



2 July 2008

Jeppesen Optimisation Solutions Pty Ltd
 Level 4, 54 Jephson Street
 TOOWONG QLD 4066

FOR THE ATTENTION OF **GIPA Act s 14 - Table 3(a)**

Dear Sir,

**AGREEMENT No C07156
 RMS-R – CREW AUPPORT AND MAINTENANCE
 CONTRACT AMENDMNET**

RailCorp advises that Agreement C07156, RMS-R Crew – Support and Maintenance is amended as follows:

Pursuant to Clause 9, the Operating System below replaces the Operating System in Annexure C.

Logical Name(s)	Hardware Model	OS	Environment(s)	Memory	CPU (no of CPU)	Database Version
dblee1c	SUN F6800 (Partition 2)	Solaris 9	Train Crewing Test 1, Corporate Security Test and Training	24 GB	8	10.2.0.2
dbyrk1c	SUN F6800 (Partition 2)	Solaris 9	Train Crewing Training	24 GB	8	10.2.0.2
dblee1a	SUN F6800 (Partition 1)	Solaris 9	Train Crewing Test 2 and Corporate Security Production	24 GB	8	10.2.0.2
SECPD DR DB server (dbyrk1c)	SUN F6800 (Partition 2)	Solaris 9	Corporate Security DR	24 GB	8	same as SECPD on production
DBMET002	SUN FIRE E6900	Solaris 5.10	Train Crewing Production Database server	32GB	8	10g EE R 10.2.0.2.0 - 64bit
DBMET001	SUN FIRE E6900	Solaris 5.10	Train Crewing Production Database DR server	32GB	8	10g EE R 10.2.0.2.0 - 64bit
OPCPDAPP01 (asmet049)		Windows 2003 EE SP2	Train Crewing Production Middletier (Lock/Task)	8GB	2 x Dual Core 2.4GHz	
ASMET708	BL45p G2	Windows 2003 EE SP2	Train Crewing Production (For Roster server)	8GB	2 x Dual Core 2.6GHz	
w2kopcrewuat 01		Windows 2003 EE SP2	Train Crewing Test 1	1024M B	1 (Virtual)	

Logical Name(s)	Hardware Model	OS	Environment(s)	Memory	CPU (no of CPU)	Database Version
w2kopcrewtrn01		Windows 2003 EE SP2	Train Crewing Training	1280M B	P3 (1.4ghz)	
w2kopcrewsim01		Windows 2003 EE SP2	Train Crewing Test 2	512MB	1 (Virtual)	
ASMET086	2 x HP BL25P G2	Windows 2003 EE SP2	Corporate Security Production	8GB	2 x Dual Core 2.6GHz	
ASMET709	2 x HP BL25P G2	Windows 2003 EE SP2	Corporate Security Production - DR	6GB	2 x Dual Core 2.6GHz	
w2kopcrewprod02		Windows 2003 EE SP2	Corporate Security Training	1.25GB	P3 (1.4GHz)	
w2kopcrewuat02		Windows 2003 EE SP2	Corporate Security Test	512MB	1 (Virtual)	
w2kopcrewtrn02		Windows 2003 EE SP2	Corporate Security Training	512MB	1 (Virtual)	
Citrix						
CXMET036, CXMET037, CXMET038, CXMET039, CXMET040, CXMET041	HP BL25P G2	Windows 2003 EE SP2	Train Crewing Production	8GB	2 AMD x 2.6Ghz	
CXMET301	HP BL25P G2	Windows 2003 EE SP2	Train Crewing Training	8GB	2 AMD x 2.6Ghz	
CXMET302	HP BL25P G2	Windows 2003 EE SP2	Train Crewing Test	8GB	2 AMD x 2.6Ghz	
CXMET007		Windows 2003 EE SP2	Train Crewing Simu Env	8192M B	2 x 3.6GHZ	
CXMET005		Windows 2003 STD	Used as Print server	2048M B	2 x 3.6GHZ	
CXMET042, CXMET043	HP BL25P G2	Windows 2003 EE SP2	Security Division Production	8GB	2 AMD x 2.6Ghz	
CXMET303	HP BL25P G2	Windows 2003 EE SP2	Security Division Test	8GB	2 AMD x 2.6Ghz	
CXMET401	HP BL25P G2	Windows 2003 EE SP2	Security Division Training Environment	8GB	2 AMD x 2.6Ghz	
Desktop						
	Acer Veriton 5600GT	XP 2002 SP2		1Gb min	P4	
	Acer V1000	XP 2002 SP2		1Gb min	P4	

All other terms and conditions of the Contract including the Charges remain unchanged

Please sign and date this letter to confirm your agreement with the above amendment and return the original to the RailCorp Delivery Representative marked for the attention of Mr Prashant Vaidya.

Yours faithfully,

GIPA Act s 14 - Table 3(a)

Accepted
GIPA Act s 14 - Table 3(a)

for and on behalf of
Jeppesen Optimization Solutions Pty Ltd
Australia

RMS-R Crew – Support and Maintenance Agreement

Rail Corporation New South Wales
ABN 59 325 778 353

Jeppesen Optimization Solutions Pty Ltd
ABN 76 010 573 814

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RMS-R CREW SUPPORT AND MAINTENANCE AGREEMENT

DATE 1 July 2007

PARTIES

Rail Corporation New South Wales ABN 59 325 778 353 of Level 6 18 Lee Street, Chippendale NSW 2008. (**RailCorp**)

Jeppesen Optimization Solutions Pty Ltd ABN 76 010 573 814 of Level 4, 54 Jephson Street, Toowong QLD 4066. (**the Supplier**)

RECITALS

- A. The Supplier is in the business of developing and supplying software and providing maintenance services for its software.
- B. The Supplier owns the Intellectual Property in the Software.
- C. Under the Licence Agreement, RailCorp was granted a perpetual licence to use the Software.
- D. The Supplier also maintained and enhanced the Software for RailCorp, pursuant to the Previous Maintenance Agreements.
- E. RailCorp and the Supplier now wish to enter into a new maintenance arrangement for the Software, effective from the Commencement Date. Accordingly, RailCorp wishes to engage the Supplier, and the Supplier agrees, to provide Maintenance Services on the terms set out in this agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this agreement.

Acceptance Tests or **Acceptance Testing** means the tests required by RailCorp to determine (i) whether a Bugfix or Bugfix Update brings the Software into compliance with its Functional Specification or (ii) an Upgrade or Enhancement complies with the additional Functional Specifications of the Software related to such Upgrade or Enhancement.

ACDC means the Australian Commercial Disputes Centre Limited ACN 003 042 840.

Authorised Person means:

- (a) for RailCorp, a person:
 - (i) who is a director, officer, employee, contractor, agent or professional adviser of or to RailCorp; and
 - (ii) who has been informed of the confidential nature of the Supplier's Confidential Information and who has agreed to comply with obligations in relation to it similar to RailCorp's obligations under this agreement; and

- (b) for the Supplier, a person:
 - (iii) who is a director, officer, employee, agent or professional adviser of or to the Supplier;
 - (iv) who has been informed of the confidential nature of RailCorp's Confidential Information and who has agreed to comply with obligations in relation to it similar to the Supplier's obligations under this agreement; and
 - (v) who, if required by RailCorp in writing, has executed a written undertaking in relation to RailCorp's Confidential Information that is satisfactory to RailCorp.

Bugfix means an improvement, modification, fix, update, addition to, or alteration to Software created primarily to overcome Defects and that brings the Software into compliance with its Functional Specifications.

Bugfix Update means a consolidated set of previously issued Bugfixes provided to allow RailCorp to conveniently apply those Bugfixes.

Business Day means a day that is not a Saturday or Sunday or public holiday in Sydney.

Business Hour means an hour on a business day between 6am and 6pm.

Charges means the Maintenance Fee and any amounts RailCorp agrees to pay in accordance with clause 11.1(b).

Commencement Date means 1 July 2007.

Confidential Information in relation to a party, means information in any form or media given by or acquired from the party, directly or indirectly, whether before, on, or after the date of this agreement, relating to a party, this agreement and the goods and services provided under this agreement but excludes the Excluded Information. Confidential Information includes information:

- (a) concerning the party's, or any related body corporate's past, present or future:
 - (i) structure, business activities, strategies, plans and assets, including Intellectual Property of or used by a party;
 - (ii) products and their specifications, and the markets in which products are sold and methods of distribution;
 - (iii) designs, plans, drawings, modules, formulae, trade secrets, know-how, processes and techniques;
 - (iv) financial affairs;
 - (v) network, communications, technology, source and object codes and computer records; and
 - (vi) clients, customers, suppliers, distributors and their financial affairs and agreements with them;
- (b) obtained by or on behalf of the other party in any manner during or in relation to a site visit or other inspection, presentation, meeting or discussion with a party;

- (c) concerning the existence of this agreement, or any of its terms; or
- (d) any other information that:
 - (i) is by its nature confidential;
 - (ii) is marked or designated or confirmed by a party as confidential or proprietary at the time of its disclosure; or
 - (iii) the other party knows or ought to know is confidential.

Consumer Price Index or CPI means the "Consumer Price: All Groups Index Number (Sydney)" published each Quarter by the Australian Bureau of Statistics.

In this definition:

- (a) the reference to the "Consumer Price: All Groups Index Number (Sydney)" means:
 - (i) the same numbers but with different names at any time;
 - (ii) the same number adjusted mathematically to take account of a change at any time in the base year provided that indices of the same base year are used throughout the calculation; and
- (b) the reference to the Australian Bureau of Statistics includes a reference to:
 - (i) the Bureau but with a different name at any time; and
 - (ii) a Government Agency in Australia (in the absence of the Australian Bureau of Statistics) at any time having similar functions.

Date Compliant means, in relation to any software, equipment, firmware, microcode, protocol or system, that neither its performance nor functionality is affected before, during or after the year 2000 so that, for example:

- (a) no value for current dates will cause any interruption in operation;
- (b) date based functionality will behave consistently for dates before, during and after the year 2000;
- (c) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules; and
- (d) the year 2000 will be recognised as a leap year in terms of handling 29th February and day 366.

Defect means any material defect or bug in the Software which is attributed to Supplier and which causes the Software to be:

- (i) in nonconformance with its Functional Specifications; and/or
- (ii) materially reduces the performance of the Software.

Dispute means a dispute or difference between the parties arising under or in connection with this agreement.

Documentation means all user documentation provided by the Supplier, including, without limitation and where available, operating manuals and functional, business and technical specifications (including the Functional Specification) for the Software.

Encumbrance means a mortgage, charge, pledge, lien, hypothecation or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money or an agreement to create any of them or to allow any of them to exist.

Enhancement means any modification of the Software of any kind for the purpose of improving the Software's functionality and that is specifically requested by RailCorp and implemented by Supplier in accordance with clause 4.1, and for clarification, excludes any Bugfixes, Bugfix Updates, Upgrades provided as part of the Maintenance Services.

Equipment means the equipment defined in Annexure D 'Operating System'.

Excluded Information means information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its Authorised Persons;
- (b) is or was made available, on a non-confidential basis, to the receiving party by a person (other than the disclosing party) who is or was not under any obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees, agents or contractors.

Force Majeure Event means any occurrence or omission as a direct or indirect result of which the party relying on it is prevented or delayed in performing any of its obligations under this agreement and that is beyond the reasonable control of that party, including forces of nature, industrial action and action or inaction by a Government Agency.

Functional Specification means Supplier's specification for the Software that describes its functionality:

- (a) which as at the date of this Agreement, is included in the User Manuals accompanying Release 3.71 titled RMS-R Central, RMS-R Shifts, RMS-R Rosters and RMS-R Operations, and annexed to this Agreement; and
- (b) will be the functional specification document which may be modified from time to time by the Supplier to include new and improved functionality included in Upgrades or Enhancements.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person;
- (c) a Minister of the NSW government; or
- (d) a person (whether autonomous or not) who is charged with the administration of a law.

GST has the meaning given in the GST law.

GST Law means the same as in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

Initial Term means the period specified in clause 3.1(a).

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand, being unable to pay its debts or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Intellectual Property means all present and future rights in or in relation to copyright, trade marks, designs, patents, circuit layouts, know-how, business and domain names, inventions and Confidential Information, and other results in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable including:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, such as Moral Rights.

Key Position means a position specified as a key position in Annexure A, as it may be varied by the parties in writing.

Licence Agreement means the agreement titled "Train Crewing-Software Licence Contract" dated 8 March 2000 between the parties for the licensing of the Software to RailCorp.

Maintenance Fee means those charges described as such in Annexure B.

Maintenance Services means the services listed in Annexure C to be performed by the Supplier in respect of the Software.

Moral Rights means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute in the world in an Update or the Documentation or any modified, adapted or derivative RailCorp Materials made by the Supplier.

Object Code means software assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by computers, but not generally readable by humans without reverse assembly, reverse compilation or reverse engineering

Permitted Purpose means:

- (a) for RailCorp - to exercise its rights, and to comply with its obligations, under this agreement; and
- (b) for the Supplier - to exercise its rights, and to comply with its obligations, under this agreement.

Previous Maintenance Agreements means the:

- (a) Train Crewing Software Support & Services Contract No. C02097 commencing 1 December 2003.
- (b) Extension to the Train Crewing Software Support & Service Contract No. C02097 dated as of 5 December 2006 extending the term to 28 February 2007.
- (c) Extension to the Train Crewing Software Support & Service Contract No. C02097 dated as of 15 March 2007 extending the term up to 30 June 2007.

Quarter means any calendar quarter commencing on 1 January, 1 April, 1 July or 1 October in any year.

RailCorp Materials means train timetable data and geographic data, including any specifications, designs and directions and any other information relating to the operation of the railway given to the Supplier by RailCorp concerning Updates. For clarification, in this definition, geographic data includes, but is not limited to, train descriptions, speed bands, station names, digital voice announcement codes and any other information relating to the operation of the railway.

RailCorp Representative means the person listed in Annexure A or as advised by RailCorp to Supplier from time to time.

Renewal Term means an extension of this agreement under clause 3.1 (b).

Site means the location where the Equipment specified in Annexure D is installed.

Services means all services provided by the Supplier under this Agreement as described in Annexure C.

Software means the computer programs detailed in Annexure A and licensed to RailCorp under the Licence Agreement, together with all Enhancements

Source Code means the software written in a form intelligible to trained programmers and capable of being translated into Object Code through assembly or compiling for operations on computer equipment.

Supplier Tests means system testing, load testing and other testing consistent with professional industry standards to be conducted by the Supplier in respect of or on a Bugfix, Bugfix Update or Upgrade pursuant to clause 10, prior to delivery of the Bugfix, Bugfix Update or Upgrade to RailCorp, including for Acceptance Testing. Supplier Tests include, without limitation:

- (a) unit tests –to ensure that the Bugfix, Bugfix Update or Upgrade delivered to RailCorp is in accordance with the Software’s Functional Specifications;
- (b) system tests – being to ensure that the Bugfix, Bugfix Update or Upgrade functions as part of the Software in accordance with its Functional Specifications, on the Equipment and the system environment; and
- (c) integration testing – being to ensure that the Bugfix Update works as part of the Software in accordance with its Functional Specifications and integrates with the required interfaces/other systems.

Tax means a tax, duty, charge, deduction or withholding, however it is described, that is imposed by a Government Agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

Term means the Initial Term and any Renewal Term.

Third Party Products means software, products, materials, which are not owned by the Supplier and that are incorporated into the Software, or any other items agreed by the parties in writing.

Time and Materials Rates means rates as set out in Annexure B Item 1.

Upgrade means an improvement, modification, fix, update, addition to, or alteration to Software created by the Supplier from time to time to improve the Software, as a result either of its own research and development or the input of others.

Year means a 12 month period during the Term, starting from the Commencement Date or its anniversary.

1.2 Rules for interpreting this agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) this agreement includes all annexures to this agreement;
 - (iii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iv) a party to this agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) The words **related body corporate** have the same meanings as in the *Corporations Act 2001 (Cth)*.

1.3 Business Days

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

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

1.4 Precedence

- (a) The provisions of this agreement are to be read in the following order of precedence if there is an inconsistency between the documents and only to the extent necessary to resolve the inconsistency:
 - (i) the clauses;
 - (ii) the annexures; and
 - (iii) any document expressly incorporated by reference.
- (b) If the conflict cannot be resolved by reading down, the parties will meet as soon as is possible after determining that the conflict cannot be resolved or within 48 hours of receipt of a notice to determine how the conflict will be resolved without otherwise affecting the remaining provisions of this agreement.
- (c) To the extent of any conflict, inconsistency or ambiguity between the express or implied effect of this agreement and the express or implied effect of the Licence Agreements, then the effect of this agreement will prevail.

2. SCOPE OF SERVICES

RailCorp appoints the Supplier and the Supplier agrees to:

- (a) provide the Maintenance Services to RailCorp in accordance with clause 3;
- (b) provide RailCorp with the Documentation as modified from time to time by the Supplier;
- (c) review RailCorp's request for any Enhancements to the Software, and if Supplier agrees to perform such Enhancements, provide development services under a separate professional services agreement for such Enhancements to the Software;
- (d) if requested by RailCorp, assist RailCorp to conduct the Acceptance Tests at a price to be mutually agreed upon by the parties

on the terms set out in this agreement.

3. TERM AND MAINTENANCE SERVICES

3.1 Term

- (a) Notwithstanding that it may be executed by the parties prior to the Commencement Date, this agreement commences on the Commencement Date and continues until 30 June 2009.
- (b) RailCorp may, by giving at least 30 days' notice before the expiry of the Initial Term or a Renewal Term, extend this agreement for an additional Year on the same terms and conditions, up to a maximum of 3 extensions.
- (c) Unless the parties otherwise agree, the maximum length of the Term (including the Renewal Terms) is 5 years.

3.2 Provision of Maintenance Services

- (a) In consideration of the Maintenance Fee, the Supplier agrees to provide the Maintenance Services in accordance with this clause 3 and Annexure C.
- (b) For the avoidance of doubt, the Maintenance Services do not include:
 - (i) any physical on-site implementation services provided by the Supplier in connection with the installation of an Upgrade, Enhancement or new release of the Software;
 - (ii) any formal on-site training whatsoever (and for clarification, the parties agree that phone and web-support does not constitute training);
 - (iii) any additional Documentation (but for clarification, the parties agree that RailCorp will at a minimum, receive release notes, web support notes, and installation instructions without extra charge);
 - (iv) on-site assistance with Acceptance Testing, requiring the physical presence of the Supplier's personnel;
 - (v) assistance outside Business Hours;
 - (vi) assistance in resolution of Defects that the parties agree are not attributable to the Software.
- (c) If the Supplier does not meet the performance standards for Maintenance Services, RailCorp will be entitled to a Rebate as a refund (as detailed in Annexures B and C) against the Maintenance Fees RailCorp has paid (or that are payable), which will be applied to the invoice for Maintenance Fees issued immediately after the failure to perform occurs.
- (d) If a Dispute arises as to whether a particular task is part of the Maintenance Services, then:
 - (i) the Supplier must nevertheless carry out the work if instructed to do so by RailCorp;
 - (ii) RailCorp will provisionally pay for the work on a time and materials basis;

- (iii) not withstanding clause 19, the parties agree that in the event of a dispute under this clause, the parties must negotiate in good faith in respect of the Dispute, but in any case, must refer the Dispute to the President of the Australian Computer Society Inc or a person nominated by the President for expert determination within 20 Business Days of the Dispute arising;
- (iv) if the Dispute is resolved in RailCorp's favour, then the Supplier must immediately refund to RailCorp all payments made under clause 3.2(d)(ii) and the Supplier must pay for the expert's fees and charges; and
- (v) if the Dispute is resolved in the Supplier's favour, then the Supplier may retain the payment made by RailCorp under clause 3.2(d)(ii), which will be considered full and final payment for the work previously performed and invoiced to RailCorp, and RailCorp must pay for the expert's fees and charges.

3.3 Bugfixes, Bugfix Updates and Upgrades

- (a) As part of the Maintenance Services, the Supplier must provide Bugfixes and Bugfix Updates, and will provide Upgrades to the Software, if and when such Upgrades are available to all of the Supplier's customers. Bugfixes and Bugfix Updates must be provided at the times indicated in, and in accordance with, Annexure C.
- (b) If and when the Supplier issues any Bugfixes, Bugfix Updates and Upgrades, the Supplier must ensure that they:
 - (i) do not remove any functionality in the Software required by RailCorp without first obtaining the prior consent of RailCorp,
 - (ii) provide a copy of updated Documentation to RailCorp no later than the time of issue of the Bugfixes, Bugfix Updates or Upgrades,
- (c) In addition to any records required to be maintained in accordance with Annexure C, the Supplier must, at its cost, maintain a log of all Bugfixes, Bugfix Updates and Upgrades to the Software that have been incorporated into the Software with details of the functionalities or changes effected by each Update. The Supplier must make that log available to RailCorp on request.

3.4 Key Positions

As at the Commencement Date, the Supplier's personnel occupying Key Positions for the purpose of the Supplier providing the Maintenance Services are as set out in Annexure A. The Supplier will notify RailCorp within a reasonable time when it changes these personnel.

4. SERVICES OTHER THAN MAINTENANCE SERVICES

- (a) From time to time, RailCorp may require other services from the Supplier which are not within the scope of the Maintenance Services, including, without limitation, for the development or implementation of Enhancements.
- (b) From time to time, RailCorp may request Software Enhancements, revisions (including deletions or additions) to the Functional Specification or the Maintenance Services, by giving notice to the Supplier of the proposed requirement.
- (c) The Supplier must review promptly each request submitted and submit to RailCorp a written submission including:

- (i) Supplier's rejection of the proposed requirement with an appropriate explanation of the same; or
 - (ii) Supplier's acceptance or rejection of the proposed requirements; and
 - (iii) if the Supplier accepts the proposed requirements, a quote for the proposed requirement, which in the case of Enhancements to the Software must be performed by Supplier under a separate agreement to be negotiated between the parties, and where applicable, any proposed changes to the payments under Annexure B for the performance of the work.
- (d) RailCorp may accept or reject the Supplier's proposal provided in accordance with clause 4.1(c), and if necessary, following such acceptance, this Agreement must be varied in writing, or if a new agreement is required in respect of such work, a new agreement must be executed by the parties, before any such work is performed.
 - (e) The Supplier acknowledges and agrees that RailCorp will have no liability to pay for any work purporting to be performed as a variation to this agreement unless clause 4.1(d) has been complied with.

5. PROBLEM MANAGEMENT

5.1 Immediate notification

As part of the Maintenance Services, and in addition to its obligations in Annexure C, the Supplier must notify RailCorp immediately after becoming aware of anything that is likely to or will result in a material delay in the performance of the Maintenance Services, or failure of the Software, specifying at least:

- (a) the nature of the problem;
- (b) the cause of the problem;
- (c) the steps being taken to minimise the impact of the problem; and
- (d) whether the problem is caused by something outside the Supplier's reasonable control.

5.2 Supplier's responsibility

The Supplier must, where a task required to be performed as a Maintenance Service is not the subject of a service level in Annexure C:

- (a) use commercially reasonable efforts to resolve or work around the problem,
- (b) keep RailCorp fully informed of its progress in resolving or working around the problem; and
- (c) comply with all reasonable requests made by RailCorp to prevent, or minimise the impact of, the delay or failure.

6. SUPPLIER'S PERSONNEL

6.1 Personnel generally

In providing the Maintenance Services, the Supplier must:

- (a) use an adequate number of appropriately qualified, experienced and skilled personnel to perform its obligations under this agreement, including the Key Personnel;
- (b) use its best endeavours to ensure that all of its personnel comply with:
 - (i) all of RailCorp's applicable written safety, security and on-site regulations, procedures and directions, and any applicable codes of conduct, protocols or procedures specified or notified to the Supplier by RailCorp (and the Supplier acknowledges in this respect that RailCorp's corporate drugs and alcohol policy is one of these policies) when working at the Site or at any of RailCorp's other, relevant, premises;
 - (ii) all applicable obligations of the Supplier under this agreement; and
 - (iii) all applicable laws.

6.2 Statutory obligations

The Supplier, at its own cost, must make all payments and otherwise comply with:

- (a) all laws including tax, superannuation, workers' compensation, annual leave and long services leave legislation; and
- (b) all orders, awards, determinations and agreements of a competent industrial tribunal, that relate to its engagement of any of its officers, employees, agents and contractors.

6.3 Sub-contracting

The Supplier must not enter into any sub-contract under or in respect of this agreement unless it first obtains the approval of RailCorp. Such approval may not be unreasonably withheld. Sub-contracting does not relieve the Supplier of its obligations under this agreement.

7. PERSONNEL CHANGES

7.1 Changes in personnel

- (a) RailCorp may, acting reasonably, request in writing that the Supplier replace any of its personnel involved with providing services under this agreement, if RailCorp forms the view the continuation of such personnel's involvement in the provision of services to RailCorp is not in RailCorp's best interest.
- (b) The Supplier must comply with such requests at no cost to RailCorp.

8. PROJECT MANAGEMENT

8.1 Parties Representatives

- (a) Each party must appoint one of its senior personnel as its representative, and must keep a representative appointed during the Term. The representative for RailCorp for the purpose of this clause is the RailCorp Representative.
- (b) Each party's initial representative is specified in Annexure A. A party may replace its existing representative by giving the other party notice of his or her removal and replacement, which includes details of the new representative.

8.2 Supplier reporting

During the Term, the Supplier must as part of the Maintenance Services, comply with the reporting requirements (including the provision of all reports) specified in Annexure C, and any other reasonable RailCorp requirements specified from time to time and agreed upon by the parties.

9. RAILCORP EQUIPMENT, SITE AND INFORMATION OBLIGATIONS

RailCorp must give the Supplier, free of charge:

- (a) access to (and use of) the Equipment and the Site during RailCorp's usual business hours on Business Days or at any other times that RailCorp may agree;
- (b) remote access to the Software installed at RailCorp's Site;
- (c) daily production logs for diagnostic purposes on successful implementation of scripts for automated transfer. The Supplier will provide template scripts that can be modified by RailCorp for its environment; and
- (d) accurate and complete information reasonably required by the Supplier about the Equipment and the Software,

as reasonably required by, and solely to enable the Supplier to perform its obligations under this agreement.

10. SUPPLIER AND ACCEPTANCE TESTS

10.1 Conduct of Supplier Tests and Acceptance Tests on non-production Bugfixes, Bugfix Updates and Upgrades

- (a) The Supplier must perform Supplier Tests on all non-production Bugfixes, Bugfix Updates and Upgrades, as part of the Maintenance Services.
- (b) Additionally, where required by RailCorp (of which requirement RailCorp must advise the Supplier within a reasonable time), the Supplier must, as part of the Maintenance Services allow RailCorp to perform Acceptance Tests on non-production Bugfixes, Bugfix Updates and Upgrades, and notify RailCorp when such a Bugfix, Bugfix Update or Upgrade is ready for Acceptance Testing.
- (c) Where an Upgrade of the Software is provided to RailCorp for future deployment into production and RailCorp agrees that the Upgrade is suitable for deployment, the parties will agree a schedule for Acceptance Testing, service pack release and installation of the Software into the production environment. If the parties are unable to negotiate a schedule that is acceptable to both parties, then the matter will be dealt with as a Dispute in accordance with clause 19.
- (d) For all non-production Bugfixes, Bugfix Updates and Upgrades RailCorp will conduct Acceptance Tests using criteria to be developed by RailCorp in consultation with the Supplier and agreed by the parties. If the parties are unable to agree on acceptance criteria the matter will be dealt with as a Dispute in accordance with clause 19.
- (e) Once determined in accordance with clause 10.1(d), the criteria used for non-production Acceptance Tests conducted by RailCorp will not be amended or updated without the mutual agreement of the parties. Nothing in this clause affects RailCorp's

ability to develop criteria for new Acceptance Tests not previously the subject of clause 10.1(d), or to develop new Acceptance Tests to verify the stability or integrity of RailCorp's production environment, however the criteria for the new Acceptance Tests will not apply for the purpose of introducing the Upgrade into production unless agreed to by the parties.

- (f) The Supplier will, when requested by RailCorp, provide all reasonable assistance to RailCorp in conducting the Acceptance Tests. Any physical on-site assistance with Acceptance Testing will be at RailCorp's sole expense and will be charged on a Time and Materials basis and not as part of the Maintenance Services (as per clause 3.2 (b) (iv)).

10.2 Satisfactory completion of non-production Acceptance Tests

- (a) RailCorp will, as soon as practicable after the completion of the non-production Acceptance Tests, notify the Supplier whether or not any Bugfix, Bugfix Update or Upgrade has passed the Acceptance Tests.
- (b) Acceptance of any Bugfix Update or Upgrade for Software not in RailCorp's production environment occurs on the date that RailCorp notifies the Supplier in writing that the Bugfix, Bugfix Update or Upgrade has passed the Acceptance Tests (where RailCorp has required such tests).
- (c) If the Supplier is not notified of RailCorp's acceptance or rejection of an Upgrade within 10 business days from the scheduled end date of the Acceptance Tests as set out in the testing schedule agreed in accordance with clause 10.1(c), then the Upgrade will be deemed to have been passed the Acceptance Testing.
- (d) Irrespective of 10.2(c) an Upgrade will be deemed to have been accepted on the date the Upgrade is first used in production.

10.3 Consequences of failure to satisfy non-production Acceptance Tests

If RailCorp notifies the Supplier under clause 10.2(a) that a non-production Bugfix, Bugfix Update or Upgrade fails to pass all the Acceptance Tests, then where a Defect in an Upgrade provided under 10.1(c) for Acceptance Testing has not been addressed by the time a second service pack is provided, the Service Levels applying to the current version of the Software in production will apply to the Upgrade as if the Upgrade were in production.

11. PAYMENT

11.1 Payments under this agreement

- (a) In consideration of the provision of the Maintenance Services in accordance with this agreement, and subject to clauses 11.1(b) 11.2, 11.3 and 11.5, RailCorp must pay the Supplier the Maintenance Fee in accordance with the procedure and payment terms set out in Annexure B.
- (b) Where a variation is agreed in accordance with clause 4.1 RailCorp may agree to pay the Supplier for services on a Time and Materials basis. At the commencement of each Year, the Supplier must provide Time and Materials Rates to RailCorp that are fixed for each Year.
- (c) With the exception of the Maintenance Fees and unless otherwise agreed by the parties, RailCorp is not required to pay the Supplier any of the Charges or other amounts

payable under this agreement until the Supplier gives the RailCorp Representative a final invoice to the satisfaction of RailCorp which must have an express statement in it that the invoice is final

- (d) The Supplier agrees that it is not entitled to invoice RailCorp for any work undertaken more than 6 months before the date of the invoice.

11.2 Supplier's claims for payment

For each claim for payment made by the Supplier in accordance with this agreement:

- (a) the Supplier must give RailCorp, at the times required by RailCorp, a statement in a format approved by RailCorp showing:
 - (A) the words "Tax Invoice";
 - (B) the ABN of the Supplier;
 - (C) RailCorp's administrative contract number;
 - (D) the amount the Supplier claims in respect of the items of work executed by the Supplier, including any additional amounts to which the Supplier is entitled under this agreement
 - (E) any rebates to which RailCorp is entitled under this agreement (including under Annexures B and C).
- (b) RailCorp will pay invoices for Maintenance Services in accordance with the payment terms in Item 3 of Annexure B, less:
 - (i) the value of any rebates which RailCorp is entitled to make in accordance with the terms of this agreement; and
 - (ii) any amounts which may be owing to RailCorp from the Supplier.
- (c) Additionally, the Supplier must, from the second invoice for Maintenance Services issued by the Supplier in accordance with this Agreement, provide with each invoice a duly executed statutory declaration in the form attached at Annexure F, in respect of the previous quarter.

11.3 Payment Disputes

If RailCorp Disputes any of the Supplier's claims for payment:

- (a) RailCorp must give the Supplier notice of the Disputed amount;
- (b) RailCorp may withhold the Disputed amount; and
- (c) the parties must first use the procedures specified in clause 19 to attempt to resolve the Dispute.

11.4 Maintenance Fee increases

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11.5 Set-off

RailCorp may, without notice to the Supplier, set off any amount that is or may become owing by the Supplier to RailCorp against any amount owing by RailCorp to the Supplier under this agreement.

11.6 GST payable in addition to Charges

- (a) In addition to paying the Charges, RailCorp must (but only in respect of amounts specified to be exclusive of GST):
 - (i) subject to clause 11.6(a)(ii), pay to the Supplier an amount equal to any GST payable on any supply by the Supplier to RailCorp under or in connection with this agreement;
 - (ii) make that payment:
 - (A) if the Supplier must pay GST on or after receiving the Charges or other consideration or any part of it, as and when RailCorp must pay or provide the Charges or other consideration or that part of it, except that RailCorp need not pay until 7 Business Days after receiving a tax invoice (or an adjustment note);
 - (B) if the Supplier must pay GST on issuing an invoice under this agreement, on the earlier of the due date for payment of that invoice or 10 Business Days from the end of the month in which the Supplier issued that invoice, but if the invoice is not also a tax invoice (or an adjustment note), RailCorp need not pay until 7 Business Days after receiving a tax invoice (or an adjustment note); and
 - (C) if the Supplier must pay GST upon the occurrence of some other event within 7 Business Days of a written request by the Supplier for payment for the GST, but if that it not in the form of a tax invoice (or an adjustment note), RailCorp need not pay until 7 Business Days after receiving a tax invoice (or an adjustment note).
- (b) If a payment to satisfy a claim or a right to claim under or in connection with this agreement (for example, for misleading or deceptive conduct, misrepresentation or for

a breach of any warranty of the Supplier or for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against the amount of that GST.

12. INTELLECTUAL PROPERTY

12.1 Ownership of Intellectual Property

- (a) The parties acknowledge and reaffirm that a licence is granted to RailCorp to use all Software under the Licence Agreement.
- (b) Nothing in this agreement gives RailCorp any right, title or interest of any kind in the Software, Documents, Upgrades, Bugfixes, Bugfix Updates or in any intellectual property that is used in connection with the Maintenance Services, except to the extent that a licence must necessarily be provided to RailCorp for RailCorp to have the benefit of the Maintenance Services performed by the Supplier.

12.2 RailCorp Materials licence

- (a) RailCorp grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use RailCorp Materials for the sole purpose of developing Bugfixes, Bugfix Updates and Upgrades (and where approved under clause 4.1(a), other Enhancements) and providing Maintenance Services. This licence includes the right to copy, modify, adapt and make derivative works of RailCorp Materials but otherwise excludes the right to use the RailCorp Material or sub-license it for any purpose.
- (b) The Supplier acknowledges that the licence granted under this clause 12.1 does not transfer any ownership rights (including any Intellectual Property) in any RailCorp Materials to the Supplier.

12.3 Moral Rights consents and waivers

- (a) To the extent permitted by applicable law, the Supplier unconditionally and irrevocably:
 - (i) consents, and will use its best endeavours to obtain all other necessary unconditional and irrevocable written consents from its employees and contractors, to any act or omission that would otherwise infringe any Moral Rights in the Software, the Documentation or any modified, adapted or derivative RailCorp Materials made by the Supplier, its employees or contractors, whether occurring before or after a consent is given; and
 - (ii) waives, and will use its best endeavours to obtain all other necessary unconditional and irrevocable written waivers from its employees and contractors of, all Moral Rights in the Software, the Documentation and any modified, adapted and derivative RailCorp Materials made by the Supplier, its employees or contractors,

for the benefit of RailCorp and any person claiming an interest in the Functional Specifications, the Documentation, documentation provided by the Supplier under the Development Plan or any modified, adapted or derivative RailCorp Materials through RailCorp.

- (b) The Supplier will not institute, maintain or support any claim or proceeding for infringement of its Moral Rights and must use its best endeavours to ensure that none of its officers, employees, agents or contractors do so.
- (c) At RailCorp's request, the Supplier must provide RailCorp with copies of each written consent and waiver obtained under this clause 12.3.

12.4 Intellectual Property representations, warranties and obligations

- (a) The Supplier represents and warrants that:
 - (i) neither the development or use of the Software, the Documentation, any modified, adapted or derivative RailCorp Materials, or the provision of the Maintenance Services or any other services approved in accordance with clause 4.1(a), will infringe any Intellectual Property or other rights of any person or otherwise contravene any law or give rise to any liability to make royalty or other payments to any person;
 - (ii) there is not, and the Supplier will not create, any Encumbrance over the Software, the Documentation or any modified, adapted or derivative RailCorp Materials;
- (b) RailCorp represents and warrants to the Supplier that the Supplier's use of any RailCorp Materials in accordance with this agreement will not infringe any Intellectual Property or other rights of any person or otherwise contravene any law or give rise to any liability to make royalty or other payments to any person.

12.5 Intellectual Property indemnities

Supplier shall, at its expense, indemnify, defend, and hold RailCorp, its agents and employees, harmless from any loss, damage, cost, expense, or liability resulting from a claim that use of the Software, when used properly and within scope of the Licence Agreement, infringes any patent or copyright, provided that:

- (a) Supplier is notified in writing within 20 Business Days of RailCorp's receipt of actual notice of any suit or written infringement claim against RailCorp;
- (b) RailCorp permits supplier to defend, compromise or settle the claim of infringement and gives supplier all available information, assistance and authority to enable supplier to do so, and
- (c) RailCorp fully observes all the terms and conditions of the Licence Agreement.

The Supplier shall have the right to control the defence of all such claims, lawsuits and other proceedings. In no event shall RailCorp settle any such claim, lawsuit, or proceeding without the Supplier's prior written consent. The supplier's indemnity obligations under this clause shall not apply to any infringement arising out of use of the Software in combination with other software or equipment or operating environment (other than a use in a combination authorized by the Licence Agreement or by the Supplier) where such infringement would not have occurred but for such use in combination.

In the event that a claim relating to any patent or copyright is commenced, then Supplier shall, in its sole election and at its own expense either:

- (i) procure for RailCorp the right to continue to use the Software pursuant to the Licence Agreement; or
- (ii) replace or modify the Software to make it non-infringing, provided that any such replacement or modified Software must perform at an equal or better level of functionality as the infringing Software, and the Supplier shall first consult with RailCorp to ensure that the modification does not cause or result in any disruption or period of interruption to RailCorp's operations that is unacceptable to RailCorp, acting reasonably.

12.6 Escrow Arrangements

- (a) The Supplier must, no later than 5 Business Days after the first major release of each new version of the software into production at RailCorp, deposit the Source Code with an escrow agent to be nominated by RailCorp.
- (b) RailCorp must not modify or adapt the Software, Documentation or Source Materials, except as permitted by clause 12.6(c).
- (c) If the Supplier:
 - (i) fails to supply the Support Services as required by this agreement, or
 - (ii) materially breaches this agreement, and this agreement is terminated by RailCorp as a result,

the Supplier grants to RailCorp and its subsidiaries and their contractors an irrevocable, non-exclusive, royalty free licence to use, copy, modify and adapt the Source Materials as required for its purposes.

13. CONFIDENTIALITY AND SECURITY

13.1 Use and disclosure of Confidential Information

A party must not, directly or indirectly:

- (a) use any Confidential Information of the other party except to the extent necessary for the Permitted Purpose; or
- (b) disclose any Confidential Information of the other party except in accordance with clause 13.2,

without first obtaining the other party's consent.

13.2 Permitted disclosures

Subject to clause 13.3, a party may disclose Confidential Information:

- (a) to an Authorised Person who needs to know that Confidential Information for the Permitted Purpose; or

- (b) to comply with:
 - (i) a legally enforceable requirement to do so, including an order of a court or tribunal of competent jurisdiction or applicable legislation; or
 - (ii) a requirement of a Government Agency, stock exchange or other regulatory body where that requirement is legally enforceable or one in relation to which a responsible person in that party's position would comply.

13.3 Conditions of permitted disclosures

- (a) For disclosures referred to in clause 13.2(a), a party must keep a list of its Authorised Persons to whom the other party's Confidential Information is made available and, at the other party's request, provide an up-to-date copy of that list to the other party.
- (b) For disclosures referred to in clause 13.2(b), a party must:
 - (i) to the extent possible, notify the other party immediately if it anticipates that it may be required to comply; and
 - (ii) if disclosure cannot be avoided:
 - (A) only disclose the other party's Confidential Information to the extent reasonably necessary to comply;
 - (B) use reasonable efforts to ensure that the other party's Confidential Information is kept confidential; and
 - (C) follow any reasonable directions of the other party concerning the disclosure.

13.4 Security, control, and other obligations

The parties must, each at its cost:

- (a) use its best endeavours to ensure that the other party's Confidential Information and tangible property in its possession, custody or control are kept under its effective control and are secure from theft, loss, damage and unauthorised access, use and disclosure;
- (b) notify the other party immediately it becomes aware of any actual, suspected, likely or threatened theft, loss, damage or unauthorised access, use or disclosure of or to any Confidential Information or tangible property in its possession, custody or control.

13.5 Remedies

The parties acknowledge that any breach or threatened breach of this clause 13 by a party may cause the other party immediate and irreparable harm for which damages alone may not be an adequate remedy. The parties agree that each party may commence proceedings to restrain any breach, or threatened breach of this agreement and any other unauthorised access to, or use of, any of its Confidential Information or to compel specific performance of this agreement.

14. WARRANTIES

14.1 Supplier's express warranties

The Supplier warrants that:

- (a) if there is any Defect in a Bugfix, Bugfix Update or Upgrade, then the Supplier will use commercially reasonable efforts to rectify that Defect at its cost;
- (b) any Bugfix, Bugfix Update or Upgrade will be compatible with the Software as described in the Documentation and will run on the Equipment.

14.2 Supplier's additional representations and warranties

Without limiting any other provision of this agreement, the Supplier represents and warrants that:

- (a) the Maintenance Services and any other services provided under this agreement will be provided to a high standard with due care, skill, diligence and efficient use of staff and resources;
- (b) the Enhancements specifically requested by RailCorp will be suitable for the purposes for which they are required by RailCorp;
- (c) each of the Enhancements is compatible and will work in combination with the Software as described in the Documentation.
- (d) the Software is Date Compliant and will remain Date Compliant; and
- (e) the Supplier has used commercially reasonable efforts and sound professional industry enterprise standard measures to ensure against introduction of any computer program virus or other destructive or disabling code into RailCorp's computing environment, or the Software or device which would prevent the Software from performing its desired function.

14.3 General representations and warranties

Each party represents and warrants that:

- (a) it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this agreement and to perform its obligations under this agreement;
- (b) it has taken all corporate action that is necessary or desirable to authorise its entry into this agreement and to perform its obligations under this agreement;
- (c) this agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally);
- (d) neither its execution of this agreement nor the carrying out by it of its obligations under this agreement, does or will:

- (i) contravene any law to which it or any of its property is subject or any order of any Government Agency or other person that is binding on it or any of its property;
 - (ii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iii) contravene its constitution;
- (e) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or threatened which, if adversely decided, could have a material adverse effect on it or any of its subsidiaries;
 - (f) no controller (as defined in the *Corporations Act 2001 (Cth)*) is currently appointed in relation to any of its property, or any of its subsidiaries; and
 - (g) it is not entering into this agreement as trustee of any trust or settlement.

15. INDEMNITY AND LIMITATION OF LIABILITY

15.1 Express Warranties in substitution for warranties implied by Law

The express warranties in clauses 14 and 12.4 are exclusive and in substitution for, any warranties implied by law with respect to the Software, Maintenance Services and any other deliverables provided under this Agreement, including but not limited to:

- (a) any implied warranty of merchantability or fitness;
- (b) any implied warranty arising from course of performance, course of dealing or usage of trade.

15.2 Supplier indemnity

- (a) The Supplier must indemnify RailCorp against all losses that RailCorp may suffer because of:

- (i) personal injury, illness or death of any person; or
- (ii) loss or damage of real or personal property in the care, custody and control of the Supplier that is owned by a person other than RailCorp,

to the extent caused or contributed to by the Supplier's negligent act or omission, breach of contract or wilful misconduct.

- 15.3** Subject to clause 15.4, the Supplier will be responsible for loss of or damage to real or personal property that is owned by RailCorp, which is in the care, custody and control of the Supplier to the extent that such loss or damage is caused by the negligent act or omission, breach of contract or wilful misconduct of the Supplier.

15.4 Exclusion of certain types of losses

Despite any other provision of this Agreement, a party (the respondent) is not liable to the other party (the claimant) to make any payment (whether by way of indemnity, damages or otherwise) in respect of any indirect, incidental, consequential loss of or damage to real or personal property that is owned by the claimant to the extent of any form of pure economic loss damages, special, exemplary or punitive loss or damages. For the purpose of this clause 15:

- (a) it is agreed that the following losses are included in the term "indirect, incidental, consequential loss of or damage to real or personal property that is owned by the claimant to the extent of any form of pure economic loss damages, special, exemplary or punitive loss or damages": loss of revenue, loss of profits, loss of reputation, loss of business, or loss of opportunity, loss of use loss of data or data corruption costs; and
- (b) it is agreed that the following losses are not included in the term "indirect, incidental, consequential, special, exemplary or punitive loss or damages": personal injury, illness or death of any person, loss or damage of real or personal property that is owned by a person other than the claimant, losses resulting from the infringement of Intellectual Property rights.

15.5 Liability cap

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- 15.6 If an arbitration panel or court of competent jurisdiction determines that relevant laws in force may imply warranties and liabilities which cannot be excluded or limited or which can only partly be excluded or limited, then the limit on Supplier's liability set forth in this Section shall apply to the fullest extent permitted by law. If Supplier cannot exclude or limit a warranty or liability implied by law, this Agreement shall be read and construed subject to such provisions of law.

16. INSURANCE

- 16.1 The Supplier must, at its expense, take out from the Commencement Date and maintain during the Term (and, in respect of the insurance referred to at (b) below also for 7 calendar years after the end of the Term) in respect of the Supplier's performance or purported performance or failure to perform its obligations under this agreement:

- (a) subject to clauses 15.4 and 15.5, commercial general liability insurance covering public and product liability claims, with available limits of not less than twenty million dollars (\$20,000,000) per occurrence for bodily injury, including death, and property damage combined; and
- (b) professional indemnity insurance in respect of the maintenance services;
- (c) workers compensation insurance extending to indemnify RailCorp for principal's liability.

- 16.2 Supplier shall provide RailCorp with written evidence (including certificates of currency) of the insurance required of Supplier under this Agreement upon request.

16.2 Liability not affected

The Supplier's insurance obligations under this clause 16 do not affect its liability under this agreement.

17. FORCE MAJEURE

17.1 Notice and suspension of obligations

If a party to this agreement is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under this agreement of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

17.2 Effort to overcome

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this does not require a party to settle any industrial dispute in any way it does not want to.

17.3 Alternative Supply

During any period in which a party to this agreement is not performing obligations because of a claimed Force Majeure Event, and only to the extent to which that party is not performing its obligations because that claimed Force Majeure Event, the other party may (but need not) obtain all its requirements of items, services or both from any other source and make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure is not performing, without incurring any liability to that party.

17.4 Termination

If a Force Majeure Event continues for more than 6 months, either party may terminate this agreement by giving at least 30 days' notice to the other party.

18. TERMINATION

18.1 Termination by RailCorp

- (a) RailCorp may, by giving at least 90 days notice to the Supplier, terminate this agreement, in part or in full, for convenience. Where terminated in full for convenience, RailCorp will pay, in full and final satisfaction of all liability to Supplier of any kind in respect of this Agreement :
 - (i) if such termination occurs during the Initial Term, a cancellation charge equal to 50% of the Maintenance Fees that would have otherwise been payable from the date of such termination to the end of the Initial Term; and

- (ii) if such termination occurs during a Renewal Term, a cancellation charge equal to 50% of the Maintenance Fees that would have otherwise been payable from the date of such termination to the end of the Renewal Term,

less any amounts previously paid in advance and any amounts RailCorp is entitled to under this Agreement.

- (b) RailCorp may terminate this agreement immediately on the actual occurrence of an Insolvency Event in respect of the Supplier.
- (c) RailCorp may terminate this agreement by giving notice effective on the date specified in the notice if the Supplier is in material breach of this agreement and fails to rectify the breach within 30 days of being required by a previous notice in writing to do so.

18.2 Termination by the Supplier for cause

- (a) The Supplier may terminate this agreement by notice effective on the date specified in the notice if RailCorp is in material breach of this agreement and fails to make reasonable efforts to commence to rectify the breach within 90 days of being required by a previous notice in writing to do so, and provided the breach is not the subject of an unresolved Dispute.
- (b) The Supplier may terminate this agreement immediately upon the actual occurrence of an Insolvency Event in respect of RailCorp.

18.3 Obligations on termination

On expiry or termination of this agreement:

- (a) RailCorp may require the Supplier to deliver all work-in-progress under this agreement to RailCorp and RailCorp shall pay the Supplier for all work completed up until that time;
- (b) the Supplier must refund money paid by RailCorp under this agreement for goods or services not provided to RailCorp;
- (c) RailCorp must pay the Supplier for all work to the date of Termination and any other Charges properly due to the Supplier under this agreement (but not paid);
- (d) each party must return any Confidential Information of the other party in its possession or control to the other party; and
- (e) to the extent that RailCorp is entitled to any rebates that have not been credited to RailCorp, the Supplier will pay the value of these rebates to RailCorp.

18.4 Claims

The expiry or termination of this agreement does not affect:

- (a) any claim that either party may have against the other; or
- (b) a party's obligations under clauses 12, 13 and 16.1

19. DISPUTE RESOLUTION

19.1 Application of clause

- (a) A party to a Dispute must not commence or maintain any litigation or arbitration in relation to that Dispute (except for interlocutory relief or a stay of proceedings) because of this clause 19 until it has complied with this clause 19.
- (b) No party may oppose an application for a stay of legal proceedings in relation to a Dispute until this clause has been complied with.

19.2 Notice of Dispute

A party that requires a Dispute to be resolved must give the other party's then current representative notice of this requirement that includes details of the Dispute. This notice must specify the period referred to in clause 19.3(a), which must be reasonable.

19.3 Negotiations

- (a) Within the period specified by the party issuing a notice under clause 19.2, the parties must use reasonable endeavours to ensure that their respective then current representatives meet at a mutually agreed place and time and use their best endeavours to attempt to resolve the Dispute.
- (b) If a Dispute is not resolved under clause 19.3(a), within 10 Business Days of its referral, the parties must refer the Dispute to their respective responsible general managers (or to a person holding an equivalent position), for resolution.
- (c) If a Dispute is not resolved under clause 19.3(b), within 10 Business Days of its referral, the parties must refer the Dispute to their respective chief information officers (or to a person holding an equivalent position), for resolution.
- (d) If a Dispute is not resolved under clause 19.3(c), within 10 Business Days of its referral, the parties must refer the Dispute to their respective chief executive officers (or to a person holding an equivalent position), for resolution.
- (e) If a Dispute is not resolved under clause 19.3(d), within 5 Business Days of its referral, the parties may refer the matter to mediation in accordance with clause 19.4.

19.4 Mediation

If a Dispute is not resolved using the processes in clause 19.3, within 10 Business Days (or any other period that the parties to the Dispute agree in writing), the parties must refer it to the ACDC for mediation in accordance with the ACDC Guidelines in force at the date of the first notice informing the other parties of a Dispute. These Guidelines are incorporated into this agreement.

19.5 Other Disputes

The parties agree that:

- (a) this clause applies if the operation of any law or the order of any court requires any Dispute arising under or in connection with this agreement to be subject to any form of dispute resolution (whether binding or not) other than in accordance with clauses 19.1 to 19.4, including any expert determination, reference, assessment or adjudication; and

- (b) if the parties are required to and fail to agree on an expert, referee, assessor, adjudicator or other relevant person (the **Arbiter**) to participate in the resolution of any Dispute or difference under clause 19.5 within the time specified by the relevant law or court order, or, if there is no such time specified, within 7 days, the parties agree that the Arbiter will be nominated by the President for the time being of the Institute of Arbitrators and Mediators Australia, or such person authorised by that person to make the appointment, on the application of either party.

19.6 Performance continues

Despite the existence of a Dispute, the parties will continue to perform their respective obligations under this agreement.

20. RELATIONSHIP OF THE PARTIES

RailCorp and the Supplier acknowledge and agree that:

- (a) they are independent contractors and are not partners, joint venturers or principal and agent;
- (b) a party does not have the authority to bind the other party by contract or otherwise and must not hold itself out as having authority to bind the other party to any contract or otherwise; and
- (c) any employee or subcontractor of the Supplier is solely an employee or subcontractor of the Supplier and will not be considered an employee or subcontractor of RailCorp.

21. NOTICES

21.1 Form and timing of notice

- (a) A notice, consent or other communication under this agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by post, fax or e-mail.
- (b) If it is sent by post, it is taken to have been received 3 Business Days after it is posted.
- (c) If it is sent by fax, it is taken to have been received when the sender receives a confirmation of such receipt from the sending machine.
- (d) If it is sent by email, it is taken to have been received two hours after it is sent, unless the sender receives an automated computer generated rejection message indicating otherwise.

21.2 Addresses

A person's postal address, fax number and email address for the purpose of giving notices are those specified below or as the person notifies the sender:

RailCorp:

Street address: 18 Lee Street, Chippendale NSW 2008

Fax: 02) 9219 1996

Attention: Henry Tan

Email: Henry.Tan@railcorp.nsw.gov.au

Supplier:

Street address: PO Box 149, Toowong QLD 4066

Fax: 07) 3105 9401

[REDACTED]

22. GENERAL

22.1 Governing law

- (a) This agreement is governed by the law in force in the State of New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

22.2 Amendment

Except as expressly provided otherwise, this agreement can only be amended, supplemented, replaced or novated by another document signed by the duly authorised representatives of the parties.

22.3 Assignment

- (a) The Supplier may only dispose of, declare a trust over or otherwise create an interest in its rights under this agreement with RailCorp's consent.
- (b) RailCorp may assign, novate or otherwise transfer its rights and obligations under this agreement to any person without the prior consent of the Supplier.
- (c) This Agreement is for the benefit of and is binding upon each of the parties hereto and their respective successors and permitted assigns. No rights or duties of either party under this Agreement may be assigned, transferred or contracted to be assigned or transferred by either party, except that:
- (d) Either party may assign its interest to a corporation that (i) results from any merger or reorganisation of such party or (ii) acquires substantially all the assets of such party;
- (e) Supplier may assign any of its rights to receive money;
- (f) Supplier may assign all or any part of its rights and obligations under this Agreement, to its parent company, or any wholly-owned subsidiary of Supplier provided that:
 - (i) the Supplier will remain responsible for all obligations and liabilities and Customer will continue to deal exclusively with the Supplier, and
 - (ii) the Supplier must satisfy RailCorp prior to effecting any such assignment that the assignor under this clause is capable of meeting the obligations and liabilities which remain with it.
- (g) No action taken by RailCorp or Supplier relating to the assignment of RailCorp's or Supplier's rights under this Agreement will subject Supplier or RailCorp to any liability beyond that in this Agreement.

22.4 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this agreement

22.5 Giving effect to this agreement

At the Supplier's cost, the Supplier must do anything (including execute any document), and must ensure that its employees and agents do, and the author of any Bugfix, Bugfix Update, Upgrade or any other modification to the Software performed in accordance with this agreement, or the Documentation does, anything (including execute any document), that RailCorp may reasonably require to give full effect to this agreement. These acts may include anything reasonably necessary to consent, or to procure consents to, or to waive, or to procure waivers of, any act or omission that would otherwise infringe any Moral Rights.

22.6 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

22.7 Operation of this agreement

- (a) This agreement and the Licence Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- (b) Except as otherwise provide herein, any right that a person may have under this agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

22.8 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this agreement is excluded to the full extent permitted by law.

22.9 Inconsistency with other documents

If this agreement is inconsistent with any other document or agreement between the parties, then to the extent that it is inconsistent with the Licence Agreement the Licence Agreement prevails otherwise this agreement prevails to the extent of the inconsistency with any other document.

22.10 Counterparts

This agreement may be executed in counterparts.

22.11 Export compliance

RailCorp shall be responsible for its compliance with any applicable export control restrictions, laws and regulations as may be modified from time to time, imposed by the governments of the U.S. and Australia and, if applicable, other countries. RailCorp shall not attempt to, or knowingly export or re-export the Software, the Services, any source technical data, or any products using such Software, Services or data covered under this Agreement to any country, or national thereof, prohibited from obtaining such Software, Services or data, either directly or indirectly through affiliates, licensees or subsidiaries of RailCorp or RailCorp's Group Company. Each party shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to conduct its respective activities hereunder. Nothing in this clause releases RailCorp from any obligation stated elsewhere in this Agreement not to disclose such Software..

EXECUTED as an agreement.

SIGNED for
RAIL CORPORATION NEW SOUTH WALES
by its authorised delegate:

Signature of witness

Signature of authorised delegate:

Name

Name

EXECUTED by
JEPPESEN OPTIMIZATION SOLUTIONS PTY LTD:
GIPA Act s 14 - Table 3(a)

Name

Name

ANNEXURE A

CONTRACT DETAILS

Software: The following components and modules of Supplier's RMS-R Crew software system, including all updates and modification, if and when available and supplied to RailCorp

Business Functions modules:

- RMS-R Central (includes Timetabling and STN Editor)
- RMS-R Shifts
- RMS-R Rosters
- RMS-R Operations

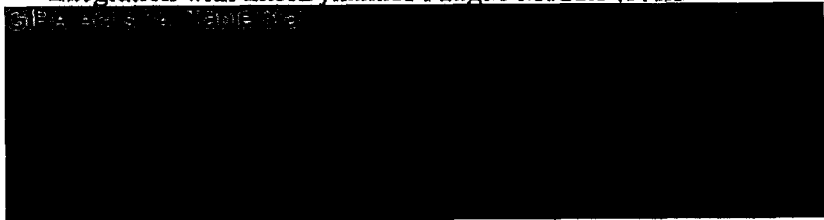
Optimisation function module:

CEPLEX (or Xpress-MP subject to successful testing and acceptance by RailCorp)

Interfaces:

- Timetable Import from RailTable (DLD format)
- Integration with InterDynamics Fatigue Module (FAID)

Key Positions, Supplier:



Key Positions, RailCorp:

RailCorp ICT Delivery Representative - Prashant Vaidya, ICT Portfolio Delivery Manager, Corporate Systems

RailCorp ICT Vendor Representative - Hayley Lindars, ICT Vendor Engagement Officer

RailCorp Business Representatives - Ian Hill, GM Train Crewing and Cheryl Constable, Acting Development Manager Train Crewing

Supplier's Contact List for Call-Outs:

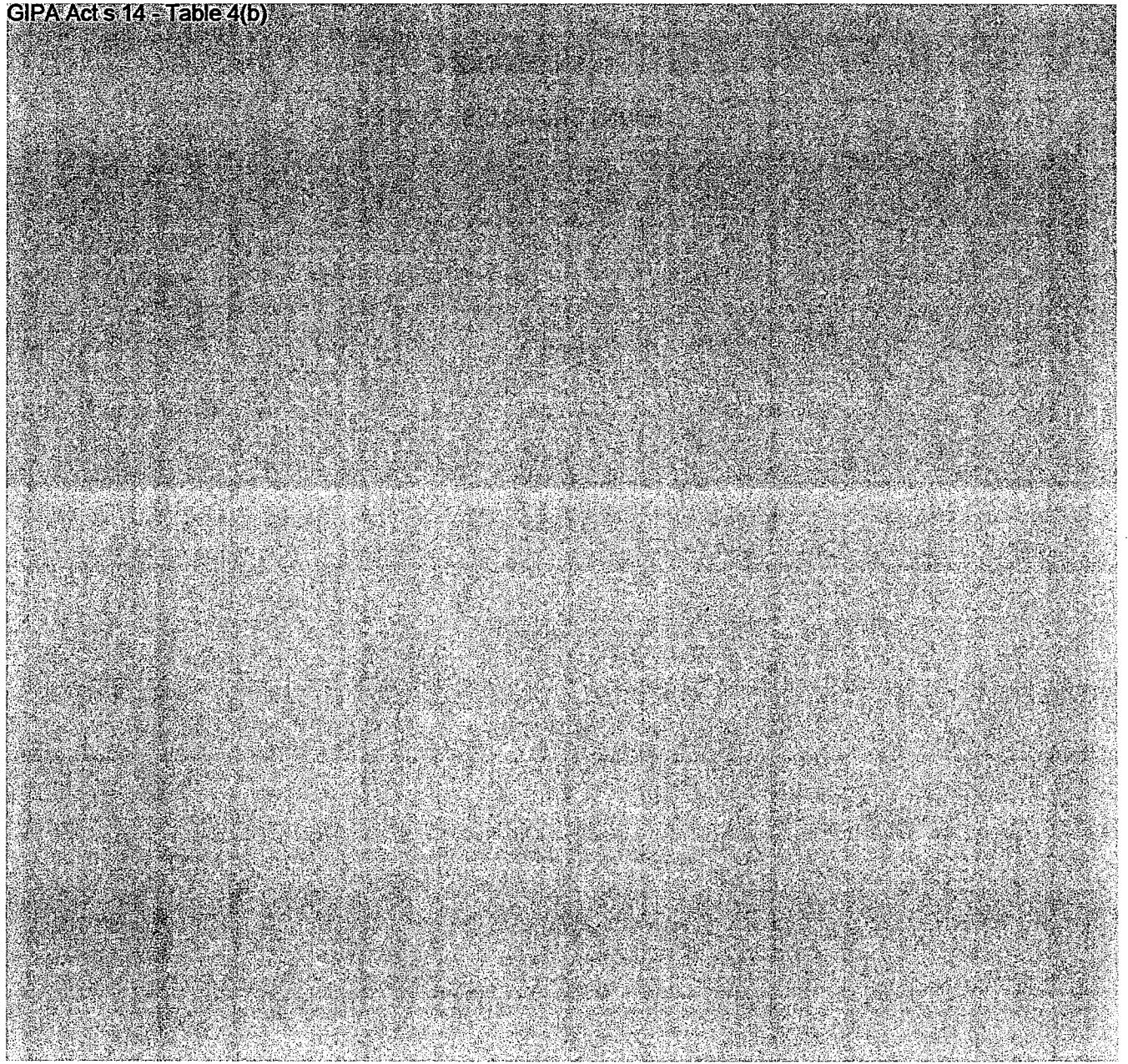
In order:

1. Name: GIPA Act s 14 - Table 3(a)
Mobile:
Phone:
Helpdesk:
2. Name:
Mobile:
Phone:
3. Name:
Mobile:
Phone:

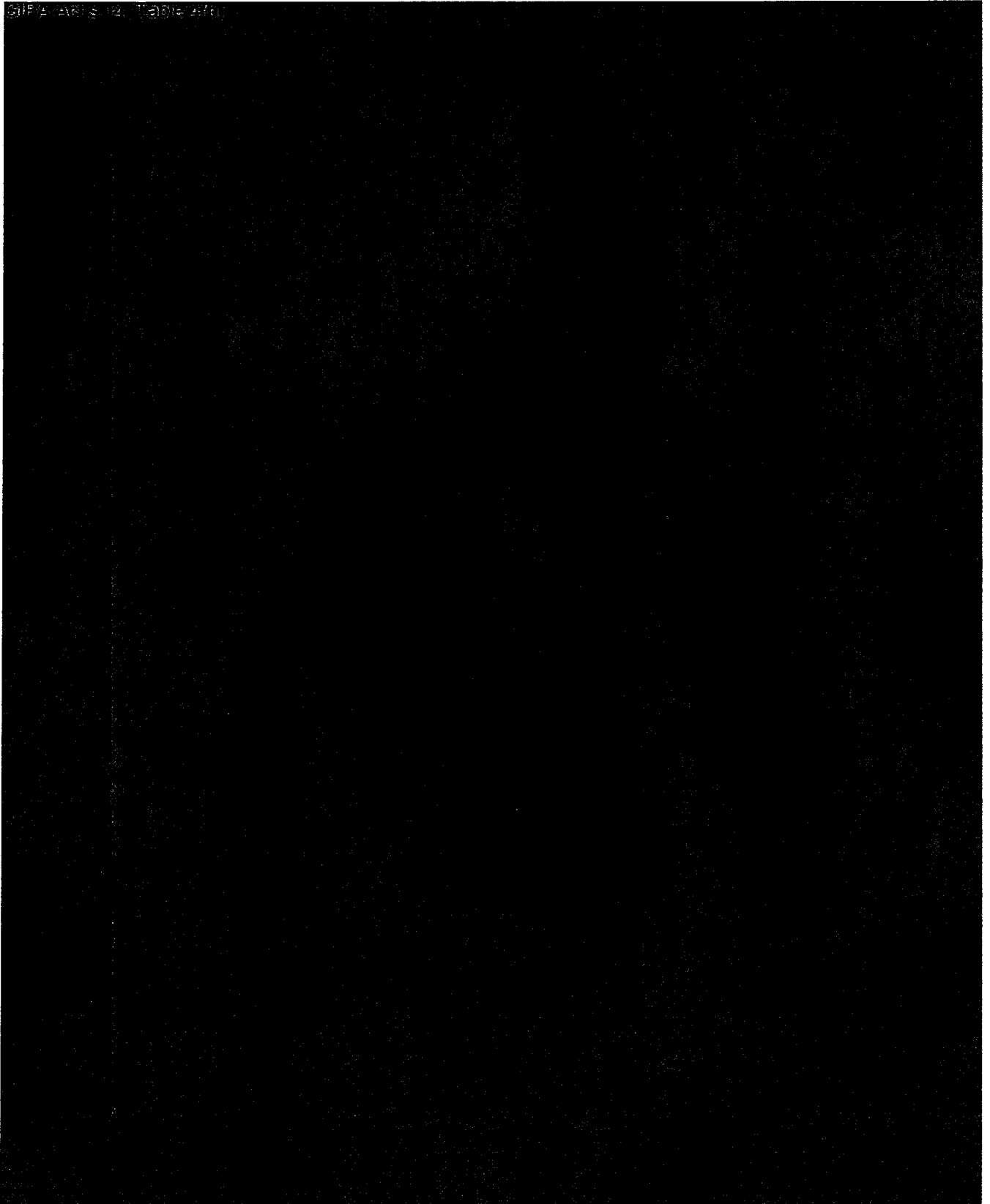
ANNEXURE B
CHARGES

GIPA Act s 14 - Table 4(b)





ANNEXURE C
MAINTENANCE SERVICES





3. Notification Procedure

Reporting by RailCorp to the Supplier with respect to problems encountered in the operation of the Software shall be initiated only by RailCorp's contacts detailed below:

Kamlesh Chaudhary, Senior Maintenance & Enhancement Officer
Moi Fong, Maintenance & Enhancement Officer
Cheryl Constable, Acting Development Manager Train Crewing
James Hu, RMS-R Administrator
Prashant Vaidya, ICT Portfolio Delivery Manager, Corporate Systems

The problem report must contain the Supplier's company name and product serial number; the name, phone number and e-mail address of the person reporting the call; the priority level (in accordance with the definitions in section 5 of the this Annexure C), the Software version for which RailCorp is reporting a problem, and details of the platform on which the Software is operating.
RailCorp will make reasonable efforts to resolve difficulties before involving the Supplier.

4. Escalation Procedure

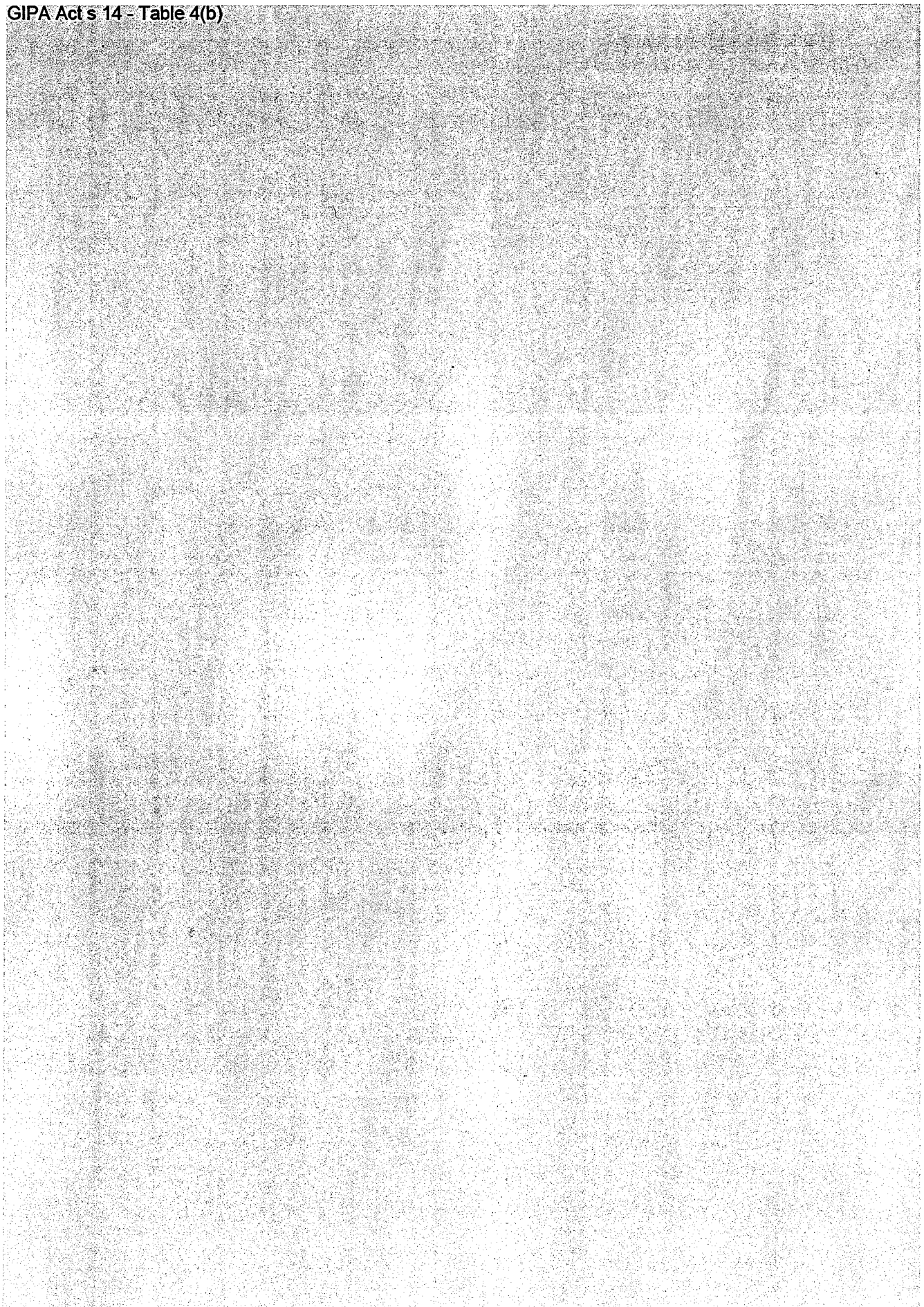
At each Level, the responsible officers will review the matter and try to reach a resolution. If resolution is not possible within one Level, the matter will be escalated to the Level above. If resolution cannot be achieved at Level 3, then the matter must be dealt with as detailed in clause 19 of the Agreement (Dispute Resolution).

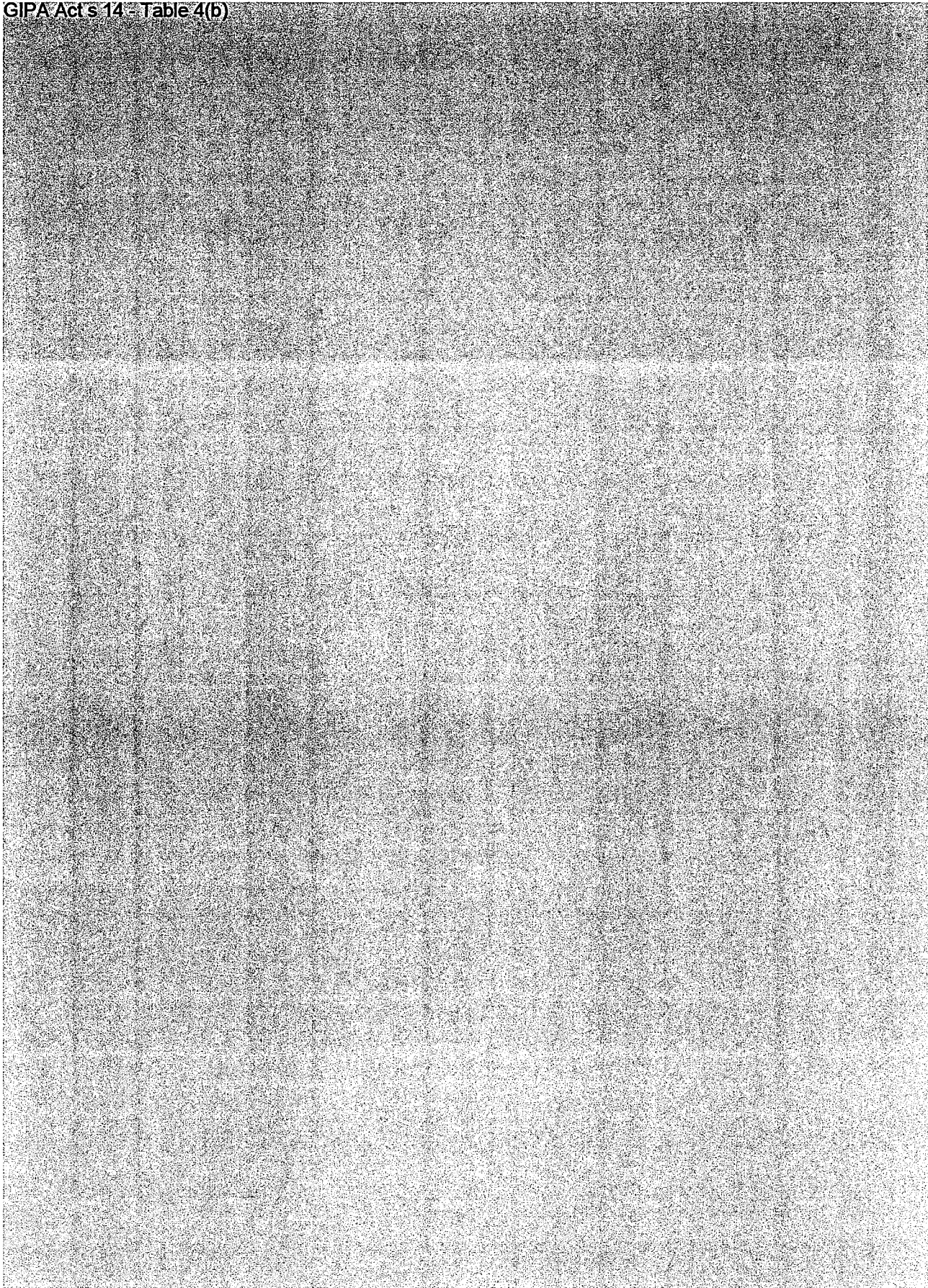
Escalation Level	Officer
Level 1	GIPA Act s 14 - Table 3(a)
Level 2	
Level 3	

5. Performance Measurement

GIPA Act s 14 - Table 4(b)







OPERATING SYSTEM

RailCorp RMS-R Equipment List - Train Crewing and Corporate Security

Logical Name(s)	Hardware Model	OS	Environment(s)	Memory	CPU (no of CPU)	Database Version
dbyrk1a	SUN F6800 (Partition 1)	Solaris 9	Train Crewing Production	24 GB	8	10.2.0.2
dblee1c	SUN F6800 (Partition 2)	Solaris 9	Train Crewing Test 1, Corporate Security Test and Training	24 GB	8	10.2.0.2
dbyrk1c	SUN F6800 (Partition 2)	Solaris 9	Train Crewing Training	24 GB	8	9.2.0.6
dblee1a	SUN F6800 (Partition 1)	Solaris 9	Train Crewing Test 2 and Corporate Security Production	24 GB	8	
OPCPD DR DB server	To be confirmed	Solaris 9	Train Crewing DR	24 GB	8	10.2.0.2
SECPD DR DB server (dbyrk1c)	SUN F6800 (Partition 2)	Solaris 9	Corporate Security DR	24 GB	8	same as SECPD on production
Windows						
OPCPDAPP01 (asmet049)		Windows 2000 Advanced Server / SP4	Train Crewing Production	8GB	2	
w2kopcrewuat01		Windows 2000 Advanced Server / SP4	Train Crewing Test 1	1024MB	1 (Virtual)	
w2kopcrewtrn01		Windows 2000 Server / SP4	Train Crewing Training	1280MB	P3 (1.4ghz)	
w2kopcrewsim01		Windows 2000 Server / SP4	Train Crewing Test 2	512MB	1 (Virtual)	
w2kopcrewprod02		Windows 2000 Server / SP4	Corporate Security Production	1280MB	P3 (1.4ghz)	
w2kopcrewuat02		Windows 2000 Server / SP4	Corporate Security Test	512MB	1 (Virtual)	
w2kopcrewtrn02		Windows 2000 Server / SP4	Corporate Security Training	512MB	1 (Virtual)	
Citrix						
CXMET007		Windows 2000 Server / SP4		8192MB	2 x 3.6GHZ	
CXMET005		Windows 2000 Server / SP4		2048MB	2 x 3.6GHZ	
Desktop						
	Acer 5500G	XP 2002 SP2 or Win 2000 SP4		1Gb min	P4, 2.4Ghz	
	Acer 7500G	XP 2002 SP2 or Win 2000 SP4		1Gb min	P4, 2.4Ghz	
Work in Progress						
Citrix	12 x HP BL25P G2	Windows 2000 Server / SP4	2x Train Crewing Test Environment (W2kopcrewuat01; opcu) 1 x Security Division Test Environment (W2kopcrewuat02; secua)	8GB	2 AMD dual Core 2.6Ghz	

Logical Name(s)	Hardware Model	OS	Environment(s)	Memory	CPU (no of CPU)	Database Version
Middletier	2 x HP BL25P G2	Windows 2000 Server / SP4	1 x Security Division Training Environment (W2kopcrewtrn02; sectr) 2 x Security Division Production Environment (W2kopcrewprod02; secpd) 6 x Train Crewing Production Environment (Opcpdapp01 (asmet049); opcpd) Security Division Production Environment	8GB	2 AMD dual Core 2.6Ghz	
	1 x HP BL45P	Windows 2000 Server / SP4	Train Crewing Production Environment	8GB	2 AMD dual Core 2.6Ghz	



HENRY DAVIS YORK
LAWYERS

Deed of Novation

Rail Corporation New South Wales
a New South Wales Government agency constituted by the *Transport Administration Act 1988 (NSW)*
ABN 59 325 778 353

Jeppesen Australia Pty Ltd
ACN 010 573 814

Constraint Technologies International Pty Ltd
ACN 054 631 462

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(D1610654:2)

Schedule 2 – Escrow Agreement

KEY DETAILS

1 **Date** See Execution on page 13

2 **Parties**

Continuing Party
Name

Rail Corporation New South Wales
a New South Wales Government agency constituted by the
Transport Administration Act 1988 (NSW)
ABN 59 325 778 353

Address

Level 20, 477 Pitt Street, Sydney NSW 2000

Attention

Portfolio Manager – Corp and Train Systems

Fax

Email

Prashant.vaidya@railcorp.nsw.gov.au

Retiring Party

Name

Jeppesen Australia Pty Ltd
ACN 010 573 814

Address

Level 10, Exchange House, 10 Bridge Street, Sydney NSW
2000

Attention

GIPA Act s 14 - Table 3(a)

Fax

Email

Substitute Party

Name

Constraint Technologies International Pty Ltd
ACN 054 631 462

Address

Level 7/224 Melbourne Street, Melbourne VIC 3000

Attention

GIPA Act s 14 - Table 3(a)

Fax

Email

BACKGROUND

- A The Retiring Party and the Continuing Party are parties to the Principal Agreements.
- B The Retiring Party, the Substitute Party and the Continuing Party have agreed that, with effect from the Effective Date, the Principal Agreements will be novated by the Retiring Party to the Substitute Party on the terms set out in this deed.

TERMS**1 Interpretation****1.1 Definitions**

The following words have the following meanings in this deed, unless the context requires otherwise.

Asset Sale Agreement means the agreement between the Retiring Party and the Substitute Party dated 20 December 2010 in respect of the sale of various assets of the Retiring Party to the Substitute Party.

Assurex means Assurex Escrow Pty Ltd ACN 008 611 578.

Completion Date has the meaning given to that term in the Asset Sale Agreement.

Conditions means the conditions precedent set out in clause 2.1.

Effective Date means the later to occur of:

- (a) the date of satisfaction or waiver of the Conditions; and
- (b) execution of this deed by the parties.

End Date means 30 June 2011.

Escrow Agreement means an escrow agreement between the Retiring Party, the Continuing Party and Assurex in the form set out in Schedule 2.

License Agreement means the Train Crewing – Software Licence Contract described in Item 1 of Schedule 1.

Principal Agreements means the agreements set out in Schedule 1.

RMS-R Software means the software defined as the "Software" in the License Agreement.

Source Code Materials means all:

- (a) computer programming code in human readable form; and

- (b) specifications, design documentation and user manuals,
relating to the RMS-R Software.

1.2 Interpretation

The following apply in the interpretation of this deed, unless the context requires otherwise.

- (a) A reference to 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 deed.
- (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 deed, their substitutes and assigns.
- (h) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally.
- (i) **Includes** means includes but without limitation.
- (j) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (k) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (l) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to, this deed.
- (m) A reference to a document is a reference to that document as varied, novated, ratified or replaced from time to time.
- (n) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

- (o) A reference to time is to the time in the place where a thing is to be done, unless specified otherwise.
- (p) A reference to dollars or \$ is to Australian currency.
- (q) A heading is for reference only. It does not affect the meaning or interpretation of this deed.

1.3 Schedules

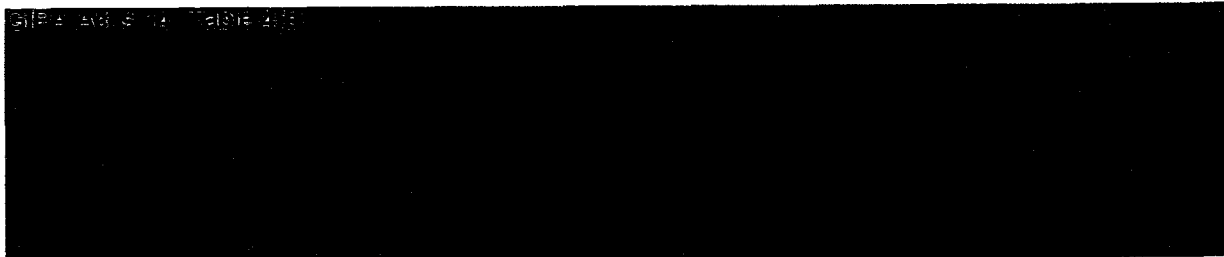
Any schedule attached to this deed forms part of it. If there is any inconsistency between any clause of this deed and any provision in any schedule, the clause of this deed prevails.

2 Conditions

2.1 Conditions

The novation of the Principal Agreements contemplated by this deed is conditional on the following conditions precedent:

Condition	Party entitled to benefit
1. The Substitute Party has such insurance as required by the Continuing Party, acting reasonably.	Continuing Party
2. The Escrow Agreement has been executed by the Retiring Party and Assurex and provided to the Continuing Party, and the Source Code Materials have been placed into escrow with Assurex in accordance with the Escrow Agreement.	Continuing Party
3. Completion of the sale and purchase of the assets contemplated in the Asset Sale Agreement.	Continuing Party Retiring Party Substitute Party



2.2 Waiver of Conditions

A Condition may only be waived in writing by a party entitled to the benefit of that Condition (as set out in the table in clause 2.1) and will be effective only to the extent specifically set out in that written waiver.

2.3 Conduct of the parties

Each party must use all reasonable endeavours within its own capacity to ensure that each Condition is satisfied as soon as reasonably practicable after execution of this deed and in any event before the End Date.

2.4 Failure of Condition

If a party has complied with its obligations under clause 2.3, it may terminate this deed before the Effective Date by giving notice in writing to the other parties if:

- (a) each Condition is not satisfied, or waived by each party entitled to the benefit of that Condition, before the End Date; or
- (b) a Condition, having been satisfied, does not remain satisfied in all respects on the Effective Date or is not waived by each party entitled to the benefit of that Condition before the Effective Date.

2.5 Effect of termination

On termination of this deed under clause 2.4:

- (a) accrued rights and remedies of a party are not affected; and
- (b) subject to clause 2.5(a), the parties are released from further performing their obligations under this deed.

3 Novation

3.1 Novation

With effect on and from the Effective Date, the Retiring Party, the Substitute Party and the Continuing Party novate the Principal Agreements so that:

- (a) the Substitute Party is substituted for the Retiring Party under the Principal Agreements as if the Substitute Party was named as a party to the Principal Agreements instead of the Retiring Party;
- (b) the Substitute Party will perform the obligations of the Retiring Party under the Principal Agreements which arise on and from the Effective Date;
- (c) the Substitute Party will perform the obligations of the Retiring Party under the Principal Agreements that exist or have arisen prior to the Effective Date to the extent that they have not been performed as at the Effective

Date, but this does not constitute a release by the Continuing Party of the Retiring Party in connection with any performance of, or failure to perform, such obligations. Without limiting the foregoing, to the extent that an obligation existed or arose prior to the Effective Date, the Retiring Party will, despite any other provisions of this deed, be liable to the Continuing Party for the acts or omissions of the Retiring Party in respect of those obligations; and

- (d) each reference in the Principal Agreements to the Retiring Party is read and construed as a reference to the Substitute Party.

3.2 Assumption of rights and obligations

On and from the Effective Date the Substitute Party:

- (a) is bound by and must comply with the Principal Agreements;
- (b) obtains the rights and benefits of the Retiring Party under the Principal Agreements; and
- (c) assumes all of the obligations and liabilities of the Retiring Party under the Principal Agreements,

as if it was named as a party to the Principal Agreements instead of the Retiring Party.

4 Consent of the Continuing Party

The Continuing Party consents to the novation of the Principal Agreements from the Retiring Party to the Substitute Party on the terms of this deed.

5 Indemnity and release

5.1 Indemnity

As between the Retiring Party and the Substitute Party only, as part of its obligations under the Asset Sale Agreement and subject to clause 5.2, the Substitute Party indemnifies and must keep indemnified the Retiring Party for all costs, damages, fees and expenses of, and from and against any liability incurred by, the Retiring Party as a result of any action, claim, demand or proceeding against the Retiring Party by the Continuing Party or any third party under or in respect of the Principal Agreements relating to any act or omission of the Substitute Party or the Retiring Party prior to, on, or after the Effective Date.

5.2 Material breaches prior to the Effective Date

- (a) Subject to clause 5.2(b), as between the Retiring Party and the Substitute Party only, in accordance with the terms of the Asset Sale Agreement, the indemnity provided by the Substitute Party in accordance with clause 5.1

{D1610854:2}

does not extend to liabilities arising from material breaches of the Principal Agreements by the Retiring Party which occurred prior to the Completion Date.

GIPA Act s 14 - Table 4(b)



5.3 Release

On and from the Effective Date, the Continuing Party releases the Retiring Party from liability for the performance or non-performance by the Substitute Party of the obligations of the Retiring Party under the Principal Agreements which arise on and from the Effective Date, excluding in relation to facts, matters or circumstances existing or arising before the Effective Date.

6 Representations and warranties

6.1 Mutual representations and warranties

Each party represents and warrants to each other party that:

- (a) it has full power and authority to enter into and perform its obligations under this deed;
- (b) the execution and delivery of this deed by it does not and will not result in the breach of the terms and conditions of or constitute a default under any contract, arrangement or understanding to which it is a party;
- (c) the execution, delivery and performance by it of this deed does not and will not violate in any respect any provision of:
 - (i) any law, regulation, authorisation, ruling, consent, judgement, order or decree of any government agency; or
 - (ii) its constituent documents; and
- (d) any authorisations required in connection with the execution, delivery and performance by it and the validity and enforceability against it of this deed have been obtained or effected and are in full force, and there has been no material default by it in the performance of any of the terms and conditions of any of those authorisations.

6.2 Reliance

Each party acknowledges that each other party, when entering into this deed, relies on the representations and warranties made and contained in this clause 6.

7 Confirmation of Principal Agreements

7.1 Confirmation

Subject to this deed, the Continuing Party and the Substitute Party ratify and confirm the Principal Agreements and the Principal Agreements continue in full force and effect on their terms.

7.2 No effect on accrued rights and obligations

For the avoidance of doubt, nothing in this deed:

- (a) prejudices or adversely affects any right, power, authority, discretion, or remedy of the Continuing Party arising under the Principal Agreements before the Effective Date;
- (b) discharges, releases or otherwise affects any liability or obligation to the Continuing Party arising under the Principal Agreements before the Effective Date; or
- (c) constitutes a waiver by the Continuing Party of the Continuing Party's rights in relation to any breach which started before the Effective Date and which is continued by the Substitute Party after the Effective Date.

8 General

8.1 Further assurance

Each party must do everything necessary, or reasonably required, by another party, to give effect to this deed and the transactions contemplated by this deed.

8.2 Entire agreement

This deed:

- (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 deed.

8.3 Legal costs

Each party must pay its own legal costs and disbursements in connection with this deed.

8.4 Counterparts and commencement

- (a) If this deed is signed in counterparts then:
 - (i) each counterpart is an original; and

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(ii) together they constitute one deed.

(b) If this deed is undated and there is no contrary intention stated, the date of this deed is the date of last execution by a party.

8.5 Governing law and jurisdiction

(a) This deed is governed by the law in force in New South Wales.

(b) The parties submit to the jurisdiction of the courts of New South Wales.

8.6 Assignment

(a) Subject to clause 8.6(b), the rights and obligations of each party under this deed are personal and cannot be assigned, charged or otherwise dealt with and no party will attempt or purport to do so, without the prior written consent of the parties.

(b) The Continuing Party may assign its rights and obligations under this deed if it becomes convenient for it to do so to give effect to a restructure or proposed restructure of the Continuing Party, a government department or any other related statutory authority, or state-owned corporation, that may have an interest in, or an impact on, the services to be provided to the Continuing Party under the Principal Agreements.

Schedule 1 – Particulars of Principal Agreements

	Name	Date	Parties	Description
1.	Train Crewing – Software Licence Contract	8 March 2000	<ul style="list-style-type: none"> • State Rail Authority of New South Wales • OpCom Pty Ltd ACN 010 573 814 	Agreement for, among other things, the licence of software and provision of services.
2.	RMS-R Crew – Support and Maintenance Agreement	1 July 2007	<ul style="list-style-type: none"> • Rail Corporation New South Wales ABN 59 325 778 353 • Jeppesen Optimization Solutions Pty Ltd ACN 010 573 814 	Agreement for, among other things, the provision of maintenance services.
3.	Contract No. CW7390 – Enhancement of RailCorp Oprew Capabilities	25 February 2010	<ul style="list-style-type: none"> • Rail Corporation New South Wales ABN 59 325 778 353 • Jeppesen Australia Pty Ltd ACN 010 573 814 	<p>Agreement for, among other things, the provision of services and which comprises:</p> <p>(a) letter from the Continuing Party to the Retiring Party titled "Enhancement of RailCorp Oprew Capabilities" dated 25 February 2010;</p> <p>(b) engagement terms and conditions based on the Conditions of Contract of Contract No. C07112 titled "Provision of Professional Services for Oprew Enhancement for Stopping Patterns" between the Continuing Party and the Retiring Party;</p> <p>(c) Part D "Scope of Services" for RFT No. WS19658; and</p> <p>(d) tender submitted by the Retiring</p>

{D1610854-2}

	Name	Date	Parties	Description
				Party to the Continuing Party on 9 December 2009 for RFT No. WS19658 and as subsequently amended with the pricing offer "Final Pricing Offer to RailCorp for RFP WS 19658- Enhancement of RailCorp Opcrew Capabilities" version 3.0 dated 17 February 2010.
4.	Acceptance Testing Phased Project	28 May 2010	<ul style="list-style-type: none"> • Rail Corporation New South Wales ABN 59 325 778 353 • Jeppesen Australia Pty Ltd ACN 010 573 814 	Agreement for, among other things, user acceptance testing of software enhancements.
5.	Invoicing Procedure	28 May 2010	<ul style="list-style-type: none"> • Rail Corporation New South Wales ABN 59 325 778 353 • Jeppesen Australia Pty Ltd ACN 010 573 814 	Agreement specifying the invoicing procedure for Contract No. CW 7390.
6.	Escrow Agreement		<ul style="list-style-type: none"> • Rail Corporation New South Wales ABN 59 325 778 353 • Jeppesen Australia Pty Ltd ACN 010 573 814 • Assurex Escrow Pty Ltd ACN 008 611 578 	Agreement for the escrow of source code and certain documents relating to the RMS-R Software.

(D1610854:2)

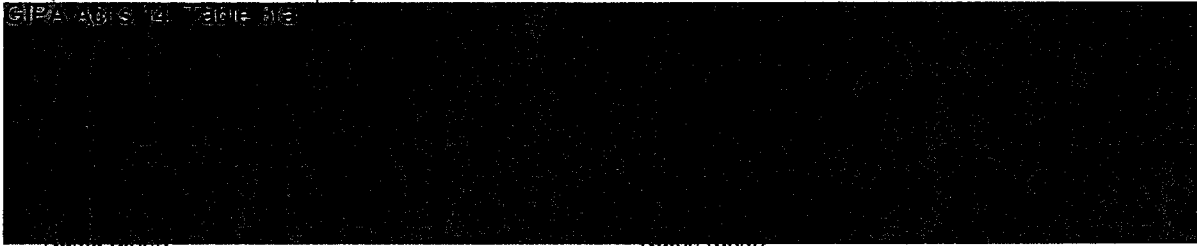
Schedule 2 – Escrow Agreement

EXECUTION

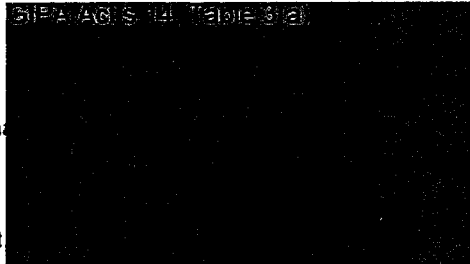
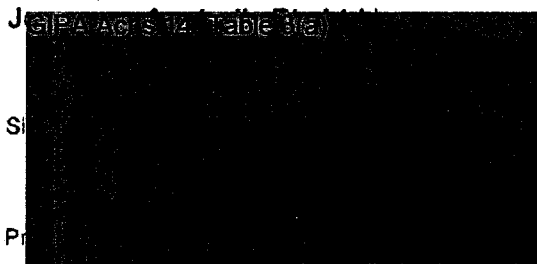
Executed as a deed on

2011

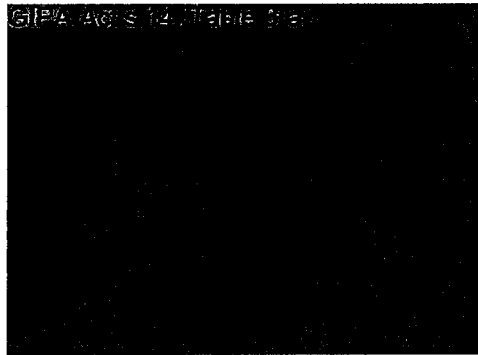
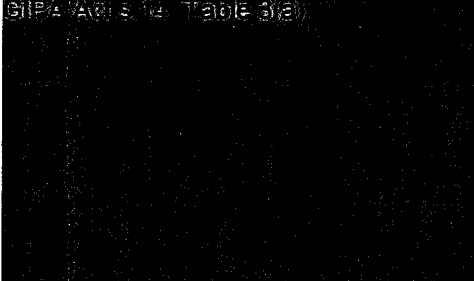
**Executed as a deed for and on behalf of
Rail Corporation New South Wales
(ABN 59 325 778 353) by its authorised**



Executed as a deed for and on behalf of



Executed as a deed for and on behalf of

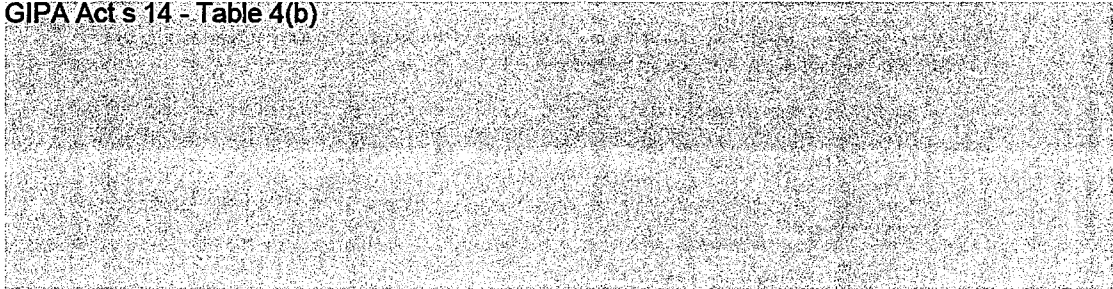


Contract Amendment Form

Contract Number:	CW17246	Contract Manager:	GIPA Act s 14 - Table 3(a)
Contract Title:	Op-Crew Support and Maintenance Agreement		
Supplier Name:	Constraint Technologies International (CTI)		
Variation No.:	1	Version No.:	1
Effective Date of the Variation:		1 July 2012	

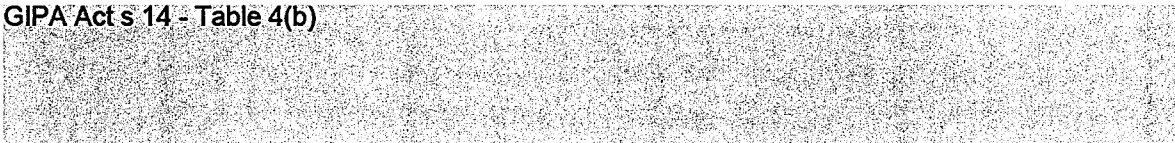
(1) This Variation to Contract confirms our agreement to make the following Variation to the Contract.

GIPA Act s 14 - Table 4(b)



(2) Contract Awarded Value (excl GST)

GIPA Act s 14 - Table 4(b)



(3) Contract Expiration Date.

Original Contract Expiration Date	30/06/12
Contract Expiration Date after previous variations	30/06/12
Contract Expiration Date after this variation	30/06/14

(4) Contract Clauses, Terms or Conditions.

All other terms and conditions of the Contract shall remain unchanged.

Please acknowledge your agreement to the above Variation by signing below and return the signed form to RailCorp marked for the attention of :

For RailCorp		For Supplier	
Signature	GIPA Act s 14 - Table 3(a)	Signature	GIPA Act s 14 - Table 3(a)
Name		Name	
Title		Title	
Date		Date	



26 June 2015

Constraint Technologies International Pty Ltd
Level 7, 224 Queen Street
Melbourne, VIC 3000
GIPA Act s 14 -
Table 3(a)

Grant of right to use by CTI – to NSW Trains in respect of the RMS-R (OpCrew) Application and to TfNSW in respect of the Rail/Sys Application

1. Further to various discussions, including on 12 March 2015, the Parties seek to set out in this letter the basis on which TfNSW can use the Rail/Sys Application and NSW Trains can use the RMS-R (OpCrew) Application.
2. Capitalised terms in this letter have the meanings given to those terms in Part A of Attachment 1 to this letter.
3. CTI acknowledges and agrees that:
 - (a) pursuant to the Vesting Orders, with effect on and from 1 July 2013 all assets, rights and liabilities of RailCorp in connection with the Licence Agreement, the S&M Agreement and the Timetabling Agreement were transferred or otherwise vested pursuant to the terms of the Vesting Orders;
 - (b) since 1 July 2013, CTI has granted, and continues to grant:
 - (i) TfNSW the right to use the Rail/Sys Application; and
 - (ii) NSW Trains the right to use the RMS-R (OpCrew) Application;
 - (c) should the Timetabling Agreement terminate, the right to use granted by CTI to TfNSW under paragraph 3(b)(i) will cease;
 - (d) should the New S&M Agreement terminate, the right to use granted by CTI to NSW Trains under paragraph 3(b)(ii) will cease;
 - (e) subject to paragraphs 3 and 4:
 - (i) TfNSW and NSW Trains are not parties to the S & M Agreement, New S&M Agreement and the Timetabling Agreement and nothing in this letter confers on TfNSW or NSW Trains any direct rights to request support and maintenance services from CTI under those agreements; and
 - (ii) the Timetabling Agreement and the Licence Agreement continue on the same terms; and
 - (f) CTI releases and will not make any claim against any Relevant Government Agencies, including for any breach of contract or for further payment by any of the Relevant Government Agencies, under or in connection with the Licence Agreement, the S&M Agreement, the New S&M Agreement, the Timetabling Agreement or this letter in connection with the use by TfNSW of the Rail/Sys Application or NSW Trains of the RMS-R (OpCrew) Application:
 - (i) between 1 July 2013 and the Date of This Letter; and

(ii) following the Date of This Letter until and including:

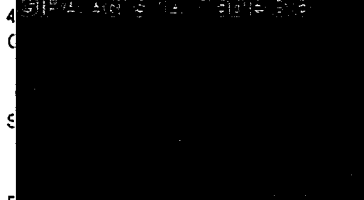
- (A) in respect of the use by TfNSW of the Rail/Sys Application, the date that TfNSW's right to use the Rail/Sys Application ceases under paragraph 3(c); and
- (B) in respect of the use by NSW Trains of the RMS-R (OpCrew) Application, the date that NSW Trains' right to use the RMS-R (OpCrew) Application ceases under paragraph 3(d),

and warrants that any such use has not, and will not, constitute a breach of any rights of CTI or any third party in respect of any intellectual property, applications or materials.

4. In recognition of the importance of having certainty in relation to the term of the Timetabling Agreement and the S&M Agreement, the Parties acknowledge and agree that on and from the Date of This Letter the term of such agreements are extended as set out in Part B of Attachment 1.
5. To the extent that the right to use in paragraph 3(b) and the release in paragraph 3(f) is in favour of, or extends to, any Relevant Government Agencies that are not a party to this letter, CTI and Sydney Trains acknowledge and agree that Sydney Trains holds the right to use and the release for itself and for and on behalf of those Relevant Government Agencies as trustee. It is further agreed that Sydney Trains may enforce the right to use and the release for itself and for and on behalf of the Relevant Government Agencies and that any of the Relevant Government Agencies may plead the release and right to use in answer to any claim made by CTI against them.
6. The Parties agree to take all steps, execute all documents and do everything reasonably required by the other Parties to give effect to the matters contemplated by this letter.
7. This letter is governed by and must be construed according to the law applying in New South Wales.
8. The Parties agree to the matters set out in this letter, as evidenced by their signature below.

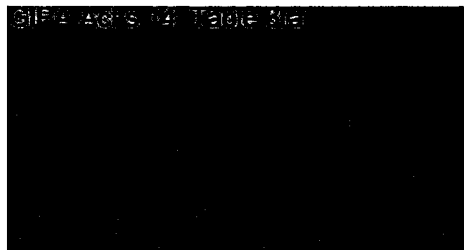
Executed as a deed on the Date of This Letter:

Executed by Constraint Technologies
International Pty Ltd (ABN 13 054 631)



Full name of director (print)

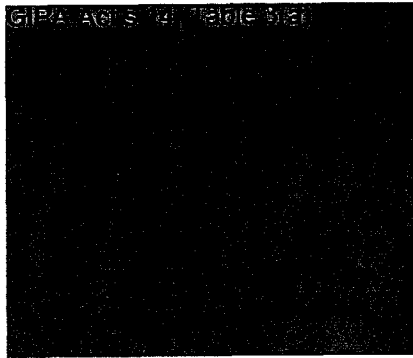
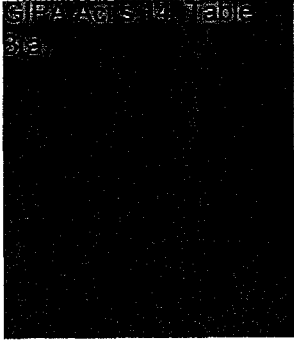
Date 16/07/15



(print)

Date 16/07/15

Executed for and on behalf of Sydney
Trains (ABN 38 284 779 682) by its
authorised delegate in the presence of:



Attachment 1

Part A - Definitions

In this letter the following terms have the meanings set out below:

1. **CTI** means Constraint Technologies International Pty Ltd (ABN 13 054 631 462) of Level 7, 224 Queen Street, Melbourne, VIC 3000;
2. **Date of This Letter** means the date that the last party executes this letter;
3. **Licence Agreement** means the agreement titled "Train Crewing – Software Licence Contract" (Agreement C00022A) dated on or about 8 March 2000, as amended, varied, transferred or novated from time to time, including by the operation of the Transport Administration Act 1988 (NSW) on or around 1 January 2004, the agreement titled "Contract No. C0002A Software Licences for OPCREW Deed of Variation" on or about 11 July 2005, the document titled "Deed of Novation" dated on or around May 2011, the document titled "Deed of Variation" dated on or around May 2011, and the Vesting Orders;
4. **New S&M Agreement** has the same meaning as in paragraph 2(a) of Part B of this Attachment 1;
5. **NSW Trains** means NSW Trains (ABN 50 325 560 455) of Level 20, 477 Pitt Street, Sydney NSW 2000;
6. **Parties** means the parties to this letter, being CTI and Sydney Trains;
7. **RailCorp** means Rail Corporation New South Wales (ABN 59 325 778 353) of Level 20, 477 Pitt Street, Sydney NSW 2000;
8. **Rail/Sys Application** means rights in respect of any intellectual property, applications and materials licensed by CTI to Sydney Trains under the Timetabling Agreement;
9. **Relevant Government Agencies** means Sydney Trains, NSW Trains and TfNSW;
10. **RMS-R (OpCrew) Application** means rights in respect of any intellectual property, applications and materials licensed by CTI to Sydney Trains under the Licence Agreement, the S&M Agreement and the New S&M Agreement;
11. **S&M Agreement** means the document titled "RMS-R Crew – Support and Maintenance Agreement" (Agreement No. C07156) dated on or about 1 July 2007, as amended, varied, transferred or novated from time to time, including by the RailCorp letter dated 2 July 2008, the document titled "Deed of Novation" dated on or around May 2011, the document titled "Deed of Variation" dated on or around May 2011, and the Vesting Orders;
12. **TfNSW** means Transport for NSW (ABN 18 804 239 602) of 18 Lee Street, Chippendale, NSW 2008;
13. **Timetabling Agreement** means the agreement titled "Rail/Sys Applications - Maintenance Agreement" dated on or about 9 November 2007, as amended, varied, transferred or novated from time to time, including by the document titled "Deed of Transition and Novation" dated 26 December 2009, the document titled "Amending Deed to Rail/Sys Applications Maintenance Agreement" dated on or about 2010, and the Vesting Orders; and

14. **Vesting Orders** means the following orders made pursuant to section 94 of the *Transport Administration Act 1988* (NSW):
- (a) Order Number 2013/07 titled "Transfer of assets, rights and liabilities from RailCorp to Sydney Trains and NSW Trains" made by Gladys Berejiklian MP, Minister for Transport on 17 June 2013; and
 - (b) Order Number 2013/17 titled "Transfer of assets, rights and liabilities from Sydney Trains to Transport for NSW, NSW Trains, Transport Cleaning Services and RailCorp" made by Gladys Berejiklian MP, Minister for Transport on 17 June 2013.

Part B - Term of the Timetabling Agreement and S&M Agreement

CTI and Sydney Trains acknowledge and agree that:

1. notwithstanding any other provision of the Timetabling Agreement, on and from the Date of This Letter, clause 3.1(a) of the Timetabling Agreement will be amended to read:

"Notwithstanding that it may be executed by the parties prior to the Commencement Date, this agreement commences on the Commencement Date and continues until the date that is 3 calendar years from the Date of This Letter (as defined in the document titled "Grant of right to use by CTI – to NSW Trains in respect of the RMS-R (OpCrew) Application and to TfNSW in respect of the Rail/Sys Application" dated on or about May 2015), unless extended under clause 3.1(b) or terminated earlier in accordance with its terms"; and
2. notwithstanding any other provision of the S&M Agreement, on and from the Date of This Letter:
 - (a) a new agreement will come into effect between Sydney Trains and CTI on the same terms as the S&M Agreement (but incorporating the amendments in paragraph 2(c)) (**New S&M Agreement**);
 - (b) that any works, deliverables, services and other things executed, provided or performed by CTI under or in connection with the subject-matter of the S&M Agreement between 1 July 2014 and the date of the New S&M Agreement were executed, provided or performed on the terms of the New S&M Agreement; and
 - (c) for the purposes of the New S&M Agreement:
 - (i) the definition of "Commencement Date" in clause 1.1 of the S&M Agreement is amended to mean "1 July 2014"; and
 - (ii) clause 3.1(a) of the S&M Agreement is amended to read:

"This agreement commences on the Commencement Date and continues until the date that is 3 calendar years from the Date of This Letter (as defined in the document titled "Grant of right to use by CTI – to NSW Trains in respect of the RMS-R (OpCrew) Application and to TfNSW in respect of the Rail/Sys Application" dated on or about May 2015), unless extended under clause 3.1(b) or terminated earlier in accordance with its terms".