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MEMORANDUM OF UNDERSTANDING BETWEEN NSW TRAINS AND THE RAIL TRAM AND BUS UNION (NSW BRANCH) RELATING TO THE INTRODUCTION OF THE NEW INTERCITY FLEET AND DRIVER ONLY OPERATIONS

1. Operation of this agreement

1.1 This is a Memorandum of Understanding (MOU) between:

- 1.1.1. NSW Trains; and
- 1.1.2. The Australian Rail Tram and Bus Union (RTBU).

1.2 The parties agree to enter an enforceable deed comprising the terms of this MOU and any other terms which the parties agree (if any). The parties will take all reasonable steps to ensure the deed will be executed prior to the certification of the replacement NSW Trains Enterprise Agreement.

2. Objectives of the MOU

2.1 This MOU is intended to:

- 2.1.1. create the environment to further discuss and consult on proposed arrangements relating to the introduction of the New InterCity Fleet (NIF) and relevant train crewing arrangements including, but not limited to NSW Trains stated intention to transition to Driver Only Operation (DOO) arrangements;
- 2.1.2. support a structured and ordered engagement with the workforce and their RTBU representatives commencing from detailed design through to the introduction of NIF revenue services;
- 2.1.3. facilitate exploring and implementing other changes to work arrangements designed to improve the safety of staff and the efficient operation of the NIF;
- 2.1.4. ensure entitlements are available to affected staff and that any proposed changes to the NSW Trains Enterprise agreement are made in accordance with CI 12 of the NSW Trains Enterprise Agreement 2014 or any successor clause; and
- 2.1.5. Enable appropriate transition to new crewing arrangements through the process outlined in this agreement.

3. Introduction of NIF

- 3.1 The NSW Government's decision to invest more than \$2 billion in a New Intercity Fleet represents an opportunity to significantly improve safety, customer service, efficiency and effectiveness by introducing new technology and new methods of work as part of the roll out of the NIF.
- 3.2 NSW Trains notes that this significant investment and the resulting new technologies means that change from existing arrangements is inevitable. Where changes are proposed, both parties agree that it is desirable to undertake constructive discussion about how that change will impact on staff.
- 3.3 It is acknowledged that:
 - 3.3.1. While the three options for the operation of the NIF as outlined in the original tender specification – Option 1 – Driver/Guard, Option 2 – Driver/second person, Option 3 –

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Driver Only Operations (DOO) –in reality there will be changes to job design and how work is performed (regardless of which option operates) will need to be considered.

- 3.3.2. Subject to its legal requirements, NSW Trains proposes to introduce DOO where it believes it to be safe and appropriate. NSW Trains has commenced consultation with the RTBU about its proposed approach in accordance with Clause 7 of the NSW Trains Enterprise Agreement 2014. NSW Trains intends to continue this approach.
- 3.3.3. In addition to job design and associated work arrangements, NSW Trains wishes to consult with its staff and the RTBU to address specific industrial interests of its staff who are affected by this proposed approach. NSW Trains outlined how it proposed to deal with these issues – on a without prejudice basis - in early December, 2016.
- 3.4 The RTBU has indicated its concern about the safety of any proposed changes to existing work methods and opposes the introduction of DOO on safety grounds, workload and fatigue grounds
- 3.5 Both NSW Trains and the RTBU have agreed to constructively participate in discussions about addressing all their respective issues.
- 3.6 It is agreed that these discussions should be on the basis of the existing rights of the parties. In particular, it is recognised that, in addition to respective rights of the parties outlined in the Fair Work Act:
 - 3.6.1. NSW Trains management has the right to :
 - 3.6.1.1.1. introduce the changes proposed so long as it is not unjust or unreasonable; and
 - 3.6.1.1.2. To have any relevant dispute resolved in accordance with Clause 8 of the enterprise agreement.
 - 3.6.2. The RTBU and staff have the right to:
 - 3.6.2.1. be consulted in relation to these changes insofar as they impact staff (as set out in Clause 7 of the Enterprise Agreement);
 - 3.6.2.2. to have any relevant dispute resolved in accordance with Clause 8 of the enterprise agreement; and
 - 3.6.2.3. to have any proposed changes to enterprise agreement entitlements dealt with in accordance with Clause 12 of the NSW Trains Enterprise Agreement or any successor clause.
- 3.7 Without, in any way derogating from these rights, NSW Trains and the RTBU agree that the most effective way to deal with any differences about these matters is to work co-operatively together, where this is possible.

4. Cooperative approach.

- 4.1 To advance this cooperative approach, NSW Trains commits to :
 - 4.1.1. actively engage the RTBU on a full range of discussions about the work arrangements associated with the introduction of NIF in a structured program of discussions as set out in Clause 8 of this MOU; and
 - 4.1.2. actively engage with affected staff during this process to ensure that their interests and concerns are fully considered. Specifically NSW Trains commits to working closely with
 - 4.1.2.1. **affected** guards as early as possible to assist them plan their future career in the light of potential options; and
 - 4.1.2.2. **affected** drivers in relation to potential workload, fatigue, role and responsibility functions

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4.2 To advance this co-operative approach, the RTBU commits:

- 4.2.1. To constructively participate and engage in the structured discussion process outlined in this MOU and deal constructively with any matters relating to NIF and train crew;
- 4.2.2. Not to take unlawful industrial action during consultation;
- 4.2.3. Not to use or divulge confidential or commercial- in- confidence information inconsistent with the terms under which such information has been provided ; and
- 4.2.4. Not to make any claims outside the the consultations outlined in this agreement. In particular, it is agreed that matters relevant to the NIF or DOO operations will not be raised in enterprise bargaining discussions due to commence in May 2017.

4.3 NSW Trains and the RTBU agree that any disputes will be dealt with under this MOU. Where matters are not resolved under this MOU, they shall be dealt with under the dispute resolution process in clause 10 of this MOU.

5. RTBU concerns about safety and operations

5.1 The RTBU has indicated its concern about the safety of any proposed changes to existing work methods and opposes the introduction of DOO on safety grounds.

5.2 To deal with these concerns NSW Trains confirms:

- 5.2.1. NSW Trains will only introduce DOO when and where it is satisfied that it meets appropriate safety standards.
- 5.2.2. NSW Trains will work openly and co-operatively with safety regulators to ensure regulators are satisfied operational changes maintain appropriate rail safety standards.
- 5.2.3. all safety and assurance testing will be undertaken in accordance with guidelines issued by ONRSR and relevant ASA standards.
- 5.2.4. any proposed operation will be consistent with legislative requirements;
- 5.2.5. any proposed operation will be consistent with the terms of the Enterprise Agreement. This includes hours of work, intervals between shifts, meal breaks, fatigue management and overtime entitlements. If any changes are proposed, they will be dealt with in accordance with Clause 12 (or successor clause) of the enterprise agreement.

5.3 In addition to meeting all legislative and regulatory requirements, NSW Trains has appointed a safety validation advisor to ensure that any safety issues are thoroughly considered before DOO or other changes to work methods are implemented.

5.4 NSW Trains will consult with the union about the outcomes of the validation process in accordance with Clause 7 of the NSW Trains enterprise agreement and relevant ASA standards. Where the RTBU has any concerns, they will be communicated to and be transparently assessed by the safety validation advisor.

5.5 The RTBU reserves its right to:

- 5.5.1. seek the assistance of and or appoint its own safety validation advisor who shall assess and ensure that any safety issues have been thoroughly considered prior to agreeing with or supporting any changes to work and operational methods; and
- 5.5.2. directly approach the regulator.

6. Proposed industrial arrangement

- 6.1 As outlined above, NSW Trains previously suggested a number of approaches to deal with the industrial interests of staff impacted by the move to DOO operations. This has been the subject of discussion with the RTBU in December, 2016. It is acknowledged that the matters discussed have not been approved by the NSW Government and would need to be approved before they could be implemented.
- 6.2 To assist with the orderly discussions referred to in clause 8 below, NSW Trains will keep these matters on the table for so long as constructive discussions continue. If they are to be withdrawn, NSW Trains will give one months notice to the RTBU to that effect.

7. Context for consultation

- 7.1 Consultation will occur in the context of three phases of the design and roll out of the NIF. These are described below. While the dates outlined above are developed in line with the planned design, manufacturing and testing regime for NIF, these are approximations only as this will be an evolving process that may change over the life of the project. Specifically, it should be noted that individual activities may occur earlier than anticipated. If these plans and/or dates change, the RTBU will be given notice of any changes. In addition, it will not be necessary for all tasks from one phase to be finalised before elements from the next phase are considered.
- 7.2 NSW Trains will make decisions about the operating method for NIF at various times during these phases. Where there are any disputes about these decisions, they will be dealt with in accordance with Clause 8 of the NSW Trains Enterprise Agreement or any successor agreement.

Early exploration (July 16 – March 17)

- 7.3 This initial phase involved:
- 7.3.1. exploration of proposed approach to Driver Only Operation through the development and discussion of 19 operational scenarios;
 - 7.3.2. early discussion on dealing with the impact of changes on employees directly affected by the proposed approach to Driver only Operation;
 - 7.3.3. early design discussions on SDR (System Definition Review)– including participation in low fidelity mock ups; and
 - 7.3.4. early information sessions for affected train crew.
- 7.4 A key outcome of this early phase is the development and finalisation of this MOU to better guide future consultation in relation to NIF.

Concept testing (March 17 – March 18)

- 7.5 This phase will involve:
- 7.5.1. development of detailed proposals relating to each of the three operation options being considered – driver/guard, driver/second person/Driver Only operations;
 - 7.5.2. specific activities to provide relevant safety assurance of each of the three operation options being considered;
 - 7.5.3. consultation relating to finalizing design of NIF – including all PDR (Preliminary Design Review) and DDR (Detailed Design Review) activities – such as concept testing through the use of the High Fidelity Mock Up; and
 - 7.5.4. early discussions with affected train crew including one on one career discussions with guards and early expression of interest in redundancy.

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- 7.6 NSW Trains intends to make a decision about key operating arrangements for NIF including which of the three operational options – driver/guard, driver/second person/Driver Only operations – will be adopted by NSW Trains and where.

Operational verification (March 18 – April 2019)

- 7.7 This third phase will involve:

- 7.7.1. preliminary engineering testing of NIF ;
- 7.7.2. final testing and confirmation of proposed operating mode referred to in 7.6 above.
- 7.7.3. confirmation of proposed operating model; and
- 7.7.4. finalisation and roll out of staffing arrangements including selection, offers of redundancy (if relevant), and training design and roll out.

- 7.8 A key outcome will be the confirmation of which of the three operating options will be adopted and where in preparation for first revenue services in August 2019.

8. Discussions

- 8.1 The parties agree that during the concept testing phase, they will constructively discuss and aim to finalise agreed arrangements that will facilitate the smooth introduction of the NIF. Without limiting the issues for discussion, it is agreed that the discussions must constructively explore:

- 8.1.1. The introduction of Driver Only Operations to coincide with the introduction of NIF trains (subject to safety assurance).
- 8.1.2. The introduction of single man crewing (i.e. Driver being solely responsible for the safe operation of the NIF Train) as the base operating model of operation across the intercity network.
- 8.1.3. The introduction of new work arrangements for train crew that ensure the most effective and efficient operation of the NIF including the development and implementation of new technologies (e.g. the optimum use of CCTV and communications systems), specific work instructions (e.g. to manage any risks associated with driver fatigue and distraction), competency standards, assessment methods and selection arrangements for drivers of NIF trains.
- 8.1.4. The abolition of the guard's role as it presently exists and arrangements to ensure:
 - 8.1.4.1. redundancy is available to affected staff once operational requirements permit;
 - or
 - 8.1.4.2. Appropriate redeployment opportunities are explored.
- 8.1.5. The nature of any transition (if any) to single man crewing and from single man crewing to Driver Only Operation. This will include exploring whether there is a need for a second person to be carried on any or all NIF services during this transition. If a second person is necessary, discussions will explore the nature of the duties (e.g. the extent to which they focus on customer service) and associated working arrangements.
- 8.1.6. Changes to a range of work arrangements to improve the efficiency and effectiveness of NIF trains such as train preparation, depot balancing limits, the ad hoc allocation of non train crew to work on trains without demarcation and rostering arrangements.
- 8.1.7. The process of testing and trialling of the train.
- 8.1.8. The employment conditions and remuneration of drivers and second person (if any).
While RTBU wishes to ensure the conditions and remuneration of the second person is consistent with the conditions and remuneration of existing guards, and NSW Trains does not support this position, the parties agree to discuss these issues.

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8.2 Where proposed changes require changes to Enterprise Agreement, these will be processed through Clause 12 of the 2014 Enterprise Agreement or relevant provisions in subsequent enterprise agreements.

8.3 Working parties will be established to facilitate elements of these discussions where the parties agree they may be of assistance. Where this occurs, NSW Trains will arrange for the reasonable release and payment of union representatives to participate where operational requirements permit.

8.4 Where NSW Trains determines that operational requirements do not permit the release of RTBU representatives, the RTBU Director of Organising and NSW Trains Chief Operations Officer shall discuss alternative arrangements. If there is no agreement, the relevant working party shall not proceed until release arrangements are available.

9. Guards redundancy

9.1 NSW Trains agrees that existing redundancy entitlements as specified in Attachment B, Part A of the Redeployment and Redundancy Deed will be applied to guards made redundant but only where the following two conditions are met:

9.1.1. The Guard has made an expression of interest to take redundancy before 30 September, 2017; and

9.1.2. The Guard accepts an offer of redundancy and exits employment directly as a result of the introduction of Driver Only Operations when the NIF fleet is entered into service.

10. Dispute Resolution

10.1 The parties commit to the orderly resolution of disputes, including the following commitments:

10.1.1. A commitment to meaningful, respectful and orderly discussions. This includes the commitment to fully engage and actively consider issues being raised.

10.1.2. The early escalation of difficult issues or disputes from working parties to senior managers for discussion with senior union officials where appropriate.

10.1.3. Commitment to quarantine progress of the NIF related discussions from other processes and other extraneous issues.

10.1.4. Commitment to ensure that all matters in dispute to be processed strictly in accordance with clause 8 of the NSW Trains Enterprise Agreement 2014 with arbitration of a dispute only being available where the matter in dispute falls with 8.2 of the enterprise agreement.

SIGNED on behalf of NSW Trains

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Peter Allaway, Chief Operations Officer

DATE:

SIGNED on behalf of the RTBU NSW Branch

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Alex Claassens, Secretary

DATE: