

# **TRANSPORT**



**Attachment 6-D**  
**to Exhibit 6 (Governance Model)**

## **OPERATING LEVEL AGREEMENT**

**(Sample)**

**26 SEPTEMBER 2014**

**Version 1.0**

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## **Operating Level Agreement (“OLA”)**

**Parties:**

**[Supplier A]** ABN [Supplier A ABN, if applicable] (“**Supplier A**”);

**Transport for NSW, ABN 18 804 239 602 (“Transport”); and**

**[SUPPLIER B], ABN [insert Supplier B ABN] (“Supplier B”)**

### **I. OPERATING LEVEL AGREEMENT**

#### **1. Background and Purpose**

- a. Supplier A and Supplier B have separately entered into agreements to provide services to Transport.
- b. While Supplier A and Supplier B have contracted to provide their respective services directly to Transport, each will have dependencies on the other to successfully provide such services and will need to interact and co-operate in order to provide their respective services. The purpose of this OLA is to document and provide information about the respective services and processes of Supplier A and Supplier B that will support and facilitate the effective and efficient interaction and co-operation between them in delivering their respective services.
- c. This document is intended by Supplier A to meet the co-operation provisions of the agreement dated [insert date of Supplier A MSA] (“Supplier A MSA”) between Supplier A and Transport under which Supplier A must, if requested by Transport, enter into operating level agreements with all Third Party suppliers (as defined in the Supplier A MSA) of Transport.
- d. This document is intended by Supplier B to meet the requirement of the agreement dated [insert date of Supplier B MSA] (“Supplier B MSA”) between Supplier B and Transport under which Supplier B must, if requested by Transport, enter into operating level agreements with all Third Party suppliers (as defined in the Supplier B MSA) of Transport.

#### **2. Co-operation**

- a. Supplier A and Supplier B will provide Transport with a copy of the then current version of this OLA promptly upon request by Transport.
- b. Supplier A and Supplier B shall be open and co-operative and provide reasonable assistance to each other, including:
  - (1) sharing such information about the manner in which the services are provided as is reasonably necessary for the other party to provide their services to Transport or carry out such activities as have been delegated to it by Transport;
  - (2) making available to, or accepting information from, the other party; and
  - (3) meeting with Transport and other suppliers to discuss their respective services and the services provided by third parties and engaging in joint problem resolution.
  - (4) If Supplier A or Supplier B provides information to the other under this OLA, the disclosure must not be of commercially sensitive nature and will be subject to the confidentiality agreement attached to this OLA as Appendix C (Confidentiality Agreement).

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- c. To ensure an appropriate level of co-operation between them, Supplier A and Supplier B must comply with the Collaboration Policy (and its Collaboration Rules) set out in Appendix D (Collaboration Policy) of this OLA.
- d. To the extent either Supplier A or Supplier B has a responsibility to Transport to perform Incident Resolution following a Service failure, the other party must cooperate with resolution activities and provide any information which may be necessary to facilitate that analysis.
- e. If initial Incident Resolution efforts do not restore Service or determine responsibility for the outage, or a party does not accept the findings of such analysis, Supplier A and Supplier B agree to work together to restore affected systems as a first priority, regardless of responsibility. Both Supplier A and Supplier B agree to provide assistance in its area of responsibility to achieve this goal.
- f. To the extent either Supplier A or Supplier B has a responsibility to Transport to perform root cause analysis following a Service failure and restoration, each party must cooperate with root cause analysis efforts and provide any information which may be necessary to facilitate that analysis.

### 3. Responsibility Matrix

- a. The parties will follow the process set out in paragraph I.3.b below to document and share (with each other and Transport) their respective service responsibilities in the form of a responsibility matrix. The responsibility matrix will be a high level definition of the relevant key services that will be provided by Supplier A and Supplier B, and describe the manner in which they will cooperate with, and provide information to, each other. The functions and services will be listed by category and the matrix will indicate which party (either Supplier A, Supplier B, or Transport) is primarily responsible for each of the following: service delivery responsibility (R), approval (A) and providing assistance/help (H); a template is attached at Appendix A (Responsibility Matrix) for reference. Further, the responsibility matrix will set out the parties' agreed positions on each of the following areas:
  - (1) definition of the processes between Supplier A and Supplier B to assist in providing clarity of their respective responsibilities, demarcation lines, and interfaces;
  - (2) operational interfaces; and
  - (3) an effective change management regime.
- b. The process for creating the responsibility matrix will be as follows: in the ten (10) Business Days following execution of this OLA, Supplier A and Supplier B will each separately prepare a draft responsibility matrix, following the template set forth in Appendix A (Responsibility Matrix), to share with the other party. The draft responsibility matrices will be provided to Transport prior to sharing with the other party in order to confirm that the matrices correctly represent each party's service responsibilities. Following confirmation from Transport, Supplier A and Supplier B shall meet to share their respective responsibilities and generate a combined responsibility matrix that shall replace the example and become the finalised Appendix A (Responsibility Matrix) of this OLA. The combined responsibility matrix must be jointly agreed-to within twenty (20) Business Days and provided to Transport for confirmation.
- c. Supplier A and Supplier B will work together to indicate in the responsibility matrix each significant service hand-off or dependency (e.g., each "H" item, trouble ticket hand-offs, or where one depends on a resource provided by the other). For each case, Supplier A and Supplier B will discuss and agree on a common expectation of effort contribution, appropriate prior notice, and committed performance timing so that there is a clear and complete understanding of how they will work together to deliver such services in a

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seamless manner. These agreed expectations will be documented in Appendix B (Agreed Expectations).

- d. Supplier A or Supplier B may write either separately or jointly to Transport to identify overlaps or gaps in service and make such recommendations to Transport as are deemed appropriate to address those issues. To the extent relevant and included in their respective agreements with Transport, the parties will update the responsibility matrix to reflect the resolution of such issues.

#### 4. Relationship Management

- a. Supplier A and Supplier B will identify their points of interaction and share detailed contact information for each interfacing role (and a backup, as appropriate).
- b. The parties will meet as appropriate to review their performance in the context of this OLA, the responsibility matrix, and the working relationship between Supplier A and Supplier B.
- c. The key points of interaction for each party are those individuals with the job titles set out below (or the nearest equivalent):

Role	Transport	Supplier A	Supplier B
Transition Managers	[*]	[*]	[*]
Service Delivery Managers	[*]	[*]	[*]
Account Managers	[*]	[*]	[*]
Account Executives / Directors	[*]	[*]	[*]
Relationship Managers	[*]	[*]	[*]

#### 5. Escalation and Dispute Resolution

- a. Supplier A and Supplier B will, as soon as practicable (but not later than 5 Business Days after referral to their respective Service Delivery or Relationship Managers specified in paragraph I.4.c above), inform Transport of any disputes or disagreements between them that arise when fulfilling their obligations and will use all reasonable endeavours to settle such disputes or disagreements as soon as possible so as to avoid or minimise any disruption to the provision of the services or the performance of obligations to Transport.
- b. Supplier A and Supplier B acknowledge the need, and agree to use all reasonable commercial efforts to resolve disputes without external intervention.
- c. During the course of any dispute, Supplier A and Supplier B must continue working together to restore any affected Services as soon as possible and to maintain agreed service levels to Transport.
- d. Any dispute will be referred for decision to the Service Delivery Managers of Supplier A and Supplier B specified in paragraph I.4.c above. Failing resolution within 5 Business Days, the dispute must then be escalated to Supplier A's and Supplier B's Account Managers specified in paragraph I.4.c above and formally notified to Transport's Commercial Manager(s).
- e. If the dispute is not resolved within 5 Business Days following its referral for decision under paragraph I.5.d above, the dispute must then be further escalated to Supplier A's and Supplier B's Account Executives and to Transport's General Manager, Commercial Management.
- f. If the dispute is not then resolved within 5 Business Days, the dispute must then be further escalated to Supplier A's and Supplier B's senior executives and to the Transport Group CIO for resolution.

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- g. In the event that the dispute is still not resolved following the steps undertaken under paragraphs I.5.a - f, the dispute will be referred to an expert for resolution ("**Expert**"). The Expert must be agreed between Supplier A, Supplier B, and Transport or, if Supplier A, Supplier B, and Transport cannot agree on the Expert within 10 Business Days following completion of the step set out in paragraph I.5.f above or such other date as is required by Transport, then the Expert will be appointed by the **[INSERT APPROPRIATE NOMINATING BODY]**. The Expert must be independent and impartial and not be a competitor of Supplier A, Supplier B, or Transport.
- h. The Expert must be appointed by letter of appointment set out in Appendix E (OLA Expert Determination) to this OLA. The Expert is deemed to be appointed, and the parties are deemed to accept such appointment, when the Expert notifies a party that he or she accepts the appointment. The party who is notified must promptly notify the other party of this fact.
- i. The parties and the Expert will be bound by the rules of the expert determination process set out in Appendix E (OLA Expert Determination) to this OLA. The parties agree that, notwithstanding the provisions of paragraph I.6 below, the decision of the Expert will be binding on each of Supplier A and Supplier B as if it constituted an obligation to Transport under, respectively, the Supplier A MSA and the Supplier B MSA. The costs of the Expert shall be shared equally between Supplier A and Supplier B.
- j. The following is an outline of the escalation process which Supplier A and Supplier B must comply with (all duration calculations in Business Days):

Event / Trigger	Event Duration	Aggregate Timeline	Escalation Level for Supplier A and Supplier B	Formal Transport Interaction
Initial dispute escalation	5 days	5 days	Service Delivery Managers	None (although Transport should be notified as soon as practicable)
Second escalation	5 days	10 days	Account Managers	Commercial Managers
Second escalation	5 days	15 days	Account Executives	General Manager, Commercial Management
Third escalation	10 days	25 days	Senior Executives	Transport Group CIO
Referral to the Expert	10 days	35 days		

**6. General**

- a. The parties acknowledge and confirm the approach documented in this OLA.
- b. The parties confirm that this OLA is not intended to create an agreement under which either of Supplier A or Supplier B would have a right to make any claim or commence proceedings against the other for damages or any other relief. Nor does this agreement set up or create an employer/employee relationship, a partnership of any kind, or an association or trust between the parties, and the parties agree that their relationship is one of independent contractors.
- c. To the extent permitted by law, the parties agree that in no event shall either Supplier A or Supplier B have any liability to the other for any loss or damages whatsoever (including but not limited to third party claims) resulting from such party's performance or non-performance under this OLA, regardless of the form or cause of action, and whether arising in contract or tort (including, without limitation, negligence) or by misrepresentation or warranty, or other statutory, legal or equitable grounds. The foregoing is without prejudice to the provisions of paragraph I.5.j above of this OLA and any rights or remedies available to Transport under either the Supplier A MSA or the Supplier B MSA (as applicable)

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arising out of any failure of Supplier A or Supplier B to co-operate with other suppliers of Transport or to comply with the requirements of this OLA.

- d. Nothing in this document expressly or by implication otherwise constitutes an amendment or waiver of any right or entitlement of any party, or obligation of any party, under any agreement held by a party with another party (or otherwise), or an admission by any party.

For and on behalf of:

(insert Supplier A details)

(insert Supplier B details)

Signature

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Transport for NSW (ABN 18 804 239 602)**

Signature

Name

Title

Date



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## II. APPENDIX A: RESPONSIBILITY MATRIX

**[Example Only]**

(R) means the party responsible for delivery of the service  
(A) means the party responsible for approving activity by the other party  
(H) means the party that will provide assistance/help

Functional Description	Supplier A	Transport	Supplier B
<i>Application Operational Crisis Management</i>			
Perform crisis management (declare crisis, monitor, escalate)	H	H	R
Conduct post-incident review	H	H	R
Perform Problem resolution and process improvement	R	H	H
Perform Root Cause Analysis	R	H	H
Update system, operations, documentation	R	H	A
Update user documentation	R	H	H
MS Exchange failure/Incident (CC and EUC dependency)	R	H	H
New server environment implementation (CC and network)	R	H	H
Request for new starter bundle (CC, network, EUC)	R	H	H
Planned change to a server environment that required DNS modifications (CC and network)	R	H	H
Database tuning between Application and Infrastructure	R	-	H
Application Release planning and communications	R	-	H

## III. APPENDIX B: AGREED EXPECTATIONS

**[To be Completed]**

## IV. APPENDIX C: CONFIDENTIALITY AGREEMENT

**[To be Completed]**

## V. APPENDIX D: COLLABORATION POLICY

### A. Part A – Collaboration Rules

#### 1. Definition

For the purposes of this Appendix D (Collaboration Policy), both Supplier A and Supplier B are referred to collectively as “Suppliers.”

#### 2. The “Best Interests” Rule

- a. Each Supplier shall use Appropriate Actions to act in Transport’s and the Transport Cluster Members’ best interests at all times.

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- b. Each Supplier shall act in good faith at all times and shall work together with all other suppliers to facilitate the best outcome for Transport and relevant Transport Cluster Members.

### 3. The “No Gaps” Rule

- a. Each Supplier has separate and distinct Specific Responsibilities.
- b. The primary objective of this rule is to ensure that each Supplier works together with all other suppliers in a timely and cost effective fashion to provide Transport (and relevant members of the Transport Cluster) with services and fully functional applications and infrastructure to enable Transport to provide high quality services to its own customers. In this rule this is known as “the **Objective**”.
- c. Each Supplier shall be mindful of the Objective when seeking to discharge its Specific Responsibilities and when interacting with other Suppliers, and shall seek to discharge its Specific Responsibilities in a manner consistent with the Objective.
- d. Suppliers shall proactively seek to identify:
  - (1) any overlaps, conflicts and inconsistencies in their respective roles and responsibilities; and
  - (2) gaps between the respective roles and responsibilities of the Suppliers.

### 4. The “Open Book” Rule

- a. Suppliers shall adopt an “open book” approach to each other’s Specific Responsibilities to ensure that roles and responsibilities of each Supplier in so far as they relate to the Objective are clearly understood by other Suppliers.
- b. The Suppliers shall each attend regular governance meetings with Transport, as required by Transport, where Transport may discuss with, and invite comments from, participants in relation to:
  - (1) each Supplier’s and Transport’s performance;
  - (2) progress on any Projects;
  - (3) the risks and issues logs prepared in order to meet the “Risk Reduction Rule” below and the adequacy of those logs and whether they are fit for purposes in all cases;
  - (4) lessons learnt from problematic Projects; and
  - (5) planning for Projects that require collaboration to ensure that all Suppliers required to collaborate have early warning of requirements.
- c. No Supplier or Transport shall object to the disclosure of any information relating to its performance during any of the discussions referred to in paragraph 4.b, however the individual performance of Supplier or Transport personnel shall not be discussed in detail so as to reveal the identity of that person.
- d. The “Open Book” Rule does not in any way require a Supplier to disclose information that would reveal its profit margins, overhead or other commercially sensitive information and does not require or compel a Supplier to breach its legal obligations relating to data protection.

### 5. The “Risk Reduction” Rule

- a. Each Supplier must at all times seek to reduce the risk of project delivery across a Project (for everyone as applicable, not simply within a Supplier’s own delivery organisation).
- b. Each Supplier must consider the impact of its actions on all of the other suppliers that must work together in order to successfully meet the Objective.

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- c. In order to meet the “Risk Reduction” Rule, each Supplier that must work together in order to deliver services or a Project, resolve an issue, Incident, or Problem and meet the Objective, must at the earliest possible stage work together to produce (and regularly update) a joint risk and issues log to track the likely risks and issues that might arise during a Project and the agreed mitigation actions that shall be taken when and if those risks and issues do arise.

### 6. The “Advance Notice” Rule

- a. As soon as any Supplier is aware of the need for assistance from another Supplier in order to achieve the Objective, the Supplier shall inform the other Supplier in writing.
- b. Such Supplier shall, as early as possible, provide the other Supplier with as much information (in writing) in relation to the nature of assistance required and it shall continue to keep the other Supplier informed (in writing) of progress and developments with the services and any Projects and the expectations of itself and of Transport.

### 7. The “Early Warning” Rule

- a. Each Supplier shall take Appropriate Actions to notify Transport and other relevant Suppliers in writing as soon as the Supplier becomes aware that:
  - (1) it, any other Supplier, or Transport has failed, or there is a reasonable apprehension that it, any other Supplier, or Transport will fail or is likely to fail to perform any Specific Responsibilities; or
  - (2) any act or omission of Supplier A, Supplier B, or Transport that has led, will lead or is likely to lead to an Incident or Problem.
- b. A Supplier shall notify Transport and other impacted Suppliers in writing as soon as it becomes aware of any actual or potential Incident or Problem.
- c. A Supplier shall provide Transport and the other impacted Supplier with an impact analysis related to paragraph 7.a explaining the wider impact of the failure, act or omission and any potential delays for other Suppliers. Transport and the other impacted Supplier shall, upon receiving the impact analysis, provide comments and recommendations in relation to the actual or potential Incident or Problem.
- d. A Supplier shall provide Transport and the other impacted Supplier with written recommendations (that shall observe the Best Solution Rule below) on how to resolve the failures, issues, Incidents or Problems identified in paragraph 7.a which recommendation may involve actions required from parties other than the Supplier reporting the Incident or Problem.
- e. Where a Supplier intends to propose a recommendation that would involve actions from the other Supplier, it must consult with that other Supplier before making any such recommendations and indicate in the written proposal to Transport whether its recommendations are supported by the other Supplier.

### 8. The “Best Solution” Rule – Problems And Incidents

- a. Each Supplier shall ensure that if there are multiple possible solutions to an Incident or Problem, the responsible Supplier shall Restore the application or Resolve the Incident or Problem:
  - (1) in accordance with Industry Best Practice; and
  - (2) at all times consistent with the Objective.
- b. Suppliers shall co-operate with each other to determine how best to comply with paragraph 8.a in relation to each Incident and Problem.

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- c. If responsibility for Restoring Services or Resolving an Incident or Problem is unclear, and where directed by the Transport Service Desk to form a “virtual team” with the other Supplier, the Suppliers shall work together with each other to identify solutions, act on those solutions and determine responsibility for Restoring Services, or Resolving any such Incidents and Problems.
- d. Suppliers shall attempt to reach agreement among themselves on how best to comply with this rule in each case without involving Transport (other than keeping the applicable Service Desk appraised and updated on all material developments in relation to the matter in question).
- e. If Suppliers are unable to reach agreement among themselves as to what is the best solution, they should consult with the Transport Service Delivery Manager and seek direction from that person.
- f. It is understood and acknowledged that in order to comply with this rule, a Supplier shall design its individual solution to an Incident or Problem in a way that complies with the Best Solution Rule as set forth in paragraph V.A.9 below.

### 9. The “Best Solution” Rule - Design

- a. Where there are multiple designs to meet a particular specification for services or a Project required by Transport, the Supplier shall recommend its preferred design taking into account the following factors:
  - (1) Transport’s preference for minimisation of total overall cost and disruption to Transport (and Transport Cluster Members), including the cost and disruption caused by all necessary collaboration and integration activities; and
  - (2) Transport’s preference for ease of integration and collaboration with other Suppliers.
- b. Suppliers shall co-operate with each other to determine how best to comply with paragraph 9.a in relation to each Project.
- c. Suppliers shall attempt to reach agreement between themselves on how best to comply with paragraph 9.a in each case without involving Transport (other than keeping it appraised and updated in writing on all material developments in relation to the matter in question).
- d. It is understood and acknowledged that in order to comply with paragraph 9.1, a Supplier may have to design its individual solution in a way that is more onerous or expensive for that Supplier but which ultimately delivers a lower cost, more efficient solution to Transport because of the lower cost with other Suppliers.
- e. In order to make an informed decision about the best solution to achieve the lowest overall cost and most efficient outcome and to comply with paragraph 9.d, the Supplier shall discuss the overall Project requirements with other relevant Suppliers in order to deliver the Objective.

### 10. The “Joint Estimate” Rule

- a. When preparing estimates and quotes for any Project, each Supplier shall ensure other Suppliers required to discharge Specific Responsibilities in respect of the Project shall be consulted to ensure that the estimates and quotes are as accurate as possible.
- b. Each Supplier that is consulted shall co-operate with the consulting Supplier and the consulted Supplier shall provide sufficient information about its charges (based on its charging mechanisms agreed with Transport) of performing Specific Responsibilities in respect of a Project to enable the consulting Supplier to advise Transport on the solution offering Transport the lowest overall Project cost.

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### 11. The “Common Tool” Rule

- a. Transport, or a Supplier on Transport’s behalf, may operate a common tool for the reporting and management of Incidents and Problems (the “Service Management Tool”).
- b. Each Supplier shall:
  - (1) use the Service Management Tool to report all Incidents and Problems that it is required to report under these rules;
  - (2) permit Transport and each other supplier to use and update (by means of creating a new record or additional comment but not so as to change the initial record created) records created by the Supplier in the Service Management Tool (in the case of each other Supplier, for the sole purpose of providing services to Transport);
  - (3) seek to avoid unnecessary duplication in the Service Management Tool, including by amending existing Incident and Problem records or linking new Incident and Problem records to existing records where appropriate;
  - (4) proactively search the records in the Service Management Tool when seeking to Resolve an Incident or Problem, in order to identify whether a possible solution to the Incident or Problem has already been recorded in the Service Management Tool; and
  - (5) once the Supplier has identified a solution to an Incident or Problem, record the solution in the Service Management Tool with a sufficient level of detail that will assist Transport and other Suppliers in resolving the same or similar Incidents or Problems in the future.

### 12. The “Clear Visibility” Rule

- a. Transport, or a Supplier on Transport’s behalf, may operate a common repository for the storage of the historic and latest architecture and design documents, style guides, software development standards, security requirements, project plans, interface specifications and other related or similar materials (the “Service Knowledge Management System (SKMS)”).
- b. Each Supplier shall:
  - (1) contribute all relevant documents that it creates into the SKMS;
  - (2) permit Transport, relevant Transport Cluster Members and the other Supplier to use (but not amend the original document without the agreement of the author) documents contributed by the Supplier to the SKMS (in the case of each other Supplier, for the sole purpose of providing services to Transport and relevant Transport Cluster members); and
  - (3) proactively ensure that it is aware of the information contained in all documents in the SKMS, to the extent relevant to the services provided by the Supplier.
- c. Each Supplier shall produce architecture and design documents as required in order for the Supplier to meet its Specific Responsibilities, and ensure that those design documents are produced in accordance with Industry Best Practice and shall be consistent with published standards and guidelines.
- d. Each Supplier shall ensure that all architecture and design documents:
  - (1) take account of the Specific Responsibilities of the other Suppliers;
  - (2) are updated at regular intervals (at least annually) in order to facilitate Transport or another Supplier reviewing those documents or assuming responsibility for the provision of any services to which those documents relate; and
  - (3) are regularly reviewed to ensure they are valid and reflect the current operations of each Supplier
- e. If a Supplier amends any documents in the SKMS and it knows or ought reasonably to know that those documents are used or may be used by the other Supplier in order for the

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other Supplier to meets its Specific Responsibilities or is used by Transport, then the Supplier that made the amendments should specifically bring the amendments to the attention of the other Supplier or Transport as the case may be.

### 13. The “Enabling Interoperability” Rule

- a. Suppliers shall implement open interoperability standards and open communications protocols in providing services to Transport, including for the benefit of relevant Transport Cluster Members (unless specifically agreed with Transport and the other Suppliers that are responsible for any deliverables that must use the interfaces or communications protocols). In this context, “open” means that the specification of the standard or protocol is publicly documented and its implementation is not subject to paying a royalty or other fee to any Supplier or any third party.
- b. Suppliers shall comply with Transport’s (and relevant Transport Cluster Member’s) software development standards, including conventions relating to use of programming languages and development environments, naming conventions for modules, subroutines, variables and constants and use of interfaces, modules and subroutines as published in the common document repository.
- c. Suppliers shall comply with all applicable third party vendor guidelines in developing software for Transport (and relevant Transport Cluster Members), including style guides for the development of graphical user interfaces, to the extent those guidelines do not conflict with Transport’s own software development standards (and those of relevant Transport Cluster Members).

### 14. The “Fix First Settle Later” Rule

- a. A dispute about the financial consequences of, or operational responsibility for, resolving an Incident or Problem does not entitle a Supplier to delay the Resolution of that Incident or Problem or to suspend or defer the performance of any Services. The Supplier must resolve the Incident and fix the Problem first, and settle the financial implications later.
- b. If a Supplier does not believe it is liable to resolve an Incident and/or fix a Problem it should, before incurring material costs (being costs involving more than 2 days of effort), inform Transport and the other party that Supplier believes is responsible, and offer that Supplier the chance to resolve the Incident and/or fix a Problem.
- c. The Supplier shall:
  - (1) keep Transport apprised and informed of the costs it is incurring in relation to the Incident and/or Problem on a regular basis (as requested by Transport);
  - (2) not seek to charge for the costs it incurs in relation to the Incident and/or Problem on any basis other than the pricing and financial provisions agreed with Transport in the relevant contract; and
  - (3) cease any work in relation to the Incident and/or Problem immediately upon Transport’s written request for it to do so.

### 15. The “Positive Contribution” Rule

- a. Each Supplier must co-operate with the other Supplier on unforeseen issues, Incidents, and Problems. If any of these occur, the Suppliers that are impacted shall, as soon as practical, convene a conference call to determine the best cause of action to meet the Objectives.
- b. Each Supplier shall proactively seek to identify potential improvements in efficiency and savings in the end-to-end processes deployed by Transport, discuss those with the other Supplier and Transport, and communicate any ideas worthy of further consideration and possible implementation to Transport in writing.

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- c. Supplier personnel that are nominated to discharge the responsibilities of a Supplier under this rule shall be identified as Key Supplier Personnel under each relevant MSA (where that concept is employed). Each of those Key Supplier Personnel shall be fully empowered to make the necessary decisions required to achieve the Objectives or to promptly obtain the necessary decisions.

### 16. The “Speak The Same Language” Rule

- a. Where Transport has adopted a standard term to describe a concept, Suppliers shall use that term in documents and meetings of governance bodies and when co-operating with the other Supplier.
- b. Where Transport has not adopted a standard term to describe a concept, Suppliers shall use industry standard terms wherever possible in preference to terms that describe a Supplier’s own products, services, methods, tools or technologies.
- c. All communications shall be in English except where Transport requires otherwise. Each Supplier is responsible for the translation of all documents and other materials necessary to perform its obligations under any Agreement and these rules. Transport shall provide reasonable notice to the Suppliers if Transport requires documents to be published in languages other than in English.

### 17. The “No Circumvention” Rule

- a. Suppliers must not use this rule to circumvent any change control process under any agreement.
- b. All discussions which are intended to lead to a change to an Agreement must be processed through the required change control procedure under the relevant agreement.
- c. The Suppliers shall not form any alliances or joint ventures or any other form of relationship to provide services to Transport without Transport’s specific prior written consent (or, in the case of any pre-existing alliances, joint ventures or relationships, continue with the same without Transport’s specific prior written consent).
- d. The Suppliers shall not enter into (or, except to the extent a relationship has been disclosed in writing to an authorised representative of Transport prior to entry into an agreement, continue with) any exclusive relationship with any vendor that would prevent the vendor from working with other Suppliers.
- e. No Supplier shall enter into (or, except to the extent a relationship has been disclosed in writing to an authorised representative of Transport prior to entry into the relevant agreement, continue with) an arrangement with any other Supplier, whether direct or indirect, that would have the effect of circumventing the competition for work within Transport between the Suppliers or limiting the choice of providers for work within Transport.

### 18. The “Co-Ordination” Rule

- a. In cases where multiple Suppliers are required to work together on any Project or services:
  - (1) where possible, the Suppliers shall work together to prepare, and then deliver services according to, a single, consolidated project plan incorporating all the milestones that each Supplier is required to achieve; and
  - (2) if that is not possible, the Suppliers must at a minimum co-ordinate their respective project plans to ensure that they are consistent, that dependencies between Suppliers are clearly identified and that milestones are aligned between project plans in order to ensure the optimal delivery of services to Transport.

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- b. In cases covered by paragraph 18.a Transport may nominate which Supplier will maintain the consolidated project plan or, where there is no consolidated project plan, the Supplier with whom the other Suppliers will co-ordinate their respective project plans.

### 19. The “Open Communication” Rule

- a. Each Supplier shall maintain in the SKMS a contact list (which shall be updated on a regular basis) of all key personnel tasked with the responsibility of ensuring Supplier compliance with this rule.
- b. The contact list shall include the names, roles, responsibilities, mobile telephone number and work email addresses for each of the Supplier’s key personnel.
- c. Each Supplier shall ensure that only those of its personnel on its contact list in the SKMS contact the key personnel of the other Supplier in relation to matters related to this rule to facilitate identity verification and foster security.

### 20. The “Disputes” Rule

- a. Each Supplier shall continue to perform all its obligations contained in its Agreement(s) with Transport notwithstanding any dispute.

### 21. Collaborative Governance

- a. Each Supplier shall, at Transport’s request:
  - (1) attend governance meetings convened under any Agreement between Transport and another Supplier, where matters to be discussed in that meeting are relevant to the Services provided by the Supplier to Transport;
  - (2) permit the other Supplier to attend governance meetings convened under an Agreement between Transport and the Supplier; and
  - (3) attend other regular and ad hoc governance meetings convened by Transport for the purpose of facilitating collaboration between Suppliers.
- b. In the situation described in paragraph 21.a(2), the Supplier may request that the other Supplier be excluded from any part of the meeting in which confidential or commercially sensitive information relating to the Supplier is to be discussed.
- c. Transport will comply with a request under paragraph 21.b, provided that the Supplier making the request has given a reasonable justification for making the request.
- d. Suppliers accept that joint attendance at meetings is an essential part of collaboration between Suppliers, and accordingly shall not make requests under paragraph 21.b except where strictly necessary.
- e. Transport shall at all times facilitate the co-operation and interaction with other Suppliers in the manner envisaged under this rule.
- f. This rule does not in itself establish a contractual relationship between a Supplier and any other Supplier.

### B. Part B – Collaboration Rules Glossary

“**Appropriate Actions**” means to take such actions as a Supplier acting in a determined, prudent and reasonable manner would take to achieve that result if it were in that Supplier’s own interests to achieve that result.

“**Eligible Recipient**” means Transport for NSW, the Independent Transport Safety Regulator, the Office of Transport Safety Investigations, the State Transit Authority, the Asset Standards Authority, the Sydney Trains (CityRail), the NSW Trains (CountryLink), the North West Rail Link, the Roads and Maritime Services, the Transport Management Centre, Sydney Ferries and the Light Rail Operator.

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“**Industry Best Practice**” means with respect to any service, function or responsibility to be provided or carried out by the Supplier, means a standard of service, in terms of accuracy, reliability, completeness, quality, timeliness and efficiency, equal to or better than that being provided at the relevant time by the best managed and performing organisations providing services (in Australia) similar to the Services (or part of the Services) as the case may be.

“**Incident**” means an unplanned interruption to an IT Service or a reduction in the quality of an IT service. Failure of a configuration item that has not yet impacted service is also an Incident

“**Objective**” has the meaning given in paragraph V.A.3.b.

“**Problem**” means a cause of one or more Incidents. “**Project**” means any specific grouping of work to be performed by a Supplier, or group of Suppliers, in respect of an application or group of applications, or items of infrastructure.

“**Resolution**” means in the case of a Problem, the action taken to repair the root cause of the Problem and permanently remove the Problem so that it no longer exists, and “Resolve”, “Resolved” and “Resolving” shall be construed accordingly.

“**Restoration**” means in respect of a “Priority 1” or “Priority 2” Incident, the action taken to restore the functionality or business process following an Incident, including the provision of a workaround where necessary, and “Restore”, “Restored” and “Restoring” shall be construed accordingly.

“**Service Knowledge Management System (SKMS)**” has the meaning given to the term in Exhibit 1 (Definitions) of each Supplier’s respective Agreement.

“**Specific Responsibilities**” means the separate and distinct obligations of each Supplier owed to Transport pursuant to its agreement with Transport.

“**Supplier**” shall mean the legal entity under contract with Transport to provide Services to Transport, and by extension, any of its subcontractors.

“**Transport Cluster**” means all the Eligible Recipients that are also a member of the Transport organisation.

“**Transport Cluster Member**” means an Eligible Recipient that is a member of the Transport organisation.

“**Service Delivery Manager**” has the meaning given to the term in Attachment 6-A (Governance Committees and Members) in each Supplier’s respective Agreement.

## VI. APPENDIX E: OLA EXPERT DETERMINATION

### A. Expert determination process

#### 1. Commencement

- a. The OLA expert determination process (“**Process**”) will commence with the acceptance by the Expert of the appointment to act to resolve the Dispute in accordance with the letter of appointment set out in section VI.A.10 of this Appendix E (OLA Expert Determination).
- b. The Expert must consider and apply to the extent relevant, the provisions of the OLA and the Supplier A MSA or Supplier B MSA, as applicable.
- c. A reference in this Appendix E (OLA Expert Determination) to the “**Parties**” means to Supplier A and to Supplier B.

#### 2. Written submissions

- a. Within five (5) Business Days after the date of the commencement of the Process, the Party who referred the Dispute to the Expert (the “**first Party**”) must provide to the other Party, Transport and the Expert:
  - (1) a statement of facts; and
  - (2) a written submission which that first Party considers relevant to the Dispute.

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- b. Within five (5) Business Days after receipt of the first Party's written submission, the other Party shall provide to the first Party, Transport and the Expert a written response to the written submission of the first Party.
- c. If, upon the application of the first Party, the Expert considers it appropriate, the first Party may make a written response to the response of Transport or the other Party (as applicable) within such time period as specified by the Expert.
- d. If the Expert decides further information or documentation is required by the Expert, the Expert may:
  - (1) require a further written submission or documents from any one or more or all of the Parties, giving each Party a reasonable opportunity to make a written response to such submissions by the other Parties; and
  - (2) call a conference between the Parties, Transport and the Expert in accordance with section VI.A.3 of this appendix.

### 3. Conference

- a. If the Expert determines that a conference between the Parties is necessary, the Expert will be responsible for arranging the conference at a venue and time convenient to the Parties and must notify them accordingly.
- b. At least five (5) Business Days prior to the conference, the Expert will inform the Parties and Transport of the subject matter to be addressed at the conference.
- c. At the time and place notified for any conference, the Parties will appear before the Expert to make oral or written representations only on the subject matters which have been specified by the Expert to be the subject of the conference. Transport may, at its discretion, also appear before the Expert to make oral or written representations.
- d. In conducting the conference the Expert is not bound by the rules of evidence.
- e. At a conference either Party may have legal or other representation.
- f. The conference must be held in private.
- g. Transcripts of the conference proceedings will be taken and will be made available to the Expert and, if requested by, to the Parties and to Transport.
- h. All proceedings and submissions relating to the Process must be kept confidential between the Parties, Transport and the Expert. No information may be divulged to any other person, at any time or in any circumstances except with the prior written consent of the Parties or as may be required by Law or in order to enforce the determination of the Expert.

### 4. Information

- a. The Expert must disclose all information and documents received from either Party to the other Party. Where a Party fails to make a written submission or appear at any conference after having received due notice, the Expert may proceed with the Process. Save as provided above, consultation must only take place in the presence of both Parties.
- b. The Expert must reach his or her resolution on the basis of the information received from the Parties and on the basis of his or her own expertise. The decision will be reached as an expert and not as an arbitrator. The Expert's determination must be made as expeditiously as possible, and in any event no later than one month after the commencement of the Process, unless the time is extended by agreement between the Parties. The determination, signed by the Expert, must be immediately notified in writing by the Expert to the Parties in writing forthwith.
- c. The Expert must respect the confidentiality of all information received either through written submissions or oral proceedings. No information acquired through the Process may be divulged to any other person or body except with the prior written consent of the Parties.

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- d. If the Expert becomes aware of any circumstances that might reasonably be considered to affect adversely his or her capacity to act independently or impartially he or she must inform the Parties immediately. The Expert must in such circumstances terminate the Process, unless the Parties agree otherwise.

### 5. The resolution

- a. As expeditiously as possible after the receipt of the submissions or after any conference, and in any event not later than one month after the commencement of the Process (unless the time has been extended by agreement between the Parties), the Expert will resolve the Dispute between the Parties and notify the Parties and Transport in writing of such resolution.
- b. Where the resolution made by the Expert contains:
  - (1) a clerical mistake;
  - (2) an error arising from an accidental slip or omission;
  - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
  - (4) a defect of form,
  - (5) the Expert must correct his or her resolution.
- c. The resolution of the Expert is final and binding on each of the Parties.

### 6. Termination

- a. The Process will conclude five Business Days after the Expert has notified the Parties and Transport of his or her resolution.
- b. The Process must be terminated immediately in the event of the Expert being unable to conclude the Process by reason of his or her illness, death, being of unsound mind, failure to act or delay in acting and in any such event the provisions of this Agreement relating to the resolution of Disputes by an Expert will reapply.

### 7. Costs

- a. Each of the Supplier A and Supplier B must bear its own costs of the Process and subject to any contrary provision in this Agreement, the Supplier A and Supplier B must equally bear the costs of the Expert conducting the Process.
- b. Security for costs must be deposited by both Parties at the commencement of the Process at the direction of the Expert or if required by Transport.
- c. Where the Process is terminated prior to the resolution of the Dispute, each of the Supplier A and Supplier B must bear its own costs of the Process to that date. The costs of the Expert conducting the Process must be borne equally between the Supplier A and Supplier B.

### 8. Expert's liability

- a. The Parties agree that the Expert will not be liable for any act or omission of the Expert done bona fide in the exercise or purported exercise of his or her functions as Expert, provided he or she has acted in accordance with the Process.

### 9. Modification

- a. Unless otherwise stated, this Appendix E may be modified only by agreement of Transport.

### 10. Letter appointing Expert

- a. The Expert will be appointed using the following form of letter:
- b. "By a contract dated [insert date] (the Agreement) between Transport and [**Contractor**], and an Operating Level Agreement between [**Contractor**], [**Contractor**] and Transport,

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each of **[Contractor]** and **[Contractor]** (the "**Parties**") agree to submit certain disputes to an Expert for resolution pursuant to an expert determination process (the Process), a copy of which is attached to this letter.

- c. A dispute to be resolved by the Process has arisen between the Parties. A short summary of the dispute is attached.
- d. The Parties agree to appoint you [insert details] of [insert details] to be the sole Expert to resolve the dispute by the Process.
- e. The Parties agree to pay you for your services at the rate of \$[insert amount] per hour. The determination of the dispute must be completed within 1 month of the date of the commencement of the Process, which is the date of your acceptance of the appointment, unless the time is extended by agreement of the Parties.
- f. The Parties agree that you will not be liable for any act or omission done bona fide in the exercise or purported exercise of your functions as Expert in accordance with the Process.

### DATED:

For and on behalf of:

**Transport**

For and on behalf of:

**[Supplier A]**

For and on behalf of:

**[Supplier B]**

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