Sets of 4 single K-Set cars.

Law means:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes, or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Authority Approvals (including any condition or requirement under them).

Latent Condition means any of the following:

- (a) any condition, configuration or layout of any part of a Set upon which the Works and Services are to be performed which:
 - (i) is different to the condition, configuration, layout described or evidenced in the Baseline Condition Documents;
 - (ii) is discovered only after the Contractor has inspected the Set to confirm its conditions; and
 - (iii) directly results in an increase to the Contractor's costs of carrying out the Works and Services in respect of that Set; or

- (b) any pre-existing defects in a Set which is of such a nature that the defect must be rectified to ensure that the Works and Services can be performed by the Contractor and will be fit for their intended purpose; or
- (c) the discovery of any Hazardous Material,

and in the case of sub-paragraphs (a) and (b) above, which a competent and experienced contractor would not have been expected to anticipate as at the date of this Deed if it had:

- (d) examined all documents and information relevant to the risks, contingencies and other circumstances having an effect on the Contractor's Tender and the Contractor's obligations under this Deed and which was obtainable by the making of reasonable enquiries (including the Information Documents and Materials); or
- (e) examined all parts (including opening up) of the Tender Inspection Set which the tender conditions allowed the Contractor to inspect and open-up.

Latent Condition Threshold Amount means the amount set out in Schedule 1.

Material Variance means a variance between the CCB Current Gate Design and the Final CCB Gate 5 Design for a Fleet which:

- (a) could not have been reasonably foreseen or contemplated by the Contractor as the date of this Deed;
- (b) does not arise out of or in connection with dealing with or overcoming a Latent Condition; and
- (c) directly results in an increase to the Contractor's costs of carrying out the Works and Services in respect of that Fleet by more than the relevant Material Variance Threshold Amount.

Material Variance Threshold Amount means the amount set out in Schedule 1.

NGER Legislation means the *National Greenhouse and Energy Report Act 2007* (Cth), related regulations and legislative instruments.

Nominated Subcontractor means a Subcontractor identified in Schedule 1, or a Subcontractor included in a list of Subcontractors identified in Schedule 1, to whom the Contractor must subcontract the relevant Nominated Subcontract Work.

Nominated Subcontract Work means that supply of goods or services specified in Schedule 1 that may only be performed by the relevant Nominated Subcontractor.

Notice of Completion means a notice issued under clause 12.3(d)(i) by the Principal's Representative stating that Completion has been achieved in respect of a Set.

Notice of ETCS Installation Commencement means a notice given by the Principal's Representative pursuant to clause 10.20(d)(i).

Notice of ETCS Installation Deferral means a notice given by the Principal's Representative pursuant to clause 10.20(b).

NSW Guidelines means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement as published by the NSW Treasury July 2013 and updated in September 2017. The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

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

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

ONRSR means the Office of the National Rail Safety Regulator established under Part 2 Division 1 of the Rail Safety National Law.

Option means an option referred to in Schedule 21.

Original Contract Price means the amount set out in Schedule 1, which is, and all components of which are, exclusive of GST.

Other Contractor means the persons listed in Schedule 1.

Outstanding Testing and Commissioning Documents means the:

- (a) Test and Commissioning Procedure (Fleet), AMS-C&K-350;
- (b) Test and Commissioning Report template (for fleet), AMS-C&K-360;
- (c) Certificates of Compliance (including installation test report), AMS-V-430;
and
- (d) Test and Commissioning Procedure & Report template (Fleet), AMS-V-380.

Overhead Costs means the costs referable to the items described in Schedule 24.

Parent Company Guarantee means the deed which appears in Schedule 20.

Payment Milestone means a Payment Milestone stated in the Payment Schedule.

Payment Schedule means Schedule 2.

PPS Act means the *Personal Property Securities Act 2009 (Cth)*.

PPS Law means:

- (a) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time; and
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

Principal Arranged Matters means those matters identified in Schedule 3.

Principal Supplied Items means both the Principal Supplied Items Category A and the Principal Supplied Items Category B.

Principal Supplied Items Category A means the items set out under the heading "Principal Supplied Items - Category A" in Schedule 18.

Principal Supplied Items Category B means the items set out under the heading "Principal Supplied Items - Category B" in Schedule 18.

Principal's Representative means:

- (a) the person nominated in Schedule 1; or
- (b) any other person appointed from time to time by the Principal under clause 9.2,

and includes any appointee under clause 9.3.

Probity and Process Deed Poll means Exhibit C.

Progress Claim has the meaning given to that term in clause 11.2.

Prohibited Subcontractor means:

- (a) any Subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in,

corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or

- (b) any Subcontractor employing an employee in respect of whom paragraphs (a)(i) or (a)(ii) apply.

Project Works Health and Safety Management Plan means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the Works Brief and which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the performance of the Works and Services from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Works and Services are performed consistently with Law in relation to work health and safety; and
- (c) address the matters specified in Schedule 1.

Provisional Sum Work means the work detailed as such in Schedule 1.

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

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

Rail 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.

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

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

Relevant Matter has the meaning given to that term in clause 9.17(a).

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc.

Second Statement of Outstanding Claims has the meaning given to that term in clause 11.10(b).

Security Interest has the meaning given to that term in clause 16.28(a).

Set means:

- (a) a set of 4 single C-Set cars;
- (b) a set of 4 single K-Set cars; or
- (c) a set of 4 single V-Set cars.

Set Return to Service Documentation has the meaning given to that term in the Works Brief.

Subcontract includes an agreement for supply of goods or services (including professional services and plant hire) or both.

Subcontractor includes a consultant or a supplier of goods or services (including professional services and plant hire) or both.

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

Taxes means income, stamp, indirect or other taxes, levies, imposts, deductions, charges, duties (including import duty and customs duties), compulsory loans and

withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

Tender means the response provided by a Tenderer to the Principal's invitation to selected Tenderers to submit a tender to undertake the Works and Services.

Tender Form means the tender form submitted by the Contractor as part of its Tender.

Tender Inspection Set means a Set which was provided to the Contractor during the Tender period to inspect for the purposes of preparing its Tender.

Tenderer means an entity or entities that submitted a Tender for the Works and Services.

Tender Management Plans means the plans set out in Schedule 9.

Tests or Testing means all testing and commissioning which is required to be performed by the Contractor as set out in the Works Brief.

TfNSW means Transport for NSW (ABN 18 804 239 602) a corporation established by section 3C of the *Transport Administration Act 1988* (NSW).

TfNSW Standard Requirements means the documents which appear as Exhibit F to this Deed.

Third Party means a party to a Third Party Agreement other than the Principal.

Third Party Agreements means the agreements referred to in Schedule 1 in respect of which, a copy of the agreement appears in Exhibit E.

Variation means any change or variation to the Works and Services and includes additions, increases, decreases, omissions, deletions, demolitions or removal to or from any of the Works and Services, excluding any change or variation to the Works and Services arising from any variance between the CCB Current Gate Design and the Final CCB Gate 5 Design other than Material Variances.

Variation Order means a written document titled "Variation Order" issued under clause 6.2.

V-Set Fleet means the fleet of 20 Sets of 4 single V-Set cars.

Warranty Period means the period stated in Schedule 1, as extended by clause 8.6.

WHS means work health and safety.

WHS Legislation means:

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

- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works and Services.

Works and Services means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Deed, including:

- (c) the installation, testing and commissioning and handover of the ETCS on each Set as stated in or reasonably ascertainable from the Works Brief; and
- (d) the provision of any equipment and spare parts to be supplied under this Deed.

Works Brief means:

- (a) the Works Brief for the C and K Sets; and
- (b) the Works Brief for the V Set.

Works Brief for the C and K Sets means the document which appears as Exhibit A Part 1 to this Deed, including all Appendices thereto.

Works Brief for the V Set means the document which appears as Exhibit A Part 2 to this Deed, including all Appendices thereto.

Works Completion means, in respect of a Fleet, the stage in the execution of the Works and Services when a Notice of Completion has been issued in respect of every Set in that Fleet.

1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

- (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Deed; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) a reference to this Deed includes all Schedules, and (subject to clause 3.5(a)) Exhibits;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) where under this Deed:
 - (i) a direction is required to be given or must be complied with;
 - (ii) payment of money must be made;
 - (iii) an unconditional undertaking must be released; or
 - (iv) a default must be remedied,within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;
- (m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:

- (i) any extension of time to a Date for Works Completion stated in days;
or
- (ii) any reference to "day",
will include only those days indicated in Schedule 1, or otherwise approved
by the Principal's Representative, as working days;
- (n) for all purposes (other than as set out in clauses 1.2(l) and 1.2(m), or where
otherwise designated as a Business Day), "day" means calendar day;
- (o) a reference to \$ is to Australian currency;
- (p) a reference to "direction" in the definition of Claim in clause 1.1 or in any of
clauses 9.1, 9.14(j), 15 and 17 will be read as also including certificate,
decision, demand, determination, instruction, notice, order, rejection,
request or requirement but will not include any failure to reject a Document
(as defined in clause 9.14(b)) under clause 9.14;
- (q) no rule of construction applies to the disadvantage of a party on the basis
that the party put forward or drafted this Deed or any part;
- (r) any reference to "information" will be read as including information,
representations, statements, data, samples, calculations, assumptions,
deductions, determinations, drawings, design, specifications, models, plans
and other documents in all forms including the electronic form in which it
was generated;
- (s) any reference:
 - (i) in the definition of Authority Approval and Completion in clause 1.1 to
"intended use" or "intended purpose"; or
 - (ii) to "intended purpose", including in clauses 1.1, 2.1, 2.3, 4.1, 7.1, 7.8
or 12.3,
will be read as referring to the intended use or intended purpose having
regard to:
 - (iii) the Principal's present intention that each Set will be used as part of a
fully integrated operating railway system forming part of the Sydney
metropolitan rail network; and
 - (iv) any intended use or intended purpose stated in, contemplated by or
ascertainable from the terms of this Deed and any other documents
provided by the Principal to the Contractor under or pursuant to this
Deed including the requirement that each Set will, when completed,
be safe and reliable for use in the operational environment and in
compliance with all Laws governing rail safety;

- (t) any reference in clauses 2.1(b) and 7.1(a) to the Works and Services or any part of them remaining at all relevant times fit for their purpose or for their intended purpose will be read as being subject to the Principal maintaining the Sets in accordance with manufacturers guidelines; and
- (u) any reference in this Deed to "the Contract" or "this Contract" will be taken to be a reference to this Deed.

1.3 Ambiguous Terms

- (a) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in this Deed (including in any Exhibit), the Principal's Representative must, subject to clause 1.4, direct the interpretation of this Deed which the Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.3(a):
 - (i) will not relieve the Contractor from or alter its liabilities or obligations under this Deed or otherwise at Law;
 - (ii) will not entitle the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
 - (iii) will not limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to Law; and
 - (iv) will, in respect of a notice given by the Contractor under clause 1.3(a), be given within 28 days of receipt of that notice.

1.4 Order of Precedence

In the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Deed then:

- (a) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the Works Brief, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and
- (b) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in Schedule 1 applies.

1.5 Authorities

- (a) This Deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter, including any functions or powers required to be exercised by the Principal or any Rail Transport Agency pursuant to any Configuration Management Framework.
- (b) Without limiting clause 1.5(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under this Deed.
- (c) The Contractor:
 - (i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal, any Rail Transport Agency or the ASA of their respective functions and powers either as an AEO or under any legislation, the ASA Charter or the Configuration Management Framework; and
 - (ii) acknowledges and agrees that:
 - (A) there are many Authorities with jurisdiction over aspects of the Works and Services, the Rail Corridor, and other matters affecting and affected by the Works and Services;
 - (B) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Works and Services (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
 - (C) it bears the full risk of all occurrences of the kind referred to in clause 1.5(c)(ii)(B) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.6 Associated Deeds

The Contractor must:

- (a) on or before the date of this Deed, and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4(a), provide to the Principal's Representative an executed deed poll in the form set out in Schedule 22 in favour of the persons named in Schedule 1; and
- (b) on or before the date of this Deed, and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4(a), provide to the Principal's Representative an executed deed poll in the form set out in Schedule 8 in favour of the persons named in Schedule 1.

1.7 Deed Commencement Date

- (a) This Deed will not commence until the Commencement Date, except for the provisions contained in:
 - (i) clause 1 (Definitions and Interpretation);
 - (ii) clause 2.2 (Subcontracts);
 - (iii) clause 2.5 (Unconditional Undertakings and Parent Company Guarantee);
 - (iv) clause 3.5 (Information Documents and Materials);
 - (v) clause 9.16 (Exchange of Information between Government Agencies);
 - (vi) clause 13 (Risks and Insurance);
 - (vii) clause 14 (Default or Insolvency);
 - (viii) clause 15 (Disputes);
 - (ix) clause 16 (General); and
 - (x) clause 17 (Notification of Claims),which will all commence on the date of this Deed.
- (b) The Commencement Date does not affect the date of this Deed.
- (c) For the purposes of calculating time, the days between the date of this Deed and the Commencement Date shall not be counted.

2. Contractor's Obligations

2.1 General

The Contractor:

- (a) must execute the Works and Services in accordance with this Deed;

- (b) warrants that the Works and Services to be performed by the Contractor in respect of a Set will, upon Completion, be, and be capable of remaining at all relevant times, fit for its intended purpose;
- (c) warrants that to the extent prepared by the Contractor, the Set Return to Service Documentation, when completed, will be fit and adequate for the purpose for which it is intended;
- (d) unless the context otherwise requires:
 - (i) must comply with and otherwise perform all obligations in, and do all things required by, the Works Brief and the other requirements of this Deed; and
 - (ii) other than in respect of Principal Supplied Items Category A, agrees that where specific manufacturer's product is specified in the Works Brief (or elsewhere), the:
 - (A) Contractor:
 - (1) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the specification of that manufacturer's product; and
 - (2) remains liable for complying with all its obligations under this Deed, including the obligations referred to at clauses 2.1(a), 2.1(b), 2.1(c) and 2.1(e); and
 - (B) Principal makes no representation as to:
 - (1) the quality of the specified product;
 - (2) the availability of the specified product; or
 - (3) the creditworthiness of the manufacturer of the specified product; and
- (e) subject to the express provisions of this Deed, accepts responsibility for and the risk of all costs, damages, expenses, losses, liabilities, delays or disruption that it incurs or suffers arising out of or in any way in connection with, the performance of the Works and Services and its obligations under this Deed.

Without limiting or otherwise restricting clauses 2.1(a) to 2.1(e), the Contractor is not responsible for the suitability of the drawings contained in Appendix A and the documents contained in Appendix C and Appendix D to the Works Brief.

2.2 Subcontracts

- (a) Subject to clause 2.2(b) the Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Deed.
- (b) The Contractor:
 - (i) must:
 - (A) not enter into any Subcontract with a Prohibited Subcontractor;
 - (B) enter into a Subcontract with each of those Nominated Subcontractors specified in Schedule 1 in respect of the relevant Nominated Subcontract Work; and
 - (C) in respect of the parts of the Works and Services described in Schedule 1, enter into a Subcontract with one of the persons listed in Schedule 1.
 - (ii) agrees that, in respect of Nominated Subcontractors, the:
 - (A) Contractor:
 - (1) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any act or omission of a Nominated Subcontractor; and
 - (2) remains liable for complying with all its obligations under this Deed, including the obligations referred to at clauses 2.1(a), 2.1(b), 2.1(c) and 2.1(e); and
 - (B) Principal makes no representation as to any Nominated Subcontractor's:
 - (1) quality of work;
 - (2) timeliness of work;
 - (3) availability to perform the relevant Nominated Subcontract Work; or
 - (4) creditworthiness;
 - (iii) must ensure that, if any Law, including in the State or Territory in which the Works and Services are carried out (as the case may be), require that:
 - (A) a person:
 - (1) be authorised or licensed to carry out any work at that workplace, that person is so authorised or licensed,

- and complies with any conditions of such authorisation or licence; and/or
- (2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the relevant Law), that person has the required qualifications or experience or is so supervised; or
- (B) a workplace, plant or substance, or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (iv) must not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of subparagraph (v) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (v) if requested by the Principal's Representative or required by Law, must produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Contractor or Subcontractor (as the case may be) commences such work.
- (c) The Contractor will be:
- (i) fully responsible for the Works and Services despite subcontracting the carrying out of any part of the Works and Services; and
- (ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Works and Services.
- (d) Whenever requested by the Principal's Representative, the Contractor must give the Principal's Representative details of each of its Subcontracts, including the name and address of the Subcontractor (and its Subcontractors), and the works, goods or services being provided under the Subcontract.
- (e) The Contractor must:
- (i) ensure that each Subcontractor (and their Subcontractors) executes a Confidentiality Undertaking and provides this to the Principal's Representative within 7 days of the engagement of that Subcontractor; and

- (ii) procure that each of its Subcontractors:
 - (A) engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule 1; or
 - (B) in respect of the categories of work set out in Schedule 1 (regardless of subcontract price),executes a deed in the form of Schedule 19 and thereafter must itself execute that deed and provide this to the Principal's Representative within 5 Business Days of being engaged by the Contractor.
- (f) The Contractor must ensure that each subcontract contains provisions which bind the Subcontractor to participate in any novation required by the deed in Schedule 19.

2.3 Compliance with Law

- (a) Subject to clauses 2.3(c)(i) and 2.3(d), the Contractor must, in carrying out the Works and Services:
 - (i) ensure that the Sets, when refurbished, comply with all applicable Law;
 - (ii) comply with all applicable Law;
 - (iii) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this Deed and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
 - (iv) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it;
 - (v) at all times conform and comply with, and ensure that the Works and Services conform and comply with (subject to clause 2.3(b)), all Codes and Standards; and
 - (vi) not engage in any fraud, bribery or corruption.
- (b) Where there is a Change in Codes and Standards:
 - (i) the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:
 - (A) details of the Change in Codes and Standards; and

- (B) an estimate of the Contractor's increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and
- (ii) if a notice is given by the Contractor which complies with clause 2.3(b)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
 - (A) direct the Contractor to disregard the Change in Codes and Standards; or
 - (B) direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 6.4.

If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards the Contractor must comply with the change and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with the change.

- (c) The Contractor must:
 - (i) obtain all Authority Approvals required for the carrying out of the Works and Services, except for those Authority Approvals specified in Schedule 13;
 - (ii) prepare and submit:
 - (A) to each relevant Authority all applications and associated documents for the purpose of obtaining all Authority Approvals as required by clause 2.3(c)(i); and
 - (B) to the Principal copies of:
 - (1) all applications and associated documents submitted by the Contractor to any Authority;
 - (2) all documents provided to the Contractor by any Authority, including any Authority Approval;
 - (3) any other document the Principal's Representative reasonably directs the Contractor to provide;
 - (iii) comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, to comply with, satisfy, carry out and fulfil, other than any conditions and requirements of an Authority Approval

expressly specified as being the responsibility of the Principal in Schedule 13;

- (iv) in respect of any:
 - (A) Authority Approvals which are to be obtained by the Principal after the date of this Deed; or
 - (B) conditions and requirements of Authority Approvals which pursuant to Schedule 13 are to be satisfied or fulfilled by the Principal,

provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;

- (v) as a condition precedent to Completion in respect of each Set (but subject to clause 2.3(d)), ensure that it has:
 - (A) obtained all Authority Approvals it is required to obtain under this Deed; and
 - (B) complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Deed (including obtaining the approval of any person for anything),

including for the avoidance of doubt any Authority Approvals, conditions or requirements which must be obtained, carried out or fulfilled to enable the Principal and any Rail Transport Agency to use the Sets as modified by the Works and Services performed by the Contractor under this Deed for their intended purpose.

- (d) Where there is a Change in Law:
 - (i) if either party wishes this clause 2.3(d)(i) to apply, then that party must, within 14 days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 2.3(d)(i) applies and containing:
 - (A) details of the Change in Law; and
 - (B) that party's estimate of any increase or decrease (as the case may be) in the Contractor's cost of carrying out the Works and Services arising out of or in any way in connection with complying with the Change in Law including sufficient information to support the estimates;

- (ii) if the Contractor or the Principal's Representative gives notice under clause 2.3(d)(i):
 - (A) representatives of the Principal and the Contractor must meet within 28 days of a notice being given under clause 2.3(d)(i) and must negotiate and endeavour to agree to a reasonable increase or decrease (as the case may be) in the Contractor's cost of carrying out the Works and Services arising from complying with the Change in Law;
 - (B) if the Principal and the Contractor reach agreement as to the reasonable increase or decrease (as the case may be) in the Contractor's cost of carrying out the Works and Services arising from complying with the Change in Law within 28 days (or such other period that the Principal and the Contractor agree upon) of a notice being given under clause 2.3(d)(i), the Principal's Representative will issue a notice setting out how the Contract Sum will be increased or decreased; and
 - (C) if the Principal and the Contractor do not reach agreement as to the reasonable increase or decrease (as the case may be) in the Contractor's cost of carrying out the Works and Services arising from complying with the Change in Law within 28 days (or such other period that the Principal and the Contractor agree upon) of a notice being given under clause 2.3(d)(i), the Principal's Representative will determine:
 - (1) for a decrease in the Contractor's costs of carrying out the Works and Services in compliance with the Change in Law, a reasonable amount as the amount of the decrease; or
 - (2) for an increase in the Contractor's costs of carrying out the Works and Services in compliance with the Change in Law, the amount of the increased costs reasonably incurred by the Contractor on the basis that the Contractor took all reasonable steps to mitigate those increased costs,and the Contract Sum will be increased or decreased by that amount; and
- (iii) the Contractor must comply with the Change in Law.

- (e) If a Change in Authority Approval occurs which necessitates a Variation, the Contractor must:
- (i) if the relevant Authority Approval was obtained by the Principal, within 14 days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or
 - (ii) otherwise, within 14 days of the Change in Authority Approval taking effect,
- notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Variation.
- (f) If the Contractor gives a notice under clause 2.3(e) and the Principal's Representative considers that the Change in Authority Approval:
- (i) does necessitate a Variation;
 - (ii) would not have been reasonably foreseen or anticipated as at the date of this Deed by a party experienced and competent in the delivery of works and services similar to the Works and Services in substantially the same form as the Change in Authority Approval; and
 - (iii) does not arise out of or in any way in connection with an act or omission by the Contractor,
- the Principal's Representative will direct a Variation under clause 6.2(a) after which relevant adjustments will be made under clause 6.4.
- (g) Other than as set out in clause 2.3(f), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
- (i) any Change in Authority Approval;
 - (ii) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Deed;
 - (iii) a change in an Authority Approval after the date of this Deed; or
 - (iv) any:
 - (A) assumptions the Contractor makes; or
 - (B) failure by the Contractor to adequately satisfy itself;as to what work methodologies might be permissible under all Authority Approvals.
- (h) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for an Authority Approval or

a modification of an Authority Approval, performance of the Works and Services, or compliance with any Authority Approval under:

- (i) the *Environmental Planning and Assessment Act 1979* (NSW);
- (ii) the *Protection of the Environment Operations Act 1997* (NSW);
- (iii) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
- (iv) any other Law,

the Contractor must continue to perform its obligations under this Deed unless, as a result of that legal challenge, proceedings or action, it is otherwise:

- (v) ordered or directed by an Authority;
- (vi) ordered by a court or tribunal; or
- (vii) directed by the Principal or the Principal's Representative.

2.4 Rail safety obligations

The Contractor:

- (a) warrants that it has, or will procure, the necessary Accreditation required to perform the Works and Services;
- (b) must liaise and co-operate with TfNSW, and do everything necessary to enable and assist TfNSW and any Rail Transport Agency to:
 - (i) maintain any relevant Accreditation held by them, including obtaining any variation to any Accreditation required as a result of the Works and Services to be performed in accordance with this Deed; and
 - (ii) comply with their respective obligations in relation to rail safety, including under the Rail Safety National Law;
- (c) must, except as required by Law, not do, or omit to do, anything which may cause any relevant Accreditation held by TfNSW and any Rail Transport Agency to be suspended or cancelled; and
- (d) must give any Authority such access to premises and information as the Authority lawfully requests to fulfil its functions with respect to the Sets and the Works and Services, within the time requested.

2.5 Unconditional Undertakings and Parent Company Guarantee

- (a) Without limiting clause 2.5(d), or clause 2.5(e), the unconditional undertakings to be provided under this clause 2.5 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Deed.

- (b) The Contractor must give the Principal within 5 Business Days of the date of this Deed, nine unconditional undertakings:
- (i) for the following amounts:
 - (A) one unconditional undertaking in the amount of \$ [] ;
 - (B) one unconditional undertaking in the amount of \$ [] ;
 - (C) one unconditional undertaking in the amount \$ [] ;
 - (D) two unconditional undertakings, each for \$ [] ;
 - (E) two unconditional undertakings, each for \$ [] ; and
 - (F) two unconditional undertakings, each for \$ [] ;
 - (ii) each in the form of Schedule 14;
 - (iii) each in favour of the Principal;
 - (iv) each issued by an Institution approved by the Principal that maintains the Required Rating; and
 - (v) where required by Law, duly stamped.
- (c) If the issuer of the unconditional undertakings ceases to have the Required Rating, then the Contractor must:
- (i) promptly notify the Principal of the circumstances; and
 - (ii) within 20 Business Days of being requested to do so, procure the issue to the Principal of replacement unconditional undertakings that satisfy the requirements of clause 2.5(b).
- (d) Subject to its rights to have recourse to the unconditional undertakings, and subject to clauses 2.5(h), 14.9 and 14.11, the Principal must:
- (i) within:
 - (A) 7 days after the Date of Works Completion of the C-Set Fleet, release so much of the unconditional undertaking for \$ [] provided by the Contractor under clause 2.5(b)(i)(A) as may be then held by the Principal;
 - (B) 7 days after the Date of Works Completion of the K-Set Fleet, release so much of the unconditional undertaking for \$ [] provided by the Contractor under clause 2.5(b)(i)(B) as may be then held by the Principal; and
 - (C) 7 days after the Date of Works Completion of the V-Set Fleet, release so much of the unconditional undertaking for \$ [] provided by the Contractor under clause 2.5(b)(i)(C) as may be then held by the Principal;

- (ii) within 28 days after the Date of Works Completion of:
 - (A) the the C-Set Fleet, release so much of the unconditional undertakings provided by the Contractor under clause 2.5(b)(i)(D) as may be then held by the Principal, so that, of those unconditional undertakings, it continues to hold \$ [] ;
 - (B) the the K-Set Fleet, release so much of the unconditional undertakings provided by the Contractor under clause 2.5(b)(i)(E) as may be then held by the Principal, so that, of those unconditional undertakings, it continues to hold \$ [] ; and
 - (C) the the V-Set Fleet, release so much of the unconditional undertakings provided by the Contractor under clause 2.5(b)(i)(F) as may be then held by the Principal, so that, of those unconditional undertakings, it continues to hold \$ [] ;
 - (iii) within 28 days after the expiration of all the Warranty Periods (excluding any extensions under clause 8.6), release so much of the unconditional undertakings provided by the Contractor under clause 2.5(b) as may be then held by the Principal, to such amount as the Principal's Representative determines to be reasonable, having regard to the work to which the remaining Warranty Periods (including any extensions under clause 8.6) apply; and
 - (iv) within 28 days after the Date of Final Completion, release the balance of the unconditional undertakings provided by the Contractor under clause 2.5(b) as may be then held by the Principal.
- (e) The Principal:
- (i) may have recourse to any of the unconditional undertakings provided under this clause 2.5 at any time;
 - (ii) is not obliged to pay the Contractor interest on:
 - (A) any unconditional undertaking; or
 - (B) the proceeds of any unconditional undertaking if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in clause 2.5(e)(ii)(B) on trust for the Contractor.

- (f) The Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any unconditional undertaking provided under this clause 2.5 from paying the Principal pursuant to the unconditional undertaking;
 - (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.5 or receiving payment under any such unconditional undertaking; or
 - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.5.
- (g) The Contractor must on or before the date of this Deed give the Principal a guarantee duly executed by the person referred to in Schedule 1 in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped.
- (h) Despite any other provision of this Deed to the contrary, where this Deed may otherwise require the Principal to release an unconditional undertaking, or this Deed is terminated by the Principal either pursuant to clauses 14 or 2.11(c) or by reason of the Contractor repudiating this Deed, (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Deed to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this Deed or the Works and Services whether for damages (including liquidated damages) or otherwise.

2.6 Collusive Arrangements

- (a) The Contractor:
 - (i) warrants that, prior to the date of this Deed, the Contractor had no knowledge of the whole or any part of the Tender price of any other Tenderer and had not directly or indirectly communicated the Contractor's Tender price, or any part of such Tender price, to any other Tenderer;
 - (ii) warrants that, except as disclosed in the Tender and as agreed with the Principal in writing, the Contractor:
 - (A) has not entered into any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:
 - (1) the Contractor will pay money to or confer any benefit upon any other Tenderer; or

- (2) the Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard membership fee),
as a result of entering into this Deed or providing a Tender for the Works and Services;
 - (B) has not made any allowance in the Original Contract Price on account of a contract, arrangement or understanding of a kind referred to in clause 2.6(a)(ii)(A); and
 - (C) has not and will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 2.6(a)(ii)(A); and
- (iii) acknowledges that it is aware that the Principal entered this Deed in reliance upon the warranties in clauses 2.6(a)(i) and 2.6(a)(ii).
- (b) The Principal and the Contractor agree that if any matter warranted in clauses 2.6(a)(i) or 2.6(a)(ii) is found not to be true or correct, in addition to any other rights that the Principal may have, the Contractor:
- (i) will be in fundamental breach of this Deed (such breach going to the root of this Deed); and
 - (ii) without limiting the Principal's rights under clause 14.3, must pay to the Principal as liquidated damages the sum equivalent to that allowed or paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 2.6(a)(ii)(A) or 2.6(a)(ii)(C).

2.7 Third Party Agreements

- (a) The Contractor:
- (i) acknowledges that the Principal has entered or will enter into the Third Party Agreements;
 - (ii) must:
 - (A) unless otherwise expressly specified in Schedule 10, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that the Principal is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
 - (B) comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in Schedule 10 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2.7(a)(ii)(A);

- (iii) must assist the Principal in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in Schedule 10;
- (iv) must comply with any reasonable directions of the Principal's Representative (who will have regard to any reasonable submissions made by the Contractor to the Principal's Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
- (v) must, where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;
- (vi) must, in performing the Works and Services:
 - (A) ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and
 - (B) otherwise act consistently with the terms of the Third Party Agreement;
- (vii) agrees that whenever, pursuant to the terms of a Third Party Agreement, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in Schedule 10 and the other terms of this Deed, the Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the Principal on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by the Principal under a Third Party Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this Deed; and
- (viii) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that the Principal similarly makes no representation to the Contractor

in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Deed.

- (b) The Contractor:
- (i) must indemnify the Principal from and against:
 - (A) any claim by a Third Party against the Principal; or
 - (B) any liability of the Principal, to a Third Party,arising out of or in any way in connection with a Third Party Agreement to the extent that the claim or liability arises out of or in any way in connection with the Works and Services, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or liability; and
 - (ii) agrees that it:
 - (A) bears the full risk of:
 - (1) complying with the obligations under this clause 2.7; and
 - (2) any acts or omissions of Third Parties; and
 - (B) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the risks referred to in clause 2.7(b)(ii)(A).

2.8 Co-operation with Other Contractors

The Contractor:

- (a) acknowledges that there may be a need for Other Contractors to have access to the Installation Facility and to the Sets at the same time as the Contractor is performing the Works and Services;
- (b) acknowledges that the Principal will procure that each Other Contractor that requires access will execute a deed in the form set out in Schedule 11;
- (c) must sign and deliver to the Principal a copy of the deed in Schedule 11 and must comply with its obligations under that deed: and
- (d) without limiting clause 2.8(c), must at all times:
 - (i) permit Other Contractors to execute the Other Work at the times agreed with the Other Contractor, or failing agreement at the times determined by the Principal's Representative, and for this purpose

ensure they have safe, clean and clear access required by them for the purpose of carrying out their work; and

- (ii) fully co-operate with Other Contractors, and do everything reasonably necessary to facilitate the execution of work by Other Contractors, including providing Other Contractors with such assistance as may be directed by the Principal's Representative.

2.9 Disputes with Other Contractors

- (a) Where the Contractor has complied with all its obligations in clause 2.8, the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Other Contractor.
- (b) Upon receipt of the Contractor's notice under clause 2.9(a), the Principal's Representative must:
 - (i) within 5 Business Days convene a meeting between the Contractor, the relevant Other Contractor and any other relevant person (as reasonably determined by Principal's Representative); and
 - (ii) work in good faith with the Contractor and the Other Contractor to resolve the issues or dispute.

2.10 No Claims Arising out of Other Contractor Work

The Contractor:

- (a) acknowledges and agrees that:
 - (i) no act or omission by an Other Contractor undertaken in accordance with the deed in Schedule 11 will, whether or not it causes any delay, disruption or interference to the Works and Services, constitute an Act of Prevention; and
 - (ii) except where the Principal's Representative directs a Variation in circumstances where the Contractor has fully complied with clause 2.8, the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - (A) the Other Contractors carrying out their work; or
 - (B) any act or omission of an Other Contractor; and
- (b) warrants that the Original Contract Price and the Contractor Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clause 2.8 and this clause 2.10.

2.11 Incident Management

- (a) The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Works and Services and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the Works Brief.
- (b) Should an Incident occur which:
 - (i) is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the Works Brief; and
 - (ii) relates to rail safety, the Contractor must notify the Principal and any relevant Rail Transport Agency rail management centre or the nearest network control officer.
- (c) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Deed, immediately terminate this Deed by written notice to the Contractor.
- (d) Without prejudice to the Principal's other rights under this Deed, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Principal.
- (e) Without prejudice to the Principal's other rights under this Deed, the Principal's Representative may issue a direction under clause 10.14(a) requiring the Contractor to suspend the carrying out of the whole or any part of the Works and Services in the event of any safety incident occurs which leads to, or had the potential to lead to, a fatality or injury to any person (including any incident which must be reported to New South Wales WorkCover Authority) or damage to the property.

The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim for any cost, expense, loss, delay, disruption or penalty arising out of or in connection with:

- (i) any suspension due to a direction to suspend issued, or for a failure to issue a notice to suspend, in the circumstances set out in this clause 2.11(e); or
 - (ii) complying with a direction issued under clause 2.11(f).
- (f) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.11(e), the Contractor may not recommence the Works and Services in respect of the part of the Works and Services to which the notice relates until the Principal's Representative issues a direction to the Contractor permitting the Contractor to recommence the Works and Services affected by the notice to suspend.

If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.11(e), the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.14(a) permitting the Contractor to recommence the Works and Services affected by the notice to suspend. In these circumstances the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under this clause 2.11(f) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Works and Services affected by the notice to suspend.

- (g) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 2.11(e) due to the Contractor's, its agents' or its Subcontractors' acts or omissions in performing the Works and Services as a debt due from the Contractor to the Principal.

2.12 Working Days and Hours of Work

The Contractor must observe:

- (a) all relevant Law; and
- (b) any requirements of the Principal as specified in Schedule 1 or otherwise notified by the Principal's Representative from time to time,

which regulate working days and hours of work.

3. Installation Facility, Principal Arranged Matters and Latent Conditions

3.1 Installation Facility

- (a) The Contractor acknowledges and agrees that:
- (i) it is responsible for ensuring it has access to the Installation Facility for the purposes of performing the Works and Services in accordance with this Deed;
 - (ii) it has informed itself completely as to:
 - (A) the suitability of the Installation Facility for performing the Works and Services;
 - (B) the nature of the work and of the plant, equipment and materials necessary for the performance of the Works and Services;
 - (C) the availability of the Installation Facility; and
 - (D) the means of access to and from, the Installation Facility,and any failure by the Contractor to have done any of these things will not relieve the Contractor of its obligation to perform and complete the Works and Services in accordance with this Deed.
- (b) If the Contractor is not the owner of the Installation Facility, the Contractor must, within 15 Business Days of the date of this Deed, and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4(a), procure the owner of the Installation Facility to execute a deed poll in the form set out in Schedule 12, and submit that executed deed poll to the Principal.
- (c) Subject to clause 3.2, the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to carry out the Works and Services.
- (d) The Contractor must only replace the Installation Facility referred to in Schedule 1:
- (i) if the Installation Facility becomes unsuitable to continue to operate for the purposes of the Works and Services;
 - (ii) with another installation facility which is of at least equivalent suitability and availability;
 - (iii) with the Principal's Representative's prior written consent, which will not be unreasonably withheld; and
 - (iv) where the Contractor is not the owner of the replacement Installation Facility, the Contractor has procured from the owner of the

replacement Installation Facility an executed deed poll in the form set out in Schedule 12, and submitted that executed deed poll to the Principal.

3.2 Principal Arranged Matters

- (a) Subject to the terms of this Deed, the Principal must, at its own cost, supply or make available (as the context requires) the Principal Arranged Matters in accordance with Schedule 3.
- (b) The Contractor acknowledges and agrees that the Principal will have no obligation to supply or make available any of the Principal Arranged Matters other than in accordance with, and no earlier than any time, set out in Schedule 3.

3.3 Latent Conditions

If during the execution of the Works and Services, the Contractor becomes aware of a Latent Condition the Contractor must:

- (a) promptly; and
- (b) where possible before the physical conditions are disturbed, give written notice thereof to the Principal's Representative.

The Contractor must provide in that notice to the Principal's Representative a statement specifying:

- (c) the conditions encountered and in what respects the Contractor considers they constitute a Latent Condition;
- (d) the additional work and additional resources which the Contractor estimates to be necessary to deal with the conditions;
- (e) the time the Contractor anticipates will be required to deal with the conditions and the expected delay in achieving Works Completion of any Fleet (if any) as a result of dealing with the conditions;
- (f) the Contractor's estimate of the cost of the measures necessary to deal with the conditions; and
- (g) other details reasonably required by the Principal's Representative.

The Principal's Representative must within 5 Business Days of receiving a notice under this clause issue a notice to the Contractor in which it does one of the following:

- (h) state that it agrees that the conditions encountered constitute a Latent Condition and direct the Contractor to proceed to undertake the additional work and provide the additional resources referred to in the statement

provided by the Contractor or to take such other action as may be directed by the Principal's Representative; or

- (i) state that it does not believe that the conditions encountered constitute a Latent Condition.

3.4 Contractor Entitlement upon Latent Condition

- (a) Subject to clause 3.4(b), if the Principal's Representative gives a notice under clause 3.3(h) then to the extent that compliance with this notice:
 - (i) has a direct effect on the Contractor carrying out the Works and Services; and
 - (ii) directly results in an increase in the Contractor's costs of carrying out the Works and Services,

which a competent and experienced contractor could not have avoided or mitigated, and could not reasonably have anticipated at the date of this Deed, the Contract Sum will be increased by:

- (iii) in the case of a Latent Condition referred to in paragraphs (a) or (c) of the definition of "Latent Condition", an amount calculated by deducting from the additional costs reasonably incurred by the Contractor in complying with the Principal's Representative's notice under clause 3.3(h) as determined by the Principal's Representative the Latent Condition Threshold Amount; or
- (iv) if clause 3.4(a)(iii) does not apply, the additional costs reasonably incurred by the Contractor in complying with the Principal's Representative's notice under clause 3.3(h) as determined by the Principal's Representative.

The parties acknowledge that in the case of subparagraph (iii), if the Latent Condition Threshold Amount is greater than the the additional costs reasonably incurred by the Contractor in complying with the Principal's Representative's notice under clause 3.3(h) as determined by the Principal's Representative, the Contractor will not be entitled to any payment in respect of the Latent Condition.

- (b) In making a valuation pursuant to clause 3.4 or determining an extension of time under clause 10:
 - (i) regard will not be had to any Works and Services, additional costs or delay suffered or incurred more than 10 days before the date on which the Contractor gives the written notice required by the first paragraph of clause 3.3;

- (ii) where the Contractor is directed to undertake the additional work and provide the additional resources referred to by the Contractor in the statement accompanying its notice under clause 3.3, the Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim for any amount greater than the estimate provided by the Contractor as part of that statement valuation; and
- (iii) in the case of a Latent Condition referred to in paragraph (c) of the definition of "Latent Condition", regard will not be had to the costs of any inspection, monitoring or reporting activities, the cost of preparing any management plan (or any similar plan), and the costs of any environmental or occupational hygienist, arising out of or in any way in connection with the Latent Condition.

3.5 Information Documents and Materials

- (a) Prior to the date of this Deed, the Contractor executed the Probity and Process Deed Poll and provided this to the Principal after which the Principal provided the Contractor with, or gave the Contractor access to, the Information Documents and Materials, including those listed in Schedule 15.

Whether or not any Information Documents and Materials or any part thereof form an Exhibit to this Deed, the Contractor acknowledges that:

- (i) the Information Documents and Materials or part thereof do not form part of this Deed and that clause 3.5(c) applies to the Information Documents and Materials or part thereof; and
 - (ii) where Information Documents and Materials or any part thereof form an Exhibit to this Deed, they do so only for the purposes of identification of that document or part thereof.
- (b) Without limiting clause 3.5(c) or the warranties or acknowledgements in the Probity and Process Deed Poll or the Tender Form:
 - (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Deed; and
 - (ii) subject to clause 3.5(e), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:

- (A) the provision of, or the purported reliance upon, or use of the Information Documents and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed; or
 - (B) a failure by the Principal to provide any other information, data or documents to the Contractor.
- (c) The Contractor:
- (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - (B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document, for the purposes of entering into this Deed except to the extent that any such information, statement or document forms part of this Deed;
 - (ii) warrants that it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that the Principal has entered into this Deed relying upon the warranties, acknowledgements and agreements in clauses 3.5(c)(i) and 3.5(c)(ii) and in the Probity and Process Deed Poll and the Tender Form.
- (d) Subject to clause 3.5(e), the Contractor releases and indemnifies the Principal from and against:
- (i) any claim against it by, or liability of it to, any person; or
 - (ii) (without being limited by clause 3.5(d)(i)) any costs, expenses, losses or damages suffered or incurred by it, arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of the Information Documents and Materials, as referred to in clauses 3.5(b) and 3.5(c)(i), to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the

- Principal is required to provide to the Contractor by the terms of this Deed);
- (iv) any breach by the Contractor of the warranties in this clause 3.5; or
 - (v) the Information Documents and Materials being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), or any equivalent provision of State or Territory legislation.
- (e) The acknowledgements, warranties, releases and indemnities referred to in clauses 3.5(a) to 3.5(d) do not affect the Contractor's rights under clauses 3.3 and 3.4.

3.6 Principal's Right to Access and Inspect

- (a) Subject to clause 3.8, the Contractor must, at all times:
 - (i) give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal, (including Alstom), access to:
 - (A) the Installation Facility; and
 - (B) any other workshops, places or areas where the Works and Services are being carried out; and
 - (ii) provide the Principal, the Principal's Representative and any person authorised by either the Principal's Representative or the Principal (including Alstom), with every reasonable facility necessary for the Inspection of the Works and Services, including the Contractor's compliance with the Authority Approvals and Third Party Agreements.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Principal owes no duty or other responsibility to the Contractor to:
 - (A) inspect the Works and Services; or
 - (B) review any item supplied or installed for Defects (including errors and omissions) or compliance with the requirements of this Deed; and
 - (ii) no Inspection of the Works and Services or review of any item supplied or installed by the Principal or the Principal's Representative will:

- (A) relieve the Contractor from or alter its liabilities or obligations under this Deed (including its warranties under clause 7.1) or otherwise according to Law; or
 - (B) limit or otherwise affect the Principal's rights against the Contractor whether under this Deed or otherwise according to Law.
- (c) Any person to whom the Contractor gives access under subparagraph (a)(ii) must comply with the reasonable requirements of the Contractor in relation to the safety of persons and property and protection of the Environment.

3.7 Waste Disposal

- (a) The Contractor must dispose of any Hazardous Materials or other waste pursuant to its obligations under this Deed in accordance with all relevant Law and Authority Approvals.
- (b) The Contractor must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Hazardous Material or other waste holds all relevant Authority Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Authority Approvals to the Principal's Representative upon request.
- (c) The Contractor must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Hazardous Material or other wastes and that they comply with all applicable Laws.
- (d) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an agent of the Principal have contributed to the claim, damage, expense, loss, liability, fine or penalty.

3.8 Principal not in Control

The Contractor and Principal acknowledge that nothing in this Deed including the right to inspect pursuant to clause 3.6 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

- (a) the Principal has any management or control over the Works and Services or the Installation Facility; or
- (b) the Principal has any responsibility for any act or omission by the Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Authority Approvals, Third Party Agreements or this Deed.

4. Compliance

4.1 Quality of Work

The Contractor must use the materials and standard of workmanship required by this Deed, and otherwise comply with this Deed in the performance of the Works and Services. In the absence of any other requirement, the Contractor must use suitable new materials and ensure that all workmanship and materials are fit for their intended purpose.

4.2 Works Brief

- (a) Subject to clause 4.2(b), the Contractor must comply with the requirements of the Works Brief.
- (b) The Contractor acknowledges and agrees that:
 - (i) following the Commencement Date, the CCB Current Gate Design will be updated by Alstom, and an updated version of the installation design of the Principal Supplied Items Category A (being the **Initial CCB Gate 5 Design**), will be issued to the Contractor by way of a direction of the Principal's Representative;
 - (ii) following the issue of the Initial CCB Gate 5 Design, the Principal may issue by way of a direction of the Principal's Representative, further updated versions of the Initial CCB Gate 5 Design, or drawings which vary the Initial CCB Gate 5 Design; and
 - (iii) even though it has not been provided with the Final CCB Gate 5 Design, it:
 - (A) did during the period prior to the Commencement Date undertake a thorough due diligence of the CCB Current Gate Design; and
 - (B) has included in the Original Contract Price allowances for the risk of variances between the CCB Current Gate Design and the Final CCB Gate 5 Design, excluding any Material Variance.

- (c) If the Contractor considers that there is a Material Variance, then the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Contractor receiving the Final CCB Gate 5 Design for the relevant Fleet setting out:
- (i) detailed particulars of the reasons why the Contractor considers that there is a Material Variance; and
 - (ii) if the Principal's Representative were to direct a Variation in respect of the Material Variance in accordance with clause 4.2(d)(ii)(B):
 - (A) the adjustment to the Contract Sum (and change to the Payment Schedule in Schedule 2) that the Contractor would claim in respect of the Variation (other than those costs referred to in clause 4.2(c)(ii)(B)) with details of how the amount has been calculated, with such amount :
 - (1) not to include any increase in the Contractor's costs of labour in connection with the Variation; and
 - (2) otherwise to be calculated by deducting from the amount determined in accordance with clause 6.4 the relevant Material Variance Threshold Amount.
 - (B) the expected effect that the Variation would have on the Contractor Program, and the Contractor achieving Works Completion of a Fleet by the relevant Date for Works Completion with details of how the effect has been assessed and if the Variation would entitle the Contractor to an extension of time, the amount of its entitlement under clause 10.13 arising from that extension of time; and
 - (C) where required by the Principal's Representative, the additional costs that the Contractor anticipates would be incurred by it if a direction was given under clause 10.15 to compress the performance of the Works and Services to overcome part or all of any of the delay in achieving Works Completion of a Fleet by the relevant Date for Works Completion expected to be caused by the Variation.
- (d) If a notice is given by the Contractor which complies with clause 4.2(c), then within 10 Business Days of the notice being given, the Principal's Representative will determine whether there is a Material Variance and:
- (i) notify the Contractor that it rejects the Contractor's notice; or
 - (ii) notify the Contractor that it accepts the Contractor's notice and either:

- (A) issue a further version of the Final CCB Gate 5 Design for the relevant Fleet in which event the provisions of clause 4.2(c) will re-apply; or
- (B) confirm that the Final CCB Gate 5 Design for the relevant Fleet applies and direct a Variation under clause 6.2(a) in respect of the Material Variance, after which relevant adjustments will be made under clause 6.4, except that:
 - (1) any adjustment to the Contract Sum must not include any increase in the Contractor's costs of labour in connection with the Variation; and
 - (2) the amount of the adjustment to the Contract Sum will be calculated by deducting from the amount determined in accordance with clause 6.4 the relevant Material Variance Threshold Amount.

In respect of a Variation referred to in clause 4.2(d)(ii)(B), the parties acknowledge that if the relevant Material Variance Threshold Amount is greater than the amount of the adjustment to the Contract Sum calculated in accordance with clause 4.2(d)(ii)(B), then the Contractor will not be entitled to any payment in respect of that Variation.

- (e) Other than as set out in clause 4.2(d)(ii)(B), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any variance between the CCB Current Gate Design and the Final CCB Gate 5 Design, including any Material Variance.
- (f) Notwithstanding any notice, determination, or direction given under clause 4.2(c) or 4.2(d), and any Material Variance, the Contractor must, in the performance of the Works and Services, comply with the requirements of the Final CCB Gate 5 Design.

4.3 Environmental Management

The Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of the Works Brief for so long as any Works and Services are carried out;
- (b) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and Works Brief in relation to environmental management; and

- (c) use, and be able to demonstrate the use of, ecologically sustainable development principles in the performance of the Works and Services.

4.4 WHS Management

The Contractor must:

- (a) hold and maintain an WHS management system for so long as any Works and Services are carried out that complies with the Works Brief;
- (b) as part of the Contract Management Plan, develop, document and implement a contract specific Project Work Health and Safety Management Plan in accordance with the Works Brief;
- (c) carry out the Works and Services in accordance with the Project Work Health and Safety Management Plan;
- (d) create a safe working environment for ensuring the safety of all persons engaged in the performance of the Works and Services; and
- (e) supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and Works Brief in relation to management of WHS issues.

4.5 No Relief from Obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this Deed (including under clause 8 or otherwise according to Law) nor will the rights of the Principal whether under this Deed or otherwise according to Law be limited or otherwise affected, by:

- (a) the implementation of, and compliance with, any management system or plan by the Contractor;
- (b) compliance with the Contract Management Plan by the Contractor;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, including where such a failure is the result of a negligent act or omission; or
- (e) any Inspections arranged by the Principal's Representative under the Works Brief or any related discussions between the Contractor's Representative and the Principal's Representative.

4.6 Engineering Authorisation

The Contractor is an AEO and its ASA Authorisation allows it to carry out the Works and Services.

The Principal authorises:

- (a) the Contractor; and
- (b) the Subcontractors engaged to undertake the Works and Services,
to undertake the Works and Services.

4.7 ASA Compliance

- (a) The Contractor must (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible) comply with the conditions of the applicable ASA Authorisation.
- (b) The Contractor:
 - (i) must hold and maintain its ASA Authorisation for so long as the Works and Services are carried out;
 - (ii) must (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible) comply with the conditions of the applicable ASA Authorisation.
- (c) The Contractor must (and must ensure that its Subcontractors and all personnel for which the Contractor is responsible):
 - (i) implement and comply with the requirements of any ASA Requirements applicable to the Asset Services (except to the extent a concession to an ASA Requirement is obtained by the Principal in accordance with clause 4.7(e));
 - (ii) cooperate fully with the ASA in the performance of the ASA's functions;
 - (iii) provide access to premises and resources as reasonably required by the ASA, including so that it can effectively carry out its review, surveillance and audit functions;
 - (iv) comply with the directions, instructions and requirements issued by the ASA;
 - (v) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;
 - (vi) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and

- (vii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (d) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the requirement to obtain ASA Authorisation or the obligation to comply with the requirements of the ASA or the ASA Authorisation.
- (e) The Principal is responsible for obtaining any concessions to ASA Requirements to the extent such concessions are required due to the requirement for the Contractor to carry out the Works and Services in accordance with the Alstom Installation Design.

4.8 Contractor's Tender Management Plans

- (a) This clause applies when Tender Management Plans are included in Schedule 9.

The Contractor must ensure that all management plans (including the Contract Management Plan and specific management plans) required by and prepared in accordance with the Works Brief are based on the Tender Management Plans.
- (b) The requirements set out in the Tender Management Plans are minimum requirements and the Contractor must not reduce or otherwise decrease these requirements in any management plans required under this Deed. In the event of any inconsistency, ambiguity or discrepancy between the requirements of this Deed, the higher, more onerous or rigorous requirement will apply.
- (c) Despite the content of the Tender Management Plans, the Contractor acknowledges that:
 - (i) it remains responsible for ensuring that the management plans prepared in accordance with the Works Brief will satisfy the requirements of this Deed; and
 - (ii) prior to the date of this Deed the Contractor has prepared the Tender Management Plans. The Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the Tender Management Plans in performing the Works and Services and that such use and reliance will not affect any of its obligations under this Deed.

4.9 TfNSW Standard Requirements

The Contractor must comply with the requirements of the TfNSW Standard Requirements.

5. Contract Documentation

5.1 Ownership of Contract Documentation and Methods of Working

- (a) Subject to clause 5.1(c)(v):
 - (i) title to and Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor will vest upon its creation for the purposes of this Deed in the Principal;
 - (ii) to the fullest extent permitted by Law, the Contractor hereby assigns to the Principal all of its rights, titles, and interests in, and to, all Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor, whenever created; and
 - (iii) upon request by the Principal, the Contractor must do all things necessary to vest that title or that Intellectual Property in the Principal.
- (b) Without limiting clause 5.1(d), the Principal grants to the Contractor a licence to use and reproduce the Contract Documentation for the Works and Services, other than the Alstom Installation Design.
- (c) The Contractor:
 - (i) warrants and must ensure that the Contract Documentation and any methods of working do not and will not infringe any Intellectual Property;
 - (ii) must indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property in connection with the Works and Services or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:
 - (A) the Principal having provided the Contractor with material which this Deed permits the Contractor to use for the purpose of the Works and Services or the Contract Documentation; and
 - (B) the provision of that material to the Contractor being an infringement of a third party's Intellectual Property rights;

- (iii) must, where requested by the Principal's Representative, obtain such an acknowledgement from other Subcontractors;
 - (iv) must obtain an assignment to the Principal from any third party who owns any Intellectual Property right in the Contract Documentation;
 - (v) must, if it is unable to obtain the assignment referred to in clause 5.1(c)(iv), grant or have granted to the Principal an irrevocable licence (which includes an unlimited right to sub-licence):
 - (A) to use the Contract Documentation for the completion of works to the Sets;
 - (B) which arises immediately upon the creation of the Contract Documentation;
 - (C) which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Sets (including to integrate other systems with the equipment and systems installed under this Deed); and
 - (D) which will survive the termination of this Deed on any basis; and
 - (vi) must ensure that the Intellectual Property created for the purposes of this Deed is not used, adapted or reproduced other than for the purposes of this Deed without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (d) The Contractor may use the Alstom Installation Design for the purpose of installing the Equipment referred to in Appendix C and Appendix D to the Works Brief as part of the Works and Services, but shall have no entitlement to, and must not:
- (i) adapt or reproduce the Alstom Installation Design; or
 - (ii) use the Alstom Installation Design for any purpose other than the purpose referred to in this clause 5.1(d).

5.2 Delivery Up of Contract Documentation

If this Deed is frustrated or terminated the Contractor must:

- (a) immediately deliver the original and all but one set and copies of all Contract Documentation (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to the Principal; and

- (b) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation.

5.3 Moral Rights

- (a) The Contractor:
 - (i) warrants that the Principal's use of the Contract Documentation, or any other work provided by the Contractor under this Deed, will not infringe any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction; and
 - (ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the Works and Services or the Contract Documentation.
- (b) For the purposes of clause 5.3(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the Sets to which the Contract Documentation or any other work provided by the Contractor under this Deed relates:
 - (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.

6. Variations

6.1 Proposed Variations

At any time prior to the Date of Works Completion of the last Fleet to reach Works Completion (but without limiting clauses 8 and 13.3) the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (a) the adjustment to the Contract Sum (and change to the Payment Schedule in Schedule 2) that the Contractor would claim in respect of the proposed Variation (other than those costs referred to in clause 6.1(b)) with details of how the amount has been calculated;
- (b) the expected effect that the proposed Variation would have on the Contractor Program, and the Contractor achieving Works Completion of a Fleet by the relevant Date for Works Completion with details of how the effect has been assessed and if the proposed Variation would entitle the Contractor to an extension of time, the amount of its entitlement under clause 10.13 arising from that extension of time;
- (c) a statement that the proposed Variation:
 - (i) does not conflict with or change the requirements of the Works Brief or involve changes other than those described in the notice; or
 - (ii) changes the requirements of the Works Brief or involves changes other than those described in the notice, in which case the Contractor must explain all the changes and effects, including providing information on the:
 - (A) impact on the Works and Services, (including specific details of the work or services that will be affected and how and to what extent it will be affected);
 - (B) effect on relevant reports, drawings and studies;
 - (C) assumptions;
 - (D) operation and maintenance of the Sets;
 - (E) Authority Approvals and Third Party Agreements affected; and
 - (F) environmental and community impacts;
- (d) sufficient details to allow the Principal to review the reasons, and, if desired, reconsider the need, for the Variation;
- (e) where required by the Principal's Representative, the additional costs that the Contractor anticipates would be incurred by it if a direction was given under clause 10.15 to compress the performance of the Works and Services to overcome part or all of any of the delay in achieving Works Completion of a Fleet by the relevant Date for Works Completion expected

to be caused by the Variation outlined in the "Variation Proposal Request";
and

- (f) any other information concerning the proposed Variation that the Principal's Representative requires.

The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

6.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to the Date of Works Completion of the last Fleet to reach Works Completion (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Variation by issuing a Variation Order, in which the Principal's Representative will state one of the following:
 - (i) the proposed adjustments to the Contract Sum and the Payment Schedule set out in the Contractor's notice under clause 6.1(a) are agreed and the Contract Sum and Payment Schedule will be adjusted accordingly; or
 - (ii) any adjustment to the Contract Sum will be determined under clause 6.4(b);
- (b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Deed.
- (c) The Contractor must comply with a Variation Order irrespective of:
 - (i) the nature, extent or value of the work or services the subject of the Variation;
 - (ii) the location or timing (including the impact on any Date for Works Completion) of the work or services involved in the Variation;
 - (iii) whether or not it agrees with any or all of the terms of the Variation Order; or
 - (iv) any Dispute related to the Variation.
- (d) The Contractor's entitlement (if any) to an extension of time and delay costs arising out of a Variation directed under clause 6.2(a) will be dealt with under clause 10 and not this clause 6. The valuation of a Variation under clause 6.4 will exclude any amount for costs incurred by the Contractor as a result of any delay caused by the Variation.

6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 21, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Deed on the basis that the Contract Sum, the Works Brief and the provisions of this Deed will be adjusted as set out in Schedule 21 for the relevant Option.

For the avoidance of doubt:

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

any Option.

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

The exercise of an Option by the Principal's Representative under this clause 6.3 will not:

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

whether under this Deed or otherwise according to any Law.

6.4 Valuation

Subject to clauses 4.2(c), 6.8, 8.4, 15 and 17, the Contract Sum and the Payment Schedule will be adjusted for all Variations that have been directed by the Principal's Representative:

- (a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order; or
- (b) to the extent that clause 6.2(a)(ii) applies:
 - (i) subject to sub-paragraph (iii) and the remainder of this clause 6.4(b), an amount in respect of the Variation to be determined by the Principal's Representative on the basis of (where applicable or where it is reasonable to use them for valuing the Variation):

- (A) the prices and rates set out in Schedule 16; and
 - (B) any other applicable data in this Deed;
- (ii) subject to sub-paragraph (iii) and the remainder of this clause 6.4(b), to the extent sub-paragraph (i) does not apply, an amount determined by the Principal's Representative on the basis of reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by the following percentage of that amount:
- (A) where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in Schedule 1, which will be in total satisfaction of all the Contractor's Overhead Costs and profit; or
 - (B) where the adjustment to the Contract Sum is to be a decrease, the percentage set out in Schedule 1 for Overhead Costs and profit; and
- (iii) subject to the remainder of this clause 6.4(b), where the Variation is in respect of the provision of spare parts or special tools and equipment, an amount determined in accordance with Schedule 1, provided however that, where the Principal's Representative has issued a Variation Proposal Request, the Contractor's entitlement under this clause 6.4(b) will not be greater than any amount set out in the Contractor's notice under clause 6.1(a).

6.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any work or services from the Works and Services:

- (a) the Principal may thereafter either perform the work or services itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work or services;
- (b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any work or services being omitted or deleted from the Works and Services whether or not the Principal thereafter performs this work or services itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work or services;

- (c) the adjustment to the Contract Sum arising from the work or services that has been omitted or deleted will be valued in accordance with clause 6.4; and
- (d) the adjustment (if any) to the Date for Works Completion of a Fleet will be assessed in accordance with clause 10.11.

6.6 Variations Requested by Contractor

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

- (a) a full description of the proposed Variation;
- (b) the additional or reduced cost or time involved in the Variation and any proposal for sharing any cost savings or increases with the Principal, including the amount;
- (c) any benefits that would flow to the Principal;
- (d) the expected effect upon the future cost of operating and maintaining the Sets;
- (e) the expected effect on the various Contractor's programs, including the Contractor Program and the Contractor achieving Works Completion of a Fleet by the relevant Date of Works Completion; and
- (f) a statement as required by clause 6.1(c).

6.7 Determination by Principal's Representative

If the Contractor makes a request in accordance with clause 6.6, the Principal's Representative may, in its absolute discretion, give a written notice to the Contractor:

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

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

6.8 Variation Approved by the Principal's Representative

If the Principal's Representative issues a written notice under clause 6.7 approving the Contractor's request under clause 6.6:

- (a) unless otherwise agreed in the notice given under clause 6.7, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the Variation;

- (b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Sum will be reduced by the amount offered by the Contractor in its request, or such other amount as may have been agreed between the Principal's Representative and the Contractor prior to any approval under clause 6.7(b); and
- (c) the Contractor will be responsible for ensuring that all aspects of the Works and Services that are in any way affected by the Variation comply with the requirements of this Deed.

Unless and until the Principal's Representative issues a written notice under clause 6.7 approving the Contractor's request under clause 6.6, no Variation will arise out of that request, and the Contractor must at all times:

- (d) continue to carry out the Works and Services; and
- (e) otherwise comply with its obligations under this Deed.

6.9 Contractor's Entitlements

This clause 6 is an exhaustive code of the Contractor's rights in any way in connection with any Variation. The Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this Deed.

6.10 No Variation or Claim

- (a) Where the Contractor considers that any direction:
 - (i) constitutes or involves a Variation; or
 - (ii) entitles it to make a Claim (other than an Excluded Claim),it must, prior to complying with the direction, issue in respect of a:
 - (iii) Variation, the notice referred to in clause 17.1; or
 - (iv) Claim, the notice referred to in clause 17.2.
- (b) If the Contractor issues a notice under clauses 6.10(a)(iii) or 6.10(a)(iv), the Principal may:
 - (i) confirm that the direction constitutes or involves a Variation, or entitles the Contractor to make a Claim (other than an Excluded Claim), by the giving of a notice under this clause 6.10(b)(i), in which case the Contractor must comply with the direction;
 - (ii) deny that the direction constitutes or involves a Variation, or entitles the Contractor to make a Claim (including an Excluded Claim), by the giving of a notice under this clause 6.10(b)(ii), in which case the Contractor:

- (A) must comply with the direction irrespective of any Claim or Dispute in relation to the direction or any part of it; and
- (B) may issue a notice of dispute under clause 15.2;
- (iii) deny that the direction constitutes or involves a Variation or entitles the Contractor to make a Claim (including an Excluded Claim) by giving a notice under this clause 6.10(b)(iii), in which case the Contractor must:
 - (A) issue a notice of dispute under clause 15.2; and
 - (B) not comply with the direction unless and until:
 - (1) the Dispute is settled or determined under clause 15; and
 - (2) the Principal's Representative subsequently directs the Contractor to comply with the direction or any part of it; or
- (iv) withdraw the direction by giving a notice under this clause 6.10(b)(iv).

6.11 Authority Approvals for Variations

- (a) Subject to clause 6.11(b), the Contractor must apply for and obtain all:
 - (i) necessary amendments or modifications to any existing Authority Approval; and
 - (ii) new Authority Approvals that may be, required for the execution of a Variation.
- (b) Where the amendment or modification to any Authority Approval required for the execution of the Variation relates to any Authority Approval specified in Schedule 13, the Contractor must:
 - (i) carry out and provide to the Principal all surveys, investigations, reports, studies:
 - (A) requested by the Principal's Representative;
 - (B) to the standard directed by the Principal's Representative; and
 - (C) within the time directed by the Principal's Representative; and
 - (ii) provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Authority Approval.
- (c) The Contractor must implement the Variation once the Authority Approvals referred to in this clause 6.11 have been amended, modified, or granted to permit the Variation to be implemented.

7. Installation and Delivery Obligations

7.1 General installation obligations

- (a) The Contractor must install the Equipment required for the Works and Services in accordance with, the Works Brief.

The Contractor warrants that the Works and Services performed by the Contractor in respect of each Set will:

- (i) upon Completion, be fit for their intended purpose; and
- (ii) be capable of remaining at all relevant times fit for their intended purpose.
- (b) As a condition precedent to Completion in respect of each Set, the Contractor must submit to the Principal's Representative a Contractor's Certificate of Installation Compliance for that Set.

7.2 All Work Included

Except in respect of any Principal Supplied Items, the Contractor:

- (a) warrants it has allowed for the provision of;
- (b) must undertake and provide; and
- (c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Deed, relating to the provision of,

all work, equipment, labour and materials necessary for the Works and Services, whether or not expressly mentioned in this Deed.

7.3 Provisional Sum Work

- (a) For each item of Provisional Sum Work, the Principal's Representative:
- (i) may at any time:
- (A) direct the Contractor to provide:
- (1) a reasonable estimate of the Contractor's costs of carrying out the Provisional Sum Work, including sufficient information to support the estimate; and
- (2) details of the amount by which the Contractor proposes the Contract Sum be adjusted; and
- (B) agree (or negotiate an agreement) with the Contractor in respect of its proposed adjustment to the Contract Sum under clause 7.3(a)(i)(A) for the item of Provisional Sum Work, but nothing in this clause 7.3(a)(i)(B) obliges the Principal's

- Representative to agree on an adjustment to the Contract Sum with the Contractor prior to the Principal's Representative exercising its rights under clause 7.3(a)(ii); and
- (ii) will give the Contractor a direction either:
 - (A) requiring the Contractor to proceed with the item of Provisional Sum Work; or
 - (B) deleting the item of Provisional Sum Work.
 - (b) Where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work, the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:
 - (i) the amount allowed for the item of Provisional Sum Work in Schedule 1; and
 - (ii) either:
 - (A) an amount agreed between the Contractor and the Principal's Representative under clause 7.3(a)(i) or otherwise; or
 - (B) if they fail to agree, an amount determined by the Principal's Representative on the basis set out in clause 6.4(b) as if the item of Provisional Sum Work were a Variation, provided that the amount determined under this clause 7.3(b) will not include the percentage referred to in clause 6.4(b)(ii)(A) but will include the relevant percentage in Schedule 1 for Overhead Costs and profit of the Contractor.
 - (c) Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:
 - (i) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Schedule 1;
 - (ii) the Principal may thereafter either carry out the item of Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and
 - (iii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with the deletion of the item of Provisional Sum Work.

7.4 Co-operation with Other Contractors

Without limiting or being limited by clause 2.8, the Contractor must:

- (a) allow Other Contractors to access the Installation Facility and permit such Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully coordinate and interface the Works and Services with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Works and Services so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.

7.5 Set Return to Service Documentation

The Contractor must, as a condition precedent to Completion in respect of each Set, and as otherwise required by the Principal's Representative, submit to the Principal's Representative the Set Return to Service Documentation for the Set.

7.6 Safety

- (a) The Contractor must carry out the Works and Services:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.

If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Works and Services, the Principal's Representative may direct the Contractor to change its manner of working or to cease working.

- (b) The Contractor must:
 - (i) ensure that in carrying out the Works and Services:
 - (A) it complies with all Law (including the Rail Safety National Law and the WHS Legislation) and other requirements of this Deed for work health, safety and rehabilitation management;
 - (B) all Subcontractors comply with the requirements referred to in this clause 7.6 and their respective obligations under the Rail Safety National Law and the WHS Legislation; and
 - (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and

- rehabilitation matters arising out of, or in any way in connection with, the Works and Services;
- (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
 - (iv) provide the Principal's Representative with the written assurances obtained pursuant to subparagraph (iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
 - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.9, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.6), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
 - (vi) cooperate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of the utmost good faith to the Principal in performing the Works and Services to enable the Principal to discharge the Principal's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
 - (ix) ensure its subcontracts include provisions equivalent to the obligations of this clause 7.6.
- (c) Without limiting clause 16.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Sets, the Environment, other property or the health or safety of people.

If the action taken by the Principal is action which the Contractor was required to take under this Deed but did not take, the amount of any penalty, fine, damage, expense, cost, loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:

- (i) taking the action contemplated in this clause 7.6(c); or
- (ii) the Contractor's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.

7.7 Contractor's Plant and Equipment and Materials Removal

The Contractor must not remove from the Installation Facility or the Works and Services any:

- (a) significant materials or major items of Contractor's Plant and Equipment; or
- (b) materials or Contractor's Plant and Equipment specified in any written notice issued by the Principal's Representative,

without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

7.8 Principal Supplied Items

- (a) The Principal must:
 - (i) make available the Principal Supplied Items:
 - (A) at its own cost;
 - (B) at the respective places referred to in Schedule 18; and
 - (C) by the respective date referred to in Schedule 18; and
 - (ii) other than in respect of Principal Supplied Items Category A, use its best endeavours to procure that the Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.
- (b) The Contractor:
 - (i) agrees that, in respect of Principal Supplied Items, the:
 - (A) Contractor:
 - (1) other than in respect of Principal Supplied Items Category A, warrants that it has reviewed the Works Brief and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Deed; and
 - (2) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except under clause 10 if a Principal Supplied Item is not made available by the relevant date set out in Schedule 18 or in the case of the Principal Supplied Items Category A, the Principal Supplied Item is not fit

- for its intended purpose and causes a delay in the achievement of Completion; and
- (3) is not relieved from and remains liable for complying with, all of its obligations under this Deed, despite the Principal making available the Principal Supplied Items; and
- (B) Sale of Goods Act 1923 (NSW) does not apply to the Principal's obligations under clause 7.8(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and
- (ii) must:
- (A) at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 18 to the Installation Facility; and
- (B) as part of the Works and Services, incorporate each Principal Supplied Item into the Sets.

8. Defects and Warranty Period

8.1 Defects Liability

Subject to clause 8.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.

Without limiting the previous paragraph, the Contractor must rectify any Defects in any Set existing at Completion as soon as possible after Completion.

8.2 Defect Notification

If at any time prior to the expiration of any Warranty Period (including for the avoidance of doubt prior to Completion in respect of any Set), the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction identifying the Defect and doing one or more of the following:

- (a) requiring the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
- (b) requiring the Contractor to investigate and report on any Defect (or any part of it) with the Contractor's proposed methods and methodologies for rectification and specifying the form of the report and the time within which this must be carried out;

- (c) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out;
- (d) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or
- (e) in respect of any Defect:
 - (i) to which clause 8.3(d) applies; or
 - (ii) discovered during a Warranty Period, whether or not a direction has first been given under clause 8.2(a) or 8.2(c),advising the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a Variation to overcome the Defect, or any part of it.

8.3 Rectification of Defect

- (a) If:
 - (i) a direction is given under clauses 8.2(a), 8.2(b) or 8.2(c) (subject to clause 8.3(f)); and
 - (ii) the Contractor considers that the Defect referred to in the direction given under clauses 8.2(a), 8.2(b) or 8.2(c) is not a Defect,then the Contractor must issue the notice referred to in clause 17.2 prior to complying with the direction.
- (b) If the Contractor issues the notice referred to in clause 8.3(a), the Principal's Representative may:
 - (i) confirm that the direction entitles the Contractor to make a Claim (other than an Excluded Claim) by the giving of a notice under this clause 8.3(b)(i), which notice will also confirm that clause 8.3(c) applies;
 - (ii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(ii), which notice will also confirm that clause 8.3(c) applies, and the Contractor may issue a notice of dispute under clause 15.2;
 - (iii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 8.3(b)(iii), in which case the Contractor must:
 - (A) issue a notice of dispute under clause 15.2; and
 - (B) not comply with the direction unless and until:

- (1) the Dispute is settled or determined under clause 15;
and
 - (2) the Principal's Representative subsequently gives
notice to the Contractor that clause 8.3(c) applies; or
 - (iv) withdraw the direction by giving a notice under this clause 8.3(b)(iv).
- (c) If the Principal's Representative gives a notice under clause 8.2(a), 8.2(b) or 8.2(c) (where clause 8.3(a)(ii) is not applicable) or clause 8.3(b)(i), 8.3(b)(ii) or 8.3(b)(iii)(B)(2), the Contractor must rectify the Defect (or the part of it notified), investigate and report or carry out the Variation work (as the case may be):
- (i) within the time specified in the Principal's Representative's direction which will generally be limited to the periods during which the operational needs from time to time of any Rail Transport Agency will allow for access to the Sets;
 - (ii) if after Completion of the Works and Services in respect of the Set:
 - (A) at other times otherwise agreed with the Principal's Representative;
 - (B) in accordance with the requirements of any Rail Transport Agency and any other relevant Authority;
 - (C) so as to minimise the impact on the use of the Set; and
 - (D) in a manner which causes as little inconvenience as possible to users of the Set or the public; and
 - (E) at a location notified by the Principal's Representative; and
 - (iii) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is in fact a Defect.
- (d) If the Contractor does not comply with clause 8.3(c), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Deed or otherwise at Law, give the Contractor a direction under clause 8.2(e) and have the rectification or Variation work carried out at the Contractor's expense, and the cost of the rectification or Variation work incurred by the Principal will be a debt due from the Contractor to the Principal.
- (e) The Contractor acknowledges and agrees that:
- (i) it is responsible for liaising with, and obtaining from, any Rail Transport Agency or relevant Authority access to any premises or rail track that is necessary for the Contractor to:

- (A) rectify Defects (including testing); or
- (B) investigate and report in relation to any Defects;
- (ii) due to the operational needs of any Rail Transport Agency and/or other operational needs:
 - (A) the Contractor, in performing the activities set out in clause 8.3(e)(i), may be obliged to work in an electrified environment;
 - (B) access may be limited, delayed and rescheduled from time to time;
 - (C) the period of access may be compressed or limited to periods of line shutdown at night, on weekends or on public holidays; and
 - (D) the Principal's Representative may direct the Contractor as to:
 - (1) the times and dates for; and
 - (2) the work method that must be employed in, carrying out Defect rectification works;
- (iii) its obligation to rectify Defects survives the expiry of the Warranty Period where it has received a direction under clause 8.2 prior to the expiration of any Warranty Period;
- (iv) any costs incurred by the Principal in moving a Set to the location notified under clause 8.3(c)(ii)(E) will be a debt due from the Contractor to the Principal; and
- (v) it will not be relieved of its liabilities or responsibilities whether under this Deed or otherwise according to Law by reason of the matters set out in this clause 8.3(e).
- (f) Where a direction is given under clause 8.2(a), the Contractor will not be entitled to make a Claim against the Principal for rectifying the Defect (or the part notified) and must bear all costs, losses and expenses suffered or incurred in rectifying the Defect unless:
 - (i) the Principal's Representative has issued a notice under clause 8.3(b)(i); or
 - (ii) the Principal's Representative has issued a notice under clause 8.3(b)(ii), in which case any entitlement which the Contractor has is not affected by proceeding as directed under clause 8.3(c) before the determination of any Dispute.

8.4 Claim for Variation

Where a Variation to overcome a Defect has been directed under clause 8.2(c):

- (a) the Principal's Representative will determine:
 - (i) the value of the Variation work in accordance with clause 6.4; and
 - (ii) the cost of rectifying the Defect (or the part notified), valued as if the work involved in the rectification of the Defect (or the part notified) were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applies;
- (b) the Contract Sum will be adjusted by the difference between the valuations under sub-paragraphs (a)(i) and (a)(ii) as follows:
 - (i) if the value under sub-paragraph (a)(i) is greater than the cost under sub-paragraph (a)(ii), the Contract Sum will be increased by the difference; or
 - (ii) if the cost under sub-paragraph (a)(ii) is greater than the value under sub-paragraph (a)(i), the Contract Sum will be decreased by the difference; and
- (c) the Contractor will not be entitled to an extension of time to any Date for Works Completion.

8.5 Acceptance of Work

If a direction is given under clause 8.2(d):

- (a) where the value to the Principal of the Sets is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified), the Contract Sum will be reduced by the amount determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Sets; or
- (b) where the value to the Principal of the Sets increases because of the acceptance of the Defect (or the part notified):
 - (i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works and Services; and
 - (ii) the Contract Sum will:
 - (A) be reduced by the amount determined by the Principal's Representative, where that amount is negative; and
 - (B) not be changed where the amount determined by the Principal's Representative is positive.

8.6 Extension of Warranty Period

- (a) The Principal's Representative may give the Contractor a notice under clauses 8.2(a) or 8.2(c) at any time prior to the expiration of any Warranty Period.
- (b) If the Contractor:
 - (i) rectifies a Defect (or the part notified) following receipt of a notice under clause 8.2(a);
 - (ii) completes the Variation work following receipt of a notice under clause 8.2(c); or
 - (iii) rectifies a Defect or completes a Variation to overcome a Defect in the absence of any notice from the Principal's Representative under clause 8.2,

then the relevant Warranty Period for the work required will be extended until the later of:

- (iv) the date of expiry of the original Warranty Period; and
- (v) the date set out in Schedule 1.

8.7 Defect Rectification by Other Contractor

Where the Principal's Representative advises the Contractor (under clause 8.2(e)) that an Other Contractor has or will be rectifying a Defect or any part of it, or has or will carry out a Variation to overcome the Defect or any part of it:

- (a) without limiting or otherwise affecting clauses 2.8, 2.10 or 7.4, the Contractor must not impede the Other Contractor from having sufficient access to rectify the Defect or carrying out the Variation;
- (b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with, the Other Contractor rectifying the Defect or carrying out the Variation, will be a debt due from the Contractor to the Principal; and
- (c) the Contractor acknowledges and agrees that:
 - (i) no act or omission by such Other Contractor in rectifying a Defect or carrying out the Variation will, whether or not it causes any delay or disruption to the Works and Services, constitute an Act of Prevention;
 - (ii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - (A) the Other Contractor rectifying the Defect or carrying out a Variation to overcome the Defect; or

- (B) any other act or omission of the Other Contractor; and
- (iii) rectification of a Defect by an Other Contractor does not relieve the Contractor or otherwise affect any of its obligations under this Deed.

8.8 Rights Not Affected

Neither the Principal's rights, nor the Contractor's liability, whether under this Deed or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Warranty Period, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 8 or any other provision of this Deed;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any notice or direction of the Principal's Representative under clause 8.2.

9. Administration

9.1 Principal's Representative

The Principal must ensure that at all times until Final Completion there is a Principal's Representative. The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Deed if exercised or made (or if it is not exercised or made) by the Principal's Representative:

- (a) independently;
- (b) after consultation with the Principal and its advisers; or
- (c) as directed by the Principal.

Any control or influence exercised by the Principal over the Principal's Representative does not:

- (d) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
- (e) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.

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

Except where this Deed otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.

9.2 Replacement of the Principal's Representative

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

Any substitute Principal's Representative appointed under this clause 9.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

9.3 Delegation of Functions

- (a) The Principal's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this Deed;
 - (ii) not appoint more than one person to exercise the same function in the same location under this Deed; and
 - (iii) revoke any appointment under clause 9.3(a)(i) by notice in writing to the Contractor.
- (b) The Principal's Representative may continue to exercise a function under this Deed despite appointing another person to exercise the function under clause 9.3(a)(i).
- (c) All references in this Deed to the Principal's Representative include a reference to an appointee appointed under clause 9.3(a)(i).

9.4 NSW Guidelines

The Contractor must at all times comply with, and meet any obligations imposed by the NSW Guidelines.

9.5 Contractor's Personnel

- (a) The Contractor must:
 - (i) notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Deed is the relevant person listed in Schedule 1) and of any subsequent changes;
 - (ii) ensure that the Contractor's Representative is appointed and available on a full-time basis and provides due and proper supervision of the performance of the Works and Services at all

- places (whether at the Installation Facility or otherwise) at which the Works and Services are taking place;
- (iii) provide personnel suitably qualified, knowledgeable, experienced and skilled in their roles in performing its obligations under this Deed; and
 - (iv) ensure that its personnel (including those referred to in clause 9.5(b)) as a team carry out the Works and Services in a manner that is professional and co-operative, and recognises the interests and needs of the public and other stakeholders in the delivery of the Works and Services.
- (b) The Contractor must:
- (i) either:
 - (A) employ the individuals nominated by the Contractor and listed in Schedule 1 in the positions specified in Schedule 1 or equivalent positions, and have the availability specified in Schedule 1; or
 - (B) where no individuals are specified in Schedule 1 for a position specified in Schedule 1, submit to the Principal's Representative the names of the persons which the Contractor proposes to employ for the roles specified in Schedule 1 for the Principal's Representative's approval, such approval not to be withheld unreasonably. The Contractor must ensure that the persons nominated are suitably qualified and experienced for the relevant position, and have suitable availability;
 - (ii) only replace the individuals referred to in clause 9.5(b)(i):
 - (A) if the individual:
 - (1) dies;
 - (2) becomes unable to continue in the positions due to illness;
 - (3) resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))); or
 - (4) becomes the subject of a direction under clause 9.5(c);
 - (B) with personnel who are of at least equivalent experience, ability, knowledge, expertise and availability; and

- (C) with the Principal's Representative's prior written approval, which will not be unreasonably withheld; and
- (iii) without limiting clauses 9.5(b)(i) and 9.5(b)(ii), ensure that the:
 - (A) positions specified in Schedule 1 as full-time, dedicated positions are full-time, dedicated positions; and
 - (B) individuals who occupy the positions specified in Schedule 1 apply themselves fully to the position and:
 - (1) where the position is a full-time, dedicated position, to the exclusion of all other work; and
 - (2) otherwise, in accordance with the availability specified in Schedule 1,until Works Completion of the last Fleet to reach Works Completion or such earlier time as may be approved by the Principal's Representative.
- (c) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.5(a) or clause 9.5(b)) from the Works and Services. The Contractor must then cease to engage that person in the Works and Services and must appoint a replacement.
- (d) The Contractor must ensure that any person the subject of a direction under clause 9.5(c) is not again employed in the Works and Services.
- (e) Any direction under clause 9.1 will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.

9.6 Meetings

- (a) The Contractor must convene meetings at the Installation Facility or such other place (or places) as the Principal's Representative may direct:
 - (i) prior to the Date of Works Completion of the last Fleet to reach Works Completion:
 - (A) weekly or such longer intervals; and
 - (B) at such other times,as may be directed in writing by the Principal's Representative; and
 - (ii) at monthly intervals after the Date of Works Completion of the last Fleet to reach Works Completion until all Warranty Periods (including

any extension under clause 8.6), have expired or at such other intervals as may otherwise be agreed.

- (b) The Contractor must ensure that the meetings are attended by:
 - (i) the Contractor's Representative (or his or her delegate); and
 - (ii) any other person (including any Subcontractor) required by the Principal's Representative.

The Principal's Representative (or its delegate) will attend all meetings. The Principal's Representative must appoint the chairperson for the meetings.

- (c) The chairperson of the meetings must prepare and give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting. The minutes of the meeting shall not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Deed.
- (d) The purpose of the meetings will include:
 - (i) the receipt of reports on, and the review and consideration of, the matters set out in clause 9.8;
 - (ii) the receipt of reports on, and the review of the status and implementation of, the Contract Management Plan and other plans and documents prepared by the Contractor under this Deed;
 - (iii) the consideration of corrective actions to prevent and rectify defective work; and
 - (iv) the consideration of any other matter that the Principal's Representative requires.

9.7 Contract Control Group

The Contract Control Group will comprise:

- (a) the Principal's Representative;
- (b) the Contractor's Representative, a senior representative of the Contractor not involved in the day to day Works and Services, and any of the Contractor's key personnel nominated by the Principal's Representative;
- (c) representatives of any of the Contractor's Subcontractors that the Principal's Representative reasonably requires; and
- (d) any other person the Principal's Representative reasonably requires from time to time.

9.8 Contract Control Group Functions

Contract Control Group functions will include the oversight and review of, and response to, reports on:

- (a) the progress of the Works and Services relative to the Contractor Program and Contractor's other programs, and the performance of the Contractor under this Deed;
- (b) the Contractor's compliance or non-compliance with the Contract Management Plan and this Deed, and related and consequential issues;
- (c) environmental management issues;
- (d) safety and safety management issues;
- (e) disputes that have arisen, or are likely to arise, between the Principal and the Contractor or the Principal's Representative and the Contractor; and
- (f) other matters as determined or directed by the Principal's Representative.

9.9 Contract Control Group Meetings

- (a) The persons nominated in clauses 9.7(b), 9.7(c) and 9.7(d) must attend all Contract Control Group meetings.
- (b) Contract Control Group meetings will be held on a:
 - (i) monthly basis prior to the Date of Works Completion of the last Fleet to reach Works Completion; and
 - (ii) quarterly basis thereafter until Final Completion,or at such other intervals as the Principal and the Contractor agree in writing.
- (c) The Principal's Representative (or his or her nominee) will attend and chair the Contract Control Group meetings.

9.10 Contractor's Reporting Obligations

The Contractor:

- (a) must on the 6th Business Day of each month, give the Principal's Representative (in accordance with clause 9.10(b)) a written report containing the detailed information specified in the Works Brief, and information to demonstrate its compliance with clause 9.5(b);
- (b) must provide for the purposes of clause 9.10(a) (unless otherwise directed by the Principal's Representative), the number and form of copies of the written report specified in Schedule 1;
- (c) acknowledges that it is not entitled to make, and the Principal will not be liable upon, any Claim in the written report referred to in clause 9.10(a);

- (d) must provide and maintain a daily record of the status of the work and the conditions at the Installation Facility and other sites involved in the Works and Services, including the resources employed and the issues affecting the progress of the Works and Services, and provide a copy of that record to the Principal's Representative for each week's Works and Services;
- (e) must provide a current projected cash flow, each three months or as required by the Principal's Representative, including a planned versus actual cash flow comparison (including the estimated versus actual value of work completed for each calendar month); and
- (f) must promptly give the Principal's Representative, when requested to do so, any information that the Principal's Representative reasonably requires in respect of the matters referred to in clause 9.10(a).

9.11 Complaints and Notification

- (a) The Contractor must immediately notify the Principal in writing if any:
 - (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,by anyone (including any Authority) against the Contractor or any of its Subcontractors or their respective employees in respect of any aspect of the carrying out of the Works and Services, including:
 - (iv) the Contractor's non-compliance with any Authority Approval (or any condition or requirement thereunder), any Third Party Agreement, the Contract Management Plan or any Law regarding the Environment;
 - (v) the implementation of the Contract Management Plan, including the Contractor's community liaison plan; or
 - (vi) loss or damage of the kind referred to in clause 13.10.
- (b) The Contractor must (at its own cost) respond to complaints and enquiries received regarding the Works and Services and that of its Subcontractors in accordance with the Works Brief.

9.12 Industrial Relations

The Contractor must in carrying out the Works and Services:

- (a) assume sole responsibility for and manage all aspects of industrial relations for the Works and Services;
- (b) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;

- (c) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Works and Services and Other Contractors' activities; and
- (d) without limiting clause 2.3(b), comply with all the requirements of the NSW Guidelines.

The Contractor warrants and acknowledges that it has allowed in the Original Contract Price for all the costs and expenses involved with complying with all the requirements of this Deed relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

9.13 Document Management and Transmission

- (a) The Contractor must manage and transmit documents, including using the Principal's electronic document management tool specified in the Works Brief, in accordance with the processes, procedures and systems in the Contract Management Plan.
- (b) Documents supplied to the Contractor will remain the property of the Principal and must be returned by the Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Works and Services.
- (c) The Contractor must keep all the Contractor's records relating to the Works and Services in a secure and fire proof storage.
- (d) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 9.13.
- (e) The Contractor must ensure that any Contract Documentation that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

9.14 Submission for Review by the Principal

- (a) The process for review of documents under the provisions of this clause 9.14 applies to all documents submitted to the Principal for review.
- (b) The Contractor must submit the Contract Management Plan, the Contractor Program and any other document (each of which in this clause 9.14, will be

referred to as a **Document**) which is required to be submitted for the review of the Principal or the Principal's Representative under a provision of this Deed:

- (i) in accordance with the times stated in this Deed or where no times are stated progressively and in a timely manner to ensure that the Works and Services are commenced, progressed and completed by the times required under this Deed, and by the times or within the periods:
 - (A) identified in the Works Brief for a specific Document or identified in the Contractor Program which is not rejected by the Principal's Representative; or
 - (B) in the absence of a time or period in the Works Brief or in the Contractor Program, required by the Principal's Representative; and
- (ii) under cover of a written notice entitled "Submit for Review", which identifies:
 - (A) the Document; and
 - (B) the provision of this Deed under which the Document is submitted.
- (c) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:
 - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work or services so as to allow the area of work or services to be fully understood; and
 - (ii) the Contractor has otherwise complied with this clause 9.14, in addition to any other requirement of this Deed relating to the submission of that Document.
- (d) The Principal's Representative may:
 - (i) direct that any Document the Contractor:
 - (A) previously submitted is a Document that is to be reviewed under the provisions of this clause 9.14; and
 - (B) is obliged to submit will be reviewed under the provisions of this clause 9.14;
 - (ii) after the submission of a Document that satisfies the requirements of clause 9.14(c), review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and

- (iii) where a Document is submitted or resubmitted in accordance with a program that has not been rejected by the Principal's Representative:
 - (A) reject the Document (and state its reasons) if in its opinion:
 - (1) the Document (or any part) does not comply with the requirements of this Deed; or
 - (2) to the extent the Deed does not specify requirements for a Document, the Document (or any part) is not in accordance with Good Industry Practice;
 - (B) make comments on the Document, or request clarification or additional information; or
 - (C) notify the Contractor that it has no (or has no further) comments to make,
within relevantly, the later of:
 - (D) where a time or period is stated in the Works Brief for a specific Document, that time or the expiry of that period; and
 - (E) 15 Business Days from submission for all other Documents.
- (e) If any Document is:
 - (i) rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 9.14 will re-apply; or
 - (ii) not rejected and the Principal's Representative responds to the submission with comments, or requests clarification or additional information, the Contractor must respond to the comments or request within 10 Business Days or such other period as may be directed by the Principal's Representative.

If the Contractor:

- (iii) responds to the Principal's Representative's comments or request within the period referred to in sub-paragraph (ii), if the Principal's Representative is not satisfied with the Contractor's response, the Principal's Representative must within 5 Business Days of receipt of the Contractor's response notify the Contractor that it is not satisfied that the response adequately deals with the comments; or
- (iv) fails to respond to the Principal's Representative's comments or request within the period referred to in sub-paragraph (ii) or the Principal's Representative gives a notice under clause 9.14(e)(iii):

- (A) the Document will be deemed to be rejected; and
 - (B) clause 9.14(e)(i) will re-apply.
- (f) The Contractor must not commence installation of any part of the Works and Services to which any Document submitted to the Principal's Representative applies, unless
- (i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or
 - (ii) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and the Principal's Representative has not issued a notice under clause 9.14(e)(iii)).
- (g) The Contractor must not amend for installation purposes any Document that has been submitted to the Principal's Representative and, in respect of which:
- (i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or
 - (ii) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and the Principal's Representative has not issued a notice under clause 9.14(e)(iii)),
- unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 9.14 will re-apply.
- (h) The Principal's Representative and the Principal do not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this Deed. Any references in this Deed to the Principal or the Principal's Representative "approving", "consenting to" or "not rejecting" any Document (or any equivalent terminology) or their use by the Principal or the Principal's Representative or the processes referred to in this Deed involving those concepts occurring during development of the Document do not relieve the Contractor from its liability under this Deed in connection with the Document.
- (i) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the

Principal's Representative not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Deed in any Document submitted.

- (j) No review of, approval of, comment upon or rejection of, or failure to review, approve, or comment upon or reject, a Document prepared by the Contractor, or any other direction (including any direction given under clause 9.14(k)(iii)) by the Principal's Representative in connection with the Document, will:
 - (i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a Variation Order and describes the nature of the Variation in accordance with clause 6.2(a);
 - (ii) relieve the Contractor from or alter its liabilities or obligations, whether under this Deed or otherwise according to any Law; or
 - (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to any Law.
- (k) In considering, reviewing, commenting upon, or rejecting any Document, the Principal's Representative may:
 - (i) consult with;
 - (ii) take into account any views or requirements of; and
 - (iii) direct the Contractor to comply with the lawful requirements of, any relevant Authority.
- (l) The restrictions on the commencement of any part of the Works and Services in this clause 9.14 are in addition to any restrictions that exist elsewhere in this Deed, including in the Works Brief and under any Third Party Agreement.
- (m) For the purposes of calculating time under this clause 9.14 the days between 24 December and 7 January shall not be counted.
- (n) Unless otherwise directed by the Principal's Representative, the Contractor must provide the number and form of copies specified in Schedule 1 of each Document which is submitted for review under this clause 9.14.

9.15 Work Method

Whether or not this Deed prescribes a particular work method or a work method is otherwise a part of this Deed or reviewed or approved (expressly or impliedly) by the Principal's Representative, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or

without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this Deed to be frustrated.

9.16 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Deed.

The Contractor acknowledges that any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work.

The Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Contractor's performance under this Deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

9.17 National Greenhouse and Energy Report Act 2007 (Cth)

The Contractor acknowledges and agrees that:

- (a) if any of the Works and Services, or the activities of any of the Contractor's personnel, in connection with the Works and Services (the **Relevant Matters**) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 9.17(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the Contractor;

- (c) if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time.
- (d) the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (e) the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 9.17, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.17 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 9.17 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

10. Time and Progress

10.1 Rate of Progress

The Contractor must:

- (a) regularly and diligently progress the Works and Services;

- (b) proceed with the Works and Services with due expedition and without delay; and
- (c) achieve Works Completion of each Fleet by the relevant Date for Works Completion.

However the Contractor must not commence the installation of ETCS on Sets forming part of a Fleet until the relevant ETCS Installation Start Date, provided that the Contractor may commence early works for ETCS installation (not requiring access to the Sets forming part of the relevant Fleet) prior to the relevant ETCS Installation Start Date with the prior consent of the Principal .

Without limiting clause 10.14(b), the Contractor must not suspend the progress of the whole or any part of Works and Services except where permitted or required under this Deed.

Without limiting the next paragraphs of this clause 10.1 or clause 10.3, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Works and Services in accordance with this Deed.

The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Deed.

The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Works and Services must be performed. If the Contractor can reasonably comply with the direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt:

- (d) no direction by the Principal's Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1; and
- (e) a Notice of ETCS Installation Deferral or a Notice of ETCS Installation Commencement does not constitute a notice under this clause 10.1.

If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be valued as if it were a Variation except where the direction was necessary because of, or arose out of, or in any way in connection with, a failure by the Contractor to comply with its obligations under this Deed. Such costs shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim,

arising out of or in any way in connection with any direction pursuant to this clause 10.1.

10.2 The Contractor's Programming Obligations

The Contractor:

- (a) acknowledges and agrees that it has made and will make adequate allowances in the Contractor Program for:
 - (i) the delays referred to in clause 10.6;
 - (ii) the high degree of interface, of the Works and Services with any work being (or to be) performed by Other Contractors; and
- (b) must prepare and provide a Contractor Program that complies with and includes the details required by this Deed, including the Works Brief, and any requirements of the Principal's Representative;
- (c) must submit the Contractor Program to the Principal's Representative for its review in accordance with clause 9.14 within the earlier of:
 - (i) 10 Business Days of the Commencement Date; or
 - (ii) any time required by the Works Brief;
- (d) must when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Works and Services within 5 Business Days of receipt of such a direction;
- (e) must update, revise and submit to the Principal's Representative an updated Contractor Program to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Works Completion, the actual progress made by the Contractor, Variations and any other changes to the Works and Services but excluding claims for extensions of time to any Date for Works Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative:
 - (i) on a monthly basis; or
 - (ii) whenever directed to do so by the Principal's Representative;
- (f) must prepare and provide for the Principal's Representative's information only versions of all Contractor Programs prepared in accordance with clause 10.2(e) that also allow for those claims for an extension of time to the relevant Date for Works Completion that have been made by the Contractor in accordance with clause 10.8 but to which the Principal's Representative has not yet responded in accordance with clause 10.10;

- (g) must comply with the requirements of the Principal's Representative and its other obligations under this Deed in preparing and using programs, including the requirements in clause 9.14; and
- (h) must not unreasonably depart from the current version of the Contractor Program that have been submitted to the Principal's Representative for review under clause 9.14 and, in respect of which:
 - (i) the Principal's Representative has given the Contractor the notice referred to in clause 9.14(d)(iii)(C); or
 - (ii) the relevant period of time in clause 9.14(d)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.14(e)).

Unless otherwise directed by the Principal's Representative, for all programs and schedules provided in accordance with this clause, the Contractor must provide:

- (iii) 1 colour printed A3 sized original;
- (iv) 3 colour printed A3 copies; and
- (v) an electronic version on CD in both pdf and unlocked native format (with all logic links intact and nothing hidden or protected) accompanied by all associated files so that they can be reproduced by the Principal's Representative using Primavera P6.

10.3 Contractor Not Relieved

Without limiting clause 9.14, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor Program) prepared by the Contractor, by the Principal's Representative in connection with the program, will:

- (a) relieve the Contractor from or alter its liabilities or obligations under this Deed, including the obligations under clause 10.1;
- (b) evidence or constitute the notification of a delay or claiming of or the granting of an extension of time to any Date for Works Completion, or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Works and Services; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Deed.

10.4 Compression by Contractor

If the Contractor chooses to compress the Works and Services or otherwise accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Works Completion before any Date for Works Completion;
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the Contractor does so at its own cost and risk.

10.5 Importance of Works Completion on Time

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 10.1; and
- (b) that a Date for Works Completion will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 15.

10.6 Risk and Notice of Delay

- (a) Except as expressly provided for in clause 10.10, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Works and Services and performance of its obligations under this Deed both before and after any Date for Works Completion.
- (b) The Contractor must within 5 days of the commencement of an occurrence causing any delay, or which is likely to cause delay, give the Principal's Representative written notice of any delay or likely delay to the carrying out of the Works and Services, details of the cause and how any Date of Works Completion is likely to be affected (if at all).

10.7 Entitlement to Claim Extension of Time

- (a) If the Contractor is or will be delayed on or prior to the Date for Works Completion of a Fleet by reason of:
 - (i) an Act of Prevention;
 - (ii) a cause so described in Schedule 1; or
 - (iii) a direction to suspend that satisfies clause 10.14(a)(ii),in a manner that will prevent it from achieving Works Completion of the Fleet by the Date for Works Completion, the Contractor may claim an extension of time to the relevant Date for Works Completion.
- (b) If the Contractor is, or will be, delayed after the Date for Works Completion of a Fleet by reason of an Act of Prevention in a manner which will delay it

in achieving Works Completion of the Fleet, the Contractor may claim an extension of time to the relevant Date for Works Completion.

10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Works Completion, which:
 - (i) gives detailed particulars of the:
 - (A) delay and the occurrence causing the delay; and
 - (B) activities that are critical to the maintenance of progress in the execution of the Works and Services; and
 - (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:
 - (A) conditions precedent to an extension of time in clause 10.9 have been met; and
 - (B) occurrence will delay it in achieving Works Completion in the manner described in clause 10.7; and
- (b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
 - (i) every 28 days after the first written claim, or such other period as may be approved by the Principal's Representative in writing, until after the end of the effects of the delay; and
 - (ii) containing the information required by paragraph (a).

The Principal's Representative may, within 14 days of receiving the Contractor's claim or further claim for an extension of time for Works Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 14 days of receiving such request, provide the Principal's Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

Subject to clauses 10.16 and 10.17, it is a condition precedent to the Contractor's entitlement to an extension of time to any relevant Date for Works Completion that:

- (a) the Contractor gives the notices and claims required by clauses 10.6(b) and 10.8 as required by those clauses;
- (b) the Contractor complies with any request for additional information under clause 10.8 within the time required;
- (c) the cause of the delay is beyond the reasonable control of the Contractor;
- (d) the Contractor is actually, or will be, delayed:
 - (i) on or prior to the relevant Date for Works Completion, by reason of one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or
 - (ii) after the relevant Date for Works Completion, by reason of an Act of Prevention in the manner described in clause 10.7(b); and
- (e) the Contractor is not given a direction to compress under clause 10.15.

If the Contractor fails to comply with the conditions precedent in this clause 10.9:

- (f) the Principal will not be liable upon any Claim by the Contractor; and
- (g) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

10.10 Extension of Time

- (a) Subject to clauses 10.10(c), 10.16 and 10.17, if the conditions precedent in clause 10.9 have been satisfied, the relevant Date for Works Completion will be extended by a reasonable period determined by the Principal's Representative, and notified to the Principal and the Contractor within 28 days after:
 - (i) the latest of the:
 - (A) Contractor's written claim under clause 10.8; and
 - (B) provision by the Contractor of any additional information regarding the claim required under clause 10.8; or
 - (ii) where the Principal's Representative has given the Contractor a direction to compress under clause 10.15 and subsequently issued a notice under clause 10.16 withdrawing the direction to compress given under clause 10.15, the date of issue of the notice under clause 10.16.
- (b) A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Works Completion, or to grant an extension of time

to any Date for Works Completion within the relevant 28 day period, will not cause an affected Date for Works Completion to be set at large, but nothing in this paragraph will prejudice any right of the Contractor to damages.

- (c) The Principal's Representative will reduce any extension of time to the Date for Works Completion it would otherwise have determined under this clause 10.10 to the extent that the Contractor:
 - (i) contributed to the delay; or
 - (ii) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.11 Reduction in Time

If the Principal's Representative directs a Variation that omits or deletes any part of the Works and Services:

- (a) the Contractor:
 - (i) may (no later than 10 Business Days after the direction) provide whatever information it considers may assist the Principal's Representative to determine; and
 - (ii) must provide whatever programming or other information the Principal's Representative directs (and within the time directed) so that the Principal's Representative can determine, what (if any) adjustment should be made to any relevant Date for Works Completion; and
- (b) any relevant Date for Works Completion may be reduced by a reasonable period determined by the Principal's Representative having regard to the impact of the Variation and notified to the Principal and the Contractor within 20 Business Days of the date of the Variation.

10.12 Unilateral Extensions

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Works Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Works Completion under clause 10.10, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor and the Principal, unilaterally extend any relevant Date for Works Completion by any period specified in a notice to the Contractor and the Principal.

The Principal's Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 10.12 may only be exercised by the Principal's Representative, and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 15 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, arbitration or litigation proceedings).

10.13 Delay Damages

- (a) For each day by which the Date for Works Completion of a Fleet is extended due to:
- (i) a breach of this Deed by the Principal; or
 - (ii) a Variation that satisfies the requirements of paragraph (c) of the definition of Act of Prevention,

the Contractor will be entitled to be paid the costs reasonably incurred by the Contractor as a direct result of the delay the subject of the extension of time, as determined by the Principal's Representative who must, where they are applicable, use the rates and prices in Schedule 1 and which will not exceed the amount specified in Schedule 1.

- (b) Notwithstanding any other provision of this Deed (including any provision of this Deed entitling the Contractor to an increase in the Contract Sum for additional costs, or to the payment of additional costs), the amounts payable pursuant to this clause 10.13 will be a limitation upon the Principal's liability to the Contractor for any delay or disruption that:

- (i) the Contractor encounters in carrying out the Works and Services; or
- (ii) arises out of, or in any way in connection with, the breach of this Deed by the Principal,

and the Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than for the amount which is payable by the Principal under this clause 10.13.

10.14 Suspension

- (a) The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Works and Services. Nothing in this clause 10.14 limits the Principal's rights under clause 2.11.

If the suspension under this clause 10.14(a) arises in the circumstances set out in clause 2.11(e), then clauses 2.11(e) and 2.11(f) will apply. Otherwise where a suspension under this clause 10.14(a) arises as a result of:

- (i) the Contractor's failure to carry out its obligations in accordance with this Deed (including under clause 4.6 or clause 4.7 or where the Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this Deed or where any process, procedure, test method, calculation, analysis or report required by this Deed has resulted in or will result in a non-conformance), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
- (ii) a cause other than the Contractor's failure to perform its obligations in accordance with this Deed:
 - (A) a direction to suspend under this clause 10.14(a) will entitle the Contractor to:
 - (1) be paid by the Principal the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Principal's Representative; and
 - (2) an extension of time to any relevant Date for Works Completion where it is otherwise so entitled under clause 10.10;
 - (B) the Contractor must take all reasonably practicable steps possible to mitigate the extra costs incurred by it and any delay in achieving Works Completion of any Fleet as a result of the suspension; and
 - (C) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.14(a)(ii).
- (b) The Contractor may suspend the carrying out of all or a part of the Works and Services to avoid an Incident.
- (c) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with a suspension by the Contractor under clause 10.14(b).

10.15 Direction to Compress

If the Contractor makes a claim under clause 10.8, the Principal's Representative may direct the Contractor to compress the Works and Services by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve Works Completion of a Fleet by the relevant Date for Works Completion.

Prior to commencing any such compression the Contractor must give the Principal's Representative an estimate of the costs of taking all such necessary measures.

The Principal's Representative may give such a direction whether or not the cause of delay for which the Contractor has made its claim under clause 10.8 entitles the Contractor to an extension of time to any relevant Date for Works Completion.

10.16 Withdrawal of Compression Direction

The Principal's Representative may at any time by notice in writing withdraw any direction given by it under clause 10.15, after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the Contractor made a claim under clause 10.8. Any such extension will be determined having regard to the effect which the compression of the Works and Services taken by the Contractor prior to the withdrawal of the direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the Contractor under clause 10.8.

10.17 Partial Compression

If the Principal's Representative gives the Contractor a direction to compress under clause 10.15 and it only applies to part of a delay, the Contractor's entitlement to any extension of time to any relevant Date for Works Completion, which it otherwise would have had, will only be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome the delay.

10.18 Compression

If the Principal's Representative gives a direction to the Contractor under clause 10.15:

- (a) whether or not the Contractor provides a cost estimate under clause 10.15, the Contractor must comply with the direction;
- (b) if the Contractor would, but for the direction, have been entitled to an extension of time to the relevant Date for Works Completion for the cause of delay in respect of which the Contractor made a claim under clause 10.8, the Contractor will, to the extent it would have been entitled to an extension of time, be entitled to be paid the lesser of:
 - (i) the sum of:
 - (A) the extra costs reasonably incurred by the Contractor (which, if the Principal's Representative gives a notice to withdraw the direction under clause 10.16 will be those extra costs incurred prior to the giving of such notice) and directly attributable to compressing the Works and Services, as determined by the Principal's Representative; and

- (B) that percentage of the amount under sub-paragraph (A) stipulated in Schedule 1; and
- (ii) the cost estimate (if any) provided by the Contractor pursuant to clause 10.15; and
- (c) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the cause of delay and the direction, other than for the amount it is entitled to under this clause 10.18.

10.19 Principal's Right to Liquidated Damages not Affected

The Principal's rights to liquidated damages under clause 12.7 for a failure by the Contractor to achieve Works Completion of a Fleet by the relevant Date for Works Completion will not be affected by the Principal's Representative giving the Contractor a direction to compress under clause 10.15.

10.20 Deferred Commencement of ETCS Installation

- (a) The parties acknowledge and agree that:
 - (i) the Contractor has assumed that it will commence the installation of ETCS on Sets forming part of each Fleet on and from the Assumed ETCS Installation Start Date for that Fleet; and
 - (ii) there is a risk that the Final CCB Gate 5 Design may not be completed by Alstom in sufficient time for the Contractor to commence the installation of ETCS on Sets forming part of a Fleet on and from the relevant Assumed ETCS Installation Start Date.
- (b) The Principal's Representative may, at any time prior to the ETCS Installation Deferral Date for a Fleet, issue a written notice to the Contractor notifying the Contractor that the Contractor must not commence installation of ETCS on Sets forming part of that Fleet until after the Assumed ETCS Installation Start Date for that Fleet (**Notice of ETCS Installation Deferral**). A Notice of ETCS Installation Deferral must:
 - (i) state that it is a Notice of ETCS Installation Deferral given pursuant to this clause 10.20(b) and state the Fleet to which it relates;
 - (ii) state, either:
 - (A) an ETCS Installation Start Date for the relevant Fleet; or
 - (B) that the ETCS Installation Start Date for the relevant Fleet will be specified in a Notice of ETCS Installation Commencement.

- (c) If a Notice of ETCS Installation Deferral states an ETCS Installation Start Date for the relevant Fleet:
- (i) the Contractor must not commence the installation of ETCS on Sets forming part of the relevant Fleet until the ETCS Installation Start Date stated in the relevant Notice of ETCS Installation Deferral, provided that the Contractor may commence early works for ETCS installation (not requiring access to those Sets forming part of the relevant Fleet) prior to that ETCS Installation Start Date with the prior consent of the Principal;
 - (ii) subject to paragraph (iii) below, the Contractor will be entitled to be paid the costs reasonably incurred by the Contractor as a direct result of the delay to the commencement of the installation of ETCS on Sets forming part of the relevant Fleet between the Assumed ETCS Installation Start Date for the relevant Fleet and the ETCS Installation Start Date for the relevant Fleet;
 - (iii) the Principal's aggregate liability under clause 10.20(c)(ii) is limited to:
 - (A) for each Fleet, if the ETCS Installation Start Date for the relevant Fleet is within 365 days of the Assumed ETCS Installation Start Date for the relevant Fleet:
 - (1) subject to paragraph (2) below, \$ [] per day per Fleet for each day between the Assumed ETCS Installation Start Date for the relevant Fleet and the ETCS Installation Start Date for the relevant Fleet; and
 - (2) \$ [] in the aggregate per Fleet; and
 - (B) for each Fleet, if the ETCS Installation Start Date for the relevant Fleet is more than 365 days after the Assumed ETCS Installation Start Date for the relevant Fleet, the sum of:
 - (1) \$ []; and
 - (2) \$ [] per day per Fleet for each day between the date that is 366 days after the Assumed ETCS Installation Start Date for the relevant Fleet and the ETCS Installation Start Date for the relevant Fleet;
 - (iv) the Contractor will be entitled to an extension of time to the relevant Date for Works Completion of the number of days between the relevant Assumed ETCS Installation Start Date and the relevant ETCS Installation Start Date; and
 - (v) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection

with the delay to the commencement of the installation of ETCS on Sets forming part of the relevant Fleet referred to in this clause 10.20(c), other than as is allowed under this clause 10.20(c).

- (d) If a Notice of ETCS Installation Deferral states that the ETCS Installation Start Date for the relevant Fleet will be specified in a Notice of ETCS Installation Commencement, then:
- (i) the Principal's Representative may, at any time give a written notice to the Contractor specifying an ETCS Installation Start Date for the relevant Fleet, which notice must be given at least 8 weeks prior to the proposed ETCS Installation Start Date set out in the notice **(Notice of ETCS Installation Commencement)**;
 - (ii) the Contractor must not commence the installation of ETCS on Sets forming part of the relevant Fleet until the ETCS Installation Start Date stated in the relevant Notice of ETCS Installation Commencement, provided that the Contractor may commence early works for ETCS installation (not requiring access to the Sets forming part of the relevant Fleet) prior to that ETCS Installation Start Date with the prior consent of the Principal;
 - (iii) subject to paragraph (iv) below, the Contractor will be entitled to be paid the costs reasonably incurred by the Contractor as a direct result of the delay to the commencement of the installation of ETCS on Sets forming part of the relevant Fleet between the Assumed ETCS Installation Start Date for the relevant Fleet and the ETCS Installation Start Date for the relevant Fleet;
 - (iv) the Principal's aggregate liability under clause 10.20(d)(iii) is limited to:
 - (A) for each Fleet, if the ETCS Installation Start Date for the relevant Fleet is within 365 days of the Assumed ETCS Installation Start Date for the relevant Fleet:
 - (1) subject to paragraph (2) below, \$ per day per Fleet for each day between the Assumed ETCS Installation Start Date for the relevant Fleet and the ETCS Installation Start Date for the relevant Fleet; and
 - (2) \$ in the aggregate per Fleet; and
 - (B) for each Fleet, if the ETCS Installation Start Date for the relevant Fleet is more than 365 days after the Assumed ETCS Installation Start Date for the relevant Fleet, the sum of:
 - (1) \$; and

- (2) \$ per day per Fleet for each day between the date that is 366 days after the Assumed ETCS Installation Start Date for the relevant Fleet and the ETCS Installation Start Date for the relevant Fleet;
- (v) the Contractor will be entitled to an extension of time to the relevant Date for Works Completion of the number of days between the relevant Assumed ETCS Installation Start Date and the relevant ETCS Installation Start Date; and
- (vi) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with the delay to the commencement of the installation of ETCS on Sets forming part of the relevant Fleet referred to in this clause 10.20(d), other than as is allowed under this clause 10.20(d)

10.21 Contractor's Entitlements

This clause 10 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any delay, disruption or Act of Prevention and the Contractor waives all rights at Law to claim any relief from its obligations under this Deed otherwise than in accordance with this clause 10.

11. Payment

11.1 Contractor's Payment Entitlements

- (a) Subject to clause 16.12 and to any other right to set-off that the Principal may have, the Principal must pay the Contractor the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed, in accordance with the procedure in this clause 11.
- (b) The Contract Sum is not subject to rise and fall.

11.2 Payment Claims

For the purposes of clause 11 and except for the Mobilisation Payment set out in the Payment Schedule, the Contractor will only be taken to have achieved a Payment Milestone when it has carried out and completed, in accordance with this Deed, all of the work and other things comprised in, and otherwise required for the completion of, that Payment Milestone.

The Contractor is only entitled to claim payment for work comprised in a Payment Milestone when the Contractor has achieved that Payment Milestone.

The Contractor may give the Principal's Representative a claim for payment on account of the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed on the latter of:

- (a) satisfaction of the conditions precedent to the Contractor's entitlement to make a payment claim set out in clause 11.6; and
- (b) the following dates:
 - (i) prior to the time for the submission of the Completion Payment Claim, upon the 6th Business Day of each month;
 - (ii) for the Completion Payment Claim, within the time required by clause 11.8; and
 - (iii) for the Final Payment Claim, within the time required by clause 11.10.

Each claim for payment (a **Progress Claim**) must:

- (c) generally follow the form of the Payment Schedule and be as the Principal's Representative reasonably requires; and
- (d) include all the evidence reasonably required by the Principal's Representative:
 - (i) in respect of those Works and Services for which the Contractor is entitled to payment once the relevant Payment Milestone has been achieved (as specified in the Payment Schedule), of any Payment Milestones which the Contractor claims to have achieved (including, where applicable, evidence of clear and unencumbered title to any items which are the subject of the payment claim);
 - (ii) in respect of those Works and Services for which the Contractor is entitled to payment progressively (as specified in the Payment Schedule), the amount payable calculated as set out in the Payment Schedule; and
 - (iii) of any other amounts claimed.

The Contractor may not include in any payment claim under this clause 11 any amount for a Claim which is barred by clause 17.6 or any other provision of this Deed.

11.3 Payment Statements

- (a) The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.8 or a Final Payment Claim under clause 11.10, assess:

- (i) whether the Contractor has achieved any Payment Milestone which is the subject of the Progress Claim; and
- (ii) in respect of those Works and Services for which the Contractor is entitled to payment progressively (as specified in the Payment Schedule) and which is the subject of the Progress Claim, the contract value of such work calculated as set out in the Payment Schedule,

and issue to the Contractor and the Principal a payment statement which identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and stating the amount of the payment which, in the Principal's Representative's opinion, is to be made by the Principal to the Contractor or by the Contractor to the Principal.

Where a Defect for which the Contractor is responsible becomes apparent to the Principal's Representative, the Principal's Representative may, without prejudice to any of the Contractor's other rights, take into account the estimated cost of rectifying the Defect.

- (b) The Principal's Representative must also set out in any payment statement issued under clause 11.3(a):
 - (i) the contract value:
 - (A) as stated in the Payment Schedule of any Payment Milestones, which the Principal's Representative considers the Contractor to have achieved to the date of the Progress Claim Principal; and
 - (B) of the Works and Services for which the Contractor is entitled to claim payment progressively (as specified in the Payment Schedule) calculated in accordance with the Payment Schedule;
 - (ii) the amount (if any) the Principal directs the Principal's Representative that the Principal is entitled to retain, deduct, withhold or set-off under this Deed;
 - (iii) the amounts otherwise due under the Deed from:
 - (A) the Principal to the Contractor; and
 - (B) the Contractor to the Principal;
 - (iv) the amount already paid to the Contractor under the Deed; and
 - (v) the calculations employed to arrive at the amount certified to be payable and the reasons for any difference between that amount and the amount claimed by the Contractor (and if the Principal's

Representative considers that the Contractor has not achieved a Payment Milestone for which the Contractor has claimed payment, or is not otherwise entitled to payment for any part of the Works and Services for which it has claimed payment, the Principal's Representative must provide reasons for that opinion).

- (c) The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works and Services covered by the payment statement has been satisfactorily carried out in accordance with this Deed.
- (d) Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Deed.
- (e) Where the Principal has notified the Contractor in accordance with clause 18(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor for the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative under clause 11.3(a) give the Principal's Representative a tax invoice (which complies with the GST Legislation) for the amount of the payment statement.

11.4 Payment

- (a) Where, pursuant to clause 11.3(b)(v), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.2, 11.6, 11.8, 11.10, 14.3, 14.6(a)(i) and 16.12, the Principal must, within 15 Business Days of receipt of the issue of the payment statement pay the Contractor the amount set out in the payment statement referred to in clause 11.3(a).
- (b) Where, pursuant to clause 11.3(b)(v), the Principal's Representative sets out in a payment statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal's Representative issuing the payment statement under clause 11.3, pay the Principal the amount set out in the payment statement referred to in clause 11.3(a).

11.5 Payment on Account

A payment of moneys under clause 11.4(a) is not:

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

but is only to be taken as payment on account.

11.6 Conditions Precedent

It is a condition precedent to the Contractor's entitlement to make a payment claim under clause 11.2, and the Principal's obligation to make a payment under clause 11.4(a), that prior to submitting the payment claim the Contractor has:

- (a) complied with clauses 1.6 and 10.2;
- (b) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.5;
- (c) if the Contractor is not the owner of the Installation Facility, submitted an executed deed poll as required under clause 3.1(b);
- (d) submitted the initial and updated parts of the Contract Management Plan as required by clauses 4 and 9.14 of this Deed and the Works Brief;
- (e) provided any report and programs required under clause 9.10;
- (f) provided the Principal's Representative with a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 17, made out not earlier than the date of the payment claim;
- (g) effected or procured to be effected the insurances required by clause 13.5 and (if requested) provided evidence of this to the Principal's Representative;
- (h) provided such evidence as the Principal's Representative may require that this Deed has been properly executed by or on behalf of the Contractor and that the Contractor is bound under this Deed;
- (i) complied with clauses 2.2(e)(ii) and 2.2(f); and
- (j) done everything else that it is required to do under this Deed before being entitled to make a payment claim or receive payment, including in respect of a Payment Milestone anything stated in the Payment Schedule as being something that must be satisfied or achieved as a requirement of that Payment Milestone.

Unless the Contractor has complied with the conditions precedent set out above the Contractor will have no entitlement to submit a payment claim under clause 11.2.

11.7 Payment of Employees and Subcontractors

- (a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.6(f).
- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.6(f), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Works and Services, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the Contractor, the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.
- (e) Nothing in this clause 11.7 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

11.8 Completion Payment Claim

- (a) No later than 28 days after the Date of Works Completion of the last Fleet to reach Works Completion, and subject to compliance with clause 11.6, the Contractor may lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating:
 - (i) the Contract Sum;
 - (ii) all payments received on account of the Contract Sum;
 - (iii) the balance (if any) due to the Contractor, being the Contract Sum less the payments referred to in clause 11.8(a)(ii).

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

- (b) With the Completion Payment Claim, the Contractor must lodge with the Principal's Representative a First Statement of Outstanding Claims. The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed which occurred prior to the date of submission of the Completion Payment Claim.
- (c) The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Works and Services or this Deed up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.
- (d) Without limiting clause 11.9, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed which occurred prior to the date of submission of the Completion Payment Claim which:
- (i) has been made;
 - (ii) could have been made; or
 - (iii) should have been made,
- that is not included in the Completion Payment Claim or First Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.
- (e) The First Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the First Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the First Statement of Outstanding Claims or the Completion Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor except as provided in clause 11.10.
- (f) Despite clause 11.8(e), if subsequent to the lodgement by the Contractor of the Completion Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Completion Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be

lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.

- (g) The claims and statements required under this clause 11.8 are in addition to the other notices which the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.
- (h) Without limiting clause 11.8(g), the Contractor cannot include in any claim or statement under this clause 11.8 any Claims that are barred under this Deed including by clause 17.6.

11.9 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

- (a) has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with clause 11.8; and
- (b) has not been barred under another provision of this Deed.

11.10 Final Payment Claim

- (a) No later than 28 days after the expiration of the last Warranty Period, and subject to compliance with clause 11.6, the Contractor may lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating the Contract Sum, all payments received on account of the Contract Sum and the balance, if any, due to the Contractor. The Final Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.
- (b) With the Final Payment Claim the Contractor must lodge with the Principal's Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed which occurred prior to the date of submission of the Final Payment Claim.
- (c) The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Works and Services or this Deed up to the date of

submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

- (d) Without limiting clause 11.11, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this Deed which occurred prior to the date of the Final Payment Claim which:
- (i) has been made;
 - (ii) could have been made; or
 - (iii) should have been made under the paragraph above,
- that is not included in the Final Payment Claim or Second Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred.
- (e) The Second Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the Second Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the Second Statement of Outstanding Claims or the Final Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor.
- (f) Despite clause 11.10(e), if subsequent to the lodgement by the Contractor of the Final Payment Claim, a final determination is made under clause 15 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Final Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made. If it is not lodged within that time, it is barred.
- (g) The claims and statements required under this clause 11.10 are in addition to the other notices that the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.
- (h) Without limiting clause 11.10(g), the Contractor cannot include in any claim or statement under this clause 11.10 any Claims that are barred under this Deed including by clause 17.6.

11.11 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or

this Deed that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

- (a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.10; and
- (b) has not been barred under another provision of this Deed.

11.12 Interest

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from, but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the *Uniform Civil Procedure Rules 2005* (NSW). Interest will be compounded at six monthly intervals.

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

11.13 Correction of Payment Statements

The Principal's Representative may, in any payment statement:

- (a) correct any error; and
- (b) modify any assumptions or allowances made,

in any previous payment statement issued by the Principal's Representative.

11.14 Costs Allowed by Contractor

Unless otherwise provided in this Deed, it is agreed that the Contractor has, and will be deemed to have, allowed in the Original Contract Price for and will be wholly responsible for the payment of:

- (a) without limiting clause 18, all customs duties, tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:
 - (i) intended to be used for, or that are to be incorporated into, the Sets; or
 - (ii) otherwise used for the Works and Services;
- (b) without limiting clause 18 or the generality of paragraph (a), all costs in connection with the handling and clearing through customs in all applicable jurisdictions (including Australia), of all exported and imported items required for incorporation into the Sets or for use in performing the Works

and Services, provided that in the case of items imported into Australia for incorporation into the Sets:

- (i) if an applicable Law in Australia requires any application or act in relation to the importation of that item into Australia to be made by or in the name of the Principal, the Principal must take all necessary steps to comply with that Law and the Contractor must co-operate with and assist the Principal in complying with the Law; and
- (ii) if a tariff duty concession is available under a government scheme (including the "Enhanced Project By-Law Scheme"), which requires an application to be made by or in the name of the Principal, the Principal must take all necessary steps to make such application and the Contractor must co-operate with and assist the Principal in the making of such application;
- (c) any long service leave levy which may be payable in respect of the Works and Services;
- (d) all royalties, licence fees and similar payments for Intellectual Property in respect of:
 - (i) the items that are intended to be used for, or that are to be incorporated into, the Sets; and
 - (ii) all Contract Documentation; and
- (e) all fluctuations in the value of the Australian dollar against other currencies.

The Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

The Contractor must co-operate with the Principal in seeking, and use its best endeavours to obtain, exemptions from or reductions in such customs and import duties. If such exemptions or reductions are obtained, the Contractor must pass the full benefit thereof on to the Principal and the Contract Sum will be reduced accordingly (subject to the Contractor being reimbursed its reasonable administrative costs incurred in obtaining any such exemption or reduction).

11.15 Title

Title in all items of Equipment will pass progressively to the Principal on the earlier of payment for or installation of such items within the Sets in accordance with this Deed. Risk in all such items remains with the Contractor in accordance with clause 13.1.

11.16 Payment of Subcontractors

The Contractor acknowledges and agrees that, without limiting clause 11.7:

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

12. Completion

12.1 Progressive Inspection and Testing

At any time prior to Completion in respect of any Set, the Principal's Representative may direct that any materials or work forming part of the Works and Services in respect of that Set be tested. The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Works and Services as may be required. On completion of any test the Contractor must make good the Works and Services so that they fully comply with this Deed.

The Principal's Representative may direct that any part of the Works and Services must not be covered up or made inaccessible without the Principal's Representative's prior approval.

The tests prescribed in this Deed must be conducted by the Contractor as and when provided for in this Deed, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.

Unless otherwise stated in this Deed, before conducting a test under this Deed the Principal's Representative or the Contractor must give not less than 5 Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.

Without prejudice to any other rights or remedies under this Deed, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

Each party must promptly make the results of tests available to the other and to the Principal's Representative.

Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:

- (a) this Deed provides that the Contractor must bear the costs of the test is one which the Contractor was required to conduct other than pursuant to a direction under clause 12.1;
- (b) the test shows that the material or work is not in accordance with this Deed;
- (c) the test is in respect of a part of the Works and Services or work is covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of this Deed.

Where the extra costs are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.

12.2 Contractor to Notify

The Contractor must give the Principal's Representative written notice 5 Business Days before it anticipates achieving Completion in respect of a Set.

12.3 Inspection before Completion

- (a) After receipt of a notice under clause 12.2, the Principal's Representative may (but is not obliged to):
 - (i) inspect the Set at a time that is mutually convenient for the Principal's Representative and the Contractor's Representative;
 - (ii) following the inspection under clause 12.3(a), issue a notice to the Principal and the Contractor either:
 - (A) containing a list of the items that are apparent and it believes must be completed before Completion is achieved; or
 - (B) stating that it believes the Contractor is so far from achieving Completion that it is not practicable to issue a list as contemplated in clause 12.3(a)(ii)(A).
- (b) If the Principal's Representative issues a notice under clause 12.3(a)(ii)(A), the Contractor must continue to proceed to bring the Works and Services in respect of that Set to Completion.
- (c) When the Contractor considers it has achieved Completion in respect of that Set, the Contractor must notify the Principal's Representative in writing by means of:
 - (i) in respect of a particular Set (other than the last Set to achieve Completion), copies of the Contractor's Certificate of Completion in respect of the relevant Set; and

- (ii) in respect of the last Set to achieve Completion, copies of all Contractor's Certificates of Completion.

Each Contractor's Certificate of Completion must attach:

- (iii) a register of all records of verification of installation, commissioning and handover (including procurement and Testing). All records are to be satisfactorily completed and signed;
- (iv) a register of any outstanding minor Defects and proposals for their rectification;
- (v) the Set Return to Service Documentation provided in accordance with the Works Brief;
- (vi) a register of deficiency notices issued, all of which are required to have been satisfactorily completed and closed out;
- (vii) a register of concessions granted for non-conforming work; and
- (viii) all Authority Approvals including any required for the Principal to occupy and use the Set for its intended purposes, in accordance with clause 2.3(c)(v).

Thereafter the Principal's Representative may (but is not obliged to), inspect the Set at a mutually convenient time.

- (d) The Principal's Representative must within 2 Business Days of receipt of a notice under clause 12.3(c), or of receipt of a notice under clause 12.3(e), issue a notice to the Principal and the Contractor:
 - (i) if satisfied that Completion in respect of the Set has been achieved:
 - (A) stating the date on which the Principal's Representative determines Completion was achieved; and
 - (B) where relevant to the test for Completion, containing a list of any minor Defects, of the type described in paragraph (a)(i) or (b)(i) of the definition of Completion in clause 1.1 (as relevant), that are apparent; or
 - (ii) if not satisfied that Completion in respect of the Set has been achieved:
 - (A) containing a list of the items that are apparent and it believes must be completed before Completion is achieved; or
 - (B) stating that it believes the Contractor is so far from achieving Completion that it is not practicable to issue a list as contemplated by clause 12.3(d)(ii)(A).

- (e) If the Principal's Representative issues a notice under either clause 12.3(d)(ii)(A) or clause 12.3(d)(ii)(B), the Contractor must continue to proceed to bring the Works and Services in respect of the Set to Completion and thereafter when it considers it has achieved Completion, the Contractor must notify the Principal's Representative by notice in writing by means of:
- (i) in respect of a particular Set (other than the last Set to achieve Completion), a Contractor's Certificate of Completion in respect of the relevant Set; and
 - (ii) in respect of the last Set to achieve Completion, copies of all Contractor's Certificates of Completion;
- to which are attached the documents referred to in the second paragraph of clause 12.3(c), and after which the third paragraph of clause 12.3(c), clause 12.3(d) and this clause 12.3(e) will reapply.

12.4 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under either of clauses 12.3(b) or 12.3(e) is not given by the Contractor yet the Principal's Representative is of the opinion that Completion in respect of a Set has been achieved, the Principal's Representative may at any time and for any reason in its absolute discretion, issue a Notice of Completion under clause 12.3(d)(i) in respect of that Set.

12.5 Handback upon Completion

- (a) The Contractor acknowledges that the Principal will require (in part) a progressive handback of the Sets and that this handback will take place by the Contractor handing back each Set once Completion has been achieved in respect of that Set.
- (b) The Contractor must comply with the requirements and procedures set out in Schedule 3 in relation to the handback of Sets and ensuring that the Sets are ready for return to revenue service.

12.6 Liquidated Damages for Delay in reaching Completion

Subject to clause 12.7(c), if Works Completion of a Fleet has not occurred by the Date for Works Completion of the Fleet, the Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1 for every day after the Date for Works Completion of the Fleet up to and including:

- (a) the Date of Works Completion of the Fleet; or
- (b) the date that this Deed is terminated under clause 14,

whichever is first.

12.7 Liquidated Damages a genuine pre-Estimate

- (a) The parties:
 - (i) agree that the amount of liquidated damages provided for in Schedule 1 constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Principal as a result of Works Completion of a Fleet not occurring on or before the relevant Date for Works Completion;
 - (ii) desire to avoid the difficulties of proving damages in connection with such failure and agree that the liquidated damages payable by the Contractor in accordance with clause 12.6 are reasonable and do not constitute nor are they intended to be a penalty; and
 - (iii) agree that the amount of liquidated damages payable by the Contractor under clause 12.6 will be recoverable from the Contractor as a debt immediately due and payable to the Principal.
- (b) If clause 12.6 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages as a result of the Contractor failing to achieve Works Completion of a Fleet by the relevant Date for Works Completion, but the Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Contractor would have had if clause 12.6 had not been void, invalid or otherwise inoperative.
- (c) The Contractor's aggregate liability under clauses 12.6 and 12.7(b) is limited to the amount set out in Schedule 1.

12.8 Final Completion

- (a) The Contractor must give the Principal's Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.
- (b) After receipt of a notice under clause 12.8(a), the Principal's Representative may (but is not obliged to):
 - (i) within 28 days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 28 days before the end of the latest Warranty Period, inspect the Sets at times that are mutually convenient for the Principal's Representative and the Contractor's Representative; and

- (ii) following the inspection under clause 12.8(b)(i), issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.
- (c) If the Principal's Representative issues a notice under clause 12.8(b)(ii), the Contractor must continue to bring the Sets to Final Completion.
- (d) When the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Final Completion in accordance with Schedule 7. Thereafter, the Principal's Representative may (but is not obliged to), inspect the Sets at times that are mutually convenient for the Principal's Representative and the Contractor's Representative.
- (e) The Principal's Representative must within 21 days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue a notice to the Principal and the Contractor:
 - (i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved; or
 - (ii) if not satisfied that Final Completion has been achieved:
 - (A) containing a list of the items which it believes must be completed before Final Completion is achieved; or
 - (B) stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.8(e)(ii)(A).
- (f) If the Principal's Representative issues a notice under clause 12.8(e)(ii)(A) or clause 12.8(e)(ii)(B), the Contractor must continue to proceed to bring the Sets to Final Completion and thereafter when it considers it has achieved Final Completion the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.8(d), clause 12.8(e) and this clause 12.8(f) will reapply.

12.9 Effect of Notice of Completion or Final Completion

A notice issued under clauses 12.3(d)(i) or 12.8(e)(i) will not:

- (a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this Deed;
- (b) be taken as an admission or evidence that the relevant Set complies with the requirements of this Deed; or

- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

12.10 Deferral of Completion Requirement

The Principal's Representative may, in its sole discretion, defer the need for the Contractor to satisfy any specified elements of the requirements of Completion and issue a Notice of Completion in respect of a Set. In that event, the Principal's Representative will expressly endorse the Notice of Completion with details of the specific elements deferred and the Contractor must satisfy or achieve those elements within the time directed by the Principal's Representative.

13. Risks and Insurance

13.1 Risk

Except where it arises from an Excepted Risk, and without limiting the generality of the Contractor's obligations, risk in:

- (a) the Principal Supplied Items passes to the Contractor upon collection of the Principal Supplied Items by the Contractor in accordance with Schedule 18; and
- (b) the Sets and things entrusted to the Contractor by the Principal at the Delivery Point for the purposes of carrying out the Works and Services:
 - (i) remains with the Contractor until delivery of the Sets and things entrusted by the Principal into the actual care, custody and control of the Principal at the Handback Point; and
 - (ii) reverts to the Contractor immediately upon the Sets and things entrusted by the Principal coming into the care, custody and control of the Contractor under any clause of this Deed dealing with the rectification of Defects, until such time as the Sets are returned into the care, custody and control of the Principal.

13.2 Other Risks

The Contractor must indemnify the Principal against:

- (a) any loss of or damage to property of the Principal caused by, arising out of, or in any way in connection with, the Works and Services;
- (b) any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons caused by, arising out of, or in any way in connection with, the Works and Services; and

- (c) (without limiting or otherwise affecting paragraphs (a) or (b)) any loss or damage to existing property in or upon which the Works and Services are being carried out, caused by, or arising out of, or in any way in connection with, the Works and Services,

but the Contractor's responsibility to indemnify the Principal will be reduced proportionally to the extent that an act or omission by the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor contributed to the loss, damage, injury or death.

The indemnity in this clause 13.2 will not:

- (d) exclude any other right of the Principal to be indemnified by the Contractor; or
- (e) apply to the extent to which the Contractor must indemnify the Principal under clause 13.1.

13.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 13.1, the Contractor must:

- (a) subject to paragraph (b), promptly replace or otherwise make good the loss or repair the damage; and
- (b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with paragraph (a) to the extent directed by the Principal's Representative.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applied.

13.4 Works and Public Liability Insurance

Upon entering into this Deed, the policies of insurance (if any) included in Exhibit B will come into effect and will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Works and Services.

This insurance is subject to the exclusions, conditions and excesses noted on the policies and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that it was provided with a copy of terms of

the insurance policies in Exhibit B prior to the date of this Deed and it reviewed and examined the terms of those insurance policies and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance included in Exhibit B do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit B; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies in Exhibit B or any insurance taken out under clause 13.4.

13.5 Contractor's Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Deed.

The Contractor must, before the Contractor commences the Works and Services or as otherwise required by this Deed:

- (a) effect and have in place the following insurance with insurers of the Required Rating:
 - (i) material damage insurance for:
 - (A) the Sets in the care, custody or control of the Contractor on the basis of the declared values specified in Schedule 1; and
 - (B) the Works and Services, including all Principal Supplied Items in the care, custody or control of the Contractor on the basis of the value specified in Schedule 1;
 - (ii) public and product liability insurance;
 - (iii) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Works and Services are being performed;
 - (iv) professional indemnity insurance;
 - (v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Works and Services, whether registered, capable of being registered or required under the Law to be

- registered, extended specifically to cover the transportation of items and substances;
- (vi) if the things the care of which the Contractor is responsible for under clause 13.1 are in transit (including storage and transshipment) from any place outside of Australia, marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Installation Facility, unpacked, inspected and confirmed as in sound condition;
 - (vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law;
 - (viii) appropriate insurance (for replacement value) in respect of all materials being or to be fabricated overseas for the Sets and any other insurance that the Principal may reasonably require the Contractor to obtain; and
 - (ix) an insurance policy covering loss or damage to the Contractor's Plant and Equipment.
- (b) ensure the public and products liability insurance referred to in sub-paragraph (a)(ii), the motor vehicle insurance referred to in sub-paragraph (a)(v) (except for compulsory third party insurance for bodily injury as required by the Law), any insurance required by sub-paragraph (a)(vii) and the insurance of the Contractor's Plant and Equipment referred to in sub-paragraph (a)(ix):
- (i) are policies in the name of the Contractor which include the Principal as an additional insured, and cover the Principal, the Principal's Representative, (including any appointee under clauses 9.2 or 9.3) Sydney Trains, NSW Trains, the Contractor and all its Subcontractors, for their respective rights and interests, and their liabilities to third parties and liability to each other arising out of, or in connection with, the Works and Services;
 - (ii) cover loss or damage to property (other than property described in clause 13.1) and the death of or injury to any person (other than liability which the Law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Works and Services;
 - (iii) includes a cross-liability clause in accordance with clause 13.9; and
 - (iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1;

- (c) in relation to the material damage insurance required by clause 13.5(a)(i), ensure that the policy:
 - (i) is in the name of the Contractor and includes the Principal and Sydney Trains as additional insureds, and covers the Principal, the Principal's Representative, Other Contractors, Sydney Trains, the Contractor and all its Subcontractors, for their respective rights and interests;
 - (ii) includes a cross-liability clause in accordance with clause 13.9; and
 - (iii) provides cover against the risks of loss, damage or destruction by all commercially insurable risks (including earthquake, fire flood, lightning, storm and tempest, theft, malicious damage and resulting loss and damage arising from faulty material or workmanship);
- (d) ensure that any insurance policy required by sub-paragraph (a)(vii) is in place before the Works and Services covered by such policies commence;
- (e) ensure the professional indemnity insurance required by clause 13.5(a)(iv):
 - (i) covers claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its Subcontractors in carrying out the Works and Services;
 - (ii) covers the Contractor for liability to the Principal arising from errors or omissions in the professional services carried out by the Contractor or any of its Subcontractors; and
 - (iii) provide:
 - (A) cover for any amount in respect of any one claim of not less than;
 - (B) cover for an amount in the aggregate of not less than; and
 - (C) for an excess not greater than,
the amount stated in Schedule 1;
- (f) in relation to the workers compensation insurance or similar insurance:
 - (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;
 - (ii) ensure that each of its Subcontractors has such workers compensation insurance or similar insurance covering the Subcontractor's employees; and
 - (iii) ensure it insures against liability for death of or injury to persons employed by the Contractor or its Subcontractors as required by any

Law for an amount not less than the amount stated in Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law;

- (g) in relation to marine transit insurance, ensure that the policy:
 - (i) is in the name of the Contractor and includes the Principal as an additional insured, and covers the Principal, the Principal's Representative, the Contractor and all its Subcontractors, for their respective rights and interests;
 - (ii) includes a cross-liability clause in accordance with clause 13.9;
 - (iii) includes a delayed unpacking clause and a 50:50 clause; and
 - (iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1.

13.6 General Insurance Policies

The Contractor must:

- (a) in respect of any insurance policy which it is required to effect, or procure to be effected, pursuant to this Deed and where required by the Principal's Representative, provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 days of a request with:
 - (i) a certificate of currency and any other evidence satisfactory to the Principal's Representative demonstrating that the policy is current and in compliance with the Contractor's obligation to insure (or procure insurance), or (where relevant) a licence as a self-insurer or other proof of being a self-insurer under the *Workers Compensation Act 1987* (Cth);
 - (ii) access to Downer's office at 39 Delhi Road, North Ryde NSW 2113 (or another location satisfactory to the Principal's Representative) for the purposes of reviewing a copy of the insurance policy; and
 - (iii) any other evidence which may be reasonably necessary to satisfy the Principal's Representative that the insurance policy is current and complies with the requirements of this Deed;
- (b) ensure that except for workers compensation or similar insurance:
 - (i) the Principal receives at least 30 days' notice of any cancellation or material change of any insurance policy effected under clauses 13.4 or 13.5;

- (ii) a notice of claim given to the insurer by the Principal, the Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by the Principal, the Contractor and the Subcontractor; and
- (iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and
- (c) ensure that it:
 - (i) does not do anything which prejudices any insurance;
 - (ii) where required, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;
 - (iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
 - (v) immediately notifies the Principal's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

If the Contractor fails to:

- (d) comply with any obligation under clause 13.6(a); or
- (e) effect or procure to be effected insurance which is with insurers of the Required Rating as required by clauses 13.5,

the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.

The Principal may refuse payment until the Contractor produces evidence of compliance with its insurance obligations under clause 13.5 to the satisfaction of the Principal. The rights given by this clause 13.6 are in addition to any other right.

13.7 Period of Insurance

The insurance the parties are required to have in place under this clause 13 must be maintained:

- (a) in the case of the material damage insurance and the public and products liability insurance policies required by clause 13.5, so as to provide cover until the later to occur of:
 - (i) the Contractor ceasing to be responsible under clause 13.1 for the care of anything; and
 - (ii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;
- (b) in the case of the Contractor's Plant and Equipment insurance:
 - (i) until the Contractor ceases to bear the risk of loss of or damage to anything under clause 13.1; and
 - (ii) at any time it is being used in connection with the Works and Services;
- (c) in the case of the workers compensation insurance and motor vehicle insurances, until the latest to occur of:
 - (i) the end of the last Warranty Period (including any extension under clause 8.6);
 - (ii) the date upon which all Defects have been rectified in accordance with this Deed; and
 - (iii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;
- (d) in the case of professional indemnity insurance, before commencing work covered by the policy referred to in clause 13.5(e) until at least the period specified in Schedule 1 after the Date of Final Completion; and
- (e) in the case of insurance required under clause 13.5(a)(vii), during the period required by any Law.

13.8 Notice of Potential Claim

The Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by this Deed;
- (b) keep the Principal informed of subsequent developments concerning the claim; and

- (c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences that may give rise to a claim.

13.9 Cross Liability

Where this Deed requires insurance to be effected in joint names or where the Deed otherwise requires insurance to contain a cross-liability clause in accordance with this clause 13.9, the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

13.10 Loss or Damage to Third Party Property

- (a) Without limiting clauses 13.1 and 13.2, where any loss of or damage to real or personal property (other than the Sets or Contractor's Plant and Equipment) occurs arising out of, or in any way in connection with, the carrying out by the Contractor of the Works and Services or a failure by the Contractor to comply with its obligations under this Deed, the Contractor must, at its cost, promptly repair any such loss or damage.
- (b) Without limiting clause 16.14, if the Contractor fails to carry out any repair work under clause 13.10(a), the Principal may carry out such work and all costs, losses and damages so suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal.
- (c) The Contractor must immediately notify the Principal's Representative upon receipt of any letter of demand or notice of claim from or on behalf of any third party or any writ, summons, proceedings, impending prosecution or inquest and immediately forward a copy of any such documents to the Principal's Representative.

13.11 Risk of Deductibles

The Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 13.

14. Default or Insolvency

14.1 Default

If the Contractor commits a breach of this Deed referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

- (a) not commencing or not progressing the Works and Services regularly and diligently in accordance with the requirements of this Deed, in breach of clause 10.1;
- (b) suspension of work, or failing to proceed with the Works and Services with due expedition and without delay, in breach of clause 10.1;
- (c) failing to provide the security, in breach of clause 2.5;
- (d) failing to ensure that the Principal is promptly notified if the Contractor causes or contributes to the occurrence of an Incident in accordance with clause 2.11(c);
- (e) failing to provide evidence of insurance, in breach of clause 13;
- (f) failing to use the materials or standards of workmanship required by this Deed, in breach of clause 4.1;
- (g) not complying with any direction of the Principal's Representative made in accordance with this Deed, in breach of clause 9.1;
- (h) not complying with the requirements of this Deed regarding the Contract Management Plan in a material respect;
- (i) not complying with its environmental obligations under this Deed;
- (j) not complying with its obligations under this Deed regarding work health and safety;
- (k) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.3;
- (l) the failure to comply with clause 2.2(e)(ii);
- (m) the failure to comply with clause 11.16(b); or
- (n) any other failure to comply with a material obligation under this Deed.

14.2 Contents of Notice

A written notice under clause 14.1 must:

- (a) state that it is a notice under clause 14.1;
- (b) specify the alleged breach;
- (c) require the Contractor to remedy the breach or, where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and
- (d) specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

14.3 Rights following Notice

- (a) Upon giving a notice under clause 14.1, the Principal may suspend payments to the Contractor until the date upon which the Contractor remedies the breach or makes arrangements satisfactory to the Principal.
- (b) If, by the time specified in a notice under clause 14.1, the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor:
 - (i) take out of the hands of the Contractor the whole or part of the work remaining to be completed and thereafter perform those works itself or engage another person to perform those works; or
 - (ii) terminate this Deed.

14.4 Immediate Termination or Immediate Take Out

If:

- (a) an Insolvency Event occurs:
 - (i) to the Contractor;
 - (ii) where the Contractor comprises more than one person, any one of those persons; or
 - (iii) to a person specified in Schedule 1;
- (b) the Contractor is in fundamental breach of this Deed as set out in clause 2.6(b)(i);
- (c) the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 2.11(c); or

- (d) the Contractor's aggregate liability under clauses 12.6 and 12.7(b) reaches or exceeds the amount to which its aggregate liability is limited under clause 12.7(c),

then, whether or not the Contractor is then in breach of this Deed, the Principal may, without giving a notice under clause 14.1, exercise the right under clause 14.3(b)(i) or 14.3(b)(ii).

14.5 Principal's Common Rights After Termination

If:

- (a) the Principal
 - (i) exercises its rights under clause 14.3(b)(i); or
 - (ii) terminates this Deed under clauses 14.3(b)(ii), 14.4 or 14.8;
- (b) the Contractor repudiates this Deed and the Principal otherwise terminates this Deed; or
- (c) this Deed is frustrated under the Law,

then:

- (d) the Contractor must immediately hand over to the Principal's Representative all copies of:
 - (i) any documents provided by the Principal to the Contractor;
 - (ii) all Contract Documentation prepared by the Contractor to the date on which the Principal exercises its rights under clauses 14.3(b)(i) or 14.3(b)(ii) (whether complete or not); and
 - (iii) any other documents or information in existence that is to be provided to the Principal under the terms of this Deed.
- (e) the Principal:
 - (i) will be entitled to require the Contractor to remove from any Set or anything else affected by the Works and Services, any Contractor's Plant and Equipment and all materials, equipment and other things intended for the Works and Services;
 - (ii) may complete those Works and Services and for that purpose in respect of any Subcontractor that has executed a deed in the form of Schedule 19, give a notice under clause 3 of that deed;
 - (iii) may take possession of such of the Contractor's Plant and Equipment and other things on or in the vicinity of any Set as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the Works and Services; and

- (iv) must, if it takes possession of the items referred to in clause 14.5(e)(iii):
 - (A) for the period during which it retains possession of the Contractor's Plant and Equipment or other things pay to the Contractor rent for the use of the Contractor's Plant and Equipment or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 15; and
 - (B) maintain the Contractor's Plant and Equipment or other things and, subject to clause 14.6, on completion of the Works and Services return to the Contractor the Contractor's Plant and Equipment and any things taken under clause 14.5(e)(iii) which are surplus.

This clause 14.5 will survive the termination or frustration of this Deed.

14.6 Parties' Rights after Termination

Subject to clause 14.10, if the Principal terminates this Deed under clause 14.3 or clause 14.4, or if the Contractor repudiates this Deed and the Principal otherwise terminates this Deed:

- (a) the Principal will:
 - (i) subject to clause 14.6(b), not be obliged to make any further payments to the Contractor, including any money that is the subject of a payment claim under clause 11.2 or a payment statement under clause 11.3;
 - (ii) be absolutely entitled to call, convert and have recourse to any unconditional undertaking held under clause 2.5; and
 - (iii) be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (b) the Contractor will:
 - (i) for work carried out prior to the date of termination, be entitled to an amount (determined by the Principal's Representative when the Principal has completed the work) that would have been payable if:
 - (A) this Deed had not been terminated; and
 - (B) the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination; and

- (ii) not be entitled to claim for any further payment of money (including for damages) in respect of the termination or for any other reason.

This clause 14.6 will survive the termination of this Deed.

14.7 Contractor's Rights after Repudiation or Wrongful Termination

- (a) If the Principal:
 - (i) repudiates this Deed and the Contractor terminates this Deed; or
 - (ii) wrongfully:
 - (A) exercises or attempts to exercise any right or power conferred on it by clauses 14.3, 14.4 or 14.8; or
 - (B) determines or purports to determine this Deed at common law,then the:
 - (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 14.8 and the Contractor's sole rights in such circumstances will be those set out in clause 14.9; and
 - (iv) Contractor:
 - (A) will not be entitled to the payment of damages;
 - (B) will not be entitled to any payment on a quantum meruit basis; and
 - (C) waives all other rights it has to make a Claim in such circumstances.
- (b) This clause 14.7 will survive the termination of this Deed.

14.8 Termination for Convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this Deed, the Principal may:

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

14.9 Payment with Termination under Clause 14.8

If the Principal terminates this Deed under clause 14.8 or is deemed by clause 14.7 to have terminated this Deed under clause 14.8, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - (i) for work carried out prior to the date of termination, the amount which would have been payable if this Deed had not been terminated and the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;
 - (ii) the cost of plant and materials reasonably ordered by the Contractor for the Works and Services and for which it is legally bound to pay provided that:
 - (A) the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (a)(i); and
 - (B) title in the plant and materials vests in the Principal upon payment;
 - (iii) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Works and Services and not included in any other payment by the Principal; and
 - (iv) the amount specified in Schedule 1, for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (a)(ii) and (a)(iii); and
- (b) must take all steps possible to mitigate the costs referred to in sub-paragraphs (a)(ii) and (a)(iii).

To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 2.5 when the Contractor has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.9 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Deed other than for the amount payable under this clause 14.9.

This clause 14.9 will survive the termination of this Deed by the Principal under clause 14.8.

14.10 Preservation of Rights

Subject to clause 14.7, nothing in this clause 14 or that the Principal does or fails to do pursuant to this clause 14 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under

clause 16.12) which it may have where the Contractor breaches (including repudiates) this Deed.

14.11 Termination by Frustration

If under the Law this Deed is frustrated the Principal will:

- (a) pay the Contractor the following amounts as determined by the Principal's Representative:
 - (i) an amount calculated in accordance with clause 14.9(a)(i) for work carried out prior to the date of frustration;
 - (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 14.9(a)(ii); and
 - (iii) the costs calculated in accordance with the terms of clause 14.9(a)(iii); and
- (b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 2.5 when the Contractor has complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.11 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the frustration of this Deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Deed other than for the amount payable under this clause 14.11.

Without limiting any other provision of this Deed, this clause 14.11 will survive the frustration of this Deed.

14.12 Codification of Contractor's Entitlements

This clause 14 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

- (a) cannot otherwise terminate, rescind or treat this Deed as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this Deed as repudiated,

otherwise than in accordance with this clause 14.

15. Disputes

15.1 Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Works and Services or this

Deed, or either party's conduct before the date of this Deed (*Dispute*), the Dispute must be determined in accordance with the procedure in this clause 15.

15.2 Notice of Dispute

Where such a Dispute arises, either party may give a notice in writing to the Principal's Representative and the other party (*Notice of Dispute*). The Notice of Dispute must:

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for being dissatisfied;
- (c) set out the position which the party believes is correct; and
- (d) in the case of a Dispute in respect of a direction of the Principal's Representative under one of the clauses referred to in Schedule 1 (a *Schedule 1 Dispute*), be given in accordance with clause 15.4.

15.3 Request for further particulars

Where a Notice of Dispute is given by the Contractor, if the Contractor fails to provide sufficient particulars of the Dispute to enable the Principal's Representative to properly consider the matter, then within 21 days after receipt of the Notice of Dispute the Principal's Representative may request the Contractor to provide further particulars of the Dispute.

If within 14 days after the request the Contractor has not furnished the particulars sought, and where the Dispute relates to a Schedule 1 Dispute, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 9.3(a)(i):

- (a) the Contractor will be deemed to have accepted the Principal's Representative's direction as final and binding and the direction will not be capable of being challenged, opened up or reviewed in any forum; and
- (b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.4 Time for Submitting Notice of Dispute Concerning Principal's Representative's Direction

The parties acknowledge that any direction by the Principal's Representative under one of the clauses referred to in Schedule 1 is an interim position only and that, without limiting the rights of the Principal's Representative under clauses 11.3 or 11.13, either party may seek to have any such direction opened up, reviewed, decided and substituted pursuant to this clause 15 by giving a Notice of Dispute to the other party and the Principal's Representative.

The Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any such direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to this clause 15 or is unreasonable (other than in accordance with the corrected determination). The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a Notice of Dispute.

If the Contractor wishes to have a direction by the Principal's Representative under one of the clauses referred to in Schedule 1 opened up, reviewed, decided and substituted, then, whether the direction is by the Principal's Representative or by a person appointed pursuant to clause 9.3(a)(i), the Contractor must give a Notice of Dispute in respect of the Dispute to the Principal and the Principal's Representative within 14 days of the date of the direction after which the Principal's Representative may review the Dispute and make a determination in accordance with clause 15.5.

If the Contractor fails to give such a notice to the Principal and the Principal's Representative within the time period required:

- (a) the direction will be final and binding and will not be capable of being challenged, opened up or reviewed in any forum; and
- (b) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 17.4, the Claim will be barred in accordance with clause 17.6.

15.5 Determination of Schedule 1 Disputes by the Principal's Representative

Upon receipt of a Notice of Dispute in respect of a Schedule 1 Dispute which is given in accordance with clause 15.4, the Principal's Representative may review and make a determination in respect of the Dispute. The determination of the Principal's Representative in respect of any such Notice of Dispute:

- (a) must be in writing;
- (b) must be given within 21 days after the Notice of Dispute is given or where further particulars have been requested under clause 15.3, within 21 days after the further particulars have been provided to the Principal's Representative;
- (c) will be substituted for the relevant direction the subject of the Notice of Dispute; and
- (d) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

If the Principal's Representative fails to make a determination as required by this clause 15.5 the direction the subject of the Notice of Dispute will be deemed to be confirmed by the Principal's Representative.

15.6 Response to Notice of Dispute

Where a Notice of Dispute has been given in accordance with clause 15.2 then the party to whom the Notice of Dispute is addressed must:

- (a) if the Notice of Dispute does not relate to a Schedule 1 Dispute, within 21 days of the date of:
 - (i) receipt of the Notice of Dispute; or
 - (ii) if any further particulars have been requested under clause 15.3, receipt of those particulars; or
- (b) if the Notice of Dispute does relate to a Schedule 1 Dispute and if the direction is confirmed, or deemed to have been confirmed, by the Principal's Representative under clause 15.5, within 42 days of the receipt of the Notice of Dispute,

provide a response in writing indicating whether or not it agrees with the position set out in the Notice of Dispute.

15.7 Executive Negotiation

- (a) If the Dispute is not resolved within 14 days of:
 - (i) the date of receipt of the response to the Notice of Dispute pursuant to clause 15.6; or
 - (ii) if no response is received, the date specified for the provision of a response pursuant to clause 15.6,
(the "**Referral Date**") either party may by notice in writing refer the Dispute to the persons described in Schedule 1 who must:
 - (iii) meet and undertake genuine and good faith negotiations with a view to:
 - (A) clarifying and narrowing the issues in dispute in the event that the Dispute is not resolved; and
 - (B) resolving the Dispute; and
 - (iv) if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.
- (b) If appropriate in the circumstances, at or prior to the meeting the parties will exchange documents critical to the resolution of the Dispute.

15.8 Expert Determination

If a dispute relates to a Schedule 1 Dispute and is referred for resolution under clause 15.7 and is not resolved within 21 days after the Referral Date, the dispute must be submitted to an expert determination.

The dispute will be referred to an expert determination whether or not the persons described in Schedule 1 have complied with clause 15.7(a).

15.9 The Expert

The expert determination under clause 15.8 is to be conducted by:

- (a) an independent industry expert agreed by the Principal and the Contractor;
or
- (b) where the parties are unable to agree upon an independent industry expert within 42 days after the Referral Date or an independent industry expert appointed under this clause 15.9:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
 - (iv) does not make a determination within the time required by clause 15.10(e),

an independent industry expert appointed by the President of the Resolution Institute.

15.10 Rules of Expert Determination

- (a) An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (b) The expert determination must be made in accordance with the rules for the expert determination process included in the agreement which appears in Schedule 23 or such other rules as the parties and the expert may agree.
- (c) The expert must:
 - (i) disclose to the parties any interest he or she has in the outcome of the determination; and
 - (ii) not communicate with one party to the determination without the knowledge of the other.
- (d) Each party will:

- (i) bear its own costs in respect of any expert determination; and
 - (ii) pay one-half of the expert's costs.
- (e) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within the period set out in the agreement between the parties and the expert.

15.11 Agreement with Expert

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

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 23 or such other terms as the parties and the expert may agree.

15.12 Determination of Expert

The determination of the expert:

- (a) must be given to the parties in writing;
- (b) will be:
 - (i) substituted for the relevant direction of the Principal's Representative; and
 - (ii) final and binding,unless a party gives a notice of appeal to the other party within 21 days of receipt of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

15.13 Arbitration Agreement

If:

- (a) a notice of appeal is given under clause 15.12; or
- (b) the dispute does not relate to a Schedule 1 Dispute and is not resolved within 21 days of the Referral Date,

the dispute must be determined by arbitration in accordance with the following clauses.

The dispute will be referred to arbitration whether or not the persons described in Schedule 1 have complied with clause 15.7(a).

15.14 Arbitration

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

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

To the extent that they are not inconsistent with this Deed, the Rules for the Conduct of Commercial Arbitration of The Resolution Institute will apply to the arbitration.

The seat of the arbitration will be Sydney, Australia.

The arbitrator will have power to grant all legal, equitable and statutory remedies and, to open up, review and substitute any decision of the expert under clause 15.12 that is not final and binding on the parties pursuant to clause 15.12.

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

15.15 Survive Termination

This clause 15 will survive the termination of this Deed.

15.16 Continuation of Work

Despite the existence of a Dispute between the parties, the Contractor must:

- (a) continue to carry out the Works and Services; and
- (b) otherwise comply with its obligations under this Deed.

15.17 Urgent Relief

Nothing in this clause 15 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

15.18 Disputes under Third Party Agreements

- (a) A Dispute under this Deed may be concerned with matters that also arise in respect of the respective rights and obligations of the Principal and a Third Party (a **Common Dispute**) including where the:
 - (i) Principal is in breach of a provision of this Deed to the extent such a breach is caused by a Third Party under its respective Third Party Agreement;
 - (ii) Principal is entitled to obtain remedies or benefits under a Third Party Agreement referenced to a Claim by the Contractor under this Deed;

- (iii) Contractor has rights against the Principal under a warranty or indemnity or specific right of reimbursement or recovery in this Deed, and there is a corresponding warranty or indemnity or specific right of reimbursement or recovery in a Third Party Agreement; or
 - (iv) Contractor has a Claim against the Principal and the Principal has a Claim against a Third Party based on the same or similar events or circumstances.
- (b) In the event that there is a Common Dispute then the Principal's Representative may, in its absolute discretion, within 28 days of a Notice of Dispute, issue a direction to the Contractor stating that this clause 15.18 applies.
- (c) Clauses 15.18(d) to 15.18(k) apply only in relation to Common Disputes for which the Principal's Representative has issued a direction pursuant to clause 15.18(b).
- (d) In relation to the relevant Common Dispute:
- (i) clauses 15.3 to 15.14 will not apply to the resolution of that Common Dispute; and
 - (ii) the Contractor acknowledges and agrees that the purpose of this clause 15.18 is:
 - (A) to provide the Contractor with comparable remedies and entitlements in respect of Common Disputes, and to limit the Contractor's rights against the Principal in respect of Common Disputes by reference to the Principal's rights and entitlements under or in connection with Third Party Agreements; and
 - (B) not to reduce or disentitle or otherwise affect the validity of any Claim by the Principal against a Third Party under, arising out of, or in any way in connection with the respective Third Party Agreement.
- (e) In respect of the relevant Common Dispute:
- (i) the Contractor's entitlement to receive compensation from the Principal, and the Principal's liability to pay compensation to the Contractor, will only arise at the time the relevant Common Dispute is resolved or determined;
 - (ii) if any compensation is payable by the Principal to the Contractor under this Deed in respect of the Common Dispute, the Contractor will have the same entitlement to recover compensation under this Deed as the Principal has to recover that compensation from a Third Party under the respective Third Party Agreement;

- (iii) any rights the Contractor has against the Principal will not exceed the equivalent relief, benefit or payment to which the Principal is entitled under the relevant Third Party Agreement; and
- (iv) the Principal will pass through to the Contractor the proportion of the damages or other form of relief to which the Principal is entitled:
 - (A) to the extent referable to the Contractor, including any liability, Claim or loss of the Contractor; and
 - (B) determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.
- (f) The Principal agrees to:
 - (i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;
 - (ii) if it is unable to obtain the Third Party's consent as contemplated under clause 15.18(f)(i), make on behalf of the Contractor whatever representations in respect of the Common Dispute that the Contractor reasonably requests; and
 - (iii) provide:
 - (A) regular updates to the Contractor; and
 - (B) whatever information and documents the Contractor reasonably requests,as to the progress of the Common Dispute.
- (g) The Principal's liability to pay the Contractor:
 - (i) is satisfied by payment to the Contractor in accordance with this clause 15.18; or
 - (ii) if the Third Party is not liable to the Principal, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:
 - (A) the Principal has complied with its obligations under this clause 15.18 with respect to recovery of the Principal's and the Contractor's entitlements from the Third Party; and
 - (B) all appeals from such determination have been exhausted.
- (h) The Contractor agrees:

- (i) to provide all documents, assistance, and cooperation reasonably requested by the Principal (and in the time requested by the Principal) in connection with the Common Dispute;
 - (ii) that where a Third Party Agreement contemplates:
 - (A) a dispute resolution process other than litigation (including arbitration, expert determination, mediation or any other dispute resolution process):
 - (1) that dispute resolution process will apply as between the Principal and the Contractor (including any rules or other terms relating to procedure); and
 - (2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that dispute resolution process; and
 - (B) litigation, the Contractor consents to the Common Dispute being consolidated with (or heard together with) that litigation; and
 - (iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor's rights and obligations under this Deed.
- (i) The Contractor's entitlement to a remedy will not be reduced to the extent to which the Principal's entitlements under a Third Party Agreement are reduced or extinguished due to the Principal's breach or failure to comply with the Third Party Agreement or other act or omission (to the extent not caused by the Contractor).
 - (j) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this Deed, then the Contractor is not entitled to the same compensation under this clause 15.18.
 - (k) Any payment to which the Contractor is entitled under this clause 15.18 shall be paid by the Principal to the Contractor within 20 Business Days from the date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

16. General

16.1 Notices

- (a) At any time and from time to time the Principal's Representative may notify the Contractor of an electronic portal or document management system to

be used for the purposes of this Deed. The Principal's Representative's notice will set out:

- (i) the relevant electronic portal or document management system;
 - (ii) the commencement date for the use of the electronic portal or document management system;
 - (iii) any password, login details or similar information required for the Contractor to use the electronic portal or document management system;
 - (iv) address details for the Principal, the Principal's Representative and the Contractor; and
 - (v) any other information reasonably necessary for the use and service of notices via the electronic portal or document management system.
- (b) Any notices contemplated by this Deed must be in writing and must:
- (i) before the date referred to in clause 16.1(a)(ii), be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); and
 - (ii) on and from the date referred to in clause 16.1(a)(ii):
 - (A) in the case of notices by the Contractor:
 - (1) without limiting clause 16.1(b)(ii)(A)(2), be sent to the Electronic Portal address of the Principal or the Principal's Representative (as applicable); and
 - (2) under clauses 10, 11, 12, 14, 15 or 17 or concerning a claim for payment, in addition to the copy of the notice sent pursuant to clause 16.1(b)(ii)(A)(1), also be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); and
 - (B) in the case of notices by the Principal or the Principal's Representative:
 - (1) be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); or

- (2) except in relation to notices by the Principal under clauses 14.3, 14.4, 14.8 or 15.2, be sent to the Electronic Portal address of the intended recipient.
- (c) For the avoidance of doubt, no notice referred to in clause 16.1(b)(ii)(A)(2) shall be effective unless delivered in accordance with both clauses 16.1(b)(ii)(A)(1) and 16.1(b)(ii)(A)(2).
- (d) Subject to clause 16.1(g), a notice sent by the Electronic Portal will be taken to have been received on the date recorded on the notice on which it was registered on the Electronic Portal.
- (e) Subject to clause 16.1(g), a notice sent by post will be taken to have been received:
- (i) in the case of international post, 7 Business Days after the date of posting; and
 - (ii) in the case of posting within Australia, 2 Business Days after the date of posting.
- (f) Subject to clause 16.1(g), a notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clause 16.1(b)(i), 16.1(b)(ii)(A)(2) or 16.1(b)(ii)(B)(1) (as applicable), which is a Business Day.
- (g) Where clause 16.1(b)(ii)(A)(2) applies, the relevant notice will be taken to have been received on the later of:
- (i) the date determined in accordance with clause 16.1(d); and
 - (ii) the date determined in accordance with clause 16.1(e) or 16.1(f) (as the case may be).

16.2 Law and Jurisdiction

- (a) This Deed is governed by and will be construed according to the Laws of New South Wales.
- (b) Where clause 15.17 applies:
- (i) the parties irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State of New South Wales with respect to any proceedings that are permitted to be brought at any time under clause 15.17; and
 - (ii) in respect of the jurisdiction referred to in clause 16.2(b)(i) the parties irrevocably waive any objection they may now or in the future have to

the venue of any action or proceeding, and any claim they may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

16.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any 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) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Deed; or
 - (ii) any other failure by the Contractor to comply with a requirement of this Deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

16.4 Assignment

The Contractor cannot assign its rights or liabilities under this Deed without the prior written consent of the Principal and except on such terms and conditions as are determined in writing by the Principal.

16.5 Entire Agreement

This Deed and the Probity and Process Deed Poll constitute the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed and the Probity and Process Deed Poll; and
- (b) any correspondence or other documents relating to the subject matter of this Deed and the Probity and Process Deed Poll that may have passed

between the parties prior to the date of this Deed and that are not expressly included in this Deed and the Probity and Process Deed Poll.

16.6 Joint and Several Liability

The obligations of the Contractor, if more than one person, under this Deed, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

16.7 Severability

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

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

16.8 Indemnities to Survive

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.

Nothing in this clause 16.8 prevents any other provision of this Deed, as a matter of interpretation also surviving the termination of this Deed.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.

16.9 Stamp Duty and Other Fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Deed and the performance of its obligations in respect of this Deed.

16.10 Taxes

Without limiting clause 2.3 but subject to clause 18, the Contractor must pay all Taxes that may be payable in respect of the Works and Services, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Works and Services.

16.11 Confidentiality

- (a) Subject to clause 16.11(b), the Contractor must:

- (i) keep confidential this Deed and any information relating to the Works and Services and any discussions concerning this Deed;
 - (ii) not use the information referred to in sub-paragraph (a)(i) except as necessary for the performance of the Works and Services; and
 - (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).
- (b) The Contractor is not obliged to keep confidential any information:
- (i) which is in the public domain through no default of the Contractor; or
 - (ii) the disclosure of which is:
 - (A) required by Law;
 - (B) consented to in writing by the Principal; or
 - (C) given to a court in the course of proceedings to which the Contractor is a party or to an expert or other person appointed under this Deed or an agreed arbitrator.
- (c) The Contractor must:
- (i) execute and submit to the Principal within 14 days of this Deed a Confidentiality Undertaking;
 - (ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each Subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The Contractor acknowledges that the Principal may disclose this Deed (and information concerning the terms of this Deed) under or in accordance with any one or more of the following:
- (i) the *Government Information (Public Access) Act 2009* (NSW); and
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability.
- (e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under clause 16.11(d).
- (f) The Contractor must not commit to marketing or promotional opportunities or develop marketing or promotional materials that relate to the Works and

Services, without the prior written approval of the Principal's Representative. The Contractor must not make any statement (verbal or written) or provide any photographs or illustrations on social media or to the media or government representatives regarding the Works and Services without the prior written approval of the Principal's Representative.

16.12 Right of Set-Off

The Principal may deduct from moneys otherwise due to the Contractor:

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

whether under this Deed or otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.5.

16.13 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 11.4(a), this Deed is an entire contract.

16.14 Principal May Act

- (a) The Principal may, either itself or by a third party, perform an obligation under this Deed that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.
- (b) Where the Principal or the Principal's Representative is entitled under this Deed to exercise any right or power to:
 - (i) direct or instruct the Contractor to, or
 - (ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal's Representative does exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works and Services.

16.15 Unlimited Discretion

- (a) Except as expressly provided in this Deed (including in clause 16.15(c)) no procedural or substantive limitation (including any which may otherwise be

implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this Deed.

- (b) Without limiting clause 16.15(a):
 - (i) except as expressly provided in this Deed (including in clause 16.15(c)) neither the Principal nor the Principal's Representative will be:
 - (A) constrained in the manner in which it exercises; or
 - (B) under any obligation to exercise,
any discretion, power or entitlement conferred by this Deed because of the operation of any legal doctrine which in any way limits or otherwise affects the express words used in the provision of this Deed conferring the discretion, power or entitlement; and
 - (ii) any approval or consent referred to in, or required under, this Deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) think fit, unless this Deed expressly provides otherwise.
- (c) Nothing in this clause 16.15 will prevent the implication of a term into this Deed where the implication of the term is required to ensure that this Deed (or a part of this Deed) is not void or voidable due to uncertainty or any other legal principle.

16.16 No Partnership, Joint Venture or Other Fiduciary Relationship

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

16.17 Process Agent

If the Contractor is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Contractor must:

- (a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
- (b) obtain the process agent's consent to the appointment.

16.18 Indemnity

The Contractor must indemnify the Principal against:

- (a) any liability to or claim by any other person (including any Third Party); and
- (b) all costs, expenses, losses, damages, fines and penalties suffered or incurred by the Principal,

arising out of, or in any way connected with:

- (c) the Contractor's breach of a term of this Deed;
- (d) any obligation under any Third Party Agreement which the Contractor is obliged to perform under clause 2.7(a)(ii); or
- (e) any Defect or the consequences of a Defect,

provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the liability claim, costs losses or damages.

16.19 Variations

Subject to clause 6.3, this Deed may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

16.20 Provisions Limiting or Excluding Liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal or the Contractor is to be construed as doing so only to the extent permitted by Law.

16.21 Limit of Contractor's Liability

Subject to clause 16.23, the liability of the Contractor to the Principal, whether arising under or in connection with this Deed or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise) or on any basis in Law, is limited to the Contract Sum.

16.22 No Liability for Certain Matters

Subject to clause 16.23, the Contractor will have no liability whatsoever to the Principal for loss of use, production, profit, revenue, business, data, contract or anticipated saving or for any financing costs or increase in operating costs.

16.23 Qualification on Limitation of Liability

Clauses 16.21 and 16.22 do not apply to limit or restrict in any way:

- (a) any liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;

- (b) any liability for which, but for a failure by the Contractor to comply with its obligations under this Deed or under an insurance policy, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with this Deed;
- (c) the Contractor's liability to pay liquidated damages under clause 12.6 or general damages under clause 12.7(b);
- (d) the Contractor's liability to indemnify the Principal under clauses 2.7(b), 3.5(d), 3.7(d), 5.1(c)(ii) 5.3(a)(ii) or 13.2 or for breach of clause 2.6;
- (e) the Contractor's liability for costs, losses and damage caused by the malicious or fraudulent acts of employees of the Contractor or its Subcontractors or its agents;
- (f) liability which is otherwise limited by another provision of this Deed;
- (g) the Contractor's liability for Abandonment;
- (h) the Contractor's liability to indemnify any Rail Transport Agency under the deed poll executed in the form of Schedule 22; or
- (i) liability out of which by Law the Contractor cannot contract.

16.24 No Circularity

- (a) In determining:
 - (i) whether an insurance policy extends to cover this Deed in respect of any matters referred to in clauses 16.21 or 16.22 and the liability (if any) of the Contractor arising out of or in connection with the matter; or
 - (ii) the amount recovered or recoverable by the Contractor under an insurance policy in connection with a matter referred to in clauses 16.21 or 16.22,(together the **Determinable Matters**), the limitation on the Contractor's liability pursuant to clauses 16.21 or 16.22 will be disregarded and it must be assumed that the Contractor has paid in full the amount of its liability to the Principal (unlimited by clauses 16.21 or 16.22) in a manner which entitles the Contractor to claim under the relevant insurance policy.
- (b) The Contractor waives and disclaims any right or entitlement it may now or in the future have, but for this clause 16.24(b), to:
 - (i) not disregard clauses 16.21 or 16.22, in connection with any determination of the Determinable Matters; or
 - (ii) do any of the following:

- (A) claim or assert (including by way of defence, counter-claim or third party proceeding); or
- (B) instigate, participate in, consent to, or lend its name to, any action or proceedings of any kind under which it is claimed or asserted (including by way of defence, counter-claim or third party proceeding),

that clauses 16.21 or 16.22 are not to be disregarded in connection with the determination of the Determinable Matters.

- (c) The parties agree that clauses 16.24(a) and 16.24(b) may be pleaded in bar to any claim or assertion by:
 - (i) the Contractor; or
 - (ii) any insurer;in any Claim to the effect that clauses 16.21 or 16.22 are not to be disregarded as provided in clause 16.24(a).
- (d) If for any reason in relation to a matter referred to in clauses 16.21 or 16.22:
 - (i) clauses 16.24(a) to 16.24(c) (or any of them) are unenforceable, void, voidable or illegal, clauses 16.21 and 16.22 will be of no force or effect and will be treated as if they were severed from, and had never been terms of, this Deed; and
 - (ii) the Contractor, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to have regard to, clauses 16.21 and 16.22 in determining the Determinable Matters, then clauses 16.21 and 16.22 will be treated as if they were severed from and had never been terms of, this Deed and as of no force or effect whatsoever as against the person(s) who is so not obliged, or who is so entitled.

16.25 Proportionate Liability

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Principal and the Contractor under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether such rights,

obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

- (b) To the extent permitted by Law:
 - (i) the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).
- (c) The Contractor must:
 - (i) in each Subcontract into which it enters for the carrying out of the work under this Deed or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
 - (ii) require each Subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the work under this Deed, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (d) The Contractor must ensure that all policies of insurance covering third party liability it is required by this Deed to effect or maintain (including the professional indemnity policy referred to in clause 13.5(e):
 - (i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
 - (ii) do not exclude any potential liability the Contractor may have to the Principal under or by reason of this Deed.

- (e) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the expert or any arbitrator appointed in accordance with the provisions of this Deed.

The expert or arbitrator (as the case may be) has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to expert determination or arbitration.

16.26 Prior Work

The Contractor agrees that the work in connection with the Works and Services carried out by the Contractor prior to the date of this Deed will be deemed to be governed by the provisions of this Deed and will be deemed to be part of the Works and Services and any payments made to the Contractor by the Principal prior to the date of this Deed in respect of the Works and Services will be treated as part payments of the amount required to be paid by the Principal under this Deed.

16.27 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

16.28 Personal Property Securities Act

- (a) By signing this Deed, the Contractor acknowledges and agrees that if this Deed and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (***Security Interest***), the Contractor shall do anything (including amending this Deed or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
 - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Deed.

- (b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- (c) The Contractor:
 - (i) acknowledges that the Security Interests created under or pursuant to this Deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
 - (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

16.29 Vienna Convention

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

17. Notification of Claims

17.1 Notice of Variation

If a direction by the Principal's Representative, other than a Variation Order under clause 6.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

- (a) within the time specified in Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Variation;
- (b) within the time specified in Schedule 1 of giving the notice under paragraph (a), submit a written Claim to the Principal's Representative, which includes the details required by clause 17.3(b); and

- (c) continue to carry out the Works and Services in accordance with this Deed and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 17.1.

17.2 Notice of Other Claims

If the Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Deed by the Principal) under, arising out of, or in any way in connection with, this Deed, the Works and Services, including anything in respect of which:

- (a) it is otherwise given an express entitlement under this Deed; or
- (b) this Deed expressly provides that:
 - (i) specified costs are to be added to the Contract Sum; or
 - (ii) the Contract Sum will be otherwise increased or adjusted,

as determined by the Principal's Representative, the Contractor must give the Principal's Representative the notice required by clause 17.3(a) and a Claim in accordance with clause 17.3(c).

17.3 Prescribed Notices

- (a) Any written notice referred to in clauses 17.1 and 17.2 must:
 - (i) be provided not later than the time specified in Schedule 1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
 - (ii) expressly specify:
 - (A) that the Contractor proposes to make a Claim; and
 - (B) the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 17.1(b) must include:
 - (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (ii) the provisions of this Deed or other legal basis upon which the Claim is based; and
 - (iii) details of the amount claimed and how it has been calculated.
- (c) Any written Claim referred to in clause 17.2 must:

- (i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 17.3(a); and
- (ii) include:
 - (A) detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (B) the legal basis for the Claim, whether based on a term of this Deed or otherwise, and if based on a term of this Deed, clearly identifying the specific term;
 - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (D) details of the amount claimed and how it has been calculated.

17.4 Submission of Claims

Claims submitted by the Contractor under clauses 17.1(b) and 17.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.

If within 28 days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 28th day.

17.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 17.3(b) or 17.3(c) every 28 days after the written Claim under clause 17.1(b) or 17.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

17.6 Bar

If the Contractor fails to comply with clauses 2.3(d), 15.1, 15.2, 15.3, 15.4, 17.1, 17.2, 17.3 or 17.5:

- (a) the Principal will not be liable upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

17.7 Other Provisions Unaffected

Nothing in clauses 17.1 to 17.6 will limit the operation or effect of any other provision of this Deed that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

18. General Provisions Relating to GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Deed are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with this Deed, including the Works and Services, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 18(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (d) If any party is required under this Deed to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of this Deed, where the Recipient is the Contractor, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 18 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a tax invoice that complies with the GST Legislation in respect of that taxable supply.
- (f) The parties agree that, unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this Deed:

- (i) the Principal will issue to the Contractor a recipient created tax invoice (RCTI) for each taxable supply made by the Contractor to the Principal under this Deed;
- (ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;
- (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
- (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this Deed, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 11.3(e)) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect any such taxable supply.

Each party acknowledges and warrants that at the time of entering into this Deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

- (g) If the GST payable in relation to a supply made by the Supplier under this Deed varies from the additional amount paid by the other party under this clause 18 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).
- (h) In this clause 18:
 - (i) terms defined in GST Legislation have the meaning given to them in GST Legislation; and
 - (ii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

Schedules

Contents

1.	Contract Particulars	2
2.	Payment Schedule	11
3.	Principal Arranged Matters	13
4.	Form of Confidentiality Undertaking	21
5.	Contractor's Certificate of Installation Compliance	23
6.	Contractor's Certificate of Completion	24
7.	Contractor's Certificate of Final Completion	25
8.	Interface Agreement Deed Poll	26
9.	Tender Management Plans	28
10.	Action in complying with Authority Approvals and Third Party Agreements	29
11.	Form of Other Contractor Interface Deed	30
12.	Installation Facility Access Deed	38
13.	Authority Approvals to be obtained by the Principal	41
14.	Form of Unconditional Undertaking	42
15.	Information Documents and Materials	44
16.	Information from Contractor's Proposal Schedules	48
17.	Form of Statutory Declaration	55
18.	Principal Supplied Items	65
19.	Form of Subcontractor Deed	73
20.	Parent Company Guarantee	78
21.	Options	97
22.	Form of Contractor Deed Poll	101
23.	Expert Determination Agreement	104
24.	Overhead Costs	115
25.	Project Team and Time Allocation	116
	DEED EXECUTION PAGE	117
	EXHIBITS	118

1. Contract Particulars

Assumed ETCS Installation Start Date (Clause 1.1)	<ul style="list-style-type: none"> • in respect of the C-Set Fleet, 2 March 2020 • in respect of the K-Set Fleet, 1 April 2019 • in respect of the V-Set Fleet, 02 September 2019
Baseline Condition Documents (Clause 1.1)	Exhibit D, Reports and Exhibit A, Works Brief, and all documents referred to in those documents
Commencement Date: (Clauses 1.1 and 1.7)	The date of execution by the last party to execute this Deed.
Conditions Precedent to Completion: (Clause 1.1)	Nil in addition to those expressed elsewhere in the Deed.
Date for Works Completion: (Clause 1.1)	<ul style="list-style-type: none"> • in respect of the C-Set Fleet, 30 June 2020 • in respect of the K-Set Fleet, 28 February 2020 • in respect of the V-Set Fleet, 28 February 2020
Delivery Point (Clause 1.1)	Flemington Depot 1 Bachel Avenue, Lidcombe, NSW
ETCS Installation Deferral Date (Clause 1.1)	<ul style="list-style-type: none"> • in respect of the C-Set Fleet, 6 January 2020 • in respect of the K-Set Fleet, 4 February 2019 • in respect of the V-Set Fleet, 8 July 2019
Handback Point (Clause 1.1)	Flemington Depot 1 Bachel Avenue, Lidcombe, NSW

Installation Facility: Downer Rail Cardiff
(Clause 1.1) 460 Main Road, Glendale, NSW 2285

Latent Condition Threshold Amount \$ [] per Set (excluding GST).
(Clause 1.1)

Material Variance Threshold Amount In respect of:
(Clause 1.1)

- (a) the C-Set Fleet, \$ [] in the aggregate (excluding GST);
- (b) the K-Set Fleet, \$ [] in the aggregate (excluding GST); and
- (c) the V-Set Fleet, \$ [] in the aggregate (excluding GST).

Other Contractor: Nil
(Clause 1.1)

Other Excepted Risk: Nil in addition to those expressed elsewhere in the
(Clause 1.1) Deed.

Nominated Subcontractor and Nominated Subcontract Work:
(Clauses 1.1 and 2.2(b)(i)(B))

Nominated Subcontract Works	Nominated Subcontractor
N/A	N/A

Original Contract Price: \$19,700,000 (excluding GST)
(Clause 1.1)

Principal's Representative: Geoff Webb
(Clause 1.1) Project Director - Automatic Train Protection Program
Transport for NSW
Level 2, 241 O'Riordan Street

Mascot NSW, 2020

**Project Work Health and Safety
Management Plan**
(Clause 1.1)

Nil

Provisional Sum Work:
(Clauses 1.1 and 7.3)

Item A6.3 of the table in Schedule 2, being the provision of locomotive haulage services for transferring a Set from the Delivery Point to the Installation Facility or from the Installation Facility to the Handback Point (as the case may be). The amount allowed for this item of Provisional Sum Work is specified in Item A6.3 of the table in Schedule 2. .

Third Party Agreements:
(Clauses 1.1 and 2.7)

Global Safety Interface Agreement between Transport for NSW and Sydney Trains, which appears in Exhibit E

Warranty Period:
(Clause 1.1)

The Warranty Period will commence on the Date of Completion in respect of the first Set to achieve Completion and expire 24 months after the Date of Works Completion of the last Fleet to reach Works Completion

Working days:
(Clause 1.2(m))

Monday to Sunday, excluding public holidays in NSW

Order of Precedence:
(Clause 1.4(b))

- (a) General Conditions and the Schedules; then
- (b) Works Brief; then
- (c) Appendices to the Works Brief; then
- (d) the Exhibits not specifically stated in (b) or (c).

**Names of persons in whose
favour the Deed Poll in Schedule
8 are required**

Sydney Trains (ABN 38 284 779 682)

(Clause 1.6)

**Names of persons in whose
favour the Deed Poll in Schedule
22 are required:**
 (Clause 1.6)

Sydney Trains (ABN 38 284 779 682)
 NSW Trains (ABN 50 325 560 455)
 Rail Corporation New South Wales (ABN 59 325 778 353)

Subcontracts:
 (Clause 2.2(b)(i)(C))

Description of the parts of the Works and Services	Subcontractor
Nil	Nil

**Subcontractors required to
execute deed in form of Schedule
19:**
 (Clause 2.2(e)(ii)(A))
 (Clause 2.2(e)(ii)(B))

Nil

Parent Company Guarantor:
 (Clause 2.5(g))

Downer EDI Limited (ABN 97 003 872 848)

Working hours and working days:
 (Clause 2.12)

Nil

**Percentages to be applied to
Variation:**
 (Clause 6.4)

Clause No	Description	Percentage
6.4(b)(ii)(A)	For Overhead Costs and profit where there is an increase in the Contract Sum due to a Variation	<input type="text"/>
6.4(b)(ii)(B)	For Overhead Costs and profit where there is a	<input type="text"/>

	decrease in the Contract Sum due to a Variation	
--	---	--

Valuation of Variation in respect of the provision of spare parts or special tools and equipment:

(Clause 6.4(b)(iii))

As per the prices in the Spare Parts Schedule included in Schedule 16.

New Warranty Period expiry date:

(Clause 8.6(b)(v))

The date that is 24 months following completion of the rectification of the Defect (or the part) or completion of the Variation work (as the case may be).

Contractor's Personnel:

(Clauses 9.5(a)(i) and 9.5(b)(i))

Contractor's Representative –

Senior Project Manager –

Project Manager –

Engineering Manager –

Testing & Commissioning Engineer –

Project Engineer –

Zero Harm Advisor –

Quality Engineer –

Full-time dedicated positions or (if not full-time) availability:

(Clause 9.5(b)(iii))

As specified in Schedule 25.

Number of copies of report:

(Clause 9.10(b))

An electronic version (in both pdf and native formats)

Causes of delay entitling Contractor to claim extension of time:

(Clause 10.7(a)(ii))

- a Force Majeure Event;
- a Change in Law to which clause 2.3(d) applies;
- a change in an Authority Approval (other than a Third Party Agreement), but only where the change has a direct effect on the Contractor carrying out the

Works and Services;

- a legal challenge or proceedings in relation to an Authority Approval to which clause 2.3 applies;
- a Change in Codes and Standards in respect of which a Variation is directed under clause 2.3(b)(ii)(B);
- the Principal Supplied Items Category A not being fit for purpose;
- a strike that is industry-wide and not specific to the Contractor;
- a Latent Condition satisfying the description in clause 3.4(a), and where in the case of a Latent Condition referred to in paragraphs (a) or (c) of the definition of "Latent Condition", the additional costs reasonably incurred by the Contractor in complying with the Principal's Representative's notice under clause 3.3(h) as determined by the Principal's Representative exceed the Latent Condition Threshold Amount; and
- any part of the rail network which is:
 - (a) required to transfer any Set from:
 - (i) the Delivery Point to the Installation Facility; or
 - (ii) the Installation Facility to the Handback Point;
 - (b) not owned by the Contractor or a "related body corporate" of the Contractor (as that term is defined in section 9 of the Corporations Act 2001 (Cth)); and
 - (c) not located at the Installation Facility, being unavailable to the Contractor for the purposes transferring a Set from the Delivery Point to the Installation Facility or from the Installation Facility to the Handback Point (as the case may be) due to reasons which are beyond the reasonable control of the Contractor.

**Rates to be used in determining
 delay damages:**
 (Clause 10.13(a))

Description	Rate (per day)
Project Director	
Project Manager	
Project Engineer	
Site Manager	
Test & Commissioning Manager	
Test & Commissioning Engineer	
Safety Manager	
Interface Manager	
Installation Facility	
Other onsite overheads	
Off-site overheads	

The rates set out above are fixed for the duration of the Deed, are not subject to rise and fall.

**Limit on amount of delay
 damages payable to Contractor:**
 (Clause 10.13(a))

\$ per day

Percentage for compression:
 (Clause 10.18(b)(i)(B))

Nil

Liquidated damages:
 (Clause 12.7(a))

\$ per day

**Limit of liability for liquidated
 damages for delay:**
 (Clause 12.7(c))

% of Contract Sum

**Amount of Contractor's
insurance:**
(Clause 13.5)

- **Workers compensation insurance**
as required by Law
- **Public and products liability insurance**
\$ [] for any one occurrence but in the
aggregate with respect to products liability for any
one period of insurance
- **Material damage insurance**
(A) declared value of \$ [] per C-Set, \$ []
[] per K-Set and \$ [] per V-Set, for the
Sets in the care, custody or control of the
Contractor; and
(B) full replacement or reinstatement value for the
Works and Services, including all Principal Supplied
Items in the care, custody or control of the
Contractor.
- **Motor vehicle insurance**
\$ [] third party property damage
- **Professional indemnity insurance**
\$ [] for any one occurrence and in the
aggregate for any one period of insurance
- **Marine transit insurance**
cost, insurance, freight value plus [] % to cover
the risk of loss or damage to each shipment
- **Contractor' Plant and Equipment**
current market value

Period for Professional Indemnity Insurance 7 years
(Clause 13.7(d))

Person in Insolvency Event: Downer EDI Limited (ABN 97 003 872 848)
(Clause 14.4(a)(iii))

Amount for termination for convenience: [] of the cost determined under clause 14.9(a)(ii) and
14.9(a)(iii).
(Clause 14.9(a)(iv))

Clauses in respect of which directions of a Principal's Representative are subject of a Dispute
 (Clauses 15.2, 15.4, 15.5 and 15.7(a))

2.3(d)(ii)(C), 6.4, 8.4, 8.5, 9.14(d)(iii), 10.10, 10.11, 10.13, 10.14, 10.15, 10.18(b), 11.3, 11.13, 12.3(b), 12.3(d), 12.8(b), 12.8(e), 14.6(b), 14.9 and 17.4

Executive for Negotiation of Disputes
 (Clause 15.7)

Principal: Pascal Labouze, Executive Director, Operational Systems
 Contractor:

Addresses:
 (Clause 16.1(b))

Principal:	Level 2, 241 O'Riordan Street Mascot NSW 2020; Fax: 02 9422 5490
Principal's Representative:	Level 2, 241 O'Riordan Street Mascot NSW 2020; Fax: 02 9422 5490
Contractor:	Level 2, 39 Delhi Road, North Ryde NSW 2113 Fax: 02 9468 9915

Time for giving notices:
 (Clauses 17.1(a) and 17.3(a))

10 Business Days

Time for written Claims:
 (Clauses 17.1(b) and 17.3(c))

20 Business Days

2. Payment Schedule

(Clause 11)

Subject to clause 11 of the General Conditions:

- a. the Contractor may include in its first claim for payment given in accordance with clause 11.2 the Mobilisation Payment (being the aggregate of the amount specified in the table below under the heading "Mobilisation Payment");
- b. in respect of each of items A1.2, A1.5, A1.6A, A1.7, A1.8, A1.9, A1.10 and A1.13 in the table below, the Contractor may claim payment in 19 equal monthly instalments, with each instalment for the relevant amount specified under the heading "Subsequent Payments";
- c. in respect of each of items A3.1.1, A3.1.2, A3.1.3, A3.2.1, A3.2.2, A3.2.3, A3.3.1, A3.3.2, A3.3.3, A5.1 and A5.2 in the table below, the Contractor may claim the amount specified under the heading "Subsequent Payments" for each Set which achieved Completion and which was delivered into the actual care, custody and control of the Principal at the Handback Point during the relevant month; and
- d. in respect of each of items A4.1, A4.2 and A4.3, the Contractor may claim the amount specified under the heading "Subsequent Payments" upon the Contractor providing to the Principal's Representative evidence satisfactory to the Principal's Representative that the Contractor has delivered all of the equipment and spare parts referred to in the relevant item to the Principal.

SCHEDULE 2 – PAYMENT SCHEDULE

Item	Description	Amount (A\$ Excl GST Incl 12% GST)	Mobilisation Payment	Subsequent Payments	Unit of Measure	Quantity	Comments
A1	PRELIMINARY AND GENERAL REQUIREMENTS						
A1.1	Mobilisation	\$					Mobilisation of project team and facility Deliverables include - Monthly Reporting - Provision of management staff - Purchasing and subcontract management
A1.2	Provision of supervision, management and a administration staff	\$					
A1.3	Provision of site office, computer and IT equipment, including the Principal's accommodation and on-going maintenance and alterations during Works and Services	\$					
A1.4	Specialist consultants and indirect labour	\$					Not used
A1.5	Plant, equipment, special tools and consumables (other than those covered in Item B1.1) Provision and use of the Installation Facility	\$					Deliverables include - Purchasing of special tooling - Provision and commissioning of ATE
A1.6A	Provision of management plans (including updates to plans as required) (excluding the Safety Assurance Plan) and authority approvals	\$					Deliverables include - Provision of Project Management Plan - Provision of other general plans (as per TNSW Standard Requirements)
A1.6B	Provision of the Safety Assurance Plan and associated Safety Assurance activities	\$					Not used
A1.7	Provision of the Contractor's Program including monthly reporting activities	\$					Deliverables include - Provision of baseline program - Provision of monthly program updates
A1.8	Provision of safety management and control (including site and train security)	\$					Deliverables include - Provision of safety personnel & compliance with safety systems
A1.9	Provision of quality and compliance management	\$					Deliverables include - Provision of Inspection and Test Plan - Provision of Testing and Commissioning Plan - Provision of Defects Management Plan - Management of quality checklists, work instructions, forms and other Downer internal documents - Setup and maintenance of Snag Tracker Database
A1.10	Provision of environmental management	\$					Deliverables include - Provision of general environmental performance reports
FA1.11	Provision of guarantees, insurance, fees and levies	\$					Deliverables include - Provision of insurance Certificates of Currency - Provision of Bank Guarantees - Payment of rent - Compliance with statutory requirements
A1.12	Provision of warranties	\$					General warranty provision
A1.13	Risk	\$					Any other items, as identified by the Contractor, required to deliver the Works
A1.14	Other (Tenderer to specify)						
	Subtotal for A1 Preliminary and General Requirements	\$					
A2	INSTALLATION FACILITY						
A2.1	Provision and use of the Installation Facility	\$					Included
A2.2	Movement of trains to and from Installation Facility	\$					Excluded from fixed price offer. Refer to Revision 6, Item section
A2.3	Other (Tenderer to specify)						
	Subtotal for A2 Installation Facility	\$					
A3	COMPLETION OF C-SETS						
A3.1	COMPLETION OF C-SETS 1-13						
A3.1.1	Installation works including Set Condition Assessment, Pre-installation and Post-installation Non-Regression Testing and Pre-Commissioning Testing	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.1.2	Supply of materials other than Principal Supplied Items Category A and Principal Supplied Items Category B	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.1.3	Testing, commissioning and handback activities	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.1.4	Provision of handback documentation	\$					
A3.1.5	Other (Tenderer to specify)						
	Subtotal for A3 Completion of Sets	\$					
A3.2	COMPLETION OF K-SETS 1-99						
A3.2.1	Installation works including Set Condition Assessment, Pre-installation and Post-installation Non-Regression Testing and Pre-Commissioning Testing	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.2.2	Supply of materials other than Principal Supplied Items Category A and Principal Supplied Items Category B	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.2.3	Testing, commissioning and handback activities	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.2.4	Provision of handback documentation	\$					
A3.2.5	Other (Tenderer to specify)						
	Subtotal for A3 Completion of Sets	\$					
A3.3	COMPLETION OF V-SETS 1-65						
A3.3.1	Installation works including Set Condition Assessment, Pre-installation and Post-installation Non-Regression Testing and Pre-Commissioning Testing	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.3.2	Supply of materials other than Principal Supplied Items Category A and Principal Supplied Items Category B	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.3.3	Testing, commissioning and handback activities	\$					Mobilisation payment conditions precedent, completion and return per Set
A3.3.4	Provision of handback documentation	\$					
A3.3.5	Other (Tenderer to specify)						
	Subtotal for A3 Completion of Sets	\$					
A4	SPARE PARTS						
A4.1	Provision of equipment and spare parts as per Section 2.2.1 of the Works Brief for C-sets	\$					Proof of delivery of 100% of material
A4.2	Provision of equipment and spare parts as per Section 2.2.1 of the Works Brief for K-sets	\$					Proof of delivery of 100% of material
A4.3	Provision of equipment and spare parts as per Section 2.2.1 of the Works Brief for V-sets	\$					Proof of delivery of 100% of material
	Subtotal for A4 Spare Parts	\$					
A5	OTHER						
A5.1	Management continuation and hazardous material	\$					Completion and return per Set
A5.2	Transport inspection	\$					Completion and return per Set
A5.3	Other (Tenderer to specify)						
	Subtotal for A5 Other	\$					
	TOTAL (EXCLUDING SUBTOTALS FROM C, B, and V Set 6 sets)	\$					
A6	PROVISIONAL SUM						
A6.1	Provisional Sum for loco haul	\$					Completion and return per Set and upon production of invoice from probaul
	Subtotal for A6 Provisional Sum	\$					
	TOTAL (INCLUDING PROVISIONAL SUMS)	\$					

* Note 1: Mobilisation Payment subject to achievement of conditions precedent and to be paid by end of December 2018 if contract executed and invoice issued prior to 10 December 2018

3. Principal Arranged Matters

(Clause 3.2)

3.1 General

The Contractor will be given access to Sets at the times, and subject to compliance by the Contractor with the requirements, set out in this Schedule 3.

In this Schedule 3:

“Access Period” means the period of time that the Contractor has Control of each Set and includes any time between:

- (a) the arrival of the Set at the Delivery Point; and
- (b) the departure of the Completed Set from the Handback Point.

“Completed Set” means a Set in respect of which Completion has been achieved.

“Contractor’s Access Notice” means a written notice issued by the Contractor to the Principal that provides at least 10 Business Days’ notice of the date that the Contractor requires access to a Set at the Delivery Point. The Contractor’s Access Notice must include the following details:

- (a) the date the Contractor requires access to a Set at the Delivery Point;
- (b) the date the Contractor anticipates it will return the Completed Set to the Handback Point;
- (c) in instances where the requested Set will replace a Set already under the Contractor’s Control:
 - (i) details of the Set to be returned; and
 - (ii) the date and time the Contractor anticipates that the Set will be returned;
- (d) confirmation of any equipment, Authority Approvals and rolling stock operator resources required to move the Set from the Delivery Point to the Installation Facility and any constraints surrounding the availability of that equipment or those resources; and
- (e) any information required by the Principal’s Representative to demonstrate that the Contractor’s request for an additional Set is in accordance with the requirements of this Schedule 3.

“Contractor’s Return Notice” means a written notice issued by the Contractor to the Principal that provides at least 5 Business Days’ notice of the date and time that the Contractor will return a Completed Set to the Handback Point. The Contractor’s Return Notice must include the following details:

- (a) details of the Set to be returned;
- (b) the proposed date and time the Contractor will return the Completed Set to the Handback Point; and
- (c) where the returned Set will be replaced by another Set, reference to the Contractor's Access Notice for the replacement Set.

“**Control**” of a Set means undertaking all activities and providing all resources required to manage and control the movement, security, condition and configuration of a Set during the Access Period.

“**Delivery Date and Time**” means the date and time that the Principal will arrange for a Set to arrive at the Delivery Point as specified in the Principal's notice in response to a Contractor's Access Notice issued in accordance with clause 3.2(a).

“**Departure Day**” means the following listed days of the week on which the Principal may arrange for the departure of a Set from the Maintenance Centre for transfer to the Delivery Point: Tuesday; Wednesday; Thursday; Friday; Saturday and Sunday.

“**Delivery Period**” means the period of time between the start of the relevant Departure Day for a Set and the actual arrival date and time of a Set at the Delivery Point.

“**Handback Date and Time**” means the date and time that the Contractor must arrange for the return of a Completed Set to the Handback Point as specified in the Principal's notice in response to a Contractor's Return Notice issued in accordance with clause 3.3(a).

“**Inspection Day**” means the whole of the day prior to the relevant Departure Day on which the pre-delivery activities set out in the Works Brief are completed by the Contractor and the Principal at the Maintenance Centre.

“**Maintenance Centre**” means the Sydney Trains facility located at Bachell Avenue, Lidcombe, NSW, 2141.

“**Out of Service**” means the period of time when a Set is withdrawn from timetable service by Sydney Trains and is made available to the Principal for the purposes of the Contractor performing the Works and Services and, for each Set, includes the following periods:

- (a) the Inspection Day;
- (b) the Delivery Period;
- (c) the Access Period; and
- (d) the Return Period,

but does not include any time after the arrival of the Completed Set at the Maintenance Centre required for Sydney Trains or its authorised representative to undertake a post installation inspection of the Set and for the Contractor to rectify any Defects identified by Sydney Trains or its authorised representative.

“Return Period” means the period of time between the actual date and time that the Principal removes the Completed Set from the Handback Point and the arrival time of the Completed Set at the Maintenance Centre.

“Return Date and Time” means the date and time that the Principal will arrange for a Completed Set to depart from the Handback Point as specified in the Principal’s notice in response to a Contractor’s Return Notice issued in accordance with clause 3.3(a).

3.2 Set Access Conditions

The Principal will deliver Sets to the Delivery Point in accordance with the following requirements:

- (a) a Contractor’s Access Notice issued in accordance with this Schedule 3 must be submitted by the Contractor for the review of the Principal’s Representative. No later than 5 Business Days after receipt of a Contractor’s Access Notice the Principal’s Representative will issue a notice to the Contractor which:
 - (i) accepts or, where the Contractor’s Access Notice does not comply with the Set access requirements set out in this Schedule 3, modifies the proposed access date for the Set;
 - (ii) confirms the Delivery Date and Time for the Set;
 - (iii) confirms the Inspection Day for the Set
 - (iv) specifies whether the return of another Set in accordance with clause 3.2(d)(vi) is a condition precedent to the delivery of the next Set; and
 - (v) prescribes any other requirements of access to the Set;
- (b) the Contractor must arrange and chair a meeting with the Principal, Sydney Trains and Sydney Trains’ authorised representative to confirm the arrangements for the delivery of the Set no later than one Business Day prior to the Inspection Day;
- (c) the Principal will provide temporary access to Sets located at the Maintenance Centre to enable the Contractor to carry out its pre-handover obligations on the Inspection Day as set out in the Works Brief;;
- (d) the Contractor acknowledges that the Principal will provide the Contractor with access to Sets at the Delivery Point subject to the following requirements:
 - (i) the Contractor has completed the Set handover activities described in clause 2.8 of the Works Brief at the Installation Facility for each Set;

- (ii) subject to clause 3.2(d)(vi), a maximum of one Set will depart from the Maintenance Centre for transfer to the Delivery Point on any Departure Day;
 - (iii) within 3 Business Days of completion of the handover activities for each Set, the Contractor provides to the Principal's Representative, evidence to demonstrate that the Contractor's Set handover activities were completed prior to the commencement of the installation of the ETCS on any Set;
 - (iv) the Principal will not arrange for Sets to depart from the Maintenance Centre on a day other than a Departure Day;
 - (v) the Principal will deliver each Set to the Delivery Point in accordance with the Contractor's Access Notice as modified by the notice from the Principal's Representative referred to in clause 3.2(a);
 - (vi) the number of Sets taken Out of Service at any one time will be up to but will not exceed 2 Sets between the Commencement Date and the Date for Works Completion of the last Fleet to reach Works Completion.
 - (vii) once the maximum number of Sets that are Out of Service has been reached for a particular time period, the Principal will not provide the Contractor with access to another Set until a Completed Set is returned to the Handback Point.
- (e) The Contractor acknowledges that:
- (i) the Contractor has Control of, and must Control, each Set commencing at the time the Set is delivered to the Delivery Point by the Principal;
 - (ii) the Set must not be left unattended at any time between the delivery of the Set to the Delivery Point by the Principal and the movement of the Set from the Delivery Point by the Contractor;
 - (iii) the Contractor must complete a Set delivery receipt in accordance with the Works Brief at the actual arrival date and time of a Set at the Delivery Point;
 - (iv) the Contractor must procure the movement of the Set into the Installation Facility without delay;
 - (v) if, at any time after the meeting described in clause 3.2(b), the Contractor becomes aware that it will not be able to move the Set to the Installation Facility within 1 hour after the Delivery Date and Time, the Contractor must notify the Principal's Representative immediately via telephone and thereafter in writing and provide the following information:
 - A. the nature and cause of the delay;

- B. if the Set has already departed from the Maintenance Centre, the measures the Contractor will take to ensure the security of the Set between the arrival of the Set at the Delivery Point and the date and time the Contractor will move the Set to the Installation Facility; and
- C. the proposed revised date and time that the Contractor will move the Set to the Installation Facility;
- (vi) the Contractor must pay the Principal any additional cost incurred by the Principal as a result of the failure by the Contractor to take Control of a Set and/or to move the Set from the Delivery Point to the Installation Facility within 1 hour of the Delivery Date and Time; and
- (vii) if the Principal delivers a Set within 4 hours from the Delivery Date and Time, the Contractor will have no entitlement to make any Claim against the Principal whether for an extension of time, or otherwise, in relation to the Principal delivering the Sets.
- (f) Upon receipt of a notice under clause 3.2(e)(v), the Principal's Representative will issue a notice which instructs the Contractor of any revision to the Delivery Date and Time and/or to the Delivery Point in which case clauses 3.2(d) to 3.2(f) will reapply.

3.3 Set Return Conditions

- (a) The following requirements will apply to the return of each Completed Set:
 - (i) a Contractor's Return Notice issued in accordance with this Schedule 3 must be submitted by the Contractor for the review of the Principal's Representative. No later than 3 Business Days after receipt of a Contractor's Return Notice, the Principal's Representative will issue a notice to the Contractor which:
 - A. accepts or, where the Contractor's Return Notice does not comply with the Set return requirements set out in this Schedule 3, modifies the proposed return date for the Completed Set;
 - B. confirms the Handback Date and Time for the Completed Set;
 - C. confirms the Return Date and Time for the Completed Set; and
 - D. prescribes any other requirements for the return of the Completed Set;
 - (ii) the Contractor must arrange and chair a meeting with the Principal and Sydney Trains to confirm the arrangements for the return of the Completed Set on the day prior to the return date stated in the

- Contractor's Return Notice, as modified by the notice from the Principal's Representative referred to in clause 3.3(a)(i); and
- (iii) prior to the return of each Completed Set, the Contractor must provide evidence to the Principal's Representative that the Completed Set has successfully completed the testing, commissioning, preparation and handback processes set out in the Works Brief.
- (b) The Contractor acknowledges that:
- (i) the Contractor's Control of each Set continues until the time that the Principal removes the Completed Set from the Handback Point;
 - (ii) the Completed Set must not be left unattended at any time prior to the movement of the Completed Set from the Handback Point by the Principal;
 - (iii) the Contractor must complete a Set return receipt in accordance with the Works Brief prior to the movement of the Completed Set from the Handback Point by the Principal;
 - (iv) the Contractor must return the Completed Set to the Handback Point at or prior to the Handback Date and Time;
 - (v) the Principal will procure train crews and arrange train paths to return the Completed Set to the Maintenance Centre at the Return Date and Time;
 - (vi) if, at any time after the meeting described in clause 3.3(a)(ii), the Contractor becomes aware that it will not be able to return the Completed Set to the Handback Point at or prior to the Handback Date and Time, the Contractor must notify the Principal's Representative immediately via telephone and subsequently in writing and provide the following information:
 - A. the nature and cause of the delay; and
 - B. the proposed revised handback date and time; and
 - (vii) the Contractor must pay the Principal any additional cost incurred by the Principal as a result of the failure by the Contractor to return the Completed Set to the Handback Point at or prior to the Handback Date and Time.
- (c) Upon receipt of a notice under clause 3.3(b)(vi), the Principal's Representative will issue a notice which instructs the Contractor:
- (i) to return the Completed Set to the Handback Point at the proposed revised handback date and time and which confirms a revised Handback Date and Time; or

- (ii) not to return the Completed Set at the proposed revised handback date and time in which case clauses 3.3(a)(ii), 3.3(a)(iii) and 3.3(b) will reapply.
- (d) The Principal will provide the Contractor with temporary access to Completed Sets located at the Maintenance Centre to enable the Contractor to carry out its post-handback Defect rectification obligations as set out in the Works Brief.

3.4 Other Principal Arranged Matters

- (a) The Principal will arrange (co-ordinate and procure) the following matters associated with the delivery of each Set from the Maintenance Centre to the Delivery Point and for the return of each Completed Set from the Handback Point to the Maintenance Centre:
 - (i) Authority Approvals including train paths;
 - (ii) rolling stock operator resources; and
 - (iii) licensed train crews.
- (b) The Contractor must provide (co-ordinate and procure) all other competent resources, Authority Approvals (including train paths), rolling stock operator resources, plant and/or equipment, including those required for:
 - (i) the transfer of Sets from the Delivery Point to the Installation Facility;
 - (ii) the transfer of Sets to and from the dynamic test track;
 - (iii) the dynamic testing activities; and
 - (iv) the transfer of Completed Sets from the Installation Facility to the Handback Point.
- (c) For additional train crew resources arranged by the Principal, other than in respect of clause 3.4(a), the Contractor must pay the Principal the relevant amount set out in the table below in respect of each train crew resource arranged by the Principal under this Schedule 3 required in order for the Contractor to fulfil its obligations under the Deed.

Train Crew Resource	Labour Costs for Train Crews (\$ per 10 hour shift or part thereof)
Driver	□
Guard	□
All travel and other incidental expenses incurred by the Principal in providing train crew resources will be moneys due from the Contractor to the Principal (at cost plus □%).	

- (d) The Principal will procure Sydney Trains' resources to undertake a single induction course prior to the delivery of the first Set for Contractor personnel who

will undertake any of the Works and Services at the Maintenance Centre in accordance with the Works Brief. The Principal is not obliged to arrange any further induction courses at the Maintenance Centre. The Contractor must pay the Principal any costs incurred by the Principal in arranging for Sydney Trains to provide additional induction courses at the Maintenance Centre.

3.5 TfNSW Site Rules

The Contractor must ensure that any of its personnel or its Subcontractors' personnel who visit the Delivery Point, the Handback Point or the Maintenance Centre immediately contact the relevant Rail Transport Agency's personnel at that location in regards to:

- (a) site induction requirements;
- (b) the safety management requirements in place at that location;
- (c) the personal protective equipment required at that location; and
- (d) any appropriate current certifications such RISI, Work Cover, Rail Safety Worker (RSW)/Rail Industry Worker (RIW) required for the visit at that location.

4. Form of Confidentiality Undertaking

(Clauses 2.2(e)(i) and 16.11(c))

To: []

We [] the
engaged Consultant / Supplier / Contractor / Subcontractor body, undertake to treat as
confidential all information received/generated from the
(*Principal*) in respect of work performed by the Principal and all information generated by the
Consultant / Supplier / Contractor / Subcontractor body in the course of performing the Works
and Services.

The Consultant / Supplier / Contractor / Subcontractor hereby undertakes:

- (a) to disclose that information to its employees only on a need-to-know basis;
- (b) not to disclose that information to any other person without first obtaining the
written consent of the Principal;
- (c) not to use that information except as necessary in connection with the
Consultant / Supplier / Contractor / Subcontractor body's engagement to perform
the Works and Services; and
- (d) to ensure that its employees to whom that information is disclosed will comply
with (a), (b) and (c) above.

This undertaking will not apply to information about the Principal which is in the public domain
(except where the availability of the information in the public domain is due to any unauthorised
disclosure by the Consultant / Supplier / Contractor / Subcontractor, its employees or agents) or
which was already known to the Consultant / Supplier / Contractor / Subcontractor.

Any breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor's
employee or agent will constitute a breach of this undertaking by the Consultant / Supplier /
Contractor / Subcontractor and at the direction of the Principal the Consultant / Supplier /
Contractor / Subcontractor must institute proceedings or do whatever the Principal regards as
reasonable to prevent or contain the breach.

The Consultant / Supplier / Contractor / Subcontractor undertakes that on request from the
Principal it will forthwith return to the Principal all originals and copies of the confidential
information, however embodied, supplied by the Principal and destroy all documents containing
or prepared using any confidential information however embodied.

The Consultant / Supplier / Contractor / Subcontractor also undertakes to declare to the
Principal any conflict of interests that exists or arises during the course of its engagement which

may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated:

SIGNED for and on behalf of:

.....
(Print Company Name)

By:
(Print Name) (Signature)

in the presence of:

.....
(Print Name) (Signature)

5. Contractor's Certificate of Installation Compliance

(Clauses 1.1, 7.1(b))

CONTRACTOR'S CERTIFICATE OF INSTALLATION COMPLIANCE		
CONTRACTOR:		
<u>DESCRIPTION: (limit of 1 Set per certificate)</u>		
<p>I certify that the Works and Services described above have been completed to the extent indicated above in accordance with the requirements of the Deed between the Principal and _____, and comply with the requirements of the Deed, subject to the register of outstanding minor non-conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Works and Services.</p>		
NAME: _____	SIGNATURE: _____	DATE: / /
<i>(Contractor's Representative)</i>		

6. Contractor's Certificate of Completion

(Definition of "Completion" in clause 1.1 and clause 12.3)

CONTRACTOR'S CERTIFICATE OF COMPLETION
CONTRACTOR:
Description of Set (limit of 1 per certificate):
<p>I certify that Completion in respect of the Set has been achieved in accordance with the requirements of the Deed between the Principal and _____, complies with the requirements of the Deed, subject to the register of unresolved issues attached.</p> <p>I further certify that:</p> <ul style="list-style-type: none"> (a) All Variation Orders (including concessions) are listed in the attached compliance register. (b) All identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out. (c) All required documentation has been submitted. (d) All notices regarding system deficiencies have been satisfactorily closed out. <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Works.</p> <p>SIGNATURE: _____ (Contractor's Representative)</p> <p>DATE: _____</p>

7. Contractor's Certificate of Final Completion

(Clause 12.8(d))

CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION	
CONTRACTOR:	
I hereby certify that Final Completion has been achieved by [the Contractor] on / / in accordance with the requirements of the Deed (including all Variation Orders detailed in (a) below) between the Principal and the Contractor.	
I further certify that:	
(a)	All Variation Orders (including concessions) are listed in the attached compliance register.
(b)	All identified Defects (including any minor non-conformities) have been satisfactorily rectified and their documentation closed out.
(c)	All required documentation has been submitted.
(d)	All deficiency notices regarding system deficiencies have been satisfactorily closed out.
I further certify that the attached compliance records as required by the Deed reflect the true status of the Works.	
SIGNATURE: _____	DATE: / /
<i>(Contractor's Representative)</i>	

8. Interface Agreement Deed Poll

(Clause 1.1 and 1.6)

Deed Poll in favour of Rail Transport Agency and Transport for NSW

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

By **Downer EDI Rail Pty Ltd (ABN 92 000 002 031)** of 39 Delhi Road, North Ryde NSW 2113 ("**Contractor**"),

in favour of [insert details of relevant Rail Transport Agency] ("**Rail Transport Agency**");

and Transport for NSW (ABN 18 804 239 602) a statutory State owned corporation constituted pursuant to the Transport Administration Act 1988, of Level 5, Tower A, Zenith Centre, 821-823 Pacific Highway, Chatswood NSW 2067 ("**TfNSW**").

RECITALS

- A. Rail Transport Agency operates the commuter rail system in Sydney, including area where the Works are to be undertaken by the Contractor and others.
- B. TfNSW is responsible for developing certain major railway systems and other major projects.
- C. TfNSW is responsible for procuring the execution and completion of certain works in respect of [Insert details] project (the "Works") on behalf of Rail Transport Agency and the New South Wales Government, and has entered into the ATP C-Set, K-Set and V- Set Fleet Onboard Installation Contract ("Contract") to achieve this.
- D. Rail Transport Agency is relying on TfNSW to procure the Contractor (and others) to execute and complete the Works in accordance with the Contract to ensure that Rail Transport Agency will satisfy, among other things, its obligations to provide an operating commuter rail system.
- E. Rail Transport Agency will suffer loss if TfNSW does not procure the Contractor to execute and complete the Works in accordance with the Contract and Interface Agreement.
- F. Rail Transport Agency and TfNSW have entered into an Interface Agreement for Works carried out on Rail Transport Agency land, which applies to the Works and the Contract (the "Interface Agreement").
- G. It is a condition of the Contract, Clause 1.6, that upon request by TfNSW, the Contractor enters into a Deed Poll in favour of TfNSW and Rail Transport Agency. This Deed Poll

binds the Contractor to the executed Interface Agreement between TfNSW and Rail Transport Agency dated [###].

THIS DEED WITNESSES THAT THE CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES WITH AND FOR THE BENEFIT OF RAIL TRANSPORT AGENCY AND TfNSW AS FOLLOWS:

1. It will observe all the requirements of the Interface Agreement and ensure that it does not do anything which would cause a party to the Interface Agreement to breach the requirements of the Interface Agreement.
2. This Deed Poll is governed by the laws of the State of New South Wales.
3. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency and TfNSW.
4. Where terms used in this Deed Poll are defined in the Contract or Interface Agreement, those terms have the meaning given to them in the Contract or Interface Agreement.

Executed by **Downer EDI Rail Pty Ltd**

ABN 92 000 002 031 by ~~or in the presence~~

*of by being signed by its attorney,
MONICA MURRAY, pursuant to a
power of attorney dated 14 December 2018,
in the presence of*

Signature of ~~Director~~ *witness*

Name of ~~Director in full~~ *witness (print)*

Signature of ~~Secretary/other Director~~ *attorney* 18/12/18

Name of ~~Secretary/other Director~~
DATE

9. Tender Management Plans

Nil

10. Action in complying with Authority Approvals and Third Party Agreements

(Clause 2.7)

Global Safety Interface Agreement between Transport for NSW and Sydney Trains ("Interface Agreement")

The Contractor:

- (i) is responsible for complying with;
 - (ii) must perform on behalf of the Principal; and
 - (iii) must do nothing to hinder the Principal or breach,
- all of the Principal's obligations under the Interface Agreement as may be amended from time to time.
-

11. Form of Other Contractor Interface Deed

(Clause 2.8(b))

Other Contractor Interface Deed

Date

Parties [insert details] **ACN** [insert ACN] of [insert details] ("**Contractor**")
[insert details] **ACN** [insert ACN] of [insert details] ("**Other Contractor**")

Background

- A. TfNSW is procuring the Automatic Train Protection On-board Installation Project ("**Project**") and has entered into a contract with the Contractor to allow it to carry out certain works and services on the Fleet in respect of the Project ("**ATP Works**").
- B. Sydney Trains engaged the Other Contractor to undertake certain modifications to the Fleet and associated services ("**Other Contractor Works**"), which must be done in conjunction with the ATP Works.
- C. The nature of the ATP Works and the Other Contractor Works is such that there will be interfaces between the work of the Contractor and the Other Contractor.
- D. The Contractor and the Other Contractor and its subcontractors may require access to the Installation Facility at the same time and will need to cooperate with each other and coordinate their respective work in order to complete the ATP Works and the Other Contractor Works.
- E. The Contractor and the Other Contractor and its subcontractors may also require to access to the Fleet at the Maintenance Centre at the same time and will need to cooperate with each other and coordinate their respective work in order to complete the ATP Works and the Other Contractor Works.
- F. The Contractor and the Other Contractor respectively agree to carry out the ATP Works and the Other Contractor Works in conformance with the requirements of this deed.

Operative provisions

1. Interpretation

1.1 Definitions

In this deed, except where the context requires otherwise:

Fleet means the C-Set Fleet, the V-Set Fleet or the K-Set Fleet.

Installation Facility means the facility where the ATP Works and the Other Contractor Works are performed.

Maintenance Centre means the Sydney Trains facility located at 136 Railway Parade, Eveleigh, NSW.

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

TfNSW means Transport for NSW (ABN 18 804 239 602) a corporation established by section 3C of the Transport Administration Act 1988 (NSW).

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention;
- (b) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to "Other Contractor" includes Other Contractor and its subcontractors;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;

- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to this deed;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

2. Interface of ATP Works and Other Contractor Works

2.1 Acknowledgements

The Parties acknowledge that:

- (a) the ATP Works interface with the Other Contractor Works and it is necessary for the Contractor to cooperate with the Other Contractor and coordinate the execution of the ATP Works with the Other Contractor's execution of the Other Contractor Works;
- (b) the Other Contractor Works interface with the ATP Works and it is necessary for the Other Contractor to cooperate with the Contractor and coordinate the execution of the Other Contractor Works with the Contractor's execution of the ATP Works;
- (c) the successful completion of the ATP Works and the Other Contractor Works is necessary to proceed with the Project;
- (d) the Other Contractor will require access to the Installation Facility for the purposes of the Other Contractor Works at the same time that the Contractor is performing the ATP Works at the Installation Facility; and
- (e) the Other Contractor will require access to the Fleet for the purposes of the Other Contractor Works at the same time the Contractor is performing the ATP Works at the Maintenance Centre.

2.2 Contractor's Obligations

The Contractor agrees to:

- (a) permit the Other Contractor to execute the Other Contractor Works on the applicable parts of the Installation Facility at the same time as the Contractor is carrying out the ATP Works;

- (b) if it is not the landowner of the Installation Facility, obtain approval from the landowner of the Installation Facility for the Other Contractor to access and use the Installation Facility for the purposes of the Other Contractor Works;
- (c) ensure that the Other Contractor has safe, clean and clear access to those parts of the Installation Facility required by it for the purposes of carrying out the Other Contractor Works;
- (d) coordinate the ATP Works and the Other Contractor Works to ensure that the Other Contractor has clear unimpeded access to the Fleet required by it for the purposes of carrying out the Other Contractor Works at the Maintenance Centre;
- (e) perform the ATP Works so as to minimise any interference with or disruption or delay to the work of the Other Contractor at the Installation Facility and at the Maintenance Centre respectively;
- (f) fully cooperate with the Other Contractor, and do everything necessary to facilitate the execution of work by the Other Contractor (including provide all necessary information to the Other Contractor in respect of the ATP Works to permit the Other Contractor to complete the Other Contractor Works);
- (g) carefully co-ordinate and interface the ATP Works with the work carried out or to be carried out by the Other Contractor; and
- (h) use its best endeavours to resolve any problems, and work closely and iteratively with the Other Contractor in order to resolve any problems, including by attending any meetings convened for the purpose of resolving such problems.

2.3 Other Contractor's Obligations

The Other Contractor agrees to:

- (a) ensure that the Contractor has safe, clean and clear access to those parts of the Installation Facility required by it for the purposes of carrying out the ATP Works;
- (b) coordinate the Other Contractor Works and the ATP Works to ensure that the Contractor has clear unimpeded access to the Fleet required by it for the purposes of carrying out the ATP Works at the Maintenance Centre;
- (c) perform the Other Contractor Works so as to minimise any interference with or disruption or delay to the work of the Contractor at the Installation Facility and at the Maintenance Centre respectively;
- (d) fully cooperate with the Contractor, and do everything necessary to facilitate the execution of work by the Contractor (including provide all necessary information to the Contractor in respect of the Other Contractor Works to permit the Contractor to complete the ATP Works);

- (e) carefully co-ordinate and interface the Other Contractor Works with the work carried out or to be carried out by the Contractor; and
- (f) use its best endeavours to resolve any problems, and work closely and iteratively with the Contractor in order to resolve any problems, including by attending any meetings convened for the purpose of resolving such problems.

2.4 No Liability

Notwithstanding anything else to the contrary in this deed, the parties to this deed will have no liability to each other arising out of or in connection with a breach of clause 2.2, 2.3 or 2.5 of this deed.

2.5 Installation facility

In consideration of the Contractor accepting this deed, the Other Contractor agrees that:

- (a) the Other Contractor, its subcontractors and their respective personnel while they are on the Installation Facility, will comply with all safety regulations, protocols, rules and procedures notified as applying to the Installation Facility from time to time;
- (b) the Other Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Contractor and all other persons who have a work health and safety duty in relation to the same matter;
- (c) the Other Contractor shall in carrying out the Other Contractor Work, comply with, and ensure that all subcontractors and personnel comply with the Work Health & Safety Act 2011 (NSW) and Work Health & Safety Regulation 2011 (NSW); and
- (d) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this deed.

3. General

3.1 Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Contractor

Name: [insert]

Address: [insert]

Fax: [insert]

For the attention of: [insert]

Other Contractor

Name: [insert]

Address: [insert]

Fax: [insert]

For the attention of: [insert]

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with paragraph (b) above; and
- (e) are taken to be received by the addressee:
 - (i) (in the case of prepaid post) on the working day (which, in this paragraph (e), means a day, not being a Saturday, Sunday or public holiday, on which banks are generally open for business in the place of receipt of the communication) that is the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety, unless that local time is not on a working day, or is after 5.00 pm on a working day, when that communication is taken to be received at 9.00 am on the next working day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in paragraph (b) above, unless that delivery is made on a day that is not a working day, or after 5.00 pm on a working day, when that communication is taken to be received at 9.00 am on the next working day.

3.2 Governing law

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

3.3 Jurisdiction

The Parties irrevocably:

- (a) submit to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waive any objection they may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph (a) above.

3.4 Amendments and revocation

This deed may not be revoked or otherwise modified without the prior written consent of all of the Parties.

3.5 No representation or reliance

- (a) Each party acknowledges that no other party (nor any person acting on their 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.

3.6 Expenses

Except as otherwise provided in this deed, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

Executed as a deed.

Executed by *[insert name of Contractor]* ACN *[insert ACN of Contractor]* by or in the presence of:

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by *[insert name of Other Contractor]*
ACN *[insert ACN of Other Contractor]* by or in
the presence of:

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

12. Installation Facility Access Deed

(Clause 3.1(b))

This deed poll made the day of 201[]

In favour of: [] (TfNSW)

Given by: [] (Installation Facility Owner)

BACKGROUND:

- A. By a deed dated [] between [] ("**Contractor**") and TfNSW, the Contractor agreed to carry out certain works for the installation of [] ("**Works**").
- B. By an agreement dated [] (the "**Licence**"), the Installation Facility Owner agreed to allow the Contractor to use the Installation Facility for the Works.
- C. The Installation Facility Owner is the registered owner of the Installation Facility on which the Works will be carried out.
- D. The Contractor has requested that the Installation Facility Owner provide this deed poll in favour of TfNSW.

THIS DEED POLL PROVIDES

1. The Installation Facility Owner warrants that, as at the date of this deed poll, no amounts of money are due to it from the Contractor.
2. The Installation Facility Owner warrants that it has no Security Interest, lien or any other property interest in or over the Trains and agrees that it will not claim any Security Interest, lien or any other property interest in or over the Trains.
3. The Landowner acknowledges and agrees that:
 - (a) the Trains are the property of TfNSW; and
 - (b) TfNSW, its employees or agents may, at any time and without notice, enter the Installation Facility in order to inspect, take possession of or remove the Trains.
4. The Installation Facility Owner agrees not to amend, or permit any amendment to, the Licence that is adverse to TfNSW's interest in the Trains or TfNSW's rights pursuant to this deed poll without the prior written consent of TfNSW, which must not be unreasonably withheld.
5. The Installation Facility Owner agrees to give TfNSW 20 Business Days prior written notice of:

- (a) any change to the Licence that is adverse to TfNSW's interest in the Trains or TfNSW's rights pursuant to this deed poll; and
 - (b) any proposal to sell, assign, grant a mortgage over or otherwise encumber the Installation Facility, any part of the Installation Facility or any interest in the Installation Facility.
6. The Installation Facility Owner agrees to procure that any person taking its interest in the Installation Facility or any part of the Installation Facility enters into a deed poll with TfNSW in substantially the same terms as this deed poll or in a form otherwise acceptable to TfNSW.
 7. The Installation Facility Owner agrees to immediately notify TfNSW of the occurrence of any event which, but for this deed poll, would enable the Installation Facility Owner to exercise its rights in respect of the Installation Facility or the Trains.
 8. The Installation Facility Owner agrees, upon becoming aware, to immediately notify TfNSW of the vacation of the Installation Facility by the Contractor.
 9. This deed poll is binding upon the Installation Facility Owner and may not be revoked.
 10. This deed poll will be governed by and construed in accordance with the laws for the time being of New South Wales.
 11. In this deed poll:

Business Day means and day other than:

- (a) a Saturday and Sunday;
- (b) a public holiday in Sydney; or
- (c) 27, 28, 29, 30 and 31 December;

Installation Facility means [].

Licence means the licence dated [] between the Installation Facility Owner and the Contractor.

Security Interest has the meaning given to that term in section 12 of the *Personal Property Securities Act 2009* (Cth).

Trains means [].

A reference to the Installation Facility Owner includes a substituted or an additional trustee.

EXECUTED AS A DEED POLL.

Executed by *[insert name]* (ABN *[insert
ABN]*) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

13. Authority Approvals to be obtained by the Principal

(Clauses 2.3(c) and 6.11(b))

As set out in clause 3.4(a) of Schedule 3.

5. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll.

Signed Sealed and Delivered)

by [])

being signed sealed and)

delivered by its duly constituted) (Signature)

Attorney [])

under Power of Attorney)

No. in the presence of:)

.....
(Signature of Witness)

.....
(Name of Witness in Full)

15. Information Documents and Materials

(Clauses 1.1 and 3.5(a))

C-Set Fleet and K-Set Fleet

Document ID	Document Name
	Product Breakdown Structure and Drawings
AMS-C-050	C-Set - Installation - Product Breakdown Structure (including drawings)
AMS-K-050	K-Set - Installation - Product Breakdown Structure (including drawings)
	Inspection, Non-Regression Testing and Train Preparation Procedures
5825808	Presentation Inspection Procedure
AMS-C&K-320	C and K-Set Installation Pre-Commissioning Test Specification
5894703, Appendix A: 5894700 and Appendix B: 5894696	C and K-Set Non-Regression Test Specification
5804920	Set Delivery Receipt Form
5805604	Set Return Receipt Form
5784257	Driver Train Preparation Procedures – C and K Sets
5857285	C Set Jacking Locations
5857287	K Set Jacking Locations
6006587	C and K Marked up Jacking Point drawings showing distance between headstocks and jacking pad photos
5847629	UGLU Job Instruction MJ1-EJ18 - Bogie Change-Out for SLR C, K and V Sets
	Fleet survey reports and as-built drawings
AMS-C&K-420	Fleet Survey Reports for Compliance with Approved Installation Design
AMS-C-080	C-Set - As-built drawings

AMS-K-080	K-Set - As-built drawings
	Installation, Testing and Commissioning Procedures and Reports
AMS-C-120	Certificate of Compliance (including installation test report)
AMS-C&K-350	Test and Commissioning Procedure and Report template (Fleet)
	TfNSW Reference Documents
30-SD-038/4.0	Generic Rail Safety Risk Register
30-SD-101/3.0	Generic Work Health and Safety Operational Risk Register
4TP-FT-105/7.0	Work Activity Advice
9TP-SD-066/4.0	Chemical Storage and Spill Response Guidelines
9TP-PR-105/15.0	Environmental Incident Classification and Reporting
9TP-FT-101/9.0	Environmental Incident/Non-Compliance Report
4TP-PR-158/6.0	Scenario - Defect Management
4TP-WI-005/1.0	Earned Value Management using Primavera P6
9TP-ST-020/5.0	Project Compliance and Assurance
90-FT-002/2.0	Safety and Environmental Incident Report
4TP-ST-003/7.0	Engineering Safety Assurance Standard
4TP-PR-004/8.0	Engineering Safety Assurance Procedure
	Hazardous Materials Reports
Multiple	C and K Set Rollingstock Hazardous Materials Registers and Clearance Certificates

V-Set Fleet

Document ID	Document Name
	Product Breakdown Structure and Drawings
AMS-V-150	V-Set - Installation - Product Breakdown Structure (including drawings)

Inspection, Non-Regression Testing and Train Preparation Procedures	
5825808	Presentation Inspection Procedure
AMS-V-320	Installation Pre-Commissioning Test Specification
6112001, Appendix A: 6112072 and Appendix B: 6112078	V-Set Non-Regression Test Specification
5804920	Set Delivery Receipt Form
5805604	Set Return Receipt Form
5784257	Driver Train Preparation Procedures – C and K Sets
TBA	V Set Jacking Locations
6006587	C and K Marked up Jacking Point drawings showing distance between headstocks and jacking pad photos
5847629	UGLU Job Instruction MJ1-EJ18 - Bogie Change-Out for SLR C, K and V Sets
Fleet survey reports and as-built drawings	
AMS-V-210	Fleet survey reports for compliance with approved Installation Design
AMS-V-390	V-Set - As-built drawings
Installation, Testing and Commissioning Procedures and Reports	
AMS-V-430	Certificates of Compliance (including installation test report)
AMS-V-380	Test and Commissioning Procedure & Report template (Fleet)
TfNSW Reference Documents	
30-SD-038/4.0	Generic Rail Safety Risk Register
30-SD-101/3.0	Generic Work Health and Safety Operational Risk Register
4TP-FT-105/7.0	Work Activity Advice
9TP-SD-066/4.0	Chemical Storage and Spill Response Guidelines
9TP-PR-105/15.0	Environmental Incident Classification and Reporting
9TP-FT-101/9.0	Environmental Incident/Non-Compliance Report
4TP-PR-158/6.0	Scenario - Defect Management

4TP-WI-005/1.0	Earned Value Management using Primavera P6
9TP-ST-020/5.0	Project Compliance and Assurance
90-FT-002/2.0	Safety and Environmental Incident Report
4TP-ST-003/7.0	Engineering Safety Assurance Standard
4TP-PR-004/8.0	Engineering Safety Assurance Procedure
	Hazardous Materials Reports
Multiple	C and K Set Rollingstock Hazardous Materials Registers and Clearance Certificates

16. Information from Contractor's Proposal Schedules

(Clause 6.4(b))

1. Prices and Rates for Valuation of Variations

The prices and rates referred to in clause 6.4(b) of the Deed are those set out in the table below. The rates are fixed for the duration of the Deed, not subject to rise and fall, and exclude Overhead Costs, profit, and GST.

The rates include mobilisation and demobilisation costs.

All rates for general plant include the labour cost of operator(s) where relevant.

Description	Rate (A\$, excl. GST, OH&P)		
	Normal Time (per hour)	Time and a Half (per hour)	Double Time (per hour)
Labour			
Electrical fitter			
Mechanical fitter			
Labourer			
Worksite Protection Officer (PO2)			
Worksite Protection Officer (PO4)			
Shunter			

Description	Unit	Rate (A\$, excl. GST, OH&P)
Facility, plant and equipment	N/A	
Locomotive (for haulage)	N/A	
Weighbridge (off-site)	N/A	
Forklift	N/A	
Portable jacks	N/A	
Installation Facility	N/A	

2. Spare Parts Schedule

The rates and prices in the table below may be used for determining the cost of a Variation under clause 6.4(b)(iii) of the Deed.

The prices are exclusive of GST, but include all profits and Overhead Costs and other taxes, levies and costs as described in the Deed.

The valuation of Variations in accordance with clause 6.4(b)(iii) of the Deed in respect of the provision of spare parts or special tools and equipment that are not identified in the table below will be at invoiced cost to the Contractor plus % (on account of all Overhead Costs and profit).

Table – C and K Set Spare Parts

Product Description	PBS ID	OEM/Custom	Rate	
Eurobalise Antenna Subframe Assembly – DTR2000014106				
CK-SET EUROANTENNA – WELDED UPPER BRACKET	DTR2000018112	Custom part		
CK-SET EUROANTENNA – BOLTED LOWER BRACKET	DTR2000018117	Custom part		
CK-SET EUROANTENNA ADAPTOR BRACKET	DTR2000018113	Custom part		
CK-SET EUROANTENNA HINGE	DTR2000018973	Custom part		
CK-SET EUROANTENNA 90 Degree connector – PLUG FEMALE 19 PTS	DTR0000145365	Standard Part		
CK-SET EUROANTENNA 90 Degree connector – ELBOW PLUG BODY 90 FOR DIAMETER 27 MM	DTR0000234544	Standard Part		
CK-SET EUROANTENNA 90 Degree connector – CONTACT SOCKET CRIMPING	DTR0000056452	Standard Part		
CK-EUROANTENNA Silencer Bracket	TBA	TBA		
Compressor 3rd point mounting structure	TBA	TBA		
ETCS Switch Panel Assembly – DTR2000018151				
DIA 22 PUSHBUTTON KIT 1NC	DTR0000287329	Standard Part		
ROTARY CAM SWITCH, K&N CA10, BLACK, 2 POSITIONS 1 - 90deg, 2Xno 2XNC, SINGLE HOLE MOUNT	DTR0000287325	Standard Part		
BILOCK ROTARY CAM SWITCH, K&N CA10 2 POSITION - 60deg, 10XNO 4XNC, DUAL KEY UNIDIRECTIONAL, BEZEL MOUNT	DTR0000401077	Standard Part		
BILOCK CAM LOCK, CREW LEVEL, CAPTIVE	DTR0000393573	Standard Part		
BILOCK STRAIGHT CAM, 25mm L3-L12	DTR00009713375	Standard Part		
CIRCUIT BREAKER “ATP MAIN” - 3A	DTR0000431543	Standard Part		
CIRCUIT BREAKER “ATP CONTROL” - 8A	DTR0000463103	Standard Part		
CIRCUIT BREAKER “ATP 2ND” - 3A	DTR0000431543	Standard Part		
CIRCUIT BREAKER “TRACTION CONTROL” - 8A	DTR0000463103	Standard Part		
Radar Bracket – DTR2000014107				
CK-SET RADAR MOUNTING PLATE	DTR2000018116	Custom part		
RADAR BRACKET	DTR2000005358	Custom part		

Product Description	PBS ID	OEM/Custom	Rate
RADAR BRACKET ADAPTOR PLATE	DTR2000005359	Custom part	
CK -SET RADAR 90 Degree connector - PLUG ELBOW 14CTS FEM + ADAPTOR M25	DTR0000070935	Standard Part	
CK-SET RADAR 90 Degree connector - CONTACT FEM 27963-13-T12 AWG20-24	DTR0000074978	Standard Part	
CK-SET RADAR 90 Degree connector - CONNECT.,STRT EMCFIX NVEZ-M257V-11	DTR0000064425	Standard Part	
Intercar Jumpers - DTR2000014115			
CK-SET Jumper MC1-TC1 (Euro Antenna)	DTR2000018139	Custom part	
CK-SET Jumper MC1-TC1 (LVE)	DTR2000018172	Custom part	
CK-SET Jumper TC1-TC2 (Euro Antenna)	DTR2000019637	Custom part	
CK-SET Jumper TC1-TC2 (LVE)	DTR2000019638	Custom part	
CK-SET Jumper TC2-MC2 (Euro Antenna)	DTR2000018139	Custom part	
CK-SET Jumper TC2-MC2 (LVE)	DTR2000018172	Custom part	
ATP Underframe Harnesses – DM1 & DM2			
C AND K-SET, MAIN HARNESS, DMC, LVE HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, DMC, EA HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No1 END	DTR2000020354	Custom part	
CONNECTOR, BASE, HARTING, HPR 24, 19400240914	DTR0000261365	Standard Part	
ATP Underframe Harnesses – TC1			
C AND K-SET, MAIN HARNESS, TC1, LVE1 HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, TC1, EA1 HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, TC1, LVE2 HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, TC1, EA2 HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, TC1, RADAR HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, TC1, WSS1 HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, TC1, WSS2 HARNESS	TBA	Custom part	

Product Description	PBS ID	OEM/Custom	Rate
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No1 END	DTR2000020354	Custom part	
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No2 END	DTR2000020362	Custom part	
ATP Underframe Harnesses – TC2			
C AND K-SET, MAIN HARNESS, TC2, LVE HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, TC2, EA HARNESS	TBA	Custom part	
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No1 END	DTR2000020354	Custom part	
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No2 END	DTR2000020362	Custom part	
CONNECTOR, BASE, HARTING, HPR 24, 19400240914	DTR0000261365	Standard Part	
ATP Emergency Brake Valve – DTR2000014102			
CK-SET ATP Emergency Brake Valve	DTR0009713393	Standard Part	
CK-SET ATP Emergency Brake valve Isolation cock	DTR0009713414	Standard Part	
CK-SET ATP Emergency Brake Valve Pressure Switch	DTR0009713429	Standard Part	
CK-SET ATP Non-Leading Mode Pressure Switch	DTR0000459865	Standard Part	
Relay Panel – DTR2000018967 (Cubicle)			
RELAY, TIMER, FINDER, 80.41.0.240.0000	DTR0000146228	Standard Part	
VOLTAGE MONITORING RELAY - MTDV4-U213	DTR0000451487	Standard Part	
RELAY, MONO, 120V VDC, 1NC-1NO, MORS SMITT, CU-U210-B	DTR0000287327	Standard Part	
AllCATPart	DTR2000000997	Standard Part	
Cubicle Main CB – 16A	DTR0000431548	Standard Part	
Relay Panel – DTR2000018916 (Crew Cab)			
RELAY, TIMER, FINDER_80.11.0.240.0000	DTR0000334227	Standard Part	
RELAY, MORS SMITT, C 036 120 415 SV	DTR0000451159	Standard Part	
RELAY MONO, 120V, VAC-VDC, 4REV, MORS SMITT, D-U210-L	DTR0000419815	Standard Part	
FHN60 RESISTOR	TBA	Standard Part	
RELAY MONO, 120V, VAC-VDC, 4REV, MORS SMITT, D-U210-ELQ	DTR0000461680	Standard Part	

Product Description	PBS ID	OEM/Custom	Rate
RELAY MONO, 120V, VAC-VDC, 4REV, MORS SMITT, D-U210-W022-ELQ	DTR0000461682	Standard Part	

Table – V Set Spare Parts

Product Description	PBS ID	OEM/Custom	Rate
Eurobalise Antenna Subframe Assembly – DTR2000023249			
V-SET, EUROANTENNA, UNDERFRAME BRACKET	DTR2000023275	Custom part	
V-SET, EUROANTENNA, BRACE	DTR2000023277	Custom part	
V-SET, EUROANTENNA, ADAPTOR BRACKET	DTR2000023276	Custom part	
V-SET, EUROANTENNA, ADAPTOR BRACKET	DTR2000023278	Custom part	
ATP, EA CONNECTOR	DTR2000022583	Prototype Part	
ETCS Switch Panel Assembly – DTR2000023247			
DIA 22 PUSHBUTTON KIT 1NC	DTR0000287329	Standard Part	
ROTARY CAM SWITCH, K&N CA10, BLACK, 2 POSITIONS 1 90deg, 2Xno 2XNC, SINGLE HOLE MOUNT	DTR0000287325	Standard Part	
BILOCK ROTARY CAM SWITCH, K&N CA10 2 POSITION 60deg, 10XNO 4XNC, DUAL KEY UNIDIRECTIONAL, BEZEL MOUNT	DTR0000401077	Standard Part	
BILOCK CAM LOCK, CREW LEVEL, CAPTIVE	DTR0000393573	Standard Part	
BILOCK STRAIGHT CAM, 25mm L3-L12	DTR0009713375	Standard Part	
CIRCUIT BREAKER "ATP MAIN" - 3A	DTR0000431543	Standard Part	
CIRCUIT BREAKER "ATP CONTROL" - 8A	DTR0000463103	Standard Part	
CIRCUIT BREAKER "ATP 2ND" - 3A	DTR0000431543	Standard Part	
CIRCUIT BREAKER "TRACTION CONTROL" - 8A	DTR0000463103	Standard Part	
Radar Bracket – DTR2000023250			
V-SET, RADAR, MOUNTING BRACKET	DTR2000023280	Custom part	
V-SET RADAR BRACKET	DTR2000005358	Custom part	
V-SET RADAR BRACKET ADAPTOR PLATE	DTR2000005359	Custom part	
V -SET RADAR 90 Degree connector PLUG ELBOW 14CTS FEM + ADAPTOR M25	DTR0000070935	Standard Part	
V-SET RADAR 90 Degree connector SOCKET CONTACT #16 - GOLD	DTR0000074978	Standard Part	

Product Description	PBS ID	OEM/Custom	Rate
V-SET RADAR 90 Degree connector CONNECT.,STRT EMCFIX NVEZ-M257V-	DTR0000064425	Standard Part	
V-SET RADAR GOLD CONTACT HAN D FEMALE 1.6MM_1.5MM2	DTR0000232750	Standard Part	
V-SET RADAR SLEEVE THERMO,SELF-SOLDER 9.2 / 4.5	DTR0009713436	Standard Part	
V-SET RADAR CAP, THMRL TC 3.2-1.3-2/1-ROUGE	DTR0025276242	Standard Part	
ATP Emergency Brake Valve – DTR2000023244			
V-SET ATP Emergency Brake Valve	DTR0009713393	Standard Part	
V-SET ATP Emergency Brake valve Isolation cock MANUAL BALLCOCK, VENTED,	DTR0009713414	Standard Part	
V-SET ATP Emergency Brake Valve Pressure Switch PRESSURE SWITCH, TYPE G, CLASS 9013	DTR0009713429	Standard Part	
V-SET ATP Emergency Brake State Pressure Switch - PRESSURE SWITCH 9012GAW25 SET TO 400/500kPa	DTR2000019360	Prototype Part	
V-SET ATP Non-Leading Mode Pressure Switch - PRESSURE SWITCH 9012GAW25 SET TO 250/350kPa	DTR2000019359	Prototype Part	
Relay Panel – TBA (Both Crew Cab & Cubicle applications to be covered)			
V-SET Relay	TBA	TBA	
V-SET Relay	TBA	TBA	
V-SET Relay	TBA	TBA	
V-SET Relay	TBA	TBA	
V-SET Relay	TBA	TBA	
Underframe Harness Installation – DTR2000023258)			
V-SET W5SS Harness	DTR2000023335	Prototype Part	
V-SET W7SS Harness	DTR2000023336	Prototype Part	
V-SET EUROANTENNA HARNESS	DTR2000023338	Prototype Part	
V-SET RADAR HARNESS	DTR2000023340	Prototype Part	

<p>5. <i>The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.</i></p> <p>6. <i>The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):</i></p> <p style="padding-left: 20px;">(a) <i>that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors;</i></p> <p style="padding-left: 20px;">(b) <i>that all their employees and subcontractors, as at the date of the making of such a declaration:</i></p> <p style="padding-left: 40px;">(i) <i>have been paid all remuneration and benefits due and payable to them by; or</i></p> <p style="padding-left: 40px;">(ii) <i>had accrued to their account all benefits to which they are entitled from;</i></p> <p style="padding-left: 40px;"><i>the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract; and</i></p> <p style="padding-left: 20px;">(c) <i>of details of any amounts due and payable or benefits due to be received or accrued described in 6(b) above which have not been paid, received or accrued,</i></p> <p><i>except for the following subcontractors to the Contractor who have failed to provide such a declaration:</i></p> <p><i>Subcontractor:</i> _____ <i>Due amount unpaid:</i> _____</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p><i>insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim</i></p>
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7. *Where a subcontractor to the Contractor has provided a declaration as in 6 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:*

<i>Employee, subcontractor or supplier:</i>	<i>Amount unpaid or not accrued:</i>	
.....	<i>insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.</i>
.....	
.....	
.....	
.....	
.....	

8. *In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.*

9. *Attached to and forming part of this declaration, as Annexure A, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:*

- (a) *under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;*
- (b) *under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and*
- (c) *under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.*

10. *I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.*

11. *All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:*

- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and
- (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.

12. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

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

Declared at

this day
of
.....20

Before me:

Signature of person before whom
the declaration is made

Signature of declarant

Full name and qualifications of
person before whom the
declaration is made

And as a witness, I certify the following matters concerning the person who made this declaration (**declarant**):

*[*strike out the text that does not supply]*

1. *I saw the face of the declarant.

OR

<p>*I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.</p> <p>2. *I have known the declarant for at least 12 months.</p> <p style="text-align: center;">OR</p> <hr/> <p>*I confirm the declarant's identity using the following identification document:</p> <div style="text-align: right; margin-right: 20px;"> Identification document relied on (may be original or certified copy) </div> <p>_____</p> <p>Signature of person before whom the declaration is made</p> <p>Declared at</p> <p>this day of20</p> <p>Before me:</p> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>Signature of person before whom the declaration is made</p> <p>_____</p> <p>Full name and qualifications of person before whom the declaration is made</p> </div> <div style="width: 45%;"> <p>Signature of declarant</p> <p>_____</p> </div> </div> <p>* <i>The declaration must be made before one of the following persons:</i></p> <ul style="list-style-type: none"> - <i>where the declaration is sworn within the State of New South Wales:</i> <ul style="list-style-type: none"> (i) <i>a justice of the peace of the State of New South Wales;</i> (ii) <i>a solicitor of the Supreme Court of New South Wales with a current practising certificate; or</i> (iii) <i>a notary public.</i> 	
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- *where the declaration is sworn in a place outside the State of New South Wales:*
 - (i) *a notary public; or*
 - (ii) *any person having authority to administer an oath in that place.*

Note: From 30 April 2012 new requirements to confirm the identity of the declarant became mandatory in NSW. Witnesses must certify that they have seen the face of the declarant and either that they have known the declarant for more than 12 months, or confirmed their identity by sighting an approved identification document. For more detail see Affidavits and Statutory Declarations – How to administer an oath, affirmation or declaration in NSW (100086819).

Annexure A

**SUBCONTRACTOR'S STATEMENT
REGARDING WORKERS COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1 - see back of form)**

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

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

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

Subcontractor: ABN:

(Business name)

of

(Address of Subcontractor)

has entered into a contract with ABN:.....

(Business name of principal contractor)

(Note 2)

Contract number/identifier

.....

(Note 3)

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

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

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

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick and only complete (f) and (g) below. You must tick one box. **(Note 6)**

- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**
- (f) Signature Full name.....
- (g) Position/Title Date/...../.....

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

Notes

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

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

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

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

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

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

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

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

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

18. Principal Supplied Items

Principal Supplied Items - Category A

The following items of Principal Supplied Items Category A (considered as each package) will be free issued by the Principal to the Contractor. The Principal Supplied Items Category A required for each set will be issued as a package.

C-Set Fleet and K-Set Fleet

Product Description	PBS ID	Qty Required per Set (C/K)	Total Qty for 52 x 4-car sets	Unit
ATP Cubicle – C-set preassembled includes EVC2, DC/DC and Accelerometer BL3 (EVC2-Type AA)	DTR2000014257	1	13 (C Sets only)	EA
ATP Cubicle – K-set preassembled includes EVC2, DC/DC and Accelerometer BL3 (EVC2-Type AA)	DTR2000014267	1	39 (K Sets only)	EA
DMI SENSE touch-screen (inbuilt CPU)	DTR0000422405	2	104	EA
Loudspeaker with faston terminal - R10SC 8ohm	DTR0000028366	2	104	EA
Eurobalise Antenna - (Compact 100m)	DTR0000182433	2	104	EA
Eurobalise Antenna Protector	DTR0000279655	2	104	EA
Doppler Radar (DEUTA) - DRS05-1S1a with SW51-032B software	DTR0000317744	1	52	EA
Wheel Speed Sensor – Hasler, 5.8600.032/96	DTR0000454156	2	104	EA
Crash Protected Memory – TOME Train Data Recorder	DTR0000332421	1	52	EA
Ethernet Switch	DTR0000193330	1	52	EA
GSM-R Antenna	DTR0000244749	1	52	EA
GPS/GSM-R Antenna	DTR0000378144	1	52	EA

V-Set Fleet

Product Description	PBS ID	Qty Required per 4-Car V-Set	Total Qty for 20 x 4-car V-sets including Spares	Unit
ATP Cubicle – V-set, Cubicle_EVC2_120V_H_V-Set	DTR2000021483	2	40 + 1 Spare	EA
DMI SENSE touch-screen (inbuilt CPU)	DTR0000422405	2	40 + 1 Spare	EA
Loudspeaker with faston terminal - R10SC 8ohm	DTR0000028366	2	40+ 2 Spares	EA
Eurobalise Antenna - (Compact 100m)	DTR0000182433	2	40 + 2 Spares	EA
Eurobalise Antenna Protector/Shroud	DTR0000279655	2	40 + 2 Spares	EA
Doppler Radar (DEUTA) - DRS05-1S1a with SW51-032B software	DTR0000264363	2	40 + 2 Spares	EA
Wheel Speed Sensor – Hasler, 5.8600.032/96	DTR0000454156	4	80 + 4 Spares	EA
Crash Protected Memory – TOME Train Data Recorder	DTR0000332421	2	40 + 2 Spares	EA
Ethernet Switch	DTR0000193330	2	40 + 2 Spares	EA
GPS/GSM-R Antenna	DTR0000378144	2	40 + 2 Spares	EA

The earliest available date of each package for collection from the Principal's Stores is as set out below:

Package No	Date of Availability
1	Prototype (not supplied to Contractor under this Contract)
2	Prototype (not supplied to Contractor under this Contract)
3	2 months prior to the relevant ETCS Installation Start Date
4	2 months prior to the relevant ETCS Installation Start Date

Package No	Date of Availability
19	2 months prior to the relevant ETCS Installation Start Date
20	2 months prior to the relevant ETCS Installation Start Date
21	2 months prior to the relevant ETCS Installation Start Date
22	2 months prior to the relevant ETCS Installation Start Date

5	2 months prior to the relevant ETCS Installation Start Date	23	2 months prior to the relevant ETCS Installation Start Date
6	2 months prior to the relevant ETCS Installation Start Date	24	2 months prior to the relevant ETCS Installation Start Date
7	2 months prior to the relevant ETCS Installation Start Date	25	2 months prior to the relevant ETCS Installation Start Date
8	2 months prior to the relevant ETCS Installation Start Date	26	2 months prior to the relevant ETCS Installation Start Date
9	2 months prior to the relevant ETCS Installation Start Date	27	2 months prior to the relevant ETCS Installation Start Date
10	2 months prior to the relevant ETCS Installation Start Date	28	2 months prior to the relevant ETCS Installation Start Date
11	2 months prior to the relevant ETCS Installation Start Date	29	2 months prior to the relevant ETCS Installation Start Date
12	2 months prior to the relevant ETCS Installation Start Date	30	2 months prior to the relevant ETCS Installation Start Date
13	2 months prior to the relevant ETCS Installation Start Date	31	2 months prior to the relevant ETCS Installation Start Date
14	2 months prior to the relevant ETCS Installation Start Date	32	2 months prior to the relevant ETCS Installation Start Date
15	2 months prior to the relevant ETCS Installation Start Date	33	2 months prior to the relevant ETCS Installation Start Date
16	2 months prior to the relevant ETCS Installation Start Date	34	2 months prior to the relevant ETCS Installation Start Date
17	2 months prior to installation start date	35	2 months prior to the relevant ETCS Installation Start Date

18	2 months prior to the relevant ETCS Installation Start Date		
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The Principal will also procure three (3) sets of Principal Supplied Items Category A items as spare parts which the Principal may make available to the Contractor upon request.

Spare Package-1 available on 14 May 2018 will consist of:

- a) One (1) ATP Cubicle – Preassembled, including EVC2, DC/DC and Accelerometer;
- b) Two (2) DMI SENSE touch-screen (inbuilt CPU);
- c) Two (2) Loudspeaker with faston terminal, R10SC 8ohm;
- d) Two (2) Eurobalise Antenna (Compact 100m);
- e) Two (2) Eurobalise Antenna Protector/Shroud;
- f) One (1) Doppler Radar (DEUTA) - DRS05-1S1a with SW51-032B software;
- g) Two (2) Wheel Speed Sensor – KES SWKP IG 20;
- h) One (1) Crash Protected Memory – TOME Train Data Recorder;
- i) Two (2) Ethernet Switch;
- j) One (1) GSM-R Antenna; and
- k) One (1) GPS/GSM-R Antenna.

Spare Package-2 available on 08 June 2018 will consist of:

- a) One (1) ATP Cubicle – Preassembled, including EVC2, DC/DC and Accelerometer;
- b) Two (2) DMI SENSE touch-screen (inbuilt CPU);
- c) Two (2) Loudspeaker with faston terminal, R10SC 8ohm;
- d) Two (2) Eurobalise Antenna (Compact 100m);
- e) Two (2) Eurobalise Antenna Protector/Shroud;
- f) One (1) Doppler Radar (DEUTA) - DRS05-1S1a with SW51-032B software;
- g) Two (2) Wheel Speed Sensor – KES SWKP IG 20;
- h) One (1) Crash Protected Memory – TOME Train Data Recorder;
- i) Two (2) Ethernet Switch;
- j) One (1) GSM-R Antenna; and
- k) One (1) GPS/GSM-R Antenna.

Spare Package-3 available on 20 August 2018 will consist of:

- a) One (1) ATP Cubicle – Preassembled, including EVC2, DC/DC and Accelerometer;
- b) Two (2) DMI SENSE touch-screen (inbuilt CPU);
- c) Two (2) Loudspeaker with faston terminal, R10SC 8ohm;
- d) Two (2) Eurobalise Antenna (Compact 100m);
- e) Two (2) Eurobalise Antenna Protector/Shroud;
- f) One (1) Doppler Radar (DEUTA) - DRS05-1S1a with SW51-032B software;
- g) Two (2) Wheel Speed Sensor – KES SWKP IG 20;
- h) One (1) Crash Protected Memory – TOME Train Data Recorder;
- i) Two (2) Ethernet Switch;
- j) One (1) GSM-R Antenna; and
- k) One (1) GPS/GSM-R Antenna.

Principal Supplied Items - Category B

The following items of Principal Supplied Items Category B will be free issued by the Principal for collection by the Contractor from the Principal's Stores, at the earliest available dates shown below:

C-Set Fleet and K-Set Fleet

Product Description	PBS ID	Qty Required per Set (C/K)	Total Qty for 52 x 4-car sets	Unit	Date of Availability
Euroantenna cable - CABLE (2X0.50MM2)+(6X1.50MM2)+4X(2X0.50MM2 120 OH.)FILOTEX 2PJ151 NEXANS	DTR0000183162	140	7,280	Metr es (m)	5 months prior to the relevant ETCS Installation Start Date
Radar cable - FLAMEX EMC [5X(EMC 2X0.6mm ²)] cable	DTR0000173139	15	780	Metr es (m)	5 months prior to the relevant ETCS Installation Start Date
Motor car transom (Compressor Mounting Bracket)	Not in PBS	2	104	ea	1 month prior to the relevant ETCS Installation Start Date

V-Set Fleet

Product Description	PBS ID	Qty Required per Set (C/K)	Total Qty for 52 x 4-car sets	Unit	Date of Availability
Euroantenna cable - CABLE (2X0.50MM2)+(6X1.50MM2)+4X(2X0.50MM2 120 OH.)FILOTEX 2PJ151 NEXANS	DTR0000183162	50	1000	Metres (m)	5 months prior to the relevant ETCS Installation Start Date
Radar cable - FLAMEX EMC [5X(EMC 2X0.6mm ²)] cable	DTR0000173139	15	300	Metres (m)	5 months prior to the relevant ETCS Installation Start Date

Testing & Commissioning Tools

The testing and commissioning tools will be free issued by the Principal for collection by the Contractor from the Principal's Stores, at the earliest available dates shown below:

S.No	Product Description	Total Qty	Date of Availability
1	An embedded "Onboard Diagnostic Equipment tool" (ODE) case including compatible tester EVC "ODO ALSTOM", its suitable accessories, cables and SW, and the tool called "FAUST". This tool case is also commonly called "Maintenance test box".	2	2 months prior to the relevant ETCS Installation Start Date
2	Software programs such as: <ul style="list-style-type: none"> o Editor such as hyperterminal (wherever required); o Software of the EVC periodic tester configured for "Millennium train set"; o Software and drivers of the "ODE" tool; o TRU tools named "MultiRec SG" and "JDR_MDR" 	1	2 months prior to the relevant ETCS Installation Start Date
3	A "Eurobalise" programmed with a compatible message generating a message "Test&Commissioning" on the DMI screen when being crossed by the vehicle.	2	2 months prior to the relevant ETCS Installation Start Date
4	Profibus tester PBT4 (or equivalent) by Softing, Model-PROFIBUS Tester 4 BC-600-PB.	2	2 months prior to the relevant ETCS Installation Start Date

S.No	Product Description	Total Qty	Date of Availability
5	Green Bi-lock key to operate IS-ETCS 1/IS-ETCS2, L2-INH 1/L2-INH 2 key switches and unlock/lock the ETCS cubicle enclosure.	2	2 months prior to the relevant ETCS Installation Start Date

Principal's Stores

The Principal Supplied Items Category A and the Principal Supplied Items Category B Main Entry Gate 3, Worth Street, Chullora, NSW 2190

The testing and commissioning tools will be made available for collection at the ATP Project Office at Level 2, 241 O'Riordan Street, Mascot, NSW 2020.

19. Form of Subcontractor Deed

(Clauses 2.2(e) and 2.2(f))

THIS DEED is made on, 20..... by:

1..... ACN..... of
..... (the "**Subcontractor**")

and

2. [] of [] (the "**Original Contractor**")

RECITALS:

- A. **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (the "**Principal**") has entered into a contract with the Original Contractor for the "**Works**".
- B. The Subcontractor has an agreement (the "**Subcontract**") with the Original Contractor for the execution and completion of the [] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR AND THE ORIGINAL CONTRACTOR HEREBY COVENANT, WARRANT AND AGREE with and for the benefit of the persons named in the Schedule as follows:

1. The Subcontractor will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed.
3. The Subcontractor:
 - (a) must if required by a written notice by the Principal sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.

4. The Original Contractor agrees that if a written notice is given by the Principal under clause 3 of this Deed, that the Subcontract will be novated to the substitute contractor in accordance with the attached Deed of Novation.
5. This Deed is governed by the laws of the State of New South Wales.
6. This Deed may not be revoked or otherwise modified without the prior written consent of the Principal.
7. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Original Contractor in respect of that breach.

PERSONS NAMED IN THE SCHEDULE TO THE DEED

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

EXECUTED AS A DEED.

Executed by *[insert name]* (ABN *[insert ABN]*) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by *[insert name]* (ABN *[insert ABN]*)
by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Attachment 1 (to Schedule 19)

THIS DEED OF NOVATION is made on [] 20[] between the following parties:

1. **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (the "**Principal**");
2. [] ("**Substitute Contractor**")
3. [] ("**Subcontractor**").

RECITALS:

- A. By deed dated [] (the "**Deed**") between:
 - (i) the Principal; and
 - (ii) [] of [] ("**Original Contractor**"),the Principal engaged the Original Contractor to undertake the Works (as defined in the Deed).
- B. The Original Contractor has entered into an agreement ("**Subcontract**") with the Subcontractor for the execution and completion of the [] ("**Subcontract Works**") as part of the Works.
- C. The Principal has exercised its rights under clause 14 of the Deed to terminate the Deed or take out of the hands of the Original Contractor some or all of the Works and wishes to effect a novation of the Subcontract from the Original Contractor to the Substitute Contractor.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. On and from the date of this deed the Subcontract is novated from the Original Contractor to the Substitute Contractor and:
 - (a) the Substitute Contractor must perform all of the obligations of the Original Contractor under the Subcontract which are not performed as at the date of this deed;
 - (b) the Substitute Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of Original Contractor; and

- (c) the Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the Substitute Contractor was originally named in the Subcontract in place of Original Contractor.
2. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

[Insert appropriate execution clauses]

Parent Company Guarantee

(Clauses 1.1, 2.5(g) and clause 11.6(b))

Deed of Guarantee and Indemnity made at *SYDNEY, NSW* on *13 Dec. 2018*

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

Downer EDI Ltd ACN 003 872 848 of Trinita Business Campus, 39 Delhi Road, North Ryde NSW 2113 (**Guarantor**)

RECITALS

- A. The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

THIS DEED PROVIDES

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Contract means the contract for ATP C-Set, K-Set and V-Set Fleets Onboard Installation between Transport for NSW and Downer EDI Rail Pty Ltd, Contract Number ISD-17-6606 and ISD-17-6607, Automatic Train Protection Program dated on or about the date of this Deed between the Principal and the Contractor.

Contractor means Downer EDI Rail Pty Ltd ACN 000 002 031.

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of

creditors or of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Obligations means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Contractor and the Principal comes to owe or be owed such liability or obligation,

and Obligation means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means the rate which is above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at approximately 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the

relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or

- (j) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

1.2 Defined terms

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

1.3 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:

- (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
- (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) a reference to:
 - (i) a party or clause is a reference to a party or clause of or to this Deed; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and

any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

2.2 Payment by Guarantor

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 Perform Obligations

If the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Obligations.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Contractor to perform the Obligations duly and punctually; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

4. Liability under this Deed

4.1 Liability as guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

4.2 Limitation on Guarantor's liability

The liability of the Guarantor under this Deed will not exceed the liability which the Guarantor would have had to the Principal arising out of or in connection with the Contract, the Works or the Obligations, if the Guarantor had been named in the Contract as being jointly and severally liable with the Contractor to the Principal.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (i) any person, whether named as a party or not, does not execute this Deed;
 - (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
 - (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;

- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;
- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;
- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;
- (o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor; or
- (p) the provisions of section 440J of the Corporations Act 2001 (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.

- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Contractor, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
- (b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or
 - (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security;
- and
- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
 - (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

The liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.

5.8 Claim on the Guarantor

The Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

5.9 No representation by Principal etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Contractor or any other person.

6. Representations and Warranties

6.1 General representations and warranties

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the Principal that:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law binding on it, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor,

threatened, which, if adversely determined, may have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;

- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate to the extent they are material to the performance of the obligations of the Guarantor under this Deed.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3, provided that interest will not be payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and
- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency (Payment Currency) other than the currency (Agreed Currency) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax, which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and
- (b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

8.3 Goods and Services Tax

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed (GST Liability) then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

9. Assignment

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.8 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.8 will only apply where the Guarantor is a foreign company (as defined in section 9 of the Corporations Act 2001 (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be

referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).

- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Not used

10.6 Consolidation

The parties agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations.

10.7 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.8 Award final and binding

Any award will be final and binding upon the parties.

11. Miscellaneous

11.1 Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others):

- (i) to the Principal: Level 2, 241 O'Riordan Street
 Mascot NSW 2020
 Fax: (02) 9422 5490

(ii) to the Guarantor: Trinita Business Campus
39 Delhi Road,
North Ryde NSW 2113
Fax: (02) 9813 8915

- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines, provided it includes particulars of the relevant default in the due and punctual performance of the Obligations.

11.5 Entire agreement

This Deed constitute the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or

- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

11.6 Joint and several liability

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

11.7 Severance

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

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

11.8 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the Principal.

11.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any 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) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Deed; or
 - (ii) any other failure by the Guarantor to comply with a requirement of this Deed,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

11.10 Consents

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

14.10A Vienna Convention

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

11.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.12 Variations

This Deed may only be varied by a document signed by or on behalf of both the Principal and the Guarantor.

11.13 Provisions limiting or excluding liability

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

11.14 Counterparts

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

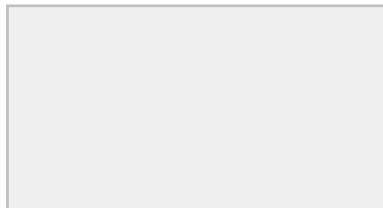
11.15 Confidentiality

- (a) Subject to paragraph (b), each party must keep the terms of this Deed confidential.
- (b) A party may make any disclosure in relation to this Deed:
 - (i) to a professional adviser, financial adviser, insurer, rating agency, financier or auditor if that person is obliged to keep the information disclosed confidential;

- (ii) to the extent required to comply with any law, a requirement of a regulatory body (including any relevant stock exchange) or pursuant to administrative request or Parliamentary requirement;
- (iii) to any of its employees or officers to whom it is necessary to disclose the information;
- (iv) in connection with any legal or arbitral proceeding under or in relation to this Deed;
- (v) to obtain the consent of a third party to a term of, or to an act under, this Deed;
- (vi) to a "related body corporate", as defined in section 9 of the Corporations Act 2001 (Cth), as long as it advises that related body corporate of the confidential nature of the terms of this Deed;
- (vii) (in the case of the Principal) to a potential assignee provided they agree to keep the terms of this Deed confidential;
- (viii) (in the case of the Principal) to a related agency or to its responsible Minister;
- (ix) with the prior consent of the other party to this Deed; or
- (x) if the information disclosed has come into the public domain through no fault of the party (or its employees, officers or related bodies corporate) making the disclosure.

Executed as a deed.

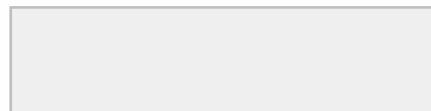
Executed by Downer EDI Ltd ACN 003 872 848
in the presence of:



Signature of Director

Grant Fenn

Name of Director in full



Signature of Secretary/~~other Director~~

PETER JAMES LYONS

Name of Secretary/~~other Director~~ in full

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

21. Options

OPTION	
Description:	Omission of all Works and Services on the V-Set Fleet
Adjustment to the Contract Sum:	<p>In Schedule 1, in the item entitled "Original Contract Price" delete "\$19,700,000 (excluding GST)" and replace it with "\$ [] (excluding GST)".</p> <p>In Schedule 2:</p> <p>(a) Replace the table in Schedule 2 with the schedule that appears at Annexure A of this Schedule 21.</p> <p>(b) Delete the references to Items A3.3.1, A3.3.2 and A3.3.3 in paragraph c. of Schedule 2.</p> <p>(c) Delete the references to Items A4.3 in paragraph d. of Schedule 2.</p>
Period for exercising the Option:	Prior to 31 March 2019
Unconditional undertakings	<p>Upon the exercise of the Option, the Principal must release so much of the unconditional undertakings provided under clauses 2.5(b)(i)(C) and 2.5(b)(i)(F) of the General Conditions as may be then held by the Principal.</p> <p>Delete clauses 2.5(d)(i)(C) and 2.5(d)(ii)(C) of the General Conditions and replace with "not used".</p>
Amendments to the General Conditions	<ol style="list-style-type: none"> 1. In Recital C, replace the reference to "C-Set, K-Set and V-Set" with "C-Set and K-Set". 2. In the definition of Outstanding Testing and Commissioning Documents in clause 1.1, replace the definition with the following: <ul style="list-style-type: none"> "(a) <i>Test and Commissioning Procedure (Fleet), AMS-C&K-350;</i> (b) <i>Test and Commissioning Report template (for fleet), AMS-C&K-360;</i>". 3. Delete the references to "V-Set Fleet" in: <ol style="list-style-type: none"> a. the definition of "Fleet"; and

	<p>b. clause 1.1, and replace them with "not used".</p> <p>4. Delete the references to "Works Brief for the V Set" in:</p> <p>a. the definition of "Works Brief"; and</p> <p>b. clause 1.1, and replace them with "not used".</p> <p>5. In each of clauses 10.20(c)(iii)(C)(2) and 10.20(d)(iv)(C)(2), delete "\$147,000 in the aggregate" and replace them with "not used".</p>
<p>Amendments to the Schedules</p>	<p>6. In Schedule 1:</p> <p>a. in item entitled "Assumed ETCS Installation Start Date the Delete", delete "in respect of the V-Set Fleet, 02 September 2019" and replace it with "not used";</p> <p>b. in item entitled "Date for Works Completion", delete "in respect of the V-Set Fleet, 28 February 2020" and replace it with "not used";</p> <p>c. in item entitled "ETCS Installation Deferral Date" delete "in respect of the V-Set Fleet, 8 July 2019" and replace it with "not used";</p> <p>d. in item entitled "Material Variance Threshold Amount" delete "the V-Set Fleet, \$ [redacted] (excluding GST)" and replace it with "not used"; and</p> <p>e. in item entitled "Amount of Contractor's insurance" delete "\$ [redacted] per V-Set" and replace it with "not used".</p> <p>7. In Schedules 8, 11 and 22, delete all references to "V-Set" and replace them with "not used".</p> <p>8. In Schedule 16, delete the table under the heading "Table – V Set Spare Parts" and replace with "not used".</p> <p>9. In Schedule 18, delete the table under the heading</p>

	"V-Set Fleet" and replace with "not used".
Amendments to the Exhibits	Delete Exhibit A Part 2, being the Works Brief for the V Set.

22. Form of Contractor Deed Poll

(Clause 1.6)

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

By: **Downer EDI Rail Pty Ltd (ABN 92 000 002 031)** of 39 Delhi Road, North Ryde
NSW 2113 (Contractor),

in favour of: Sydney Trains (ABN 38 284 779 682) of 477 Pitt Street, Sydney NSW 2000;
NSW Trains (ABN 50 325 560 455) of 477 Pitt Street, Sydney NSW 2000;
Rail Corporation New South Wales (ABN 59 325 778 353) 477 Pitt Street, and
Sydney NSW 2000 (RailCorp)

(Rail Transport Agency).

RECITALS

- A. Rail Transport Agency operates the commuter rail system in Sydney.
- B. Transport for NSW (ABN 18 804 239 602), a corporation established by section 3C of the Transport Administration Act 1988 (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (TfNSW), is responsible for developing certain major railway systems and other major projects.
- C. TfNSW is responsible for procuring the execution and completion of the installation, testing, commissioning and handover of the European Train Control System (ETCS) on C-Set, V-Set and K-Set fleets, known as the ATP C-Set, V-Set, K-Set Fleet Onboard Installation Project, as part of the Automatic Train Protection Program. It has entered into a deed (Main Deed) with the Contractor to undertake the ATP C-Set, V-Set, K-Set Fleet Onboard Installation Project (the Works).
- D. Rail Transport Agency is relying on TfNSW to procure the Contractor to execute and complete the Works in accordance with the Main Deed to ensure that Rail Transport Agency will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E. Rail Transport Agency will suffer loss if TfNSW does not procure the Contractor to execute and complete the Works in accordance with the Main Deed.
- F. It is a condition of the Main Deed that the Contractor executes this Deed Poll.

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

1. It will comply with its obligations under the Main Deed, including with respect to achieving Works Completion of each Fleet by the relevant Date for Works Completion.
2. Upon Works Completion of a Fleet, the Works and Services applicable to that Fleet will satisfy the requirements of the Main Deed.
3. The aggregate of the Contractor's liability to Rail Transport Agency under this Deed Poll and the Contractor's liability to TfNSW under the Main Deed:
 - (a) will not exceed the liability which the Contractor would have had under the Main Deed if the Main Deed had named, as Principal, Rail Transport Agency and TfNSW jointly and severally;
 - (b) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Main Deed.
4. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
5. Rail Transport Agency may assign or charge the benefits and rights accrued under this Deed Poll.
6. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
7. The Contractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency.
9. Where terms used in this Deed Poll are defined in the Main Deed, those terms have the meaning given to them in the Main Deed.

Executed as a deed poll.

Executed by Downer EDI Rail Pty Ltd
 ABN 92 000 002 031 by ~~in the presence of:~~
 being signed by its attorney, MONICA
 MURRAY, pursuant to a power of attorney
 dated 14 December 2018 in the presence of

Signature of Director/other witness

[Redacted Signature]

Name of witness (print)

[Redacted Signature]

18-12-18

Signature of Secretary/other Director attorney

Date

~~Name of Director in full~~

~~Name of Secretary/other Director in full~~

23. Expert Determination Agreement

(clause 15.11)

Expert Determination Agreement made at _____ on _____

Parties [_____] (the Principal)

[Insert name and address of Contractor] (Contractor)

[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause [to be inserted] of the Contract] (Expert)

Recitals

- A. The Principal and the Contractor (together "**the Parties**" and each "**a Party**") are parties to a contract (**Contract**) for *[to be inserted]*.
- B. By written notice dated *[to be inserted]*, the *[insert the Principal or Contractor as applicable]* has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause *[to be inserted]* of the Contract (**Matter**).
- C. Pursuant to clause *[to be inserted]* of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative part

1. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
- (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence and natural justice do not apply to the determination; and
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2;

- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

2. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

3. Costs and Fees

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) The Parties agree as between themselves that:
- (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

4. Exclusion of Liability and Indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

5. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

6. Governing Law

This Agreement is governed by and is to be construed in accordance with the laws in force in the State of New South Wales.

7. Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the New South Wales courts to which the appeals from those courts may be made.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

Schedule 1 - The Matter

[To be inserted when it comes time for expert determination]

Schedule 2 - Rules for Expert Determination Process**1. Commencement**

- 1.1 Except as provided in clause 4.3 of these Rules, the expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

2. Written Submissions

- 2.1 Within 7 days after the date this process begins, Party A (ie the Party who gave notice under clause 15.1 of the Contract) must, in addition to any particulars provided by Party A under clause 15.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- 2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.
- 2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.
- 2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

3. Conference

- 3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney.
- 3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- 3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.
- 3.4 The Parties:
- (a) may be accompanied at a conference by legal or other advisers; and
 - (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.
- 3.5 The conference must be held in private.
- 3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4. General

4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Contract.

4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:

- (a) with the prior consent of the Parties;
- (b) as may be required by law; or
- (c) as may be required in order to enforce the determination of the Expert.

4.3 The Expert must:

- (a) inform the Parties of:
 - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
- (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise terminate the proceedings.

5. The Determination

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:

- (a) determine the Matter between the Parties; and
- (b) notify the Parties of that determination.

5.2 The determination of the Expert must:

- (a) be in writing stating the Expert's determination and giving reasons;
- (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
- (c) meet the requirements of the Contract.

5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a notice of appeal is given in accordance with clause 15.12 of the Contract.

5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6. **Costs**

6.1 Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

7. **Modification**

7.1 These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS

Code of Conduct for an Expert

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

Schedule 3 - The Expert's Fees and Disbursements

[To be inserted when it comes time for expert determination]

Signed as an agreement.

Signed for and on behalf of the Principal by
[insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]

Signed for and on behalf of the Contractor by
[insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]

Signed by the Expert *[insert name]* in the
presence of:

[Signature]

[Name of witness]

[Signature of witness]

24. Overhead Costs

On-site overheads

The on-site overheads are those overhead costs and expenses which are specific to the Site, including:

- (i) on-site personnel with project management, site supervision, administration and support functions;
- (ii) site accommodation including amenities and parking facilities;
- (iii) phones lease and installation, rental and charges including mobiles;
- (iv) storage area and facilities;
- (v) office supplies and consumables;
- (vi) site services;
- (vii) furniture and office fittings;
- (viii) information and communications technology;
- (ix) printing, photocopying and stationery;
- (x) project specific insurances only (and not corporate held insurances);
- (xi) security;
- (xii) waste disposal associated with site accommodation, including amenities and parking facilities (excluding waste disposal associated with construction activities)
- (xiii) personal protective equipment; and
- (xiv) cleaning.

Off-site overheads

The off-site overheads are on account of costs and expenses related to off-site business functions of the Contractor (in respect of the Works), including the following matters:

- (i) safety and quality;
- (ii) financial, legal, human resources and commercial;
- (iii) executive management;
- (iv) corporate infrastructure and support;
- (v) parent company fees;
- (vi) corporate head offices running costs and payroll;
- (vii) Contract Control Group meetings (non-site personnel); and
- (viii) bonds and bank guarantee

25. Project Team and Time Allocation

Part	Position Title	Name	Allocation	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	
	<i>General Manager Cardiff</i>																					
	Senior Project Manager																					
	<i>Project Manager (M-Set)</i>																					
	Project Engineer (CK-Sets)																					
	Project Engineer (V-Set)																					
	Project Planner																					
	<i>Purchasing & Inventory Manager</i>																					
	Purchasing & Rotables Officer																					
	Storesperson																					
	Zero Harm Advisor																					
	Environmental officer																					
	<i>Engineering Manager</i>																					
	T&C Engineer																					
	Technical Officer																					
	Quality Officer																					
	Document Controller																					
	<i>Planning / Operations Manager</i>																					
	<i>Production Team Leader (M-Set)</i>																					
	Production Team Leaders (CK-Sets Day Shift)																					
	Production Team Leader (V-Set Day Shift)																					
	Production Team Leaders (all ATP Afternoon Shift)																					
	T&C Team Leader																					

DEED EXECUTION PAGE

DATED 19TH day of DECEMBER 2018

Executed and delivered as a Deed in Sydney

Signed for and on behalf of

TRANSPORT FOR NSW (ABN 18 804

2



Signature of Witness

ETHAN WEISZ

Print Name

(block letters)

COMMERCIAL MANAGER

Position held


Signature of Authorised Delegate

GEOFF WEBB

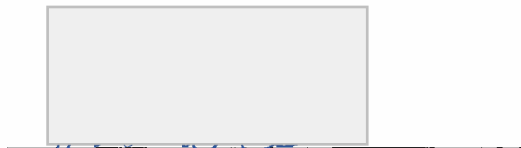
Print Name

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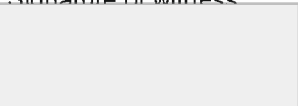
PROJECT DIRECTOR ATP

Position held

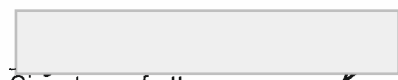
Executed by Downer EDI Rail Pty Ltd
(ABN 92000 002 031) by being signed
by its attorney MONICA MURRAY
pursuant to a power of attorney dated
14 December 2018, in the presence of:



Signature of witness



Name of witness (print)


Signature of attorney

18/12/18

Date

EXHIBITS

LIST OF EXHIBITS

- EXHIBIT A - WORKS BRIEF
- EXHIBIT B - PRINCIPAL'S INSURANCE POLICIES
- EXHIBIT C - PROBITY AND PROCESS DEED POLL
- EXHIBIT D - REPORTS
- EXHIBIT E - THIRD PARTY AGREEMENTS
- EXHIBIT F - TFNSW STANDARD REQUIREMENTS

Exhibit A

Works Brief



**Transport
for NSW**

Automatic Train Protection

C and K-Set Fleets Onboard Installation Project

Works Brief

Document Number: 5812428_7

Commercial In Confidence

© TfNSW 2018

DeskSite: 5812428_7

Document History

Version	Date	Author	Summary
5439569_4	10/4/17	Jason Dinh	Added comments to H-set Installation Works Brief.
5439569_5	19/7/17	Raj Panda	Developed MCKV Installation Works Brief using H-set Installation Works Brief as base. Incorporated Jason Dinh and Rene Rosales' comments.
5439569_6	28/7/17	Raj Panda	Updated Contractor Supplied Materials, Spare Parts, etc with technical inputs from Jason Farrugia
5439569_7	2/8/17	Raj Panda	Incorporated H-set lessons learned comments from Nizar Audish and Karan Jain.
5439569_8	7/8/17	Raj Panda	Incorporated comments by Tennille Cheong and Himesh Nair.
5812428_1	25/10/17	Raj Panda	Removed M and V set sections.
5812428_2	10/07/2018	Raj Panda	Added Contractor scope details, spares information and documentation references. Incorporated PE and QAT1 comments.
5812428_3 & 5812428_4	4/09/2018	Raj Panda	Updated quantities of Contractor Supplied Spares and added new items
5812428_5	10/09/2018	Raj Panda	Changed clauses 2.8 and 2.12.1 (a) as per RFI request RFI-0509-01 from Downer. Updated revisions of Appendices documents and added new documents.
5812428_6	22/11/2018	Raj Panda	Added details in Appendix C1 Reference no, 21 – transom replacement engineering instruction Issued to Downer for Contract Execution
581428_7	11 Dec 2018	Jay Lynn	Removed Appendix C1 Reference no, 21 – transom replacement engineering instruction

Table of Contents

1	Background.....	1
1.1	Works Brief Overview	1
1.2	ATP Program Background	1
1.3	Fleet Onboard Installation Project Overview	2
1.4	Project Objectives.....	3
1.5	Other Projects involving C and K-Set Fleets.....	3
1.6	Glossary	3
1.7	List of Abbreviations	4
1.8	Documents provided in electronic form.....	5
2	General Requirements	6
2.1	Works and Services.....	6
2.2	Contractor Supplied Materials	7
2.3	The Principal Supplied Items	12
2.4	Rail Safety Accreditation.....	14
2.5	Scheduling and Interface Management Activities	14
2.6	Progress Reporting.....	15
2.7	Milestone Dates for Reports and Plans	16
2.8	Set Handover and Set Handover Activities	17
2.9	Installation Activities	17
2.10	Testing & Commissioning Activities	19
2.11	Train Preparation Activities.....	19
2.12	Handback Activities	19
3	Works Management.....	21
3.1	Management Plans.....	21
3.2	Other Works Management Obligations.....	22
3.3	Review by the Principal	22

- Appendix A – Product Breakdown Structure and Drawings
- Appendix B – Inspection, Non-Regression Testing and Train Preparation Procedures
- Appendix C – Installation Documentation
- Appendix D – Testing and Commissioning Procedures and Reports
- Appendix E – Interface Schedule

1 Background

The purpose of this Works Brief is to define the Works and Services that the Contractor must undertake to fulfil its obligations under the Automatic Train Protection (ATP) C and K-Set Fleets Onboard Installation Contract.

The Contractor is required to be an Authorised Engineering Organisation (AEO) as defined and authorised by the Asset Standards Authority (ASA). The Contractor is required to undertake all activities necessary to ensure the delivery of the requirements of this Works Brief in accordance with their own engineering development systems, which have been defined, audited and duly approved by the ASA in granting the Contractor AEO status for the purposes of delivering this package of work.

As the AEO for the activities defined in this Works Brief, the Contractor is responsible for the management of project Stakeholders, including Sydney Trains, NSW Trains, The Principal and any other party in ensuring the delivery of the requirements.

The Principal will undertake rigorous audit and assurance activities to ensure that the Works and Services are in accordance with their internal systems and in keeping with their AEO status to ensure that the project will deliver the intended outcomes.

1.1 Works Brief Overview

This Works Brief sets out the scope of the Works and Services for the installation, testing and commissioning on The Principal Designated Rolling Stock Fleets.

The Works Brief includes Appendices A to E inclusive which must be read in conjunction with all other parts of the Deed.

1.2 ATP Program Background

“Automatic Train Protection” (ATP) is a generic name to describe trackside and train borne systems designed to automatically prevent a train from over speeding or travelling beyond the end of its permitted movement authority.

The ATP Program arose out of the Special Commission of Inquiry into the Waterfall train accident which occurred in January 2003. Recommendation 32 of the subsequent report stated that RailCorp should implement an ATP system within a reasonable amount of time. Following extensive research into driver safety systems, RailCorp adopted the ETCS Level 1 as its preferred ATP technology.

The ATP Program was initially delivered by RailCorp. The delivery responsibility for the ATP Program was subsequently transferred from RailCorp to TfNSW Transport Projects Division on 1 December 2012.

ETCS has been developed under the sponsorship of the European Rail Agency and operates at three levels. A multi-stage approach has been adopted for the implementation of an ATP system, commencing with ETCS Level 1. The three levels of ETCS are:

- (a) Level 1: an intermittent overlay to existing signalling with track to train transmission via track mounted transponders;
- (b) Level 2: a continuous system with track to train transmission via a digital train radio network; and
- (c) Level 3: a future development which builds on ETCS Level 2 and enables the removal of track circuits.

TfNSW has funding approval for implementation of ETCS on part of the NSW electrified metropolitan rail network and rolling stock fleet. This is known as “Approval Package 1” (AP1). AP1 involves the implementation of an ETCS Level 1 system.

A contract was awarded to Alstom Transport Australia Pty Ltd in January 2011 for ETCS onboard equipment supply and engineering services, including the provision of system design, installation design, installation working instructions and test procedures. In 2017, a Second Deed of the

Amendment to the existing Alstom Onboard Deed was executed, that included the equipment supply, design and prototyping for M, C and K Sets.

The next stage of the ATP Program is to install, test and commission ETCS on the M-Set, C-Set, K-Set and V-Set fleets prior to entry in to full revenue service with operational ETCS in Level 1 Limited Supervision mode.

1.3 Fleet Onboard Installation Project Overview

The Principal is the system integrator for the ATP system including the installation on C and K-Set fleets. The Principal's chosen strategy for the delivery of the Works and Services is through the procurement of an installation contractor and the engagement of Other Contractors including those shown in Figures 1 and 2 below.

Figure 1: C-Set Fleet Onboard Packaging Strategy

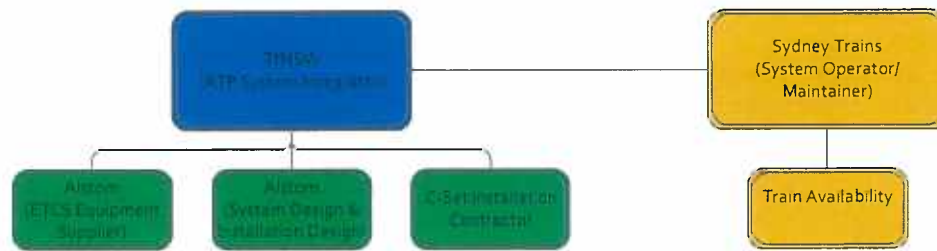
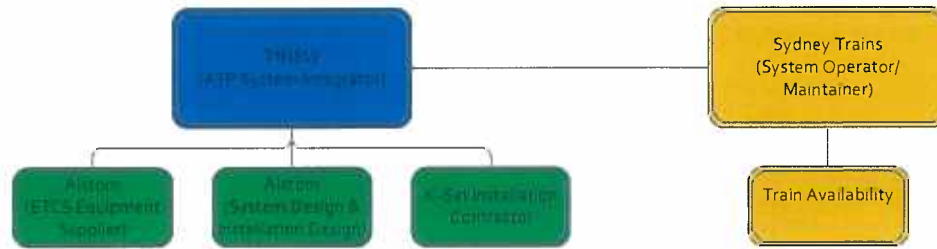


Figure 2: K-Set Fleet Onboard Packaging Strategy



The Works and Services to be undertaken by the Contractor for the Project include:

- (a) pre-installation inspection and pre-installation non-regression testing;
- (b) installation, post-installation non-regression testing, testing & commissioning, and handback of the ETCS Level 1 Limited Supervision and migration works to Level 2 scope on the following fleets:
 - (i) 13 x 4-car Sets of C-Set Fleet in accordance with the installation work instructions and test procedures supplied by The Principal; and
 - (ii) 39 x 4-car Sets of K-Set Fleet in accordance with the installation work instructions and test procedures supplied by The Principal.
- (c) supply of hardware and materials as per the Product Breakdown Structure in Appendix A excluding the Principal Supplied Items Category A and Category B; and
- (d) provision of a suitable Storage, Installation and Testing Facility and competent resources to undertake the Works and Services.

The Interface Schedule in Appendix E of this Works Brief sets out the main divisions of responsibility between the Contractor and The Principal for the key activities related to the Works and Services. The

Interface Schedule also shows, for the purpose of clarity, some of the work for the Project that will be undertaken by Sydney Trains and Other Contractors, including the Enabling Works Contractor.

1.4 Project Objectives

The primary objective of the Project is to successfully install, test and commission ETCS on 13 x 4-car C-sets and 39 x 4-car K-sets to enable the successful operation of the C and K-Set fleets with ETCS in the Sydney Trains and NSW Trains operating environment that satisfies the safety, operating, technical and business requirements.

1.5 Other Projects involving C and K-Set Fleets

There are other on-going works on the C and K-Set fleets. Whilst these other works do not form part of the Project, it is nevertheless important for the Contractor to be aware of their timing and potential impact on fleet availability.

These other works include:

- (a) C and K Reliability Boost project; and
- (b) Year 4 and Year 8 Maintenance Program – a program of heavy maintenance.

Details of these ongoing works will be communicated as appropriate, for the Contractor to plan its activities under this Works Brief.

1.6 Glossary

Unless the context otherwise indicates, the words and phrases used in the Works Brief have the meaning given to them in the General Conditions of the Deed and the Deed Schedules.

Any reference to the “Deed” or “Contract”, including “Schedules” and “Exhibits” means the ATP C and K-Set Fleet Onboard Installation Contract between TfNSW and the Contractor for the Project.

In this Works Brief, unless the context otherwise indicates, the following words or phrases have the meaning given to them in Table 1.

Table 1 Works Brief Definitions

Term	Description
Commissioning	[As defined in the TSRs]
Completed Set	A Set that has been completely tested and handed over and accepted by TfNSW after the Scope of Works has been completed by the Contractor on this Set in accordance with this Works Brief.
Contractor's Access Notice	has the meaning given in Schedule 3 to the Deed
Contractor's Return Notice	has the meaning given in Schedule 3 to the Deed
Cubicle	means the physical structure that houses the EVC, accelerometer, Juridical Recorder Unit, Level 2 data radio (future) and its associated ancillary equipment (e.g., power supplies, switchgear, inter-component cabling, relay interface unit and circuits, etc.).
Cubicle Enclosure	means the cupboard or locker that houses the Cubicle and provides protection to that equipment from the outside environment and prevents any unauthorised access to the Cubicle.
Defects Management Plan	As defined in the TSRs
Flemington Maintenance Centre	means the Flemington Maintenance Centre at Bachell Avenue, Lidcombe, NSW, 2141
Principal's Stores	In respect of: (a) Principal Supplied Items Category A and Principal Supplied Items

Term	Description
	<p>Category B, means the location at 14-16 Giffnock Avenue, Macquarie Park NSW 2113</p> <p>(b) The testing and commissioning tools, means the ATP Project Office at Level 2, 241 O’Riordan Street, Mascot, 2020, NSW</p>
Project	means the Automatic Train Protection (ATP) Onboard Installation on C and K-Set Fleets Project
Prototypes	means the 4-car C-Set (C2) and 4-car K-Set (K96) that were installed with ETCS by Alstom Transport on behalf of the Principal.
Rail Transport Operator	As defined in the Rail Safety National Law and as accredited by the Office of the National Rail Safety Regulator.
Set Return to Service Documentation	has the meaning set out in 2.12.1 of this Works Brief.
Site	means the Installation Facility, the Rail Corridor, the Flemington Maintenance Centre and any other sites or premises on or in which any aspect of the Works and Services is performed.
TfNSW Standard Requirements (TSRs)	The TfNSW Standard Requirements in Exhibit F to the Deed.

1.7 List of Abbreviations

Acronyms used in this Works Brief have the meanings given in Table 2.

Table 2: Acronyms

Abbreviation	Definition
ATP	Automatic Train Protection
ERN	Equipment Request Notice
ETCS	European Train Control System
C-Set	C-Set train type, also known as Suburban C
K-Set	K-Set train type, also known as Suburban K
OEM	Original Equipment Manufacturer
ONRSR	Office of the National Rail Safety Regulator
PBS	Product Breakdown Structure
RSO	Rolling Stock Operator as that term is defined in the Rail Safety National Law
TfNSW	Transport for New South Wales
TSRs	TfNSW Standard Requirements provided in Exhibit F to this Deed
WAA	Work Activity Advice

1.8 Documents provided in electronic form

Documents referred to in the appendices of this Exhibit A that have a corresponding DeskSite reference are provided in electronic form and are contained in the compact disc labelled "Documents for the ATP C-Set, K-Set and V-Set Fleets Onboard Installation Contract".

2 General Requirements

The Contractor must perform the Works and Services in accordance with the requirements of this Deed, including the Works Brief and the TSRs.

The Alstom ATP equipment will be installed and type tested on one prototype 4-car C-Set and one prototype 4-car K-Set. Alstom is the supplier of the system critical ATP Equipment and installation design while the Contractor's scope of this work is covered in the sections below.

The Contractor must be responsible for the supply and installation of all cabling, conduits runs, mounting plates, brackets and fixtures.

The Contractor must supply materials and equipment as specified as Contractor's scope of supply in sections 2.2 and 2.3.

The Contractor must make all connections for the ATP sub-system interfaces with the existing on-board power supply, traction and braking systems, and any other interfaces necessary for a seamless operation of the ATP system without adversely impacting the safety, operation or maintainability of the existing onboard systems.

The Contractor must test and commission each set after the ATP equipment is installed and connected in accordance with referenced documents in Appendix D of this Works Brief.

The Contractor must rectify all Defects in accordance with the Deed.

2.1 Works and Services

Without limiting the Contractor's other obligations under the Deed, the Works and Services include all things necessary with regard to:

- (a) co-ordinating and scheduling of Set delivery between the Delivery Point and the Handback Point;
- (b) undertaking pre-delivery activities;
- (c) collecting, storing and managing The Principal Supplied Items;
- (d) procuring all materials, equipment and resources other than The Principal Supplied Items;
- (e) providing RSOs accredited by the Office of the National Rail Safety Regulator for train movements after a Set is entrusted to the Contractor by The Principal at the Delivery Point until the Set is returned to The Principal at the Handback Point;
- (f) providing a suitable Installation and Testing Facility and competent resources;
- (g) co-ordinating any interface works, including the completion and certification of the enabling works modifications undertaken by the Enabling Works Contractor;
- (h) undertaking pre-installation non-regression testing activities;
- (i) installing the Works and Services as described in this Works Brief and in accordance with The Principal's installation work instructions;
- (j) undertaking pre-commissioning (i.e. point to point) testing activities;
- (k) undertaking post-installation non-regression testing activities;
- (l) undertaking Testing & Commissioning activities;
- (m) undertaking train preparation in compliance with the home depot requirements;
- (n) co-coordinating, witnessing, inspection and auditing of the enabling works and the installation works by The Principal and Other Contractors;
- (o) ensuring the safety and security of the Installation Facility;

- (p) rectifying all Defects during the Warranty Period;
- (q) undertaking those interface activities and the coordination of the interface works set out in Appendix E and identified as the Contractor's responsibility;
- (r) providing uninterrupted access for The Principal's personnel, Sydney Trains and NSW Trains personnel and Other Contractors nominated by the Principal to the Installation Facility;
- (s) undertaking monthly progress reviews and making arrangements for chairing a pre-handback meeting with The Principal and Sydney Trains for each Completed Set; and
- (t) producing and submitting relevant documentation required for the handback of Completed Sets.

2.2 Contractor Supplied Materials

The Contractor must procure all materials other than Principal Supplied Items Category A and Principal Supplied Items Category B in accordance with the Product Breakdown Structure and drawings provided in Appendix A. The Principal Supplied Items listed in Table 3a and Table 3b must not be procured by the Contractor.

The Contractor supplied materials include off-the-shelf items, which the Contractor may purchase from manufacturers and suppliers, and custom items, which the Contractor must have manufactured or subcontracted to a third party. The Contractor must ensure that all Contractor supplied materials are in conformance with the Product Breakdown Structure.

Table 3a: Principal Supplied Items Category A, which are listed in the Product Breakdown Structure

Product Description	PBS ID	Qty Required per Set (C/K)	Total Qty for 52 x 4-car sets including Spares	Unit
ATP Cubicle – C-set preassembled includes EVC2, Rack fan, DC/DC and Accelerometer BL3 (EVC2-Type AA)	DTR2000014257	1	13 + 1 Spare (C Sets only)	EA
ATP Cubicle – K-set preassembled includes EVC2, Rack fan, DC/DC and Accelerometer BL3 (EVC2-Type AA)	DTR2000014267	1	39 + 1 Spare (K Sets only)	EA
DMI SENSE touch-screen (inbuilt CPU)	DTR0000422405	2	104 + 4 Spares	EA
Loudspeaker with faston terminal - R10SC 8ohm	DTR0000028366	2	104 + 4 Spares	EA
Eurobalise Antenna - (Compact 100m)	DTR0000182433	2	104 + 4 Spares	EA
Eurobalise Antenna Protector/Shroud	DTR0000279655	2	104 + 4 Spares	EA
Doppler Radar (DEUTA) - DRS05-1S1a with SW51-032B software	DTR0000264363	1	52 + 2 Spares	EA
Wheel Speed Sensor – Hasler, 5.8600.032/96 (includes WSS cable, connector, gasket and 4 mounting screws)	DTR0000454156	2	104 + 4 Spares	EA
Crash Protected Memory – TOME Train Data Recorder	DTR0000332421	1	52 + 2 Spares	EA
Ethernet Switch	DTR0000193330	1	52 + 2 Spares	EA

GSM-R Antenna	DTR0000244749	1	52 + 2 Spares	EA
GPS/GSM-R Antenna	DTR0000378144	1	52 + 2 Spares	EA

Table 3b: Principal Supplied Items Category B, which are not in the Product Breakdown Structure

Product Description	PBS ID	Qty Required per Set (C/K)	Total Qty for 52 x 4-car sets	Unit
Euroantenna cable - CABLE (2X0.50MM2)+(6X1.50MM2)+4X(2X0.50MM2 120 OH.)FILOTEX 2PJ151 NEXANS	DTR0000183162	140	7,280	Metre (m)
Radar cable - FLAMEX EMC [5X(EMC 2X0.6mm ²)] cable	DTR0000173139	15	780	Metre (m)
Motor car transom (Compressor Mounting Bracket)	Not in PBS	2 if transom cracks found on both cars 1 if cracks found on one car 0 if nil cracks found	Dependent on transom cracks being found	ea
Motor car replacement flooring (timber/vinyl) for transom replacement works	Not in PBS	2 if transom cracks found on both cars 1 if cracks found on one car 0 if nil cracks found	Dependent on transom cracks being found	Square Metre (m ²)
Test Tools				
Data logger test laptop (for non-regression testing)	Not in PBS	1	1	EA
Data logger key (for non-regression testing)	Not in PBS	1	1	EA
Speed code generator (for non-regression testing)	Not in PBS	1	1	EA

Embedded "Onboard Diagnostic Equipment tool" (ODE) case including compatible tester EVC "ODO ALSTOM", its suitable accessories, cables and SW, and the tool called "FAUST". This tool case is also commonly called "Maintenance test box"			2	EA
Software programs such as: <ul style="list-style-type: none"> o Editor such as hyper terminal (wherever required); o Software of the EVC periodic tester configured for "C & K train set"; o Software and drivers of the "ODE" tool 	Not in PBS	1	1	EA
"Eurobalise" programmed with a compatible message generating a message "Test&Commissioning" on the DMI screen when being crossed by the vehicle	Not in PBS	1	2	EA
Train crew key set (including butterfly, cabinet, Red Bi-lock)	Not in PBS	2	2	EA
Green Bi-lock key to operate IS-ETCS 1/IS-ETCS2, L2-INH 1/L2-INH2 key switches and unlock/lock the ETCS cubicle enclosure	Not in PBS	2	2	EA

2.2.1 Spare parts

The Contractor must procure and supply to the Principal the type and quantity of spare parts listed in Table 4 and in accordance with the Product Breakdown Structure provided in Appendix A.

The Contractor must replenish any spare items used to replace damaged items during the period of fleet installation.

The Contractor must supply the Principal with 50% of the Spare parts listed in Table 4 within 10 Days of commencement of ATP C-Set Fleet Installation, and the remainder within 10 Days of completion of ATP K-Set Fleet Installation.

Table 4: Contractor Supplied Materials (C and K-Set) – Spare parts

Product Description	PBS ID	OEM/ Custom	Quantity of C&K-Set Spares
Eurobalise Antenna Subframe Assembly – DTR2000014106			
CK-SET EUROANTENNA – WELDED UPPER BRACKET	DTR2000018112	Custom part	4
CK-SET EUROANTENNA – BOLTED LOWER BRACKET	DTR2000018117	Custom part	4
CK-SET EUROANTENNA ADAPTOR BRACKET	DTR2000018113	Custom part	6
CK-SET EUROANTENNA HINGE	DTR2000018973	Custom part	6



Product Description	PBS ID	OEM/ Custom	Quantity of C&K-Set Spares
CK-SET EUROANTENNA 90 Degree connector - PLUG FEMALE 19 PTS	DTR0000145365	Standard Part	6
CK-SET EUROANTENNA 90 Degree connector - ELBOW PLUG BODY 90 FOR DIAMETER 27 MM	DTR0000234544	Standard Part	6
CK-SET EUROANTENNA 90 Degree connector - CONTACT SOCKET CRIMPING	DTR0000056452	Standard Part	6
CK-EUROANTENNA Silencer Bracket	TBA	TBA	6
Compressor 3 rd point mounting structure	TBA	TBA	6
ETCS Switch Panel Assembly – DTR2000018151			
DIA 22 PUSHBUTTON KIT 1NC	DTR0000287329	Standard Part	15
ROTARY CAM SWITCH, K&N CA10, BLACK, 2 POSITIONS 1 90deg, 2Xno 2XNC, SINGLE HOLE MOUNT	DTR0000287325	Standard Part	15
BILOCK ROTARY CAM SWITCH, K&N CA10 2 POSITION 60deg, 10XNO 4XNC, DUAL KEY UNIDIRECTIONAL, BEZEL MOUNT	DTR0000401077	Standard Part	15
BILOCK CAM LOCK, CREW LEVEL, CAPTIVE	DTR0000393573	Standard Part	15
BILOCK STRAIGHT CAM, 25mm L3-L12	DTR0009713375	Standard Part	15
CIRCUIT BREAKER "ATP MAIN" - 3A	DTR0000431543	Standard Part	15
CIRCUIT BREAKER "ATP CONTROL" - 8A	DTR0000463103	Standard Part	15
CIRCUIT BREAKER "ATP 2ND" - 3A	DTR0000431543	Standard Part	15
CIRCUIT BREAKER "TRACTION CONTROL" - 8A	DTR0000463103	Standard Part	15
Radar Bracket – DTR2000014107			
CK-SET RADAR MOUNTING PLATE	DTR2000018116	Custom part	4
RADAR BRACKET	DTR2000005358	Custom part	4
RADAR BRACKET ADAPTOR PLATE	DTR2000005359	Custom part	4
CK -SET RADAR 90 Degree connector PLUG ELBOW 14CTS FEM + ADAPTOR M25	DTR0000070935	Standard Part	6
CK-SET RADAR 90 Degree connector CONTACT FEM 27963-13-T12 AWG20-24	DTR0000074978	Standard Part	6
CK-SET RADAR 90 Degree connector CONNECT.,STRT EMC FIX NVEZ-M257V-11	DTR0000064425	Standard Part	6
Intercar Jumpers - DTR2000014115			
CK-SET Jumper MC1-TC1 (Euro Antenna)	DTR2000018139	Custom part	4
CK-SET Jumper MC1-TC1 (LVE)	DTR2000018172	Custom part	4
CK-SET Jumper TC1-TC2 (Euro Antenna)	DTR2000019637	Custom part	4



Product Description	PBS ID	OEM/ Custom	Quantity of C&K-Set Spares
CK-SET Jumper TC1-TC2 (LVE)	DTR2000019638	Custom part	4
CK-SET Jumper TC2-MC2 (Euro Antenna)	DTR2000018139	Custom part	4
CK-SET Jumper TC2-MC2 (LVE)	DTR2000018172	Custom part	4
ATP Underframe Harnesses – DM1 & DM2			
C AND K-SET, MAIN HARNESS, DMC, LVE HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, DMC, EA HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No1 END	DTR2000020354	Custom part	2
CONNECTOR, BASE, HARTING, HPR 24, 19400240914	DTR0000261365	Standard Part	4
ATP Underframe Harnesses – TC1			
C AND K-SET, MAIN HARNESS, TC1, LVE1 HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, TC1, EA1 HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, TC1, LVE2 HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, TC1, EA2 HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, TC1, RADAR HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, TC1, WSS1 HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, TC1, WSS2 HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No1 END	DTR2000020354	Custom part	2
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No2 END	DTR2000020362	Custom part	2
ATP Underframe Harnesses – TC2			
C AND K-SET, MAIN HARNESS, TC2, LVE HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, TC2, EA HARNESS	TBA	Custom part	2
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No1 END	DTR2000020354	Custom part	1
C AND K-SET, MAIN HARNESS, CONNECTOR BASE BRACKET, No2 END	DTR2000020362	Custom part	1
CONNECTOR, BASE, HARTING, HPR 24, 19400240914	DTR0000261365	Standard Part	4
ATP Emergency Brake Valve – DTR2000014102			
CK-SET ATP Emergency Brake Valve	DTR0009713393	Standard Part	6
CK-SET ATP Emergency Brake valve Isolation cock	DTR0009713414	Standard Part	6
CK-SET ATP Emergency Brake Valve Pressure Switch	DTR0009713429	Standard Part	6
CK-SET ATP Non-Leading Mode Pressure Switch (pressure switch setting of 400 to 500kpa)	DTR0000459865	Standard Part	2

Product Description	PBS ID	OEM/ Custom	Quantity of C&K-Set Spares
CK-SET ATP Emergency Brake State Pressure Switch (pressure switch setting of 250 to 350 kpa)	DTR0000459865	Standard Part	2
Relay Panel – DTR2000018967 (Cubicle)			
RELAY,TIMER,FINDER,80.41.0.240.0000	DTR0000146228	Standard Part	5
VOLTAGE MONITORING RELAY - MTDV4-U213	DTR0000451487	Standard Part	5
RELAY, MONO, 120V VDC, 1NC-1NO, MORS SMITT, CU-U210-B	DTR0000287327	Standard Part	20
AIICATPart	DTR2000000997	Standard Part	10
Cubicle Main CB – 16A	DTR0000431548	Standard Part	5
Relay Panel – DTR2000018916 (Crew Cab)			
RELAY, TIMER, FINDER_80.11.0.240.0000	DTR0000334227	Standard Part	10
RELAY, MORS SMITT, C 036 120 415 SV	DTR0000451159	Standard Part	10
RELAY MONO, 120V, VAC-VDC, 4REV, MORS SMITT, D-U210-L	DTR0000419815	Standard Part	10
FHN60 RESISTOR	TBA	Standard Part	10
RELAY MONO, 120V, VAC-VDC, 4REV, MORS SMITT, D-U210-ELQ	DTR0000461680	Standard Part	10
RELAY MONO, 120V, VAC-VDC, 4REV, MORS SMITT, D-U210-W022-ELQ	DTR0000461682	Standard Part	10
Wheel Speed Sensor ancillary Items			
WSS Adaptor Ring	DTR2000018119	TBA	4
WSS Drive Pin	TBA	TBA	10
Trailer Car 1			
Weather-shield glass	TBA	TBA	2
Scratch resistant film for weather-shield glass	TBA	TBA	2

2.3 The Principal Supplied Items

2.3.1 Collection of Principal Supplied Items

The Contractor must collect The Principal Supplied Items as listed in Tables 3a and 3b from the Principal's Stores in accordance with the process set out in this clause 2.3.1.

The Contractor must perform visual inspection of the Principal Supplied Items at collection and report any observations to the Principal within 2 Business Days for further action.

The Contractor is responsible for the care of The Principal Supplied Items from when they are collected from the Principal's Stores until Works Completion.

The Contractor must develop and maintain an equipment collection schedule which sets out the date and quantity of each type of equipment that the Contractor will collect from The Principal. The equipment collection schedule must reflect the delivery strategy of the Contractor's Program. The Contractor must submit the equipment collection schedule to The Principal's Representative for review

in accordance with the requirements set out in the Deed. An updated equipment collection schedule must be submitted with each monthly progress report in accordance with the TSRs.

The Contractor must provide an Equipment Request Notice (ERN) to The Principal 5 Business Days prior to each collection event proposed in the equipment collection schedule required under this clause. The ERN must advise the proposed date, equipment type(s) and quantities to be collected from The Principal's Stores and must state where the Principal Supplied Items will be stored once collected from The Principal's Stores.

The Principal will review the ERN and then notify the Contractor in writing of the location, availability, date and time for the collection of requested items. The Principal's Representative will also provide the Contractor with a Principal endorsed copy of the ERN.

The Contractor must develop and maintain a live equipment database which will allow the Contractor and The Principal to track the location and status of all Principal Supplied Items collected from The Principal's Stores. The database must provide the following information for every Principal Supplied Item:

- a) Part number (in accordance with the Product Breakdown Structure in Appendix A);
- b) Batch number;
- c) item description;
- d) serial number, version and final installed location;
- e) date collected from The Principal's Stores;
- f) date delivered to the Contractor's stores;
- g) location of the Contractor's stores; and
- h) date installed and the Set and car number.

The equipment database must allow the history of each item of equipment to be interrogated. It must also be able to provide summary information of the status of all the equipment collected by the Contractor from The Principal's Stores.

2.3.2 Storage of Principal Supplied Items

Once in the Contractor's possession, the Contractor must store the Principal Supplied Items such that the items are protected from environmental factors in accordance with the original manufacturer's recommendations.

The Contractor is responsible for providing adequate storage of the Principal Supplied items and must obtain Principal's approval for the nominated storage location and/or storage provider.

The Contractor shall obtain formal approval from the Principal for the nominated storage vendor by submitting a formal letter confirming that the items are protected from environmental factors, tampering and vandalism in accordance with the original manufacturer's recommendations.

The Contractor must allow The Principal or any representative appointed by the Principal to conduct audits of the Contractor's storage facility, and must address any requests arising out of these audits in relation to the storage conditions.

2.3.3 Return of Principal Supplied Items

If, after collection of the Principal Supplied Items from the Principal's Stores, the Contractor identifies a defective item within the collected Items, the Contractor must within 2 Business Days complete and submit to the Principal's Representative an ERN, requesting a replacement item is made available at the Principal's Stores. The ERN shall provide the following details:

- a) Set number if applicable;
- b) description, batch, part and serial numbers of the defective item;
- c) detailed description of defect including photographic evidence; and

- d) date and time of delivery of defective item at The Principal's Stores.

Within 2 Business Days of receiving the above documents, the Principal's Representative will review the ERN and notify the Contractor of the date and time that a replacement item will be available for collection at The Principal's Stores. The Contractor must return the defective item to The Principal's Stores at the agreed time of collection of the replacement item.

The Contractor must not replace defective components within an ATP Cubicle with components from other ATP Cubicles. An ATP Cubicle with one or more defective components must be replaced with an ATP Cubicle, from the corresponding fleet pool, that has not been installed on a train.

The Contractor must not initiate the repair of any defective Principal Supplied Items without prior authorisation by the Principal.

The Contractor must only install equipment from the Principal Supplied Items batches to the designated Consists. Parts must not be swapped between batches without consultation with the Principal.

The Contractor must return all the Principal Supplied Items Category A spares listed in Table 3a to the Principal within 10 Days of completion of ATP K-Set Fleet Installation.

The Contractor must return all the Principal Supplied Items Category B test tools listed in Table 3b to the Principal within 10 Days of completion of ATP K-Set Fleet Installation.

2.4 Rail Safety Accreditation

The Contractor must ensure that only an RSO with appropriate Accreditation under the Rail Safety National Law carries out the movement of:

- a) Sets between the Delivery Point and the Installation Facility;
- b) Sets to and from the dynamic testing test track;
- c) Completed Sets between the Installation Facility and the Handback Point; and
- d) any other rolling stock movements while the Set is in the care, custody and control of the Contractor.

2.5 Scheduling and Interface Management Activities

2.5.1 Scheduling

The Principal will provide the Contractor with access to Sets in accordance with the conditions set out in Schedule 3 to the Deed. The Contractor must develop and maintain a comprehensive and detailed schedule which, as a minimum, sets out the dates and durations for the following activities for each Set:

- a) the pre-handover activities;
- b) the delivery date for the Set at the Delivery Point;
- c) the pre-installation non-regression testing activities;
- d) the installation activities;
- e) the progressive inspections;
- f) the pre-commissioning testing activities;
- g) the final inspection;
- h) the post-installation non-regression testing activities;
- i) the Testing & Commissioning activities;
- j) the pre-handback activities including defect management;
- k) the return date for the Completed Set at the Handback Point; and

- l) the post-handback activities including submission of all handback documents.

The above detail must be included in the Contractor Program and submitted to The Principal's Representative for review within the timeframes set out in the TSR. The Contractor Program must make due allowances for:

- (a) the coordination and management of the Works and Services to be performed by the Other Contractors; and
- (b) an increased presence of The Principal and its ETCS equipment supplier/designer to witness the implementation of ETCS on the earlier Sets in the program with particular emphasis on the first two Sets for each Fleet type.

After the receipt of the first Contractor's Access Notice in accordance with Schedule 3 to the Deed, the Contractor must:

- (a) update and resubmit the above elements of the Contractor Program on a weekly basis showing the Works and Services over the following 6 week period (a 6-week look ahead program); and
- (b) organise and chair the meetings required under Schedule 3 to the Deed.

2.5.2 Interface Management

The Contractor must manage all interface requirements of the Works and Services with the Other Contractors. The Interface Schedule included in Appendix E of this Works Brief sets out the interfaces with the Other Contractors, including the work and activities to be carried out by the Other Contractors. The Interface Schedule also clarifies the division of responsibilities between the Contractor, the Principal and the Other Contractors for the Project.

The Contractor must maintain and update the Interface Schedule as a live document until Final Completion.

The Contractor must also coordinate and chair monthly project status meetings at the Principal's offices in Mascot between the Contractor, the Principal, Sydney Trains and any other relevant party, as advised by the Principal.

2.6 Progress Reporting

2.6.1 Monthly Report

The Contractor must, on the last Business Day of each month prepare and present a monthly report in accordance with the TSR.

2.6.2 Weekly Report

The Contractor must, on Tuesday of each week (or the next Business Day where the Tuesday is a gazetted public holiday in NSW), prepare and present a weekly report to the Principal's Representative mapping the actual progress of completing the Works and Services against the Contractor's Program. The exact format and layout of the weekly report will be agreed with the Principal upon commencement of the Works and Services, but must record the following information:

- (a) Weekly progress summary of activities completed previous week with photographs;
- (b) a rolling 3 week look-ahead schedule of proposed activities;
- (c) program slippage (if any) to be clearly explained and documented;
- (d) proposed actions to catch up with any program slippage (if any);
- (e) progress chart detailing each activity and percentage completed to date;
- (f) fatigue management table showing hours spent onsite previous week by each worker;
- (g) weekly safety statistics showing:

- (i) Near Miss incident;
 - (ii) First Aid incident;
 - (iii) Medical Treatment Injury;
 - (iv) Lost Time Injury; and
 - (v) Other incident.
- (h) list of design documents showing:
- (i) documents in development by the Contractor;
 - (ii) documents that will be submitted to the Principal's Representative for review in the current week;
 - (iii) the status of documents that have been submitted to the Principal's Representative for review (in review, reviewed with comments, reviewed with no comments); and
 - (iv) a summary of stakeholder consultation performed and issues arising.
- (i) list of site activities showing:
- (i) activities in development by the Contractor; and
 - (ii) activities that are planned and to be completed.

2.7 Milestone Dates for Reports and Plans

The key milestone dates from the works are listed below. The milestone dates are indicative only.

Deliverable	Works Brief Reference	Milestone Date
GENERAL		
Project Schedule	As per the TSR	Ten (10) Business Days after the Commencement Date Monthly updates to be submitted on the 25 th day of every month.
Monthly Report	Works Brief – Section 2.6.1	On the last Business Day of each month or the next consecutive Business Day
Weekly Report	Works Brief – Section 2.6.2	Issued weekly on a Tuesday or the next Business Day
Contract Management Plan	As per the TSR	As per the TSR
Project Work Health and Safety Management Plan	As per the TSR	As per the TSR
Safe Work Method statements and Work Activities advice	As per the TSR	As per the TSR
Defects Management Plan, Risk Management Plan	As per the TSR	As per the TSR

2.8 Set Handover and Set Handover Activities

Sets being handed over for the installation of ETCS equipment will be made available to the Contractor as a 4-car Set at the Delivery Point in accordance with the provisions of Schedule 3 to the Deed. The Contractor must coordinate and provide suitably qualified RSOs to transfer Sets from the Delivery Point to the Installation Facility. The Contractor must ensure that any rolling stock movements outside of the Installation Facility are carried out by a RSO with appropriate Accreditation and must arrange and procure for any Authority Approvals (including train paths or equivalent) required for that train movement.

The Contractor must carry out the Works and Services for the Set handover activities in accordance with Schedule 3 to the Deed and with this clause 2.8.

Upon delivery of a Set to the Delivery Point, the Contractor must:

- Conduct the Handover Set Condition Assessment in accordance with the 'Presentation Inspection Procedure' in Appendix B1 of this Works Brief; and
- Complete and submit to the Principal's Representative a Set Delivery Receipt Form (Appendix B3 of this Works Brief).

If the Contractor intends to loco haul a Set from the Delivery Point to the Installation Facility, the Contractor must complete the appropriate testing activities set out in Appendix B5 of this Works Brief prior to moving a set from the Installation Facility to the dynamic testing track and prior to returning a Set to the Handback Point.

Within 3 Business Days of completion of the handover activities for each Set, the Contractor must provide the Principal's Representative with evidence to demonstrate that the Contractor's set handover activities were completed prior to the commencement of installation activities

2.8.1 Handover Documentation

The Principal will make available the following documentation at the time a Set is handed over to the Contractor as evidence of the condition of each Set:

- a) List of known defects; and
- b) Written confirmation that the needles stick inspection activity has been completed.

The Contractor must obtain from Sydney Trains all other configuration materials required to undertake the Works and Services.

2.9 Installation Activities

2.9.1 Installation Facility

The Contractor must provide a suitable Installation Facility in which to carry out the Works and Services. As a minimum, the Installation Facility must include the following features:

- (a) Sydney metropolitan rail network compatible overhead line and 415V alternating current shore supply for static testing as a complete 4 car Set;
- (b) covered accommodation for a minimum of 2 Sets and sufficient space to separate each of the 4 cars at any one time;
- (c) facilities to remove bogies and jack/raise each of the 4 cars to a suitable height;
- (d) facilities to re-balance Sets;
- (e) pits to enable access to the under frame;
- (f) roof level access platforms;
- (g) access to a minimum of 200m length of track with overhead line power to enable low speed dynamic testing within depot limits;

- (h) facilities to weigh each Set; and
- (i) standard workshop features including compressed air supply, space for storage of tooling and materials and availability of portable stairs.

The Contractor must provide the following amenities for the use of the Principal's personnel at the Installation Facility:

- (a) a separate, lockable, air conditioned Principal's site office to accommodate 2 staff members that complies with all relevant building codes and safety requirements, connected to power and communications services that includes 2 workstations of 4 square metres each with an appropriate walkway space. Each workstation must include:
 - (i) a desk;
 - (ii) a lockable pedestal drawer unit;
 - (iii) an office chair;
 - (iv) shelving units;
 - (v) a separate telephone connection;
 - (vi) a minimum of 4 power sockets;
- (b) access to kitchen and break-out facilities including fridge, hot and cold running water, microwave, tables and chairs;
- (c) access to first aid facilities;
- (d) access to ablution and changing facilities which may be incorporated into the Contractor's amenities;
- (e) parking for up to 2 cars or utility vehicles; and
- (f) 240V alternating current power supplies on each Set during Testing & Commissioning activities.

All equipment, furniture, fittings and finishes provided by the Contractor must be of a standard that is suitable for a professional office space.

The Contractor must fully service and maintain, at its cost, the Principal's site office facilities including all cleaning and maintenance.

The Contractor must pay all one-off and ongoing costs associated with all utility and service connections, hire arrangements and security arrangements except that The Principal will pay its own office supplies and communication usage charges (cost of telephone calls and electronic data transfers).

The Principal will supply and install computers and multi-function printers at the Principal's site office.

The Contractor must maintain the above facilities for The Principal's representatives until directed by The Principal's Representative, whose direction may be up to one month after the Date of Works Completion.

2.9.2 Pre-Installation Non-Regression Testing Activities

Following the completion of the Works and Services set out in the clause 2.9.3 the Contractor must conduct pre-installation Non-Regression Testing activities on each Set in accordance with the 'C and K-Set Non-Regression Test Specification' provided in Appendix B2 of this Works Brief.

The Contractor must notify the Principal within 1 Business Day of non-regression testing completion of any damaged train equipment. The Principal will provide a suitable replacement, if required, for the damaged train equipment to the Contractor.

The Contractor must submit the Pre-Installation Non-Regression Testing Report for each Set within 1 Business Day of the completion of the Pre-Installation Non-Regression Testing on that Set.

2.9.3 Preliminary Activities

Following the completion of the Works and Services set out in the clause 2.9.3, the Contractor is required to undertake the following activities after acceptance of Set at the Delivery Point:

- (a) weighing of Sets in accordance with the relevant 'Car Re-balancing' maintenance instruction;
- (b) separation of individual cars within a Set in accordance with the relevant 'Car Re-Marshalling' maintenance instruction;
- (c) measurement of wheels to achieve the requirements of On Site Test & Commissioning Procedure for the Onboard ETCS Sub-System; and
- (d) jacking of cars.

2.9.4 Installation Works

Following the completion of the Works and Services set out in the clause 2.9.3, the Contractor must install the ETCS equipment on each Set in accordance with the installation work instructions, schematic drawings, installation design reports, installation constraints compliance reports, fleet survey reports and as-built drawings provided in Appendix C of this Works Brief.

2.9.5 Pre-Commissioning Testing Activities

Following the completion of the Works and Services set out in the clause 2.9.3 the Contractor must conduct pre-commissioning testing activities on each Set in accordance with the 'C and K-Set Installation Pre-Commissioning Test Specification' provided in Appendix B2 of this Works Brief.

2.9.6 Post-Installation Non Regression Testing Activities

Following the completion of the Works and Services set out in the clauses 2.9.3 to 2.9.5 and prior to the commencement of Post-Installation Non-Regression Testing activities, the Contractor must amalgamate the 4 cars into a working Set including weighing of the Set in accordance with the relevant 'Car Re-balancing' maintenance instruction.

The Contractor must conduct post-installation Non-Regression Testing activities on each Set in accordance with the 'C and K-Set Non-Regression Test Specification' provided in Appendix B2 of this Works Brief.

2.10 Testing & Commissioning Activities

Following the completion of the Works and Services set out in the clauses 2.9.3 to 2.9.6, the Contractor must complete Testing & Commissioning activities on each Set in accordance with the documents provided in Appendix D of this Works Brief.

The Contractor must provide The Principal with at least 5 Business Days' notice of the commencement of the testing and Commissioning activities for each Set and must confirm the date, time and location of the static and dynamic Testing & Commissioning of each Set.

The Contractor must complete the appropriate testing activities set out in Appendix B of this Works Brief prior to dynamic testing.

2.11 Train Preparation Activities

Upon Completion of the Works and Services in respect of each Set, the Contractor must undertake comprehensive internal cleaning of each Set prior to returning it to the Handback Point in accordance with Flemington Maintenance Centre's requirements.

2.12 Handback Activities

Sets being handed back to The Principal following the Completion of the Works and Services in respect of the Set must be made available to the Principal as 4-car Sets at the Handback Point in accordance with the provisions of Schedule 3 to the Deed. The Contractor must coordinate and provide suitably qualified resources to transfer Sets from the Installation Facility to the Handback

Point. The Contractor must ensure that any rolling stock movements outside of the Installation Facility are carried out by an RSO accredited by ONRSR and must arrange and procure any Authority Approvals (including train paths or equivalent) required for those train movements.

Upon return of a Set to the Handback Point, the Contractor must complete and submit to the Principal's Representative a Set Return Receipt Form (Appendix B4 of this Works Brief) that includes set number, car numbers, date and time of handback, confirmation of successful completion of all Works and Services with any outstanding activities clearly identified and signature boxes for the appropriate Contractor and the Principal on-site personnel. Any outstanding activities outlined in the Set Return Receipt Form must also have reference to the associated documentation in the Set Return to Service Documentation for the Principal's review.

2.12.1 Set Return to Service Documentation

The Contractor must produce and submit to the Principal's Representative, for review within 5 Business Days of the return of each Set to the Handback Point, a Set Return to Service Documentation pack consisting of the following documentation relevant to each individual Set:

- (a) handover set condition assessment report;
- (b) pre-installation non-regression test report;
- (c) installation test report including certificate of compliance;
- (d) post-installation non-regression test report;
- (e) Testing & Commissioning report;
- (f) defects register;
- (g) records of any non-conformances and dispensations;
- (h) failure reporting and corrective action reports;
- (i) equipment spreadsheet for the data collection of component serial numbers and product information in a format approved by the Principal;
- (j) completed train preparation documentation as required in Appendix B5;
- (k) Marked As-Built, in the form of legible hand mark-ups of existing drawings, for each Set;
- (l) Certificate of Design Assurance; and
- (m) Certificate of Readiness.

The above documentation must be provided in electronic format prior to the return of each Set to the Handback Point. The Contractor must also include a bound paper copy of the above documentation onboard each Set at the time of return to the Handback Point.

2.12.2 Post-Handback Defects Rectification

Sydney Trains will undertake an inspection of a Completed Set within 2 Business Days after it is returned to the Flemington Maintenance Centre.

No later than 5pm on the day after the visual inspection, The Principal will inform the Contractor whether any new Defects in the Set were identified during the Sydney Trains inspection. The Contractor must attend the Flemington Maintenance Centre on the day following receipt of the above notice from the Principal's Representative (even if that day is a weekend day or a public holiday) to rectify any Defects in the Completed Set identified by Sydney Trains. All post-handback defect rectifications works must be carried out by the Contractor at no additional cost to the Principal.

3 Works Management

The Contractor must employ a management system that is consistent with the NSW Government Quality Management Systems Guidelines (available on the ProcurePoint website) and must develop and implement a project-specific Contract Management Plan. The Contract Management Plan must cover the Contractor and any Subcontractors engaged by the Contractor.

The Contractor's quality management processes must focus management on customer satisfaction and require compliance in accordance with AS/NZS ISO 9001:2000 and must:

- (a) satisfy the specified requirements documented in this Works Brief and the TSRs;
- (b) include processes implicitly required to accurately complete the Works on time; and
- (c) satisfy all statutory and regulatory requirements.

The Contractor must hold and maintain an environmental management system and a WHS management system which complies with the requirements set out in the TfNSW Standard Requirements (TSR).

3.1 Management Plans

3.1.1 Contract Management Plan

Prior to commencing any Works and Services, the Contractor must prepare, submit for review in accordance with clause 9.14 of the Deed, and thereafter implement a Contract Management Plan to demonstrate how it proposes to perform the Works in accordance with the requirements of the Deed. The plan must satisfy the requirements laid out in the TSR.

3.1.2 Rail Safety Management Plan

If the Works involve work in or adjacent to the rail corridor or rail environment, the Contractor must prepare and implement a rail safety management plan which addresses the requirements of rail safety in the Deed, Rail Safety National Law and AS4292 Railway Safety Management.

3.1.3 Fatigue Management Plan

The Contractor must prepare, submit and thereafter implement a fatigue management plan for all its personnel and Subcontractors that is in accordance with:

- (a) WHS legislation;
- (b) Rail Safety National Law (if the Works involve work in and adjacent to the rail corridor and the rail environment); and
- (c) the TSRs.

3.1.4 Interface Management Plan

Not used.

3.1.5 Design Management Plan

Not used.

3.1.6 Safety Assurance Plan

Not used.

3.1.7 Risk Management Plan

Prior to commencing any construction activities on Site, the Contractor must prepare and submit a Risk Management Plan in accordance with TSRs.

3.1.8 Construction and Site Management Plan

Not used.

3.1.9 Traffic Management Plan

Not used.

3.1.10 Defects Management Plan

Prior to commencing any construction activities in the Site, the Contractor must prepare, submit and thereafter implement a Defects Management Plan in accordance with TSRs.

3.1.11 Properties Management Plan

Not used.

3.1.12 Updating Management Plans

The Contractor must implement, audit and update the management systems and plans as necessary for the ongoing successful management of the Works.

Any updates and modifications to the management plans must be provided to the Principal's Representative for review. The Contractor must not decrease or otherwise reduce the commitments and requirements, including those relating to the scope, reporting, processes, procedures, effort, resources, experience or expertise, in the developed of any subsequently amended versions of the management plans.

3.2 Other Works Management Obligations

3.2.1 Asset Management

The Contractor must supply an asset register that records all the equipment installed as part the Works. The format and content for the asset register is to be agreed with the Principal.

3.2.2 Attendance at Meetings

A project inception meeting will occur within the first week following the Commencement Date. The Contractor will also be required to attend relevant technical meetings and workshops with a number of stakeholders as required by TfNSW including a monthly progress meeting which will be held in the second week of every month.

3.3 Review by the Principal

The Principal may review all Contractor Contract Documentation including management plans and other documents described this Works Brief with clause 9.14 of the Deed.

Appendix A – Product Breakdown Structure and Drawings



A1 Product Breakdown Structure and Drawings

Document ID	Document Name	Version	DeskSite Reference	Document Date
AMS-C-050	C-Set - Installation - Product Breakdown Structure (including drawings)	A-0000049459_A	5844071	16/02/2018
AMS-K-050	K-Set - Installation - Product Breakdown Structure (including drawings)	A-0000049460_A	5875996	28/02/2018
NA	C and K Set Decal Drawings - for ATP fleet install	NA	6130127	4/09/2018

NOTE: Updated PBS and drawings will be submitted with as-built status after the completion of Prototype retrofit works.

**Appendix B – Inspection, Non-Regression Testing and Train
Preparation Procedures**



B1 Presentation Inspection Procedure

DeskSite Reference: 5825808_6



B2 Pre-Commissioning Testing and Non-Regression Testing

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-C&K-320	C and K-Set Installation Pre-Commissioning Test Specification	A-0000060339_A	5779366	18/08/2017
2	Not Applicable	C and K-Set Non-Regression Test Specification	3.0	5894703, Appendix A: 5894700 and Appendix B: 5894696	18/04/2018

B3 Set Delivery Receipt Form Template

DeskSite Reference: 5804920_1



B4 Set Return Receipt Form Template

DeskSite Reference: 5805604_1

B5 Train Preparation Procedures

Ref.	Document ID	Document Name	Version	Document Date
1	DeskSite: 5784257	Driver Train Preparation Procedures – C and K Sets	3.0	29/08/2011



B6 Train Splitting, Jacking and Recoupling

Ref.	Document ID	Document Name	Version	Document Date
1	DeskSite: 5857285	C Set Jacking Locations	N/A	N/A
2	DeskSite: 5857287	K Set Jacking Locations	N/A	N/A
3	DeskSite: 6006587	C and K Marked up Jacking Point drawings showing distance between headstocks and jacking pad photos	N/A	N/A
4	DeskSite: 5847629	UGLU Job Instruction MJI-EJ18 - Bogie Change-Out for SLR C, K and V Sets	4	15/06/2015
5	DeskSite: 6118074	PR-R-90390 C&K Sets - Intercar High Tension Cable Inspection Procedure	1	23/08/2016

Appendix C – Installation Documentation

C1 Installation Work Instructions

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-C&K-150	WI 1.1 - Mechanical Crew Cab Equipment Installation	A-0000068676_2A	5980679	25/1/2018
2	AMS-C&K-160	WI 1.2 - Mechanical EBV Installation	A-0000068677_2A	5980692	1/2/2018
3	AMS-C&K-170	WI 1.3 - Mechanical Cubicle Location Preparation	A-0000068678_4A	5980691	23/07/2018
4	AMS-C&K-180	WI 1.4 - Mechanical Floor Penetration	A-0000068679_4A	5980690	23/07/2018
5	AMS-C&K-190	WI 1.5 - Mechanical Intercar Harness Installation	A-0000068680_4A	6008778	23/07/2018
6	AMS-C&K-200	WI 1.6 - Mechanical Euroantenna Installation	A-0000068681_4A	5980689	23/07/2018
7	AMS-C&K-210	WI 1.7 - Mechanical Radar Installation	A-0000068682_2A	5980688	25/1/2018
8	AMS-C&K-220	WI 1.8 - Mechanical Cubicle Installation	A-0000068683_2A	5980687	25/1/2018
9	AMS-C&K-230	WI 1.9 - Mechanical CPM and Ethernet Switch Installation	A-0000068684_2A	5980686	31/1/2018
10	AMS-C&K-240	WI 1.10 - Mechanical Wheel Speed Sensor Installation	A-0000068685_4A	5980685	23/07/2018
11	AMS-C&K-250	WI 1.11 - Mechanical GSM-R and GPS Antenna Installation	A-0000068686_4A	5980684	23/07/2018
12	AMS-C&K-260	WI 1.12 - Mechanical Cubicle Enclosure Installation	A-0000068687_2A	5987249	26/2/2018
13	AMS-C&K-270	WI 2.1 - Electrical Crew Cab Harness Installation	A-0000068688_4A	5980683	23/07/2018
14	AMS-C&K-280	WI 2.2 - Electrical TC1 Harnesses Installation	A-0000068689_4A	5988064	23/07/2018

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
15	AMS-C&K-290	WI 2.3 - Electrical InCar harness installation	A-0000068690_6A	5980682	23/07/2018
16	AMS-C&K-300	WI 2.4 - Electrical Connectors Assembly	A-0000068691_5A	5980681	21/08/2018
17	AMS-C&K-310	WI 2.5 - Electrical GSM-R and GPS harness installation	A-0000068692_4A	5980680	23/07/2018
18	AMS-C-010	Cubicle Schematics for Generic BSL3 Cubicle	DOC0000669675_A	5717148	19/6/2017
19	AMS-K-010	Cubicle Schematics for Generic BSL3 Cubicle	DOC0000669671_A	5717152	19/6/2017
20	NA	C and K Sets – Transom Issue Resolution - Fleet Strategy Scope Summary	NA	6034414	10/08/2018
21	TBA	WI - Transom testing and replacement	TBA	TBA	TBA
22	NA	Additional Installation activities for Prototype C and K Sets <i>NOTE: This list is provided as a guideline for pricing and labour estimation in lieu of retrofit works not being started for Prototype C or K Sets.</i>	NA	6133306	16/08/2018

NOTE: Updated Work Instructions will be submitted with as-built status after the completion of Prototype retrofit works.

C2 Installation Design Reports and Installation Constraints Compliance Reports

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-C&K-050	Installation Design Report - Summary of Modifications	A-0000058531_B	5831185	16/11/2017
2	AMS-C&K-060	Installation Design Report - Crew Cab	A-0000056204_A	5842355	14/11/2017

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
3	AMS-C&K-070	Installation Design Report - Underframe	A-0000068093_A	5842395	13/11/2017
4	AMS-C&K-080	Installation Design Report - Cubicle Mounting	A-0000068094_A	5842307	13/11/2017
5	AMS-C&K-090	Installation Design Report - Train Electrical Interfaces	A-0000068095_A	5831415	04/01/2018
6	AMS-C-270	Installation Design Report - Train Electrical Schematics C-set	DTR2000017213_2	5808156	07/12/2017
7	AMS-K-270	Installation Design Report - Train Electrical Schematics K-set	DTR2000017213_2	5808153	07/12/2017
8	AMS-C&K-100	Installation Design Report - GSM-R & GPS	A-0000068096_A	5842417	14/11/2017
9	AMS-C&K-110	Installation Design Report - In-Car	A-0000068258_A	5842425	13/11/2017
10	AMS-C&K-030	Installation Constraints Compliance Report	A-0000068693_1A	5903003	17/11/2017

C3 Fleet survey reports and as-built drawings

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-C&K-420	C&K-Sets - Fleet survey reports for compliance with approved Installation Design	A-0000068902_A	5981964	8/02/2018
2	AMS-C-080	C-Set - As-built drawings	TBA	TBA	TBA
3	AMS-K-080	K-Set - As-built drawings	TBA	TBA	TBA

Appendix D – Testing and Commissioning Procedures and Reports



D1 Installation, Testing and Commissioning Procedures and Reports

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-C-120	Certificate of Compliance (including installation test report) NOTE: <i>This installation test report for Prototype Set C2 is to be used as a guideline for developing the installation test reports for C&K fleets.</i>	A-0000103338_A	6091384	8/06/2018
2	AMS-C&K-330	Test and Commissioning Procedure (Prototype) Note: this will be replaced with Fleet template (Item 3 below) when available.	A-0000048591_A	6002860	21/03/2018
3	AMS-K-260	Test and Commissioning Report (Prototype) NOTE: <i>This report for Prototype Set K96 is to be used as a guideline for developing the test and commissioning reports for C&K fleets.</i>	A-0000069200-A	6128580	30/08/2018
4	AMS-C&K-350	Test and Commissioning Procedure and Report template (Fleet)	TBA	TBA	TBA

Appendix E – Interface Schedule

Overview of the C and K-Set Fleet Onboard Interface Schedule

The purpose of this Interface Schedule is to summarise the key interfaces between the Contractor, the Principal, Sydney Trains, Enabling Works Contractor and Other Contractors.

1. General Arrangements

Item	Contractor	TfNSW (Principal)	Sydney Trains ¹	Other Contractors / Enabling Works Contractor
ASA Authorisation	> AEO for installation works.	> ASA: Review AEO applications and grant AEO status to the Contractor.	Operator and Principal for the maintenance Contract for the C-Set and C-Set fleets. AEO for the M sets facility and/or the Installation Facility.	> AEO for design and installation of the Enabling Works at the Installation Facility.
Procure Equipment	> Procure the Contractor supplied material in accordance with the Product Breakdown Structure.	> Procure the ETCS Principal Supplied items in accordance with this Deed.		> Procure the Enabling Works equipment and materials.
Installation Facility	> Provide installation facility in accordance with this Deed. > Provide the amenities set out in the Works Brief for the Principal's representatives and for the Enabling Works Contractor at the Installation Facility.			
Rail Safety Accreditation	> Procure Rolling Stock Operator (RSO) resources for the movement of Sets between the Delivery Point and the Installation Facility and of Completed Sets between the Installation Facility and the Handback Point (where required). > Procure RSO resources for the movement of Sets to and from the dynamic testing test track (where required).		> RSO for the movement of Sets between the Eveleigh Maintenance Centre (EMC) and the Delivery Point.	
Safety Management	> Provide, maintain and implement a safety management system for the Installation Facility. > Implement a competency management system in accordance with its AEO authorisation and provide suitably competent resources to undertake the Works and Services. > Coordinate and provide site induction for the Installation facility to representatives of TfNSW, Sydney Trains and Alstom. > Comply with the Sydney Trains induction and safety management requirements for any Works and Services performed at the EMC.	> Ensure all staff, agents and sub-contractors comply with the Contractor's induction and safety management requirements when visiting and/or working in the Installation Facility. > Ensure all staff, agents and sub-contractors comply with the Sydney Trains induction and safety management requirements for activities performed at the EMC.	> Ensure all staff, agents and sub-contractors comply with the Contractor's induction and safety management requirements when visiting and/or working in the Installation Facility. > Provide induction to the Contractor, Alstom and Principal representatives visiting or undertaking work at the MMC.	> Ensure all staff, agents and subcontractors comply with the Contractor's induction and safety management requirements when visiting and/or working in the Installation Facility.
Schedule and	> Provide to TfNSW a comprehensive and detail schedule of dates for the	> Co-ordinate with Sydney Trains and provide consolidated feedback on the	> Provide feedback to TfNSW on the Contractor's Set delivery, dynamic testing	> Provide updates on the Enabling Works progress.

¹ In this Appendix E, reference to a Sydney Trains activity marked with an "*" may also refer to an activity to be performed by NSW Trains.

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
coordination	<p>delivery, dynamic testing and handback of Sets.</p> <ul style="list-style-type: none"> > Update schedule of delivery, handback and dynamic testing of Sets on a weekly basis and submit to TfNSW. > Submit Contractor's Access Notices in accordance with Deed Schedule 3. 	<p>Contractor's Set delivery, dynamic testing and handback schedule.</p> <ul style="list-style-type: none"> > Respond to Contractor's Access Notices in accordance with Deed Schedule 3. 	<p>and handback schedule.</p>	
Schedule Reviews	<ul style="list-style-type: none"> > Organise and lead the pre-delivery meetings described in Deed Schedule 3 for each Set. > Coordinate and chair monthly project status meetings at TfNSW's offices in Mascot between the Contractor, TfNSW, Sydney Trains, Other Contractors and the Enabling Works Contractor. 	<ul style="list-style-type: none"> > Participate in Contractor led pre-delivery meetings for each Set. > Attend monthly project status meetings between the Contractor, TfNSW, Sydney Trains, Other Contractors and the Enabling Works Contractor. 	<ul style="list-style-type: none"> > Participate in Contractor led pre-delivery meetings for each Set. > Attend monthly project status meetings at TfNSW's offices in Mascot between the Contractor, TfNSW, Sydney Trains, Other Contractors and the Enabling Works Contractor. 	<ul style="list-style-type: none"> > Participate in Contractor led pre-delivery meetings for each Set. > Attend monthly project status meetings at TfNSW's offices in Mascot between the Contractor, TfNSW, Sydney Trains, Other Contractors and the Enabling Works Contractor.
Handover Sets at Delivery Point	<ul style="list-style-type: none"> > Take control of Sets at the Delivery Point. 	<ul style="list-style-type: none"> > Arrange for and book train paths for the movement of Sets from the EMC to the Delivery Point. > Coordinate the provision of train crews to transfer Sets from the EMC to the Delivery Point in accordance with the provisions of Deed Schedule 3. > Handover Sets to the Contractor at the Delivery Point. 	<ul style="list-style-type: none"> > Deliver Sets to TfNSW at the EMC in accordance with the conditions set out in Deed Schedule 3. >*Provide train crews and train paths as required by TfNSW for the movement of sets from the EMC to the Delivery Point. 	
Transfer Sets from Delivery Point to Installation Facility	<ul style="list-style-type: none"> > Provide accredited resources (RSO) for transfer of Sets from the Delivery Point to the Installation Facility. > Obtain necessary approvals from relevant authority for train movements from the Delivery Point to the Installation Facility (where required). 			
Set handover inspections	<ul style="list-style-type: none"> > Advise TfNSW and Sydney Trains of the relevant date for the Set handover inspections for each Set at the Installation Facility and mutually agree the times for the Set handover inspection activities on that date. > Perform the inspection of each Set at the Installation Facility with TfNSW in accordance with the Works Brief. 	<ul style="list-style-type: none"> > Participate in the inspection of each Set at the Installation Facility with the Contractor. 	<ul style="list-style-type: none"> > Witness the joint handover inspection of each Set at the Installation Facility with TfNSW and the Contractor. >Provide As-Built documents to the Contractor for updating during the Works and Services. 	

3. Installation

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
Principal Supplied Items	<ul style="list-style-type: none"> > Arrange safe and secure collection of Principal Supplied Items from the Principal's Stores in accordance with the Works Brief. > Provide safe return of any defective ETCS Hardware Principal Supplied Items to the Principal's Stores. > Provide facilities for storage of ETCS equipment. 	<ul style="list-style-type: none"> > Provide the Principal Supplied Items at the Principal's Stores. 	<ul style="list-style-type: none"> > Provide facilities as required by TfNSW for storage of ETCS equipment and manage the process for collection of ETCS equipment by the Contractor. 	
Pre-existing defects	<ul style="list-style-type: none"> > Notify the Principal when it observes pre-existing defects in a Set after its arrival at the Installation Facility. > Cooperate and coordinate with Sydney Trains for the inspection of pre-existing defects that impact on the Works and Services at the Installation Facility. 		<ul style="list-style-type: none"> > Coordinate with the Contractor and provide management and technical support to assess any pre-existing defects that impact the Works and Services identified in a Set after its arrival at the Installation Facility. 	
Installation Works	<ul style="list-style-type: none"> > Install the Works and Services on 33 Sets in accordance with the Installation Work Instructions specified in the Works Brief (including the TOS consolidation works). > Develop, maintain and implement inspection and test plans for the Works and Services. 			<ul style="list-style-type: none"> > Coordinate with the Contractor and arrange for its staff and/or subcontractors to visit the Installation Facility to carry out the Enabling Works.
Oversight and inspection	<ul style="list-style-type: none"> > Provide access to the Installation Facility to TfNSW and its agents including Alstom and Sydney Trains to witness the installation of the Works and Services. 	<ul style="list-style-type: none"> > Witness the installation of the Works and Services (where required). 	<ul style="list-style-type: none"> > Witness the installation of the Works and Services (where required). 	
Design modifications	<ul style="list-style-type: none"> > Notify TfNSW when the existing configuration of a Set prevents the installation of the Works and Services in accordance with the Installation Design. 	<ul style="list-style-type: none"> > Review the Contractor's notice and where applicable provide revised Set-specific installation designs to the Contractor. > Seek ASA concession for deviations to standards including stakeholder consultation with Sydney Trains > ASA: Review any applications for concessions to standards from the Contractor. 	<ul style="list-style-type: none"> > Provide and manage resources for stakeholder consultation on any proposed Set-specific Installation Designs. > Provide resources to review any proposed Set-specific Installation Designs. 	

4. Testing and Commissioning

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
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Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
General	<ul style="list-style-type: none"> > Provide suitably competent resources to undertake the Contractor's testing and commissioning activities. > Undertake the testing and commissioning activities in accordance with the Works Brief. > Produce test records in accordance with the Works Brief and send all test records to TfNSW for review. > Coordinate and provide access to Alstom and subcontractors to Sets at the Installation Facility to assist with fault finding during the testing and commissioning activities where required. 	<ul style="list-style-type: none"> > Witness testing and commissioning activities. > Provide qualified resources to assist the Contractor with fault finding during the testing and commissioning activities where required. 	<ul style="list-style-type: none"> > Witness testing and commissioning activities. 	<ul style="list-style-type: none"> > The Enabling Works Contractor is to assist the Contractor with fault finding during the test and commissioning activities where required.
Dynamic testing	<ul style="list-style-type: none"> > Coordinate train crew requirements with TfNSW at least 4weeks in advance of the dynamic testing of each Set. > Procure RSO resources and obtain necessary approvals from the relevant authority for train movements as required to move the Set between the Installation Facility and the dynamic test track prior to and following dynamic testing. > Coordinate and lead dynamic testing activities. 	<ul style="list-style-type: none"> > Coordinate the provision of train crews to operate Sets during the dynamic tests. > Witness dynamic testing activities. 	<ul style="list-style-type: none"> > Provide train crews as requested by TfNSW for train movements during dynamic testing. > Witness the dynamic testing activities. 	

5. Handback

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
Post installation non-regression testing	<ul style="list-style-type: none"> > Complete Post-Installation Non-Regression Testing in accordance with the Works Brief. 			
Return Completed Sets at the Handback Point	<ul style="list-style-type: none"> > Submit Contractor's Return Notices in accordance with Deed Schedule 3. > Complete Train Preparation in accordance with Test Specification provided by The Principal. > Undertake internal cleaning of each Set prior to hand back to Sydney Trains. > Provide RSO resources and obtain necessary approvals from the relevant authority for train movements (where required) from the Installation Facility to the Handback Point. > Transfer Completed Sets from the Installation Facility to the Handback Point. 	<ul style="list-style-type: none"> > Advise Sydney Trains prior to expiry of a Certificate of Readiness for a Set at the Installation Facility. > Respond to Contractor's Return Notices in accordance with Deed Schedule 3. > Arrange for and book train paths for movement of Completed Sets from the Handback Point to the EMC. > Coordinate provision by train crews to move Completed Sets from the Handback Point to the EMC. 	<ul style="list-style-type: none"> > Manage the process and obtain a deferral to the Certificate of Readiness in cases where the certificate expires whilst a Set is at the Installation Facility. > Provide train crews and train paths as required by TfNSW for the return of Completed Sets from the Handback Point to the EMC. 	
Handback finalisation	<ul style="list-style-type: none"> > Produce and submit to the Principal's 		<ul style="list-style-type: none"> > Maintain configuration records in 	

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
	<p>Representative and Sydney Trains the As-Built and Set Return to Service Documentation in accordance with the Works Brief.</p>		<p>repositories including Plan Room and asset registers.</p>	
<p>Post handback defects rectification</p>	<p>> Attend locations with the Sydney Metropolitan Rail Network as nominated by TfNSW to rectify Defects identified in the C and K-Set Fleet during the Warranty Period.</p>		<p>> Provide access to the Contractor to each Completed Set at a suitable location to rectify defects identified during the Warranty Period.</p>	



**Transport
for NSW**

Automatic Train Protection

V-Set Fleets Onboard Installation Project

Works Brief

Document Number: 6034316_6

Commercial In Confidence

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Document History

Version	Date	Author	Summary
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5439569_5	19/7/17	Raj Panda	Developed MCKV Installation Works Brief using H-set Installation Works Brief as base. Incorporated Jason Dinh and Rene Rosales' comments.
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6034316_5	19/09/2018	Himesh Nair	Updated Appendix C1 to include Details of Work Instruction W1.2 (Mechanical EBV Installation)
6034316_6	27/11/2018	Himesh Nair	Removed highlighted sections and retained 'TBA' for outstanding items. Issued to Downer for Contract Execution

Table of Contents

1	Background.....	1
1.1	Works Brief Overview	1
1.2	ATP Program Background.....	1
1.3	Fleet Onboard Installation Project Overview.....	2
1.4	Project Objectives.....	2
1.5	Other Projects involving V-set Fleet.....	2
1.6	Glossary	3
1.7	List of Abbreviations	4
1.8	Documents provided in electronic form.....	4
2	General Requirements	5
2.1	Works and Services.....	5
2.2	Contractor Supplied Materials	6
2.3	The Principal Supplied Items	9
2.4	Rail Safety Accreditation.....	11
2.5	Scheduling and Interface Management Activities	11
2.6	Progress Reporting.....	12
2.7	Milestone Dates for Reports and Plans	13
2.8	Set Handover and Set Handover Activities	13
2.9	Installation Activities	14
2.10	Testing & Commissioning Activities	16
2.11	Train Preparation Activities.....	16
2.12	Handback Activities	16
3	Works Management.....	18
3.1	Management Plans.....	18
3.2	Other Works Management Obligations	19
3.3	Review by the Principal	19

- Appendix A – Product Breakdown Structure and Drawings
- Appendix B – Inspection, Non-Regression Testing and Train Preparation Procedures
- Appendix C – Installation Documentation
- Appendix D – Testing and Commissioning Procedures and Reports
- Appendix E – Interface Schedule

1 Background

The purpose of this Works Brief is to define the Works and Services that the Contractor must undertake to fulfil its obligations under the Automatic Train Protection (ATP) V-Set Fleet Onboard Installation Contract.

The Contractor is required to be an Authorised Engineering Organisation (AEO) as defined and authorised by the Asset Standards Authority (ASA). The Contractor is required to undertake all activities necessary to ensure the delivery of the requirements of this Works Brief in accordance with their own engineering development systems, which have been defined, audited and duly approved by the ASA in granting the Contractor AEO status for the purposes of delivering this package of work.

As the AEO for the activities defined in this Works Brief, the Contractor is responsible for the management of project Stakeholders, including Sydney Trains, NSW Trains, The Principal and any other party in ensuring the delivery of the requirements.

The Principal will undertake rigorous audit and assurance activities to ensure that the Works and Services are in accordance with their internal systems and in keeping with their AEO status to ensure that the project will deliver the intended outcomes.

1.1 Works Brief Overview

This Works Brief sets out the scope of the Works and Services for the installation, testing and commissioning on The Principal Designated Rolling Stock Fleet.

The Works Brief includes Appendices A to D inclusive which must be read in conjunction with all other parts of the Deed.

1.2 ATP Program Background

"Automatic Train Protection" (ATP) is a generic name to describe trackside and train borne systems designed to automatically prevent a train from over speeding or travelling beyond the end of its permitted movement authority.

The ATP Program arose out of the Special Commission of Inquiry into the Waterfall train accident which occurred in January 2003. Recommendation 32 of the subsequent report stated that RailCorp should implement an ATP system within a reasonable amount of time. Following extensive research into driver safety systems, RailCorp adopted the ETCS Level 1 as its preferred ATP technology.

The ATP Program was initially delivered by RailCorp. The delivery responsibility for the ATP Program was subsequently transferred from RailCorp to TfNSW Transport Projects Division on 1 December 2012.

ETCS has been developed under the sponsorship of the European Rail Agency and operates at three levels. A multi-stage approach has been adopted for the implementation of an ATP system, commencing with ETCS Level 1. The three levels of ETCS are:

- (a) Level 1: an intermittent overlay to existing signalling with track to train transmission via track mounted transponders;
- (b) Level 2: a continuous system with track to train transmission via a digital train radio network; and
- (c) Level 3: a future development which builds on ETCS Level 2 and enables the removal of track circuits.

TfNSW has funding approval for implementation of ETCS on part of the NSW electrified metropolitan rail network and rolling stock fleet. This is known as "Approval Package 1" (AP1). AP1 involves the implementation of an ETCS Level 1 system.

A contract was awarded to Alstom Transport Australia Pty Ltd in January 2011 for ETCS onboard equipment supply and engineering services, including the provision of system design, installation design, installation working instructions and test procedures. In 2017, a Second Deed of the

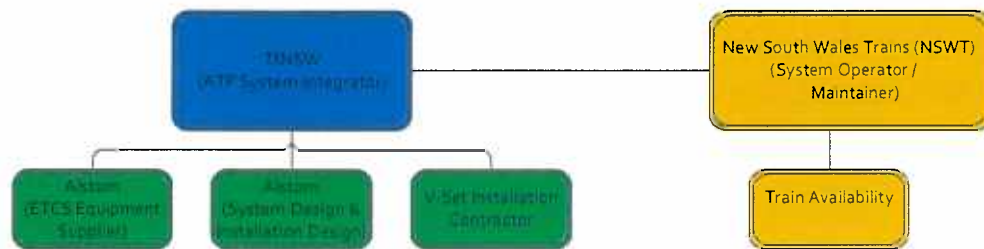
Amendment to the existing Alstom Onboard Deed was executed, that included the equipment supply, design and prototyping for M, C and K Sets. A contract variation was subsequently awarded to Alstom in Dec 2017 to extend its scope to include V-set design.

The next stage of the ATP Program is to install, test and commission ETCS on the M-Set, C-Set, K-Set and V-Set fleets prior to entry in to full revenue service with operational ETCS in Level 1 Limited Supervision mode.

1.3 Fleet Onboard Installation Project Overview

The Principal is the system integrator for the ATP system including the installation on V-Set fleet. The Principal's chosen strategy for the delivery of the Works and Services is through the procurement of an installation contractor and the engagement of Other Contractors including those shown in Figure 1 below.

Figure 1: V-Set Fleet Onboard Packaging Strategy



The Works and Services to be undertaken by the Contractor for the Project include:

- (a) pre-installation inspection and pre-installation non-regression testing;
- (b) installation, post-installation non-regression testing, testing & commissioning, and handback of twenty (20) V-sets (from V-set fleet series 5 and series 6) equipped with an operational ETCS Level 1 Limited Supervision system in accordance with the installation work instructions and test procedures supplied by the Principal
- (c) supply of hardware and materials as per the Product Breakdown Structure in Appendix A excluding the Principal Supplied Items Category A and Category B; and
- (d) provision of a suitable Storage, Installation and Testing Facility and competent resources to undertake the Works and Services.

The Interface Schedule in Appendix E of this Works Brief sets out the main divisions of responsibility between the Contractor and The Principal for the key activities related to the Works and Services. The Interface Schedule also shows, for the purpose of clarity, some of the work for the Project that will be undertaken by NSW Trains and Other Contractors, including the Enabling Works Contractor.

1.4 Project Objectives

The primary objective of the Project is to successfully install, test and commission ETCS on 20 x 4-car V-sets to enable the successful operation of the V-Set fleets with ETCS Level 1 LS in the Sydney Trains and NSW Trains operating environment that satisfies the safety, operational, technical and business requirements.

1.5 Other Projects involving V-set Fleet

There are other on-going works on the V-Set fleet. Whilst these other works do not form part of the Project, it is nevertheless important for the Contractor to be aware of their timing and potential impact on fleet availability.

These other works include:

- (a) V-set Reliability Boost project; and
- (b) V-set Safety Enhancement Program
- (c) V-set Maintenance Program – a program of heavy maintenance.

Details of these ongoing works will be communicated as appropriate, for the Contractor to plan its activities under this Works Brief.

1.6 Glossary

Unless the context otherwise indicates, the words and phrases used in the Works Brief have the meaning given to them in the General Conditions of the Deed and the Deed Schedules.

Any reference to the “Deed” or “Contract”, including “Schedules” and “Exhibits” means the ATP V-set Fleet Onboard Installation Contract between TfNSW and the Contractor for the Project.

In this Works Brief, unless the context otherwise indicates, the following words or phrases have the meaning given to them in Table 1.

Table 1 Works Brief Definitions

Term	Description
Commissioning	[As defined in the TSRs]
Completed Set	A Set that has been completely tested and handed over and accepted by TfNSW after the Scope of Works has been completed by the Contractor on this Set in accordance with this Works Brief.
Contractor’s Access Notice	has the meaning given in Schedule 3 to the Deed
Contractor’s Return Notice	has the meaning given in Schedule 3 to the Deed
Cubicle	means the physical structure that houses the EVC, accelerometer, Juridical Recorder Unit and their associated ancillary equipment (e.g., power supplies, switchgear, inter-component cabling, relay interface unit and circuits, etc.).
Cubicle Enclosure	means the cupboard or locker that houses the Cubicle and provides protection to that equipment from the outside environment and prevents any unauthorised access to the Cubicle.
Defects Management Plan	As defined in the TSRs
Flemington Maintenance Centre	means the Flemington Maintenance Centre at Bachell Avenue, Lidcombe, NSW, 2141
Principal’s Stores	In respect of: (a) Principal Supplied Items Category A and Principal Supplied Items Category B, means the location at 14-16 Giffnock Avenue, Macquarie Park NSW 2113 (b) The testing and commissioning tools, means the ATP Project Office at Level 2, 241 O’Riordan Street, Mascot, 2020, NSW
Project	means the Automatic Train Protection (ATP) Onboard Installation on V-set Fleet Project
Prototypes	means the 4-car V-Set (Y1) installed with ETCS by Alstom Transport on behalf of the Principal.

Term	Description
Rail Transport Operator	As defined in the Rail Safety National Law and as accredited by the Office of the National Rail Safety Regulator.
Set Return to Service Documentation	has the meaning set out in 2.12.1 of this Works Brief.
Site	means the Installation Facility, the Rail Corridor, the Flemington Maintenance Centre and any other sites or premises on or in which any aspect of the Works and Services is performed.
TfNSW Standard Requirements (TSRs)	The TfNSW Standard Requirements in Exhibit F to the Deed.

1.7 List of Abbreviations

Acronyms used in this Works Brief have the meanings given in Table 2.

Table 2: Acronyms

Abbreviation	Definition
ATP	Automatic Train Protection
ERN	Equipment Request Notice
ETCS	European Train Control System
V-Set	V-Set train type
OEM	Original Equipment Manufacturer
ONRSR	Office of the National Rail Safety Regulator
PBS	Product Breakdown Structure
RSO	Rolling Stock Operator as that term is defined in the Rail Safety National Law
TfNSW	Transport for New South Wales
TSRs	TfNSW Standard Requirements provided in Exhibit F to this Deed
WAA	Work Activity Advice

1.8 Documents provided in electronic form

Documents referred to in the appendices of this Exhibit A that have a corresponding DeskSite reference are provided in electronic form and are contained in the compact disc labelled "Documents for the ATP C-Set, K-Set and V-Set Fleets Onboard Installation Contract".

2 General Requirements

The Contractor must perform the Works and Services in accordance with the requirements of this Deed, including the Works Brief and the TSRs.

The Alstom ATP equipment will be installed and type tested on one prototype 4-car V-Set. Alstom is the supplier of the system critical ATP Equipment and installation design while the Contractor's scope of this work is covered in the sections below.

The Contractor must be responsible for the supply and installation of all cabling, conduits runs, mounting plates, brackets and fixtures.

The Contractor must supply materials and equipment as specified as Contractor's scope of supply in sections 2.2 and 2.3.

The Contractor must make all connections for the ATP sub-system interfaces with the existing onboard power supply, traction and braking systems, and any other interfaces necessary for a seamless operation of the ATP system without adversely impacting the safety, operation or maintainability of the existing onboard systems.

The Contractor must test and commission each set after the ATP equipment is installed and connected in accordance with referenced documents in Appendix D of this Works Brief.

The Contractor must rectify all Defects in accordance with the Deed.

2.1 Works and Services

Without limiting the Contractor's other obligations under the Deed, the Works and Services include all things necessary with regard to:

- (a) co-ordinating and scheduling of Set delivery to the Delivery Point and the Handback Point;
- (b) undertaking pre-delivery activities;
- (c) collecting, storing and managing The Principal Supplied Items;
- (d) procuring all materials, equipment and resources other than The Principal Supplied Items;
- (e) providing RSOs accredited by the Office of the National Rail Safety Regulator for train movements after a Set is entrusted to the Contractor by The Principal at the Delivery Point until the Set is returned to The Principal at the Handback Point;
- (f) providing a suitable Installation and Testing Facility and competent resources;
- (g) co-ordinating any interface works, including the completion and certification of the enabling works modifications undertaken by the Enabling Works Contractor;
- (h) undertaking pre-installation non-regression testing activities;
- (i) installing the Works and Services as described in this Works Brief and in accordance with The Principal's installation work instructions;
- (j) undertaking pre-commissioning (i.e. point to point) testing activities;
- (k) undertaking post-installation non-regression testing activities;
- (l) undertaking Testing & Commissioning activities;
- (m) undertaking train preparation in compliance with the home depot requirements;
- (n) co-coordinating, witnessing, inspection and auditing of the enabling works and the installation works by The Principal and Other Contractors;
- (o) ensuring the safety and security of the Installation Facility;

- (p) rectifying all Defects during the Warranty Period;
- (q) undertaking those interface activities and the coordination of the interface works set out in Appendix E and identified as the Contractor's responsibility;
- (r) providing uninterrupted access for The Principal's personnel, Sydney Trains and NSW Trains personnel and Other Contractors nominated by the Principal to the Installation Facility;
- (s) undertaking monthly progress reviews and making arrangements for chairing a pre-handback meeting with The Principal and Sydney Trains for each Completed Set; and
- (t) producing and submitting relevant documentation required for the handback of Completed Sets.

2.2 Contractor Supplied Materials

The Contractor must procure all materials other than Principal Supplied Items Category A and Principal Supplied Items Category B in accordance with the Product Breakdown Structure and drawings provided in Appendix A.

The Contractor supplied materials include off-the-shelf items, which the Contractor may purchase from manufacturers and suppliers, and custom items, which the Contractor must have manufactured or subcontracted to a third party. The Contractor must ensure that all Contractor supplied materials are in conformance with the Product Breakdown Structure.

The Principal Supplied Items listed in **Error! Reference source not found.a** and 3b must not be procured by the Contractor.

Table 3a: Principal Supplied Items Category A, which are listed in the Product Breakdown Structure

Product Description	PBS ID	Qty Required per 4-Car V-Set	Total Qty for 20 x 4-car V-sets including Spares	Unit
ATP Cubicle – V-set, Cubicle_EVC2_120V_H_V-Set	DTR2000021483	2	40 + 1 Spare	EA
DMI SENSE touch-screen (inbuilt CPU)	DTR0000422405	2	40 + 2 Spare	EA
Loudspeaker with faston terminal - R10SC 8ohm	DTR0000028366	2	40+ 2 Spares	EA
Eurobalise Antenna - (Compact 100m)	DTR0000182433	2	40 + 2 Spares	EA
Eurobalise Antenna Protector/Shroud	DTR0000279655	2	40 + 2 Spares	EA
Doppler Radar (DEUTA) - DRS05-1S1a with SW51-032B software	DTR0000264363	2	40 + 2 Spares	EA
Wheel Speed Sensor – Hasler, 5.8600.032/96	DTR0000454156	4	80 + 4 Spares	EA
Crash Protected Memory – TOME Train Data Recorder	DTR0000332421	2	40 + 2 Spares	EA
Ethernet Switch	DTR0000193330	2	40 + 2 Spares	EA
GPS/GSM-R Antenna	DTR0000378144	2	40 + 2 Spares	EA

Table 3b: Principal Supplied Items Category B, which are not in the Product Breakdown Structure

Product Description	PBS ID	Qty Required per 4-car V-Set	Total Qty for 20 x 4-car V-sets	Unit
Euroantenna cable - CABLE (2X0.50MM2)+(6X1.50MM2)+4X(2X0.50 MM2 120 OH.)FILOTEX 2PJ151 NEXANS	DTR0000183162	50	1000	Metres (m)
Radar cable - FLAMEX EMC [5X(EMC 2X0.6mm ²)] cable	DTR0000173139	15	300	Metres (m)
Test Tools				
Data logger test laptop (for non-regression testing)	Not in PBS	1	1	EA
Data logger key (for non-regression testing)	Not in PBS	1	1	EA
Speed code generator (for non-regression testing)	Not in PBS	1	1	EA
Embedded "Onboard Diagnostic Equipment tool" (ODE) case including compatible tester EVC "ODO ALSTOM", its suitable accessories, cables and SW, and the tool called "FAUST". This tool case is also commonly called "Maintenance test box"			2	EA
Software programs such as: <ul style="list-style-type: none"> o Editor such as hyperterminal (wherever required); o Software of the EVC periodic tester configured for "V-set"; o Software and drivers of the "ODE" tool o TBC (List out any other software tool that has to be supplied This list need to be checked against T&C report			1	EA
A "Eurobalise" programmed with a compatible message generating a message "Test&Commissioning" on the DMI screen when being crossed by the vehicle.			2	EA
Train crew key set (including butterfly, cabinet, Red Bi-lock)	Not in PBS	2	2	EA
Green Bi-lock key to operate IS-ETCS 1/IS-ETCS2, L2-INH 1/L2-INH2 key switches and unlock/lock the ETCS cubicle enclosure	Not in PBS	2	2	EA

2.2.1 Spare parts

The Contractor must procure and supply to the Principal the type and quantity of spare parts listed in Table 44 and in accordance with the Product Breakdown Structure provided in Appendix A.

The Contractor must replenish any spare items used to replace damaged items during fleet installation.

The Contractor must supply the Principal with 50% of the Spare parts listed in Table 4 within 10 Days of commencement of ATP V-Set Fleet Installation, and the remainder within 10 Days of completion of ATP V-Set Fleet Installation.

Table 4: Contractor Supplied Materials (V-Set) – Spare parts

Product Description	PBS ID	OEM/ Custom	Quantity of C&K-Set Spares
Eurobalise Antenna Subframe Assembly – DTR2000023249			
V-SET, EUROANTENNA, UNDERFRAME BRACKET	DTR2000023275	Custom part	2
V-SET, EUROANTENNA, BRACE	DTR2000023277	Custom part	2
V-SET, EUROANTENNA, ADAPTOR BRACKET	DTR2000023276	Custom part	2
V-SET, EUROANTENNA, ADAPTOR BRACKET	DTR2000023278	Custom part	2
V-SET EUROANTENNA 90 Degree connector –	DTR0000145365	Standard Part	5
PLUG FEMALE 19 PTS	DTR0000234544	Standard Part	5
V-SET EUROANTENNA 90 Degree connector	DTR0000056452	Standard Part	20
V-set Euroantenna Harness Assembly	TBA	Custom Part	TBA
ETCS Switch Panel Assembly – DTR2000023247			
DIA 22 PUSHBUTTON KIT 1NC	DTR0000287329	Standard Part	6
ROTARY CAM SWITCH, K&N CA10, BLACK, 2 POSITIONS 1 90deg, 2Xno 2XNC, SINGLE HOLE MOUNT	DTR0000287325	Standard Part	6
BILOCK ROTARY CAM SWITCH, K&N CA10 2 POSITION 60deg, 10XNO 4XNC, DUAL KEY UNIDIRECTIONAL, BEZEL MOUNT	DTR0000401077	Standard Part	6
BILOCK CAM LOCK, CREW LEVEL, CAPTIVE	DTR0000393573	Standard Part	6
BILOCK STRAIGHT CAM, 25mm L3-L12	DTR0009713375	Standard Part	6
CIRCUIT BREAKER "ATP MAIN" - 3A	DTR0000431543	Standard Part	6
CIRCUIT BREAKER "ATP CONTROL" - 8A	DTR0000463103	Standard Part	6
CIRCUIT BREAKER "ATP 2ND" - 3A	DTR0000431543	Standard Part	15

Product Description	PBS ID	OEM/ Custom	Quantity of C&K-Set Spares
CIRCUIT BREAKER "TRACTION CONTROL" - 8A	DTR0000463103	Standard Part	15
Radar Bracket – DTR2000023250			
V-SET, RADAR, MOUNTING BRACKET	DTR2000023280	Custom part	3
V-SET RADAR BRACKET	DTR2000005358	Custom part	3
V-SET RADAR BRACKET ADAPTOR PLATE	DTR2000005359	Custom part	3
V-SET RADAR 90 Degree connector PLUG ELBOW 14CTS FEM + ADAPTOR M25	DTR0000070935	Standard Part	5
V-SET RADAR 90 Degree connector CONTACT FEM 27963-13-T12 AWG20-24	DTR0000074978	Standard Part	5
V-SET RADAR 90 Degree connector CONNECT.,STRT EMCFIX NVEZ-M257V-11	DTR0000064425	Standard Part	5
V-set RADAR Harness Assembly	TBA	Custom Part	TBA
ATP Emergency Brake Valve – DTR2000023244			
V-SET ATP Emergency Brake Valve	DTR0009713393	Standard Part	9
V-SET ATP Emergency Brake valve Isolation cock	DTR0009713414	Standard Part	9
V-SET ATP Emergency Brake Valve Pressure Switch	DTR0009713429	Standard Part	9
Relay Panel – TBA (Both Crew Cab & Cubicle applications to be covered)			
V-SET Relay	TBA	TBA	TBA
V-SET Relay	TBA	TBA	TBA
V-SET Relay	TBA	TBA	TBA
V-SET Relay	TBA	TBA	TBA
V-SET Relay	TBA	TBA	TBA

2.3 The Principal Supplied Items

2.3.1 Collection of Principal Supplied Items

The Contractor must collect The Principal Supplied Items as listed in Tables 3a and 3b from the Principal's Stores in accordance with the process set out in this clause 2.3.1.

The Contractor must perform visual inspection of the Principal Supplied Items at collection and report any observations to the Principal within 2 Business Days for further action.

The Contractor is responsible for the care of The Principal Supplied Items from when they are collected from the Principal's Stores until Works Completion.

The Contractor must develop and maintain an equipment collection schedule which sets out the date and quantity of each type of equipment that the Contractor will collect from The Principal. The equipment collection schedule must reflect the delivery strategy of the Contractor's Program. The Contractor must submit the equipment collection schedule to The Principal's Representative for review

in accordance with the requirements set out in the Deed. An updated equipment collection schedule must be submitted with each monthly progress report in accordance with the TSRs.

The Contractor must provide an Equipment Request Notice (ERN) to The Principal 5 Business Days prior to each collection event proposed in the equipment collection schedule required under this clause. The ERN must advise the proposed date, equipment type(s) and quantities to be collected from The Principal's Stores and must state where the Principal Supplied Items will be stored once collected from The Principal's Stores.

The Principal will review the ERN and then notify the Contractor in writing of the location, availability, date and time for the collection of requested items. The Principal's Representative will also provide the Contractor with a Principal endorsed copy of the ERN.

The Contractor must develop and maintain a live equipment database which will allow the Contractor and The Principal to track the location and status of all Principal Supplied Items collected from The Principal's Stores. The database must provide the following information for every Principal Supplied Item:

- a) Part number (in accordance with the Product Breakdown Structure in Appendix A);
- b) Batch number;
- c) item description;
- d) serial number, version and final installed location;
- e) date collected from The Principal's Stores;
- f) date delivered to the Contractor's stores;
- g) location of the Contractor's stores; and
- h) date installed and the Set and car number.

The equipment database must allow the history of each item of equipment to be interrogated. It must also be able to provide summary information of the status of all the equipment collected by the Contractor from The Principal's Stores.

2.3.2 Storage of Principal Supplied Items

Once in the Contractor's possession, the Contractor must store the Principal Supplied Items such that the items are protected from environmental factors in accordance with the original manufacturer's recommendations.

The Contractor is responsible for providing adequate storage of the Principal Supplied items and must obtain Principal's approval for the nominated storage location and/or storage provider.

The Contractor shall obtain formal approval from the Principal for the nominated storage vendor by submitting a formal letter confirming that the items are protected from environmental factors, tampering and vandalism in accordance with the original manufacturer's recommendations.

The Contractor must allow The Principal or any representative appointed by the Principal to conduct audits of the Contractor's storage facility, and must address any requests arising out of these audits in relation to the storage conditions.

2.3.3 Return of Principal Supplied Items

If, after collection of the Principal Supplied Items from the Principal's Stores, the Contractor identifies a defective item within the collected Items, the Contractor must within 2 Business Days complete and submit to the Principal's Representative an ERN, requesting a replacement item is made available at the Principal's Stores. The ERN shall provide the following details:

- a) Set number if applicable;
- b) description, batch, part and serial numbers of the defective item;
- c) detailed description of defect including photographic evidence; and

- d) date and time of delivery of defective item at The Principal's Stores.

Within 2 Business Days of receiving the above documents, the Principal's Representative will review the ERN and notify the Contractor of the date and time that a replacement item will be available for collection at The Principal's Stores. The Contractor must return the defective item to The Principal's Stores at the agreed time of collection of the replacement item.

The Contractor must not replace defective components within an ATP Cubicle with components from other ATP Cubicles. An ATP Cubicle with one or more defective components must be replaced with an ATP Cubicle, from the corresponding fleet pool, that has not been installed on a train.

The Contractor must not initiate the repair of any defective Principal Supplied Items without prior authorisation by the Principal.

The Contractor must only install equipment from the Principal Supplied Items batches to the designated Consists. Parts must not be swapped between batches without consultation with the Principal.

2.4 Rail Safety Accreditation

The Contractor must ensure that only an RSO with appropriate Accreditation under the Rail Safety National Law carries out the movement of:

- a) Sets between the Delivery Point and the Installation Facility;
- b) Sets to and from the dynamic testing test track;
- c) Completed Sets between the Installation Facility and the Handback Point; and
- d) any other rolling stock movements while the Set is in the care, custody and control of the Contractor.

2.5 Scheduling and Interface Management Activities

2.5.1 Scheduling

The Principal will provide the Contractor with access to Sets in accordance with the conditions set out in Schedule 3 to the Deed. The Contractor must develop and maintain a comprehensive and detailed schedule which, as a minimum, sets out the dates and durations for the following activities for each Set:

- a) the pre-handover activities;
- b) the delivery date for the Set at the Delivery Point;
- c) the pre-installation non-regression testing activities;
- d) the installation activities;
- e) the progressive inspections;
- f) the pre-commissioning testing activities;
- g) the final inspection;
- h) the post-installation non-regression testing activities;
- i) the Testing & Commissioning activities;
- j) the pre-handback activities including defect management;
- k) the return date for the Completed Set at the Handback Point; and
- l) the post-handback activities including submission of all handback documents.

The above detail must be included in the Contractor Program and submitted to The Principal's Representative for review within the timeframes set out in the TSR. The Contractor Program must make due allowances for:

- (a) the coordination and management of the Works and Services to be performed by the Other Contractors; and
- (b) an increased presence of The Principal and its ETCS equipment supplier/designer to witness the implementation of ETCS on the earlier Sets in the program with particular emphasis on the first two Sets.

After the receipt of the first Contractor's Access Notice in accordance with Schedule 3 to the Deed, the Contractor must:

- (a) update and resubmit the above elements of the Contractor Program on a weekly basis showing the Works and Services over the following 6 week period (a 6-week look ahead program); and
- (b) organise and chair the meetings required under Schedule 3 to the Deed.

2.5.2 Interface Management

The Contractor must manage all interface requirements of the Works and Services with the Other Contractors. The Interface Schedule included in Appendix E of this Works Brief sets out the interfaces with the Other Contractors, including the work and activities to be carried out by the Other Contractors. The Interface Schedule also clarifies the division of responsibilities between the Contractor, the Principal and the Other Contractors for the Project.

The Contractor must maintain and update the Interface Schedule as a live document until Final Completion.

The Contractor must also coordinate and chair monthly project status meetings at the Principal's offices in Mascot between the Contractor, the Principal, Sydney Trains and any other relevant party, as advised by the Principal.

2.6 Progress Reporting

2.6.1 Monthly Report

The Contractor must, on the last Business Day of each month prepare and present a monthly report in accordance with the TSR.

2.6.2 Weekly Report

The Contractor must, on Tuesday of each week (or the next Business Day where the Tuesday is a gazetted public holiday in NSW), prepare and present a weekly report to the Principal's Representative mapping the actual progress of completing the Works and Services against the Contractor's Program. The exact format and layout of the weekly report will be agreed with the Principal upon commencement of the Works and Services, but must record the following information:

- (a) Weekly progress summary of activities completed previous week with photographs;
- (b) a rolling 3 week look-ahead schedule of proposed activities;
- (c) program slippage (if any) to be clearly explained and documented;
- (d) proposed actions to catch up with any program slippage (if any);
- (e) progress chart detailing each activity and percentage completed to date;
- (f) fatigue management table showing hours spent onsite previous week by each worker;
- (g) weekly safety statistics showing:
 - (i) Near Miss incident;
 - (ii) First Aid incident;
 - (iii) Medical Treatment Injury;

- (iv) Lost Time Injury; and
 - (v) Other incident.
- (h) list of design documents showing:
- (i) documents in development by the Contractor;
 - (ii) documents that will be submitted to the Principal's Representative for review in the current week;
 - (iii) the status of documents that have been submitted to the Principal's Representative for review (in review, reviewed with comments, reviewed with no comments); and
 - (iv) a summary of stakeholder consultation performed and issues arising.
- (i) list of site activities showing:
- (i) activities in development by the Contractor; and
 - (ii) activities that are planned and to be completed.

2.7 Milestone Dates for Reports and Plans

The key milestone dates from the works are listed below. The milestone dates are indicative only.

Deliverable	Works Brief Reference	Milestone Date
GENERAL		
Project Schedule	As per the TSR	Ten (10) Business Days after the Commencement Date Monthly updates to be submitted on the 25 th day of every month.
Monthly Report	Works Brief – Section 2.6.1	On the last Business Day of each month or the next consecutive Business Day
Weekly Report	Works Brief – Section 2.6.2	Issued weekly on a Tuesday or the next Business Day
Contract Management Plan	As per the TSR	As per the TSR
Project Work Health and Safety Management Plan	As per the TSR	As per the TSR
Safe Work Method statements and Work Activities advice	As per the TSR	As per the TSR
Defects Management Plan, Risk Management Plan	As per the TSR	As per the TSR

2.8 Set Handover and Set Handover Activities

Sets being handed over for the installation of ETCS equipment will be made available to the Contractor as a 4-car Set at the Delivery Point in accordance with the provisions of Schedule 3 to the Deed. The Contractor must coordinate and provide suitably qualified RSOs to transfer Sets from the Delivery Point to the Installation Facility. The Contractor must ensure that any rolling stock movements outside of the Installation Facility are carried out by a RSO with appropriate Accreditation and must

arrange and procure for any Authority Approvals (including train paths or equivalent) required for that train movement.

The Contractor must carry out the Works and Services for the Set handover activities in accordance with Schedule 3 to the Deed and with this clause 2.8.

Upon delivery of a Set to the Delivery Point, the Contractor must:

- Conduct the Handover Set Condition Assessment in accordance with the 'Presentation Inspection Procedure' in Appendix B1 of this Works Brief; and
- Complete and submit to the Principal's Representative a Set Delivery Receipt Form (Appendix B3 of this Works Brief).

If the Contractor intends to loco haul a Set from the Delivery Point to the Installation Facility, the Contractor must complete the appropriate testing activities set out in Appendix B5 of this Works Brief prior to moving a set from the Installation Facility to the dynamic testing track and prior to returning a Set to the Handback Point.

Within 3 Business Days of completion of the handover activities for each Set, the Contractor must provide the Principal's Representative with evidence to demonstrate that the Contractor's set handover activities were completed prior to the commencement of installation activities

2.8.1 Handover Documentation

The Principal will make available the following documentation at the time a Set is handed over to the Contractor as evidence of the condition of each Set:

- a) List of known defects; and
- b) Written confirmation that the needles stick inspection activity has been completed.

The Contractor must obtain from Sydney Trains all other configuration materials required to undertake the Works and Services.

2.9 Installation Activities

2.9.1 Installation Facility

The Contractor must provide a suitable Installation Facility in which to carry out the Works and Services. As a minimum, the Installation Facility must include the following features:

- (a) Sydney metropolitan rail network compatible overhead line and 415V alternating current shore supply for static testing as a complete 4 car Set;
- (b) covered accommodation for a minimum of 2 Sets and sufficient space to separate each of the 4 cars at any one time;
- (c) facilities to remove bogies and jack/raise each of the 4 cars to a suitable height;
- (d) facilities to re-balance Sets;
- (e) pits to enable access to the under frame;
- (f) roof level access platforms;
- (g) access to a minimum of 200m length of track with overhead line power to enable low speed dynamic testing within depot limits;
- (h) facilities to weigh each Set; and
- (i) standard workshop features including compressed air supply, space for storage of tooling and materials and availability of portable stairs.

The Contractor must provide the following amenities for the use of the Principal's personnel at the Installation Facility:

- (a) a separate, lockable, air conditioned Principal's site office to accommodate 2 staff members that complies with all relevant building codes and safety requirements, connected to power and communications services that includes 2 workstations of 4 square metres each with an appropriate walkway space. Each workstation must include:
 - (i) a desk;
 - (ii) a lockable pedestal drawer unit;
 - (iii) an office chair;
 - (iv) shelving units;
 - (v) a separate telephone connection;
 - (vi) a minimum of 4 power sockets;
- (b) access to kitchen and break-out facilities including fridge, hot and cold running water, microwave, tables and chairs;
- (c) access to first aid facilities;
- (d) access to ablution and changing facilities which may be incorporated into the Contractor's amenities;
- (e) parking for up to 2 cars or utility vehicles; and
- (f) 240V alternating current power supplies on each Set during Testing & Commissioning activities.

All equipment, furniture, fittings and finishes provided by the Contractor must be of a standard that is suitable for a professional office space.

The Contractor must fully service and maintain, at its cost, the Principal's site office facilities including all cleaning and maintenance.

The Contractor must pay all one-off and ongoing costs associated with all utility and service connections, hire arrangements and security arrangements except that The Principal will pay its own office supplies and communication usage charges (cost of telephone calls and electronic data transfers).

The Principal will supply and install computers and multi-function printers at the Principal's site office.

The Contractor must maintain the above facilities for The Principal's representatives until directed by The Principal's Representative, whose direction may be up to one month after the Date of Works Completion.

2.9.2 Pre-Installation Non-Regression Testing Activities

Following the completion of the Works and Services set out in the clause 2.9.3 the Contractor must conduct pre-installation Non-Regression Testing activities on each Set in accordance with the 'V-Set Non-Regression Test Specification' provided in Appendix B2 of this Works Brief.

The Contractor must notify the Principal within 1 Business Day of non-regression testing completion of any damaged train equipment. The Principal will provide a suitable replacement, if required, for the damaged train equipment to the Contractor.

The Contractor must submit the Pre-Installation Non-Regression Testing Report for each Set within 1 Business Day of the completion of the Pre-Installation Non-Regression Testing on that Set.

2.9.3 Preliminary Activities

Following the completion of the Works and Services set out in the clause 2.9.3, the Contractor is required to undertake the following activities after acceptance of Set at the Delivery Point:

- (a) weighing of Sets in accordance with the relevant 'Car Re-balancing' maintenance instruction;

- (b) separation of individual cars within a Set in accordance with the relevant 'Car Re-Marshalling' maintenance instruction;
- (c) measurement of wheels to achieve the requirements of On Site Test & Commissioning Procedure for the Onboard ETCS Sub-System; and
- (d) jacking of cars.

2.9.4 Installation Works

Following the completion of the Works and Services set out in the clause 2.9.3, the Contractor must install the ETCS equipment on each Set in accordance with the installation work instructions, schematic drawings, installation design reports, installation constraints compliance reports, fleet survey reports and as-built drawings provided in Appendix C of this Works Brief.

2.9.5 Pre-Commissioning Testing Activities

Following the completion of the Works and Services set out in the clause 2.9.3 the Contractor must conduct pre-commissioning testing activities on each Set in accordance with the 'V-Set Installation Pre-Commissioning Test Specification' provided in Appendix B2 of this Works Brief.

2.9.6 Post-Installation Non Regression Testing Activities

Following the completion of the Works and Services set out in the clauses 2.9.3 to 2.9.5 and prior to the commencement of Post-Installation Non-Regression Testing activities, the Contractor must amalgamate the 4 cars into a working Set including weighing of the Set in accordance with the relevant 'Car Re-balancing' maintenance instruction.

The Contractor must conduct post-installation Non-Regression Testing activities on each Set in accordance with the 'V-Set Non-Regression Test Specification' provided in Appendix B2 of this Works Brief.

2.10 Testing & Commissioning Activities

Following the completion of the Works and Services set out in the clauses 2.9.3 to 2.9.6, the Contractor must complete Testing & Commissioning activities on each Set in accordance with the documents provided in Appendix D of this Works Brief.

The Contractor must provide The Principal with at least 5 Business Days' notice of the commencement of the testing and Commissioning activities for each Set and must confirm the date, time and location of the static and dynamic Testing & Commissioning of each Set.

The Contractor must complete the appropriate testing activities set out in Appendix B of this Works Brief prior to dynamic testing.

2.11 Train Preparation Activities

Upon Completion of the Works and Services in respect of each Set, the Contractor must undertake comprehensive internal cleaning of each Set prior to returning it to the Handback Point in accordance with Flemington Maintenance Centre's requirements.

2.12 Handback Activities

Sets being handed back to The Principal following the Completion of the Works and Services in respect of the Set must be made available to the Principal as 4-car Sets at the Handback Point in accordance with the provisions of Schedule 3 to the Deed. The Contractor must coordinate and provide suitably qualified resources to transfer Sets from the Installation Facility to the Handback Point. The Contractor must ensure that any rolling stock movements outside of the Installation Facility are carried out by an RSO accredited by ONRSR and must arrange and procure any Authority Approvals (including train paths or equivalent) required for those train movements.

Upon return of a Set to the Handback Point, the Contractor must complete and submit to the Principal's Representative a Set Return Receipt Form (Appendix B4 of this Works Brief) that includes

set number, car numbers, date and time of handback, confirmation of successful completion of all Works and Services with any outstanding activities clearly identified and signature boxes for the appropriate Contractor and the Principal on-site personnel. Any outstanding activities outlined in the Set Return Receipt Form must also have reference to the associated documentation in the Set Return to Service Documentation for the Principal's review.

2.12.1 Set Return to Service Documentation

The Contractor must produce and submit to the Principal's Representative, for review within 5 Business Days of the return of each Set to the Handback Point, a Set Return to Service Documentation pack consisting of the following documentation relevant to each individual Set:

- (a) handover set condition assessment report;
- (b) pre-installation non-regression test report;
- (c) installation test report including certificate of compliance;
- (d) post-installation non-regression test report;
- (e) Testing & Commissioning report;
- (f) defects register;
- (g) records of any non-conformances and dispensations;
- (h) failure reporting and corrective action reports;
- (i) equipment spreadsheet for the data collection of component serial numbers and product information in a format approved by the Principal;
- (j) completed train preparation documentation as required in Appendix B5;
- (k) Marked As-Built, in the form of legible hand mark-ups of existing drawings, for each Set;
- (l) Certificate of Design Assurance; and
- (m) Certificate of Readiness.

The above documentation must be provided in electronic format prior to the return of each Set to the Handback Point. The Contractor must also include a bound paper copy of the above documentation onboard each Set at the time of return to the Handback Point.

2.12.2 Post-Handback Defects Rectification

Sydney Trains will undertake an inspection of a Completed Set within 2 Business Days after it is returned to the Flemington Maintenance Centre.

No later than 5pm on the day after the visual inspection, The Principal will inform the Contractor whether any new Defects in the Set were identified during the Sydney Trains inspection. The Contractor must attend the Flemington Maintenance Centre on the day following receipt of the above notice from the Principal's Representative (even if that day is a weekend day or a public holiday) to rectify any Defects in the Completed Set identified by Sydney Trains. All post-handback defect rectifications works must be carried out by the Contractor at no additional cost to the Principal.

3 Works Management

The Contractor must employ a management system that is consistent with the NSW Government Quality Management Systems Guidelines (available on the ProcurePoint website) and must develop and implement a project-specific Contract Management Plan. The Contract Management Plan must cover the Contractor and any Subcontractors engaged by the Contractor.

The Contractor's quality management processes must focus management on customer satisfaction and require compliance in accordance with AS/NZS ISO 9001:2000 and must:

- (a) satisfy the specified requirements documented in this Works Brief and the TSRs;
- (b) include processes implicitly required to accurately complete the Works on time; and
- (c) satisfy all statutory and regulatory requirements.

The Contractor must hold and maintain an environmental management system and a WHS management system which complies with the requirements set out in the TfNSW Standard Requirements (TSR).

3.1 Management Plans

3.1.1 Contract Management Plan

Prior to commencing any Works and Services, the Contractor must prepare, submit for review in accordance with clause 9.14 of the Deed, and thereafter implement a Contract Management Plan to demonstrate how it proposes to perform the Works in accordance with the requirements of the Deed. The plan must satisfy the requirements laid out in the TSR.

3.1.2 Rail Safety Management Plan

If the Works involve work in or adjacent to the rail corridor or rail environment, the Contractor must prepare and implement a rail safety management plan which addresses the requirements of rail safety in the Deed, Rail Safety National Law and AS4292 Railway Safety Management.

3.1.3 Fatigue Management Plan

The Contractor must prepare, submit and thereafter implement a fatigue management plan for all its personnel and Subcontractors that is in accordance with:

- (a) WHS legislation;
- (b) Rail Safety National Law (if the Works involve work in and adjacent to the rail corridor and the rail environment); and
- (c) the TSRs.

3.1.4 Interface Management Plan

Not used.

3.1.5 Design Management Plan

Not used.

3.1.6 Safety Assurance Plan

Not used.

3.1.7 Risk Management Plan

Prior to commencing any construction activities on Site, the Contractor must prepare and submit a Risk Management Plan in accordance with TSRs.

3.1.8 Construction and Site Management Plan

Not used.

3.1.9 Traffic Management Plan

Not used.

3.1.10 Defects Management Plan

Prior to commencing any construction activities in the Site, the Contractor must prepare, submit and thereafter implement a Defects Management Plan in accordance with TSRs.

3.1.11 Properties Management Plan

Not used.

3.1.12 Updating Management Plans

The Contractor must implement, audit and update the management systems and plans as necessary for the ongoing successful management of the Works.

Any updates and modifications to the management plans must be provided to the Principal's Representative for review. The Contractor must not decrease or otherwise reduce the commitments and requirements, including those relating to the scope, reporting, processes, procedures, effort, resources, experience or expertise, in the developed of any subsequently amended versions of the management plans.

3.2 Other Works Management Obligations

3.2.1 Asset Management

The Contractor must supply an asset register that records all the equipment installed as part the Works. The format and content for the asset register is to be agreed with the Principal.

3.2.2 Attendance at Meetings

A project inception meeting will occur within the first week following the Commencement Date. The Contractor will also be required to attend relevant technical meetings and workshops with a number of stakeholders as required by TfNSW including a monthly progress meeting which will be held in the second week of every month.

3.3 Review by the Principal

The Principal may review all Contractor Contract Documentation including management plans and other documents described this Works Brief with clause 9.14 of the Deed.

Appendix A – Product Breakdown Structure and Drawings

A1 Product Breakdown Structure and Drawings

Document ID	Document Name	Version	DeskSite Reference	Document Date
A-0000049461 (CDRL AMS-V-150)	V-Set - Installation - Product Breakdown Structure (including drawin_gs)	2	6031385	31/08/2018

Note: Updated Product Breakdown Structure will be issued post prototype installation.

**Appendix B – Inspection, Non-Regression Testing and Train
Preparation Procedures**

B1 Presentation Inspection Procedure

DeskSite Reference: 6112238

B2 Pre-Commissioning Testing and Non-Regression Testing

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-V-320*	V-Set Installation Pre-Commissioning Test Specification	A-0000060339_2	5779366	28/08/2017
2	Not Applicable	V-Set Non-Regression Test Specification	1.0	6112001, Appendix A: 6112072 and Appendix B: 6112078	10/09/2018

* Installation Pre-commissioning test specification for V-set is currently being developed. Expected

B3 Set Delivery Receipt Form Template

DeskSite Reference: 5804920_1

B4 Set Return Receipt Form Template

DeskSite Reference: 5805604_1

B5 Train Preparation Procedures

Ref.	Document ID	Document Name	Version	Document Date
1	DeskSite: TBA	Driver Train Preparation Procedures – V-set	TBA	TBA



B6 Train Jacking

Ref.	Document ID	Document Name	Version	Document Date
1	DeskSite: 6130758	V Set Splitting and Jacking Info Pack	N/A	N/A
2	DeskSite: 5847629	UGLU Job Instruction MJ1-EJ18 - Bogie Change-Out for SLR C, K and V Sets	4	15/06/2015

Appendix C – Installation Documentation

C1 Installation Work Instructions

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-V-220	WI 1.1 - Mechanical Drivers Cab Equipment Installation	A-0000112497_3A	6135148	10/09/2018
2	AMS-V-230	WI 1.2 - Mechanical EBV Installation	A-0000112680_3A	6135754	12/09/2018
3	AMS-V-240	WI 1.3 - Mechanical ATPSP Installation	A-0000112681_3A	6135271	10/09/2018
4	AMS-V-250	WI 1.4 - Mechanical Cubical Location Preparation	A-0000111938_3A	6135161	10/09/2018
5	AMS-V-260	WI 1.5 - Mechanical Euroantenna Installation	A-0000112682_3A	6135183	10/09/2018
6	AMS-V-270	WI 1.6 - Mechanical Radar Installation	A-0000112495_3A	6135281	10/09/2018
7	AMS-V-280	WI 1.7 - Mechanical Cubicle Installation	A-0000111939_3A	6135193	10/09/2018
8	AMS-V-290	WI 1.8 - Mechanical Ancillary Equipment Installation	A-0000112489_3A	6135201	10/09/2018
9	AMS-V-300	WI 1.9 - Mechanical Wheel Speed Sensor Installation	A-0000109837_3A	6135301	10/09/2018
10	AMS-V-310	WI 1.10 - Mechanical GPS Antenna Installation	A-0000112683_3A	6135224	10/09/2018
11	AMS-V-320	WI 1.11 - Mechanical Cubicle Enclosure Installation	Not yet submitted	TBA	TBA
12	AMS-V-340	WI 2.1 - Electrical Interior Harness Installation	A-0000113786_3A	6135320	10/09/2018
13	AMS-V-350	WI 2.2- Electrical Under frame harness installation	A-0000113787_3A	6135237	10/09/2018
14	AMS-V-360	WI 2.3 - Electrical Connectors Assembly	A-0000113788_3A	6135255	10/09/2018
15	AMS-V-370	WI 2.4 - Electrical GPS Antenna Harness Installation	A-0000113789_3A	6135311	10/09/2018
16	AMS-V-010	Cubicle Schematics for Generic BSL3 Cubicle	Not yet submitted	TBA	TBA

C2 Installation Design Reports and Installation Constraints Compliance Reports

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-V-080	Installation Design Report - Summary of Modifications	A-0000069181	5979816	15/2/2018
2	AMS-V-090	Installation Design Report Crew Cab	A-0000069182	6029300	9/5/2018
3	AMS-V-100	Installation Design Report - Underframe	A-0000069183	6029351	8/5/2018
4	AMS-V-110	Installation Design Report - Cubicle Mounting	A-0000069184	6029350	8/5/2018
5	AMS-V-120	Installation Design Report - Train Electrical Interfaces	A-0000069185_2A	6129524	22/08/2018
6	AMS-V-130	Installation Design Report - Train Electrical Schematics V-set	DTR01000232622	6091552	15/6/2018
7	AMS-V-670	Installation Design Report - GPS	A-0000069187	6029411	9/5/2018
8	TBA	Installation Design Report - In-Car	Not yet submitted	TBA	TBA
9	AMS-V-660	ETCS Installation Constraints Compliance Report	Not yet submitted	TBA	TBA

C3 Fleet survey reports and as-built drawings

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-V-210	Fleet survey reports for compliance with approved Installation Design	Not yet submitted	TBA	TBA
2	AMS-V-390	V-Set - As-built drawings	Not yet submitted	TBA	TBA

Appendix D – Testing and Commissioning Procedures and Reports

D1 Installation, Testing and Commissioning Procedures and Reports

Reference	Document ID	Document Name	Version	DeskSite Reference	Document Date
1	AMS-V-430	Certificates of Compliance (including installation test report)	Not yet submitted	TBA	TBA
2	AMS-V-380	Test and Commissioning Procedure & Report template (Fleet)	Not yet submitted	TBA	TBA

Appendix E – Interface Schedule

Overview of the V-Set Fleet Onboard Interface Schedule

The purpose of this Interface Schedule is to summarise the key interfaces between the Contractor, the Principal, Sydney Trains, Enabling Works Contractor and Other Contractors.

1. General Arrangements

Item	Contractor	TfNSW (Principal)	Sydney Trains ¹	Other Contractors / Enabling Works Contractor
ASA Authorisation	> AEO for installation works.	> ASA: Review AEO applications and grant AEO status to the Contractor.	Operator and Principal for the maintenance Contract for the V-Set fleet. AEO for the M sets facility and/or the Installation Facility.	> AEO for design and installation of the Enabling Works at the Installation Facility.
Procure Equipment	> Procure the Contractor supplied material in accordance with the Product Breakdown Structure.	> Procure the ETCS Principal Supplied items in accordance with this Deed.		> Procure the Enabling Works equipment and materials.
Installation Facility	> Provide installation facility in accordance with this Deed. > Provide the amenities set out in the Works Brief for the Principal's representatives and for the Enabling Works Contractor at the Installation Facility.			
Rail Safety Accreditation	> Procure Rolling Stock Operator (RSO) resources for the movement of Sets between the Delivery Point and the Installation Facility and of Completed Sets between the Installation Facility and the Handback Point (where required). > Procure RSO resources for the movement of Sets to and from the dynamic testing test track (where required).		> RSO for the movement of Sets between the Eveleigh Maintenance Centre (EMC) and the Delivery Point.	
Safety Management	> Provide, maintain and implement a safety management system for the Installation Facility. > Implement a competency management system in accordance with its AEO authorisation and provide suitably competent resources to undertake the Works and Services. > Coordinate and provide site induction for the Installation facility to representatives of TfNSW, Sydney Trains and Alstom. > Comply with the Sydney Trains induction and safety management requirements for any Works and Services performed at the EMC.	> Ensure all staff, agents and sub-contractors comply with the Contractor's induction and safety management requirements when visiting and/or working in the Installation Facility. > Ensure all staff, agents and sub-contractors comply with the Sydney Trains induction and safety management requirements for activities performed at the EMC.	> Ensure all staff, agents and sub-contractors comply with the Contractor's induction and safety management requirements when visiting and/or working in the Installation Facility. > Provide induction to the Contractor, Alstom and Principal representatives visiting or undertaking work at the MMC.	> Ensure all staff, agents and subcontractors comply with the Contractor's induction and safety management requirements when visiting and/or working in the Installation Facility.
Schedule and coordination	> Provide to TfNSW a comprehensive and detail schedule of dates for the delivery, dynamic testing and handback	> Co-ordinate with Sydney Trains and provide consolidated feedback on the Contractor's Set delivery, dynamic testing	> Provide feedback to TfNSW on the Contractor's Set delivery, dynamic testing	> Provide updates on the Enabling Works progress.

¹ In this Appendix E, reference to a Sydney Trains activity marked with an "*" may also refer to an activity to be performed by NSW Trains.

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
	<p>of Sets.</p> <ul style="list-style-type: none"> > Update schedule of delivery, handback and dynamic testing of Sets on a weekly basis and submit to TfNSW. > Submit Contractor's Access Notices in accordance with Deed Schedule 3. 	<p>and handback schedule.</p> <ul style="list-style-type: none"> > Respond to Contractor's Access Notices in accordance with Deed Schedule 3. 	<p>and handback schedule.</p>	
Schedule Reviews	<ul style="list-style-type: none"> > Organise and lead the pre-delivery meetings described in Deed Schedule 3 for each Set. > Coordinate and chair monthly project status meetings at TfNSW's offices in Mascot between the Contractor, TfNSW, Sydney Trains, Other Contractors and the Enabling Works Contractor. 	<ul style="list-style-type: none"> > Participate in Contractor led pre-delivery meetings for each Set. > Attend monthly project status meetings between the Contractor, TfNSW, Sydney Trains, Other Contractors and the Enabling Works Contractor. 	<ul style="list-style-type: none"> > Participate in Contractor led pre-delivery meetings for each Set. > Attend monthly project status meetings at TfNSW's offices in Mascot between the Contractor, TfNSW, Sydney Trains, Other Contractors and the Enabling Works Contractor. 	<ul style="list-style-type: none"> > Participate in Contractor led pre-delivery meetings for each Set. > Attend monthly project status meetings at TfNSW's offices in Mascot between the Contractor, TfNSW, Sydney Trains, Other Contractors and the Enabling Works Contractor.
Handover Sets at Delivery Point	<ul style="list-style-type: none"> > Take control of Sets at the Delivery Point. 	<ul style="list-style-type: none"> > Arrange for and book train paths for the movement of Sets from the EMC to the Delivery Point. > Coordinate the provision of train crews to transfer Sets from the EMC to the Delivery Point in accordance with the provisions of Deed Schedule 3. > Handover Sets to the Contractor at the Delivery Point. 	<ul style="list-style-type: none"> > Deliver Sets to TfNSW at the EMC in accordance with the conditions set out in Deed Schedule 3. > *Provide train crews and train paths as required by TfNSW for the movement of sets from the EMC to the Delivery Point. 	
Transfer Sets from Delivery Point to Installation Facility	<ul style="list-style-type: none"> > Provide accredited resources (RSO) for transfer of Sets from the Delivery Point to the Installation Facility. > Obtain necessary approvals from relevant authority for train movements from the Delivery Point to the Installation Facility (where required). 			
Set handover inspections	<ul style="list-style-type: none"> > Advise TfNSW and Sydney Trains of the relevant date for the Set handover inspections for each Set at the Installation Facility and mutually agree the times for the Set handover inspection activities on that date. > Perform the inspection of each Set at the Installation Facility with TfNSW in accordance with the Works Brief. 	<ul style="list-style-type: none"> > Participate in the inspection of each Set at the Installation Facility with the Contractor. 	<ul style="list-style-type: none"> > Witness the joint handover inspection of each Set at the Installation Facility with TfNSW and the Contractor. > Provide As-Built documents to the Contractor for updating during the Works and Services. 	

3. Installation

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
Principal Supplied Items	<ul style="list-style-type: none"> > Arrange safe and secure collection of Principal Supplied Items from the Principal's Stores in accordance with the Works Brief. > Provide safe return of any defective ETCS Hardware Principal Supplied Items to the Principal's Stores. > Provide facilities for storage of ETCS equipment. 	<ul style="list-style-type: none"> > Provide the Principal Supplied Items at the Principal's Stores. 	<ul style="list-style-type: none"> > Provide facilities as required by TfNSW for storage of ETCS equipment and manage the process for collection of ETCS equipment by the Contractor. 	
Pre-existing defects	<ul style="list-style-type: none"> > Notify the Principal when it observes pre-existing defects in a Set after its arrival at the Installation Facility. > Cooperate and coordinate with Sydney Trains for the inspection of pre-existing defects that impact on the Works and Services at the Installation Facility. 		<ul style="list-style-type: none"> > Coordinate with the Contractor and provide management and technical support to assess any pre-existing defects that impact the Works and Services identified in a Set after its arrival at the Installation Facility. 	
Installation Works	<ul style="list-style-type: none"> > Install the Works and Services on 33 Sets in accordance with the Installation Work Instructions specified in the Works Brief (including the TOS consolidation works). > Develop, maintain and implement inspection and test plans for the Works and Services. 			<ul style="list-style-type: none"> > Coordinate with the Contractor and arrange for its staff and/or subcontractors to visit the Installation Facility to carry out the Enabling Works.
Oversight and inspection	<ul style="list-style-type: none"> > Provide access to the Installation Facility to TfNSW and its agents including Alstom and Sydney Trains to witness the installation of the Works and Services. 	<ul style="list-style-type: none"> > Witness the installation of the Works and Services (where required). 	<ul style="list-style-type: none"> > Witness the installation of the Works and Services (where required). 	
Design modifications	<ul style="list-style-type: none"> > Notify TfNSW when the existing configuration of a Set prevents the installation of the Works and Services in accordance with the Installation Design. 	<ul style="list-style-type: none"> > Review the Contractor's notice and where applicable provide revised Set-specific installation designs to the Contractor. > Seek ASA concession for deviations to standards including stakeholder consultation with Sydney Trains > ASA: Review any applications for concessions to standards from the Contractor. 	<ul style="list-style-type: none"> > Provide and manage resources for stakeholder consultation on any proposed Set-specific Installation Designs. > Provide resources to review any proposed Set-specific Installation Designs. 	

4. Testing and Commissioning

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
General	<ul style="list-style-type: none"> > Provide suitably competent resources to undertake the Contractor's testing and 	<ul style="list-style-type: none"> > Witness testing and commissioning activities. > Provide qualified resources to assist the 	<ul style="list-style-type: none"> > Witness testing and commissioning activities. 	<ul style="list-style-type: none"> > The Enabling Works Contractor is to assist the Contractor with fault finding during the test

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
	commissioning activities. > Undertake the testing and commissioning activities in accordance with the Works Brief. > Produce test records in accordance with the Works Brief and send all test records to TfNSW for review. > Coordinate and provide access to Alstom and subcontractors to Sets at the Installation Facility to assist with fault finding during the testing and commissioning activities where required.	Contractor with fault finding during the testing and commissioning activities where required.		and commissioning activities where required.
Dynamic testing	> Coordinate train crew requirements with TfNSW at least 4weeks in advance of the dynamic testing of each Set. > Procure RSO resources and obtain necessary approvals from the relevant authority for train movements as required to move the Set between the Installation Facility and the dynamic test track prior to and following dynamic testing. > Coordinate and lead dynamic testing activities.	> Coordinate the provision of train crews to operate Sets during the dynamic tests. > Witness dynamic testing activities.	> Provide train crews as requested by TfNSW for train movements during dynamic testing. > Witness the dynamic testing activities.	

5. Handback

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
Post installation non-regression testing	> Complete Post-Installation Non-Regression Testing in accordance with the Works Brief.			
Return Completed Sets at the Handback Point	> Submit Contractor's Return Notices in accordance with Deed Schedule 3. > Complete Train Preparation in accordance with Test Specification provided by The Principal. > Undertake internal cleaning of each Set prior to hand back to Sydney Trains. > Provide RSO resources and obtain necessary approvals from the relevant authority for train movements (where required) from the Installation Facility to the Handback Point. > Transfer Completed Sets from the Installation Facility to the Handback Point.	> Advise Sydney Trains prior to expiry of a Certificate of Readiness for a Set at the Installation Facility. > Respond to Contractor's Return Notices in accordance with Deed Schedule 3. > Arrange for and book train paths for movement of Completed Sets from the Handback Point to the EMC. > Coordinate provision by train crews to move Completed Sets from the Handback Point to the EMC.	> Manage the process and obtain a deferral to the Certificate of Readiness in cases where the certificate expires whilst a Set is at the Installation Facility. > Provide train crews and train paths as required by TfNSW for the return of Completed Sets from the Handback Point to the EMC.	
Handback finalisation	> Produce and submit to the Principal's Representative and Sydney Trains the As-Built and Set Return to Service Documentation in accordance with the Works Brief.		> Maintain configuration records in repositories including Plan Room and asset registers.	

Item	Contractor	TfNSW (Principal)	Sydney Trains	Other Contractors / Enabling Works Contractor
Post handback defects rectification	> Attend locations with the Sydney Metropolitan Rail Network as nominated by TfNSW to rectify Defects identified in the V-Set Fleet during the Warranty Period.		> Provide access to the Contractor to each Completed Set at a suitable location to rectify defects identified during the Warranty Period.	

Exhibit B

Principal's Insurance Policies

Nil

Exhibit C

Probity and Process Deed Poll



**Onboard Installation on C-Set and K-Set Project
(ISD-17-6606), and V-Set Project (ISD-17-6607)
Invitation to Tender
Probity and Process Deed Poll**

Downer EDI Rail Pty Ltd

August 2018

Table of Contents

1.	Interpretation	2
1.1	Definitions	2
1.2	Priority in interpretation	10
1.3	Interpretation	11
1.4	Headings	12
1.5	Unfettered Discretion	12
2.	NSW Code of Practice	12
3.	Process Matters	13
3.1	Questions	13
3.2	Contact between TfNSW, Government Agencies and Stakeholders	14
3.3	Notification of error or discrepancy	15
3.4	Clarifications and other information	15
3.5	Right to negotiate	16
3.6	Site Inspections	16
3.7	Additional TfNSW rights	17
3.8	Nature of Procurement Process	17
3.9	Notification of change in circumstances	17
3.10	Conflict of interest	17
3.11	Influences	18
4.	Probity	18
4.1	TfNSW's Probity Advisor	18
4.2	Tenderer's Probity Auditor	18
4.3	Co-operate	19
4.4	Tenderer's probity checks	19
4.5	Responsibility for probity	20
5.	Collusive Agreements	20
6.	TfNSW's rights and powers	22
7.	Tenderer's Warranties and Acknowledgements	24
7.1	Protection of Privacy	24
7.2	Exchange of information within Government	25
7.3	Financial assessment	25
7.4	No Contract	26
7.5	No liability	26
7.6	No Claim for costs	26
7.7	Information Documents and Materials	27
7.8	Reliance on Tenders	30
7.9	Offers of employment	30
7.10	TfNSW consent	30
8.	Security and control of Confidential Information	31
8.1	Security	31
8.2	Assistance in proceedings	31
8.3	TfNSW's right to terminate holding of Confidential Information	31
8.4	Consequences of right to terminate holding of Confidential Information	31
8.5	Effect of such termination on accrued rights	31

8.6	Additional obligations unaffected	32
8.7	Confidentiality obligations continue after assignment or Termination	32
9.	Use and disclosure of Confidential Information by the Tenderer	32
9.1	Use of Confidential Information	32
9.2	Disclosure of Confidential Information	32
9.3	Tenderer's obligations	33
9.4	Exclusion from obligation of confidentiality	33
9.5	Disclosure required by Law	33
10.	Disclosure by TfNSW	34
10.1	Disclosure of information or documents by TfNSW	34
10.2	Public disclosure	34
10.3	Tenderer's representations	35
11.	Intellectual Property	35
12.	Tenderer's structure	36
12.1	Changes to the Tenderer's structure	36
12.2	Associates' involvement with Other Tenderers	36
12.3	Tenderer location	37
12.4	Acknowledgment of consequences of breach	37
13.	Release and Indemnity	37
14.	Notices	38
14.1	General	38
14.2	Notices sent by email	38
14.3	Time of receipt	38
14.4	Address for Notices	39
15.	Publicity	40
16.	Survival of Deed Poll	40
17.	Enforcement	40
18.	Absolute Liability	41
19.	General Provisions	41
19.1	No Partnership, Joint Venture or other Fiduciary Relationship	41
19.2	Assignment	41
19.3	No Waiver	41
19.4	Further acts	42
19.5	No representation or reliance	42
19.6	Severability	42
19.7	Joint and Several Liability	42
19.8	Indemnities to Survive	42
19.9	Stamp Duty and other Fees	43
19.10	Entire Agreement	43
19.11	Provisions Limiting or Excluding Liability	43
19.12	Governing Law and Jurisdiction	43
Schedules		45
1	Confidentiality and Process Deed Poll - Undertaking	45
2	Access Indemnity	47

Date	8/8/2018
Parties	This Deed Poll is made by:
1,	<i>Downer EDI Rail Pty Ltd (ABN 90 000 002 031)</i>
	([collectively] ¹ the Tenderer)
Beneficiary	in favour of Transport for NSW (ABN 18 804 239 602) (TfNSW).
Recitals	
A	TfNSW has released an Invitation for Expression of Interest in relation to the ATP Onboard Installation on the C, K and V-Set Fleets Project.
B	The Tenderer has been Shortlisted to receive an Invitation to Tender for the ATP Onboard Installation on the C, K and V-Set Fleets Project following evaluation of its EOI and participate in the Procurement Process.
C	The Tenderer is required to execute this Deed Poll as an essential precondition to: <ul style="list-style-type: none"> i. receiving the Invitation to Tender; ii. submitting a Tender in response to the Invitation to Tender; and iii. participating in the Procurement Process.
D	This Deed Poll sets out certain undertakings and other provisions applicable to the Procurement Process.

This Deed Poll witnesses as follows:

¹ Retain or delete as applicable.

1. Interpretation

1.1 Definitions

In this Deed Poll:

Addendum means an addendum to the Invitation to Tender issued by TfNSW.

Addenda has a corresponding meaning.

Advisor means any person who directly or indirectly provides advice to the Tenderer or any Associate of the Tenderer in connection with the ATP Onboard Installation on the C, K and V-Set Fleets Project.

Affected Parties has the meaning given in clause 5(c).

Associate means, in relation to a person, any Related Party of that person or any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of that person or that Related Party and:

- (a) in the case of TfNSW, includes:
 - (i) any Government Agency;
 - (ii) any NSW Rail Entity; and
 - (iii) their officers, employees, agents, contractors, consultants, nominees, licensees or advisors; and
- (b) in the case of the Tenderer, includes:
 - (i) each Participant;
 - (ii) any entity proposed to:
 - (A) enter into the Contract Documents; or
 - (B) have an interest (whether direct or indirect) in an entity that is proposed to enter into the Contract Documents;
 - (iii) entities which the Tenderer or its Associates engage with from time to time in connection with the provision of:
 - (A) key technology, equipment or materials; and
 - (B) insurance advice, design, engineering, technical, verification, certification, environment, legal or accounting services, for the ATP Onboard Installation on the C, K and V-Set Fleets Project,

and any of their respective officers, employees, agents, contractors, consultants, nominees, licensees or advisors.

ATP Onboard Installation on the C, K and V-Set Fleets Project means the installation, testing and commissioning of ETCS equipment on the C-Set, K-Set and V-Set fleets prior to entry into full revenue service with ETCS operational.

Authority means:

- (a) any governmental, semi-governmental or local-government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality, body, or any other similar entity having jurisdiction in relation to the delivery of the ATP Onboard Installation on the C, K and V-Set Fleets Project; or
- (b) any other person having a right to impose a requirement, or whose consent is required under any mandatory requirements, with respect to any part of the delivery of the ATP Onboard Installation on the C, K and V-Set Fleets Project.

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

Claim includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, the ATP Onboard Installation on the C, K and V-Set Fleets Project or the Procurement Process;
- (b) under, arising out of, or in any way in connection with, any contract or deed which the Tenderer or any Other Tenderer may enter into with TfNSW in respect of the ATP Onboard Installation on the C, K and V-Set Fleets Project; or
- (c) otherwise at Law or in equity including:
 - (i) by, under or for a breach of a statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Closing Date and Time means, as the context requires, the date and time by which Tenders are due as required by the Invitation to Tender, as such date and time may be extended by TfNSW from time to time in its absolute discretion.

Completion Process means the process which:

- (a) occurs following the selection of the Successful Tenderer;
- (b) entails execution of all Contract Documents and any other legal documents required to be executed by TfNSW in connection with performance of the ATP Onboard Installation on the C, K and V-Set Fleets Project by, amongst others, the Successful Tenderer and TfNSW and any other agreements that the Successful Tenderer is required to enter into or procure; and
- (c) entails completion of all requirements necessary for contractual close to the satisfaction of TfNSW.

Confidential Information means the following, whether or not in tangible or electronic form (however disclosed):

- (a) all information directly or indirectly disclosed by or on behalf of TfNSW or its Associates to the Tenderer or its Associates, whether before or after execution of this Deed Poll which is connected directly or indirectly with the ATP Onboard Installation on the C, K and V-Set Fleets Project or the Procurement Process or the involvement of a person with the ATP Onboard Installation on the C, K and V-Set Fleets Project or the Procurement Process;
 - (b) all other information in relation to or connected with TfNSW or its Associates in relation to the ATP Onboard Installation on the C, K and V-Set Fleets Project or the Procurement Process in the possession or control of the Tenderer or its Associates including:
 - (i) information contained in or connected with the Invitation for Expression of Interest or the Invitation to Tender;
 - (ii) all past, current and prospective financial, trading and business information;
 - (iii) all concept designs, preliminary designs, other designs and specifications; and
 - (iv) any information concerning geotechnical, hydrological, contamination, environment or sea water quality matters;
 - (c) the fact that the Tenderer has had, will have, or is having discussions with TfNSW or its Associates in connection with the Procurement Process;
 - (d) the fact and terms of any discussions, negotiations or agreements between TfNSW or any of its Associates and the Tenderer or any of its Associates;
 - (e) all material disclosed in presentations by or on behalf of TfNSW or any of its Associates in connection with the ATP Onboard Installation on the C, K and V-Set Fleets Project;
 - (f) all notes, data and other records (in whatever form) based on, referring to or incorporating any information referred to in paragraphs (a) to (e); and
 - (g) all copies (in whatever form) of the information and those notes, data and other records referred to in any of paragraphs (a) to (f),
- but excludes:
- (h) information which was in the public domain before the date of this Deed Poll; or

- (i) information which comes into the public domain after the date of this Deed Poll, except through disclosure by the Tenderer or any of its Associates in contravention of this Deed Poll or any other obligations of confidence.

Conflict of Interest means where:

- (a) an individual or organisation engaged by or on behalf of TfNSW is influenced, or appears to be influenced, by personal interest (whether pecuniary or non-pecuniary) when assessing any EOI, Tender or offer made by or on behalf of a Tenderer or Participant; or
- (b) the Tenderer, any Participant, Advisor or Associate of the Tenderer:
- a. has an actual or perceived interest or duty which conflicts in a material way with the interests of the ATP Onboard Installation on the C, K and V-Set Fleets Project; or
 - b. is involved in a business or activity which is incompatible with the Tenderer's submission of the EOI or Tender, or the ATP Onboard Installation on the C, K and V-Set Fleets Project.

Conforming EOI means an EOI that complies with the requirements of the Invitation for Expression of Interest.

Contract Documents means the agreement entitled "Project Deed" and other agreements relating to the ATP Onboard Installation on the C, K and V-Set Fleets Project to be entered into between TfNSW and a supplier which establishes the rights and obligations of the supplier in relation to the ATP Onboard Installation on the C, K and V-Set Fleets Project.

Corporations Act means the *Corporations Act 2001* (Cth).

Disclosure Requirements means the requirement to disclose information under or in accordance with any one or more of the following:

- (a) the *Government Information (Public Access) Act 2009* (NSW);
- (b) the *Ombudsman Act 1974* (NSW);
- (c) Premier's Memorandum 2007-01 "Public Disclosure of Information Arising From NSW Government Tenders And Contracts"; or
- (d) the requirement to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability.

EOI means an expression of interest submitted in response to the Invitation for Expression of Interest.

EOI Process means the process which:

- (a) commences with the issue of the Invitation for Expression of Interest;

- (b) requires Tenderers to lodge a Conforming EOI;
- (c) involves the evaluation by TfNSW of Conforming EOIs; and
- (d) concludes with the announcement of no more than three (3) Shortlisted Tenderers.

Government Agency means TfNSW, the State of New South Wales or any governmental, semi-governmental, judicial, municipal, statutory, public or administrative entity, agency or authority and includes a Member of Parliament (in any right), or a statutory corporation.

Indemnified Parties has the meaning in clause 13.

Information Documents and Materials means any information document or other material which has been or may from time to time be provided, issued or made available to the Tenderer or any of its Associates by or on behalf of TfNSW, any Government Agency or any of their Associates in connection with the ATP Onboard Installation on the C, K and V-Set Fleets Project, including:

- (a) the Invitation for Expression of Interest;
- (b) the Invitation to Tender;
- (c) any comment or response given by, or on behalf of, TfNSW with respect to the ATP Onboard Installation on the C, K and V-Set Fleets Project (regardless of whether or not it is expressly classified or stated to be an 'Information Document');
- (d) any other information document or other material referred to or incorporated by reference into the Invitation for Expression of Interest or the Invitation to Tender;
- (e) any Confidential Information; and
- (f) any information or document expressly classified or stated to be an 'Information Document',

whether issued or made available before or after the date of this Deed Poll, or submission of the Tenderer's EOI or the Tender, or the date of execution of any Contract Documents.

Intellectual Property Rights includes all rights in the nature of intellectual property or industrial property (within the meaning of the term 'industrial property' as defined in Article 1 of the *Paris Convention for the Protection of Industrial Property*) and includes:

- (a) copyright;
- (b) trade and service marks, whether registered or unregistered, and any copyright material subsisting in those trademarks;
- (c) designs (whether registered or unregistered);

- (d) patents and inventions (whether patented, and whether patentable or not);
- (e) internet domain names;
- (f) trade names and business names;
- (g) moral rights;
- (h) confidential information and trade secrets;
- (i) any application or the right to apply for registration of any of the rights referred to in paragraphs (a) to (h) of this definition;
- (j) any letters patent or registration in respect of any of the rights referred to in paragraphs (a) to (h) of this definition; and
- (k) any of the rights referred to in paragraphs (a) to (h) of this definition, whether registered, registrable or not.

Invitation for Expression of Interest means the invitation to submit an expression of interest in connection with the ATP Onboard Installation on the C, K and V-Set Fleets Project issued by TfNSW, including all volumes (and any attachments) and Addenda.

Invitation to Tender or ITT means any invitation to submit Tenders in respect of the ATP Onboard Installation on the C, K and V-Set Fleets Project that may be issued by TfNSW to Shortlisted Tenderers as part of the ITT Process, including all volumes (and any attachments) and Addenda.

ITT Process means the process which:

- (a) commences with the announcement of the Shortlisted Tenderers;
- (b) continues with the release of the ITT;
- (c) involves interaction with the Shortlisted Tenderers;
- (d) requires the Shortlisted Tenderers to lodge a Tender which complies with the ITT;
- (e) involves the evaluation and clarification of Tenders; and
- (f) concludes with the announcement of the Successful Tenderer.

Law means:

- (a) those principles of law and equity established by decisions of courts; and
- (b) all legislation, statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the State or any other relevant authority.

Liability means any Loss whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty, and whether arising under or for breach of

contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law or in equity.

Loss includes any debt, obligation, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or liability of any kind.

Non-Conforming Tender means a Tender that does not comply with the requirements of any Invitation to Tender.

Notice has the meaning given to it in clause 14.1.

NSW Code means the New South Wales Government Code of Practice for Procurement and related Implementation Guidelines, in each case current at the date two weeks prior to the Closing Date and Time in respect of EOIs.

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

NSW Trains means the body corporate known by that name which was constituted as a body corporate under the *Transport Administration (General) Regulation 2005* (NSW) and all present and future iterations of that body corporate which continue in existence under the *Transport Administration Act 1988* (NSW) or any other legislation, or any other entity appointed to undertake some or all of the functions of that body.

Other Tenderer means any entity, partnership, joint venture or consortium, partner, joint venture participant or member of that partnership, joint venture or consortium as applicable (including, to the extent identified at this stage, any special purpose vehicle, holding entity, equity investor, sub-contractor, lender or financier) participating in the Procurement Process and competing with the Tenderer.

Participant means:

- (a) where the Tenderer is an individual entity, that entity; or
- (b) where the Tenderer is a partnership, joint venture or consortium, a partner, joint venture participant or member of that partnership, joint venture or consortium as applicable (including, to the extent identified at this stage, any special purpose vehicle, holding entity, equity investor, sub-contractor, lender or financier for the purpose of the ATP Onboard Installation on the C, K and V-Set Fleets Project).

Permitted Purpose means:

- (a) participating in the Procurement Process and preparing the Tenderer's EOI and its subsequent Tender;

- (b) where the Tenderer enters into the Contract Documents with TfNSW, as permitted by the Contract Documents; or
- (c) as required by Law or such other purpose as TfNSW may agree to in writing.

Process Period means the period from the date of this Deed Poll to the earlier of:

- (a) execution of the Contract Documents; and
- (b) TfNSW notifying the Tenderer and each Other Tenderer that TfNSW is terminating the Procurement Process.

Procurement Process means the process consisting of:

- (a) the EOI Process;
- (b) the ITT Process; and
- (c) the Completion Process.

Project Director means Mr Geoff Webb, or such other person as TfNSW notifies the Tenderer is the Project Director from time to time.

Project Structure has the meaning given in clause 12.1(a)(ii).

RailCorp or **Rail Corporation New South Wales** means a statutory corporation (ABN 59 325 778 353) constituted under Part 2 of the *Transport Administration Act 1988* (NSW) and all present and future iterations of that entity (including TAHE) which continue in existence under the *Transport Administration Act 1988* (NSW), *Transport Administration Amendment (Transport Entities) Act 2017* (NSW) or any other legislation or any other entity appointed to undertake some or all of the functions of that entity.

Related Party means, in respect of an entity, another entity which is a related body corporate (as defined by sections 9 and 50 of the Corporations Act or an associate (as defined by sections 10 to 17 of the Corporations Act) of that first mentioned entity.

Shortlisted Tenderer means a Tenderer who has been Shortlisted as a result of the EOI Process and who will be offered the opportunity to participate in the ITT Process.

Shortlisting means the shortlisting of certain Tenderers to receive an ITT for the ATP Onboard Installation on the C, K and V-Set Fleets Project following evaluation of their EOIs. Each of **Shortlist** and **Shortlisted** has a corresponding meaning.

Site Inspection has the meaning given in clause 3.6(a).

Stakeholder means a person, an entity or consortium (other than the Tenderer, any Other Tenderer or any persons or entities comprising the Tenderer or any Other Tenderer) which is or may be affected by the ATP Onboard Installation on the C, K and V-Set Fleets Project.

State means the State of New South Wales.

Successful Tenderer means a Shortlisted Tenderer or an entity to be formed by it who, following the ITT Process, is appointed (whether the Tenderer or an Other Tenderer) to undertake the ATP Onboard Installation on the C, K and V-Set Fleets Project and with whom TfNSW proposes to finalise and execute the Contract Documents.

Sydney Trains means the body corporate known by that name which was constituted as a body corporate under the *Transport Administration (General) Regulation 2005* (NSW) and all present and future iterations of that body corporate which continue in existence under the *Transport Administration Act 1988* (NSW) or any other legislation or any other entity appointed to undertake some or all of the functions of that body corporate.

TAHE or Transport Asset Holding Entity of New South Wales means a statutory corporation constituted (under the corporate name of Rail Corporation New South Wales) under Part 2 of the *Transport Administration Act 1988* (NSW), as amended by the *Transport Administration Amendment (Transport Entities) Act 2017* (NSW) which is to rename such corporation and all present and future iterations of that entity which continue in existence under the *Transport Administration Act 1988* (NSW), *Transport Administration Amendment (Transport Entities) Act 2017* (NSW) or any other legislation or any other entity appointed to undertake some or all of the functions of that entity.

Tender means the documents which will be required by the Invitation to Tender to be duly completed, executed and lodged by or on behalf of Tenderers pursuant to the Invitation to Tender.

Tenderer's Probity Auditor means the person (if any) appointed in accordance with clause 4.2.

TfNSW's Contact Officer means Paul Blakemore or such other person as TfNSW notifies the Tenderer is TfNSW's Contact Officer from time to time.

TfNSW's Probity Advisor means Tiffany Blackett of Procure Group Pty Ltd or such other person as TfNSW notifies the Tenderer is TfNSW's Probity Advisor from time to time.

Undertaking means an undertaking in the form set out in Schedule 1 to comply with the terms of this Deed Poll in so far as such terms relate to Confidential Information.

1.2 Priority in interpretation

For the purposes of this Deed Poll, to the extent of any inconsistency between this Deed Poll, the Invitation for Expression of Interest and the Invitation to Tender, the order of priority of interpretation will be:

- (a) this Deed Poll;
- (b) the Invitation to Tender; and
- (c) the Invitation for Expression of Interest.

1.3 Interpretation

In this Deed Poll unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any beneficiary or party to this Deed Poll includes that beneficiary's or party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to "the Tenderer" includes each Participant;
- (e) a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that authority, institute, association or body;
- (f) a reference to this Deed Poll or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed Poll or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;

- (h) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (i) a reference to:
 - (i) a party, clause or schedule is a reference to a party, clause or schedule of or to this Deed Poll; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) a reference to this Deed Poll includes all its schedules;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a person on the basis that such person put forward or drafted this Deed Poll or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, designs, specifications, models, plans and other documents in all forms including any electronic form in which it is generated.

1.4 Headings

Headings do not affect the interpretation of this Deed Poll.

1.5 Unfettered Discretion

- (a) This Deed Poll will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any legislation.
- (b) Without limiting clause 1.5(a), anything TfNSW does, fails to do or purports to do, pursuant to its functions and powers under any legislation, will be deemed not to be an act or omission by TfNSW under this Deed Poll.
- (c) The Tenderer waives any Claims that it may have against TfNSW as a result of the exercise by TfNSW of its functions and powers under any legislation.

2. NSW Code of Practice

- (a) The Tenderer acknowledges that the NSW Code applies to the ATP Onboard Installation on the C, K and V-Set Fleets Project and that

- compliance with the NSW Code is a pre-requisite to lodging an EOI, lodging a Tender, the Procurement Process and the award of any contract.
- (b) The Tenderer undertakes to:
 - (i) comply with the NSW Code for the duration of the Procurement Process and any Contract Documents that may be awarded to it; and
 - (ii) provide on request evidence of such compliance and access to all relevant information to demonstrate such compliance.
 - (c) The ability of a Tenderer to demonstrate compliance with the NSW Code is an essential condition of the Procurement Process.
 - (d) If the Tenderer fails to comply with the NSW Code, this failure may be taken into account by TfNSW when considering the Tenderer's EOI or Tender and may result in the EOI or Tender being passed over without prejudice to any other rights of action or remedies available to TfNSW.

3. Process Matters

3.1 Questions

- (a) Except to the extent that the Project Director otherwise agrees, if the Tenderer has any questions or otherwise wishes to communicate with TfNSW concerning the Procurement Process or the ATP Onboard Installation on the C, K and V-Set Fleets Project, the Tenderer undertakes to ask or make these questions or communications to TfNSW's Contact Officer in accordance with the following process:
 - (i) the Tenderer must notify TfNSW's Contact Officer of the enquiry via email on ATPCKVSetsProcurement@transport.nsw.gov.au no later than 7 Business Days prior to the Closing Date and Time;
 - (ii) TfNSW will respond to such enquiries in the form of an Addendum or Addenda and may issue the Addendum or Addenda to any Other Tenderer;
 - (iii) if the Tenderer believes that an enquiry is confidential, it may identify the enquiry as confidential in its notice to TfNSW's Contact Officer, following which a determination will be made by TfNSW, acting reasonably and, where appropriate, after obtaining advice from TfNSW's Probity Advisor, whether or not the enquiry is confidential;
 - (iv) if TfNSW determines that the enquiry is not confidential, TfNSW will notify the Tenderer of this determination and the Tenderer may withdraw the enquiry within 2 Business Days of such notification;

- (v) if the Tenderer does not withdraw the enquiry within 2 Business Days, such enquiry will be dealt with in accordance with the process in subparagraphs (i) and (ii); and
 - (vi) if TfNSW determines that an enquiry is confidential, the answer to the enquiry, if any, will not be issued by TfNSW to Other Tenderers.
- (b) If TfNSW provides additional information to the Tenderer, it reserves the right to issue a copy of this additional information to any Other Tenderer. The Tenderer acknowledges that, unless determined otherwise in accordance with clause 3.1(a)(vi), it is TfNSW's intention to disclose all such responses to all Other Tenderers.

3.2 Contact between TfNSW, Government Agencies and Stakeholders

- (a) TfNSW may invite the Tenderer to attend meetings with TfNSW and any others during the Process Period to discuss issues arising in relation to preparing the Tender, the ATP Onboard Installation on the C, K and V-Set Fleets Project or the Procurement Process.
- (b) The Tenderer undertakes that it will not, and it will ensure that its Associates do not, make contact with any Government Agency, Stakeholder, any Associate of TfNSW or any of their Associates, to discuss any aspect of the ATP Onboard Installation on the C, K and V-Set Fleets Project or Procurement Process, except with the prior written consent of TfNSW, which may be given or withheld on such terms or conditions as TfNSW determines.
- (c) Without limiting TfNSW's discretion under clause 3.2(b) to give or withhold consent, or to impose terms or conditions, the Tenderer acknowledges and agrees that those conditions may include:
 - (i) TfNSW requiring the Tenderer to give TfNSW prior notice of the topic of the proposed meeting or contact;
 - (ii) TfNSW determining the date and time for, as well as the location or length of, the proposed meeting or contact;
 - (iii) TfNSW or its nominated representative being present at the proposed meeting or contact; or
 - (iv) TfNSW refusing to permit any meetings or contact after the date which is two weeks prior to the Closing Date and Time.
- (d) If TfNSW requests a meeting or consents to a request for a meeting or phone call:
 - (i) the party that requested the meeting or phone call will prepare an agenda of items to be discussed;

- (ii) the meeting or phone call will be conducted in accordance with all probity and other procedures and protocols advised by TfNSW from time to time;
- (iii) TfNSW's Probity Advisor must attend;
- (iv) if a meeting or phone call has been convened at the request of the Tenderer, the Tenderer must give TfNSW at least 3 Business Days written notice of issues or matters which it wishes to discuss at the meeting or the phone call;
- (v) TfNSW may decline to discuss any or all issues or matters raised by the Tenderer at a meeting or during a phone call;
- (vi) TfNSW may, in its absolute discretion, inform all Other Tenderers of any matter discussed at a meeting or phone call, subject to section 3.1(a);
- (vii) TfNSW may, in its absolute discretion, record any meeting or phone call via any form of media, copies of which may only be provided to the Tenderer at TfNSW's discretion; and
- (viii) the Tenderer must not rely on any information provided during any meeting or discussion unless a formal clarification or addendum is issued by TfNSW.

3.3 Notification of error or discrepancy

The Tenderer must notify TfNSW's Contact Officer of any error or discrepancy in the Invitation to Tender, as soon as reasonably practicable after discovering it.

3.4 Clarifications and other information

- (a) At any time, TfNSW may request:
 - (i) clarification of a Tender;
 - (ii) additional information concerning any part of a Tender;
 - (iii) information as to the preparation of a Tender; or
 - (iv) information as to the basis on which the Tenderer may be prepared to undertake the ATP Onboard Installation on the C, K and V-Set Fleets Project.
- (b) TfNSW is not obliged to check or clarify the apparent meaning of any part of a Tender.
- (c) If a request referred to in clause 3.4(a) is made by TfNSW, the Tenderer must promptly respond, in writing and in the format required by TfNSW.

- (d) Where such information is not provided within the timeframe nominated by TfNSW, TfNSW reserves the right to continue its evaluation process on the basis of the available information.

3.5 Right to negotiate

- (a) During the Process Period, TfNSW may negotiate with the Tenderer or any Other Tenderer on any matter TfNSW may determine.
- (b) TfNSW may allow the Tenderer or any Other Tenderer to amend, alter, add to or otherwise change its Tender after the Closing Date and Time.
- (c) TfNSW is not obliged to disclose the nature of negotiations, amendments, alterations, additions or other changes nor to offer or accept the same or equivalent amendments, alterations or other changes to those that it may offer to or accept from any Other Tenderer.

3.6 Site Inspections

- (a) During the Process Period:
 - (i) TfNSW may organise for the Tenderer or any Other Tenderer to attend site inspections; and
 - (ii) the Tenderer may, following the issue of any Invitation to Tender to it, request permission to conduct site inspections, in areas which are not generally accessible public areas (each a **Site Inspection**).
- (b) All requests for Site Inspections referred to in clause 3.6(a)(ii) will:
 - (i) be subject to the approval of TfNSW in its sole discretion, which may be given or withheld on such terms or conditions as TfNSW determines; and
 - (ii) if approved, be coordinated by TfNSW.
- (c) The Tenderer must bear its own costs associated with the relevant Site Inspections and must bear any costs incurred by TfNSW in relation to an inspection requested under clause 3.6(a)(ii).
- (d) The Tenderer must comply with the Site Inspection protocols specified within the Invitation to Tender or by TfNSW from time to time.
- (e) If requested by TfNSW, prior to undertaking a Site Inspection, the Tenderer must, and must procure that any of its Associates requested by TfNSW will, execute and deliver an indemnity in the form set out in Schedule 2.
- (f) TfNSW may require the Tenderer or its Associates to successfully complete safety awareness training as a pre-condition to conducting any Site Inspection.

3.7 Additional TfNSW rights

- (a) The Tenderer acknowledges and agrees that TfNSW may at any time and from time to time and acting in its sole discretion, unilaterally and without being required to give any reasons:
 - (i) cancel, supplement, vary or amend the terms of clauses 3.1, 3.2, 3.4 to 3.6, 4.1 and 4.4 of this Deed Poll or any information, requirements, procedures, selection criteria and protocols relevant to the Procurement Process;
 - (ii) waive any or all (in whole or in part) of the obligations of the Tenderer under this Deed Poll or the requirements under the Invitation to Tender; and
 - (iii) waive any or all of the obligations of any Other Tenderer.
- (b) Without prejudice to any rights or remedies that TfNSW may have under this Deed Poll or otherwise, TfNSW may elect to exclude the Tenderer from continued participation in the Procurement Process and may cease to consider any Tender if the Tenderer fails in whole or in part to comply with this Deed Poll or the Invitation to Tender.

3.8 Nature of Procurement Process

- (a) The Tenderer acknowledges that the Procurement Process is resource intensive, time critical, expensive and requires dedicated commitment from senior management of the Tenderer.
- (b) The Tenderer commits to making available, and procuring that its Associates make available, all necessary resources for the purposes of the Procurement Process in priority to any other commitment.

3.9 Notification of change in circumstances

- (a) The Tenderer must inform TfNSW promptly in writing of any material change:
 - (i) to any information contained in the Tenderer's EOI or Tender;
 - (ii) in any circumstance, which may affect the completeness or accuracy of any information provided in, or in connection with, the Tenderer's EOI or Tender.

3.10 Conflict of interest

- (a) Without prejudice to clause 4, the Tenderer must provide full, frank and prompt disclosure of any Conflict of Interest which:
 - (i) exists or may exist at the time of submission of the Tenderer's EOI;or

- (ii) may arise after the Closing Date and Time.

3.11 Influences

- (a) Without limiting any other provision of this Deed Poll, the Invitation for Expression of Interest or the Invitation to Tender, the Tenderer must not seek to unduly influence any Government Agency or any of its contractors, employees, agents or advisers in relation to the Procurement Process for the ATP Onboard Installation on the C, K and V-Set Fleets Project. For the avoidance of doubt, payments or the provision of favours, gifts, entertainment or other acts could be construed as special treatment which would be a contravention of this clause.
- (b) The Tenderer acknowledges and agrees that TfNSW may, in its absolute discretion, exclude the Tenderer from the Procurement Process for the ATP Onboard Installation on the C, K and V-Set Fleets Project if the Tenderer fails to comply with this clause 3.11.

4. Probity

4.1 TfNSW's Probity Advisor

- (a) TfNSW has appointed TfNSW's Probity Advisor who will, among other matters, be responsible for oversight of the process and procedures of the Tenderer's Probity Auditor (if any).
- (b) The Tenderer will provide (or procure) access for TfNSW's Probity Advisor to the records, books, accounts and personnel of:
 - (i) the Tenderer; and
 - (ii) the Tenderer's Probity Auditor.

4.2 Tenderer's Probity Auditor

- (a) The Tenderer agrees and acknowledges that TfNSW may, where it considers that there is a need to do so, request the Tenderer to appoint a probity auditor in relation to the Tenderer.
- (b) Without limiting the rights of TfNSW, the terms of appointment will at least include the following (unless dispensed with by TfNSW by notice to the Tenderer):
 - (i) the costs and expenses of the Tenderer's Probity Auditor will be paid, as and when due, by the Tenderer;
 - (ii) the Tenderer's Probity Auditor must have:
 - (A) full access to all records, books, accounts and personnel of the Tenderer; and

- (B) full power to question and require answers of those personnel (to the extent that such authority may lawfully be given), to the extent that the Tenderer's Probity Auditor, in its absolute discretion, considers that those records, books, accounts, personnel, questions or answers are or may be relevant to matters connected with compliance with this Deed Poll, the ATP Onboard Installation on the C, K and V-Set Fleets Project, the Procurement Process, or the Tenderer's Probity Auditor otherwise fulfilling their role;
 - (iii) the Tenderer's Probity Auditor will be obliged to report to TfNSW on the compliance of the Tenderer with this Deed Poll and each Undertaking;
 - (iv) the Tenderer's Probity Auditor will be obliged to report as requested by TfNSW but must at least provide a report:
 - (A) as part of any response to the Invitation to Tender delivered by, or on behalf of the Tenderer;
 - (B) immediately prior to the announcement of a Successful Tenderer; and
 - (C) on becoming aware of a breach of this Deed Poll or of any Undertaking.
- (c) The Tenderer undertakes to grant to TfNSW's Probity Advisor full access to the papers and process of the Tenderer's Probity Auditor in order to verify the process and compliance procedures of the Tenderer's Probity Auditor.

4.3 Co-operate

The Tenderer agrees to fully co-operate with and do all things reasonably necessary or desirable, to enable TfNSW's Probity Advisor and the Tenderer's Probity Auditor (if any) to effectively and expeditiously carry out their respective duties.

4.4 Tenderer's probity checks

The Tenderer consents to probity checks being conducted at any time. Such probity checks may include:

- (a) investigations into commercial structure, business and credit history;
- (b) prior contract compliance;
- (c) any criminal records or pending charges;
- (d) interviews with any referees nominated; and

- (e) research into any relevant activity that has been, is or might reasonably be expected to be the subject of regulatory investigation.

4.5 Responsibility for probity

- (a) Nothing in this clause 4 detracts from or limits:
 - (i) the Tenderer's obligations or responsibilities for complying with all probity requirements which relate to the Procurement Process or the ATP Onboard Installation on the C, K and V-Set Fleets Project; or
 - (ii) the obligations or responsibilities of the Tenderer's Probity Auditor for monitoring and reporting on whether all probity requirements which relate to the Procurement Process or the ATP Onboard Installation on the C, K and V-Set Fleets Project have been adhered to.
- (b) The Tenderer must immediately notify TfNSW of any fact, matter or thing which may have an adverse effect on the Procurement Process, probity or perception of probity in relation to the ATP Onboard Installation on the C, K and V-Set Fleets Project.

5. Collusive Agreements

- (a) The Tenderer must not enter into any improper or anti-competitive contract, arrangement or understanding with any Other Tenderer or any other person in connection with the Procurement Process or the ATP Onboard Installation on the C, K and V-Set Fleets Project.
- (b) TfNSW may, in its absolute discretion, reject any EOI or Tender lodged by the Tenderer where TfNSW reasonably believes that the Tenderer has engaged in any collusive or anti-competitive conduct or any other similar conduct with any Other Tenderer or any other person in relation to the Procurement Process or the ATP Onboard Installation on the C, K and V-Set Fleets Project.
- (c) The Tenderer represents and warrants that it and its Associates (**Affected Parties**):
 - (i) have no knowledge of the content of the EOI or Tender of any Other Tenderer other than information disclosed or permitted to be held (as approved by TfNSW in writing prior to any such disclosure) due to participation in any other EOI or Tender;
 - (ii) except as disclosed in its EOI or Tender, have not entered into any contract, arrangement or understanding to pay or allow any money or other benefit directly or indirectly to a trade or industry

- association (above the published standard membership fee) or to or on behalf of any Other Tenderer in relation to the Procurement Process or any contract to be entered into consequent thereon, nor paid or allowed any money or other benefit on that account, nor will the Affected Parties pay or allow any money or other benefit on that account;
- (iii) have not entered into any contract, arrangement or understanding to receive any money or other benefit directly or indirectly from or on behalf of any Other Tenderer, nor received any money or other benefit from or on behalf of any Other Tenderer in relation to the Procurement Process or any contract to be entered into consequent thereon, nor will the Affected Parties receive any money or other benefit as aforesaid;
 - (iv) in the event of the Affected Parties receiving any money or other benefit from or on behalf of any Other Tenderer in relation to the Procurement Process, the Affected Parties will immediately give TfNSW written notice of such an event and such money or the value of any benefit shall be held on trust for and become immediately payable to TfNSW; and
 - (v) in the event of any Affected Party paying or allowing to or on behalf of a trade or industry association or any Other Tenderer any money or other benefit in breach of these conditions, the Tenderer will immediately give TfNSW written notice of such an event, and TfNSW shall be entitled to withhold from any payment due to the Tenderer (or any other Affected Parties) on any account an equivalent sum as liquidated damages.
- (d) Each representation and warranty made in clause 5(c) will be deemed to be repeated by the submission by the Tenderer of its EOI and by the submission by the Tenderer of its Tender, in each case on the date of such submission.
- (e) The Tenderer acknowledges and agrees that:
- (i) if TfNSW reasonably believes that there has been a failure by the Tenderer to comply with this clause 5, TfNSW may exclude the Tenderer from further participation in the Procurement Process, without prejudice to TfNSW's rights to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against Liability from the Tenderer; and
 - (ii) a failure by the Tenderer to comply with this clause 5 will be deemed to be a breach of an essential condition of this Deed Poll.

6. TfNSW's rights and powers

The Tenderer acknowledges and agrees that, despite any provision of the Invitation for Expression of Interest, the Invitation to Tender or this Deed Poll to the contrary, TfNSW reserves the right in its absolute discretion and without limiting any other right which TfNSW may have whether under the Invitation for Expression of Interest, the Invitation to Tender or this Deed Poll or otherwise, to do any one or more of the following at any time without giving reasons and the exercise of such rights will not give rise to any Liability to the Tenderer on the part of TfNSW or any entitlement for the Tenderer to make any Claim against TfNSW:

- (a) cancel or amend the Procurement Process (in whole or in part), whether before or after any Closing Date and Time;
- (b) structure the Procurement Process as it sees fit and to alter or amend the content, process, timing and/or structure of the Procurement Process at any time;
- (c) issue Addenda to the Invitation to Tender (including to modify or clarify the Invitation to Tender in any way or to respond to any query by a Tenderer) and such Addenda will become part of the Invitation to Tender, as the case may be;
- (d) cancel, supplement, vary or replace the Invitation to Tender;
- (e) not award any contract at the conclusion of the Procurement Process;
- (f) procure the whole or any part of the ATP Onboard Installation on the C, K and V-Set Fleets Project by any other means it sees fit (including by way of a new procurement process);
- (g) proceed with the ATP Onboard Installation on the C, K and V-Set Fleets Project or any part of the ATP Onboard Installation on the C, K and V-Set Fleets Project in any way, whether or not contemplated by the Invitation for Expression of Interest, the Invitation to Tender or this Deed Poll;
- (h) provide to any or all Tenderers any further information provided to a particular Tenderer, including in response to queries regarding the Invitation to Tender or any document contained or referred to in the Information Documents and Materials;
- (i) decide to:
 - (i) waive any requirement of the Invitation to Tender;
 - (ii) have any Tenderer or other entity (whether or not they lodged an EOI in response to the Invitation for Expression of Interest or a Tender in response to the Invitation to Tender) participate in all or part of the ATP Onboard Installation on the C, K and V-Set Fleets Project;

- (iii) not proceed with all or any part of the Procurement Process or the ATP Onboard Installation on the C, K and V-Set Fleets Project; or
- (iv) change its approach to the award of the work to any person;
- (v) consider and accept Non-Conforming Tenders;
- (vi) reinvite EOIs or Tenders for the ATP Onboard Installation on the C, K and V-Set Fleets Project or any part of the ATP Onboard Installation on the C, K and V-Set Fleets Project from all or any of the Tenderers who have lodged an EOI or Tender, or from any other person;
- (vii) extend any Closing Date and Time;
- (viii) seek an EOI or Tender from, Shortlist, enter into discussion or negotiations with, or eliminate from further participation in the Procurement Process, any one or more persons;
- (ix) accept a substitution of, withdrawal of, or addition to any of the Participants comprising the Tenderer or any person or entity comprising any Other Tenderer;
- (x) vary the Procurement Process or the ATP Onboard Installation on the C, K and V-Set Fleets Project;
- (xi) vary its requirements or evaluation criteria for the Invitation for Expression of Interest, the Invitation to Tender or the ATP Onboard Installation on the C, K and V-Set Fleets Project;
- (xii) convene meetings or phone calls with an individual Tenderer to discuss issues associated with the Tenderer's EOI or Tender;
- (xiii) convene meetings or phone calls with Tenderers, either individually or collectively, to discuss issues associated with the Procurement Process or any other aspect of the ATP Onboard Installation on the C, K and V-Set Fleets Project;
- (xiv) request additional, or clarification of, information within a reasonable timeframe from any or all Tenderers, and where the request is directed to the Tenderer, the Tenderer must provide any such response promptly in writing;
- (xv) negotiate with any Tenderer, and such negotiations:
 - (A) may involve or result in the amendment of any aspect of the particular Tenderer's EOI or Tender, regardless of how substantial the amendment or the fact that the amendment only relates to a particular Tenderer; and

- (B) do not require TfNSW to provide the Tenderer or any Other Tenderer with the same information, opportunity to negotiate, or proposed amendment of any aspect of the Invitation for Expression of Interest, the Invitation to Tender, any Information Documents and Materials, the Tenderer's EOI or the Tenderer's Tender, and
- (C) discontinue negotiations with the Tenderer or any Other Tenderer for any reason;
- (j) publish the names of the Tenderer, any Associates of the Tenderer, the Other Tenderers and any of their associates or participants;
- (k) rely on publicly available information relating to the Tenderer or the Other Tenderers as part of the evaluation process; and
- (l) take such other action as it considers, in its absolute discretion, appropriate or necessary in relation to the Procurement Process.

7. Tenderer's Warranties and Acknowledgements

7.1 Protection of Privacy

- (a) The Tenderer:
 - (i) in respect of any personal information provided in its EOI, its Tender or any contract arising from the Procurement Process, warrants that the information is accurate, up to date and complete, and that individuals to which the personal information refers have authorised its collection and are aware:
 - (A) that the information is being collected, and will be held by TfNSW;
 - (B) that the information is being collected for the purpose of evaluating the Tenderer's EOI or Tender, as the case may be, and the administration of any contracts arising from the EOI, the Tender or the Procurement Process, and may be made available to other Government Agencies or local government authorities for those purposes;
 - (C) when the supply of the information by the individual is required by Law or is voluntary, and of any consequences for the individual if the information (or any part of it) is not provided; and
 - (D) of the existence of any right of access to, and correction of, the information.

- (ii) in relation to any personal information provided by the Tenderer in connection with its EOI or Tender, warrants and represents to TfNSW that the Tenderer has complied with all applicable privacy Laws.
- (b) The Tenderer acknowledges and agrees that it must comply with all applicable privacy Laws in relation to any personal information provided to it by TfNSW or its Associates and must only use such information for the purpose for which it is provided by TfNSW.

7.2 Exchange of information within Government

- (a) The Tenderer acknowledges and agrees that TfNSW may, and hereby authorises TfNSW to, make available to other Government Agencies information including, but not limited to, any information provided by the Tenderer to TfNSW and information relating to the Tenderer's performance and financial position.
- (b) The Tenderer acknowledges and agrees that:
 - (i) any information about the Tenderer, from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by TfNSW and any other Government Agency in considering whether to offer the Tenderer opportunities for State government work including but not limited to assessment of suitability for registration, pre-qualification, selective lists or the award of a contract; and
 - (ii) TfNSW regards the provision of information about the Tenderer to any Government Agency as privileged under section 22 of the *Defamation Act 1974* (NSW) and neither TfNSW, nor the State will be liable for Claims in respect of any matter arising out of the provision or receipt of such information, including any Claim for Loss to the Tenderer arising out of the communication.

7.3 Financial assessment

The Tenderer acknowledges and agrees that:

- (a) by participating in the Procurement Process, TfNSW may engage private sector consultants to undertake a financial assessment of it and any Participants; and
- (b) in the event that the Tenderer is appointed as the Successful Tenderer, TfNSW may use the same process to periodically update the financial assessments of the Successful Tenderer and its Participants, including during the term of the Contract Documents.

7.4 No Contract

The Tenderer acknowledges and agrees that:

- (a) none of this Deed Poll, the Invitation for Expression of Interest, the Invitation to Tender, the lodgement of an EOI, the lodgement of a Tender, the Procurement Process or the evaluation of any EOI or any Tender by TfNSW will:
 - (i) except for the obligations on the Tenderer created under this Deed Poll, the Invitation for Expression of Interest or the Invitation to Tender, create a contract between the Tenderer and TfNSW; or
 - (ii) impose any obligations at Law or otherwise upon TfNSW; and
- (b) in undertaking the Procurement Process, including in its evaluation of the Tenderer's EOI or Tender, TfNSW will not be under any obligation to act in any particular manner or refrain from acting in any particular manner.

7.5 No liability

The Tenderer acknowledges and agrees that:

- (a) neither TfNSW nor any Government Agency will be liable upon any Claim whatsoever by the Tenderer arising out of, or in any way in connection with:
 - (i) TfNSW or a Government Agency exercising, or failing to exercise, any of their rights in relation to the Procurement Process, including as set out in this Deed Poll;
 - (ii) anything that TfNSW or a Government Agency does or fails to do as part of the Procurement Process, including in the evaluation of EOIs or Tenders; or
 - (iii) any of the matters or things relevant to the ATP Onboard Installation on the C, K and V-Set Fleets Project in respect of which the Tenderer must satisfy or inform itself under the Invitation for Expression of Interest, the Invitation to Tender or this Deed Poll; and
- (b) the Tenderer will have no right to appeal against any decision arising from the Procurement Process, any EOI or any Tender.

7.6 No Claim for costs

The Tenderer acknowledges and agrees that:

- (a) no payment will be made by TfNSW or any Government Agency for any costs or Liabilities suffered or incurred by the Tenderer or any of its Associates arising out of, or in any way connected with, the Procurement Process, including any costs or Liabilities incurred by the Tenderer in:

- (i) preparing and lodging an EOI or a Tender;
 - (ii) participating in any discussions, negotiations, briefing sessions or site inspections; or
 - (iii) undertaking any tasks after lodging its EOI or Tender; and
- (b) the Tenderer will have no Claim of any kind against TfNSW or any Government Agency or any of their officers, employees, consultants or agents (whether in contract, tort (including negligence), equity, under statute or otherwise) arising from or in connection with:
- (i) any costs or Liabilities suffered or incurred by the Tenderer in preparing and lodging an EOI or a Tender (including any amendments or requests for further information by TfNSW);
 - (ii) TfNSW or any Government Agency exercising or failing to exercise any discretion, right or power it has under or in connection with the ATP Onboard Installation on the C, K and V-Set Fleets Project; or
 - (iii) any of the matters or things relevant to an EOI, a Tender or the ATP Onboard Installation on the C, K and V-Set Fleets Project in respect of which the Tenderer must satisfy itself under this Deed Poll, the Invitation for Expression of Interest or the Invitation to Tender, as the case may be.

7.7 Information Documents and Materials

The Tenderer:

- (a) warrants that it will not rely upon the Information Documents and Materials as being accurate, adequate, suitable or complete for the purposes of enabling it to prepare and submit its EOI or Tender or to perform any obligations if it enters into the Contract Documents;
- (b) warrants that it will make its own independent evaluation of the accuracy, adequacy, suitability and completeness of the Information Documents and Materials for the purposes of enabling it to prepare and submit its EOI and Tender and to perform any obligations if it enters into the Contract Documents and will base the prices which it bids as part of its Tender upon its own independent evaluation;
- (c) acknowledges and agrees that:
 - (i) TfNSW may, but is not obliged to, provide it with the Information Documents and Materials;
 - (ii) any Information Documents and Materials that TfNSW provides:
 - (A) will be provided by TfNSW for the information only of the Tenderer; and

- (B) do not form part of the Contract Documents (except to the extent they are expressly incorporated into those Contract Documents);
- (iii) TfNSW does not owe any duty of care to the Tenderer with respect to the Information Documents and Materials;
- (iv) to the extent that TfNSW is not the author or source of any Information Documents and Materials it merely passes those documents on to the Tenderer and TfNSW does not adopt the content of those Information Documents and Materials, nor guarantee or make any other representation as to their accuracy and completeness;
- (v) TfNSW:
 - (A) is not responsible for; and
 - (B) makes no representation or warranty in respect of, the contents of the Information Documents and Materials, including the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, geotechnical investigations, opinions, analysis, recommendations, findings or other information contained in the Information Documents and Materials;
- (vi) where any information or document is referred to and incorporated by reference in any Information Documents and Materials, the Tenderer will not rely upon any summary of the information or document which appears in any such Information Documents and Materials;
- (vii) no representation or warranty (express or implied) has been made by TfNSW (or by anyone on its behalf) to the Tenderer that the Information Documents and Materials are accurate, adequate, suitable or complete for any purpose connected with the ATP Onboard Installation on the C, K and V-Set Fleets Project or the preparation of the Tenderer's EOI or Tender and the performance of any obligations which the Tenderer will be required to perform if it enters into the Contract Documents;
- (viii) no representation or warranty (express or implied) has been made by TfNSW (or by anyone on its behalf) that the Information Documents and Materials have been independently verified for any purpose connected with the ATP Onboard Installation on the C, K and V-Set Fleets Project or the preparation of the Tenderer's EOI or Tender; and

- (ix) the Tenderer will have the opportunity during the Procurement Process to itself undertake and to request others to make further enquiries and investigations relating to the subject matter of the Information Documents and Materials and for this purpose will have regard to the acknowledgements, warranties and releases in this Deed Poll in undertaking its own enquiries and investigations and in requesting further enquiries and investigations;
- (d) acknowledges and agrees that:
 - (i) TfNSW has provided and will be providing the Information Documents and Materials to the Tenderer in reliance upon the acknowledgements and warranties contained in this Deed Poll;
 - (ii) if TfNSW ultimately accepts the Tenderer as the Successful Tenderer, TfNSW will be doing so and TfNSW will be entering into the Contract Documents in reliance upon the acknowledgements and warranties contained in this Deed Poll; and
 - (iii) TfNSW will not be liable to the Tenderer upon any Claim arising out of or any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of, the Information Documents and Materials by the Tenderer or any of its Associates or any person to whom the Information Documents and Materials are disclosed by the Tenderer; or
 - (B) a failure by TfNSW to provide any information to the Tenderer;
- (e) warrants that it has or will:
 - (i) obtain and consider all necessary information relevant to the risks, contingencies and other circumstances having an effect on the EOI or the Tender;
 - (ii) satisfy itself as to the correctness and sufficiency of its EOI and the Tender, having regard to those risks;
 - (iii) inform itself of all matters relevant to the employment of labour and all industrial matters relevant to the ATP Onboard Installation on the C, K and V-Set Fleets Project;
 - (iv) if any sites are made available by TfNSW in connection with the ATP Onboard Installation on the C, K and V-Set Fleets Project, examine the sites for the ATP Onboard Installation on the C, K and V-Set Fleets Project and their surroundings and inform itself completely as to the conditions of the sites for the ATP Onboard Installation on the C, K and V-Set Fleets Project; and

- (v) take such professional advice as is appropriate for a project of this type.

7.8 Reliance on Tenders

In submitting its Tender, the Tenderer represents and warrants to TfNSW that:

- (a) its Tender has been diligently prepared and TfNSW may rely upon it; and
- (b) it will participate in each stage of the Procurement Process substantially on the basis set out in, and reasonably inferred from, its Tender.

7.9 Offers of employment

The Tenderer acknowledges and agrees that it must:

- (a) not make an approach or an offer of employment at any time during the Procurement Process for the ATP Onboard Installation on the C, K and V-Set Fleets Project to any employee or contractor of TfNSW who is involved in the ATP Onboard Installation on the C, K and V-Set Fleets Project (and if such an offer is made, the Tenderer acknowledges that TfNSW may, at its absolute discretion, immediately terminate the Tenderer's involvement in the Procurement Process for the ATP Onboard Installation on the C, K and V-Set Fleets Project, or require that additional probity measures be taken); and
- (b) notify TfNSW immediately of any offer of employment made during the Procurement Process for the ATP Onboard Installation on the C, K and V-Set Fleets Project to any employee or contractor of TfNSW who is not involved in the ATP Onboard Installation on the C, K and V-Set Fleets Project, but who is engaged, or who has previously been engaged, by TfNSW in relation to the ATP Onboard Installation on the C, K and V-Set Fleets Project.

7.10 TfNSW consent

Where TfNSW's consent is required under this Deed Poll, the Invitation for Expression of Interest or the Invitation to Tenders, the Tenderer acknowledges that such consent may be:

- (a) given or withheld by TfNSW in TfNSW's absolute discretion; or
- (b) given subject to such conditions as TfNSW may determine.

8. Security and control of Confidential Information

8.1 Security

The Tenderer must, at its cost:

- (a) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised by this Deed Poll;
- (b) subject to the terms of this Deed Poll, keep Confidential Information under its control; and
- (c) establish and maintain effective and auditable procedures for ensuring compliance with this Deed Poll.

8.2 Assistance in proceedings

The Tenderer must, at its cost, provide all reasonable assistance requested by TfNSW in relation to any proceedings TfNSW may take against any person for unauthorised use, copying or disclosure of Confidential Information, or failure to comply with the provisions of this Deed Poll or any Undertaking.

8.3 TfNSW's right to terminate holding of Confidential Information

TfNSW may terminate the entitlement of the Tenderer to hold Confidential Information at any time with immediate effect, by giving written notice to that effect to the Tenderer.

8.4 Consequences of right to terminate holding of Confidential Information

On termination under clause 8.3 of the entitlement of the Tenderer to hold Confidential Information, or upon completion of the Permitted Purpose, without limitation to the other rights of TfNSW, the right of the Tenderer to use Confidential Information ceases and the Tenderer must immediately procure that, except to the extent prohibited by Law from doing so, such Confidential Information is, at TfNSW's option, either:

- (a) returned to TfNSW;
- (b) destroyed and that destruction certified to TfNSW;
- (c) destroyed and a representative of TfNSW is permitted to witness that destruction; or
- (d) dealt with in some other manner nominated by TfNSW and reasonably acceptable to the Tenderer.

8.5 Effect of such termination on accrued rights

Termination of the entitlement to hold Confidential Information pursuant to clause 8.3 does not affect any accrued rights or remedies TfNSW may have.

8.6 Additional obligations unaffected

The obligations under this Deed Poll are in addition (and without prejudice) to any other obligations of confidence or with respect to probity which the Tenderer may have whether at Law, in equity, by statute or otherwise.

8.7 Confidentiality obligations continue after assignment or Termination

The obligations of confidentiality under this Deed Poll continue to apply after assignment, transfer or termination of the right to hold Confidential Information under this Deed Poll.

9. Use and disclosure of Confidential Information by the Tenderer

9.1 Use of Confidential Information

The Tenderer must:

- (a) not use the Confidential Information for any purpose whatsoever except the Permitted Purpose;
- (b) keep confidential all Confidential Information (subject to disclosure permitted under clause 9.2 or 9.4); and
- (c) not copy or duplicate (or allow the copying or duplication of) any Confidential Information except for the purposes of the disclosure of Confidential Information provided for in clause 9.2.

9.2 Disclosure of Confidential Information

- (a) The Tenderer may only disclose Confidential Information to:
 - (i) those specifically nominated by TfNSW; or
 - (ii) any person who:
 - (A) has a need to know (and only to the extent that each has a need to know) the Confidential Information for the Permitted Purpose;
 - (B) is aware that the Confidential Information must be kept confidential and may only be used for the Permitted Purpose; and
 - (C) has signed and delivered an Undertaking to the Tenderer, and a copy of the Undertaking to the Tenderer's Probity Auditor (if any).
- (b) Within 3 Business Days of receiving a request to disclose, the Tenderer must provide TfNSW with copies of any or all of the Undertakings required to be signed and delivered under this Deed Poll.

9.3 Tenderer's obligations

- (a) The Tenderer must, at its own expense:
 - (i) ensure, at all times, that each person to whom Confidential Information has been disclosed under clause 9.2 complies with the Undertaking;
 - (ii) notify TfNSW immediately if it becomes aware of a suspected or actual breach of this Deed Poll or an Undertaking or any unauthorised disclosure, copying or use of Confidential Information;
 - (iii) immediately take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure or use; and
 - (iv) provide all reasonable assistance requested by TfNSW from time to time regarding enforcement of any Undertaking (including, but not limited to, assisting TfNSW in commencing, conducting and settling enforcement proceedings, at the Tenderer's cost payable on demand).
- (b) Without limiting the generality of clauses 5, 9.1 and 9.2, the Tenderer must not disclose Confidential Information to any Other Tenderer.

9.4 Exclusion from obligation of confidentiality

The obligations of confidentiality under this Deed Poll do not apply to any person to the extent that the obligations apply to information that:

- (a) prior to the date of this Deed Poll was rightfully known to and in the possession or control of that person and not subject to an obligation of confidentiality on that person, it being acknowledged that all information provided in the Invitation for Expression of Interest or Invitation to Tender or otherwise provided by or on behalf of TfNSW in connection with the Procurement Process was, and is, subject to such an obligation of confidentiality;
- (b) TfNSW has consented in writing to being disclosed, provided that any such disclosure may only be made in accordance with the terms and conditions (if any) of that consent; or
- (c) subject to clause 9.5, that person is required by Law or the binding requirement of a recognised stock exchange to disclose.

9.5 Disclosure required by Law

- (a) If the Tenderer or any person to whom clause 9.2(a)(ii) applies is required by Law or the binding requirement of a recognised stock exchange to disclose any of the Confidential Information, the Tenderer must immediately give Notice to TfNSW setting out full details of the circumstances of the

proposed use or disclosure and the relevant information proposed to be used or disclosed.

- (b) The Tenderer must procure that the relevant person must give TfNSW a reasonable opportunity to challenge in a court of law or other appropriate forum the proposed use or disclosure of the Confidential Information.
- (c) In addition, if the Tenderer or any person to whom clause 9.2(a)(ii) applies is or anticipates being legally compelled to disclose Confidential Information, the Tenderer must and must procure that the relevant person will, at the direction of TfNSW:
 - (i) assist and take such steps as will permit TfNSW to oppose or restrict that disclosure;
 - (ii) take all lawful measures available to oppose or restrict that disclosure; and
 - (iii) if that disclosure is legally required, make disclosure on terms which preserve the confidentiality of the Confidential Information to the maximum extent possible,

provided that TfNSW agrees to pay the reasonable costs of the relevant person in acting in accordance with such a direction from TfNSW.

10. Disclosure by TfNSW

10.1 Disclosure of information or documents by TfNSW

TfNSW may publish or disclose (on the internet or otherwise) all or any part of:

- (a) the terms and conditions of this Deed Poll or the Contract Documents; and
- (b) any documents or information (including financial models and technical information) arising under, out of or in connection with this Deed Poll or the Contract Documents, or relating to the performance of this Deed Poll or the Contract Documents.

10.2 Public disclosure

- (a) The Tenderer acknowledges and agrees that disclosure of documents and information by TfNSW or any Government Agency may be required in accordance with the Law or the Disclosure Requirements.
- (b) The Tenderer must, at its own cost and expense, use all reasonable endeavours to assist TfNSW or a Government Agency in meeting its obligations referred to in clause 10.2(a).

10.3 Tenderer's representations

- (a) The Tenderer must identify to TfNSW documents or information, including any part of its EOI or Tender, that the Tenderer considers as being confidential to the Tenderer and which the Tenderer wishes to request TfNSW not to publish or disclose.
- (b) No claim by the Tenderer that specific information is confidential will be conclusive or binding on TfNSW and TfNSW will be under no obligation not to publish or disclose any document or information referred to it under clause 10.3(a).
- (c) An unreasonable claim by the Tenderer that all or a substantial part of an EOI or Tender is confidential may result in the Tender being considered a Non-Conforming Tender.

11. Intellectual Property

- (a) Such Intellectual Property Rights as may exist in information contained in the Invitation for Expression of Interest, the Invitation to Tender or any document contained in or referred to in the Information Documents and Materials remain, as between TfNSW and the Tenderer, the property of TfNSW and the Tenderer is permitted to use such information and material only for the Permitted Purpose.
- (b) The Tenderer warrants to TfNSW that it either owns, or has a licence to use (including a right to sub-licence), all Intellectual Property Rights in all materials contained in its EOI or in its Tender. The Tenderer hereby grants a non-exclusive, irrevocable, royalty and fee free licence to TfNSW and its Associates to copy, adapt, amend, disclose, retain on file indefinitely or do anything else necessary (in the sole discretion of TfNSW) to or in respect of all material contained in the Tenderer's EOI or its Tender for the purpose of:
 - (i) evaluating EOIs;
 - (ii) evaluating Tenders;
 - (iii) resolving any inconsistencies or ambiguities that may arise;
 - (iv) negotiating and managing any contract between TfNSW and the Tenderer or its Associates in connection with the ATP Onboard Installation on the C, K and V-Set Fleets Project;
 - (v) exercising any powers and or discretions under this Deed Poll with respect to the Tenderer; or
 - (vi) otherwise conducting the Procurement Process.

12. Tenderer's structure

12.1 Changes to the Tenderer's structure

- (a) The Tenderer acknowledges that the decision to Shortlist the Tenderer was made, amongst other matters, on the basis of:
 - (i) the Participants who constitute the Tenderer; and
 - (ii) its proposed corporate structure for undertaking the ATP Onboard Installation on the C, K and V-Set Fleets Project (**Project Structure**).
- (b) The Tenderer may not change:
 - (i) the Participants constituting the Tenderer; or
 - (ii) the Project Structure,in each case, without the prior written consent of TfNSW.
- (c) TfNSW reserves the right not to accept any proposed change of the type described in clause 12.1(b)(i) or 12.1(b)(ii).
- (d) If a change of the type described in clause 12.1(b)(i) or 12.1(b)(ii) is made without the express prior written approval of TfNSW, TfNSW reserves the right to exclude the Tenderer from further participation in the Procurement Process without prejudice to TfNSW's rights to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against Liability from the Tenderer.
- (e) The Tenderer acknowledges and agrees that TfNSW may in its absolute discretion:
 - (i) consent to, allow, or permit changes of the type described in clause 12.1(b)(i) or 12.1(b)(ii) in relation to any Other Tenderer;
 - (ii) allow or permit any entity which has not been Shortlisted by TfNSW to subsequently participate in the Procurement Process; and
 - (iii) permit an advisor to TfNSW or to one Tenderer in relation to the ATP Onboard Installation on the C, K and V-Set Fleets Project to be an advisor to an Other Tenderer.

12.2 Associates' involvement with Other Tenderers

The Tenderer must ensure that no Advisor or Participant is appointed as an advisor or participant to, in or in respect of any Other Tenderer in connection with the ATP Onboard Installation on the C, K and V-Set Fleets Project unless:

- (a) the Tenderer:

- (i) in the case of an Advisor, requests TfNSW's consent to the Advisor acting for the Other Tenderer and the Tenderer provides such information as TfNSW requests;
 - (ii) in the case of a Participant, requests TfNSW's consent to the Participant participating in the Other Tenderer (providing TfNSW with (i) details of the proposed arrangements for participation in any other EOI and (ii) written confirmation from each Participant in the Tenderer stating they are aware of and agree to such participation) and the Tenderer provides such information as TfNSW requests; and
 - (iii) satisfies TfNSW that there are and will remain appropriate confidentiality and separation arrangements in place to ensure no breaches of confidentiality, conflicts of interest or other matters will occur which, in TfNSW's opinion, may, or may reasonably be perceived to, adversely affect the Procurement Process; and
- (b) TfNSW provides its prior written consent.

12.3 Tenderer location

The Tenderer must ensure that it carries out its activities in relation to the ATP Onboard Installation on the C, K and V-Set Fleets Project and the Procurement Process within a location which is different from the location in which any Other Tenderer, or any person involved with any Other Tenderer, carries out its activities in relation to the ATP Onboard Installation on the C, K and V-Set Fleets Project or the Procurement Process (other than any activities of either of them carried out within premises occupied or approved by TfNSW).

12.4 Acknowledgment of consequences of breach

The Tenderer acknowledges and agrees that:

- (a) if TfNSW reasonably believes that there has been a failure by the Tenderer to comply with this clause 12, TfNSW may exclude the Tenderer from further participation in the Procurement Process, without prejudice to TfNSW's rights to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against Liability from the Tenderer; and
- (b) a failure by the Tenderer to comply with this clause 12 will be deemed to be a breach of an essential condition of this Deed Poll.

13. Release and Indemnity

The Tenderer irrevocably releases and indemnifies TfNSW and each of its Associates (**Indemnified Parties**) and must keep them indemnified at all times from and against:

- (a) any Claim against any of the Indemnified Parties by or liability of any of the Indemnified Parties to, any person; or
- (b) any Loss suffered or incurred by any of the Indemnified Parties, arising out of or in connection with:
- (c) the reliance upon, or use of, the Information Documents and Materials by the Tenderer or any other person to whom the Information Documents and Materials are disclosed by the Tenderer;
- (d) its election to participate in or its participation in, the Procurement Process; or
- (e) any breach of this Deed Poll or an Undertaking.

14. Notices

14.1 General

Subject to clause 14.2, any notice, demand, consent or other communication (**Notice**) must be, if in writing, signed by or on behalf of the sender, addressed to the intended recipient and:

- (a) delivered; or
 - (b) sent by prepaid mail (or if posted to another country, by registered airmail);
- to that recipient's address specified in clause 14.4 or the last address notified by that recipient to the sender.

14.2 Notices sent by email

A Notice may also be sent by email if the Notice is sent to the email address specified in clause 14.4 or the email address last notified by the intended recipient to the sender.

14.3 Time of receipt

A Notice given to a person in accordance with this clause 14 is treated as having been given and received:

- (a) in the case of delivery in person, when delivered to the intended recipient or their premises;
- (b) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (c) in the case of delivery by email, on the first to occur of:

- (i) receipt by the sender of any email acknowledgment from the intended recipient's information system showing that the Notice has been delivered to the email address of that recipient;
- (ii) the time that the Notice enters an information system which is under the control of the intended recipient; and
- (iii) the time that the Notice is first opened or read by an employee or officer of the intended recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or at later than 4.00pm (local time) on a Business Day, the Notice will be taken to have been duly given or made at the start of business on the next Business Day.

14.4 Address for Notices

The address and email address to which notices under this Deed Poll must be delivered are:

- (a) the addresses and email addresses set out below; or
- (b) where the intended recipient notifies the sender of another address or email address, the last address or email address so notified by that recipient to the sender.

TENDERER

Attention:

Address: Downer (Rolling Stock Services)
Level 2, Triniti 1, 39 Delhi Rd
NORTH RYDE

Email: [#]

TfNSW

Attention: Paul Blakemore

Address: TfNSW
Level 2, 241 O'Riordan St
MASCOT NSW 2020

Email: ATPCKVSetsProcurement@transport.nsw.gov.au

TfNSW's PROBITY ADVISOR

Attention:

Procure Group Pty Ltd
Address: GPO Box 1104, SYDNEY NSW 2001
Email: [REDACTED]@procuregroup.com.au

15. Publicity

- (a) The Tenderer must not use any media or other public communication channels:
 - (i) in a way which may reflect adversely on the ATP Onboard Installation on the C, K and V-Set Fleets Project or TfNSW; or
 - (ii) subject to clause 15(b), to make a media release or other public announcement or statement in relation to the Procurement Process, the ATP Onboard Installation on the C, K and V-Set Fleets Project or any matter associated therewith.
- (b) If the Tenderer reasonably considers that it must make a market, public or media statement in relation to or in connection with the Procurement Process or the ATP Onboard Installation on the C, K and V-Set Fleets Project, it must first, to the extent reasonably possible, discuss the content of such statement with TfNSW and comply with any requirements which TfNSW may express in relation to the statement.

16. Survival of Deed Poll

The Tenderer acknowledges and agrees that its obligations pursuant to this Deed Poll shall exist prior to, and shall survive the termination or completion of the ATP Onboard Installation on the C, K and V-Set Fleets Project and the Procurement Process and, in the case of obligations in relation to the Confidential Information, such obligations shall continue until such time as the Confidential Information becomes public knowledge other than by breach of this Deed Poll.

17. Enforcement

- (a) The Tenderer:
 - (i) provides to TfNSW the acknowledgments, undertakings, warranties and representations; and
 - (ii) grants to TfNSW the rights and remedies, referred to in this Deed Poll and undertakes to TfNSW to comply with this Deed Poll in all respects.

- (b) This document operates as a deed poll and is enforceable against the Tenderer, including each Participant, in accordance with its terms by TfNSW, despite TfNSW not being a party to this Deed Poll.

18. Absolute Liability

The liability of the Tenderer, including each Participant, under this Deed Poll is absolute and is not subject to the execution of this Deed Poll or any other instrument or document by any person other than the Tenderer, and is not subject to the performance of any condition precedent or subsequent. The liability of a Participant, under this Deed Poll is not subject to the execution of this Deed Poll by any other Participant.

19. General Provisions

19.1 No Partnership, Joint Venture or other Fiduciary Relationship

Except as expressly provided in this Deed Poll, nothing in this Deed Poll will be construed or interpreted as constituting the relationship between TfNSW on one hand and the Tenderer on the other hand as that of partners, joint venturers or any other fiduciary relationship.

19.2 Assignment

The Tenderer cannot assign or otherwise transfer any of its rights or obligations arising under this Deed Poll without the written consent of TfNSW and except on such terms and conditions as are determined in writing by TfNSW.

19.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Deed Poll by TfNSW will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Deed Poll.
- (b) Any waiver or consent given by TfNSW under this Deed Poll will only be effective and binding on TfNSW if it is given or confirmed in writing by TfNSW.
- (c) No waiver by TfNSW of:
- (i) a breach of any term of this Deed Poll; or
 - (ii) any other failure by the Tenderer to comply with a requirement of this Deed Poll,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed Poll or failure to comply with any other requirement of this Deed Poll.

19.4 Further acts

The Tenderer must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to TfNSW) required by Law or reasonably requested by TfNSW to give effect to this Deed Poll.

19.5 No representation or reliance

- (a) The Tenderer acknowledges that no person (nor any person acting on a person's behalf) has made any representation or other inducement to it to enter into this Deed Poll.
- (b) The Tenderer acknowledges and confirms that it does not enter into this Deed Poll in reliance on any representation or other inducement by or on behalf of any other person.

19.6 Severability

If at any time any provision of this Deed Poll is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that illegality, invalidity or unenforceability will not affect or impair:

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

19.7 Joint and Several Liability

The obligations and liabilities of the Tenderer, if more than one person, under this Deed Poll are joint and several. Each Participant constituting the Tenderer acknowledges and agrees that it will be responsible for the acts and omissions (including breaches of this Deed Poll) of the other as if those acts or omissions were its own.

19.8 Indemnities to Survive

- (a) Each indemnity in this Deed Poll is a continuing obligation, separate and independent from the other obligations of the Tenderer, and survives termination, completion or expiration of this Deed Poll. Nothing in this clause 19.8 prevents any other provision of this Deed Poll, as a matter of interpretation also surviving the termination of this Deed Poll.
- (b) It is not necessary for TfNSW to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed Poll.

19.9 Stamp Duty and other Fees

The Tenderer must pay all stamp duties and other fees payable in respect of the execution of this Deed Poll and the performance of its obligations in respect of this Deed Poll.

19.10 Entire Agreement

This Deed Poll constitutes the entire understanding of the Tenderer with respect to the matters contemplated in this Deed Poll and will take effect according to its tenor despite, and supersedes:

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

19.11 Provisions Limiting or Excluding Liability

Any provision of this Deed Poll which seeks to limit or exclude a liability of TfNSW or the Tenderer is to be construed as doing so only to the extent permitted by Law.

19.12 Governing Law and Jurisdiction

- (a) This Deed Poll will be governed by and construed in accordance with the laws of New South Wales.
- (b) The Tenderer irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State of New South Wales with respect to any proceedings that are permitted to be brought at any time under this Deed Poll.
- (c) The Tenderer irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

Executed and delivered as a deed poll:

Executed and delivered as a deed in
accordance with section 127(1) of the
Corporations Act 2001 by Downer EDI
Rail Pty Ltd



Director Signature

MICHAEL MILICK, DIRECTOR

Print Name and Position



Director/Secretary Signature

Peter James Lyons COMPANY SECRETARY

Print Name and Position

Schedules

1 Confidentiality and Process Deed Poll - Undertaking

DATE:

FROM: (the *Recipient*)

IN FAVOUR OF: Transport for NSW (ABN 18 804 239 602) (TfNSW)

AND

_____ (the *Tenderer*)

This Deed Poll witnesses as follows:

In this Deed Poll any word, expression, reference or term used which is defined in the probity and process Deed Poll dated _____ and executed by _____ in favour of Transport for NSW (**Probity and Process Deed Poll**) and is not specifically defined in this Deed Poll will, unless the context requires otherwise, have in this Deed Poll, the same meaning as in the Probity and Process Deed Poll.

The Recipient acknowledges that TfNSW will make available to the Tenderer and others certain information pursuant to the provisions of the Probity and Process Deed Poll, part or all of which may be disclosed to the Recipient (**Relevant Confidential Information**).

The Recipient undertakes to comply with clauses 8 and 9 of the Probity and Process Deed Poll (and such of the other provisions of the Probity and Process Deed Poll as may be necessary for the operation the provisions contained in clauses 8 and 9 of the Probity and Process Deed Poll) insofar as they apply to the Relevant Confidential Information as if the Recipient were the Tenderer and, in particular, that:

1. the Recipient will take all action necessary to maintain the confidential nature of all Relevant Confidential Information;
2. the Recipient will not, without the prior written consent of TfNSW and the Tenderer, disclose or allow the disclosure of the Relevant Confidential Information to any person other than an employee or consultant of the Recipient and then only to the extent necessary for the Permitted Purpose;
3. the Recipient will ensure that any person to whom the Recipient discloses Relevant Confidential Information will maintain the confidential nature of Relevant Confidential Information and comply with clauses 8 and 9 of the Probity and Process Deed Poll (and such of the other provisions of the Probity and Process Deed Poll as may be necessary for the operation the provisions contained in clauses 8 and 9 of the Probity and Process Deed Poll) in respect of such Relevant Confidential Information as if that person were the Tenderer;

4. the Recipient will not use or reproduce or allow the use of reproduction, of any of the Relevant Confidential Information for any purpose other than the Permitted Purpose;
5. except to the extent the Recipient is required by Law to retain any documents which contain or form part of the Relevant Confidential Information, the Recipient will deliver to the Tenderer or destroy, on demand, all documents and other materials in the Recipient's possession which contain the Relevant Confidential Information;
6. the destruction or the return of any documents by the Recipient will not release the Recipient from any of the obligations under this undertaking; and
7. the Recipient will immediately notify TfNSW if the Recipient becomes aware that any person to whom we disclose Relevant Confidential Information has not complied with the obligations imposed on them under this Deed Poll.

The Recipient releases TfNSW and the Tenderer from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) that TfNSW or the Tenderer may incur arising out of or in respect of or in connection with any breach of this Deed Poll.

This Deed Poll is governed by and construed in accordance with the laws of New South Wales. The Recipient submits to the non-exclusive jurisdiction of the courts of New South Wales.

Executed and delivered as a deed poll

Executed and delivered as a deed in accordance with section 127(1) of the *Corporations Act 2001* by *[insert]*

Director Signature

Director/Secretary Signature

Print Name and Position

Print Name and Position

2 Access Indemnity

DATE:

FROM: _____] (the
Inspecting Party)

IN FAVOUR OF: Transport for NSW (ABN 18 804 239 602) (TfNSW)

Background

- A. TfNSW is able to procure access to certain sites relevant to the ATP Onboard Installation on the C, K and V-Set Fleets Project (a *Site*).
- B. The Inspecting Party wishes to conduct an inspection of, or otherwise gain access to, a Site.
- C. This Deed Poll records the Inspecting Party's obligations in relation to any such inspection of, or access to, a Site.

This Deed Poll witnesses as follows

1. In this Deed Poll any word, expression, reference or term used which is defined in the probity and process Deed Poll dated _____ and executed by _____ in favour of Transport for NSW (**Probity and Process Deed Poll**) and is not specifically defined in this Deed Poll will, unless the context requires otherwise, have in this Deed Poll, the same meaning as in the Probity and Process Deed Poll.
2. The Inspecting Party undertakes to TfNSW that:
 - (a) the Inspecting Party will make good any damage to a Site caused by it, any of its Associates or any person acting on its or any of its Associates' authority;
 - (b) the Inspecting Party releases and indemnifies TfNSW and the NSW Rail Entities and will keep them indemnified from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) they may suffer or incur arising out of, or in respect of, or in connection with any inspection of, or access to, any Site at any time by the Inspecting Party any of its Associates or any person acting on its or any of its Associates' authority except to the extent that such Claim, Liability or Loss is directly caused by the unlawful conduct or gross negligence of TfNSW or the relevant NSW Rail Entity; and
 - (c) in the conduct of inspecting a Site, the Inspecting Party will do all reasonable acts and things to minimise any disruption to TfNSW, the NSW Rail Entities and their invitees and to minimise inconvenience and disruption to the Site.

3. For inspections of the Site:
 - (a) which are organised by TfNSW pursuant to clause 3.6(a)(i) of the Probity and Process Deed Poll, TfNSW and the Inspecting Party must bear their own costs associated with the relevant inspection of the Site; and
 - (b) requested by the Inspecting Party pursuant to clause 3.6(a)(ii) of the Probity and Process Deed Poll, the Inspecting Party must bear its own costs and the costs of TfNSW associated with the inspection of the Site (which will be payable by the Inspecting Party to TfNSW on demand).
4. This Deed Poll is governed by and construed in accordance with the laws of New South Wales.
5. The Inspecting Party submits to the non-exclusive jurisdiction of the courts of New South Wales.

Executed and delivered as a deed poll:

Executed and delivered as a deed in accordance with section 127(1) of the *Corporations Act 2001* by Downer EDI Rail Pty Ltd

Director Signature

Director/Secretary Signature

Print Name and Position

Print Name and Position

Exhibit D

Reports

The following is an index of the documents forming part of this Exhibit D. A copy of the documents referred to in the index below is located on the CD and USB drive labelled "Documents for the ATP C-Set, K-Set and V-Set Fleets Onboard Installation Contract".

File Name	Format
Asbestos Bulk Sample Analysis Report - K98 and K99 (GBAR)	PDF
Asbestos Bulk Sample Analysis Report - T13 and T103 (GBAR)	PDF
C1 - Rollingstock Hazardous Materials Register (REVISED)	PDF
C10 -Rollingstock Hazardous Materials Register (REVISED)	PDF
C11 -Rollingstock Hazardous Materials Register	PDF
C12 -Rollingstock Hazardous Materials Register	PDF
C13-Rollingstock Hazardous Materials Register	PDF
C14-Rollingstock Hazardous Materials Register	PDF
C2 - Certificate of Analysis -Emergency Cupboard Plyboard - No Asbestos Detected	PDF
C2 - Intrusive Targeted Hazardous Materials Survey and Risk Assessment Report - by ADE for Alstom	PDF
C2 - Rollingstock Hazardous Materials Register (REVISED)	PDF
C2 Quantitative Exposure Risk Assessment of Airborne Contaminants Report - by ADE for Alstom	PDF
C3 - Rollingstock Hazardous Materials Register (REVISED)	PDF
C4 - Rollingstock Hazardous Materials Register	PDF
C5 - Rollingstock Hazardous Materials Register	PDF
C5, C9, K80 - Certificate of Analysis -Emergency Cupboard Plyboard - No Asbestos Detected	PDF
C6 - Rollingstock Hazardous Materials Register (REVISED)	PDF
C7 - Rollingstock Hazardous Materials Register	PDF
C8 - Rollingstock Hazardous Materials Register (REVISED)	PDF
C9 -Rollingstock Hazardous Materials Register (REVISED)	PDF
Certificate of Analysis - CK Compressor at FMC (Parsons Brinckerhoff)	PDF
Certificate of Analysis - V-set cars 8026 and 8029 (GBAR)	PDF
Certificates of Analysis - Dynamic Air Monitoring - C7, K63, K74, K7 8:00 AM nd K84	PDF
Certificates of Analysis - Guard side emergency cupboard plyboard - C1, C2, C3, C4, C6, C8, C10, C13, K61, K78, K94 and K99	PDF
Downer Confirmation of Nil Asbestos Containing Materials on Millennium Train Sets	PDF

File Name	Format
FMD Safety Advice 22-03-18 - Asbestos in arc chutes of line switches on roofs of K and V Sets.pdf	PDF
K60 - Clearance Certificate - Asbestos Dust Removal	PDF
K60 Rollingstock Hazardous Materials Register	PDF
K61 - Rollingstock Hazardous Materials Register	PDF
K62 - Clearance Certificate - Asbestos Dust Removal	PDF
K62 - Rollingstock Hazardous Materials Register	PDF
K63 Rolling stock hazardous materials register (REVISED)	PDF
K64 - Rolling stock hazardous materials Register	PDF
K65 - Rollingstock Hazardous Materials Register	PDF
K66 - Rollingstock Hazardous Materials Register	PDF
K67 - Clearance Certificate - Asbestos Removal - Dust in end wall panel	PDF
K67 Rollingstock Hazardous Materials Register	PDF
K68 - Clearance Certificate - Asbestos Removal - Dust in Drivers side CB panel	PDF
K68-Rollingstock Hazardous Materials Register	PDF
K69 -Rollingstock Hazardous Materials Register	PDF
K70 -Rollingstock Hazardous Materials Register	PDF
K71 -Rollingstock Hazardous Materials Register (REVISED)	PDF
K72-Master-Rollingstock Hazardous Materials Register	PDF
K73 -Rollingstock Hazardous Materials Register	PDF
K74 - Clearance Certificate - Asbestos Dust Removal	PDF
K74 Rollingstock Hazardous Materials Register	PDF
K75 - Rollingstock Hazardous Materials Register	PDF
K75 Rolling stock Undercarriage only hazmat report	PDF
K76 -Rollingstock Hazardous Materials Register	PDF
K77 - Clearance Certificate - Asbestos Dust Removal	PDF
K77 Rollingstock Hazardous Materials Register	PDF
K78 - Clearance Certificate - Asbestos Removal - Dust in Drivers side CB panel	PDF
K78 - Rollingstock Hazardous Materials Register	PDF
K79 -Rollingstock Hazardous Materials Register	PDF
K81 -Rollingstock Hazardous Materials Register	PDF
K82 -Rollingstock Hazardous Materials Register	PDF
K83-Rollingstock Hazardous Materials Register	PDF
K84 - Clearance Certificate - Asbestos Dust Removal	PDF
K84 Rollingstock Hazardous Materials Register	PDF
K85-Rollingstock Hazardous Materials Register	PDF
K86-Rollingstock Hazardous Materials Register	PDF

File Name	Format
K87-Rollingstock Hazardous Materials Register	PDF
K88 - Clearance Certificate - Asbestos Debris removal	PDF
K88 - Clearance Certificate - Lead dust removal	PDF
K88 Rolling stock - Roof only Hazmat report	PDF
K88 Rollingstock Hazardous Materials Register	PDF
K89-Rollingstock Hazardous Materials Register	PDF
K90-Rollingstock Hazardous Materials Register	PDF
K91 - Rollingstock Hazardous Materials Register	PDF
K92 -Rollingstock Hazardous Materials Register	PDF
K93 -Rollingstock Hazardous Materials Register	PDF
K94 - Rolling stock Hazardous Materials Register (REVISED)	PDF
K95 -Rollingstock Hazardous Materials Register	PDF
K96 - Intrusive Targeted Hazardous Materials Survey and Risk Assessment Report - by ADE for Alstom	PDF
K96 - Rollingstock Hazardous Materials Register (revised)	PDF
K97 -Rollingstock Hazardous Materials Register	PDF
K98 - Clearance Certificate - Asbestos Removal - Dust in Drivers side CB panel	PDF
K98 - Make Safe Certificate - Asbestos removal	PDF
K98 -Rollingstock Hazardous Materials Register	PDF
K99 - Clearance Certificate - Asbestos Removal - Dust under redundant driver desk compartment in car 4099	PDF
K99 Rollingstock Hazardous Materials Register	MSG
Lab results - K75 and K90 underframes (GBAR)	MSG
Lab results - K80 (Parsons Brinckerhoff)	PDF
Lab results - V-set cars 8026 and 8029 (Parsons Brinckerhoff)	MSG
Lab results - Y1, Y2, C2 and K96 (Parsons Brinckerhoff)	MSG
Letter from WSP to Sydney Trains - Occupational Hygiene advice RE asbestos dust within electrical cupboards on C & K Set Trains	PDF
Reliance Rail Confirmation of Nil Asbestos Containing Materials on Waratah train sets	PDF
Rolling Stock Engineering Procedure PR R 90396 - Hazardous Substances - Asbestos Containing Materials Notice Locations	PDF
Safety Alert May 7th 2018 - Asbestos Containing Mastic on roof components of C and K Sets	PDF
Y1 and Y2 - Hazardous Materials Inspection Report - by ADE for Alstom	PDF

Exhibit E

Third Party Agreements



Global Safety Interface Agreement

Transport for NSW
ABN 18 804 239 602

Sydney Trains
ABN 38 284 779 682

CONTENTS

KEY DETAILS	1
BACKGROUND	2
TERMS	2
1 Interpretation	2
1.1 Definitions	2
1.2 Interpretation	3
1.3 Schedules	4
2 Term	4
3 Risks arising from Railway Operations	4
3.1 Identifying and assessing risks	4
3.2 Managing risks	5
3.3 Changes to risks	5
3.4 Notification of incidents	5
3.5 Register of interface agreements	6
4 Access	6
5 Dispute resolution	6
6 Miscellaneous	7
6.1 Notices	7
6.2 Costs	7
6.3 Proportionate liability	7
6.4 Government authorities	7
6.5 Variation	7
6.6 Entire agreement	8
6.7 Waiver	8
6.8 Governing law	8
EXECUTION	9
Schedule 1 - Rail Safety Interface Risks Between Sydney Trains and TfNSW	10

KEY DETAILS

1 **Date** See Execution on page 9

2 **Parties**

TfNSW

Name

Transport for NSW
ABN 18 804 239 602

Address

18 Lee Street Chippendale

Attention

General Manager Safety and Quality, Policy and Regulation
or such other person as may be notified by TfNSW from
time to time.

Sydney Trains

Name

Sydney Trains
ABN 38 284 779 682

Address

477 Pitt Street Sydney

Attention

Director Safety, Environment, Quality and Risk or such
other person as may be notified by Sydney Trains from time
to time.

BACKGROUND

- A The Rail Safety National Law requires Rail Transport Operators to:
- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from Railway Operations carried out by or on behalf of that Rail Transport Operator and that may be caused wholly or partly by Railway Operations carried out by or on behalf of any other Rail Transport Operator;
 - (b) manage such risks as far as reasonably practicable; and
 - (c) for the purposes of managing those risks, seek to enter into an Interface Agreement with the other Rail Transport Operator.
- B This Agreement is an Interface Agreement for the purposes of the Rail Safety National Law.
- C The parties are Rail Transport Operators who will satisfy the above requirements by applying their Safety Management Systems to manage risks in accordance with this Agreement.

TERMS

1 Interpretation

1.1 Definitions

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

Business Day means a day other than a Saturday, Sunday or a public holiday as gazetted in NSW.

Contractors means any person engaged by a party to provide any works required by, or perform any obligation under, this Agreement including any further person engaged by such a person to carry out any such work or obligation.

Date of this Agreement means the date on which this Agreement has been executed by both parties.

Interface Agreement means an interface agreement required under section 106 of the Rail Safety National Law.

National Safety Regulator means the Office of the National Rail Safety Regulator established under Part 2 Division 1 of the Rail Safety National Law.

Personnel means officers, employees, agents, Contractors, and officers, employees and agents of Contractors.

Rail Safety National Law means the Rail Safety National Law (NSW) No 82a.

Rail Transport Operator has the meaning given to that term under the Rail Safety National Law.

Railway Operations has the meaning given to that term under the Rail Safety National Law.

Safety Management System means a person's safety management system which:

- (a) complies with the Rail Safety National Law;
- (b) has been accepted and approved by the National Safety Regulator for use by a person for Railway Operations for which that person holds rail safety accreditation under the Rail Safety National Law,

as amended from time to time.

1.2 Interpretation

The following apply in the interpretation of this document, unless the context requires otherwise.

- (a) A reference to this Agreement, this deed, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.
- (b) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this Agreement.
- (f) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Agreement, their substitutes and assigns.
- (h) **Includes** means includes but without limitation.
- (i) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (j) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (k) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Agreement.

- (l) A heading is for reference only. It does not affect the meaning or interpretation of this Agreement.

1.3 Schedules

Any schedule attached to this Agreement forms part of it. If there is any inconsistency between any clause of this Agreement and any provision in any schedule, the clause of this Agreement prevails.

2 Term

- (a) This Agreement commences on the Date of this Agreement and continues until it is terminated by a party under clause 2(b).
- (b) A party may terminate this Agreement by providing the other party with no less than 6 months' written notice. If a party provides a notice under this clause 2(b) that it wishes to terminate this Agreement and Interface Agreements under the Rail Safety National Law are still required between the parties, the parties must negotiate in good faith to enter into a replacement agreement for this Agreement prior to the date on which the termination of this Agreement will take effect.

3 Risks arising from Railway Operations

3.1 Identifying and assessing risks

- (a) The parties must identify and assess, so far as is reasonably practicable, risks to safety that may arise from Railway Operations carried out by or on behalf of on party, as a Rail Transport Operator, and that may be caused wholly or partly by Railway Operations carried out by or on behalf of the other party, as a Rail Transport Operator.
- (b) Unless otherwise agreed by the parties, TfNSW's Safety Management System will apply to the assessment of risk required under this clause 3.1.
- (c) The parties may agree to participate in joint risk workshops to perform their obligations under this clause 3.1.
- (d) Subject to clause 3.1(c), each party may undertake the identification and assessment of risks to safety individually or jointly through the use of risk workshops. A party may adopt a risk assessment conducted by the other party.
- (e) Each party must provide the other party with any information reasonably requested by the other party to enable the party requesting the information to perform its obligations under this clause 3.1.

3.2 Managing risks

- (a) Each party must:
 - (i) determine measures to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1 in accordance with clause 3.2(b); and
 - (ii) implement those measures for which it is responsible determined in accordance with clause 3.2(b).
- (b) Schedule 1 sets out how each party's Safety Management System will be applied to determine each party's responsibilities in respect of risks identified and assessed under clause 3.1 including:
 - (i) each party's responsibility for implementation and maintenance of the safety risk management measures;
 - (ii) where appropriate, the timetable for implementation of safety risk management measures;
 - (iii) any other details required to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1; and
 - (iv) the communication details required to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1.

3.3 Changes to risks

- (a) The parties must consult with each other regarding any planned alteration to infrastructure, operations, or circumstances which may impact on safety risks arising from their Railway Operations.
- (b) If a party becomes aware of:
 - (i) a risk that is not being managed to the extent reasonably practicable; or
 - (ii) a new safety risk;then:
 - (iii) that party must provide the other party with notice of that risk; and
 - (iv) clauses 3.1 and 3.2 will again apply.

3.4 Notification of incidents

Each party must notify the other party in accordance with the communication requirements of that party's Safety Management System as soon as reasonably practicable after becoming aware of any safety incident or accident which is related to rail safety on the other party's Railway Operations.

3.5 Register of interface agreements

Each party must record this Agreement in that party's register of interface agreements.

4 Access

- (a) If a party, or any of its Personnel, require access to the other party's infrastructure or land for the purposes of meeting its obligations under this Agreement, the party seeking access must:
 - (i) provide the other party with details of the access sought including the locations, times and Personnel; and
 - (ii) comply, and ensure that its Personnel comply, with all relevant instructions, obligations and safety plans as advised by the other party, and/or any that parties nominee.
- (b) TfNSW must provide Sydney Trains with notice as soon as reasonably practicable if TfNSW may require a track possession to perform any of its obligations under this Agreement.
- (c) Sydney Trains must provide TfNSW with notice as soon as reasonably practicable if Sydney Trains may require a track possession to perform any of its obligations under this Agreement and that track possession impacts upon any work being carried out by or on behalf of TfNSW.

5 Dispute resolution

- (a) If a party:
 - (i) discovers any non-compliance with this Agreement;
 - (ii) otherwise wishes to raise a dispute in relation to this Agreement,(together referred to as an **Issue**)

that party must as soon as reasonably practicable, provide the other party with notice of the Issue.
- (b) If a party provides a notice under clause 5(a):
 - (i) representatives from the parties with appropriate delegations must attempt to resolve the Issue within [10] Business Days;
 - (ii) if the Issue is not resolved by the parties' representatives under clause 5(b)(i), it must referred to a representative from each party who is responsible for that party's safety operations and that representative must attempt to resolve the Issue within [5] Business Days.

6 Miscellaneous

6.1 Notices

- (a) Any notice given in connection with this Agreement must be in writing and must be addressed to that party and either:
 - (i) hand delivered to, or sent by post to, the party's registered office, principal place of business or any other address the party notifies for the service of notices;
 - (ii) sent by fax to any fax number the party notifies for the service of notices; or
 - (iii) sent by email to any email address the party notifies for the service of notices.

- (b) A notice is taken to have been given:
 - (i) in the case of being hand delivered, on the date on which it is delivered;
 - (ii) in the case of being sent by post, on the third (seventh if sent to an address in another country) day after the date of posting;
 - (iii) in the case of being sent by fax, at the time of dispatch as confirmed by a transmission report by the sending machine; and
 - (iv) in the case of delivery by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

6.2 Costs

Each party will be responsible for its own costs in complying with this Agreement.

6.3 Proportionate liability

This Agreement does not affect or derogate from the parties' rights and obligations under the Civil Liability Act 2002 (NSW) or their functions and powers under other laws.

6.4 Government authorities

If a party is reconstituted, renamed, replaced or if the powers and functions are transferred to another organisation, a reference under this Agreement to that party includes the reconstituted, renamed or replaced organisation or the organisation to which the powers of functions are transferred (as the case may be).

6.5 Variation

No provision of this Agreement nor any right conferred by such agreements can be varied except in writing signed by the parties.

6.6 Entire agreement

This Agreement:

- (a) records the entire agreement between the parties; and
- (b) supersedes all previous negotiations, understandings, representations and agreements,

in relation to the subject matter of this Agreement.

6.7 Waiver

A waiver is effective only if in writing and signed by or on behalf of the party to be bound and is effective to the extent that the party giving it expressly states in writing.

6.8 Governing law

This Agreement is governed by the law in force in New South Wales and the parties submit to the jurisdiction of its courts.

EXECUTION

Signed as a deed on

28 June

2013

SIGNED for and on behalf of **Transport for NSW** by its authorised officer in the presence of

[Redacted Signature]

Signature of Witness

HELEN VICKERS

Name of Witness (print)

SIGNED for and on behalf of **Sydney Trains** by its authorised officer in the presence of

[Redacted Signature]

Signature of Witness

RITA CARUZZA

Name of Witness (print)

[Redacted Signature]

Signature of Authorised Officer

Leslie Robert Wieling

Name of Authorised Officer (print)

[Redacted Signature]

Signature of Authorised Officer

BOB MASON

Name of Authorised Officer (print)

ALCE

Schedule 1 - Rail Safety Interface Risks Between Sydney Trains and TfNSW

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Safety Requirements/ Standards	Safety risk associated with delivered asset cannot be demonstrated to be reduced SFAIRP	Standards used as baseline for design do not represent best/good practice (Standards out of date) CMC acceptance process not carried out adequately throughout the project lifecycle before handing over to the operator	- Network incident with safety consequences	ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101 Network Standards Governance	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Asset does not achieve an acceptable minimal safety standard	Standards incorrect/fail to define minimum safety standards	- Network incident with safety consequences	ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101 Network Standards Governance	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Fail safe modes for systems not clearly defined	Fail safe modes for systems not clearly defined in safety requirements/requirements (should be based on standards)	- System fails in an unsafe way leading to safety incident	PPD specify high level requirements in transport planning. ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				Network Standards Governance. TPD to include relevant fail safe requirements in tendering/contract/design information prior to procurement of AEO to design and construct	
Contracts	Asset does not meet end user safety requirements	<ul style="list-style-type: none"> - AEO contracted to deliver asset does not have relevant system knowledge - Design not subject to appropriate stakeholder consultation - Stakeholder/end user not included in acceptance/approval process for design choices - Asset solutions imposed on Sydney Trains - Focus on delivery against time/budget 	- Network incident with safety consequences	<p>ASA AEO audit and surveillance process - see 4SA-ST-201 ASA Framework for AEO Assessment Audits and Surveillance audits.</p> <p>TPD Quality Management System (QMS) contains requirements for stakeholder/emd user consultation. The RSC requires all parties to work collaboratively and the RSC provides for SYD Trains to have input into designs, user requirements, etc.</p>	<p>ST Operational Readiness Manager role to provide user input into the design process</p> <p>ST to notify CMC/ASA if not able to provide Safety Assurance for Operational Readiness.</p>
	Contractor delivers substandard work	- AEO fails to adequately assure the suitability of its subcontractors	- Network incident with safety consequences	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		<ul style="list-style-type: none"> - Contractor does not adequately implement/follow its own quality management processes - AEO assumes contractor will deliver good work 		<ul style="list-style-type: none"> - including TPD Safety Requirements TfNSW Standard Requirements TSR S1 - Safety Management. TPD management of AEO via contract ASA being responsible for engineering governance through the implementation of CMC framework, development and maintenance of engineering standards and AEO assessment 	
	<p>Sydney Trains as a Contractor/AEO to TfNSW delivers substandard work</p>	<ul style="list-style-type: none"> - Sydney Trains fails to assure its work - Sydney Trains fails to use competent resource 	<ul style="list-style-type: none"> - Network incident with safety consequences 	<p>ASA AEO audit and surveillance process - see 4SA-ST-201 ASA Framework for AEO Assessment Audits and Surveillance audits. TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD management of AEO via project agreement/contract. ASA being responsible for engineering</p>	<p>ST will advise TfNSW of safety concerns based on past data or current operational experience. ST internal assurance processes</p>

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				governance through the implementation of CMC framework, development and maintenance of engineering standards and AEO assessment	
	Delivered Asset does not satisfy key (but undefined) safety requirements	Asset contract specification fails to adequately address system safety requirements (safety requirements not defined)	- Unsafe Asset released into service	PPD to specify defined requirements during concept design. TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS - including TPD Safety Requirements TfNSW Standard Requirements TSR S1 - Safety Management Role of ASA in development and maintenance of engineering standard.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Consultation	Asset not correctly integrated into network	Lack of clarity as to when ASA need to be consulted on design matters (deviation from standards unclear) Process for handover and integration unclear	- Network incident with safety consequences	ASA Standards Waiver process 4SA-PR-106 Implementation of the CMC process and AEO management process	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Safety/Risk	No direct communication	- Unsafe Asset released	TPD Engineering and	ST Operational

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
	misunderstanding between parties leading to poor design choices	between Sydney Trains and AEO delivering asset (Intermediary TfNSW prevents direct communication)	into service	Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. AEO has responsibility to ensure safety risks in the system have been mitigated to SFAIRP. CMC process to check that this has been	Readiness Manager role to provide user input into the design process

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				carried out.	
Design Approval/Acceptance	Design not compliant with operating environment, configuration requirements, standards and/or waivers	Proposed risk mitigation options not accepted/approved by TfNSW	- Unsafe Asset released into service	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Design failings go unnoticed	AEO's work is not independently assured/verified (AEO)	- Unsafe Asset released into service - Latent issue released	TPD Engineering and Safety Assurance processes as per	ST will advise TfNSW of safety concerns based on past data or current

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		<p>approves own designs) Failure of the CMC process and failure of TPD assurance process.</p>	<p>leading to safety incident on network</p>	<p>TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.</p>	<p>operational experience</p>
	<p>Sydney trains accept asset that is deficient from a safety perspective</p>	<p>Sydney Trains assured by TfNSW that asset is fit for purpose and safe, based on AEO's assurance (No assurance from Sydney Trains)</p>	<p>- Network incident with safety consequences</p>	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS.</p>	<p>Sydney trains accept asset that is deficient from a safety perspective</p>

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		Failure of the CMC process and failure of TPD assurance process.			
Construction	TfNSW rail corridor worksite incorrectly setup and/or maintained/managed	<ul style="list-style-type: none"> - Interface risks not clearly identified/evaluated before worksite setup - Worksite protection controls not in place - Ineffective communication between worksite and RMC 	<ul style="list-style-type: none"> - Unauthorised entry of train into/through worksite leading to safety incident in worksite - Unauthorised exit of works train from worksite leading to safety incident on network 	TfNSW (and it's contractors) compliance with Sydney Trains Network Rules and Procedures. TPD worksite audit and review presence. AEO audit and surveillance process.	ST Network rules and procedures for worksite protection
Commissioning	Testing does not validate all safety aspects of asset	<ul style="list-style-type: none"> - Lack of experience in developing testing and commissioning plans - Planned testing and commissioning not carried out according to the plan 	<ul style="list-style-type: none"> - Unsafe asset released into service - Safety incident on network 	ASA surveillance of AEO performing testing and commissioning. TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process. ASA configuration management process	ST will advise TfNSW of safety concerns based on past data or current operational experience
Assurance	Safety assurance aspects of project poorly undertaken including operational constraints are not clearly specified/communicated	AEO does not fully appreciate the requirements of system safety Safety and assurance requirements not	<ul style="list-style-type: none"> - Unsafe Asset released into service 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		adequately specified during procurement process		(QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. AEO audit and surveillance process. ASA configuration management process	
	Operational readiness requirements do not align with asset being delivered	Asset documentation does not appropriately reflect asset	<ul style="list-style-type: none"> - Safety incident on the network - Specific risks may go un-identified/mitigated 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains	ST will advise TfNSW of safety concerns based on past data or current operational experience.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.	
Delays into Service	Old trains retained in service beyond life expiry	New trains delayed delivery into service Long term asset planning does not reflect asset condition	Safety incident on network	NOTE: TfNSW is limited in controls that can be deployed in this circumstance: ST as the accredited operator/maintainer must ensure trains entering and remaining in revenue service meet minimum safety standards, not TfNSW. PPD control owner with	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				respect to long term asset planning.	
	Life expired assets required to be used beyond their design life	Delivery of asset delayed - AEO scope of work excludes commissioning - AEO not able to comply with ASA standards - AEO fails to deliver project on time TfNSW fails to respond in a timely manner to infrastructure/asset safety requirements Long term asset planning does not reflect asset condition	Safety incident on network	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS PPD control owner with respect to long term asset planning. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Operational Efficiency	Asset delivered has negative impact on operational efficiency/safety	- Design not optimised for operational efficiency/safety - Design choices do not adequately address ongoing reliability requirements of asset Long term asset planning does not reflect asset condition	- Failure in service leading to network disruption - Failure in service leading to safety incident	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services	ST Operational Readiness Manager role to provide user input into the design process ST will advise TfNSW of safety concerns based on past data or current operational experience.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				<p>Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. PPD control owner with respect to long term asset planning.</p>	
<p>Asset Performance</p>	<p>Assets considered safer/more reliable than they actually are</p>	<p>Asset performance incorrectly predicted through design or poor reporting</p>	<p>Safety incident on network</p>	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all</p>	<p>ST will advise TfNSW of safety concerns based on past data or current operational experience</p>

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				<p>parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process</p>	
Maintenance	Maintainability not addressed within design	Failure of design process	<ul style="list-style-type: none"> - Asset unable to be maintained unless taken offline - Asset maintenance introduces unnecessary safety risk for maintenance staff - Asset not maintained to required standard but continues to be operated - safety incident occurs 	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires</p>	<p>ST to notify TfNSW that it is not able to demonstrate operational (Maintenance) readiness</p>

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				<p>SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process.</p>	
	<p>Asset responsibility handed over without all appropriate/necessary documentation (including safety assurance)</p>	<p>Failure of design process</p>	<ul style="list-style-type: none"> - Asset unable to be operated/maintained as "intended/required" - Latent condition leading to safety incident 	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the</p>	<p>ST unable to demonstrate Operational Readiness to CMC</p>

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process.	
	Contracts awarded by TfNSW to parties other than Sydney Trains for maintenance/renewal of Sydney Trains operated infrastructure	Failure of third party maintenance process	<ul style="list-style-type: none"> - Network configurations falls out of synch - Latent conditions propagated leading to safety incident - Maintenance activities interfere with the safe operation of trains 	ASA configuration management process	ST will advise TfNSW of safety concerns based on past data or current operational experience
Access agreements	Access agreements influenced by TfNSW		<ul style="list-style-type: none"> - Unsafe trains/operators allowed onto network - Safety incident on network 	Access seekers must comply with minimum standards; ST as network control manager can prevent operators from accessing network if safety of operations is compromised.	Network access process managed by ST ST not to allow access without positive confirmation of suitability received from TfNSW (ASSUMED POSITION BASED ON CURRENT KNOWLEDGE)
Sydney Trains/NSW Trains (as a Rolling Stock Operator) operating on TfNSW (as a Rail Infrastructure	Track structures/infrastructure not fit for purpose	- Ineffective maintenance regime (Minimum standards set too low)	<ul style="list-style-type: none"> - Train Collision - Train derailment - Train hits object/structure infringing kinematic 	TfNSW SMS requirements for managing safeworking and infrastructure, including:	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Maintainer) network			envelope	Rail Safeworking Standard 4TP-ST-014/2.0 Minimum Rolling Stock Requirements 4TP-ST-098/4.0, Rail Safeworking Arrangements Procedure 4TP-PR-106/2.0	
	TfNSW rail corridor worksite incorrectly setup and/or maintained/managed	<ul style="list-style-type: none"> - Interface risks not clearly identified/evaluated before worksite setup - Worksite protection controls not in place - Ineffective communication between worksite and RMC 		TfNSW (and its contractors) recognises and complies with ST Network Rules and Procedures for worksite protection. AEO audit and surveillance process.	ST Network rules and procedures for worksite protection
Emergency Response	TfNSW directly involved in emergency response coordination activities		<ul style="list-style-type: none"> - Confusion and re-prioritisation of tasks - Safety incidents escalate 	TfNSW recognition of ST incident response accountabilities	Incident response is the responsibility of ST
Decommissioning	TfNSW fails to decommission assets when required		<ul style="list-style-type: none"> - Infrastructure loses structural integrity and impacts rail safety (collapsing onto trains) - Rollingstock used beyond life leading to safety incident 	TfNSW relationship with Sydney Trains as per provisions of the Rail Services Contract. TPD Engineering and Safety Assurance processes as per	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				TfNSW SMS/TPD QMS, including that for decommissioning. NOTE: ST retains responsibility for maintenance and inspection of extant assets, including identifying condition of current operational assets and reacting accordingly by imposing CAN (Condition Affecting the Network) arrangements.	
	Re-commissioning of de-commissioned rolling stock	Delivery of asset delayed - AEO scope of work excludes commissioning - AEO not able to comply with ASA standards - AEO fails to deliver project on time TfNSW fails to respond in a timely manner to infrastructure/asset safety requirements	- Asset not fit for service - Safety incident on network	TfNSW relationship with Sydney Trains as per provisions of the Rail Services Contract TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Old trains not retired when beyond life expiry		Safety incident on network	TfNSW relationship with Sydney Trains as per	ST will advise TfNSW of safety concerns based

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				provisions of the Rail Services Contract ST as the accredited operator/maintainer must ensure trains entering and remaining in revenue service meet minimum safety standards, not TfNSW.	on past data or current operational experience
Configuration Management	Real world asset configuration out of sync with configuration register	<ul style="list-style-type: none"> - Configuration documents inadequately managed/controlled - Network configuration issues not/inadequately communicated to stakeholders - ASA too far removed from the "asset" to be able to adequately provide configuration control - Configuration Control Board (CCB) fails to provide traceability and assurance to TfNSW that all configuration changes within the responsibility of the CCB have been properly managed - Contracts awarded by 	<ul style="list-style-type: none"> - Unsafe (incorrectly integrated) asset released into service leading to safety incident - Latent conditions propagated leading to safety incident 	ASA Configuration Management control process. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		TfNSW to parties other than Sydney Trains for maintenance/renewal of Sydney Trains operated infrastructure			
	Governance arrangements for systems integration and configuration control not adhered to by all relevant parties/stakeholders		- Unsafe asset released into service	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA Configuration Management control process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Software configuration inadequately managed/controlled		- Software release leads to system failure leading to operational impact - Software release results in unsafe operation of asset leading to safety incident - Software update cannot be rolled back in event release fails leading to operational impact	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA to ensure standards reflect current requirements. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Configuration Management Committee (CMC) influenced by government to deliver/release assets on time		- Unsafe assets released into service leading to safety incident	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA Configuration Management control	ST is to assist development of CMC assurance evidence

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				process	
Compatibility	Procured rolling stock out of gauge for network (too big or too small)	Delivered Asset does not satisfy key (but undefined) safety requirements	<ul style="list-style-type: none"> - Infrastructure damaged - Gap between rollingstock and platforms too big 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Rolling stock not compatible with network systems	Delivered Asset does not satisfy key (but undefined) safety requirements	<ul style="list-style-type: none"> - Rolling stock fails to trip track circuits - Rolling stock cannot be integrated with ATP - Rolling stock cannot be integrated with comms systems (voice and data) 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Asset incompatible with network	Project integration fails to address all relevant interfaces	<ul style="list-style-type: none"> - Safety systems compromised - Automated systems need to be manually overridden 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process. ASA Configuration Management control process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Organisational Functions	Safety function of TfNSW/Sydney Trains not clearly defined		<ul style="list-style-type: none"> - Critical safety functions/responsibilities not undertaken - Safety Incident on network 	Rail Services Contract, Safety Interface agreement and project agreements stipulate the various accountabilities	Safety functions identified within Rail Service Contract Safety function and responsibilities identified

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
					within the ST SMS ST accredited as an Rail Operator
Funding	Failure to adequately fund MPM programme		- Asset maintenance/renewal compromised - Safety incident on network	Rail Services Contract retains mechanisms for ST to notify of safety concerns. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA inputs to Sydney Train's Technical Maintenance Plans.	ST retains ability to notify TfNSW of problems or significant flaws based on past data or current operational experience.
Competence	Lack of assurance that staff are competent	- Line managers remote to training delivery Lack of ST understanding (as the informed purchaser) of the competence	Safety incident on network	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		requirements for staff. - Sydney trains assumes TfNSW responsible for training/competency		Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program design and monitoring delivery and effectiveness.	within Safety Risk Register)
	Poor quality training	- Training delivered by resources who do not meet Trainer/Assessor requirements - Rail safety training outsourced - Trainers not following quality process	Safety incident on network	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes assurance functions built within it, to: - Capturing Trainer/ Assessor competence requirements (including currency) - Ensuring rostered /brokered resources meet requirements(internal and external) - identify and address sub-standard training delivery.	
	Rail safety worker competence system does not align with Sydney Trains competency requirement	ST competency requirements are not clear/provided to inform RSW competence system.	- Safety incident on network - Increase in human error	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services). The TfNSW Quality Training Management	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				<p>System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, RSW competence system design and monitoring delivery and effectiveness.</p>	
	<p>Competency programme only focuses on initial training requirement</p>	<p>- ST competency requirements are not clear/provided to inform RSW competence system.</p>	<p>- Safety incident on network</p>	<p>TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services).</p> <p>The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet</p>	<p>ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)</p>

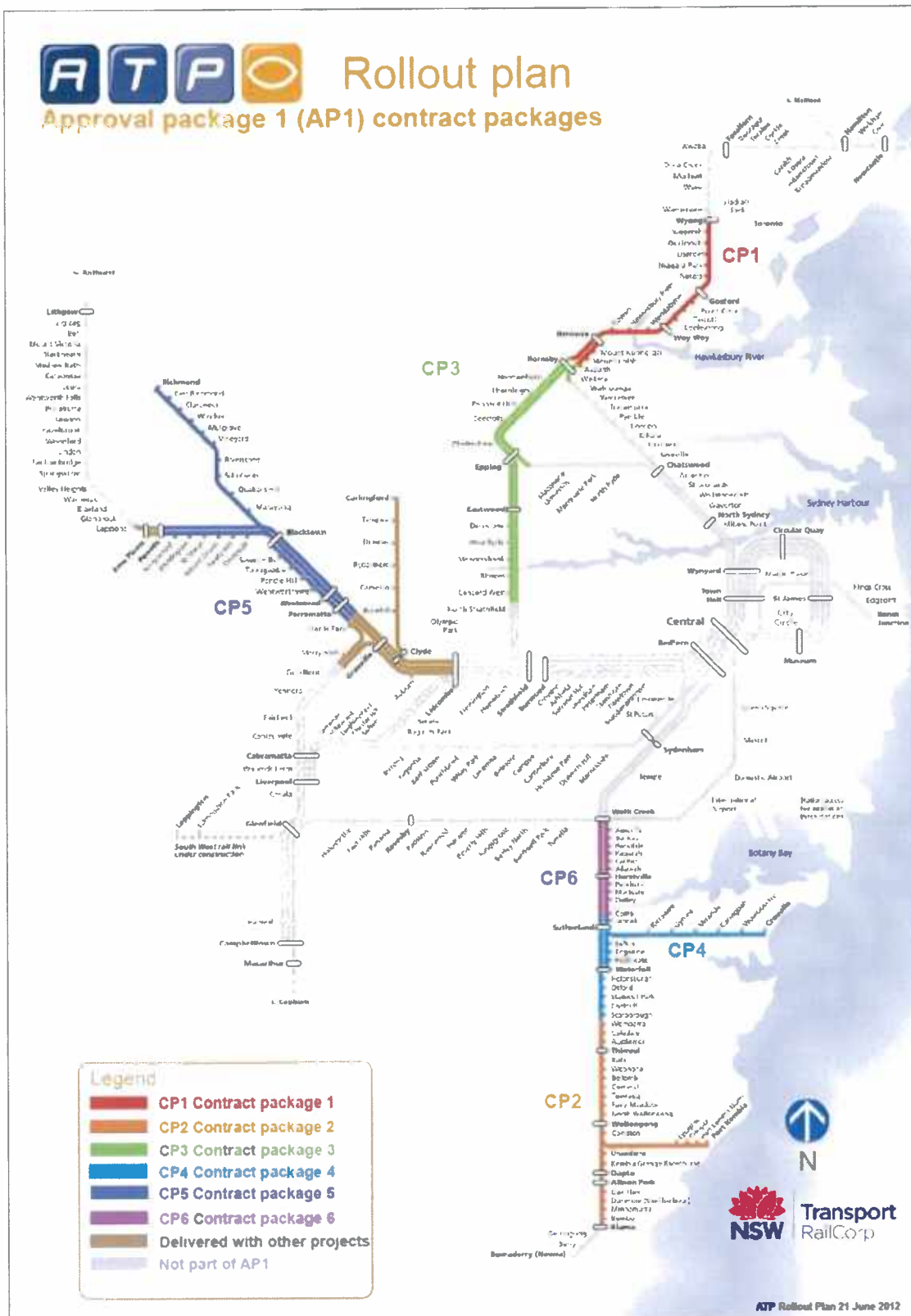
Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program design and monitoring delivery and effectiveness.	
	Refresher training not triggered by competency system	- ST competency requirements are not clear/provided to inform RSW competence system.	- Rail Safety Worker competency erodes over time - Safety incident	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				design and monitoring delivery and effectiveness.	
	Sydney Trains assumes all Rail Safety Worker card holders are competent (including contractors) and they are not	<ul style="list-style-type: none"> - Rail Safety Worker Cards qualifies person as competent without reference to the supporting system - Card issued incorrectly 	Card holder uses authorisation but not competent leading to safety incident	<p>TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services).</p> <p>The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify the business rules for the issuing of Rail Safety Worker cards and monitoring delivery and effectiveness.</p>	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms as defined within Safety Risk Register
Timetable	Standard working timetable not compatible	- Existing network weaknesses	- Safety incident on network due to more	TfNSW timetable change process as	ST to provide inputs to and comments on the

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
	with network assets	Increase in / improvement to services	customers at different locations - Increased asset utilisation in places	articulated in the Rail Services Contract (Schedule 8) specifies requirements for review of timetable changes and roles and responsibilities for TfNSW and ST.	Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, Asset maintainability and safety integrity view. ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.
	Standard working timetable increases traffic throughput	Existing network limitations and constraints Increase in / improvement to services	- Increased asset utilisation in places - Increased network congestion in places	TfNSW timetable change process as articulated in the Rail Services Contract (Schedule 8) specifies requirements for review of timetable changes and roles and responsibilities for TfNSW and ST.	ST to provide inputs to and comments on the Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, Asset maintainability and safety integrity view. ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Fleet allocation	Train fleets inappropriately assigned to Sydney Trains	<ul style="list-style-type: none"> - Existing fleet limitations and constraints - Introduction of new fleet to services - Reallocation of fleet to services 	<ul style="list-style-type: none"> - Fleet not compatible with network and/or operating model - Safety incident on network 	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The ST RSC requires all parties to work collaboratively to resolve issues and requires ST to notify TfNSW of any material issues. The intent of the RSC is to resolve any issues collaboratively. If a dispute arises, both parties will follow the dispute resolution process outlined in the RSC.</p>	<p>ST to provide inputs to and comments on the Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, asset maintainability and safety integrity view. ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.</p>

1. Schedule 2 – Scope of Work



Processes and Operations	Interface with Sydney Trains
<p>Amendments to operator specific procedures, train operations manual, train preparation and failure/degraded mode procedures, rolling stock and signal maintenance procedures, technical maintenance plans, safe working rules and training manuals.</p>	<p>Network Rules Organisational Development Operations Maintenance</p>
Systems and interfaces	<p>- conducted through regular meetings and reviews</p> <p>Other formal meetings held monthly: Steering Committee Program Control Group</p>
<p>ETCS Level 1 interfaces with: Signalling systems at the signal aspect level to provide signal status information to Lineside Electronic Units (LEU) Speed profiles which are programmed into the LEU and balise data Gradient profiles which are programmed into balise data Oscar and Tangara train management systems (Train Operating System – TOS), service and emergency brakes, traction systems, train lines, cab active and direction control systems.</p>	
Training	
<p>Training of train crew and operational staff. Training of all impacted engineering staff for trackside and onboard systems. Training of all impacted maintenance staff for trackside and onboard systems.</p>	
Property, plant and equipment	<p>Through Safety Interface Meetings</p> <p>Separate interface meetings for all areas operated and controlled by Australian Rail Track Corporation</p>
<p>Supply, design, install, test and commission ETCS Level 1 on the following sections: Construction Package 1: Wyong to Asquith, excluding Gosford area Construction Package 2: Kiama and Port Kembla to Wombarra Construction Package 3: Asquith to North Strathfield Construction Package 4: Wombarra and Cronulla to Jannali Construction Package 5: Emu Plains and Richmond to Harris Park Construction Package 6: Jannali to Wolli Creek</p>	
<p>Supply, design, install, test and commission ETCS Level 1 on the following fleets: 2 x V set Intercity chopper trains for use as ATP test trains Outer suburban Cars (OSCar) (H-sets) Tangara (T-sets) 2 x V set test trains and 8 other trains to be upgraded for Level 2 operations</p>	<p>Fleet owned by Sydney Trains ATP equipment to be installed at a train facility that may be operated by another rail operator</p>

2. Schedule 2 – Risk Register

Interface	Safety Risk	Current Proposed Control	Additional Controls Required	Responsible for risk control implementation and monitoring	Responsible for modifying the operation of risk controls
Property, plant and equipment					
Entry to Rail Corridor to establish worksite	Uncontrolled access to site	Project Safety Agreement (PSA); Work Activity Advice (WAA) All persons hold Rail Industry Safety Induction (RISI) certification. All persons are under supervision of qualified safe working staff Security risks addressed in Safe Work Method Statement (SWMS) and pre-work briefing	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice - TPD Contact Network Control Officer (Signaller)	Contractor TfNSW Project Management Protection Officer	TfNSW Sydney Trains
	Work undertaken in close proximity to other worksites	Consult and communicate with any workgroups in area of proposed enabling work Other workgroups addressed as a potential hazard in SWMS and pre-work briefing	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice - TPD	Contractor TfNSW Project Management Protection Officer	TfNSW Contractor
Working in Rail Corridor (outside danger zone)	Contact with live services	Current Detailed Site Survey (DSS) drawings made available to workgroup Non destructive pot-hole exposure of identified services to be undertaken prior to any geotechnical excavation Non-metal staves and tape measures used by all workers in the Rail Corridor Live service risks addressed in SWMS and pre-work briefing	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice – TPD Worksite Protection Plans Pre-work briefing	Sydney Trains Contractor TfNSW Project Management	TfNSW Sydney Trains
	Damage to Rail Infrastructure	All existing rail infrastructure to be identified in preliminary risk assessment and protected as	Project Work Notification (SMS-06-FM-4362) –	TfNSW Project Management	TfNSW Sydney Trains

Interface	Safety Risk	Current Proposed Control	Additional Controls Required	Responsible for risk control implementation and monitoring	Responsible for modifying the operation of risk controls
		<p>required.</p> <p>Identification and protection of existing rail infrastructure risks addressed in SWMS and pre-work briefing</p> <p>Reporting procedures addressed in PSA and WAA</p>	<p>Sydney Trains</p> <p>Work Activity Advice – TPD</p> <p>Worksite Protection Plans</p> <p>Pre-work briefing</p>	<p>Contractor</p> <p>Protection Officer</p> <p>Supervisory Staff and Spotters</p>	
	<p>Installing demarcation fencing</p>	<p>Current Detailed Site Survey (DSS) drawings made available to workgroup</p> <p>Non destructive pot-hole exposure of identified services to be undertaken prior to any geotechnical excavation</p> <p>Non-metal staves and tape measures used by Survey teams</p> <p>Live service risks addressed in SWMS and pre-work briefing</p>	<p>Project Work Notification (SMS-06-FM-4362) – Sydney Trains</p> <p>Work Activity Advice - TPD</p>	<p>TfNSW Project Management</p> <p>Contractor</p> <p>Protection Officer</p>	<p>Contractor</p> <p>TfNSW</p> <p>Protection Officer</p>
	<p>Construction activities in close proximity to the running line and existing rail infrastructure</p>	<p>All persons hold Rail Industry Safety Induction (RISI) certification.</p> <p>All persons are under supervision of qualified safe working staff</p> <p>Worksite protection plans comply with RailSafe Network Rules and Procedures</p> <p>Rail Safety risks addressed in SWMS and pre-work briefing</p>	<p>Project Work Notification (SMS-06-FM-4362) – Sydney Trains</p> <p>Work Activity Advice - TPD</p>	<p>TfNSW Project Management</p> <p>Contractor</p> <p>Protection Officer</p>	<p>Contractor</p> <p>Protection Officer</p>
	<p>Plant and equipment strikes train or lies foul of running line</p>	<p>Identification and protection of existing rail infrastructure risks addressed in WMP, SWMS, Work Site Protection Plans and pre-work briefing</p> <p>TfNSW Guidelines for use of swing arm plant in rail Corridor</p> <p>Regular Site Inspection and monitoring of work site activities</p> <p>Work detailed on Project Safety Agreement (PSA);</p>	<p>Project Work Notification (SMS-06-FM-4362) – Sydney Trains</p> <p>Work Activity Advice - TPD</p>	<p>TfNSW Project Management</p> <p>Contractor</p> <p>Protection Officer</p>	<p>Sydney Trains</p> <p>TfNSW</p>

Interface	Safety Risk	Current Proposed Control	Additional Controls Required	Responsible for risk control implementation and monitoring	Responsible for modifying the operation of risk controls
		Work Activity Advice (WAA)			
Entry to Danger Zone	Working persons struck by train	All persons hold Rail Industry Safety Induction (RISI) certification. All persons are under supervision of qualified safe working staff Network Control and Corridor Safety Centre (if applicable) has been notified of workgroup location and type of work Worksite protection plans comply with RailSafe Network Rules and Procedures Rail Safety risks addressed in SWMS and pre-work briefing	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice – TPD Worksite Protection Plans Pre-work briefing	TfNSW Project Management Contractor Protection Officer	TfNSW Contractor Protection Officer
	Walking in the Danger Zone	All persons hold Rail Industry Safety Induction (RISI) certification. All persons are under supervision of qualified safe working staff Worksite protection plans comply with RailSafe Network Rules and Procedures All persons must have easy access to a safe place or refuge. All persons to have undertaken a pre-work briefing by the Worksite Protection Officer (PO)	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice – TPD Worksite Protection Plans Pre-work briefing	TfNSW Project Management Contractor Protection Officer	TfNSW Contractor Protection Officer
Working in Danger Zone	Using communication device while in the Danger Zone	All persons to make or receive phone calls or other communication only when in a safe place or refuge	Worksite Protection Plans Pre-work briefing SWMS	Contractor Protection Officer	Contractor Protection Officer
	Working persons struck by train	All persons hold Rail Industry Safety Induction (RISI) certification. All persons are under supervision of qualified safe	Worksite Protection Plans Pre-work briefing	TfNSW Project Management Contractor	TfNSW Contractor

Interface	Safety Risk	Current Proposed Control	Additional Controls Required	Responsible for risk control implementation and monitoring	Responsible for modifying the operation of risk controls
		<p>working staff</p> <p>Network Control and Corridor Safety Centre (if applicable) has been notified of workgroup location and type of work</p> <p>Worksite protection plans comply with RailSafe Network Rules and Procedures</p> <p>Rail Safety risks addressed in SWMS and pre-work briefing</p>	SWMS	Protection Officer	Protection Officer
	Plant and equipment strikes train or lies foul of running line	<p>Identification and protection of existing rail infrastructure risks addressed in WMP, SWMS, Work Site Protection Plans and pre-work briefing</p> <p>TfNSW Guidelines for use of swing arm plant in rail Corridor</p> <p>Regular Site Inspection and monitoring of work site activities</p> <p>Work detailed on Project Safety Agreement (PSA); Work Activity Advice (WAA)</p>	<p>Worksite Protection Plans</p> <p>Pre-work briefing</p> <p>SWMS</p>	<p>TfNSW Project Management</p> <p>Contractor</p> <p>Protection Officer</p>	<p>TfNSW Contractor</p> <p>Protection Officer</p>
Conducting Enabling works using plant and/or equipment	Contact with live services	<p>Current Detailed Site Survey (DSS) drawings made available to workgroup</p> <p>Non destructive pot-hole exposure of identified services to be undertaken prior to any geotechnical excavation</p> <p>Non-metal staves and tape measures used by all workers in the Rail Corridor</p> <p>Live service risks addressed in SWMS and pre-work briefing</p>	<p>Project Work Notification (SMS-06-FM-4362) – Sydney Trains</p> <p>Work Activity Advice – TPD</p> <p>Worksite Protection Plans</p> <p>Pre-work briefing</p>	<p>TfNSW Project Management</p> <p>Contractor</p> <p>Protection Officer</p> <p>Plant Operator</p>	<p>TfNSW Contractor</p> <p>Protection Officer</p>
	Potential to impact on rail infrastructure, reliability and/or train operations	Adequate adjacent line Worksite Protection has been implemented by qualified staff	<p>Worksite Protection Plans</p> <p>Pre-work briefing</p> <p>SWMS</p>	<p>TfNSW Project Management</p> <p>Contractor</p> <p>Protection Officer</p>	<p>TfNSW Contractor</p> <p>Protection Officer</p>

Interface	Safety Risk	Current Proposed Control	Additional Controls Required	Responsible for risk control implementation and monitoring	Responsible for modifying the operation of risk controls
	Damage to Rail Infrastructure <ul style="list-style-type: none"> •digging •striking by equipment •falling equipment •dropped objects •cutting cables, utilities or underground services 	All existing rail infrastructure to be identified in preliminary risk assessment and protected as required. Identification and protection of existing rail infrastructure risks addressed in SWMS and pre-work briefing Reporting procedures addressed in PSA and WAA	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice – TPD Worksite Protection Plans Pre-work briefing	TfNSW Project Management Contractor Protection Officer	TfNSW Contractor Protection Officer
	Exposure to hazardous materials	Site assessments Task is undertaken by licensed or specialist contractors	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice – TPD Worksite Protection Plans Pre-work briefing	TfNSW Project Management Contractor	TfNSW Contractor
Removal of hazardous materials from Rail Corridor	Sydney Trains regional or station platform personnel are not aware of the process	All interface issues are outlined in PSA & WAA Task is undertaken by licensed or specialist contractors Area is barricaded to restrict unauthorised access Signage is displayed at all access points to warn of process	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice – TPD Worksite Protection Plans Pre-work briefing	TfNSW Project Management Contractor	TfNSW Contractor
Security / Access arrangements	Unauthorised access to worksite or Rail Corridor	Site boundary gates to worksite areas (locked or manned at all times) Inspections of gates and fences at end of each shift Site Management Plan to include security measures	Project Work Notification (SMS-06-FM-4362) – Sydney Trains Work Activity Advice – TPD Worksite Protection Plans Pre-work briefing	TfNSW Project Management Contractor	TfNSW Contractor
Onboard/Operational Readiness*					
Test Train	Failure to provide	Provision of Train Path		TfNSW Project	TfNSW

Interface	Safety Risk	Current Proposed Control	Additional Controls Required	Responsible for risk control implementation and monitoring	Responsible for modifying the operation of risk controls
Operation and Movement	safe access	Provision of Possession Provision of Safe Notice Provision of Special Train Notice		Management Sydney Trains	Sydney Trains
	Provision of Train Crew	All persons to hold Rail Industry Safety Induction (RISI) certification Test captain in cab supervising Test plan, SWMS, Pre work Briefings Test Crew Supervision Drug and alcohol management program Fatigue management program and rostering Medicals and Health Assessment management program		TfNSW Project Management Sydney Trains NSW Trains	TfNSW Sydney Trains NSW Trains
	Operation and handling of train by Train Crew	Train Operating Conditions (TOC) TOM Notices		TfNSW Project Management Sydney Trains NSW Trains	TfNSW Sydney Trains NSW Trains
	ATP equipment causes interference with other trackside/train safety systems	Design approval of onboard installation Conditional Type Approval of ETCS Antenna ATP will be isolated outside of testing location		TfNSW Project Management Sydney Trains NSW Trains	TfNSW Sydney Trains NSW Trains
	ATP inadvertently enabled in unauthorised location	ATP will be isolated outside of testing location TOM Notice Test plan, SWMS, Pre work Briefings		TfNSW Project Management Sydney Trains NSW Trains	TfNSW Sydney Trains NSW Trains

Interface	Safety Risk	Current Proposed Control	Additional Controls Required	Responsible for risk control implementation and monitoring	Responsible for modifying the operation of risk controls
	ATP functions incorrectly	ATP is isolated and not reliant upon as a safety system Test captain in cab supervising Test plan, SWMS, Pre work Briefings		TfNSW Project Management Sydney Trains NSW Trains	TfNSW Sydney Trains NSW Trains
	Issue of signalling waiver	ASA issue of waiver		TfNSW Project Management Sydney Trains	TfNSW Sydney Trains
	End of test track residue	Test plan, SWMS, Pre work Briefings to ensure safe method		TfNSW Project Management	TfNSW Project Management

*Risks associated with the design, asset performance, maintenance of assets, and competency of Sydney Trains' staff are covered in the Global Safety Interface Agreement

Exhibit F

TfNSW Standard Requirements



TfNSW Standard Requirements (Works Contracts)

5TP-FT-425/3.0

Template – Applicable to Infrastructure and Services

Integrated Management System

Status:	Approved
Version:	3.0
Section:	Commercial
Business unit:	Procurement
Date of issue:	31 December 2016
Review date:	31 December 2017
Audience:	Project Delivery/For use with the Contract templates
Asset classes:	<input checked="" type="checkbox"/> Heavy Rail; <input checked="" type="checkbox"/> Light Rail; <input checked="" type="checkbox"/> Multi Sites; <input checked="" type="checkbox"/> Systems; <input checked="" type="checkbox"/> Fleets
Project delivery model:	I&S Project/Alliance/Novo Rail
Project type:	For all project types
Project lifecycle:	<input type="checkbox"/> Feasibility; <input type="checkbox"/> Scoping; <input checked="" type="checkbox"/> Definition; <input checked="" type="checkbox"/> Construction readiness; <input checked="" type="checkbox"/> Implementation; <input type="checkbox"/> Finalisation; <input type="checkbox"/> Not applicable
Process owner:	Director Commercial

Document History

Version	Date of approval	Doc. control no.	Summary of change
1.0	19 August 2015	4541518_1	New consolidated TSR document replacing the suite of individual TSRs (TSR C, TSR E, TSR P, TSR S, TSR T) for use with the Contract Templates. Includes revisions to TSR P elements re Planning & Scheduling
2.0	18 February 2016	4249760_8	Updated consolidated TSR
3.0	31 December 2016	4249760_15	Technical content moved to Works Brief, duplications with Contract requirements deleted. Reordered to support Annexure layout

Note - this document includes hyperlinks to TfNSW authored reference documents.

Where the TfNSW reference document is publicly available, the link will take the user to TfNSW's Internet website, where the particular reference document can be located. Access to these documents is available to all users.

Where the TfNSW reference document is not publicly available, the link will take the user to TfNSW's intranet and the QMS system where the document is located. Access is limited to users with TfNSW intranet access. Contractors do not have access to QMS and must therefore be provided with these reference documents as part of the Contract. The list of these reference documents can be found in Annexure I of this TSR.

Table of Contents

1. Introduction	4
2. Project Administration	4
3. Planning, Sustainability and Environmental Management	6
4. Safety Management.....	7
5. Communications, Stakeholder and Community Liaison	10
6. Property	13
Annexure A Additional Project Requirements	17
Annexure B Definitions.....	18
Annexure C Management Plans	22
Annexure D Contractor's Program.....	32
Annexure E Records	37
Annexure F Working in and Adjacent to the Rail Corridor	40
Annexure G Sustainability and Climate Change	49
Annexure H Contractor's Monthly Report	51
Annexure I Reference Documents	53

1. Introduction

- (a) This TfNSW Standard Requirement (TSR) describes TfNSW's requirements and processes for the management of the Contractor's Activities.
- (b) The Contractor must comply with the requirements detailed in this TSR, including its Annexures unless noted otherwise in Annexure A - Additional Project Requirements.
- (c) The Contractor must comply with the requirements of the Reference Documents listed in Annexure I of this TSR.
- (d) Wherever used in this TSR, capitalised words and phrases have their general dictionary meaning unless otherwise noted in the General Conditions or Annexure B of this TSR.

2. Project Administration

2.1. Contract Management Plan (CMP)

- (a) The Contractor must have in place, maintain and consistently apply until Final Completion, a Contract Management Plan and with sections Sub plans describing how the project will be delivered. The CMP must include the content described in Annexure C.
- (b) The Contractor's Activities must be carried out in accordance with the CMP.
- (c) The timing and frequency for the initial and subsequent submissions of the CMP to the Principal's Representative for review in accordance with the Contract, is nominated in Annexure A of this TSR.

2.2. Contractor's Program

Without limiting the Contract, the Contractor's Program and all other programs must comply with the requirements of Annexure D.

2.3. Document Management

The Contractor must use the nominated electronic document management tool listed in Annexure A.

2.4. Monthly Reporting

Unless otherwise noted in Annexure A, the Contractor must prepare and submit a progress report on a monthly basis which complies with Annexure H, to the Principal's Representative for review in accordance with the Contract.

2.5. Audit

- (a) Should the Principal establish a Compliance Working Group (CWG), the Contractor must provide suitably competent attendees and resources until Final Completion.
- (b) The Contractor must attend the CWG meetings and participate efficiently to ensure the success of the CWG as well as ensuring that all audits are coordinated, lead and managed through the CWG.
- (c) The Principal may also utilise independent auditors to assist with its Inspections including audit and surveillance.
- (d) When any audit or Inspection is to be undertaken by the Principal, the Contractor must:

- i. make available, all records and Documents;
 - ii. make suitable facilities available to accommodate the audit and audit team; and
 - iii. provide all reasonable assistance during the audit including the participation of representatives from the Contractor and Subcontractors organisations.
- (e) The Contractor must ensure that all recommendations arising from any audit are actioned in accordance with appropriate corrective and preventive systems in a timely and agreed manner.
- (f) The Contractor must provide the Principal's Representative with a program of audits and the audit results when requested.

2.6. Training, Competence and Reference Checks

The Contractor must ensure that all persons engaged in carrying out the Contractors Activities:

- (a) are inducted, appropriately trained and made aware of the requirements of the Contract with particular focus on incident management/reporting procedures, community enquiries or complaints and media enquiries, prior to commencing work on site prior to performing any function on Site;
- (b) maintain records of all training and inductions carried out;
- (c) attend any training provided by the Principal specified in Annexure A;
- (d) when directed by Principal's Representative, are subject to police criminal record checks. The Contractor must promptly notify the Principal's Representative if any offences have been recorded; and
- (e) hold certificates of competency for the operation of plant and are assessed and deemed competent to operate the plant for its intended use to the satisfaction of the Contractor.

2.7. Incident Management

- (a) The Contractor must provide immediate verbal notification to the Principal's Representative of any Incident or Issue.
- (b) The Contractor must immediately report all Incidents using the [InControl Incident Management System \(INX\)](#). Should INX not be accessible, the Contractor must report in a manner that enables effective and subsequent recording into INX.
- (c) The Contractor must undertake a preliminary investigation of all minor incidents within 5 Business Days of the Incident, unless otherwise agreed by the Principal's Representative. Major investigations must be completed within 20 Business Days of the Incident. Terms of reference for major investigations will be issued by the Principal. If the Principal's Representative requires the appointment of an external independent investigator, the Contractor will bear the cost of the appointment.
- (d) The Principal may participate in any investigation being undertaken by the Contractor or initiate its own investigation. If the Principal instigates its own investigation the Contractor must provide the Principal with all assistance reasonably required for the purposes of the investigation, this includes the waiver of legal professional privilege over any investigation report prepared by, or on behalf of, the Contractor. The Parties may agree that any investigation report that is subject

to legal professional privilege may, between the Contractor and the Principal, be subject to a common interest privilege.

- (e) For all Environmental incidents the Contractor must comply with the requirements of “TfNSW [Environmental Incident Classification and Reporting – 9TP-PR-105](#)” and “TfNSW [Environmental Incident/Non-Compliance Report – 9TP-FT-101](#)” in relation to all environmental Incidents.
- (f) In the event of an Incident or Issue, the Contractor must not contact or provide information to any person (other than that which is required to directly manage the Incident or to comply with law), including any stakeholder, the media or the public, without the prior approval of the Principal. The Contractor must make available senior personnel to respond to the community, the media and other stakeholders when required by the Principal.
- (g) All notifiable occurrences under WHS, Rail Safety National law, or Maritime law must be reported immediately to the Principal's Representative and to the relevant Regulatory authority. Where any type of notice, infringement or fine by a Regulator has been issued to the Contractor in relation to undertaking the Works, the Contractor must immediately notify the Principal's Representative and provide a copy of the notice, infringement or fine within 24hrs of receiving.
- (h) The Contractor must provide the Principal with all necessary Communications Materials that may need to be disseminated as a result of such incidents, when required by the Principal.

3. Planning, Sustainability and Environmental Management

3.1. Planning and Approvals

- (a) Where the Contractor is responsible for a submission to an Authority for an Authority Approval, or where an Authority requests a document submission, the Contractor must provide that submission to the Principal's Representative for review in accordance with the Contract. The Contractor must satisfy the process outlined in Clause 9.8 of the Contract prior to issuing the submission to the relevant Authority.
- (b) The Contractor must comply with the nominated environmental compliance monitoring system, where nominated in Annexure A.
- (c) In the event of Pre-Construction Works, the Contractor must submit the details of the Pre-Construction Works to the Principal's Representative using the form “TfNSW [Pre-Construction Minor Works Approval – 9TP-FT-202](#)” for review in accordance with the Contract.
- (d) Consistency checklists and Environmental Reviews, are to be completed by the Contractor where stated in Annexure A.

3.2. Environmental Management

- (a) The Contractor must provide sufficient competent environmental resources on and offsite to ensure effective implementation of the CEMP and the broader requirements of the Contract.
- (b) The Contractor's Activities, Works and Temporary Works must be provided, having regard to TfNSW' suite of [Environmental Guidelines](#).

- (c) The Contractor's Environmental Management System (EMS) must comply with the requirements stated in Annexure A.
- (d) Where Non Compliances or Incidents arise in the Contractor's Activities, "[TfNSW Environmental Incident/Non-Compliance Report – 9TP-FT-101](#)" must be completed by the Contractor and returned to the Principal's Representative within 48 hours.
- (e) The Contractor must develop, implement and maintain Environmental Control Maps (ECMs) in accordance with all Authority Approvals and comply with "[TfNSW Guide to Environmental Control Map – 3TP-SD-015](#)" as well as preparing each ECM as a map in both A0 and A3 sizes.
- (f) The Contractor must progressively review and update the ECMs (to incorporate works progression and changing characteristics of the Site), amending environmental protection measures where those identified fail to achieve continuous compliance with the environmental obligations under the Contract.
- (g) The Contractor must submit all ECMs to the Principal's Representative for review in accordance with the Contract.
- (h) The Contractor must comply with section 4.5.4 Control of Records of "AS/NZS ISO 14001:2015" and retain all environmental records for a period of no less than 5 years from Completion.
- (i) The Contractor must provide the Principal with copies of the environmental records stated in Part 3 of Annexure E. Any records not required to be stored on-site must be forwarded to the Principal's Representative within 3 Business Days of a request.

3.3. Sustainability and Climate

The Contractor must comply with the Principal's sustainability and climate requirements and the requirements of GREP described in Annexure G.

4. Safety Management

4.1. General Requirements

- (a) The Contractor must advise the Principal's Representative at all times, the name of the senior management representative responsible for implementing the safety requirements of this Contract and monitoring the effectiveness of the Contractor's safety management system in complying with all safety requirements.
- (b) The Contractor must manage safety risks in accordance with "AS/NZS ISO 31000:2009 – Risk", and must eliminate all risks to health and safety; or where not possible, minimise those risks so far as is reasonably practicable applying, maintaining and reviewing the prescribed Hierarchy of Control Measures.
- (c) The Contractor must implement the Principal's Pegasus/Onsite Track Easy access card systems unless otherwise specified in Annexure A. The Contractor must ensure that all workers are provided with an access card and log in and out each shift.
- (d) The Contractor must effectively manage, through the Pegasus system, fatigue, emergency response, alcohol and other drugs use, training, induction and competency records. The Contractor must ensure adequate numbers of sign on location points (whereby workers can easily log on and off each shift) exist. Each location point is to be provisioned with an Alcolizer/Breathalyser which is to be incorporated into the sign-on unit and used as part of the daily sign-on for all workers and visitors accessing site.

- (e) As part of the determination of whether risks have been eliminated or minimised so far as is reasonably practicable, the Contractor must review, and record the review of "TfNSW's [Generic Work Health and Safety Operational Risk Register - 30-SD-101](#)" and where the Contractor's Activities involve Rail Safety Work, the Contractor must also review "TfNSW [Generic Rail Safety Risk Register - 30-SD-038](#)".
- (f) All SWMS, must be approved and signed off by the Principal Contractor prior to being submitted to the Principal's Representative for review in accordance with the Contract. The Contractor acknowledges and agrees that by exercising its right under this clause 4.1 (f) the Principal's Representative is not assuming any management or Control of the Site or the Contactor's Activities and is only receiving the SWMS information to monitor the Contractor's compliance with its obligations under this Contract and/or applicable Laws.

4.2. Safety Control Measures

- (a) The Contractor must ensure that quick hitch attachments fitted to excavators and other earth moving machinery are of the fully automatic type with a secondary locking attachment. The secondary attachment is to be capable of preventing the excavator attachment from releasing in the event of a partial or total failure of the power supply or when the operator stops operating the machine. All half-hitch, mechanical-hitch, form-lock, semi-automatic types are prohibited.
- (b) Where mobile plant's operating envelope is capable of encroaching within 3 metres of the Rail Network Danger Zone or the safe approach distance to live electrical infrastructure, the Contractor must implement the use of programmable zone limiting devices that limit the hoisting and/or slewing and which are designed to be "fail safe" or which meet Category 4 reliability in accordance with "AS4024.1 Safeguarding of Machinery" or a SIL of 3 under "AS 61508 Functional safety of electrical / electronic / programmable electronic safety-related systems".
- (c) The Contractor must ensure that records for inspection, maintenance and repair of each item of plant on site are kept and maintained up to date.
- (d) The Contractor must ensure that no modifications have been made to any item of plant without approval and acceptance from the original equipment manufacturer for the relevant item of plant.
- (e) Prior to all penetration or excavation works being undertaken, the Contractor must develop a Utilities Management Plan to manage these works. As part of the management of utilities the Contractor must positively identify all utilities within and adjacent to, the Site and update all relevant drawings/maps to include the known locations of such utilities. The Utilities Management Plan must demonstrate how the Contractor will manage all its activities around all overhead and underground service utilities.
- (f) The Contractor's Activities must be in compliance with the relevant WHS legislation and TfNSW Working Near Utilities Standard 4TP-PR-159 and as a minimum must demonstrate how the contractor will manage:
 - i. positive and effective isolation of energy sources;
 - ii. potholing to positively identify underground services;
 - iii. non-destructive digging methods and service locations (e.g. Ground Penetrating Radar);
 - iv. Dial Before You Dig and DSS service searches;

- v. the potential for unidentified underground services; and
 - vi. Penetration/excavation permit process including the use of hold points to ensure controlled approval management of the process.
- (g) Live electrical work is not permitted to be carried out on the Site and isolated circuits must be treated as live until they have been proven otherwise dead by testing. The only exception to the above is for the purpose of testing, as specified in the Safework NSW Code of Practice "Managing Electrical Risks in the Workplace".
- (h) The use of portable earphone equipped music players on Site is prohibited.
- (i) Fires or burning off are not permitted anywhere on Site.
- (j) The Contractor must provide a defibrillator (and suitable training in its use for its first aid personnel) at each major first aid location, and must ensure persons trained in the use of the defibrillator are on Site at all times.
- (k) In Vehicle Monitoring Systems (IVMS) are to be fitted in all Heavy Vehicles used on Site. General exemptions to the above would be for non-project delivery drivers, and suppliers providing one off deliveries.
- (l) All breaches in relation to clause 4.2 (k), IVMS must be managed in accordance with section 2.7 of this TSR. Incidents involving speeding, fatigue and log book breaches must be monitored, reported and acted upon by the Contractor.
- (m) Management of Fatigue must be in accordance with the requirements set out in TfNSW Fatigue Management Standard ST-011.

4.3. Alcohol and Other Drugs

- (a) The Principal's policy of zero tolerance of alcohol and illegal drug use applies to this Contract and all the Contractor's Activities. Alcohol and illegal drugs are not permitted on any Site or on premises controlled or managed by the Principal. The Contractor must develop policies and procedures to ensure this policy of zero tolerance of alcohol and illegal drugs use is adhered to at all times.
- (b) The Contractor must develop and implement effective alcohol and drug testing procedures inclusive of the number of tests to be performed annually and the periods throughout the year that testing will take place. All Alcohol and Other Drug testing procedures must be in line with relevant Laws and Australian Standards.
- (c) The Contractor must ensure that all persons associated with the Contractor's Activities (including the Contractor's personnel, visitors, Subcontractor workers and agents) are aware of their obligations to comply with all alcohol and other drug requirements.
- (d) Any persons under the influence of alcohol or drugs are prohibited from working on any projects carried out for, controlled or managed by the Principal, regardless of their work location. Prescription and over-the-counter drugs may also affect a person's ability to work safely and the Contractor, in consultation with the Principal's Representative, will determine its policy in relation to prescription and over-the-counter drugs on a case by case basis.
- (e) All of the Contractor's personnel and workers of Subcontractors may be subject to alcohol and drug testing by an authorised testing officer or agent of the Principal at any time whilst carrying out the Contractor's Activities (including within the Contractor's Site amenities or facilities).

- (f) Testing for the presence of alcohol and other drugs may be undertaken at any time that workers are present on Site, including:
 - i. before performing duties (pre-sign on, primarily alcohol test);
 - ii. during the performance of duties (random and reasonable cause); and
 - iii. following any Incident.
- (g) The Contractor must immediately remove anyone from Site that tests positive to alcohol or drug tests or who refuses an alcohol or drug test, and the Principal's Representative notified immediately.
- (h) The Contractor must take disciplinary action against a person who breaches the Principal's policy of zero tolerance of alcohol and illegal drug use. The nature of the disciplinary action to be taken must be communicated to the Principal's Representative.
- (i) Each individual that signs on at the commencement of each shift declares themselves to be free of alcohol and drugs.
- (j) In addition to the requirements set out in this clause 4.3, if the Contractor's activities are in or adjacent to the Rail Corridor and the rail environment, the applicable alcohol and other drugs procedures must comply with the Rail Safety National Law and the testing regime must include prestart testing prior to Track Possessions.

5. Communications, Stakeholder and Community Liaison

5.1. General Requirements

The Contractor must:

- (a) appoint suitably qualified and experienced personnel to fulfil the communications requirements of the Contract and must consult the Principal's Representative prior to taking any action that may impact on stakeholders and the community;
- (b) proactively identify positive media and/or community relations opportunities, informing the Principal of these opportunities in a timely manner; and
- (c) comply with all reasonable suggestions and requests of the community.

5.2. Meetings with Community and Stakeholders

- (a) The Contractor must not meet the community or stakeholders without seeking prior approval from the Principal, providing the Principal with a minimum of 3 Business Days' notice in each case.
- (b) The Contractor must ensure that suitable persons, adequately informed and qualified to participate and take the lead during meetings where requested by the Principal's Representative are available to attend meetings at all times, including "after-hours". The Contractor must also provide relevant materials for presentation and distribution at such meetings.

5.3. Communications Management Control Group (CMCG)

- (a) The Contractor must provide administration and attend all CMCG meetings, established by the Principal. The CMCG may comprise representatives from Other Contractors, the Contractor, the Principal and others invited by the Principal.
- (b) At each CMCG meeting the Contractor must provide the following information:

- i. a summary of current and upcoming Contractor's Activities, likely impacts, and proposed communication strategies;
- ii. an update on any current or emerging issues and/or opportunities;
- iii. an update on complaints received and action taken to resolve them; and
- iv. other information as requested by the Principal.

5.4. Communication Materials and Notifications

- (a) All written, verbal or photographic/illustration information to be seen and made available to others i.e. Communication Materials must be submitted for approval to the Principal's Representative, who will require a minimum of 5 Business Days to review and approve or reject any submission. All written Communication Materials produced by the Contractor must comply with the "TfNSW [WCAG 2.0 Quick reference guide](#)" and "TfNSW [Editorial Style Guidelines](#)".
- (b) The Contractor must issue written notifications to stakeholders and the community at least 5 Business Days before commencing any activity with the potential to impact stakeholders and the community. The notification must use the template provided by the Principal and must include the distribution details shown on a map.
- (c) During Emergency Works, the Contractor must provide written and verbal notification to properties immediately adjacent to or impacted by the works at least two hours before commencing any activities. In such circumstances notifications do not have to be provided to the Principal's Representative for prior review/approval on the basis that subsequently, a copy of the distributed notification is provided to the Principal in electronic format.

5.5. Communications Management System (CMS)

- (a) Contractor must complete formal familiarity training using the Principal's web-based CMS for collecting and recording details of all community and stakeholder contact.
- (b) The Contractor must record all contact with the community, media, government representatives, project related articles (paper and web based) and online discussions (blogging) on CMS and must update and maintain CMS with accurate details within 24 hours of the contact to ensure easy identification and rapid distribution of information when required.
- (c) Entries into the CMS must provide an accurate, succinct summary of the contact and include contact details, actions required and must be updated by the Contractor as soon as actions are closed out.
- (d) The Contractor must provide the Principal with information within the requested timeframes, to respond to media and government enquiries.

5.6. Complaints and Enquiries

- (a) The Contractor is responsible for responding to complaints and enquiries received regarding the Contractor's Activities, through a variety of avenues including the Principal's 24-hour response line or project info line, in writing (letter or email), direct to the Principal via telephone, or direct to the Contractor or its Subcontractors.
- (b) When responding to complaints the Contractor must:
 - i. record details of every complaint received and how it was managed and closed out;

- ii. immediately investigate and determine the source of the complaint including an immediate return call to the complainant (where received by telephone). Where the complaint does not relate to the Contractor's Activities, the Contractor must immediately notify the Principal's Representative;
- iii. provide an oral response to the complainant regarding what action is proposed, immediately, within a maximum of 2 hours from the time of the complaint. If no return phone number was provided, the complaint must be responded to within a maximum of 24 hours for emails and 5 Business Days for letters from time of receipt;
- iv. provide a detailed written response to the complainant within 7 calendar days, outlining the issue and the remedial action taken. Such written responses must be provided to the Principal for review and approval/rejection within 3 Business Days of receipt of the complaint; and
- v. forward a scanned signed copy of the approved written response to the Principal on the day it is sent.

5.7. Construction Site

- (a) The Contractor must submit a written request to the Principal's Representative providing at least 48 hours notice, for any requests by the community and stakeholders to access Site. The Contractor must not provide access unless the Principal has granted their prior approval.
- (b) The Contractor must accommodate all visits to the Site by the Principal's authorised representatives. The Contractor acknowledges that any photographs, film or video taken by either the Contractor or the Principal is the property of the Principal, who may use them for any purpose it chooses, and without the Contractor's approval,
- (c) The Principal may provide the Contractor with signage and/or graphics which must be installed by the Contractor as directed by the Principal's Representative.
- (d) The Contractor must install way finding signage to direct pedestrians, commuters and vehicles that identifies changes to traffic and access at least 7 calendar days before:
 - i. making changes to pedestrian routes;
 - ii. impacting on cycle ways;
 - iii. changing traffic conditions; and
 - iv. disrupting access to public transport modes.
- (e) All Temporary Works, Works and items erected as a part of the Contractor's Activities must be constantly maintained free of graffiti and advertising not otherwise authorised by the Principal, until Final Completion.
- (f) The Contractor must carry out daily inspections, and remove or cover any graffiti and unauthorised advertising as detailed:
 - i. offensive graffiti and unauthorised advertising material must be removed or covered within 24 hours;
 - ii. highly visible yet non-offensive graffiti must be cleaned or covered within 1 week; and

- iii. graffiti that is neither offensive nor highly visible must be cleaned or covered during normal operations within one month.

6. Property

6.1. General

- (a) The Contractor must appoint a site-based person to be the Contractor's property representative. This representative must be present during all inspections undertaken by the Principal's Representative or delegate.
- (b) Any findings by the Principal's Representative from inspections must be actioned within the timeframes reasonably required by the Principals Representative. The Contractor must provide written notification to the Principal that the findings of the Principals Representative have been closed out within the timeframes specified.
- (c) The Contractor must provide the property records described in Part 2 of Annexure E.

6.2. Pre Commencement Property Risk Assessment

- (a) Prior to the commencement of any Site based activity, the Contractor must undertake a comprehensive property risk assessment in consultation with the Principal's Representative unless otherwise specified in Annexure A. A staged risk assessment may be utilised, upon agreement with the Principal's Representative.
- (b) This risk assessment must identify the potential property impacts of the Contractor's Activities on property, and the control measures that are required to be implemented in order to provide property protection in accordance with the requirements of the Contract.
- (c) With respect to the Site (and where the Site is at more than one location, for each part of the Site), this risk assessment must include:
 - i. permanent and temporary worksite access requirements and timing;
 - ii. access to or across adjoining properties and timing;
 - iii. crane slew radius, air rights and impacts on neighbouring properties or the Rail Corridor;
 - iv. any future subdivision, easements, other title interests or divestment requirements;
 - v. any future commercial impacts of resultant works; and
 - vi. Site investigation and contamination.

6.3. Access

6.3.1. Ownership and Rights of Access

- (a) The Contractor must ensure it has the necessary legal rights to access the appropriate property prior to commencing the Contractor's Activities. To assist the Contractor, the Principal has developed a non-exhaustive list of applicable legislation, described in "TfNSW [Property Compliance Register – 2TP-ST-175](#)".
- (b) Prior to commencing the Contractor's Activities, the Contractor must conduct property ownership searches (if lands are not supplied by the Principal).

- (c) Works to be undertaken on roads e.g. RMS owned lands or Council property, require a Work Authorisation Deed (WAD), Section 138 permit or other *Roads Act 1993 (NSW)* consent or agreement with the owner or authority. If this has not been undertaken by the Principal prior to the engagement of the Contractor, and it is not the Principal's responsibility under the Contract, the Contractor must negotiate the WAD or permit on behalf of the Principal to gain access to the lands and determine who will be the rightful owner of any new structures, and who will be responsible for future asset management.
- (d) The Contractor must submit any such agreements to the Principal's Representative for review in accordance with the Contract, before they are formally released to any external party (e.g. RMS and Councils) for negotiation and execution.

6.3.2. Neighbouring Property

- (a) The Contractor must be responsible for managing the Site and minimising the impact of the Contractor's Activities on adjoining owners until Final Completion.
- (b) At least 2 weeks prior to commencement of the Works and activity on Site, the Contractor must identify all neighbouring land owners, tenants, businesses, occupants, who may be impacted by the Contractor's Activities and provide the Principal's Representative with a consolidated list that includes:
 - i. addresses;
 - ii. land use (retail, residential, garage, etc.);
 - iii. primary contact name, phone number and email address;
 - iv. likely impact that the Contractor's Activities will have on neighbouring property; and
 - v. any past correspondence.
- (c) Where access to neighbouring property is required, the Contractor must have the necessary legal rights and must comply with the *Access to Neighbouring Land Act 2000 (NSW)* and this Contract. In such cases, the Contractor must prepare an application for access and submit it to the Principal's Representative for review in accordance with the Contract, prior to submitting the application to the local court.

6.4. Surveys

6.4.1. Pre-Construction Land Surveys

The Contractor must verify survey control for the Contractors' Activities, and must:

- (n) prior to commencing any activity which could affect existing infrastructure (including roads, railways, utility services and buildings), undertake above ground and underground property boundary survey, recording the location of the relevant Site boundaries in relation to existing infrastructure on every land parcel and provide them to the Principal's Representative;
- (o) avoid, where reasonably possible, disturbance of existing survey marks and must re-establish any such marks disturbed or affected by the Contractor's Activities; and
- (p) all boundary and engineering surveys carried out must be in accordance with the *Surveying and Spatial Information Act 2002 (NSW)* and the *Surveying and Spatial Information Regulation 2012 (NSW)*.

6.4.2. Post Construction Land Surveys

- (a) The Contractor must verify survey control for the Works, and must comply with the requirements of the Contract in relation to land surveys.
- (b) If any part of the Works or Temporary Works is proposed to be, or have been built outside the relevant boundaries of the Site stipulated in Schedule 1, and no formal agreement has been reached with the adjoining property owner, the Contractor must cease work in this area and immediately notify the Principal.

6.5. Property Damage

- (a) In carrying out the condition surveys, the Contractor must minimise disruption to property owners and occupiers.
- (b) The Principal's Representative may direct the Contractor to include additional condition surveys if it considers they have the potential to be damaged as part of the Contractor's Activities and a person, nominated by the Principal, may attend the undertaking of any condition surveys.
- (c) In addition to the requirements set out in the Contract and the TSR, the Contractor must comply with all requirements for condition surveys and ongoing monitoring and set out in any Third Party Agreements.

6.6. Pre and Post Construction Condition Surveys

- (a) At least 2 weeks prior to the commencement of the Works, the Contractor must carry out pre-construction condition surveys to record the existing condition of adjoining land and property prior to construction, and to assess the susceptibility of critical services, structures, infrastructure or buildings, to damage or unacceptable changes or alterations as a result of the Contractor's Activities.
- (b) The Contractor must then perform a post-construction condition survey on each property previously subject to a pre-construction condition survey unless otherwise specified in Annexure A.
- (c) Post-construction condition survey reports must include a determination of the cause of any monitored change or any damage identified since pre-construction or previous construction surveys and the Contractor's proposed remedial works or activities. If damage is found to have been caused by the Contractor's Activities, the Contractor must:
 - i. provide the Principal with a proposal setting-out the remedial action required;
 - ii. obtain the property owner's acceptance, in a form agreed to by the Principal, of the compensation, repair or reinstatement work, and release from future claims and actions; and
 - iii. If no damage is found to have been caused by the Contractor's Activities, the Contractor must write to the property owner and Principal's Representative providing them both a copy of both reports.

6.6.1. Condition Survey Requirements

- (a) The Contractor must engage an independent third party to ensure compliance against the minimum standard of condition surveys.

- (b) The Contractor must ensure that the same surveyor performs the post construction survey that carried out the pre-construction condition survey, in each case.
- (c) The Contractor must submit all condition survey reports to the Principal's Representative for review in accordance with the Contract.
- (d) Each survey must include a report which must contain a certificate from the surveyor who performed the survey certifying that the survey has been completed and is an accurate assessment of the condition of the property or asset.
- (e) The Contractor must ensure that the processes and procedures for performing all condition surveys are based on industry best practices. Examples of acceptable standards for condition surveys of buildings include:
 - i. sections 4 and 5 of the "Royal Institute of Chartered Surveyors (RICS) Guidance Note 63/2010 Building surveys and technical due diligence"; and
 - ii. "AS 4349 Inspection of Buildings – General Requirements", and with specific regard to the heritage elements within the Site.
- (f) The Contractor's reports on condition surveys of buildings must as a minimum record the following features:
 - i. major features of the buildings and developments including location, type, construction, age and present condition, including any defects or damage;
 - ii. type of foundations including columns, walls and retaining structures;
 - iii. an assessment of the susceptibility of the building to further movement or stress;
 - iv. an assessment of the effectiveness of water-proofing systems in basements to the anticipated movements caused by the Contractor's Activities; and
 - v. an assessment of the susceptibility of the building to changes in water levels resulting from the Contractor's Activities.

6.6.2. Construction Phase Property Monitoring

- (a) The Contractor must implement a monitoring and inspection regime for properties with the potential to be detrimentally or negatively affected by the Contractor's Activities.
- (b) The monitoring and inspection regime must address the requirements of the Contract, the Planning Approvals and third party agreements and agreements made with any Authority.

6.7. Pre-Commencement Property Compliance Checklist

Prior to commencement of the Works or Site occupation, the Contractor must submit the Property Compliance Checklist in Part 1 of Annexure E to the Principal's Representative for review in accordance with the Contract, to demonstrate that all property obligations have been met.



TfNSW Standard Requirements (Works Contracts) ANNEXURE A

5TP-FT-426/3.0

Integrated Management System

Status:	Approved
Version:	3.0
Section:	Commercial
Business unit:	Procurement
Date of issue:	31 December 2016
Review date:	31 December 2017
Audience:	Project Delivery/For use with the Contract templates only
Asset classes:	<input type="checkbox"/> Heavy Rail; <input type="checkbox"/> Light Rail; <input type="checkbox"/> Multi Sites; <input checked="" type="checkbox"/> Systems; <input checked="" type="checkbox"/> Fleets
Project delivery model:	I&S Project
Project type:	For all project types
Project lifecycle:	<input type="checkbox"/> Feasibility; <input type="checkbox"/> Scoping; <input type="checkbox"/> Definition; <input type="checkbox"/> Construction readiness; <input checked="" type="checkbox"/> Implementation; <input type="checkbox"/> Finalisation; <input type="checkbox"/> Not applicable
Process owner:	Director Commercial

Document History

Version	Date of approval	Doc. control no.	Summary of change
1.0	19 August 2015	4542124_2	New consolidated Annex A TSR document replacing the suite of individual TSRs (TSR C, TSR E, TSR P, TSR S, TSR T) for use with the PSC Templates
2.0	18 February 2016	4320590_3	Modified to suit new TSR updates
3.0	31 October 2016	4320590_11	Modified to suit new TSR updates

This document has been drafted to be used as an annexure to version 3.0 of TfNSW Standard Requirements (Works Contracts) 5TP- FT-425, only and should not be used with other versions.

TfNSW authored documents referenced within this document can be found on TfNSW's website: <http://www.transport.nsw.gov.au/projects> under the "Working with us" and "Environmental Services" Menu Tabs.

Additional Project Requirements

A1 Contract Management Plan clause 2.1

Requirement	Is one Required?	Initial Submission Timing	Frequency of Update
Contract Management Plan	Yes	T1	As required

Legend

T1 15 Business Days after the Contract Date.

A2 Contractor's Program clause 2.2

Clause	Item	Requirement	Add Insertion
2.2	Contractor's Program	Date first program is required	10 Business Days after the Contract Date
		Monthly updates required?	Yes
		Update submission timeframe	5 Business Days prior to month end
		Required status date for program update	Last Business Day of each month

A3 Principal's Document Management Tool clause 2.3

Clause	Requirement
2.3	Yes, the Principal will administer the Contract document deliverables using the Principal's electronic document management tool.
	The nominated electronic document management tool is TeamBinder.

A4 Monthly Reporting clause 2.4

Clause	Requirement
2.4	A report is due monthly.
2.4 (i)	The format for the safety statistics report must be as per template provided in Appendix A to this document.

A5 Principal Provided Training clause 2.6

The Principal will provide Installation & Testing courses to the Contractor as delivered by Alstom under a separate contract.

A6 Compliance Monitoring clause 3.1 (b)

Requirement	Applies?
Use INX to undertake self-regulation to confirm that all the Contractors' Activities are compliant with all Authority Approvals (including the EPL), and to report environmental incidents and non-compliances.	Yes
Implement an INX reporting structure in addition to any other reporting requirements for the Contract [and follow the applicable parts of "TfNSW Guide to Compliance	Yes

[Monitoring and Reporting using PECOMS – 9TP-SD-012](#)].

A7 Consistency Checklists clause 3.1 (d)

Requirement	Applies?
Consistency checklists and Environmental Reviews, in the format provided by the Principal's unless otherwise agreed, are to be completed by the Contractor and provided to the Principal's Representative for review in circumstances where project works are likely to deviate from the approved project. Where inconsistency with the approved project exists or is likely to exist, the Contractor may request the Principal seek a project modification. Under such circumstances, it is the Contractor's responsibility to provide the necessary reports, studies and final submission to the Principal's Representative to justify the modification. Any modification must detail property, environmental, community and all other related impacts.	Yes

A8 Contractor's Environmental Management System clause 3.2 (c)

Requirement	Applies?
(i) Is a Contractor's Environmental Management System accredited under ISO 14001:2004 required?	No
(ii) If No in (i) above, is a Contractor's Environmental Management System required.	Yes

A9 Safety Management clause 4.1 (c)

Requirement
The Pegasus/Onsite Track Easy Access card system is not required

A10 Pre-Commencement Property Risk Assessment clause 6.2

Requirement
A Pre-Commencement Property Risk Assessment is not required

A11 Post-construction Property Condition Surveys clause 6.6

Requirement
Pre- construction conditions surveys are not required Post- construction conditions surveys are not required

A12 Contract Management Plan Sections & Sub Plans Annexure C

Content	Must the CMP include this Content?
Construction and Site Management	No
Design Management	No
Commuter and Passenger Management	No
Traffic Management	No
Defect Management	Yes
Audit Management	No
Risk Management	Yes
Commissioning & Operational Readiness Management	Yes

Content	Must the CMP include this Content?
Construction Environmental Management Sub Plan	No
Communications Liaison Management Sub Plan	No
Workplace Relations Management Sub Plan	No
Property Management Sub Plan	No
Project Work Health and Safety Management	Yes

A13 Traffic Control Plan Annexure C clause 2.5 Traffic Management

Requirement	Applies?
Are Traffic Control Plans required? Where noted as being required in this table A12, the Contractor must prepare detailed Traffic Control Plans (TCP) for the Site generally in accordance with the RTA manual "Traffic Control at Work Sites 4th Ed (June 2010)". The TCPs must be submitted to and approved by the relevant Authority and submitted to the Principal's Representative for review prior to the commencement of any activity or work on the Site. Thereafter, the Contractor must ensure that the approved TCPs are available for inspection by the Principal's Representative or any officer of WorkCover NSW, NSW Police, the RMS or any other Authority.	No

A14 Defect Management Software – Annexure C clause 2.6

Requirement
The Principal's preferred Defects management system software application is: N/A

A15 Construction Environmental Management Plan Annexure C clause 3.1

Requirement	Applies?
The Contractor must comply with the relevant requirements of the "NSW Government Environmental Management System Guidelines".	No

A16 Reporting Requirements Annexure E

Clause	Requirement	Applies?
Part 1	Pre Commencement Property Compliance Checklist required?	No
Part 2	Property Records required?	No
Part 3	Environmental Records required?	No

A17 Working In or Adjacent to the Rail Corridor – Annexure F

Requirement	Applies?
Does Annexure F apply?	Yes

A18 Sustainability Requirements Annexure G

Clause	Requirement	Applies?
1.0 (a)	The Contractors Activities must meet a minimum Silver/Gold/Platinum design rating.	No



1.0 (b)	The Contractor must submit a completed checklist in electronic format (form available at http://www.transport.nsw.gov.au/projects/Planning-and-assesment/sustainability) to the Principal's Representative for review in accordance with the Contract, every milestone, confirming compliance with the requirements of the "TfNSW NSW Sustainable Design Guidelines".	No
1.0 (c)	The Contractor must prepare and submit the Carbon Emission Reporting Tool (CERT) at each of the following stages: a. during the construction phase, 5 Business Days after the end of the periods: i. commencing 1 January and ending 30 June; and ii. commencing 1 July and ending 31 December.	No
1.0 (d)	The Contractor must prepare and submit a Climate Risk Assessment (CRA) Report.	Yes
1.0 (e)	The Contractor must register the project with the Infrastructure Sustainability Council of Australia.	No
	The Contractor's Activities must meet as a minimum Commended/Leading/Excellent rating for 'design'	No
	The Contractor's Activities must meet as a minimum Commended/Leading/Excellent rating for 'as built'	No
1.0 (f)	The Contractor must demonstrate waste management including recycling, by inclusion in the Contract Management Plan or other relevant Management Plan	Yes
2.0 (a)	The Contractor must make available documents and evidence to assure the Principal that the Works and Contractor's Activities are compliant with the requirements of the GREP policy.	No
2.0 (b)	The Contractor must comply with GREP requirements E3, E4, W3, A2	No
2.0 (c)	The Contractor must prepare waste and energy reporting using the Waste Data Collection Workbook 9TP-FT-436 and Carbon Emission Reporting Tool respectively.	Yes

Appendix A

Safety Statistic Report Template



9tp-ft-096 Monthly
Safety Statistics.xls

Annexure B Definitions

The following definitions apply:

Asset Handover	Point in time at which the control of certain specified assets is transferred to an Operator/Maintainer and/or Asset Owner for their ongoing operation and maintenance.
Asset Owner	Organisation who will ultimately own the assets subject to the Asset Handover. In some cases this may also be the Operator/Maintainer.
CDR	Critical Design Review or equivalent stage of the design as developed in accordance with the Contractor's systems engineering processes.
Codes and Standards	As defined in the Contract, or otherwise: the codes and standards to which the Contractor's Activities, Works or Temporary Works must comply, including those nominated in the Contract, TSR and Works Brief and for the avoidance of doubt including the ASA Requirements.
Commissioning	Systematic process of ensuring that all infrastructure, equipment and systems installed in a project perform interactively in accordance with the design intent and the Operator/Maintainer's functional and operational needs.
Communications Materials	All written, verbal or photographic/illustration information to be seen and made available to others such as: media responses, all forms of social media, press releases, marketing and promotional materials, Notifications, material placed on construction hoardings, shade cloth and fences and the like.
Control Gates	Meaning Configuration Management Gates as defined in the "TfNSW Configuration Management Plan T MU AM 04001 PL".
Configuration Materials	The Design Documentation which is required in support of Asset Handover, describing the operation and maintenance requirements the assets delivered under this Contract.
Contract Management Plan (CMP)	The Management Plan to be developed by the Contractor in accordance with the requirements of this TSR which acts as a framework for bringing together all the management requirements for the Contractor's Activities into a coordinated and integrated plan.
Cost Loaded Baseline Schedule	A baseline program or schedule where the Contractor's costs are distributed across activities such that a cash flow S-Curve may be created, this will also be used as the basis for measuring Earned Value.
Danger Zone	Danger Zone as defined in the RailSafe Network Rules and Procedures.
Document	As defined in the Contract, or otherwise: any document that is required to be submitted to the Principal or Principal's Representative.

Design Documentation	As defined in the Contract, or otherwise: any design documents that are required to be submitted to the Principal or Principal's Representative.
Earned Value	Method of measuring and reporting project cost performance based on integrated time, cost and scope elements in accordance with "TfNSW Earned Value Management using Primavera P6 4TP-WI-005 "
Environmental Control Map (ECM)	A document prepared to assist in the planning and delivery of construction works, specific to a work area and/or activity that identifies the physical location of physical protection measures, work method controls and monitoring requirements to minimise the impact of construction activities on the environment and community.
Environmental Management System (EMS)	A tool for managing the impacts of an organisation's activities on the environment and provides a structured approach to planning and implementing environment protection measures.
Emergency Works	unplanned work which must be undertaken immediately in order to avoid damage to property or injury to people.
Final Completion	As defined in the Contract, or if not so defined: the expiry of the Defects Liability Period.
Fruin Level of Service	A level of service Standard for pedestrian access created by John J Fruin PhD.
Global Possession Calendar and Standard Working Calendar	Default calendars in TfNSW's P6 database which can be made available on request.
GREP	NSW Government Resource Efficiency Policy
Hierarchy of Control Measures	Hierarchy of Control Measures as defined in the "Work Health and Safety Regulations 2011 Part 3.1 Managing Risks to Health and Safety".
Heavy Vehicle	Under the Heavy Vehicle National Law (NSW) a heavy vehicle is a vehicle that has a Gross Vehicle Mass (GVM) or Aggregate Trailer Mass (ATM) of more than 4.5 tonnes and a combination that includes a vehicle with a GVM or ATM of more than 4.5 tonnes.
Hold Point	Verification point identified in the Works Brief beyond which the relevant part of the Contractor's Activities may not proceed without the verification and subsequent written authorisation of the Principal's Representative or the relevant person nominated in the TSR.
Issue	Any issue associated with the Contractor's Activities that may have an impact on the community or may attract the attention of the media, such as an event which impacts on the normal operation of transport services, a timetable delay or access blockage etc.
Management Plans	Any of the Management Plans or Sub plans to be developed by the Contractor in accordance with the requirements of this TSR and Contract which describe how the Contractor will manage related matters and issues that arise during the term of the project.
NABERS	The National Australian Built Environment Rating System

National Counter Terrorism Alert Levels	Levels described in the Australian Government's National Terrorism Public Alert System and referenced on the Australian National Security website
Other Contractor	As defined in the Contract, or otherwise: any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work, other than the Contractor and its Subcontractors.
Other Contractor Work	As defined in the Contract, or otherwise: the works to be undertaken by an Other Contractor on a part of the Site during any period in which the Contractor has been engaged as principal contractor in respect of that part of the Site.
Operator/Maintainer	Organisation that, post Asset Handover, will operate and maintain the assets. In some cases, this may also be the Asset Owner.
Operational Readiness	A process used to ensure that the Works are safely integrated into the Rail Network, with all necessary plans, Documents, Approvals, staff training and any other related activity completed, so as to ensure a safe and smooth transition into operation. The company that originally manufactured the product.
PDR	Preliminary Design Review or equivalent stage of the design as developed in accordance with the Contractor's systems engineering processes.
Planning Approval	As defined in the Contract, or otherwise: any Authority Approval issued from time to time by either the Principal or the Minister for Planning and Infrastructure (acting in their capacity as determining authority) under the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> in respect of the Contractor's Activities; and any mitigation measures and statement of commitments that are required to be complied with or fulfilled.
Planning and Environmental Compliance Monitoring System (PECOMS)	A Principal developed system which may be specified to monitor compliance with the conditions of all licences, permits and Approvals during the delivery of its projects.
Pre-Construction Works	Defined in a Planning Approval as works other than the construction, where those defined pre-construction activities are (within specified constraints) able to be undertaken prior to the approval to commence construction.
Project Rail Safeworking Coordinator	A person appointed by the Principal, accountable for monitoring the management of worksite protection and rail safety requirements for controlled and managed worksites on the programs/projects being delivered by TfNSW on behalf of the NSW State government.
Property Representative	The Property Representative appointed by the Principal
RailSafe Network Rules & Procedures	Australian Network Rules and Procedures as defined by the Rail Industry Safety Standards Board
Rail Safety	Rail Safety as defined in the <i>Rail Safety National Law (NSW)</i> .
Rail Safety National Law	The <i>Rail Safety National Law (NSW)</i> .
Rail Safety Work	Rail Safety Work as defined in the <i>Rail Safety National Law</i> .
Rail Safety Worker (RSW)	Rail Safety Worker as defined in the <i>Rail Safety National Law</i> .
Rail Transport Operator	An entity defined by the <i>Rail Safety National Law</i> as a rail operator or rail transport operator.

Reference Documents	The list of documents which are referenced in this TSR, but not publicly available.
RMS	Roads and Maritime Services, a corporation constituted by section 46(1) of the <i>Transport Administration Act 1988</i> (NSW). A reference in any of the TSR documents to the "Roads and Traffic Authority" or "RTA" is to be construed as a reference to Roads and Maritime Services.
SafeWork NSW	Work Health & Safety regulatory authority in New South Wales.
Safe Work Method Statements (SWMS)	Documents so titled prepared in accordance with this TSR and that give specific instructions on how to safely perform a work related task, or operate a piece of plant or equipment etc.
SDR	System Definition Review or equivalent stage of the design as developed in accordance with the Contractor's systems engineering processes.
SFAIRP	So Far As Is Reasonably Practicable
Sub plan	A standalone Management Plan which is included in the overall Contract Management Plan.
Vehicle Registration Database	The Principal's database recording a rail vehicle's ownership and technical details to indicate that the vehicle has met the Principal's acceptance requirements and is authorised to operate on rail infrastructure managed by the Principal.
Witness Point	Point identified in the TSR or Works Brief where the Principal's Representative, or the relevant person nominated in the TSR, may review, witness, inspect, or undertake tests on any component, method, or process of the Contractor's Activities.
Work Breakdown Structure (WBS)	Framework of discrete work elements (or tasks) used to organise and define the total project work scope, cost, and schedule control elements.
Worksite Protection	The safety measures adopted, in relation to rail operations, to protect persons brought or invited to any part of the Site located within the Rail Corridor.
Worksite Protection Personnel	The protection officer assigned to implement the required Worksite Protection for work within the Rail Corridor.
Worksite Protection Plan	The Protection Officer's plan documenting the safety measures adopted, in relation to rail operations, to protect persons brought or invited to any part of the Site located within the Rail Corridor.

Annexure C Management Plans

1.0 General

The Contract Management Plan (CMP) is the project-specific overarching Management Plan that includes all other Management Plans as Sub plans that must be developed under the Contract. The CMP must describe the complete management activities, systems and processes which the Contractor will employ during the Contractor's Activities.

The Contractor's Activities must be carried out in compliance with all Management Plans developed by the Contractor.

2.0 CMP Sections

Unless otherwise noted in Annexure A, the CMP must include the following sections.

2.1 Contract Management

The Contract Management section must:

- (a) explain in a systematic, coordinated and integrated structure, the managerial structure for performing the Contractor's Activities in the delivery of the Works;
- (b) define responsibilities, resources and processes for planning and performing the Contractor's Activities and verifying that the Works meet the requirements of the Contract;
- (c) describe the key roles and responsibilities and provide an organisation chart covering the key roles and Subcontract interfaces;
- (d) define the interface and associated responsibilities of the Contractor, Subcontractors, Interface Contractors, Other Contractors and other relevant third parties as well as the Principal;
- (e) describe how the AEO authorisation covers the full scope of the Contract including all subcontracts;
- (f) describe how the Contractor will comply with all relevant Laws, Codes and Standards and requirements, applicable to the Contractor's Activities;
- (g) list all Documents required to be developed by the Contractor, under this Contract;
- (h) list all Documents required to be submitted to the Principal under this Contract;
- (i) List all approvals to be sought from the Principal and others;
- (j) define the reporting mechanisms in the case of Incidents and protocols for communicating with Authorities; and
- (k) identify the responsible person for developing and updating the CMP and its sections.

2.2 Construction and Site Management (C&SM)

The C&SM section must:

- (a) detail how the Contractor will comply with its obligations under the Contract in relation to the control, establishment, security, use and rehabilitation of the Site including the arrangements to provide access to, within and through the Site for the Principal, Other Contractors and any other person nominated by the Principal;

- describe how security management will reflect the National Counter Terrorism Alert Levels and develop procedures to communicate and respond to changes in the National Counter Terrorism Alert Levels.
- (b) document how notification of a terrorism Incident will be made to the Principal's Representative and Law enforcement authorities, and the roles and responsibilities of the Contractor's employees and Subcontractors in such an event.
 - (c) describe procedures for the preparation and implementation of Management Plans before the start of the related Works;
 - (d) describe procedures for the management of Subcontractors;
 - (e) describe procedures for the Contractor's mobilisation and demobilisation to carry out the Contractor's Activities, including mobilisation and demobilisation of personnel, Construction Plant and equipment; and
 - (f) address the Site related management of interfaces with any Authority, stakeholders and Other Contractors.

2.3 Design Management

The Design Management section applies to both the Works and Temporary Works and must be based on the Contractor's management systems and processes as assessed by the ASA as part of its AEO authorisation and must include the measures, including audit and verification that the Contractor will utilise to ensure that, as a minimum:

- (a) all design tasks are appropriately resourced by competent personnel;
- (b) all design personnel are aware of the requirements of the Contract and any obligations of designers under the WHS Legislation;
- (c) all designs are prepared in accordance with requirements of the Contract;
- (d) design packages are identified and a schedule is included which identifies each unique package, its scope, discipline and the stages of submission in accordance with any requirements of the Works Brief;
- (e) the development of the design is effectively coordinated and the interrelationships identified and managed across all:
 - i. design interfaces, including with existing systems, operational systems, and maintenance systems;
 - ii. design stages;
 - iii. design packages, where the design work has been portioned into design packages; and
 - iv. design disciplines (e.g. electrical, civil, track, signalling and rolling stock);
- (f) the process of CCB and CMAAC control gate submissions are detailed;
- (g) the Contractor demonstrates familiarity with the Site and its constraints and the existing infrastructure so the works are designed and configured so as to achieve optimal integration from a human, asset and systems perspective in their operations and maintenance;
- (h) a system for the management of design review comments is incorporated;
- (i) all stakeholders in relation to the design have been appropriately identified, that appropriate stakeholder consultation is undertaken and includes workshops and

- presentations of the design to relevant parties including the design and sustainability review panel;
- (j) all design assumptions are documented and verified;
 - (k) all designs are checked, reviewed and verified by competent personnel and that verification or proof engineering is conducted;
 - (l) a requirements management process is adopted in accordance with "ASA Systems Engineering Standard T MU AM 06006 ST" and the related requirements of the Works Brief;
 - (m) all methodologies, sequencing, staging, temporary or enabling works are taken into account and the associated risks are managed in the design;
 - (n) an asset maintenance strategy and an asset operations strategy are delivered with the design;
 - (o) safety, sustainability, reliability, availability and maintainability are demonstrated in the design;
 - (p) durability assessment and durability statements are included with the design;
 - (q) all completed designs or completed portions of the design are accompanied by a design assurance certificate from the AEO;
 - (r) the process for managing design changes, and how this integrates with the configuration management activities in regards the CCB and CMAAC;
 - (s) all inspection and test criteria are developed for the delivery of the works for incorporation in the inspection and test documentation that will verify and validate the Works and Temporary Works;
 - (t) all documentation is compliant with requirements of the Agreement, "TfNSW CAD Protocols - 4TP-RL-004" and discipline specific ASA Requirements;
 - (u) risk arising from all hazards identified in the preliminary hazard analysis and systems hazard analysis are designed out or carried over, in the project hazard log or project specific safety risk register; and
 - (v) all designs comply with relevant Codes and Standards and the ASA Requirements.

2.4 Commuter and Passenger Management (C&PM)

The C&PM section must include:

- (a) drawings showing, as a minimum, the layout of public areas, including facilities provided for operational staff and patrons and systems drawings at each stage of construction;
- (b) drawings showing the proposed arrangement of the passenger facilities clearly showing the position of hoardings and provisions for interchange to other transport services. Clearances and free area of platforms and the like should be clearly documented. Fruin Level of Service diagrams must accompany the drawings and they must indicate the proposed level of service for the proposed arrangement;
- (c) drawings showing proposed arrangement of signage covering existing signage and new temporary signage. Details must include location, size and wording of temporary and permanent way finding signage and proposed modification to any existing signage;

- (d) drawings showing proposed arrangement of passenger information panels including temporary relocations and modifications;
- (e) a program clearly indicating when configuration will be changed and proposed period of change;
- (f) identification of controlled Site access points;
- (g) identification of delineation lines and material to be used for delineation;
- (h) identification of access points from public modes of transport and general ingress and egress points; and
- (i) identification and accommodation of level changes via ramps, stairs, and other means.

2.5 Traffic Management

The Traffic Management section must: (i) be consistent with and comply with the traffic configuration of the local road network as it exists at various stages during construction in respect of items (a) to (f) below; and (ii) also describe the Contractor's approach to satisfying the requirements (g) to (r) below:

- (a) the management of traffic on the Site;
- (b) WHS Legislation, the *Roads Act 1993 (NSW)* and all other Laws;
- (c) Authority Approvals, including any from RMS, NSW Police, State Emergency or any local councils;
- (d) the "RTA Traffic Control at Work Sites Manual";
- (e) the need for Traffic Control Plans;
- (f) "AS 1742.3-2009 Part 3 - Spoil Control Devices for Works on Roads"; and
- (g) certificates, licences, consents, permits and approvals, including in respect of working hours;
- (h) include traffic management procedures for the Site, including those required to manage: modifications to existing roads/paths and traffic patterns; changes to public transport routes and services; impacts on residents and/or commercial enterprises; and the impact of construction traffic within the Site and outside the Site on the adjacent public road system;
- (i) include procedures to ensure the appropriate notification of relevant emergency services prior to implementing road and pedestrian traffic modifications such as street closures or changes to station access;
- (j) address the safety of commuters, pedestrians, cyclists and contract personnel;
- (k) consider changes to traffic usage patterns (average, low and peak flows as well as special events or traffic embargoes);
- (l) include relevant detail from the Contractor's Program including relevant commencement and Completion dates;
- (m) describe the management of emergencies and Incidents in the context of access/egress;
- (n) describe requirements in relation to occupation of, or access through, private properties;

- (o) describe coordination of traffic management with the Principal, Other Contractors and other parties;
- (p) include procedures for obtaining relevant certificates, licences, consents, permits and approvals;
- (q) Traffic management Plans nominated in Annexure A; and
- (r) show expected number of vehicle movements each hour, based on the predicted maximum monthly material generation amounts and hours of operation of worksites.

2.6 Defect Management

The Defect Management section must:

- (a) address all contractual requirements for managing Defects;
- (b) clearly specify the strategy for managing any Defects raised by the Contractor, the Principal, the Operator/Maintainer or Asset Owner;
- (c) clearly specify the process in relation to joint inspection of review of the Works, and notifications to be provided prior to Completion of any Portion or the whole of the Works; and
- (d) include a procedure for the management of Defects which must include the use of TfNSW's preferred software system where specified in Annexure A.

2.7 Audit Management

The Audit Management section must outline the methodology, process and procedures adopted by the Contractor to assure itself that the requirements of the Contract are being met, including:

- (a) preparation of risk based audit schedules for the Works and any Subcontractor's activities that also take account of previous audit outcomes;
- (b) supply of competent and experienced resources to carry out audit management and implement the audit schedule;
- (c) reporting, analysing and determining trends based on those audits;
- (d) implementation of corrective and preventative actions as an outcome from those audits; and
- (e) measures to assess the effectiveness of the corrective and preventative actions.

2.8 Risk Management

The Risk Management section must address the management of risks applicable to the undertaking of the Contractor's Activities in delivery of the Works and:

- (a) provide an outline of the framework and approach for developing, utilising, and maintaining a risk register capable of supporting effective risk management and reporting risk information;
- (b) describe the management of risks applicable to the undertaking all of the Contractor's Activities;
- (c) provide details of the Contractor's approach to risk management in accordance with "ISO 31000 - Risk Management Guidelines and Principles", and its risk framework, processes and internal controls to manage;

- (d) include processes and procedures for the systematic identification, assessment, treatment and management of hazards and risks;
- (e) provide details on the timing and scope of The Contractor's internal and external risk review processes, compliance, and audit related activities, including methods used to ensure that risk control measures and tasks are on schedule and effective;
- (f) describe how the risks identified are integrated and managed with the other sections in the CMP and its sections and Sub plans;
- (g) describe specific control measures, including safe work methods to be implemented to eliminate or mitigate risks;
- (h) include methods to be used to monitor effectiveness of safe work methods and control measures;
- (i) nominate the persons responsible for monitoring implementation of the control measures;
- (j) include consultative processes employed by the Contractor in relation to risk management and the persons involved;
- (k) demonstrate the application of the Hierarchy of Control Measures undertaken to lessen the risks so far as is reasonably practicable; and
- (l) Include and maintain a register of risks which includes:
 - i. a description of the risk/hazard and likely impacts;
 - ii. the risk level assessed for each hazard; and
 - iii. the residual risks/hazards.

2.9 Commissioning & Operational Readiness Management (CORM)

The CORM section must:

- (a) document systems and processes to ensure that the programming and coordinating of all Commissioning activities, including activities which may be carried out by or interface with third parties including Track Possessions are defined;
- (b) describe the Contractor's Activities in relation to the requirements in the Works Brief relating to Commissioning, Asset Handover and operational readiness;
- (c) define the operational readiness tasks and responsibilities of each organisation involved in transitioning the project into operation'
- (d) define the maintenance readiness tasks and responsibilities of each organisation involved in transitioning the project into the operations and maintenance phase; and
- (e) define the document submission requirements relating to the Configuration Materials for Track Possessions, Asset Handover, the CCB gateway 4 and 5 process and Completion.

3.0 CMP Sub plans

The CMP must include the following stand-alone Sub plans, as nominated in Annexure A.

3.1 Construction Environmental Management Plan (CEMP)

The CEMP must comply with the relevant requirements of the "NSW Government Environmental Management System Guidelines" where nominated in Annexure A and the Planning Approval and must include the following:

- (a) details of the EMS to be applied;
- (b) the environmental protection measures, and inspection and monitoring regime to be employed;
- (c) the procedures to be implemented to verify that the Contractor's Activities relating to environmental management matters are compliant with the requirements of the Contract, including all Authority Approvals as well as details of the system to track Planning Approvals;
- (d) procedures for the management of Incidents, non-conformances, non-compliances, Defects, complaints and reporting, reflecting the fact that the Contractor must not communicate (phone, mail, email etc.) directly with any Authority unless allowed to do so under Law or (unless permitted under Law) unless written consent is provided by the Principal and a communications protocol has been established;
- (e) management of sustainability matters; and
- (f) record keeping.

3.2 Community Liaison Management Plan (CLMP)

The CLMP must include the following:

- (a) details of the community relations resources to be employed by the Contractor;
- (b) a comprehensive, project-specific analysis of issues and proposed strategies to manage these issues through the duration of the project;
- (c) details of the communication tools (traditional and digital) and activities that will be used to inform and engage the community and stakeholders;
- (d) a comprehensive stakeholder list, highlighting issues/interests and strategies for dealing with each audience and mitigating potential issues/concerns;
- (e) a program for the implementation of community liaison activities relating to key construction tasks with strategies for minimising impacts and informing the community;
- (f) details of key messages to be used in the Communications Materials;
- (g) details of the community and stakeholder consultation, methodologies and timeframes required to meet the Planning Approval;
- (h) policies and procedures for handling community complaints and enquiries, including the Contractor's nominated 24 hour contact for management of complaints and enquiries;
- (i) details of activities which will be undertaken to monitor and evaluate the effectiveness of the community liaison activities;
- (j) analysis of other major projects/influences in the area with the potential to result in cumulative impacts to the community and strategies for managing these;
- (k) details of procedures for obtaining approval from the Principal, where required in the Contract, including this TSR;
- (l) details of the approach to engaging with and involving local community/interest groups in the successful delivery of the project; and
- (m) a business management strategy which includes details of businesses that may be impacted by the Works, the potential impacts to business continuity, the

engagement tools, forums and activities that will be used to keep them consulted and informed.

A summary of the CLMP must be provided for uploading to the Principal's Website.

3.3 Property Management Plan (PMP)

The PMP must address the Contractors approach to the management of property and must describe:

- (a) the property resources to be engaged in the project including subcontractors and consultants;
- (b) processes for identification, mitigation and treatment of property related risk;
- (c) definition of the Site including the use of any additional lands as well as access control and security measures;
- (d) management of relations with all adjoining owners, stakeholders, Other Contractors, Interface Contractors and the Principal;
- (e) how the Contractor will minimise disruption to property owners and procedures for the complaint resolution process;
- (f) processes for management of property survey and site set out;
- (g) processes for ensuring all design and construction occurs within the allowable boundaries;
- (h) processes to avoid and monitor for unwanted damage to property on the Site and neighbouring properties;
- (i) a list of the properties and assets which will be subject to a condition survey by the Contractor;
- (j) processes for managing condition surveys and identification of actual damage, how it occurred and how that damage will be rectified;
- (k) processes for dispute management in relation to damage and how each dispute will be processed, managed and resolved including a property damage claim process flowchart;
- (l) noise, vibration and settlement limits that will prevent the damage of existing property and items by the Contractor's Activities and the need to transfer these criteria into method statements and inspection and test plans to ensure that any Contractor's Activities are within the above limits and minimise damage risks;
- (m) Sample letters for permission to conduct a property condition survey, letter of introduction for property condition survey staff, and sample property condition reports; and
- (n) The Contractor must prepare a summary of the CLMP for uploading on to the Principal's website.

3.4 Work Health and Safety Management Plan (WHSMP)

The management of health and safety as well as the means of developing the required safety culture must be documented in the Work Health and Safety Management Plan as required in this TSR. The WHSMP must;

- (a) detail how the Contractor will continuously promote a safer, healthier, more productive workplace, by establishing and maintaining an effective safety management system that facilitates the flow of information both within the Contractor's organisation and between the Contractor's organisation, Subcontractors and the Principal;
- (b) detail how the Contractor will provide strong leadership and promote safety as a core value, establishing and enforcing high standards of performance and ensuring relevant expertise is available;
- (c) detail how the Contractor will ensure ongoing open and effective consultation and further, mutual trust with the Principal's Representative, providing timely response to safety issues and concerns within requested timeframes as advised by the Principal.
- (d) describe the means of providing the Works in accordance with the safety management requirements stated in the Contract, Law and this TSR;
- (e) demonstrate compliance with the "NSW Government Work Health and Safety Management Systems and Auditing Guidelines" September 2013;
- (f) describe how the Contractor will manage WHS risks in accordance with "AS/NZS ISO 31000:2009 - Risk Management";
- (g) ensure that where the Contractor's Activities involve work in or adjacent to the Rail Corridor or the rail environment, provision for rail safeworking arrangements, based upon (without limitation) compliance with the Rail Safety National Law and RailSafe Network Rules and Safe Network Rules and Procedures are provided;
- (h) contain within it, a requirements matrix to demonstrate compliance which will readily direct the Principal to the particular parts of the Contractor's Management Plans where WHS requirements of this TSR are addressed;
- (i) describe how the Contractor's safety management system and safety culture supports:
 - i. the encouragement of teamwork and of worker involvement in promoting and maintaining a positive safety culture;
 - ii. a "One Team" approach to safety across all project participants including subcontractors;
 - iii. senior management's commitment to safety;
 - iv. a commitment to work with the Principal's Representative to develop project-specific lead and lag key performance indicators;
 - v. a shared care and concern for hazards;
 - vi. workers adapting to their changing environment where required;
 - vii. organisational learning through monitoring, analysis and feedback systems;
 - viii. methods for providing feedback and setting timeframes for such provision;
 - ix. methods to communicate and share learning from successes and failures;
 - x. methods to demonstrate how site-safety rules will be reflected in practice and how such rules will be incorporated into the Contractor's Activities; and

- xi. methods to enable the ongoing development of safety improvements developed in consultation and communication with the Principal's Representative, as required.

3.5 Workplace Relations Management Plan (WRMP)

The WRMP must:

- (a) be in accordance with the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction. http://www.industrialrelations.nsw.gov.au/About_NSW_IR/New_Guidelines_Construction_Work.page
- (b) reflect any Industrial Relations Plan submitted with the Contractor's tender submission.

3.6 Other Plans

The CMP must include as a Sub plan, any other Management Plan required under the Contract.

Annexure D Contractor's Program

1.0 General

- (a) The Contractor must:
- i. submit the Contractor's Program to the Principle's Representative in accordance with the Contract, within 10 Business Days of the date of the Contract, unless noted otherwise in Annexure A or the Contract;
 - ii. update the Contractor's Program on a monthly basis and submit to the Principal's Representative for review in accordance with the Contract by the first Business Day of the month (with a Status Date of the last calendar day of the previous month) unless otherwise specified in Annexure A and at any other times required by the Contract;
 - iii. comply with "TfNSW [Scheduling Standard – 4TP-ST-123](#)" and provide the Contractor's Program in the latest P6 version (XER format), as a single P6 project, not broken into multiple parts;
 - iv. develop, status and maintain the Contractor's Program in Primavera P6 on the Principal's planning environment. The Contractor will be given access to the Principal's planning environment via Citrix at no extra cost to the Contractor;
 - v. ensure that each update to the Contractor's Program is archived within the Principal's planning environment, and will be able to export the program file (no more than once per week) via a request to the Principal's Representative. The file will be emailed to the Contractor; and
 - vi. not import any programs into the Principal's Primavera database. The Principal will import the Contractor's Program into the Principal's P6 planning environment database, maintain the database security and control the access to the database, but will not make changes to the Contractor's Program without the approval of the Contractor.
- (b) As a minimum, the Contractor's Program must:
- i. define approved Variation activities and/or additional working days in a separate WBS and cost breakdown structure item, so that cost and time of the Variation activities can be clearly distinguished from the original scope;
 - ii. have a separate WBS structure outlining each step of the design review process for each individual design package; where relevant;
 - iii. group the Works and milestones in a Work Breakdown Structure (WBS) that is aligned to the payment schedule or other form of cost breakdown structure included in the Contract;
 - iv. show Earned Value in accordance with "AS 4817-2006 Project Performance Measurement using Earned Value" and "TfNSW [Earned Value Management using Primavera P6 - 4TP-WI-005](#)";
 - v. include budgeted cost, actual and actual cost input into the relevant WBS items each month; and
 - vi. show the Principal's review periods in accordance with the requirements set out in the Contract.

2.0 Program Setup and Maintenance

- (a) The Contractor's Program must:
- i. include all key activities and deliverables detailed in this TSR and the Contract and any other activities and deliverables directed by the Principal's Representative;
 - ii. include requirements for the submission, review and approval of all Documents and other deliverables including the Management Plans and Design Documentation;
 - iii. include the required submission and approval timeframes and resources for community notification and consultation;
 - iv. outline the dates when the Contractor will require information, documents, materials or instructions from the Principal and the dates when the Contractor will provide information or Documents to the Principal. These dates must be consistent with dates that the Principal could reasonably have anticipated at the date of the Contract;
 - v. provide start and finish dates for all elements of the Contractor's Activities (including design, procurement and construction activities), milestones, Track Possessions, external dependencies, Principal deliverables, Operator/Maintainer deliverables and any other significant events and contractual Dates for Completion;
 - vi. show the lead times for the supply of information, selection of Subcontractors and suppliers, approvals, and the supply of equipment by the Principal, its agents or persons for whom the Contractor is not responsible. Each period must be represented in a separate activity from the Contractor's activity for the relevant items;
 - vii. clearly identify the access requirements and activities, including Track Possessions and any outages;
 - viii. show activities for Site mobilisation, establishment and demobilisation;
 - ix. clearly identify the critical path activities and milestones;
 - x. add and maintain codes, resources and expense activities as directed by the Principal's Representative;
 - xi. show quantities and rates as requested by the Principal's Representative;
 - xii. identify time leads and lags, resources and other constraints;
 - xiii. show calendars identifying the working and non-working days for the Works. Project calendars are to be up-to-date and reflect changes to the available working periods. The calendars must reflect the Global Possession Calendar and Standard Working Calendar which can be provided on request. No other allowances for wet weather or other such contingencies are to be made in the calendars;
 - xiv. reflect the time scheduled, remaining duration and actual physical progress of the Works, and be consistent with all constraints on access, performance and coordination;
 - xv. show allowance for weather and other event contingencies in a single activity at the end of the critical path and prior to Completion; and

- xvi. show Commissioning and Asset Handover activities, including the time allowed for testing and Commissioning of major items.

3.0 Program Quality

- (a) The Contractor must maintain the quality of the Contractor’s Program and satisfy the criteria in the table 3.1 Program Quality Thresholds by remaining below the stated acceptable thresholds.
- (b) Further assessment criteria and thresholds may be added or modified by the Principal’s Representative. Deviations from the stated thresholds must be approved by the Principal’s Representative prior to being accepted.
- (c) The quality of the Contractor’s Program will be assessed upon each submission.

Table 3.1 Program Quality Thresholds

Criteria	Description	Remarks	Acceptable Threshold
Missing Predecessors	Total number of activities that are missing predecessors.	Activities that have missing predecessors are known as open-ended activities. Open ends cause time and risk analysis calculations to be erroneous. Ideally, all open ends should be fixed in a program during the planning phase.	Less than 1%
Missing Successors	Total number of normal activities that are missing successors.	Activities that have missing successors are known as open-ended activities. Open ends cause time and risk analysis calculations to be erroneous. Ideally, all open ends should be fixed in a program during the planning phase	Less than 1%
Merge Hotspot	The total number of activities with a high number of predecessor links.	Also known as merge bias, merge hotspot is an indication as to how complex the start of an activity is. If the number of links is greater than two, then there is a high probability that the activity in question will be delayed due to the cumulative effect of all links having to complete on time in order for the activity to start on time.	Less than 2.5%
Diverge Hotspot	The total number of activities with a high number of successor links.	A diverge hotspot is an indication as to how complex the end of an activity is. If the number of links is greater than two, then there is a high probability that the activity in question may delay a large number of successors.	Less than 2.5%
Critical	Number of critical activities	The number of critical tasks within a grouping. Typically critical activities have total finish float of zero. Primavera programs may have critical activities with more than zero float	No threshold

Criteria	Description	Remarks	Acceptable Threshold
		depending on the threshold set in Primavera P6.	
0 to 20 Days Float	Total number of activities with positive float of more than zero and less than or equal to 20 days.	Near critical activities should be closely monitored during execution to ensure a successful on-time project.	No threshold
Hard Constraints (Finish on, Start on, Mandatory Finish, Mandatory Start)	Number of activities with hard or two-way constraints.	Hard or two-way constraints such as Must start on or Must finish on should be avoided. Consider using soft constraints if absolutely necessary. Includes normal activities and milestones that are planned, in-progress, or complete.	Zero
Soft Constraints (Start On or After, Finish On or After)	Number of activities with soft or one-way constraints.	Soft or one-way constraints such as start no earlier than or finish no later than, constrain an activity in a single direction. While not as impactful as hard constraints, soft constraints do impact critical path method calculations in a program and should be reviewed carefully.	Zero
High Float	Excessive free total float	Number of activities with total float greater than 2 months. Activities must be agreed with the Principal's Representative	Less than 5%
Negative Float	Total number of activities with total finish float less than 0 working days.	Negative float is a result of an artificially accelerated or constrained program. Negative float indicates that a program is not possible, based on the current Completion dates. Compare this metric to constraint metrics to determine which activities (with negative float) are being impacted by constraints. Ideally, there should not be any negative float in the program. Includes normal activities and milestones that are planned or in-progress.	Zero
High Duration	Total number of activities that have a duration longer than 10 days. This number should not	Total number of activities that have a duration longer than 10 days. Activities must be agreed with the Principal's Representative.	Less than 5%

Criteria	Description	Remarks	Acceptable Threshold
	exceed 5%.		
Zero Duration	Normal activities having a Zero duration	Normal activities having a Zero duration	Zero
Wrong Status	Activities started or completed in the future	All activities with status in the future must be corrected in order to maintain an accurate execution plan. Includes only normal activities and milestones that are in progress or complete	Zero
SF Predecessors	Total number of activities with Start to Finish (SF) logic links.	Start-to-finish links are deliberately used very rarely because they have the unusual effect that the successor happens before the predecessor. Generally a poor practice when planning. Includes only normal activities and milestones that are planned, in-progress, or complete.	Zero
Leads and Lags	Lags in excess of 10 days	A lag is a duration applied to a logic link often used to represent non-working time between activities such as concrete curing. Lags tend to hide detail in programs and cannot be "stated" like normal activities. Lags should typically be replaced with activities. Includes normal activities and milestones that are planned, in-progress, or complete.	Zero
Logic on summaries		A summary is not a true activity. Logic should be tied to activities within the schedule	Zero
Reverse logic		As a result of a negative lag (a lead), the successor activity starts before their predecessor.	Zero

Annexure E Records

These requirements apply as indicated in Annexure A

Part 1 Pre Commencement Property Compliance Checklist

(for use pre Site occupation or pre construction)

Compiled by: _____

On behalf of: _____

Contract #: _____

Date: _____

#	Issue	Circle relevant answer and add comment	Attachment
1	Has the Contractor been liaising with the Principal's Representative?	Y N Comment: [insert text here]	
2	Have all properties affected by the project been identified?	Y N Comment: [insert text here]	
3	Has a list of all affected properties been issued to the Principal's Representative? (where lands have not been supplied already by the Principal)	Y N Comment: [insert text here]	
4	Is access required to properties owned by other parties?	Y N provide details Comment: [insert text here]	
5	Are all agreements in place with other landowners to permit the Contractor to undertake the Works?	Y N Comment: [insert text here]	
7	Have all surveys been conducted?	Y N Comment: [insert text here]	
8	Have all surveys been cross-checked with the designs?	Y N Comment: [insert text here]	
9	Do any of the proposed Works or Contractor's Activities fall outside the property / Site boundaries?	Y N Comment: [insert text here]	
10	If so, has the Contractor got agreements to build on the adjoining land?	Y N Comment: [insert text here]	
11	Are new easements, stratum, MOU's or WAD's with stakeholders required for the project?	Y N Comment: [insert text here]	

#	Issue	Circle relevant answer and add comment	Attachment
12	Have any new easement, stratum, MOU's or WAD's been drafted and issued to the Principal's Representative for review?	Y N Comment: [insert text here]	
13	Have all property Pre-construction Condition Surveys been conducted and submitted?	Y N Comment: [insert text here]	
14	Has asset management been considered in design?	Y N Comment: [insert text here]	
15	Are there any other property risks?	Y N Comment: [insert text here]	

RECEIVED by TfNSW

Signed: _____

Received by: _____

Date: _____

REVIEWED by Principal's Representative

Signed: _____

Name: _____

Date: _____

Acceptable? (Conforms to Contract requirements): Y/N provide reasons:

Comments provided: Y/N (attach comments)

No Comments or no further Comments: Y/N

Part 2 Property Records

Required Record or Reference
Index of all property records noting issues/versions and where they are held
Qualifications/skills and competency records of Contractor's personnel (including subcontractors)
Induction and training records for Contractor's personnel and subcontractors
Property control and constraints maps (Worksite maps)
List of all adjoining property owners and details of all interaction / communications and complaints
Evidence of property inputs/outputs within the design development process including any sustainability initiatives
Surveillance, audit of subcontractors property performance and controls
Non-conformance and non-compliance property reports and register

Part 3 Environmental Records

Required Record or Reference
Copies of all completed forms, templates required under the Codes and Standards, and applicable guidelines.
Contractor's non compliance, incident, near miss, non conformance reports and register
Preventive and corrective action reports and register
Environmental audit reports
Environmental Control Maps
Index of all environmental records (prior to Completion)
Induction and training records
Records/checklists of inspection and testing
Records of environmental management reviews for the project
Register of equipment, calibration frequency and certificates
Surveillance, audit of Subcontractors environmental performance and controls

Annexure F Working in and Adjacent to the Rail Corridor

1.0 The Operating Railway System

The Contractor acknowledges and agrees that:

- (a) it is aware that Sydney Trains or another Operator/Maintainer may continue to use areas adjacent to, or within the Site as part of normal operations of the railway system on a commercial basis during the undertaking of the Works;
- (b) the continuance of normal operations of the railway system, including within the Site, adjoining areas and railway stations, on a commercial basis by Sydney Trains or another Operator/Maintainer during the performance of the Contractor's Activities must be maintained to the satisfaction of the Operator/Maintainer as notified by the Principal's Representative. The Contractor must ensure that the railway system operations and infrastructure are not impeded or interfered with by reason of the performance of the Contractor's Activities, except where this is approved in writing beforehand by the Principal's Representative;
- (c) it must maintain and coordinate sufficient access to the railway system, for users and operators, so as not to hinder main traffic routes, including access to and from operating railway station platforms, ticketing areas and the Rail Corridor, and the flow of traffic, including on or accessing the Site and the adjoining areas, except where this is approved in writing beforehand by the Principal's Representative;
- (d) it must, in performing the Contractor's Activities, do everything that could be reasonably expected of the Contractor to avoid Sydney Trains or another Operator/Maintainer breaching any obligation it may have arising out of or in connection with the continuing operation of the railway system on a commercial basis;
- (e) The Contractor must:
 - i. ensure access and egress for Sydney Trains or another Operator/Maintainer and its Contractors to the Site to undertake regular inspections and to complete maintenance and repairs of the Operator/Maintainer's infrastructure where required;
 - ii. ensure access and egress to those parts of the Site required by Other Contractors are made available and coordinated so as to minimise any interference with or disruption;
 - iii. ensure emergency egress routes (including routes to the Rail Corridor and its support system) are maintained at all times and that emergency systems (including the Sydney Trains emergency warning intercommunication system and fire alarm panels) remain operational throughout the duration of the Contract;
 - iv. provide a safe place for persons carrying out Rail Track inspections and/or maintenance work, for example, refuges in any hoarding/fencing constructed adjacent to the Rail Track;
 - v. comply with any Sydney Trains or other Operator/Maintainer standards applicable to the Contractor's Activities including for work that is adjacent to an operating rail line and to live overhead wires;
 - vi. ensure that whilst undertaking the Contractor's Activities, no employees or Construction Plant (including, for example, by the slewing of cranes) of the

- Contractor, Subcontractors or consultants enter an operating Rail Corridor, except as permitted by Sydney Trains "RailSafe Network Rules"; and
- vii. all times, and to the satisfaction of the Principal's Representative, carry out the Contractor's Activities in a manner that will ensure the safety of all property and persons, including the general public, travelling public, station lessees, railway traffic, railway system personnel, road traffic and any person associated or engaged in connection with the Works.

2.0 Track possessions

2.1 Arrangements For Track Possessions

- (a) The Track Possessions available to the Contractor are set out in the Contract. For each Track Possession to be utilised by the Contractor, the Contractor must attend and incorporate the requirements from:
- i. the "Tier 6 Possession Coordination Meeting" with Sydney Trains held approximately 12 weeks prior to the Track Possession. This meeting will decide the coordination of all activities in the Track Possession, working hours, movements of equipment and work trains in the Track Possession area;
 - ii. the "Possession Coordination Meeting" with Sydney Trains held approximately two weeks prior to the Track Possession to discuss train movements and safe working; and
 - iii. the "Pre-Possession Meeting" with Sydney Trains, usually held prior to the Track Possession to confirm the detailed arrangements for the Track Possession and coordinate the activities of each party working in the Track Possession.
- (b) For each Track Possession to be utilised by the Contractor, the Contractor must conform to the requirements of the relevant Rail Transport Operator.
- (c) If a Track Possession involves an asset or partial asset being handed over to the Asset Owner or Operator/Maintainer (even if only for maintenance prior to it being commissioned), a Commissioning event and formal Asset Handover will be required. In these circumstances, the following documents appertaining to the assets being handed over are required to be submitted to the Principal's Representative for review at least six weeks prior to the Track Possession:
- i. Safe Work Method Statements;
 - ii. residual risk assessments;
 - iii. relevant Configuration Materials including operations and maintenance manuals, drawings, as directed by the Principal's Representative;
 - iv. Design Documentation; and
 - v. any other Documents required, as directed by the Principal's Representative.
- (d) Where power isolation is required, the Contractor must specify what power is required to be shut down and the time and duration required for the power isolation. This information must be submitted to the Principal's Representative for review, in accordance with the Contract at least 16 weeks prior to each Track Possession.

2.2 Interface Arrangements During Track Possessions

- (a) The Contractor may not have exclusive access to any Rail Tracks or areas within the vicinity of Rail Tracks during a Track Possession. The Contractor must coordinate the Contractor's Activities with those sharing the Track Possession, including parties involved in the operation or maintenance of the rail system and Other Contractors. This includes, where required, the Contractor allowing for Operator/Maintainers' contractors and Other Contractors to pass through the worksites during the Track Possessions.
- (b) The extent of Operator/Maintainers Contractors and Other Contractors activities on or within the vicinity of the Rail Track during Track Possessions will be determined at the "Tier 6 Possession Coordination Meeting".
- (c) The Contractor must ensure that all persons invited or brought onto the Site by the Contractor or Other Contractors, and those who enter an area within the Rail Corridor undertake all necessary Site inductions and obey all directions given by the Worksite Protection Personnel.
- (d) Prior to the end of the Track Possession, an appropriately qualified inspector holding the appropriate competencies must approve adequate completion of the relevant Works and sign off on "Sydney Trains Certificate of Practical Completion/Certification (W42F01)".
- (e) Any Defects listed on W42F01 must be rectified by the Contractor to the satisfaction of the Principal's Representative within 5 Business Days of the issue of the relevant W42F01.
- (f) The Principal's Representative may alter, cancel or curtail any Track Possession at any time.

2.3 Requesting Additional Track Possessions

- (a) It is unlikely that, in addition to those specified in the Contract, weekend Track Possessions, the Operator/Maintainer's resources and/or Track Possessions (with or without power) in overnight periods when trains are not running, will be available. If the Contractor requires additional Track Possessions, power isolation and/or the Operator/Maintainer's resources, they are to be arranged by the Contractor at the Contractor's own cost. This includes reimbursing the Principal's Representative for any costs that it incurs in respect of granting the additional Track Possessions and procuring the Operator/Maintainer's resources. In the case of an alliance contract, the allocation of these additional costs will be in accordance with the commercial framework of the Project Alliance Agreement.
- (b) The Contractor must provide a written request for additional Track Possessions or power isolation of overhead and transmission lines with a notice period as specified in the Contract.
- (c) Upon a written request by the Contractor, the Principal will seek to facilitate obtaining additional Track Possessions, power isolations and/or the Operator/Maintainer's resources for the Contractor by arranging a meeting between the Contractor and the Operator/Maintainer. At this meeting or subsequent meetings, possible dates for Track Possessions, power isolations and/or additional Operator/Maintainer's resources may be identified.
- (d) The Principal does not guarantee the granting of, and is not obliged to arrange additional Track Possessions, power isolations or Operator/Maintainer resources on any particular date, or at all.

2.4 Planning and Managing Track Possessions

To ensure that Track Possessions are managed effectively and safely, the Contractor must:

- (a) prepare, maintain and update policies and procedures for planning and managing Track Possession work in accordance with the "Sydney Trains Possession Manual".
- (b) prepare and submit to the Principal's Representative for review for conformance with the "Sydney Trains Possession Manual", six weeks prior to each Track Possession:
 - i. a consolidated plan comprising all information required in advance of the Track Possession including that detailed in the "Sydney Trains Possession Manual"; and
 - ii. a program including:
 - A. the elements of the Works to be completed prior to the Track Possession;
 - B. an hour by hour breakdown of the elements of the Works to be carried out during the Track Possession;
 - C. milestones and the time and date by which they must be achieved so as to ensure that the rail infrastructure can be reinstated within the allocated time and which, if not achieved by the nominated time, would result in the Contractor bringing work to an end and commencing reinstatement of the rail infrastructure and other works to avoid a delay in returning the Track Possession and/or delays to trains;
 - D. adequate allowance of time at the beginning and end of the Track Possession to safely remove and reinstate the affected rail infrastructure to operational condition and for providing and removing safeworking protection and the Operator/Maintainer inspections and certifications;
 - E. the specific risks to be managed during the Track Possession and the procedures to be followed in managing these risks;
 - F. any potential interface issue in any way connected with work carried out by an Other Contractor or involving the Operator/Maintainer's operational and maintenance activities; and
 - G. progress/program review meetings scheduled during the Track Possession as requested by the Principal's Representative and/or the Operator/Maintainer.
- (c) The Contractor must immediately comply with any instructions by the Principal's Representative to vary the program described in clause 8.2.4 (b) of the Contract, or curtail the Works if the Principal's Representative considers that continuing with intended Works will result in a delay to returning the Track Possession and/or delay to trains.

2.5 Certification of Work in Track Possessions

- (a) Before handover of an area at the end of any Track Possession the Contractor must provide to the Principal and, if required by the Principal's Representative, to the Operator/Maintainer as well; the following:

- i. for any form of civil or structural works that will support operating Rail Track, written certification by the Contractor's designers (including design Subcontractors) that the relevant works are safely able to support the operating rail infrastructure;
- ii. for any adjustments to or interruptions of service to signalling, track, overhead wiring or high voltage infrastructure, written certification from the Contractor's designers (including design Subcontractors) that such infrastructure is suitable for operations and complies with the approved design;
- iii. for any adjustments to or interruptions of service to signalling, overhead wiring or high voltage infrastructure, written certification from a Sydney Trains (or other relevant Operator/Maintainer's) representative that such infrastructure is suitable for operations; and
- iv. all other infrastructure certification as required by Sydney Trains or the relevant Operator/Maintainer and/or Asset Owner.

3.0 Rail Safety

3.1 Project Work Notification and Work Activity Advice

- (a) The Contractor must:
 - i. complete and submit the relevant Operator/Maintainer's Project Work Notification or other applicable document to the Principal's Representative at least six weeks prior to the planned Works, including any works in a Track Possession.
 - ii. comply with the requirements of the "TfNSW/Rail Transport Operator Safety Interface Contract".
 - iii. Produce a Work Activity Advice (WAA) using the form "TfNSW [Work Activity Advice Form – 4TP-FT-105](#)." 4 weeks prior to commencing work. Each WAA must cover a particular part of the Contractor's Activities and include the SWMS applicable to that part of the Works; and
 - iv. conduct a pre-work briefing with all personnel involved, including the Protection Officer as defined in the RailSafe Network Rules and Procedures, prior to commencing.

3.2 Competencies

- (a) The Contractor must provide the Principal's Representative with a list of position descriptions which identifies whether each position is a Rail Safety Worker. The Principal may require alteration of the designation of Rail Safety Workers as nominated by the Contractor.
- (b) Any person supervising or setting up safe work arrangements for the Works on or in the vicinity of the Rail Corridor must hold the qualifications required by the Rail Transport Operator and the Principal.
- (c) The Contractor must ensure that no person undertakes Rail Safety Work unless they have been issued with a certificate of competency under the Rail Safety National Law.
- (d) The Contractor must consult with the Principal's Representative to obtain a determination as to when the RIW card is required. The Contractor must ensure that

any visitors required to enter the Rail Corridor complete the relevant safety inductions.

3.3 Fatigue Management, Medical and Health Management

For workers carrying out Rail Safety Work the Contractor must apply the following fatigue, medical and health minimisation controls:

- (a) implement a fatigue management program that:
 - i. addresses the requirements of the *Rail Safety National Law* and this Contract;
 - ii. restricts workers to no more than 12 hours worked at a time not including travel time to and from work, unless there is a declared Incident in which case work can be performed up to a maximum of 16 hours at a time, as long as workers are not required to drive a motor vehicle or operate heavy plant or equipment after the 12th hour;
 - iii. restricts workers that have worked more than 12 hours from driving after finishing work;
 - iv. includes periods of 11 hours rest away from work;
 - v. restricts the maximum number of work days to 12 work days in 14 consecutive days;
 - vi. minimises to five consecutive occasions where eight hours are worked at night (i.e. after normal office hours) or four consecutive occasions where 10 hours are worked at night or three consecutive occasions where 12 hours are worked at night without a 48 hour rest break;
 - vii. ensures employees receive a minimum of 48 consecutive hours free of work in a 14-day period; and
 - viii. has the capacity to replace or relieve workers where unplanned or unavoidable extended hours have created a risk to employee health and safety;
- (b) inform such persons that they are subject to medicals and health assessments in accordance with the “National Standard for Health Assessments of Rail Safety Workers”;
- (c) ensure that the “National Standard for Health Assessments of Rail Safety Workers” are undertaken and documented including re-examinations. The documented records must be maintained according to the *State Records Act 1998 (NSW)*; and
- (d) inform such persons that additional medical and health assessments may be required to be undertaken where they are involved in a safety accident or where there is reasonable cause for concern that person may be unable to perform work safely (such as upon return from a long illness).

3.4 Work on Track Methods for Working Safely

- (a) Unless specified by the issue of a safeworking notice by the Principal's Representative, the primary work on track methods for working safely are summarised as follows:
 - i. “Construction Site” - A worksite under construction without any rail traffic movements, or traction power systems being installed. Worksite Protection and RIW Identification are not required; and

- ii. "TfNSW Rail Site" - A Principal's Representative managed and controlled rail-site which has no interface access with other rail sites or rail systems.
- (b) Work within or potential to impact the Danger Zone requires Local Possession Authority in accordance with the RailSafe Network Rules and Procedures.
- (c) Should a TfNSW Rail Site encroach on the Danger Zone of any other adjoining Rail Transport Operator rail-sites, then:
 - i. adjacent line protection must be implemented and managed in accordance with the rules of the adjoining Rail Transport Operator; and
 - ii. an access interface is considered removed if points that allow entry and exit to the rail-site are secured and a physical barrier is established at the limits of the TfNSW Rail Site.
- (d) Where the contracted Works are undertaken within a rail-site managed and controlled by another accredited Rail Transport Operator, the other Rail Transport Operator's Network Rules and Procedures apply.

3.5 Worksite Protection Personnel

- (a) Worksite Protection is required for carrying out the Works within the Rail Corridor in accordance with the RailSafe Network Rules and Procedures and/or the requirements of the Rail Transport Operator.
- (b) The Worksite Protection Personnel are required to hold a minimum of Worksite Protection Personnel level 2 accreditation (PO2).
- (c) The Worksite Protection Personnel must brief all personnel undertaking the Works on the Worksite Protection arrangements at the Site at the start of each shift or as is otherwise required (and agreed by the Principal's Representative).
- (d) Where the Principal is to provide the Worksite Protection Personnel, the Contractor must provide 10 Business Days' notice in writing to the Principal's Representative requesting the number of Worksite Protection Personnel required.

3.6 Use of Rolling Stock, Hi-Rail Vehicles and Work Trains

- (a) Rolling stock and rail traffic are not permitted to travel or operate on the Site without the approval of the Principal.
- (b) The Principal's Representative may also impose requirements, limitations and constraints on rail traffic travelling or operating on the Site.
- (c) To the extent that any part of the Works requires the use of hi-rail vehicles or work trains the Contractor must:
 - i. ensure that such vehicles are only operated by persons with appropriate competencies and by an organisation which holds accreditation as a "Rolling Stock Operator" (as that term is defined under the Rail Safety National Law);
 - ii. ensure that hi-rail vehicles are duly checked and certified as being fit for their intended use at the start of each shift;
 - iii. ensure the hi-rail vehicle has been certified as compliant and safe to use with the hi-rail modifications by the Original Equipment Manufacturer (or an independent competent engineer, including from a WHS and rail safety perspective;

- iv. ensure that the utilisation of hi-rail vehicles or work trains is appropriately addressed in the Contractor's procedures to ensure safe operations, to prevent injury and damage to infrastructure and to ensure that responsibilities are identified and documented;
- v. assess the past record of potential Subcontractors to ensure that they comply with the *Rail Safety National Law* and relevant rail accreditation requirements. The results of these assessments must be made available to the Principal's Representative upon request;
- vi. set out and carry out regular reviews of the performance of train and hi-rail operators engaged for the undertaking of the Works (including at least one review after each major Track Possession or Incident, or in any event every three months). The results of these reviews must be made available to the Principal's Representative upon request; and
- vii. only use rolling stock, hi-rail vehicles and work trains authorised on the Vehicle Registration Database.

3.7 Swing Arm Plant – Rail Environment

- (a) The Contractor must ensure the use of restrictors for swing arm plant.
- (b) The Contractor's construction planning process must include the validation of the proposed method of work to be carried out on the day. This validation process must include the completion of a site-specific risk assessment and development of a plant working diagram by the Contractor in conjunction with the Project Rail Safeworking Coordinator and any other required project personnel.
- (c) The Contractor's pre-work briefing must include the following items:
 - i. description of swing arm plant and equipment being used, including the type of restrictor(s) being used;
 - ii. details of the "line in the sand" for the positioning of the chassis of the swing arm plant or equipment being used (including consideration of the size and reach of the swing arm plant or equipment);
 - iii. arrangements for the provision of a spotter;
 - iv. reference to the details included in the Worksite Protection Plan prepared by the Protection Officer that includes swing arm plant considerations; and
 - v. in the case of operations involving the use of a crane, details of the lifting plan.

3.8 Rail Safety Worker Assessments.

The Contractor must assure the competence of their Rail Safety Workers by one of the following methods:

- (a) To the extent that the Contractor has its own competence management system (regardless of whether or not it is an RTO in its own right), the Contractor must demonstrate and provide evidence that the requirements and criteria of the TfNSW Rail Safety Competency Standard 60-ST-153 have been met. A component of the demonstration will necessitate an assessment by the Principal of the Contractor's competence management system to verify that its system meets the requirements of this Standard.

- (b) To the extent that the Contractor does not have its own competence management system, they will be required to demonstrate that the Contractor can meet the competencies required to undertake Rail Safety Work via assessment as part of the TfNSW competence management process.

Annexure G Sustainability and Climate Change

1.0 Sustainability Requirements

Unless noted otherwise in Annexure A, the Contractor must:

- (a) comply with the "TfNSW ["NSW Sustainable Design Guidelines"](#) to meet a minimum design rating of Silver, Gold or Platinum, as indicated in Annexure A.
- (b) submit a completed "TfNSW [NSW Sustainable Design Guideline Checklist](#)" in electronic format to the Principal's Representative for review in accordance with the Contract at the interval stated in Annexure A, confirming compliance with the requirements of "TfNSW [NSW Sustainable Design Guideline Checklist](#)"
- (c) prepare and submit to the Principal's Representative for review in accordance with the Contract, a Greenhouse Gas Inventory Report using the "TfNSW [Carbon Estimation and Reporting Tool \(CERT\)](#)" at each of the following stages:
 - i. SDR or equivalent design stage (20% design);
 - ii. CDR or equivalent design stage (100% design); and
 - iii. during the construction phase, 5 Business Days after the end of the periods:
 - A. commencing 1 January and ending 30 June; and
 - B. commencing 1 July and ending 31 December.
- (d) prepare and submit for review by the Principal's Representative in accordance with the Contract, a Climate Risk Assessment (CRA) Report in accordance with the "TfNSW [Climate Risk Assessment Guidelines – 9TP-SD-081](#)" at the commencement of SDR (or equivalent) stage of design. This report must, as a minimum:
 - i. identify any project-specific climate change risks (utilising climate modelling data);
 - ii. recommend risk mitigation measures to reduce the identified climate risks; and outline how risk mitigation measures will be addressed through the design process to reduce "extreme", "high" and "medium" risks to "low" where practicable; and
 - iii. demonstrate how the recommended risk mitigation measures will carry through to the construction phase and could be applied in the operational phase of the project.
- (e) register the project with the Infrastructure Sustainability Council of Australia and obtain a minimum 'design' and/or 'as built' rating of 'commended', 'excellent' or 'leading' as indicated in Annexure A.
- (f) demonstrate, by inclusion in the Contract Management Plan and other relevant Sub plans, their:
 - i. Corporate or project-specific equal employment opportunity Policy or Guideline and how its requirements will be implemented; and
 - ii. A learning and development program that is specific to the project.

2.0 NSW Government Resource Efficiency Policy (GREP)

Where nominated in Annexure A, the Contractor must:

- (a) make available documents and evidence to assure the Principal that the Works and Contractor's Activities are compliant with the requirements of the GREP policy;
- (b) comply with the following requirements, to the extent they apply to the Works or Contractors Activities:
 - i. E3. Minimum standards for new electrical appliances and equipment;
 - ii. E4. Minimum standards for new buildings, such that all new office buildings and fit-outs will be designed and built to a predicted performance of at least 4.5 stars for NABERS energy rating. For building types other than office buildings and fit outs, and where the facilities have projected development costs over \$10 million, the buildings must be designed and built so that energy consumption is predicted to 10% lower than if built to minimum compliance with National Construction Code requirements;
 - iii. W3. Minimum standards for new water using appliances; and
 - iv. A2. Low Volatile Organic Compound surface coatings.
- (c) prepare the following reporting tools in the form provided by the Principal, and submit to the Principal's Representative for review in accordance with the Contract:
 - i. an inventory of non-road diesel vehicles to be used in the Contractor's Activities, within 1 month of the date of the Contract, and subsequently, annually (where the duration of the Contract is of more than 1 year) – using "TfNSW [Air Emission Data Collection Workbook – 9TP-FT-439](#)"; and
 - ii. a "TfNSW [Waste Data Collection Worksheet 9TP-FT-436](#)" to be submitted annually, by no later than the last Friday of the second week in August.

Annexure H Contractor’s Monthly Report

The Contractor must provide a monthly report, which must be submitted to the Principal’s Representative on the 25th day of each month, which includes the following information for the previous 30 days.

Item	Description
A	A summary of the status of progress as compared to the current Contractor’s Program and the Contractor’s other programs including photographs
B	An A3 size PDF copy of the Contractor’s Program
C	Planned Works and Contractor’s Activities over the forthcoming 3 month period
D	A list and timing of Hold Points and Witness Points planned for the forthcoming 3 month period;
E	The status of any Document, Design Documentation, other deliverables, major procurement orders, Subcontracts, manufacture and the overall delivery of the Works
F	Dates for the anticipated submission of design packages at key stages of the design as defined in the Works Brief;
G	The actual number and categories of personnel and equipment currently engaged by the Contractor to carry out the Contractor’s Activities (including apprentices and those engaged in off-site functions such as engineering and specialist Subcontractors). This data must also be compared with the planned resources
H	A summary of the financial status of the Contract, including detailed final cost forecasts, and separate lists for the cost of approved Variations, claims and outstanding claims for Variations
I	Where applicable, the status of any activities against all the requirements of Authority Approvals, including planning consents
J	Safety statistics in a format agreed with the Principal’s Representative
K	Details of any reportable Incidents;
L	A consolidated SWMS register showing active and completed SWMS
M	Any non compliances or non conformances of the Works, Temporary Works and Contractors Activities in relation to the Contract, Authority Approvals and other obligations in Law and the steps taken by the Contractor to address those non compliances or non conformances
N	Records of all corrective and preventative actions taken by the Contractor and audits of such actions
O	Cooperation, coordination, industrial relations and interface matters with Other Contractors
P	Summary updates relating to community issues and potential community issues
Q	Details of all community contacts (detailing issues, frequency, outcomes, dates etc.) from CMS
R	A written summary covering the completed Works and upcoming activities including any associated community impacts, in a form suitable for inclusion on the Principal’s website
S	Details of complaints and enquiries received by the Contractor in relation to the Contractor’s Activities

T	Activities of the Dispute Resolution Board, where such a board is established under the Contract
U	<p>Details of the status, implementation, operation and effectiveness of risk identification and mitigation measures including:</p> <ul style="list-style-type: none"> i. a report on the risks deemed 'extreme' or 'high' within the risk register; ii. an overview of the full risk register (e.g. number of risks by category and rating, number of new risks identified and risks closed out during the previous month); iii. the status of associated controls and tasks; and iv. any results of risk audits
V	Where the Works include signalling system works, the progress report must also include a one page summary of the status of signalling design packages and provide the status of signalling inspection and test documentation such as permit to work applications, inspection and test plans, installation works packages, Commissioning test plans and Commissioning works packages;
W	Details of any property related matters including property claims; and
X	Any other information the Principal's Representative reasonably requires

Annexure I Reference Documents

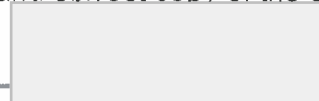
The following TfNSW authored documents, referenced in this TSR are not publicly available, and will be supplied as part of the Contract.

- TfNSW Environmental Incident/Non-Compliance Report 9TP-FT-101
- TfNSW Pre-Construction Minor Works Approval 9TP-FT-202
- TfNSW Generic Work Health and Safety Operational Risk Register 30-SD-101
- TfNSW Generic Rail Safety Risk Register 30-SD-038.
- TfNSW WCAG 2.0 Quick reference guide
- TfNSW Editorial Style Guidelines
- TfNSW Property Compliance Register 2TP-ST-175
- TfNSW Earned Value Management using Primavera P6 4TP-PR-143
- TfNSW Scheduling Standard 4TP-ST-123
- TfNSW Work Activity Advice Form 4TP-FT-105.
- TfNSW Waste Data Collection Worksheet 9TP-FT-436
- TfNSW Guide to Compliance Monitoring and Reporting using PECOMS 9TP-SD-012
- TfNSW Fatigue Management Standard ST-011
- TfNSW Rail Safety Competency Standard 60-ST-153
- TfNSW Working Near Utilities Standard 4TO-ST-107

Power of Attorney

Downer EDI Rail Pty Ltd
ACN 000 002 031

I certify that this is a true
and correct copy of the original



18 DECEMBER 2018

KRISTEN POTTS
Solicitor
No. 81411

Power of Attorney

DATE 14.12.2018

PARTY

Downer EDI Rail Pty Ltd
ACN 000 002 031 (**Grantor**)

1. APPOINTMENT AND POWERS

1.1 Appointment

- (a) The Grantor appoints each person described in item 1 of the schedule (each an **Attorney**) as an attorney of the Grantor to exercise the powers set out in clause 1.2 for and on behalf of and in the name of the Grantor in accordance with this document.

1.2 Powers

Each Attorney has the power to:

- (a) execute and if appropriate deliver (conditionally or unconditionally), or to enter into by any other means:
- (i) any of the documents or agreements to which the Grantor is a party described in item 2 of the schedule in the form, and with the parties (whether or not mentioned in item 2 of the schedule), that the Attorneys decide;
 - (ii) any other document (including all *Corporations Act 2001* (Cth) forms, notices, consents, instruments and communications) which is contemplated by, referred to in, ancillary to or necessary or desirable in connection with a document described in subparagraph (i) or a schedule to any document described in subparagraph (i); and
 - (iii) any document or agreement that amends, supplements, replaces or novates any of those documents or agreements described in subparagraphs (i) or (ii),

(each a **Document**); and

- (b) do anything which, in the Attorneys' opinion, is contemplated by, incidental to or otherwise necessary or desirable in connection with any Document or any transaction contemplated by a Document including, without limitation:
- (i) making amendments, alterations or additions to a Document (including changing the parties named in the document) and executing and delivering any document which effects or evidences the amendment, alteration or addition;
 - (ii) executing any ancillary document to a Document; and

- (iii) completing any blanks in a Document or signing any document dealing with an estate or interest in land in any State or Territory of Australia.

An Attorney may do these things in the Attorney's own name or in the name of the Grantor.

1.3 The Grantor is bound by what the Attorneys do

The Grantor is bound by, and agrees to ratify, anything done by an Attorney in the exercise of an authority under this document, including anything done between the revocation by any means of the power granted under this document and that revocation becoming known to the Attorney.

2. PROTECTIONS FOR THE ATTORNEYS

2.1 Indemnity

The Grantor must indemnify each Attorney against, and must pay each Attorney on demand the amount of, all losses, liabilities, costs or expenses incurred in connection with this document or as a result of anything done by an Attorney in the exercise of an authority under this document.

2.2 Conflicts

An Attorney may do anything contemplated by this document or permitted by law even if this constitutes an actual or potential conflict of interest or duty or benefits the Attorney.

2.3 No warranty of authority

The fact that an Attorney does something under this document is not:

- (a) a warranty (express or implied) by the Attorney, or by any entity of which the Attorney is a partner, member, officer, employee or agent, that this document is binding on the Grantor or authorises the Attorney to do so; or
- (b) an assumption of personal liability by the Attorney or by any person of which the Attorney is a partner, member, officer, employee or agent.

3. TERMINATION OF APPOINTMENT

An Attorney's appointment under this document terminates on the earlier of:

- (a) the date listed in Item 3 of Schedule 1; or
- (b) when that Attorney:
 - (i) receives notice of revocation from the Grantor; or
 - (ii) ceases to be employed by Downer EDI Limited or any of its related bodies corporate.

A person may rely in good faith on a statement in writing by an Attorney (including a statement in a Document) that the Attorney's appointment has not been revoked as conclusive evidence of that fact.

4. STAMPING AND REGISTRATION

The Grantor undertakes to stamp and register this document as required by law. If the Grantor does not do this promptly, an Attorney or a party to a Document may do this on behalf of the Grantor. The Grantor agrees to pay their reasonable costs for doing this.

5. APPOINTMENT OF ATTORNEY IS CONCLUSIVE EVIDENCE

Any person (including without limitation any registration authority in Australia or elsewhere) dealing with the Attorney or a person purporting to be an Attorney under this document, is:

- (a) entitled to rely on execution of any document by that person as conclusive evidence that:
 - (i) the person holds the office set out in this document;
 - (ii) the power of attorney has come into effect;
 - (iii) the power of attorney has not been revoked; and
 - (iv) the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power; and
- (b) not required to make any inquiries in respect of any of the above matters.

6. GOVERNING LAW

This document is governed by the laws in force in New South Wales. The Grantor and the Attorney each submit to the non-exclusive jurisdiction of the courts of New South Wales.

Schedule 1

Item 1 (Attorneys):

Name	Position title
Michael Ferguson	Group Chief Financial Officer
Michael Miller	Executive General Manager, Rollingstock Services
Evan Economo	Deputy General Counsel
Robert St Clair	Head of Legal & Commercial - Transport & Infrastructure Services
Monica Murray	Senior Legal Counsel

Item 2 (Documents):

QUEENSLAND NEW GENERATION ROLLINGSTOCK MODIFICATION CONTRACT

Documents include:

- a) Subcontract for works to modify Queensland New Generation Rollingstock between Downer EDI Rail Pty Ltd and Bombardier Transportation Pty Ltd.
- b) Any arrangement which achieves the same or a similar commercial effect as or to the above; and
- c) Any ancillary documents contemplated by the Subcontract between Downer EDI Rail Pty Ltd and Bombardier Transportation Pty Ltd.

AUTOMATIC TRAIN PROTECTION C-SET, K-SET AND V-SET FLEETS ONBOARD INSTALLATION CONTRACT

Documents include:

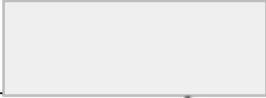
- a) Contract for ATP C-Set, K-Set and V-Set Fleets Onboard Installation between Transport for NSW and Downer EDI Rail Pty Ltd, Contract Number ISD-17-6606 and ISD-17-6607, Automatic Train Protection Program.
- b) Any arrangement which achieves the same or a similar commercial effect as or to the above; and
- c) Any ancillary documents contemplated by the Contract for ATP C-Set, K-Set and V-Set Fleets Onboard Installation between Transport for NSW and Downer EDI Rail Pty Ltd.

Item 3 (Termination Date)

11:59PM (Sydney time) on 31 January 2019

EXECUTED as a deed.

EXECUTED by Downer EDI Rail Pty Ltd



Signature of director

Michael Ferguson

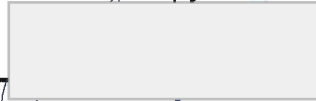


Signature of secretary

PETER J. LYONS

Peter James Lyons

I certify that this is a true
and correct copy of the original



18 DECEMBER 2018

KRISTEN POTTS

Solicitor

No. 81411