



Traffic Management System (TMS) TLS Agreement

Digital Systems Program

Contract Number CW2405133

Sydney Trains (ABN 38 284 779 682) (**the Customer**)

Siemens Mobility Pty Ltd (ABN 39 625 304 556) (**the Contractor**)

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Date:

Recitals

- A The Customer is the operator and maintainer of the Network constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW). TfNSW is a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW). TfNSW is responsible for the delivery of, among other things, the major rail and infrastructure upgrades in NSW.
- B TfNSW is undertaking a program known as the Digital Systems Program (**Program**) to implement a system to replace legacy signalling and train control on the Network with a modern, intelligent, internationally proven, integrated rail signalling system utilising an onboard and trackside ETCS Level 2 system operating in conjunction with a Traffic Management System, and automatic train operations grade of automation 2 for use on the Network (including the Rollingstock).
- C The Traffic Management System will be deployed in stages procured under Statements of Work under the Delivery Agreement. The scope of Statement of Work 1 under the Delivery Agreement is the delivery of a Traffic Management System capable of being deployed across the Network including all functionality detailed in the TMS Subsystem SSRS, to be implemented as Deployment Stage 1 under the Delivery Agreement. The scope of Statement of Work 3 under the Delivery Agreement is the provision of visualisation for the Traffic Management System, being the capability of the TMS Subsystem relating to visualising information from non-ETCS Level 2 areas of the Network.
- D The Program involves multiple Packages of trackside, train-borne and control systems to be undertaken contemporaneously by Other Contractors and Rail Transport Entities, as well as interfaces between various Subsystems. It is critical to the success of the Program and delivery of the overall System that all Packages, including the TMS Subsystem, are delivered in an integrated and seamless manner. The Customer wishes to work with the Contractor, Other Contractors and Rail Transport Entities in a spirit of collaboration and cooperation in connection with the Program.
- E On 28 June 2019, TfNSW issued a Request for Proposal (**RFP**) seeking suppliers to deliver a TMS Subsystem under a TMS Delivery Agreement, and to provide maintenance and support under a TMS TLS Agreement. In reliance on the Contractor's response to the RFP, and other representations made by the Contractor to TfNSW and the Customer during the RFP Process, TfNSW and the Customer have decided to engage the Contractor to provide through life support services on the terms of this Agreement.

The parties agree as follows:

Part A Nature of relationship

1 Term

1.1 Commencement of Agreement

- (a) Subject to paragraph (b), this Agreement does not commence until the Commencement Date, and the Contractor's obligation to perform the TLS Activities under this Agreement in respect of the first Deployment Area to go into revenue service operation does not commence until the Commencement Date.
- (b) The following clauses and Schedules of this Agreement commence on the Execution Date: 1.1(Commencement of Agreement), 25 (Governance), 26 (Resolution of Matters), 28 (Probity Events and Conflicts of Interest), 29 (Intellectual Property), 30 (Customer Data), 31 (Confidentiality), 32 (Privacy), 33 (Government Disclosure), 49 (Termination), 51 (Representations and warranties), 53 (Liability), 55 (Notices), 56 (Machinery of Government), 57 (General), Schedule 1 (Definitions and Interpretation) and Schedule 2 (Agreement Details).
- (c) The Contractor must:
 - (i) at the time of its delivery to TfNSW under the Delivery Agreement, unconditionally deliver to the Customer a copy of the Contractor Deed Poll; and
 - (ii) within twenty (20) Business Days after the date TfNSW notifies the Contractor of the Commencement Date for this Agreement in accordance with clause 24.1(b)(i) of the Delivery Agreement and in any case prior to the Commencement Date, unconditionally deliver to the Customer:
 - (A) an original TLS Parent Company Guarantee, duly executed by the parent company of the Contractor;
 - (B) where a guarantor to the TLS Parent Company Guarantee is incorporated outside of Australia, a Legal Opinion in a form reasonably acceptable to the Customer from lawyers reasonably acceptable to the Customer;
 - (C) an original unconditional undertaking that satisfies the requirements of clause 47.2(b);
 - (D) original Subcontractor Deeds, executed by the Key Subcontractors whose identity is known as at the Commencement Date in accordance with clause 20.5(b)(ii); and
 - (E) copies of certificates of currency evidencing that the Contractor Insurance Policies required under this Agreement have been effected and are current.
- (d) If the Contractor fails to deliver to the Customer any document or documents listed in paragraph (c) by the due dates for delivery of those documents, then:
 - (i) the Contractor indemnifies and must keep indemnified the Customer Indemnified Persons against all Loss suffered or incurred by the Customer Indemnified Persons arising out of or in connection with such failure; and

- (ii) the Contractor will not be entitled to bring any Claim against the Customer or the Customer Indemnified Persons arising out of or in connection with such failure.

1.2 Term

Subject to clause 1.1(b), this Agreement commences on the Commencement Date and, unless otherwise terminated in accordance with this Agreement or extended by the Customer in accordance with clause 1.4 (Extensions), continues until the later of:

- (a) the expiry of the Initial Term;
- (b) the expiry of any Extended Term;
- (c) the completion of all of the Additional Support Services (including any Defect Liability Periods) under each Work Order; and
- (d) the end of the Disengagement Period.

1.3 Initial Term

The Initial Term of this Agreement is from the Commencement Date until the date that falls ten (10) Years after the Commencement Date (**Initial Term**).

1.4 Extensions

- (a) The Customer may, by providing at least six (6) months' notice to the Contractor prior to the end of the Initial Term or the then current Extended Term:
 - (i) subject to paragraphs (b) and (c), renew this Agreement for one or more periods of up to five (5) Years each from the date of expiry of the Initial Term or the then current Extended Term, as applicable; or
 - (ii) elect not to renew this Agreement, in which case this Agreement will expire in accordance with clause 1.2 (Term).
- (b) The total duration of all Extended Terms must not exceed fifteen (15) Years from the end of the Initial Term.
- (c) Any renewal by the Customer under paragraph (a)(i) must be for a minimum of twenty-four (24) months.
- (d) The Contractor must provide:
 - (i) at least nine (9) months' notice to the Customer prior to the end of the Initial Term, or the then-current Extended Term, requesting the Customer to advise whether it intends to renew this Agreement in accordance with paragraph (a)(i); and
 - (ii) notice to the Customer immediately upon the Contractor becoming aware of TfNSW having decided to exercise its right to extend the Delivery Agreement.
- (e) Unless agreed otherwise between the parties, the terms and conditions (including as to pricing) applicable to each Extended Term will be the same terms and

conditions as at the expiry of the Initial Term or previous Extended Term, as relevant.

1.5 Work Orders

Each Work Order commences on the Work Order Commencement Date and, unless otherwise terminated in accordance with this Agreement, continues until the later of:

- (a) the Customer's written confirmation of completion of all of the TLS Activities under that Work Order; and
- (b) (if applicable) the expiry of all Defects Liability Periods relevant to that Work Order.

2 Engagement

2.1 Objectives

- (a) As the supplier of the TMS Subsystem, the Contractor has a lead role in supporting TfNSW and the Customer to implement a System that meets (amongst other things) the BRS and the SRS, and as a result achieves the following objectives for the Program, to:
 - (i) enable growth on the Network to meet forecast growth;
 - (ii) improve service reliability on the Network;
 - (iii) enable increased capacity on the Network of up to thirty (30) trains per hour;
 - (iv) enable dynamic systems so that disruption and incidents on the Network can be managed faster, reducing delays caused by Network incidents and disruptions;
 - (v) provide more accurate service information to customers and enable availability of real-time customer information;
 - (vi) facilitate financially sustainable maintenance and operation of the Network, reducing 'whole of life' cost to maintain signalling technology and incidence of signalling asset failure;
 - (vii) replace end-of-life assets in a way that minimises capital costs and Network disruption;
 - (viii) minimise the cost of replacing Network assets; and
 - (ix) minimise the need for, and impact of, possessions,(together, the **Objectives**).
- (b) The Contractor acknowledges that:
 - (i) the TMS Subsystem is only one component of the System and cannot be delivered or implemented in isolation from the other components of the System;

- (ii) it is critical to the success of the Program that all Subsystems, including the TMS Subsystem, are delivered in an integrated and seamless manner, so as to ensure the successful delivery of the overall System; and
 - (iii) it will perform its obligations under this Agreement in the manner which best supports and enables TfNSW and the Customer in achieving the Objectives.
- (c) For clarification, the Objectives and this clause 2.1 are not intended to:
- (i) alter the plain meaning of the specific terms and conditions of this Agreement; or
 - (ii) impose obligations on the Customer or the Contractor that are not otherwise provided for in this Agreement.

2.2 No Exclusivity

- (a) The Contractor acknowledges that it is not being appointed as an exclusive or preferred supplier of any of the Works or Assets, or in respect of any part of the System or Network, and that the Customer may at any time perform or supply any part of the TLS Activities or Assets itself or procure them from a Third Party. The Contractor further acknowledges that multiple trackside and signalling and control systems may be operated in parallel on, or on different parts of, the Network.
- (b) Other than as set out in a Work Order, nothing in this Agreement requires the Customer to, nor represents that the Customer will, acquire any particular goods or services from the Contractor or guarantees a minimum value or volume of goods or services.

2.3 Interface with the Delivery Agreement

- (a) Unless agreed otherwise with the Customer:
 - (i) the Customer will not have any obligation or liability to the Contractor under this Agreement, and the Contractor will not in any manner whatsoever be entitled to an adjustment to the Fees under this Agreement, arising out of or in connection with any matter arising under the Delivery Agreement;
 - (ii) save to the extent explicitly provided otherwise in Schedule 15 (Pricing Terms), the Contractor will be paid for its performance of the “Contractor’s Activities” (as that term is defined in the Delivery Agreement) under the Delivery Agreement and not this Agreement;
 - (iii) the Contractor must not assert any defence in connection with a Claim made by the Customer under this Agreement (including a Claim or obligation relating to any Service Level or other performance requirement), or otherwise seek to avoid any obligation under this Agreement, relying on any matter arising from or connected with any act, omission or failure of the Contractor under the Delivery Agreement (including any Defect or failure to remedy a Defect under the Delivery Agreement); and
 - (iv) the Contractor shall not be entitled to, and must not make, any Claim against the Customer under or in connection with this Agreement (including any Claim regarding the responsibility for a Defect) in respect of any Loss or Claim brought against, suffered or incurred by the Contractor arising out of or in connection with any act, omission or failure of the Contractor or any of

its Associates relating to the Delivery Agreement (including any Defect or failure to remedy a Defect under the Delivery Agreement).

2.4 Interface with Other Arrangements with Contractor

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

3 Structure of Agreement

3.1 Elements

- (a) This Agreement consists of the following parts:
 - (i) any Special Conditions;
 - (ii) clauses 1 (Term) to 57 (General);
 - (iii) any Schedule other than those identified in paragraphs (iv) or (v);
 - (iv) Schedule 3 (System Definition and Requirements);
 - (v) Schedule 4 (Process Requirements (PR));
 - (vi) any Work Orders (excluding any Special Conditions or Concept Design included in a Work Order);

- (vii) excluding the Information Documents and Materials, any document incorporated by reference in:
 - (A) a clause to this Agreement;
 - (B) a Schedule to this Agreement; or
 - (C) a Work Order, other than as identified in paragraph (vi); and
 - (viii) for each Work Order, the relevant Concept Design (if any),
as varied through any Variation (the **Agreement**).
- (b) The Contract Specifications consist of the following parts:
- (i) the Mandatory Requirements;
 - (ii) the System Definition and Requirements;
 - (iii) the PR;
 - (iv) any other design, specifications or requirements relating to the TLS Activities as set out in this Agreement, including in any Work Order, and any other documents relating to the TMS Subsystem or TLS Activities referenced in this Agreement, including in any Work Order or the PR, including any Project Plans developed by the Customer or TfNSW (excluding any such documents that form part of the Contractor's Solution); and
 - (v) the Contractor's Solution,
- as varied through any Variation (**Contract Specifications**).
- (c) The System Definition and Requirements consist of the following parts:
- (i) the TMS Subsystem SSRS and the parts of the TMS Subsystem ISDs that relate to works to be performed by, or otherwise impose obligations on, the Contractor;
 - (ii) the SRS;
 - (iii) the OCD and the MCD;
 - (iv) TfNSW's System Architecture Description;
 - (v) the BRS; and
 - (vi) the Technical Glossary,
- as varied through any Variation (**System Definition and Requirements**).
- (d) The Contractor's Solution consists of the following parts:
- (i) the Designs;
 - (ii) each of the other documents relating to the TMS Subsystem provided or developed by or on behalf of the Contractor pursuant to the Delivery

Agreement or this Agreement, including as required by any Work Order or the PR, including the Project Plans where those documents have become a Confirmed Document; and

- (iii) Schedule 2 (Contractor's Solution Description) to Statement of Work 1 under the Delivery Agreement,

as varied through any Variation (**Contractor's Solution**).

3.2 Order of precedence

- (a) Subject to paragraphs (e) and (f), if there is any ambiguity, discrepancy or inconsistency between the parts of this Agreement set out in clause 3.1(a), then the part listed earlier within that clause will prevail to the extent of that ambiguity, discrepancy or inconsistency.
- (b) Subject to paragraphs (e) and (f), if there is any ambiguity, discrepancy or inconsistency between the parts of the Contract Specifications set out in clause 3.1(b), then the part listed earlier within that clause will prevail to the extent of that ambiguity, discrepancy or inconsistency.
- (c) If there is any ambiguity, discrepancy or inconsistency between the parts of the System Definition and Requirements set out in clause 3.1(c), then that ambiguity, discrepancy or inconsistency will be resolved by applying clause 5.1(e).
- (d) Subject to paragraphs (e) and (f), if there is an inconsistency, ambiguity or discrepancy between two or more of the documents that together comprise the Contractor's Solution, then:
 - (i) the Designs will prevail over the other Technical Documents to the extent of that ambiguity, discrepancy or inconsistency;
 - (ii) the version of any Design that was Confirmed later in time will prevail to the extent of any ambiguity, discrepancy or inconsistency with another Design; and
 - (iii) the version of any Technical Document that was Confirmed later in time will prevail to the extent of any ambiguity, discrepancy or inconsistency with another Technical Document.
- (e) If there is any ambiguity, discrepancy or inconsistency between any Project Plan developed by the Customer or TfNSW (including the Significant Project Plans referred to in Appendix 07 to the PR) and any Project Plan developed by the Contractor, the Project Plan developed by the Customer / TfNSW will prevail to the extent of the inconsistency.
- (f) To the extent that any part or provision of:
 - (i) this Agreement;
 - (ii) the Contract Specifications;
 - (iii) subject to clause 5.1(e), the System Definition and Requirements; or
 - (iv) the Contractor's Solution,

imposes higher standards, greater responsibilities and/or additional requirements on the Contractor, the Contractor must satisfy and meet those higher standards, greater responsibilities and/or additional requirements unless the Customer otherwise Directs in writing. For clarity, this paragraph applies both in respect of higher standards, greater responsibilities or additional requirements between the items referred to in paragraphs (i) to (iv) and also within each of those items.

3.3 Work Orders

- (a) The primary TLS Activities to be performed under this Agreement are contained in Schedule 5 (Services Schedule). In addition, the Customer may engage the Contractor to supply Additional Support Services from time to time under one or more Work Orders.
- (b) Each Work Order forms part of this Agreement and the clauses and Schedules to this Agreement apply to each Work Order. Additional terms and conditions specific to the supply of different types of Additional Support Services may be set out in a Work Order or in different Schedules which apply only to specific Additional Support Services.

Part B Through Life Support

4 Staged Rollout, Work Orders and Variations

4.1 Staged Rollout

- (a) On and from the TLS Activities Commencement Date for each Deployment Area, the Contractor must perform the TLS Activities in respect of that Deployment Area in accordance with the service standards set out in this Agreement.
- (b) The Fees for the performance of the TLS Activities in respect of each Deployment Area will be calculated in accordance with Schedule 15 (Pricing Terms) and Schedule 15A (Pricing Tables).
- (c) The **TLS Activities Commencement Date** for each Deployment Area will occur:
 - (i) in respect of the first Deployment Area to go into in revenue service operation, on the Commencement Date; and
 - (ii) in respect of each Deployment Area other than the first Deployment Area to go into in revenue service operation, at the point at which that Deployment Area goes into in revenue service operation.

4.2 Work Orders

- (a) If the Customer wishes to engage the Contractor to provide Additional Support Services, the process set out in section 2 (Work Orders for Additional Support Services) of Schedule 6 (Work Orders and Variation Procedures) applies.
- (b) Without limiting clause 2.2 (No Exclusivity), the Customer makes no representation or commitments with respect to:
 - (i) whether any Additional Support Services will be procured;
 - (ii) whether any, or how much Additional Support Services may be awarded to the Contractor; or
 - (iii) the process by which the Customer procures goods or services in respect of Additional Support Services.
- (c) The Contractor acknowledges that:
 - (i) any Additional Support Services (or work equivalent to Additional Support Services) may be awarded to Other Contractors or any Third Party; and
 - (ii) the Customer's approach to procurement of Additional Support Services may change from time to time.
- (d) Without prejudice to paragraph (c), the Customer may, in assessing whether to procure any Additional Support Services from the Contractor, take into account various aspects of the Contractor's past performance which may include:
 - (i) whether the Contractor performed the TLS Activities so as to meet or exceed the requirements of this Agreement;

- (ii) the Contractor's management of resources and costs;
- (iii) the Contractor's overall behaviour, including its level of compliance with the Collaboration Principles and the Interface Requirements; and
- (iv) an assessment of performance against any metrics or criteria adopted by the Customer for the purposes of assessing the Contractor's performance.

4.3 Variations

If:

- (a) either party wishes to:
 - (i) other than in accordance with clause 4.1 (Staged Rollout) or clause 4.2 (Work Orders), alter, vary, modify, omit, increase or decrease the existing scope of the TLS Activities under the Services Schedule;
 - (ii) amend the timeframe for performance of the TLS Activities under this Agreement;
 - (iii) change the Contract Specifications or any part of them; or
 - (iv) vary the terms of this Agreement (including any Schedule) or any Work Order; or

- (b) any other variation occurs that is stated to be subject to the Variation Procedures,

(each, a **Variation**) the parties must comply with the relevant process set out in section 3 (Variations) and section 5 (Changes in Laws, Approvals and Standards) of Schedule 6 (Work Orders and Variation Procedures).

5 Supply obligations

5.1 Scope of obligations

- (a) The Contractor must:
 - (i) perform all of the TLS Activities:
 - (A) in accordance with this Agreement, the Contract Specifications and, if applicable, the relevant Work Order;
 - (B) so as to meet or exceed the Service Levels; and
 - (C) in a manner which is consistent with the achievement of the Objectives, and the operation of a System that meets the Contract Specifications;
 - (ii) ensure that at all times the TMS Subsystem meets the Contract Specifications and is fit for its intended purpose;
 - (iii) perform its obligations in accordance with the timeframes specified in this Agreement (including any Work Order); and

- (iv) if applicable, achieve Acceptance of each Milestone under a Work Order by its relevant Milestone Date.
- (b) If something that is required to be done, supplied or procured in order to effectively maintain the TMS Subsystem in accordance with this Agreement is not expressly identified as being required to be done by the Customer in this Agreement, then that thing must be done, supplied or procured by the Contractor.
- (c) Without prejudice to paragraphs (a) and (b), and subject to anything to the contrary in the Contract Specifications or a Work Order, the Contractor must perform, and the TLS Activities include, the performance of, all tasks, activities and services required to:
 - (i) maintain the TMS Subsystem in accordance with Part D (Maintenance Services) so as to ensure that the TMS Subsystem complies with and operates in accordance with the Contract Specifications and remains fit for purpose;
 - (ii) in the case of any Asset that forms part of the TMS Subsystem, maintain that Asset so that it is in a condition consistent with or better than the Target Condition for that Asset and so as to achieve a high level of performance of the Asset;
 - (iii) maintain the TMS Subsystem so that it remains capable of achieving its Design Life;
 - (iv) provide support to the Customer in accordance with the Services Schedule;
 - (v) perform Minor Enhancements as required by the Customer in accordance with the process set out in section 2 (Work Orders for Additional Support Services) of Schedule 6 (Work Orders and Variation Procedures);
 - (vi) otherwise meet the Objectives and the Contract Specifications; and
 - (vii) comply with the Contractor's obligations, and perform such tasks, activities and services, as would be reasonably expected of, an AEO.
- (d) The Contractor must ensure that all Assets (including each component of the TMS Subsystem), Contractor's Equipment and Spares to be supplied, provisioned or used to perform the TLS Activities will, for its Design Life (in respect of an Asset) or the Term (in respect of the Contractor's Equipment and Spares):
 - (i) continue to be fully supported by the Contractor;
 - (ii) remain compatible and interoperable with the Interfacing Systems, assuming:
 - (A) where the Interfacing Systems are Subsystems, those Interfacing Subsystems continue to comply with the SSRs and ICDs for those Interfacing Systems; and
 - (B) where the Interfacing Systems are not Subsystems, those interfacing Subsystems continue to comply with the ICDs for those Interfacing Systems; and
 - (iii) subject to clause 17.3, do not become Obsolete.

- (e) Where this Agreement requires the Contractor to comply with the System Definition and Requirements, the Contractor's obligation is to:
- (i) comply with the SSRS and the parts of the ISDs that relate to works to be performed by, or otherwise impose obligations on, the Contractor; and
 - (ii) ensure that the TMS Subsystem supports, enables and is consistent with the achievement of all of the objectives and requirements contained in the following documents:
 - (A) the BRS;
 - (B) TfNSW's System Architecture Description;
 - (C) the OCD and the MCD; and
 - (D) the SRS.

5.2 All Work included

- (a) The Contractor:
- (i) warrants it has allowed for the provision of;
 - (ii) must undertake and provide; and
 - (iii) will not be entitled to make, and the Customer will not be liable upon, any Claim except as otherwise provided for in this Agreement, relating to the provision of,

any Contractor's Equipment, labour, materials and other work necessary to execute the TLS Activities, whether or not expressly mentioned in this Agreement or anticipated by the Contractor, and agrees that all such Contractor's Equipment, labour, materials and work forms part of the TLS Activities.
- (b) Omissions or misdescriptions of details or requirements relating to the TMS Subsystem or the TLS Activities which:
- (i) are customarily provided or performed in connection with, or incidental or ancillary to the provision or performance of, works and services in the nature of the provision of the TMS Subsystem and the TLS Activities;
 - (ii) are required to be performed under the ASA Charter; or
 - (iii) the Contractor knew or reasonably should have known or should have included in the TMS Subsystem or the TLS Activities,

will not relieve the Contractor from performing such omitted or mis-described details or requirements, and they must be performed as if fully and correctly set forth and described in this Agreement and the relevant Work Order and will not be considered to be a Variation.
- (c) The Contractor acknowledges that any Future Project Work must be supplied under, and in accordance with, the Delivery Agreement.

5.3 Standards of service

The Contractor:

- (a) must use and supply workmanship:
 - (i) of the standard prescribed in this Agreement, and to the extent it is not so prescribed, of a standard consistent with Industry Best Practice for work of a nature similar to the TLS Activities; and
 - (ii) which is fit for purpose;
- (b) must use and supply materials (including the Assets and Contractor's Equipment) which are:
 - (i) suitable, new (at the point at which they are first tested or supplied for use in connection with the TLS Activities) and comply with the requirements of the Agreement, and to the extent not fully described in the Agreement, which are of a standard consistent with Industry Best Practice; and
 - (ii) safe and of merchantable quality, which are fit for their purpose and consistent with the nature and character of the TLS Activities;
- (c) despite any other provision in this Agreement to the contrary, must ensure that no other services or facilities, are:
 - (i) damaged or destroyed; or
 - (ii) disconnected, disrupted, interfered with or interrupted,

by reason of the performance of the TLS Activities, without prior approval by the Customer;
- (d) must use all reasonable efforts to inform itself of the requirements of the Customer and perform the TLS Activities in accordance with those requirements where those requirements are not inconsistent with this Agreement, and regularly consult with the Customer during the performance of the TLS Activities;
- (e) must perform the TLS Activities in a manner that reduces, so far as is reasonably practicable (taking into account the Contractor's obligations under this Agreement), any risk to the Environment;
- (f) must implement a quality assurance and management system in accordance with, and otherwise perform their obligations relating to quality assurance as defined in, the PR; and
- (g) must allow the Customer access to the quality assurance and management system of the Contractor and its Subcontractors.

5.4 Collaboration

- (a) The Contractor acknowledges that both the Customer, TfNSW and certain other Rail Transport Entities have in place agreements, and may enter into further agreements, with a number of Other Contractors for the provision of goods and/or services in relation to the Program.

- (b) In order for the Customer, TfNSW and other Rail Transport Entities to receive the full benefit of the System and the Program, the Contractor must cooperate and coordinate its performance of the TLS Activities with the Customer, TfNSW, Other Contractors, any other Third Parties involved in the delivery of the Program and the Stakeholders.
- (c) The Contractor acknowledges that it is intended that the parties, together with TfNSW, the System Integrator, any actual or prospective suppliers for the Trackside Subsystem Packages, and such Key Subcontractors, Other Contractors and Stakeholders as determined by the Customer from time to time (the **Collaboration Participants**), operate under and in accordance with:
- (i) collaboration principles which set out the basis on which the Collaboration Participants will collaborate and cooperate during the Program, and which will form the basis of an agreed collaboration charter and agreed ways of working to be developed between the Collaboration Participants, TfNSW and the Customer under the Delivery Agreement; and
 - (ii) the Digital Systems Team Charter,
- (together with the agreed collaboration charter and ways of working, once developed, the **Collaboration Principles**). The version of the Collaboration Principles in force as of the Execution Date is set out in Schedule 13 (Collaboration Principles).

5.5 Information and Reliance

- (a) The Contractor acknowledges and agrees that:
- (i) no Reliance Materials have been provided to the Contractor in connection with this Agreement;
 - (ii) pursuant to clause 60 (Information and Reliance) of the Delivery Agreement, the Contractor has made certain representations and warranties and provided certain indemnities and releases with respect to the Information Documents and Materials and the Reliance Material provided to the Contractor;
 - (iii) the Customer, as a TfNSW Indemnified Person under the Delivery Agreement, has the benefit of those representations, warranties, indemnities and releases in relation to the Information Documents and Materials and Reliance Material; and
 - (iv) the Contractor is not entitled to, and waives any rights it has or may have to, bring any Claim under this Agreement, against a Customer Indemnified Person in relation to the Information Documents and Materials and Reliance Material that it would not be entitled to bring under the Delivery Agreement.
- (b) The Contractor must give the Customer reasonable advance notice if the Contractor requires any information, materials, documents or instructions from the Customer under this Agreement. The Contractor acknowledges and agrees that, unless expressly provided to the contrary in this Agreement or agreed in a Variation:

- (i) the Customer will not be obliged to provide any information, materials, documents or instructions requested by the Contractor under this clause 5.5; and
- (ii) if the Customer does not provide the relevant information, materials, documents or instructions, the Contractor will not be entitled to:
 - (A) delay the progress of any part of the TLS Activities; or
 - (B) make any Claim against the Customer.

5.6 Compliance with Directions

- (a) Subject to paragraph (c), the Contractor must comply with the Directions of the Customer.
- (b) Except where this Agreement provides otherwise (including in relation to Directions to Proceed), a Direction may be given orally. The Customer will, as soon as reasonably practicable, confirm or procure the confirmation of (where a Direction is given by another Rail Transport Entity) any oral Direction in writing where requested by the Contractor in writing to do so. For clarity, any written Direction (or any confirmation of an oral Direction in writing) will be provided to the Contractor's Representative as soon as reasonably practicable.
- (c) Where the Contractor considers that any Direction, not expressed to be a Direction to Proceed under section 4 (Directions to Proceed) of Schedule 6 (Work Orders and Variation Procedures), constitutes or involves a Variation or would otherwise entitle the Contractor to any Claim (including under or in respect of the Delivery Agreement), the Contractor must, prior to complying with the Direction and in any event within five (5) Business Days of receiving such Direction, give the Customer a notice stating that it considers the Direction to constitute or involve a Variation or otherwise entitle the Contractor to any Claim. If the Contractor issues such a notice, the Customer must:
 - (i) issue a Variation Request, requiring the Contractor to provide a Variation Proposal in accordance with section 3 (Variations) of Schedule 6 (Work Orders and Variation Procedures), in which case the Contractor must not comply with the Direction unless either the Customer has Directed it to do so in accordance with section 4 (Directions to Proceed) of Schedule 6 (Work Orders and Variation Procedures) or has approved the Variation Proposal in accordance with Schedule 6 (Work Orders and Variation Procedures);
 - (ii) confirm the Direction by issuing a Direction to Proceed in accordance with section 4 (Directions to Proceed) of Schedule 6 (Work Orders and Variation Procedures);
 - (iii) by notice to the Contractor, not accept that the Direction constitutes or involves a Variation or entitles the Contractor to any Claim, in which case the Contractor:
 - (A) must comply with the Direction; and
 - (B) will be entitled to treat such notice as an Issue for the purposes of clause 26 (Resolution of Matters); or

- (iv) withdraw the Direction, or procure the withdrawal of the Direction (where a Direction is given by another Rail Transport Entity), by notice to the Contractor.
- (d) The Contractor will not be entitled to make, and the Customer will not be liable upon, any Claim against the Customer or any Stakeholder (including under or in respect of the Delivery Agreement) arising in connection with a Direction by the Customer, including a Claim for Variation, that is not expressly identified in a notice provided by the Contractor to the Customer in accordance with paragraph (c).
- (e) Notwithstanding any provisions of the Collaboration Principles which encourage open and efficient communication, the Contractor acknowledges that no other person has the power or authority to issue Directions, make decisions or issue requests on behalf of or as agent of the Customer. If it is ever not clear as to whether or not a Direction or decision has been made by the Customer, the Contractor must consult with the Customer to resolve that matter.
- (f) Without limiting the foregoing, if there is any conflict between a Direction or notice given to the Contractor by the Customer and that given by another Rail Transport Entity, the Contractor must notify the Customer of such conflict as soon as practicable after becoming aware of it. The Customer will notify the Contractor of the resolution of the conflict as soon as practicable and the Contractor must comply with the Directions, instructions or notices specified in the Customer's notice.

5.7 Timing

- (a) The Contractor must:
 - (i) continuously and diligently progress the TLS Activities;
 - (ii) proceed with the TLS Activities with due expedition and without delay;
 - (iii) perform the TLS Activities in accordance with any timing requirements set out in this Agreement; and
 - (iv) perform the TLS Activities in accordance with any timing requirements and so as to achieve any Milestones set out in any Work Order.
- (b) Without limiting paragraph (a), the Contractor must perform the TLS Activities, within:
 - (i) the time Directed by the Customer (which must not be less than any applicable time required by the Services Schedule); or
 - (ii) if no time is Directed by the Customer, the time required by the Services Schedule; or
 - (iii) if neither paragraph (i) or (ii) applies, as soon as reasonably practicable.
- (c) Without limiting clause 46 (Suspension), the Contractor must not suspend the progress of the whole or any part of TLS Activities except where permitted or required under this Agreement.

5.8 Business Continuity and Disaster Recovery

The Contractor must comply with the business continuity and disaster recovery requirements set out in Schedule 19 (Business Continuity and Disaster Recovery).

6 Service Levels and Service Credits

6.1 Performance standards

- (a) The Contractor must perform the TLS Activities so as to meet or exceed:
 - (i) the Service Levels; and
 - (ii) any other performance standards set out in this Agreement.
- (b) The method of calculating and interpreting the Service Levels is set out in Schedule 14 (Performance Framework).
- (c) The Contractor acknowledges and agrees that the Service Levels are only one measure of the Contractor's performance under this Agreement.

6.2 Service Level Monitoring

- (a) The Contractor must monitor its own performance against the Service Levels by means of the Performance Monitoring System (subject to the Customer's right of review and audit).
- (b) The Performance Monitoring System must be capable of fulfilling the monitoring and reporting requirements set out in Schedule 14 (Performance Framework) and Schedule 20 (Reports).
- (c) In the event of an inaccuracy or incompleteness or incorrectness in the Performance Monitoring System or any performance data for, or resulting from, the Performance Monitoring System, then the Contractor must:
 - (i) correct and reissue the affected report or data and (where applicable) take steps to remedy the fault in its monitoring, measuring and reporting system; and
 - (ii) if the error has affected the amount of a Payment Event, make the appropriate adjustment to the next scheduled payment claim or, if there are no further payment claims scheduled and the adjustment amount is a deduction, the amount will be a debt due and payable from the Contractor to the Customer.
- (d) If any fraud or intentionally false, misleading or deceptive reporting is discovered, this will constitute a Material Breach.

6.3 Service Credits

- (a) The parties acknowledge and agree that:
 - (i) failure to achieve any Service Levels may entitle the Customer to a Service Credit (by way of credit or rebate, at the Customer's sole and absolute

- discretion) in accordance with the process set out in Schedule 14 (Performance Framework);
- (ii) the Service Credits are intended to reflect the anticipated diminution in the value of the TLS Activities in the event that the Service Levels are not achieved;
 - (iii) the Service Credits:
 - (A) do not reflect any potential Loss or Claim (other than anticipated diminution in value of the TLS Activities) which may arise from or in connection with any failure to achieve the Service Levels;
 - (B) operate as a reduction in the Fees; and
 - (C) are not intended to apply as liquidated damages or as a penalty;
 - (iv) each of the parties require a formula for the calculation of that diminished value that is able to be readily applied without unnecessary administrative costs, delay or difficulty; and
 - (v) there are many and varied matters which form part of the diminished value which the Customer may suffer, many of which are difficult or impossible to calculate with precision.
- (b) To the extent permissible, the Contractor excludes and expressly waives any right of the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of the Service Credits as penalties, or the enforceability or recoverability of the Service Credits.
- (c) The Service Credits do not limit any rights or remedies available to the Customer at Law for the Contractor's failure to meet the Service Levels (including damages and the right to terminate this Agreement), and the liability of the Contractor in respect of any Loss or Claim which may arise out of or in connection with any failure to achieve the Service Levels is not affected, reduced or otherwise limited to or by the Service Credits.

7 TLS Delivery Work

7.1 Scope

This clause 7 applies where the Contractor is required to perform delivery-related work as part of the TLS Activities (for example, when performing Additional Support Services such as Minor Enhancements, or implementing Updates).

7.2 Design

If the Contractor is required to:

- (a) conduct Design Activities; and /or
- (b) develop Design Documentation,

then the Contractor must conduct those Design Activities / develop those Design Documents in accordance with Schedule 8 (Design Activities), and so that once developed and implemented they meet the requirements of this Agreement, including the:

- (c) Design Development Requirements;
- (d) Contract Specifications; and
- (e) requirements of any Work Order under which those Design Activities are being performed or Design Documents are being supplied.

7.3 Verification

If the Contractor is required to conduct Verification Activities, then the Contractor must conduct those Verification Activities in accordance with Schedule 9 (Verification).

7.4 Acceptance

If the Contractor is required to present any Asset for Acceptance, or the Contractor must achieve Acceptance of any Milestone under a Work Order, then the Contractor must do so in accordance with Schedule 10 (Acceptance).

7.5 CCB Gates

- (a) Where relevant, the Customer is responsible for submitting to the ASA the documents required for any Asset or Milestone to achieve any CCB Gate and for obtaining the relevant Configuration Change Notice.
- (b) The Contractor must:
 - (i) deliver to the Customer all documentation and other inputs required for the Asset or Milestone to achieve any CCB Gate within the timeframes required under a Work Order or the PR;
 - (ii) make any necessary changes to, and prepare, the Design Documentation or other documentation requested by the Customer in order to achieve a CCN; and
 - (iii) provide to the Customer all assistance reasonably requested in relation to the preparation of documentation for a CCB Gate.

8 Document Deliverables

8.1 Obligation to develop and supply Document Deliverables

- (a) If the Contractor is required to develop, supply or update any Document Deliverables, the Contractor must develop the Document Deliverables in accordance with this clause 8 and so that once developed or updated and implemented they meet the requirements of this Agreement, including:
 - (i) the Contract Specifications;
 - (ii) the requirements in any Work Order under which the Document Deliverable is being developed, supplied or updated; and

- (iii) any Direction to Proceed.
- (b) The Contractor acknowledges that the Document Deliverables will be developed or updated through a consultative, progressive and staged process that will:
 - (i) involve, amongst other things, consultation between Stakeholders, the Contractor, Other Contractors and the Customer; and
 - (ii) enable the Customer, Stakeholders and Other Contractors to review and comment on relevant aspects of the Document Deliverables as they are developed or updated.

8.2 Review Procedures

If the Document Deliverables developed, supplied or updated by the Contractor are Document Deliverables which must be submitted for Review under this Agreement (as defined in section 1 (General) of Schedule 7 (Review Procedures), the Contractor must, in addition to its obligations under this clause 8, comply with its obligations under Schedule 7 (Review Procedures) with respect to those Document Deliverables.

8.3 Project Plans

- (a) The intended purpose of the Project Plans includes:
 - (i) in respect of Project Plans to be developed or updated by the Contractor, to demonstrate to the Customer that the Contractor has the understanding, capacity and capability at all times to perform the TLS Activities safely and in accordance with the requirements of this Agreement;
 - (ii) to help ensure that the TMS Subsystem complies with the requirements of this Agreement;
 - (iii) to help define responsibilities, resources and processes for planning, performing and verifying that the TLS Activities satisfy the requirements of this Agreement; and
 - (iv) to help allow the Customer to understand how the Contractor will achieve the performance outcomes and objectives specified in this Agreement and otherwise fulfil its obligations under this Agreement.
- (b) The Contractor acknowledges that it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the Project Plans in performing the TLS Activities and that such use and reliance will not affect any of its obligations under this Agreement.
- (c) Without limiting any requirements set out elsewhere in this Agreement, the Contractor must keep the Project Plans up-to-date in accordance with and at the times specified in the PR, or where no timeframe is specified, at such times as required by the Customer from time to time.
- (d) Without limiting any other provision of this Agreement, the Contractor:
 - (i) subject to paragraph (ii), must implement and comply with, and ensure that the Subcontractors comply with, the Project Plans; and
 - (ii) must:

- (A) implement and comply with each Project Plan; and
 - (B) not use any plan unless it is a Project Plan,
- which is a Confirmed Document.

8.4 Project Plans developed under the Delivery Agreement

- (a) The Contractor acknowledges that it developed the Project Plans pursuant to the requirements of the Delivery Agreement.
- (b) The Customer acknowledges and agrees that, as at the Commencement Date, each Project Plan which is a Confirmed Document for the purposes of the Delivery Agreement is a Confirmed Document for the purposes of this Agreement.

8.5 Reports

The Contractor must provide to the Customer each of the Reports in accordance with and at the times specified in this Agreement, including the PR, Schedule 14 (Performance Framework), Schedule 20 (Reports) or the Services Schedule, or where no timeframe is specified, monthly.

8.6 Updating of Document Deliverables

- (a) The Contractor must:
 - (i) review and, if necessary, update each Document Deliverable to take account of events or circumstances which will, or may, affect the TLS Activities relevant to the Document Deliverable, including:
 - (A) where the correction of Defects in Assets necessitates an amendment to any Document Deliverable;
 - (B) if the Customer notifies the Contractor that any Document Deliverable does not comply with the requirements of this Agreement;
 - (C) Work Orders;
 - (D) any Variations, Enhancements, Updates or Upgrades; and
 - (E) Changes in Law, Changes in Standards or Changes in Approvals (where the Contractor is required to implement and comply with the Change in Law, Change in Standard or Change in Approval (as applicable) in accordance with section 5 (Changes in Laws, Approvals and Standards) of Schedule 6 (Work Orders and Variation Procedures));
 - (ii) promptly submit each updated Document Deliverable to the Customer for Review in accordance with the requirements under Schedule 7 (Review Procedures);
 - (iii) except as agreed in a Variation, or as required to ensure that the Document Deliverable is consistent with this Agreement, not update any Document Deliverable in a manner which:

- (A) makes any Rail Transport Entity's, any Stakeholder's or any Other Contractor's obligations, responsibilities or activities in connection with the Program more onerous or more costly; or
 - (B) increases any liability or potential liability of any Customer Indemnified Person in connection with the Program; and
- (iv) unless agreed otherwise with the Customer, ensure that any updated Document Deliverables:
- (A) impose standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
 - (B) provide an equal or greater level of detail than,

the previous versions of the Document Deliverables.
- (b) If, at any time:
- (i) any Document Deliverable does not comply with the requirements of this Agreement; or
 - (ii) the Contractor has not updated any Document Deliverable in accordance with the requirements of paragraph (a),
- then the Customer may by notice request that the Contractor amend or update the Document Deliverable specifying the:
- (iii) reasons why the Contractor must update the Document Deliverable (or why the Document Deliverable does not comply with this Agreement); and
 - (iv) time within which the Contractor must update the Document Deliverable (which must be reasonable, having regard to the amount of work required),
- and the Contractor must:
- (v) amend or update the Document Deliverable as requested by the Customer to comply with the requirements of this Agreement; and
 - (vi) submit the amended or updated Document Deliverable to the Customer for Review within the time specified under paragraph (iv).

8.7 Copies of Document Deliverables

- (a) The Contractor must, for the purpose of enabling the proper use of any Works or Assets, provide to the Customer at least one soft copy of the Document Deliverables via the Customer's chosen collaboration and document management tool as notified to the Contractor from time to time.
- (b) All Document Deliverables must be:
 - (i) in fully text searchable computer readable form (or in such other form as agreed with the Customer from time to time) and without any security restrictions;
 - (ii) written in the English language;

- (iii) of a reasonable standard in terms of its presentation, accuracy and scope; and
 - (iv) the most current and up-to-date version available.
- (c) If, for any reason, the Contractor replaces, amends or updates any Document Deliverable, the Contractor must provide free to the Customer such number of copies of the replaced, amended or updated Document Deliverable (or the amendments to the Document Deliverable) as is necessary to update the Customer's existing Document Deliverables within twenty (20) Business Days (or within a shorter period as reasonably specified by the Customer) of the replacement, amendment or update.

9 Sites

9.1 Delivery Locations

- (a) The Contractor must not, without the Customer's prior consent:
- (i) perform any of the TLS Activities from, at or in any locations other than the Delivery Locations; or
 - (ii) allow a Key Person to perform any of the TLS Activities from, at or in any locations other than the Delivery Locations for which the relevant Key Person is approved to perform the TLS Activities.
- (b) For the purposes of paragraph (a), the Delivery Locations include those Rail Transport Entity Sites, as advised by the Customer from time to time, where Contractor Personnel are co-located with Customer Personnel for the purposes of performing the TLS Activities.
- (c) If the Contractor wishes to obtain the Customer's consent to perform any of the TLS Activities from any locations other than the Delivery Locations, or to change the Delivery Location from where a Key Person is approved to perform the TLS Activities, the Contractor must:
- (i) provide the Customer with any information that the Customer reasonably requires in order to assess the proposed location; and
 - (ii) co-operate with the Customer or any Government Authority in relation to any information requested by the Customer or that Government Authority as to the nature and operations of any proposed location.
- (d) The Contractor must, prior to, during and after the implementation of any change in Delivery Location, work with the Customer to mitigate any risks to the Customer relating to the performance of the relevant TLS Activities from the Delivery Location.

9.2 Co-location

The Contractor must co-locate (including at Rail Transport Entity Sites) with Customer Personnel and the personnel of Other Contractors, such Contractor Personnel as are required by the Services Schedule or in a Work Order.

9.3 Location requirements

Without limiting any other provision of this Agreement:

- (a) all facilities and accommodation provided by the Customer to the Contractor are only to be used by the Contractor for the purpose of performing the TLS Activities under this Agreement;
- (b) all furnishings provided by the Customer to the Contractor will be standard furnishings (e.g. desks, chairs, file cabinets, desk phone and similar items) of the same quality and number that it normally provides to its staff; and
- (c) the Contractor must provide all the equipment needed to perform the TLS Activities, including mobile phones and desktop or laptop computers for all Contractor Personnel.

9.4 Access by the Contractor to Rail Transport Entity Sites

- (a) At least twenty (20) Business Days (or such longer period as may be required under this Agreement or any Customer Policy with respect to particular Delivery Locations) prior to commencing work on, or requiring access to, a Rail Transport Entity Site (or such other period of time as the Customer may agree), the Contractor must:
 - (i) notify the Customer of the date the Contractor proposes to commence such work or require such access and the expected duration of the work on, or access to, that Rail Transport Entity Site; and
 - (ii) unconditionally deliver to the Customer an access indemnity in substantially (as determined by the Customer) the form of Schedule 32 (Form of Access Indemnity) (**Access Indemnity**), fully executed by the Contractor.
- (b) The Contractor may only access Rail Transport Entity Sites as reflected in the relevant Work Order, a Direction or the Services Schedule.

9.5 Conditions of access

- (a) The Contractor must:
 - (i) only access a Rail Transport Entity Site for the purposes approved in advance by the Customer;
 - (ii) obtain all necessary Approvals and consents (excluding those Approvals the Customer is required to obtain) prior to performing work on a Rail Transport Entity Site, including any Approvals specific to a particular Rail Transport Entity;
 - (iii) comply with all Approvals and consents applicable to a Rail Transport Entity Site to which the Contractor seeks or has access (provided that in the case of Approvals and consents obtained by the Customer, the Contractor is notified, or otherwise aware, of the conditions applicable to those Approvals or consents);
 - (iv) comply with the access requirements relating to that Rail Transport Entity Site, as notified to it by the relevant Rail Transport Entity from time to time;

- (v) comply with any workplace, health and safety rules or requirements of the relevant Rail Transport Entity;
 - (vi) comply with all reasonable requirements of the relevant Rail Transport Entity;
 - (vii) where it has Control of a Rail Transport Entity Site, control access to, and ensure public safety on, all or such part (as the case may be) of the Rail Transport Entity Site (as applicable);
 - (viii) not contact any of the Rail Transport Entities (other than the Customer or TfNSW) without prior approval from the Customer, unless otherwise expressly permitted by this Agreement;
 - (ix) ensure the TLS Activities are performed safely so as to protect persons and property and to avoid causing destruction or damage to property or harm to persons; and
 - (x) comply with all other conditions of access set out in the Services Schedule, a Direction or a Work Order.
- (b) The Contractor acknowledges and agrees that:
- (i) it may not be given exclusive access to any of the Rail Transport Entity Sites;
 - (ii) a Rail Transport Entity is not obliged to carry out any work or provide any facilities to the Contractor (other than as stated in this Agreement) which may be necessary to enable the Contractor to obtain adequate access to perform the TLS Activities;
 - (iii) a Rail Transport Entity may engage other contractors or consultants to perform other work on the Rail Transport Entity Sites;
 - (iv) a Rail Transport Entity may remove any unauthorised person from the Rail Transport Entity Sites at any time; and
 - (v) the Rail Transport Entity Sites are areas where the Rail Transport Entities carry on their business and the Contractor is not entitled to make a Claim for any delay or disruption to the Contractor (including a claim for compensation) caused by a Rail Transport Entity carrying on business on that Rail Transport Entity Site.
- (c) The Contractor:
- (i) must make good any damage to the Rail Transport Entity Sites caused by any act or omission of the Contractor or its Associates; and
 - (ii) indemnifies and must keep the Customer Indemnified Persons indemnified against any Loss or Claim suffered or incurred as a result of, or in connection with, any adverse effect or interference resulting from a breach of this clause 9.5 or any other act or omission of the Contractor or its Associates. The Contractor must promptly notify the Customer of any such adverse effect or interference.

- (d) Without limiting any other obligation under this Agreement, the Contractor must notify the Customer immediately upon it becoming aware of any actual or suspected security breach or Security Event:
 - (i) at a Delivery Location; or
 - (ii) related to or affecting the Works, the Assets, the TMS Subsystem, the System or the Program.

9.6 Working areas at Rail Transport Entity Sites

- (a) The Contractor acknowledges and agrees that working areas, and areas for the stacking or storage of Contractor's Equipment, at Rail Transport Entity Sites may be nominated by the relevant Rail Transport Entity from time to time. The Contractor must not perform work, or permit the Contractor's Equipment to be stacked or stored, outside of the areas so nominated.
- (b) The Contractor must arrange and place all the Contractor's Equipment at a Rail Transport Entity Site in positions approved by the relevant Rail Transport Entity.
- (c) The Rail Transport Entities will not be responsible for the safe-keeping of any of the Contractor's Equipment. The Contractor may provide any security measures it considers necessary to ensure the safe-keeping of any of the Contractor's Equipment at a Rail Transport Entity Site, subject to the relevant Rail Transport Entity's approval.
- (d) The Rail Transport Entities may check the contents of Contractor vehicles and vessels entering or leaving a Rail Transport Entity Site.
- (e) The Contractor must keep all working areas, and areas for the stacking or storage of the Contractor's Equipment, at a Rail Transport Entity Site clean and tidy and free of refuse, and must clean up no less often than at the end of each day.
- (f) Without limiting any of the Contractor's other obligations under this Agreement, the Contractor must take all reasonable precautions to prevent loss of or damage to:
 - (i) the Customer Sites and Rail Transport Entity Sites; and
 - (ii) any other sites at which the Contractor is performing the TLS Activities, resulting from theft, misuse or vandalism by any person.

9.7 Customer's Right to Access

- (a) Subject to clauses 9.8 (Access by Customer to Contractor Sites) and 9.9 (Customer not in Control), the Contractor must:
 - (i) manage the TLS Activities to ensure that any interference or inconvenience to the business of the Rail Transport Entities and Stakeholders are kept to an absolute minimum, and comply with any Direction of the Customer in respect of such management;
 - (ii) ensure the TLS Activities are performed so that there is no legal nuisance and minimal disturbance and inconvenience is caused to owners, users, tenants or occupiers of the Delivery Locations and land adjoining the Rail

Transport Entity Site, or use by the public, of the Delivery Location or land adjoining the Rail Transport Entity Site;

- (iii) minimise disruption or inconvenience to others having a right of access to the Delivery Location or any other land or buildings above or adjacent to the Delivery Locations; and
 - (iv) at all times give the Customer and any person authorised by the Customer access to the Delivery Locations.
- (b) The Contractor must ensure that any person to whom the Contractor gives access complies with the requirements of this clause 9.

9.8 Access by Customer to Contractor Sites

- (a) The Customer and any person authorised by the Customer may, at any time after reasonable notice to the Contractor, have access to any part of the Contractor Sites for any purpose related to the Program, subject to normal safety and security constraints as notified by the Contractor to the Customer.
- (b) The Customer must ensure that the Contractor is not impeded in performing the TLS Activities while exercising its right of access under this clause 9.8.

9.9 Customer not in Control

The Contractor and the Customer acknowledge that nothing in this Agreement will be construed to mean or imply that the Customer has any:

- (a) management or control over the TLS Activities or Control over the Contractor Sites; or
- (b) responsibility for any act or omission by the Contractor or its Subcontractors or agents in relation to a Delivery Location, including compliance or non-compliance with any relevant Mandatory Requirements, Approvals or this Agreement.

9.10 Contractor's Equipment and Materials Removal

The Contractor must not remove from the Delivery Locations any:

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

without the prior written approval of the Customer, which approval must not be unreasonably withheld.

Part C Supply of Assets

10 Supply of Assets

If the Contractor is required to supply any Assets under this Agreement (including under a Work Order), those Assets must be supplied in accordance with this Agreement, including:

- (a) clause 5 (Supply obligations);
 - (b) this Part C;
 - (c) the Contract Specifications;
 - (d) the Services Schedule; and
 - (e) the relevant Work Order.
-

11 Customer Supplied Items

The Contractor:

- (a) agrees that, in respect of Supplied Items, the Contractor:
 - (i) warrants that it has reviewed the Contract Specifications and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Supplied Items and is satisfied that they satisfy, and will allow the Contractor to satisfy, the requirements of this Agreement;
 - (ii) will not be entitled to make, and the Customer will not be liable upon, any Claim arising out of, or in connection with, any Supplied Item, including any claim for an Excusable Event; and
 - (iii) is not relieved from and remains liable for complying with, all of its obligations under this Agreement, despite the Customer making available the Supplied Items;
 - (b) agrees, in respect of Supplied Items, the *Sale of Goods Act 1923* (NSW) does not apply and the Customer makes no representation as to the quality, performance, merchantability or fitness of the Supplied Items;
 - (c) must at its own risk transport each Supplied Item to the Delivery Locations; and
 - (d) must, where required under the Services Schedule or a Work Order, incorporate each Supplied Item into the Works as part of the TLS Activities.
-

12 Title and risk

12.1 Ownership and title

- (a) Subject to paragraphs (b) and (d) and clause 29 (Intellectual Property):

- (i) TAHE owns the Network and NSW Rail Assets, including those in respect of which the TLS Activities will be provided by the Contractor; and
 - (ii) to the extent ownership of Assets supplied by the Contractor under this Agreement does not vest automatically with TAHE, the Customer will own all Assets, with the intent that ownership will then be vested in TAHE.
- (b) Title to and property in all Assets will vest (free of all Security Interests and Third Party rights) progressively in the Customer or TAHE (as applicable) on the earlier of:
- (i) payment for;
 - (ii) delivery to a Rail Transport Entity Site of; and
 - (iii) installation on the Network or in the TMS Subsystem of,
- such items in accordance with this Agreement.
- (c) If the Contractor adds to, or replaces, any Asset (including use of the Contractor's TLS Spares Inventory), title to and property in the added or replaced Asset will vest in the Customer free of Security Interests and Third Party rights upon the earlier of delivery or installation.
- (d) This clause 12.1 does not apply to Software or Assigned IP.

12.2 Risk

- (a) Risk in:
- (i) the Assets remains with the Contractor until the earlier of:
 - (A) installation on the Network (except for Spares); and
 - (B) otherwise, delivery by the Contractor of the Assets into the actual care, custody and control of the Customer or a Rail Transport Entity,and reverts to the Contractor immediately upon the Assets coming into the care, custody or control of the Contractor, including:
 - (C) under any clause of this Agreement dealing with the rectification of Defects; or
 - (D) under any clause of this Agreement dealing with the maintenance or support of the Assets,while any such activities are being carried out, until such time as the Assets are returned into the care, custody and control of the Customer; and
 - (ii) the Supplied Items passes to the Contractor upon delivery or collection of the Supplied Items to or by the Contractor and remains with the Contractor until such time as the Supplied Items are returned into the care, custody and control of a Rail Transport Entity, an Other Contractor or an Interface Contractor (as applicable).
- (b) The Contractor:

- (i) without prejudice to its general obligations with respect to insurance as set out in clause 54 (Insurance), is responsible for the insurance of the Supplied Items and Assets whilst it has risk in those items;
- (ii) must take all reasonable precautions to prevent loss of or damage to the Supplied Items and Assets, including as may result from theft, misuse or vandalism, when the Contractor has care, custody and/or control of them for the purposes of the TLS Activities;
- (iii) must provide safe storage and protection for the Supplied Items and Assets when the Contractor has care, custody and/or control of them for the purposes of the TLS Activities; and
- (iv) indemnifies and must keep indemnified the Customer Indemnified Persons against any loss of or damage to the Supplied Items and Assets which occurs or is caused whilst the risk in those things is with the Contractor, including in accordance with this clause 12.2.

12.3 Damage and reinstatement

- (a) Without prejudice to any other provisions of this Agreement, including clause 5.8 (Business Continuity and Disaster Recovery) and Schedule 19 (Business Continuity and Disaster Recovery), if any destruction, loss or damage occurs to any thing which by virtue of clause 12.2 (Risk):
 - (i) is at the risk of the Contractor; or
 - (ii) the risk has passed to the Customer, where the destruction, loss or damage is caused by an act or omission of the Contractor or any of its Associates,then, the Contractor must:
 - (iii) continue to comply with this Agreement;
 - (iv) promptly provide notice to the Customer of any material destruction, loss or damage and any required repair, replacement, reinstatement or remediation and the action being taken including the estimated time that action will take;
 - (v) consult with the Customer about the programming of any works needed to effect the relevant repair, replacement, reinstatement or remediation;
 - (vi) promptly repair, replace, reinstate or remedy the destruction, loss or damage or, where the Customer elects to do so itself or to engage a Third Party to do so, reimburse the Customer for its and any Third Party's costs and expenses to repair, replace, reinstate or remedy the destruction, loss or damage;
 - (vii) keep the Customer informed of the progress of any repair, replacement, reinstatement or remediation activities; and
 - (viii) without limiting any of the foregoing paragraphs, apply all proceeds received pursuant to any related insurance claims towards the cost of repair, replacement, reinstatement or remediation. For the avoidance of doubt, the Contractor's failure to claim in respect of such destruction, loss or damage under the Contractor Insurance Policies shall not constitute a waiver of the Contractor's liability in respect of such things.

- (b) Subject to paragraph (c), for the avoidance of doubt, any replacement, making good or repair of an Asset or the Works required under paragraph (a)(vi) constitutes Works for the purposes of this Agreement, and no additional amounts are, or will be, payable by the Customer in respect of those Works other than the Fees.
- (c) Where the destruction, loss or damage contemplated by paragraph (a)(i) arises from an Excepted Risk:
 - (i) the Contractor must only comply with paragraph (a)(vi) and (a)(vii) to the extent Directed by the Customer; and
 - (ii) any such replacement, making good or repair of an Asset or Works under paragraph (a)(vi) will be treated as if it were a Variation the subject of a Direction by the Customer.

12.4 Loss or damage to third party property

Without limiting any of the Contractor's other obligations or any rights or remedies of any Customer Indemnified Person:

- (a) where any loss of or damage to real or personal property occurs arising out of, or in connection with, the carrying out by the Contractor of the TLS Activities or a failure by the Contractor to comply with its obligations under this Agreement, the Contractor must promptly repair any such loss or damage;
- (b) if the Contractor fails to carry out any repair work under paragraph (a), the Customer may carry out such work and all costs, losses and damages so suffered or incurred by the Customer will be a debt due and payable from the Contractor to the Customer; and
- (c) the Contractor must immediately notify the Customer upon receipt of any letter of demand or notice of claim from or on behalf of any Third Party or any writ, summons, proceedings, impending prosecution or inquest and immediately forward a copy of any such documents to the Customer.

13 Spares

13.1 Obligation to supply

- (a) The Contractor must supply and manage the procurement of Spares as Directed by the Customer and otherwise in accordance with this Agreement, and assist the Customer with the use, maintenance, refurbishment and replacement of Spares, required to ensure that:
 - (i) the Customer is able to maintain the TMS Subsystem; and
 - (ii) the Contractor is able to perform the TLS Activities,in accordance with the Asset Management System and this Agreement.
- (b) All Spares provided under this Agreement must be:

- (i) new or refurbished (provided that where they are refurbished, they are of equivalent quality as if they were new and continue to comply with the Contract Specifications);
- (ii) subject to clause 17.3, functionally compatible with the replaced model and version of those components installed for use on the Network where, unless otherwise agreed by the Customer, the Contractor has ratified and tested that functionally compatible Spare for local compatibility with the Customer's instance of the TMS Subsystem; and
- (iii) fit for purpose and otherwise comply with the requirements of this Agreement.

13.2 Management of inventory

- (a) The Contractor must ensure that the Spares and Consumables Strategy is continuously updated and re-submitted for Review in accordance with the PR to include details of the minimum stock of Spares required to be held:
 - (i) by the Contractor for the performance of the TLS Activities in all Deployment Areas awarded to the Contractor; and
 - (ii) by the Customer for the maintenance of the TMS Subsystem (the **Customer's Maintenance Spares Inventory**).
- (b) The Contractor must establish and maintain an inventory of Spares (the **Contractor's TLS Spares Inventory**):
 - (i) sufficient for the Contractor to meet its obligations under this Agreement, including:
 - (A) replenishing the Customer's Maintenance Spares Inventory; and
 - (B) performing the TLS Activities in accordance with the Services Schedule; and
 - (ii) in accordance with the Asset Management Plan and the Confirmed Spares and Consumables Strategy and otherwise to ensure it complies with its warranties and requirements in respect of Obsolescence,

at the Rail Transport Entity Sites in metropolitan Sydney nominated by the Customer.
- (c) The Contractor must:
 - (i) deliver replacement Spares to the Customer at Rail Transport Entity Sites in metropolitan Sydney nominated by the Customer to maintain the Customer's Maintenance Spares Inventory within the Asset replacement timescales set out in the Services Schedule or in the agreed Schedule of Rates;
 - (ii) ensure all Spares used in the performance of the TLS Activities are, to the extent relevant, used, tested, commissioned, maintained and overhauled in accordance with the Asset Management Plan and the Spares and Consumables Strategy; and

- (iii) comply with the Asset Management Plan in respect of the programmed replacement of end of life Assets, including by providing the Customer with advice on the current technological landscape and best options for replacement of that Asset.
 - (d) The Contractor bears all risk in relation to the availability, cost, quality, functionality, delivery, integration, fitness for purpose, Obsolescence and maintenance of Spares which are in the care, custody or control of the Contractor.
 - (e) Without limiting paragraph (c) or clause 27.2 (Audit and Inspection), if at any time the Customer's Maintenance Spares Inventory is not at the levels required by this Agreement or not available to the Contractor:
 - (i) the Contractor must promptly notify the Customer; and
 - (ii) except for where a Spare is required as a result of an Excepted Risk in circumstances where risk in the Asset is with the Customer under clause 12.2, the Contractor must, at the Customer's option either:
 - (A) restock such inventory to the levels required at no expense to the Customer; or
 - (B) pay to the Customer an amount equal to the cost of restocking such inventory to the levels required, such amount to be a reduction in the Fees payable by the Customer,
- within ten (10) Business Days (or such other period of time as the parties may agree) after receiving the Customer's notice.

13.3 Title

Title to and property in the Spares shall vest (free of all Security Interests and Third Party rights) progressively in the Customer on delivery of the Spares in accordance with this Agreement.

14 Asset Register

- (a) The Contractor must maintain an Asset Register that complies with the PR.
- (b) The Contractor must provide access to or a copy of the Asset Register required under paragraph (a) on request by the Customer.
- (c) The Contractor must, as part of the delivery of Assets under this Agreement, tag and scan all Assets in accordance with the process and requirements reasonably nominated by the Customer.

15 Asset Condition

15.1 Asset Condition Assessment

- (a) The Contractor must conduct regular Asset Condition Assessments, and report to the Customer on the results of those Asset Condition Assessments, in accordance with the PR.

- (b) The parties must meet annually, within three (3) months of the end of each Year, to review the Contractor's compliance with the Maintenance Works Program during the previous Year.

15.2 Asset Management Failures

- (a) An Asset Management Failure will occur if:
 - (i) the Contractor fails to comply with the Maintenance Works Program; and
 - (ii) in the Customer's reasonable opinion, the Contractor's failure to comply with the Maintenance Works Program constitutes a material non-compliance with the Asset Management Plan.
- (b) If an Asset Management Failure occurs the Customer may give the Contractor a notice stating the nature of the Asset Management Failure.
- (c) The Contractor must remedy the Asset Management Failure within:
 - (i) three (3) months of the date on which the notice referred to in paragraph (b) is issued; or
 - (ii) such other period agreed, in writing, between the parties,
(the **Remediation Period**).

15.3 Condition Audit

- (a) Without limiting the Customer's audit rights under clause 27.2 (Audit and Inspection), Customer's Representative may nominate an independent expert (**Condition Auditor**) to carry out an audit of the Assets under this clause 15.3.
- (b) The Condition Auditor must be:
 - (i) chosen by agreement, in writing, between the parties; or
 - (ii) if the parties cannot agree on the person to be appointed within twenty (20) Business Days of a nomination by the Customer, nominated by the President of Engineers Australia on request in writing by the Customer.
- (c) Customer's Representative must:
 - (i) notify the Contractor at least ten (10) Business Days in advance of its proposed inspection program for carrying out the Condition Audit and specify the Assets that will be the subject of the Condition Audit (**Audit Assets**); and
 - (ii) consider in good faith any reasonable request by the Contractor for the Condition Audit to be carried out according to a different program.
- (d) The Condition Auditor will inspect and assess the Audit Assets and notify the Customer and the Contractor of:
 - (i) whether the Audit Assets have been and are being maintained by the Contractor in accordance with this Agreement;

- (ii) any rectification, maintenance and remediation works required to be carried out by the Contractor to bring the condition of the Audit Assets to the Target Condition; and
 - (iii) the estimated cost (without double counting) of carrying out those works (**Estimated Rectification Cost**).
- (e) The Contractor must, at its cost, cooperate with the Condition Auditor and provide the Condition Auditor with any reasonable assistance required by the Condition Auditor.
- (f) The cost of the Condition Audit will be borne by the Customer.

15.4 Target Condition

The Target Condition for Assets at any given time is the condition the Asset should or ought to be in if the parties had complied with all of their obligations under this Agreement.

15.5 Rectification work

The Contractor must carry out any required rectification, maintenance and remediation work notified pursuant to clause 15.3(d)(iii):

- (a) to the satisfaction of the Condition Auditor and the Customer;
- (b) in accordance with all applicable Mandatory Requirements; and
- (c) so as to satisfy all other requirements applicable to the Assets under this Agreement.

16 PPSA

16.1 PPSA undertakings

- (a) If this Agreement and the transactions contemplated by it, operate as, or give rise to, a Security Interest in favour of a Rail Transport Entity:
 - (i) the Contractor must promptly do anything (including amending this Agreement or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that Rail Transport Entity considers necessary under or as a result of the PPSA for the purposes of:
 - (A) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under the PPSA;
 - (B) ensuring that the Security Interest is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a Third Party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA;

- (C) enabling that Rail Transport Entity to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (D) enabling that Rail Transport Entity to exercise rights in connection with the Security Interest and this Agreement;
 - (ii) that Rail Transport Entity's Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly, from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this Agreement;
 - (iii) the Contractor must not without the relevant Rail Transport Entity's prior consent, create, purport or attempt to create, or permit to exist any other Security Interest, however ranking over the collateral; and
 - (iv) the Contractor covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person to whom a Rail Transport Entity assigns some or all of its rights under a Transaction Document should have the benefit of this covenant.
- (b) The Contractor agrees that it will bear all costs and expenses:
- (i) that it incurs to comply with paragraph (a); and
 - (ii) incurred by a Rail Transport Entity for the purposes set out in paragraph (a).
- (c) If Chapter 4 of the PPSA applies to the enforcement of the Security Interest the Contractor agrees that:
- (i) sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA will not apply to the enforcement of the Security Interest; and
 - (ii) the application of Part 4.2 of the PPSA is contracted out of if that part would apply by virtue of section 116(2) of the PPSA.
- (d) The Contractor:
- (i) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPSA in respect of the Security Interest; and
 - (ii) undertakes it will not register a financing change statement without the prior written consent of the Customer.
- (e) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement within the meaning of the PPSA.
- (f) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

16.2 PPSA procedures

- (a) Without limiting clause 16.1 (PPSA undertakings), if the Contractor holds any Security Interests in the Assets for the purposes of the PPSA by reason of entering into any supply or other arrangements with a Subcontractor, the Contractor agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that the Contractor takes all steps to identify Security Interests in its favour and under the PPSA to perfect continuously any such Security Interest including all steps necessary:
 - (i) for the Contractor to obtain the highest ranking priority possible in respect of the Security Interest (such as perfecting a purchase money security interest (as defined in the PPSA) or perfecting a Security Interest by control); and
 - (ii) to reduce as far as possible the risk of a Third Party acquiring an interest free of the Security Interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).
- (b) If requested by the Customer, the Contractor must arrange at its expense an audit of the above PPSA procedures and provide the results of that audit to the Customer.

16.3 PPSA warranties and indemnities

- (a) To the extent the PPSA applies to any goods, materials or other items supplied by the Contractor to the Customer, the Contractor warrants that the supply of goods, materials or other items to the Customer:
 - (i) does not breach any security agreement the Contractor has with a Third Party; and
 - (ii) is within the ordinary course of the Contractor's business.
- (b) The Contractor indemnifies and must keep indemnified the Customer Indemnified Persons against any Claims against, or Losses suffered or incurred by a Customer Indemnified Person directly or indirectly in connection with any infringement of, or Claim in regard to, any Third Party security agreement or Security Interest under the PPSA arising as a result of:
 - (i) the Contractor carrying out the TLS Activities; or
 - (ii) goods, materials or other items supplied to the Customer by the Contractor infringing that Third Party's rights under the PPSA.

Part D Maintenance Services

17 Technology currency

17.1 Updates and Upgrades

- (a) As part of the TLS Activities, the Contractor must make available to the Customer any Updates and Upgrades at the same time that the Contractor makes those Updates and Upgrades generally available to its customers. The right to access and receive Updates and Upgrades is covered by the TMS Software Maintenance Charge in Schedule 15B (Resource Unit Definitions).
- (b) Nothing in this Agreement requires the Customer to implement or adopt any Updates or Upgrades. Any failure or delay in the Customer adopting any Updates in no way diminishes or reduces the Contractor's obligations (including its obligations under Schedule 14 (Performance Framework)) or warranties under this Agreement or the Delivery Agreement.
- (c) If the Customer chooses to implement an Update or Upgrade, then, unless the implementation of such Update or Upgrade forms part of the TLS Activities contemplated by Schedule 5 (Services Schedules), the Contractor must:
 - (i) for an Upgrade, submit a SOW Proposal under the Delivery Agreement for the implementation of the Upgrade as Future Project Work (as defined in the Delivery Agreement); and
 - (ii) for an Update, submit a Work Order Proposal under Schedule 6 (Work Orders and Variation Procedures) for the implementation of the Update as Additional Support Services,

however the implementation of all Updates must be at no additional cost or charge to the Customer or TfNSW (and is covered by the Base Care Fees under Schedule 15 (Pricing Terms)).

17.2 End of Life

- (a) The Contractor must perform all activities (including testing) necessary to replace any component of the TMS Subsystem that becomes end of life before the end of the Design Life for the TMS Subsystem.
- (b) Without limiting paragraph (a), if any component of the TMS Subsystem becomes end of life prior to the expiry of the Design Life for the TMS Subsystem, the Contractor must:
 - (i) supply a replacement and, where requested by the Customer, perform such Works as are required to remove that end of life component of the TMS Subsystem and install a replacement;
 - (ii) ensure:
 - (A) that the TMS Subsystem and any associated interfaces to Interfacing Systems continue to operate and be supported and maintained in accordance with this Agreement and the Contract Specifications notwithstanding the need to replace the end of life component; and

- (B) that any new or replacement version or type of any Asset (or component of that Asset) or a new Spare (**Replacement Item**) required to be used or implemented as result of any end of life component is backwards compatible with the version or component then in use, and also with the TMS Subsystem and Interfacing Systems; and
- (iii) indemnify (and must keep indemnified) each Customer Indemnified Person for their costs and any additional costs claimed or incurred by any Other Contractor or Interface Contractor in connection with the replacement of any end of life component, including the Contractor's performance of its obligations under this paragraph (b).

17.3 Obsolescence

- (a) The Contractor must:
 - (i) ensure that no components of the TMS Subsystem become Obsolete during the Term;
 - (ii) comply with the Obsolescence Management obligations set out in Schedule 5 (Services Schedule);
 - (iii) monitor the Assets and promptly notify the Customer if any Asset (or component of an Asset) is, or is expected to become, Obsolete during the Term (**Obsolescence Matter**);
 - (iv) without limiting the Contractor's obligations under paragraph 17.3(a)(ii), provide the Customer with advice on how to address any Obsolescence Matter, including:
 - (A) opportunities to purchase or acquire sufficient rights to an adequate contingency supply of the Obsolete item;
 - (B) opportunities to purchase or acquire the Obsolete item from an alternative supplier;
 - (C) the replacement of the Obsolete item with a suitable alternative product;
 - (D) opportunities to procure the manufacture of the Obsolete item from an alternative manufacturer; or
 - (E) options to ensure continued access to technical assistance for Software faults arising in any proprietary Software comprising part of an Asset;
 - (v) comply with the Customer's Direction with respect to the implementation of any strategy or activities to address the Obsolescence Matter (**Obsolescence Strategy**) and supply of a Replacement Item (as defined below) and, where requested by the Customer, perform such Works as are required to remove any Obsolete component of the TMS Subsystem and install a Replacement Item so as to ensure:
 - (A) that the TMS Subsystem and any associated interfaces to Interfacing Systems continue to operate and be supported and maintained in

accordance with this Agreement and the Contract Specifications throughout the Design Life of the TMS Subsystem and all related Assets notwithstanding such Obsolescence Matter; and

- (B) that any new or replacement version or type of any Asset (or component of that Asset) or a new Spare (**Replacement Item**) required to be used or implemented as result of any Obsolescence Matter is backwards compatible with the version or component then in use, and also with the TMS Subsystem and Interfacing Systems;
 - (vi) ensure that there is no increase to the Fees or to the cost to the Customer of using, maintaining, operating and procuring (e.g. as Spares) that Replacement Item as compared to the Fees and costs associated with the existing version of the Asset (or component); and
 - (vii) indemnify (and must keep indemnified) each Customer Indemnified Person for their costs and any additional costs claimed or incurred by any Other Contractor or Interface Contractor in connection with an Obsolescence Matter or any Obsolescence Strategy, including the Contractor's performance of its obligations under this paragraph (a).
- (b) Notwithstanding the period referred to in paragraph (a)(i), the Contractor acknowledges that the Software that is included in the TMS Subsystem must not become Obsolete during its Design Life. Paragraph (a) refers only to hardware and other non-Software equipment.

18 Defect Rectification

18.1 Obligation to manage and notify

- (a) The Contractor must promptly notify the Customer of all Defects discovered by the Contractor or of which it is aware.
- (b) Without limiting paragraph (a), the Contractor must track and manage all Defects using the failure reporting and corrective action system (**FRACAS**) developed, utilised and maintained in accordance with the PR.

18.2 Defect Rectification

- (a) Without limiting any of the Customer's rights or remedies under this Agreement, the Contractor must, in accordance with the Customer's Directions, promptly identify the root cause of any and all Defects in the Assets discovered by it, or of which it becomes aware.
- (b) Where that Defect affects an Asset supplied or delivered under the Delivery Agreement which is discovered or the Contractor becomes aware of it:
 - (i) prior to the expiry of the applicable Defects Liability Period under the Delivery Agreement, the Contractor must arrange for that Defect to be repaired, replaced or rectified (at TfNSW's discretion) under and in accordance with the Delivery Agreement; or
 - (ii) after expiry of the applicable Defects Liability Period under the Delivery Agreement, the Contractor must provide the Customer with all necessary

support, including provision of the TLS Activities set out in Schedule 5 (Services Schedule), in order to rectify the Defect.

- (c) Where that Defect affects an Asset supplied or delivered by the Contractor under this Agreement including under a Work Order and is discovered or the Contractor becomes aware of it:
 - (i) prior to the expiry of the applicable Defects Liability Period under this Agreement, the Contractor must repair, replace or rectify (at the Contractor's discretion, and at no additional cost to the Customer) any and all Defects in the Assets under this Agreement; or
 - (ii) after the expiry of the applicable Defects Liability Period under this Agreement, the Contractor must provide the Customer with all necessary support, including provision of the TLS Activities set out in Schedule 5 (Services Schedule) in order to rectify the Defect.
- (d) The Contractor must comply with its obligations to the Customer's satisfaction (to be approved in writing) and in a manner that meets any timing and/or quality requirements under this Agreement and results in the Assets meeting the Contract Specifications.
- (e) After the Contractor has repaired, replaced or rectified a Defect under paragraph (c)(i), a new Defects Liability Period of equivalent length to the original Defects Liability Period will apply to the repaired, replaced or rectified Asset (or component thereof), commencing on the date such repair, replacement or rectification is approved by the Customer in writing in accordance with paragraph (d).
- (f) In addition, and without limiting the Contractor's obligations under this clause or any TLS Activities, the Contractor indemnifies and must keep indemnified the Customer Indemnified Persons in respect of all Loss incurred by a Customer Indemnified Person associated with the rectification, repair or replacement of the Assets as a result of a Defect, including removal, storage and reinstallation costs.
- (g) For clarity, the Contractor's obligation to rectify Defects pursuant to this clause 18.2 survives the expiry of any relevant Defects Liability Period in respect of all Defects discovered by it, or of which it becomes aware, prior to the expiration of any Defects Liability Period.

18.3 Batch Defects

- (a) Without limiting any of the Customer's rights or remedies under this Agreement, if at any time the Customer notifies the Contractor that a Batch Defect affects or may affect any Assets, the Contractor:
 - (i) must, within such period as may reasonably be specified in such notice:
 - (A) rectify, repair or replace (at the Customer's discretion, after consultation with the Contractor) all such Assets in accordance with clause 18.2(c)(i); or
 - (B) arrange for the rectification, repair or replacements (at the Customer's discretion, after consultation with the Contractor) in accordance with the Delivery Agreement, in accordance with clause 18.2(b)(i),
- (as applicable); and

- (ii) indemnifies and must keep indemnified the Customer Indemnified Persons in respect of all Loss incurred by a Customer Indemnified Person associated with the rectification, repair or replacement of such Assets, including removal, storage and reinstallation costs.
- (b) Without limiting any of the Customer's rights or remedies under this Agreement, the Customer may, at its discretion after consultation with the Contractor, in respect of any Assets affected or which may be affected by Batch Defects, Direct the Contractor to:
 - (i) temporarily cease delivery, installation and/or commissioning of all such Assets until further Directions are provided by the Customer; or
 - (ii) permanently cease the delivery, installation and/or commissioning of all such Assets.
- (c) Without limiting any of the Customer's rights or remedies under this Agreement, no exercise by the Customer of its rights under paragraph (b) will:
 - (i) cause the Customer to be in breach or repudiation of this Agreement;
 - (ii) entitle the Contractor to any compensation or payment for any undelivered Assets;
 - (iii) require the Customer to provide the Contractor with more time to perform its obligations under this Agreement; or
 - (iv) entitle the Contractor to make any Claim against the Customer.
- (d) This clause 18.3 applies for an Asset, for the period from:
 - (i) in respect of an Asset supplied or delivered under the Delivery Agreement, the date on which title in that Asset transfers to TfNSW in accordance with the Delivery Agreement; or
 - (ii) in respect of any Asset supplied or delivered under this Agreement, including any Asset delivered under a Work Order, the date on which title to that Asset transfers to the Customer in accordance with this Agreement,for the following periods:
 - (iii) for server hardware, 60 months; and
 - (iv) for workstation hardware, 48 months.

18.4 Recurrent Defects

- (a) The Contractor must:
 - (i) monitor and assess the occurrence of any Recurrent Defects; and
 - (ii) within five (5) Business Days of becoming aware of any Recurrent Defect, give notice of the Recurrent Defect to the Customer.

- (b) If a Recurrent Defect becomes apparent, in addition to the Contractor's obligations under clause 18.1 (Obligation to manage and notify) and 18.2 (Defect Rectification) the Contractor must, subject to paragraph (c):
- (i) rectify that Recurrent Defect in all Assets that have or suffer from the Recurrent Defect;
 - (ii) undertake all necessary works to prevent the occurrence of the Recurrent Defect in any Assets that have not been affected by the Recurrent Defect; and
 - (iii) undertake all other works that are reasonably necessary to enable all of the Assets to continue in operation in compliance with the terms of this Agreement pending the carrying out and completion of the rectification and other works,

in each case in accordance with a Recurrent Defect Rectification Plan that is Confirmed.

- (c) Within twenty (20) Business Days after the Contractor gives notice of a Recurrent Defect pursuant to clause 18.1(a), or the Contractor is notified of the existence of a Recurrent Defect by the Customer, the Contractor must submit to the Customer for Review a draft plan (**Recurrent Defect Rectification Plan**) for complying with its obligations under paragraph (b) as soon as practicable. The Recurrent Defect Rectification Plan will be a Technical Document for the purposes of Schedule 7 (Review Procedures).
- (d) If the Recurrent Defect Rectification Plan is Confirmed, the Contractor must as soon as reasonably practicable implement, and thereafter comply diligently with, the Confirmed Recurrent Defect Rectification Plan.
- (e) In addition, and without limiting the Contractor's obligations under this clause or any TLS Activities, the Contractor indemnifies and must keep indemnified the Customer Indemnified Persons in respect of all Loss incurred by a Customer Indemnified Person associated with the rectification, repair or replacement of the Assets as a result of a Recurrent Defect, including removal, storage and reinstallation costs.

18.5 Defect Rectification by Rectifying Party

- (a) If the Contractor fails to comply with this clause 18, the Customer may, without limiting any obligation or warranty of the Contractor (including under the Delivery Agreement), cause such work as is reasonably required to repair, replace or remedy any Defects to be performed by itself (or its Third Party nominee).
- (b) Where the Customer (or its Third Party nominee) (in this clause, the **Rectifying Party**) has or will be rectifying a Defect or any part of it, or has or will perform any other works to overcome the Defect or any part of it, including under paragraph (a):
- (i) without limiting or otherwise affecting the Interface Requirements or Collaboration Principles, the Contractor must not impede the Rectifying Party from having sufficient access to the Delivery Locations to rectify the Defect or carrying out the works to overcome the Defect;
 - (ii) any Losses suffered or incurred by the Customer or a Rectifying Party arising out of or in any way in connection with, the Rectifying Party rectifying

- the Defect or carrying out the works, will be a debt due from the Contractor to the Customer; and
- (iii) the Contractor acknowledges and agrees that the Contractor is not entitled to make, and the Customer will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with:
 - (A) the Rectifying Party rectifying the Defect or carrying out the works to overcome the Defect; or
 - (B) any other act or omission of the Rectifying Party; and
 - (C) rectification of a Defect or any works to overcome the Defect by a Rectifying Party does not relieve the Contractor or otherwise affect any of its obligations under this Agreement.
 - (c) In addition, and without limiting the Contractor's obligations under this clause or any TLS Activities, the Contractor indemnifies and must keep indemnified the Customer Indemnified Persons in respect of all Loss incurred by a Customer Indemnified Person associated with the rectification, repair or replacement of the Assets as a result of a Batch Defect, including removal, storage and reinstallation costs.

18.6 General

- (a) The Customer may Direct the Contractor as to the:
 - (i) times and dates for; and
 - (ii) work method that must be employed in,

performing the activities under this clause 18.
- (b) The Contractor will not be entitled to an increase in the Fees, any additional payment from the Customer or to recover any additional costs it may incur as a result of complying with its obligations to rectify Defects under this clause 18, including under any Work Order or Future Project Work.
- (c) The Contractor must comply with all provisions of this Agreement with regard to repaired, replaced or rectified Assets.
- (d) If any Asset is recalled for any reason, the Contractor must:
 - (i) immediately advise the Customer of the recall;
 - (ii) comply with all Laws relating to the recall;
 - (iii) if the recall relates to Assets already delivered to the Customer, supply to the Customer, within ten (10) Business Days (or such other timeframe as is agreed with the Customer) of the Customer's request, substitute Assets that will perform the functions and performance requirements described in this Agreement; and
 - (iv) pay all the costs (including those of the Customer) associated with the recall and the replacement of any Asset and any associated testing, review and verification processes.

- (e) Neither the Customer's rights, nor the Contractor's liability, whether under this Agreement or otherwise according to Law in respect of Defects, will be affected or limited by:
- (i) the rights conferred upon the Customer by this clause 18 or any other provision of this Agreement;
 - (ii) the failure by the Customer to exercise any such rights; or
 - (iii) any instruction of the Customer under this clause 18.

Part E Personnel

19 Contractor Personnel

19.1 Responsibility for Contractor Personnel

- (a) The Contractor must:
- (i) maintain sufficient Contractor Personnel with sufficient skills to properly perform and manage the TLS Activities in accordance with this Agreement including all required activities related to programming, budgeting, inspecting, fault finding, repairing and maintaining for safety and serviceability;
 - (ii) ensure that the Contractor Personnel:
 - (A) comply with all of the Contractor's obligations under this Agreement; and
 - (B) do not represent themselves as being an employee, partner or agent of the Customer;
 - (iii) provide prompt notice to the Customer if any of the Contractor Personnel are unable to undertake work in respect of the TLS Activities and this unavailability is predicted to last longer than four (4) weeks and comply with any reasonable Direction given by the Customer in that regard, including promptly providing a replacement suitable to the Customer; and
 - (iv) provide to the Customer on request a list of the Contractor Personnel with actual or proposed access to Rail Transport Entity Sites or Customer Systems.
- (b) The Contractor is responsible for all acts and omissions of the Contractor Personnel as if they were those of the Contractor.
- (c) The Contractor must pay all wages, salaries, benefits and entitlements and all income, payroll, sales and similar Taxes, in relation to all Contractor Personnel whether or not the liability results from the Contractor entering into this Agreement.

19.2 Engagement of Contractor Personnel

The Contractor must:

- (a) not engage, employ or otherwise use any Contractor Personnel to perform the TLS Activities who:
- (i) has:
 - (A) been dismissed from a Government Authority for reasons of misconduct;
 - (B) breached the TfNSW Statement of Business Ethics; or

- (C) resigned from a Government Authority in circumstances where the person was being investigated by a Government Authority for misconduct;
 - (ii) does not have the necessary visas and/or other work permits to carry out their relevant tasks and activities in connection with the performance of the TLS Activities; or
 - (iii) does not meet the background check requirements specified by the Customer (acting reasonably) from time to time (including those set out in clause 19.3 (Conduct of background checks)); and
- (b) take all necessary steps to identify whether the circumstances described in clause 19.2(a) apply before employing, engaging or otherwise using the services of any person to perform the TLS Activities.

19.3 Conduct of background checks

- (a) Subject to paragraph (e), the Contractor must unless agreed otherwise by the Customer:
- (i) conduct criminal history checks on Contractor Personnel in every jurisdiction in which the relevant Contractor Personnel resided in the prior seven (7) years, including for any finding of corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW), and clear the Contractor Personnel to the Customer's satisfaction:
 - (A) before that Contractor Personnel commences work under this Agreement; and
 - (B) every two (2) Years thereafter;
 - (ii) conduct such other background, security or other checks on such Contractor Personnel as may be required by the Customer from time to time, and clear them to the Customer's satisfaction; and
 - (iii) provide the results of such checks to the Customer or alternatively certify that they have been obtained.
- (b) The Customer may:
- (i) require the Contractor to report on its compliance with this clause 19.3 and to provide evidence to the Customer of clearances;
 - (ii) where permitted by Law, carry out the background checks referred to in paragraph (a) itself; and/or
 - (iii) conduct such other investigations and background checks as the Customer considers appropriate and as are permitted by Law.
- (c) The Contractor must:
- (i) provide reasonable assistance as requested by the Customer for purposes of the Customer exercising its rights under paragraph (b);

- (ii) if requested by the Customer, provide to the Customer accurate information about the identity, qualifications, job history and character of any Contractor Personnel nominated by the Customer; and
 - (iii) obtain any consents required from Contractor Personnel for purposes of any checks to be performed (either by the Contractor or the Customer) as contemplated by this clause 19.3.
- (d) If the Contractor is unable to obtain any consent from a person, then, unless the Customer agrees otherwise in writing, the Contractor must not engage that person to perform, or remove that person from performing, the Contractor's obligations under this Agreement.
- (e) The Contractor is not required to comply with this clause 19.3 to the extent that to do so is prohibited by Law (including by any Law in force in the jurisdiction in which the relevant Contractor Personnel is resident). The Contractor must advise the Customer where that is the case for any Contractor Personnel and provide written reasons for the non-performance. The Contractor must comply with any Direction provided by the Customer in respect of any restrictions or conditions regarding use of such Contractor Personnel.

19.4 Qualifications and training

The Contractor must:

- (a) ensure that all Contractor Personnel:
 - (i) are and continue to be competent, experienced, suitably skilled, qualified and trained to undertake the TLS Activities for the Contractor;
 - (ii) are qualified and trained to meet any Mandatory Requirements and the requirements of this Agreement;
 - (iii) undertake any relevant training or induction required by the Customer to perform the TLS Activities; and
 - (iv) are made aware of the requirements of this Agreement (with a particular focus on reporting procedures, compliance, community or media enquiries, or other functions on a Delivery Location); and
- (b) maintain records of all qualifications and certifications held by, and training and inductions attended by, Contractor Personnel and provide copies of those records to the Customer on request.

19.5 Key People

- (a) The Services Schedule will set out the names and roles of the Contractor's Key People relevant to the performance of the TLS Activities. The Contractor must ensure that the Key People nominated in the Services Schedule stay in the Key Delivery Positions for the Minimum Commitment Period specified in the Services Schedule.
- (b) The Contractor must ensure that each of the Key People devote their time and effort to the provision of TLS Activities under this Agreement to at least the level set out in the Resource Plan.

- (c) The Contractor must not, without the Customer's prior approval:
- (i) appoint a person to a Key Delivery Position (including as a replacement for another Key Person); or
 - (ii) remove or replace (temporarily or permanently) Key People from Key Delivery Positions, except:
 - (A) where such Key Person resigns from the employment of the Contractor and all of its Related Bodies Corporate (such that the Key Person is no longer employed by the Contractor or any of its Related Bodies Corporate), in which case the Contractor must promptly notify the Customer;
 - (B) where such Key Person is unable to work for the Contractor or any of its Related Bodies Corporate by reason of illness or incapacity and this unavailability is predicted to last longer than four (4) weeks (in which case the Contractor must promptly notify the Customer); or
 - (C) following expiry of the relevant Minimum Commitment Period.
- (d) The Contractor must ensure that any removed Key Person is replaced in accordance with this clause 19.5.
- (e) In seeking the Customer's approval for the appointment, replacement or reassignment of Key People or the appointment of any additional persons to a Key Delivery Position (**Proposed Key Person**) under this clause 19.5 the Contractor must:
- (i) ensure the replacement, reassignment or appointment will not adversely affect the quality of the relationship between the Customer and the Contractor or the performance of the TLS Activities in accordance with this Agreement;
 - (ii) appoint the Proposed Key Person for the Minimum Commitment Period specified in the Services Schedule for the relevant Key Delivery Position;
 - (iii) ensure the Proposed Key Person is suitably qualified and experienced for the relevant Key Delivery Position (including meeting any qualifications or experience required in relation to that Key Delivery Position as set out in the Services Schedule);
 - (iv) provide to the Customer:
 - (A) a resume of the Proposed Key Person;
 - (B) a summary of the Proposed Key Person's experience;
 - (C) such other details in relation to the Proposed Key Person that the Customer reasonably requires; and
 - (D) the Contractor's proposed replacement plan (including replacement timeframe); and
 - (v) where requested by the Customer, provide an opportunity for the Customer to meet with the Proposed Key Person.

- (f) The Customer must, within ten (10) Business Days, or such longer period as the Customer reasonably requires after being provided the information set out in paragraph (e)(iv), notify the Contractor whether or not it accepts the Proposed Key Person. If the Customer does not accept the Proposed Key Person, the Customer must provide its reasons to the Contractor and the process in paragraphs (e) and (f) will be repeated until the Customer accepts a Proposed Key Person for the relevant Key Delivery Position (at which point, the list of Key People set out in the Services Schedule will be amended accordingly).
- (g) If a Key Person is replaced, the Contractor must ensure that the Proposed Key Person is appointed to the relevant Key Delivery Position no later than twenty (20) Business Days before the replaced Key Person ceases to act in the relevant Key Delivery Position so that there is a period of parallel appointment to the relevant Key Delivery Position. During such period, the Customer has no liability to pay, nor is the Contractor entitled to make a payment claim for, any part of the Fee attributable to the engagement of the Proposed Key Person. The period of parallel appointment will be reduced (or may not apply at all) where a Key Person has to be replaced on shorter (or no) notice as a result of illness or incapacity.
- (h) The Customer may at any time by notice to the Contractor, acting reasonably:
- (i) nominate certain positions as Key Delivery Positions from the date included in the notice;
 - (ii) nominate certain Contractor Personnel to Key Delivery Positions from the date included in the notice;
 - (iii) require that one or more current Key People are removed from a Key Delivery Position and replaced with an alternative person approved by the Customer in accordance with paragraph (f) on and from the date included in the notice; or
 - (iv) require that the Contractor procure a resource with a new skillset, in which case the Contractor will use its best endeavours to procure such skillset, such skillset will become a Key Delivery Position for the purposes of this Agreement, and the Labour Rates payable for such Key Delivery Position will be reasonable, market competitive and consistent with the basis on which the Labour Rates for the existing Key Delivery Positions have been calculated,

in which case the list of Key People and Key Delivery Positions set out in the Services Schedule will be amended accordingly.

19.6 Customer removal of Contractor Personnel

- (a) If the Customer is of the reasonable opinion that any Contractor Personnel:
- (i) fails to meet the criteria for engagement of Contractor Personnel set out in clauses 19.2 (Engagement of Contractor Personnel) to 19.4 (Qualifications and training);
 - (ii) fails to maintain the necessary qualifications or to display a level of competency in the performance of that Contractor Personnel's duties;

- (iii) is not performing the Contractor's obligations in a satisfactory manner, or in such a way that if done by the Contractor would result in the Contractor breaching its obligations under this Agreement;
- (iv) may give rise to a Conflict of Interest or have access to Confidential Information of the Customer which may be used to the detriment of the Customer or any Stakeholder;
- (v) acts in a manner materially detrimental to safety or the Customer's public image and reputation; or
- (vi) in the opinion of the Customer is guilty of misconduct or is incompetent or negligent,

then the Customer may direct the Contractor to:

- (vii) immediately cease the involvement of those Contractor Personnel in the performance of the TLS Activities;
 - (viii) terminate or refuse for any period, such Contractor Personnel's access to the Customer's Systems, Rail Transport Entity Sites and Confidential Information;
 - (ix) promptly provide replacements suitable to the Customer and that otherwise meet the requirements of this Agreement; and
 - (x) take reasonable remedial steps in relation to that person as required by the Customer (acting reasonably).
- (b) The Contractor must comply with any requirement or Direction made by the Customer under this clause 19.6.
 - (c) The Contractor must ensure that any person that the Customer directs should cease to be involved in the TLS Activities is not again involved in the TLS Activities.

19.7 Organisational Chart and Resource Plan

- (a) The Contractor must:
 - (i) develop and maintain an organisational chart in respect of the performance of the TLS Activities (**Organisational Chart**);
 - (ii) develop and maintain a Contractor Personnel resource plan in respect of the performance of the TLS Activities (**Resource Plan**); and
 - (iii) comply with the Organisational Chart and Resource Plan in performing the TLS Activities.
- (b) The Organisational Chart and Resource Plan must comply with the requirements of the Services Schedule and must, at a minimum:
 - (i) include the name of the Contractor's Representative;
 - (ii) include an organisation chart that identifies all Contractor Personnel that will be involved in delivering the TLS Activities under the Services Schedule including name, role, safety accountabilities, work location and employer;

- (iii) detail the hierarchy of the Contractor Personnel that will be involved in delivering the TLS Activities under the Services Schedule;
 - (iv) identify the location of the Contractor Personnel including if they are offshore in Contractor Sites, onshore in Contractor Sites, or onshore in Rail Transport Entity Sites;
 - (v) specify the following information for each Contractor Personnel:
 - (A) name and role in delivering the TLS Activities;
 - (B) whether they are also a Key Person;
 - (C) 'home' or 'base' location, and visa status if travelling from an offshore location;
 - (D) location for delivering the TLS Activities (if different to their 'home' or 'base' location) and proposed travel calendar;
 - (E) duration of their involvement in delivering the TLS Activities;
 - (F) for Key People, and for Contractor Personnel performing their functions on a time and materials basis only, utilisation for delivery of the TLS Activities, on a weekly or monthly basis as required by the Customer;
 - (G) whether they have access to Rail Transport Entity Sites or the Customer Systems;
 - (H) background verification and criminal record checks completion status from their home or base location authority;
 - (I) any other information required by the Agreement; and
 - (J) any other information reasonably required by the Customer from time to time; and
 - (vi) include a succession process which enables the smooth transition of each Key Person if and/or when they are removed or replaced in order to ensure appropriate knowledge management and transfer and otherwise avoid any adverse effect on the performance of the TLS Activities and the quality of the relationship between the Customer and the Contractor.
- (c) The Contractor must:
- (i) update the Organisational Chart and Resource Plan quarterly (or at such other times as may be requested by the Customer) and provide a copy of the current Organisational Chart and Resource Plan to the Customer; and
 - (ii) otherwise keep the Customer informed on a regular basis of:
 - (A) the removal of any Contractor Personnel;
 - (B) the replacement, appointment, reassignment or other change of Contractor Personnel;

- (C) any other change to the organisation structure relevant to the performance of the TLS Activities; and
 - (D) its succession plan and process for the proposed replacement of any Contractor Personnel.
- (d) The Organisational Chart and Resource Plan will be a regular agenda item for discussion between the parties at the Contract Management and Governance Meeting.

19.8 Drugs and alcohol

Irrespective of anything else contained in this Agreement:

- (a) the Contractor:
 - (i) acknowledges that a key principle underpinning the Customer Policy on drugs and alcohol is zero tolerance;
 - (ii) must develop and implement policies and procedures, in accordance with relevant Laws and Standards (including where applicable to Rail Safety Work, the Rail Safety National Law) applicable in the jurisdictions in which the TLS Activities are being performed:
 - (A) to manage the risks of the effects of alcohol and drugs on any Contractor Personnel;
 - (B) to ensure that the Customer's policy of zero tolerance is adhered to at all times in the performance of the TLS Activities; and
 - (C) for effective drug and alcohol testing by the Contractor, including the number of tests to be performed annually and the period through the year that testing will take place;
 - (iii) without prejudice to paragraph (ii), may (subject to the Customer's consent) develop and implement its own policies and procedures in relation to prescription and over-the-counter drugs on a case by case basis;
 - (iv) must ensure that all persons associated with the TLS Activities including Contractor Personnel and visitors, are aware of their obligations to comply with all drug and alcohol requirements; and
 - (v) must ensure that all Contractor Personnel sign on each time that they perform the TLS Activities and declare themselves to be free of alcohol and drugs; and
- (b) the Contractor:
 - (i) agrees that the Customer may randomly perform (or procure the performance of) drug and alcohol tests on any Contractor Personnel:
 - (A) at any time that the Contractor Personnel are performing the TLS Activities;
 - (B) at any time that the Contractor Personnel are present on any of the Delivery Locations (including before performing duties (pre-sign on,

primarily alcohol test), during the performance of duties (random and reasonable cause) and following any incident); and

- (C) in accordance with the Rail Safety National Law, Standards, and the Customer's reasonable requirements,

and must ensure that Contractor Personnel submit to and comply with the Customer's testing and instructions in respect of any such tests;

- (ii) acknowledges and agrees that a failure to comply with this provision, or failure by the relevant Contractor Personnel to pass the relevant tests, may result in the Customer requiring that the relevant Contractor Personnel must no longer perform TLS Activities for the Customer, and in such event the Contractor will:
 - (A) immediately comply with the Customer's request; and
 - (B) be liable for all Losses suffered by the Customer as a result of any disruption or delay caused as a result;
- (iii) must immediately remove anyone from the Delivery Locations that tests positive to alcohol or drug tests or who refuses an alcohol or drug test, and notify the Customer immediately; and
- (iv) must take disciplinary action against a person who breaches their obligations to comply with all drug and alcohol requirements.

20 Subcontracting and performance by Related Bodies Corporate

20.1 When subcontracting is permitted

- (a) Subject to paragraphs (b) and (c), the Contractor may subcontract a part (but not the whole) of its obligations under this Agreement.
- (b) Other than in respect of any Pre-Approved Subcontractors and Project Related Bodies Corporate, the Contractor must obtain the Customer's prior consent in accordance with this clause 20 before subcontracting any of its obligations under this Agreement.
- (c) The Contractor must not subcontract or delegate the management or administration responsibilities for the delivery of the Contractor's obligations in relation to performance of the TLS Activities.
- (d) Regardless of any consent given by the Customer, the Contractor must ensure that any Subcontractor or Project Related Body Corporate:
 - (i) is and remains reputable, capable of performing and has, or has access to, sufficient experience, expertise and ability to perform the relevant TLS Activities to the standards required by this Agreement;
 - (ii) is and remains solvent and has sufficient financial capacity to implement any relevant part of the TLS Activities;

- (iii) does not have any interest or duty which conflicts in a material way with the interests of the Program and is not involved in any business or activity which is incompatible with, or in appropriate in relation to, the Program; and
- (iv) has and maintains the technical capability and the qualifications, skills and experience including holding all Approvals required to perform the obligations of the Contractor to be performed by it to at least the standard required by this Agreement,

(Qualified Subcontractor).

- (e) Paragraph (b) does not apply to individuals that are engaged by the Contractor as contractors on a labour hire basis.

20.2 Contractor remains liable

- (a) The Contractor:
 - (i) is not relieved of any of its liabilities or obligations under this Agreement by virtue of its obligations being performed by a Subcontractor or Project Related Body Corporate;
 - (ii) will be liable to the Customer for the acts and omissions of a Subcontractor or Project Related Body Corporate or any personnel of a Subcontractor or Project Related Body Corporate as if they were the acts or omissions of the Contractor or the Contractor Personnel; and
 - (iii) acknowledges and agrees that a breach of this Agreement caused or contributed to by a Subcontractor or Project Related Body Corporate is a breach of the Contractor,

notwithstanding that the Customer may have consented to the relevant subcontract or Subcontractor or performance of the TLS Activities by a Project Related Body Corporate.

- (b) The Contractor must, in circumstances where it makes any Claim against the Customer as a consequence of a Claim that has been made by a Subcontractor or Project Related Body Corporate against the Contractor, take reasonable steps to ensure that any Claim made by a Subcontractor or Project Related Body Corporate is bona fide, prior to making any related Claim against the Customer.

20.3 Approved Subcontractors and Project Related Bodies Corporate

- (a) The Contractor acknowledges that Approved Subcontractors are only approved in respect of the performance of certain TLS Activities, set out in the Customer's consent to that Subcontractor or, in respect of Pre-Approved Subcontractors, as identified alongside the Pre-Approved Subcontractor in Item 3 of Schedule 2 (Agreement Details) or the relevant Work Order.
- (b) Subject to clauses 20.5(b)(ii) and 20.10 (Novation of Key Subcontracts), the identification of certain Subcontractors as Pre-Approved Subcontractors, the performance of the TLS Activities by Project Related Bodies Corporate or the provision of consent in respect of any other Approved Subcontractor does not create any form of contractual relationship between the Customer and the relevant Approved Subcontractor(s) or Project Related Body Corporate.

- (c) If:
- (i) there is any change to the TLS Activities that an Approved Subcontractor performs under this Agreement or any Work Order; or
 - (ii) where a Project Related Body Corporate is wholly owned by the Contractor or one of its Related Bodies Corporate, such Project Related Body Corporate ceases to be wholly owned by the Contractor or one of its Related Bodies Corporate,

then the Contractor must immediately seek re-approval in respect of that Approved Subcontractor or approval in respect of the Project Related Body Corporate in accordance with this clause 20.3. If such re-approval or approval is not granted within five (5) Business Days, that entity will cease to be an Approved Subcontractor or Project Related Body Corporate with immediate effect, and the Contractor must immediately cease subcontracting or delegating its obligations under the Agreement or any Work Order to that entity.

20.4 Seeking Customer approval of subcontracting

- (a) Before the Contractor enters into any subcontract that requires the Customer's consent under clause 20.1(b) (including to replace an existing subcontract or due to the operation of clause 20.3(c)), the Contractor must:
- (i) notify the Customer that it proposes to enter into the subcontract; and
 - (ii) provide the Customer with the following information:
 - (A) written details of the specific tasks to be subcontracted;
 - (B) the name, ABN (or, where the Subcontractor does not hold an ABN, an equivalent corporate identifier in the jurisdiction in which the Subcontractor is incorporated), address and qualifications of the proposed Subcontractor;
 - (C) evidence that the proposed Subcontractor is a Qualified Subcontractor;
 - (D) an assessment of the work health and safety management capability of the proposed Subcontractor;
 - (E) certificates of currency for the insurances held by the proposed Subcontractor; and
 - (F) all other information reasonably requested by the Customer in respect of the proposed subcontracting.
- (b) On completion of the Customer's review of information provided under paragraph (a) or clause 20.5, the Customer must notify the Contractor whether the Customer consents or does not consent to the engagement of the proposed Subcontractor. The Customer will endeavour, where reasonably practicable, to provide such notice within four (4) weeks of the Customer's receipt of the information provided under paragraph (a).

20.5 Key Subcontractors specific provisions

- (a) This clause 20.5 applies to Key Subcontracts, in addition to the other provisions in this clause 20.

- (b) When applying for consent to enter into a Key Subcontract pursuant to clause 20.1(b) (including to replace an existing Key Subcontract or an existing Approved Subcontractor), the Contractor must:
- (i) provide a copy of, and obtain the Customer's consent to, the terms of the proposed Key Subcontract, excluding details of any fees payable under those subcontracts;
 - (ii) procure that the Key Subcontractor executes a Subcontractor Deed with the Customer in the form set out in Schedule 23 (Form of Subcontractor Deed); and
 - (iii) where requested by the Customer, procure that the Key Subcontractor executes a confidentiality and intellectual property deed poll in the form set out in Schedule 25 (Confidentiality and Intellectual Property Deed Poll), or such other form as requested by the Customer.
- (c) Without limiting clause 20.7 (Form of subcontract), each Key Subcontract must include (in a form satisfactory to the Customer) express provisions requiring the Subcontractor to:
- (i) novate the Key Subcontract to the Customer if requested by the Customer under clause 20.10(a) on termination of this Agreement (in whole or in part) or on any variation to this Agreement to de-scope services performed by that Subcontractor (**Key Subcontract Novation**); and
 - (ii) where requested by the Customer, be a Collaboration Participant and acknowledge and adopt the Collaboration Principles.
- (d) If the Customer consents to the terms of a proposed Key Subcontract under paragraph (b)(i), then the Contractor must:
- (i) ensure the terms of the Key Subcontract are not subject to material amendment prior to execution unless the Contractor provides the Customer with the details of the proposed amendments, and the Customer consents to such amendments prior to execution of the Key Subcontract in accordance with paragraph (b); and
 - (ii) provide the Customer with a copy of the executed Key Subcontract (excluding details of any fees payable under the same) within fifteen (15) Business Days of its execution.
- (e) The Contractor must:
- (i) comply with each Key Subcontract; and
 - (ii) use reasonable endeavours to enforce the terms of each Key Subcontract.
- (f) The Contractor must not (without the prior consent of the Customer):
- (i) materially amend, replace or waive any provision of a Key Subcontract;
 - (ii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in a Key Subcontract;
 - (iii) enter into another contract, arrangement or understanding which affects the operation or interpretation of or relates to the subject matter of a Key Subcontract;

- (iv) terminate, surrender, rescind or accept repudiation of (or give the relevant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of) a Key Subcontract; or
- (v) suffer or permit any compromise or settlement of or waive any material Claim, or give any release under, a Key Subcontract, that relates to the subject matter of this Agreement or has, or has the potential to have, an impact on the performance of the TLS Activities.
- (g) If there is any early termination, surrender or rescission of a Key Subcontract for any reason, the Contractor must promptly notify the Customer (and in any event within five (5) Business Days) of such early termination, surrender or rescission or the Contractor becoming aware of same.

20.6 Timing

In respect of any information required to be provided in relation to a proposed subcontract:

- (a) under clause 20.4(a), that information must be given to the Customer in sufficient time, and in any event at least ten (10) Business Days; or
- (b) under clause 20.5(b), that information must be given to the Customer in sufficient time, and in any event at least six (6) weeks,

prior to the anticipated date for execution of the relevant subcontract, to allow the Customer to give adequate consideration to that information prior to the Contractor entering into the subcontract.

20.7 Form of subcontract

Unless the Customer approves otherwise, the terms of each subcontract entered into by the Contractor must:

- (a) be consistent with this Agreement as to:
 - (i) co-operation and collaboration;
 - (ii) confidentiality, privacy and intellectual property obligations;
 - (iii) compliance obligations (including workplace health and safety) to the extent relevant to the Subcontractor's services;
 - (iv) performance remediation and escrow provisions;
 - (v) termination and disengagement rights; and
 - (vi) Contractor Personnel rights and obligations;
- (b) engage the Subcontractor in connection with the execution of the relevant part of the Program as an independent contractor of the Contractor; and
- (c) include any other provisions which are reasonably necessary to enable the Contractor to fulfil its obligations to the Customer.

20.8 Withholding consent

Without limitation, the Contractor acknowledges that it will be reasonable for the Customer to withhold its consent to a proposed subcontracting, if:

- (a) the Contractor has not provided the Customer all of the information and documents required by this clause 20;
- (b) the Customer has reasonable cause to consider the proposed Subcontractor is not a Qualified Subcontractor; or
- (c) in the case of a proposed replacement of a Subcontractor for a Key Subcontract, the proposed Key Subcontract does not satisfy the other requirements of this clause 20 relating to Key Subcontracts.

20.9 Other subcontracting requirements

The Contractor must:

- (a) if requested by the Customer, ensure that a Subcontractor or Project Related Body Corporate attends meetings of governance forums (provided that, in the case of any Subcontractor or Project Related Body Corporate who is based overseas, reasonable notice is provided by the Customer prior to the date of the meeting and/or an option is made available for that Subcontractor or Project Related Body Corporate to attend the relevant meeting by video or telephone conferencing);
- (b) ensure that each Subcontractor does not further subcontract, assign or otherwise transfer the performance of its obligations to any other person without the Customer's prior consent;
- (c) ensure that a Subcontractor or Project Related Body Corporate is aware of, and complies with, all of the terms of this Agreement that are relevant to that Subcontractor's or Project Related Body Corporate's role in the performance of the applicable obligations, including in particular the obligations in respect of:
 - (i) co-operation and collaboration;
 - (ii) confidentiality, privacy and intellectual property obligations;
 - (iii) compliance obligations (including workplace health and safety) to the extent relevant to the Subcontractor's services;
 - (iv) performance remediation and escrow provisions; and
 - (v) Contractor Personnel rights and obligations;
- (d) ensure the Subcontractor or Project Related Body Corporate has in place arrangements for ensuring the availability of the appropriate skills and resources to perform its obligations to the standards required by this Agreement;
- (e) ensure that each Subcontractor and Project Related Body Corporate permits the disclosure of information, including confidential information of the Subcontractor or Project Related Body Corporate, to the Customer and for the Customer to use and disclose that information as permitted by this Agreement (subject to clause 31 (Confidentiality));

- (f) obtain and ensure the Customer has the benefit of manufacturer warranties from Subcontractors and Project Related Bodies Corporate with respect to each relevant part of the Program;
- (g) obtain regular written assurances from Subcontractors and Project Related Bodies Corporate about their ongoing compliance with WHS Legislation, including the due diligence obligation contained therein;
- (h) ensure that each Subcontractor and Project Related Body Corporate does not hold itself out as being, or otherwise purport to be, the agent of the Customer in connection with the execution of any subcontract or any subcontract works;
- (i) ensure that each Subcontractor and Project Related Body Corporate has no authority to contract or otherwise deal with any tenderer, or any Subcontractor, or any person, as agent for, or on behalf of, the Customer and must not profess to have any such authority;
- (j) ensure that each Subcontractor, as soon as possible, informs the Contractor and the Customer in respect of any occurrence which might give rise to a claim, by the Subcontractor, under an insurance policy required by the terms of any subcontract, if that claim would:
 - (i) have a material impact on insurance proceeds available under that policy; or
 - (ii) affect the Subcontractor's ability to comply with its obligations under a subcontract between the Contractor and the Subcontractor, including obligations relating to insurances; and
- (k) immediately notify the Customer:
 - (i) if a Subcontractor materially breaches any subcontract relating to this Agreement, and such breach relates to the subject matter of this Agreement or has, or has the potential to have, an impact on the delivery of the TLS Activities; and
 - (ii) of any dispute with any Subcontractors who are parties to a subcontract relating to this Agreement,

and where the breach or dispute relates to the subject matter of this Agreement, or has the potential to impact on delivery under this Agreement, the Contractor must keep the Customer aware of the status of the breach or dispute.

20.10 Novation of Key Subcontracts

- (a) On receipt of a notice from the Customer requiring a Key Subcontract Novation, the Contractor must:
 - (i) do all things necessary to:
 - (A) execute the Key Subcontract Novation in the form of Schedule 31 (Form of Subcontractor Deed of Novation);
 - (B) give effect to such Key Subcontract Novation; and
 - (C) assist the Customer to assume the responsibilities of a counterparty to the relevant Key Subcontract; and

- (ii) not exercise any right or power under the Key Subcontract that may be contrary to the interests of the Customer or refuse to exercise any right or power under the Key Subcontract for the interest of the Customer, pending novation of that Key Subcontract.
- (b) Any Key Subcontract Novation occurring pursuant to this clause will not:
 - (i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Agreement);
 - (ii) limit or otherwise affect the Customer's rights against the Contractor (including those arising out of any warranties given under this Agreement);
or
 - (iii) entitle the Contractor to make any Claim against the Customer,

whether under this Agreement or otherwise according to any Law.

20.11 Termination of Subcontractors

- (a) The Customer may, by giving notice to the Contractor and on reasonable grounds, require the Contractor to cease using any Subcontractor. On receipt of such notice, the Contractor must promptly (or immediately, in the case of a Material Breach or Probity Event or an issue of safety or security) cease using that Subcontractor to perform the TLS Activities and terminate such Subcontractor's access to the Customer Systems and Rail Transport Entity Sites.
- (b) The Contractor will not be entitled to make any Claim against the Customer in relation to any exercise of the Customer's rights under this clause 20.

Part F Financial Terms

21 Fees

21.1 Fees

- (a) Subject to the Contractor performing the TLS Activities in accordance with this Agreement, the Customer must pay the Contractor the Fees in accordance with this Part F (Financial Terms), Schedule 15 (Pricing Terms) and the relevant Work Order.
- (b) The Fees must be calculated in accordance with Schedule 15 (Pricing Terms) and the relevant Work Order.
- (c) Except as expressly set out in this Agreement, the Fees are the only amounts payable by the Customer for the:
 - (i) TLS Activities; and
 - (ii) performance of the Contractor’s obligations under this Agreement,and include all costs and expenses related to the Contractor’s performance of its obligations under this Agreement.

All Fees are to be expressed in, and are payable in, Australian dollars (unless expressly stated otherwise).

21.2 Most favoured pricing

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

22 Invoices and Payment

22.1 Payment claims

- (a) The Contractor may within five (5) Business Days of the end of each calendar month (or, if a Work Order anticipates an alternative Fee model, completion of a Payment Event, as further described in Schedule 15 (Pricing Terms) and the relevant Work Order), submit to the Customer a payment claim showing:
- (i) details of:
 - (A) the Payment Event(s) completed; or
 - (B) the Assets or Works provided in the relevant calendar month in accordance with this Agreement,(as applicable);
 - (ii) details of any amounts that the Customer is entitled to retain, deduct, withhold or set-off under this Agreement;
 - (iii) details of any applicable discounts;
 - (iv) the Contractor's calculation of:
 - (A) the Fees that are attributable to the Assets or Works provided during the relevant calendar month or the completed Payment Event(s) (as applicable), determined by reference to Schedule 15 (Pricing Terms) and (if applicable) the relevant Work Order; and
 - (B) any other amounts that are payable to the Contractor under this Agreement; and
 - (v) evidence of the Contractor's entitlement to payment in accordance with paragraph (iv) reasonably sufficient to enable the Customer to verify that entitlement.
- (b) The Contractor may not submit more than one (1) payment claim in any calendar month.
- (c) The Contractor must:
- (i) make any payment claim using the invoice and cost reporting template supplied by the Customer; and

- (ii) not include in any payment claim any amounts for Works or Assets that are Defective or omitted, and any payment claim must be reduced, where Works or Assets are Defective or omitted, by the estimated cost of rectifying the Defect or carrying out the omitted Works or Assets.
- (d) The Contractor is not entitled to submit a payment claim to the Customer, and the Customer is not obliged to make any payment to the Contractor, until the Contractor has provided the Customer with copies of:
 - (i) all relevant certificates of currency in respect of all Contractor Insurance Policies; and
 - (ii) the documents listed in clause 1.1(c)(ii) (provided that such documents only need to be provided once, and not for clarity prior to submission of each payment claim),(each being a condition precedent to the Contractor's right to submit the relevant payment claim).
- (e) Subject to clauses 22.2 (Payment schedule) to 22.7 (Disputed Amounts) inclusive, the Customer may accept the Contractor's payment claim submitted pursuant to paragraph (a) and, subject to clause 22.3(d), issue a Recipient Created Tax Invoice.
- (f) The Contractor must provide the Customer with substantiation reports for payment claims at the timing, frequency and in the form the Customer reasonably requires from time to time.

22.2 Payment schedule

- (a) If the Customer intends to make a payment that is less than the amount claimed by the Contractor in a payment claim, the Customer must, within ten (10) Business Days following receipt of a payment claim give the Contractor:
 - (i) a payment schedule which sets out:
 - (A) the value of the TLS Activities completed in accordance with this Agreement;
 - (B) the amount already paid to the Contractor;
 - (C) the amount that the Customer is entitled to retain, deduct, withhold or set-off under this Agreement, including under clauses 22.1(d) and 22.4 (Set-Off);
 - (D) any applicable discounts;
 - (E) any relevant amounts agreed under any Variations;
 - (F) any correction to previous payment schedules by the Customer;
 - (G) the amount (if any) which the Customer proposes to pay to the Contractor; and
 - (H) the reason why the amount under paragraph (a)(i)(G) is less than the amount claimed by the Contractor in the payment claim; and

- (ii) subject to clause 22.3(d), a Recipient Created Tax Invoice for the amount to be certified by the Customer to be paid to the Contractor pursuant to this clause 22.2(a).
- (b) The failure of the Customer to set out in a payment schedule an amount which it is entitled to retain, deduct, withhold or set off under this Agreement will not prejudice its right to subsequently exercise such entitlement. The Customer may, in any payment schedule, correct any error and modify any assumptions or allowances made in any previous payment schedule.

22.3 Recipient Created Tax Invoices

- (a) Where required by the Customer, the Contractor agrees to enter into a Recipient Created Tax Invoice arrangement with the Customer in accordance with this clause 22, and the Contractor and the Customer agree that:
 - (i) this Agreement relates to the provision of TLS Activities to which the relevant tax invoice relates;
 - (ii) the Customer may issue Recipient Created Tax Invoices in respect of TLS Activities performed by the Contractor under this Agreement;
 - (iii) the Customer will issue to the Contractor an adjustment note for any adjustment event;
 - (iv) subject to paragraph (d), the Contractor will not issue tax invoices in respect of the TLS Activities;
 - (v) each will notify the other party if it ceases to be registered or if it ceases to satisfy any of the requirements of the GST Act or the *Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities (GST Determination)*; and
 - (vi) the Customer will not issue a document that would otherwise be a Recipient Created Tax Invoice on or after the date when the Customer or the Contractor has notified the other party of a GST Determination.
- (b) If the Contractor has not notified the Customer within three (3) Business Days of receiving the Customer's Recipient Created Tax Invoice that it either accepts or disputes the invoice, the invoice will be deemed to be accepted.
- (c) The Customer may notify the Contractor that it will no longer issue a Recipient Created Tax Invoice for each taxable supply made by the Contractor under this Agreement, in which case, from that point in time:
 - (i) the Customer will not be required to issue Recipient Created Tax Invoices in respect of such supplies; and
 - (ii) as a condition precedent to the Customer being obliged to pay any amount in respect of GST to the Contractor in respect of any such taxable supply, the Contractor will be required to issue tax invoices which comply with the GST Act to the Customer within two (2) Business Days of receipt of a payment schedule issued by the Customer under clause 22.2 (Payment schedule) for the amount set out in the payment schedule.

- (d) The Customer must pay the amount stated in the Recipient Created Tax Invoice, or in any invoice provided by the Contractor in accordance with paragraph (c) (as applicable), within fifteen (15) Business Days of its receipt of the Contractor's payment claim.
- (e) Any payment made under this clause 22 is on account only.

22.4 Set-Off

- (a) The Customer may set off against the Fees payable to the Contractor under this Agreement any:
 - (i) amount that the Contractor owes to the Customer or any Rail Transport Entity under any Transaction Document; and
 - (ii) other claims relating to the Program which the Customer or any Rail Transport Entity has against the Contractor, whether under this Agreement, another Transaction Document or otherwise (including at Law),

including any overpayment by the Customer against a payment claim that is found to have been incorrectly rendered.

- (b) This clause does not prejudice other available means of recovery.

22.5 Service Credits

- (a) If the Customer has required Service Credits to be credited to it under clause 6 (Service Levels and Service Credits), the Contractor must calculate the applicable Service Credits and issue a credit note for the value of such Service Credits to the Customer within ten (10) Business Days of such requirement.
- (b) The Customer may withhold the amount depicted in the credit note from any invoice payable by the Customer or, at the Customer's discretion, may require the Contractor to pay such value to the Customer in cleared funds. If the Customer requires the Contractor to pay such amount to the Customer, the Contractor must pay to the Customer the amount of any such Service Credits in cleared funds within twenty (20) Business Days of such a request.
- (c) If the Contractor does not issue a credit note for Service Credits within the relevant ten (10) Business Days, the Customer may withhold the amount of Service Credits from any amounts payable to the Contractor, provided the liability to pay Service Credits has not been disputed in good faith.

22.6 Late invoicing

Without limiting clause 22.9:

- (a) unless otherwise approved by the Customer, the Contractor must not render a payment claim for any TLS Activities more than one hundred and twenty (120) days after the date on which the Contractor was first entitled to make a payment claim for such amounts; and
- (b) without limiting any other provision of this Agreement, the Customer will not be liable for any amounts included in a payment claim rendered contrary to this clause 22.6 and will not otherwise have any liability for costs, charges or fees associated with such TLS Activities.

22.7 Disputed Amounts

- (a) The Customer may withhold payment of all, or any part, of a payment claim that the Customer disputes. The Customer is not required to make any payment of such withheld amounts (including where the dispute relates to the application of a Service Credit) until the relevant issues have been resolved in accordance with the Issue Resolution Procedures or the parties agree otherwise.
- (b) Where the Customer withholds payment of any part of a payment claim in accordance with paragraph (a):
 - (i) the Customer must provide the Contractor an Initial Early Warning Notice and, where required, a Detailed Early Warning Notice within the timeframes set out in, and that meet the requirements of, section 2 of Schedule 17 (Issue Resolution Procedure);
 - (ii) the Contractor must provide the Customer with a payment claim for the undisputed amount;
 - (iii) subject to clause 22.3(c) (Recipient Created Tax Invoices), the Customer must create a Recipient Created Tax Invoice; and
 - (iv) the Customer must pay the undisputed amount within fifteen (15) Business Days of its receipt of the payment claim submitted pursuant to clause 22.1(a).

22.8 Payment of Subcontractors

The Contractor acknowledges and agrees that, without limiting clause 22.1(d) the:

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

22.9 Statement of Outstanding Claims and Release

- (a) In connection with any Work Order, the Contractor must submit to the Customer a statement of outstanding Claims in relation to that Work Order no later than the date (the **Final Claim Date**) that is the later of twenty-eight (28) days after:
 - (i) the expiry of the last Defects Liability Period under that Work Order; and
 - (ii) the last Asset or Milestone requiring Acceptance under that Work Order has been Accepted,

which statement must identify all Claims that the Contractor wishes to make against any Customer Indemnified Person in respect of any fact, matter or thing arising out of, or in any way in connection with, the TLS Activities or the Works under a Work Order which occurred or arose prior to the Final Claim Date (the **Statement of Outstanding Claims**).

- (b) Each Claim by the Contractor against any Customer Indemnified Person in respect of any fact, matter or thing arising out of, or in any way in connection with, the TLS

Activities or the Works under a Work Order which occurred or arose prior to the Final Claim Date, including all Claims which:

- (i) have been made;
- (ii) could have been made; or
- (iii) should have been made,

that is not included in the Statement of Outstanding Claims will be deemed to have been abandoned and waived by the Contractor and is barred.

- (c) The Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After the Final Claim Date in respect of a Work Order or the TLS Activities, the Contractor is not entitled to make any further Claim (not identified in the Statement of Outstanding Claims which has been given to the Customer within the time required by, and in accordance with paragraph (a)) whatsoever against any Customer Indemnified Person, and no Customer Indemnified Person will be liable upon any further Claim by the Contractor arising out of, or in any way in connection with that Work Order or the TLS Activities.
- (d) The claims and statements required under this clause 22.9 are in addition to the other notices that the Contractor must give to the Customer under this Agreement in order to preserve its entitlements to make any such Claims.
- (e) Without limiting paragraph (d), the Contractor cannot include in any Statement of Outstanding Claims any Claims that it is not entitled to make or that are barred or waived under this Agreement.
- (f) The Contractor releases the Customer Indemnified Persons from, and the Customer Indemnified Persons will not be liable in respect of, any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with the TLS Activities or the Works under a Work Order that occurred or arose prior to the Final Claim Date for the TLS Activities or that Work Order except for any Claim which both:
 - (i) has been included in the Statement of Outstanding Claims for the TLS Activities or that Work Order which has been given to the Customer within the time required by, and in accordance with, this clause; and
 - (ii) is not otherwise barred or waived under this Agreement.

23 Taxes and GST

23.1 Taxes

- (a) Subject to clause 23.2 (Recovery of GST), the Contractor must pay any Taxes payable upon, or in respect of, this Agreement or the performance of the Contractor's obligations under this Agreement wherever and however such Taxes arise.
- (b) The Customer may withhold any withholding payments required by Law to be withheld.

23.2 Recovery of GST

If GST is, or becomes, payable on a supply made by a party (**supplying party**) under or in connection with this Agreement, including the TLS Activities, the party providing the consideration for the supply (**receiving party**) must pay an additional amount to the supplying party equal to the GST payable by the supplying party (or representative member of a GST group of which the supplying party is a member) in relation to the supply.

23.3 Time for payment of GST amount

Subject to first receiving a tax invoice or adjustment note (as appropriate), the receiving party must pay the GST amount when it is liable to provide the consideration.

23.4 Reimbursement payments

If any party is required under this Agreement to reimburse or pay to the other party an amount (other than any payment on account of the fee and any disbursements for which it is entitled to payment) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.

23.5 Adjustment of GST payable

If the GST payable in relation to a supply made by the supplying party under this Agreement varies from the additional amount paid by the other party under this clause 23 in respect of that supply, then the supplying party will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

23.6 GST status acknowledgement

Without limiting clause 22.3(a)(v), each party acknowledges and warrants that at the time of entering into this Agreement it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of Recipient Created Tax Invoices.

23.7 Insurance

The Contractor must ensure that each Contractor Insurance Policy covers any liability to GST.

23.8 Interpretation

In this Agreement:

- (a) terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
- (b) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and

- (c) in addition to the meaning given in the GST Act, the term “GST” includes a notional liability for GST.

24 Benchmarking

- (a) Subject to paragraphs (b) and (i), in order to ensure that the Customer is obtaining competitive pricing and levels of service, the Customer may elect to engage the services of an independent Third Party to benchmark the rates contained in the Contractor’s Schedule of Rates (or any component of it) against rates charged by organisations providing services or solutions to equivalent customers (**Benchmarking**).



[Redacted]



[Redacted]



[Redacted]

- (c) The Benchmarking must take into account all relevant characteristics of the TLS Activities being provided to the Customer, which may include all or some of the following characteristics:
 - (i) the TLS Activities as a whole, such as their complexity, volume, the required standards of performance and the operating environment;
 - (ii) the Fees and commercial terms applicable to the TLS Activities, including how the TLS Activities are priced and applicable risk/reward structures; and
 - (iii) the geographic spread of Works and degree of localised activity.



[Redacted]

- (e) The benchmarker will assess a pool of organisations, the number of which will be determined by the benchmarker’s determination of an appropriate sample size. The Customer will consult with the Contractor regarding the scope of the benchmarker’s remit.
- (f) The Contractor must provide all reasonable assistance, including the provision of appropriate data, to the benchmarker, provided however, the Contractor will not be required to disclose to the Customer or the benchmarker any information related to its internal costs, margins or profitability, information related to its other customers or details of effort expended where the Contractor is charging the Customer on a fixed price basis. The Contractor may request that the Customer procure that the benchmarker enter into a confidentiality deed substantially in the form of Schedule 24 (Form of Confidentiality Deed Poll) for the benefit of the Contractor prior to disclosing any information to the benchmarker.



[Redacted]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- (h) The Contractor may treat a failure to agree on adjustments or corrective actions under this clause as an Issue for the purposes of the Issue Resolution Procedures.
- (i) The Customer will bear the costs of the benchmarker. Each party will bear its own costs in participating in the Benchmarking.
- (j) For the purposes of this clause 24:
 - (i) “equivalent” means not materially different; and
 - (ii) “equivalent customer” means any customer purchasing equivalent volumes of equivalent products and services to those being provided by the Contractor as part of or in connection with the TLS Activities, whether that customer is located in Australia or elsewhere, where the relationship between that customer and Contractor is based on a similar operating environment.
- (k) For clarity, this clause 24 is not intended to operate to benchmark the fixed price elements of a Work Order.

Part G Governance

25 Governance

25.1 Governance model

The parties must comply with the governance model as set out in Schedule 21 (Governance and Management).

25.2 Representatives

- (a) The principal points of contact between the parties in relation to the Transaction Documents will be the Customer Representative and the Contractor's Representative.
- (b) The Customer Representative and the Contractor's Representative must:
 - (i) manage the working arrangements between the parties under the Transaction Documents;
 - (ii) monitor and review each party's performance of its respective obligations and responsibilities under the Transaction Documents on an ongoing basis; and
 - (iii) serve as the principal interface between the parties with respect to all matters relating to the Transaction Documents.

25.3 Customer Representative

- (a) The Customer must appoint an employee or contractor of the Customer as the Customer Representative and may change its nomination from time to time on reasonable notice to the Contractor. Any substitute Customer's Representative appointed under this clause 25.3 will be bound by anything done by the former Customer's Representative to the same extent as the former Customer's Representative would have been bound.
- (b) The Customer Representative will give Directions and carry out all its other functions under the Transaction Documents as the agent of the Customer (and not as an independent certifier, assessor or valuer).
- (c) The Contractor must comply with any Direction by the Customer Representative given or purported to be given under the Transaction Documents.
- (d) The Customer Representative may:
 - (i) by notice to the Contractor appoint persons to exercise any of the Customer Representative's functions under the Transaction Documents;
 - (ii) not appoint more than one person to exercise a specific function under the Transaction Documents;
 - (iii) revoke any appointment under paragraph (d)(i) by notice to the Contractor; and

- (iv) continue to exercise a function under the Transaction Documents despite appointing another person to exercise that function (provided that any Directions of the Customer Representative will take precedence over those of any appointees to the extent of any inconsistency).
- (e) All references in the Transaction Documents to the Customer Representative include a reference to a representative appointed under paragraph (d). The Contractor acknowledges that a purported exercise by the Customer Representative's appointee of a function outside of those functions delegated to the appointee and notified to the Contractor is not binding on the Customer.

25.4 Contractor's Representative

- (a) The Contractor must appoint as the Contractor's Representative a senior employee of the Contractor approved by the Customer, and may only replace that appointed person in accordance with clause 19.5 (Key People) or in accordance with paragraph (h).
- (b) The Contractor's Representative will carry out all its functions under the Transaction Documents as the agent of the Contractor (and not as an independent certifier, assessor or valuer), and must have the full power and authority to act for and on behalf of and to bind the Contractor under the Transaction Documents.
- (c) The Contractor must ensure that the Contractor's Representative has full authority to execute the Directions of the Customer without delay.
- (d) The Contractor must ensure that the Contractor's Representative is present at the primary location in Australia where the TLS Activities are being carried out (or such other Delivery Location as is agreed) at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Transaction Documents.
- (e) On reasonable notice from the Customer, the Contractor's Representative must attend any ad hoc or regular meetings required by the Customer and must provide reports and make any presentations that the Customer reasonably requests, to either:
 - (i) demonstrate the Contractor's compliance with any Project Plan or any other system required to comply with the Transaction Documents; or
 - (ii) discuss other matters of importance to the conduct or progress of the TLS Activities.
- (f) A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
- (g) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor, and the Contractor is bound by and deemed to have knowledge of:
 - (i) notices or documents signed by the Contractor's Representative;
 - (ii) matters within the knowledge of the Contractor's Representative; and

- (iii) acts, omissions and defaults of the Contractor's Representative, whether or not the Contractor's Representative was acting within the scope of its authority at the time of the act, omission or default.
- (h) If the Customer makes a reasonable objection as to the identity of or the performance of the Contractor's Representative, the Contractor must terminate the appointment and appoint another representative, subject again to the approval of the Customer.

25.5 Delegated Authority

- (a) The Contractor acknowledges that any Direction, agreement, acceptance, consent or approval by the Customer with or to the Contractor (as applicable) in respect of any matter or thing under the Transaction Documents is not binding on the Customer unless such Direction, agreement, acceptance, consent or approval is given or made by the Customer Representative, or a person authorised by the Customer Representative in accordance with clause 25.3 (Customer Representative) to give or make such Direction, agreement, acceptance, consent or approval.
- (b) The Customer acknowledges that any agreement, acceptance, consent or approval by the Contractor with or to the Customer (as applicable) in respect of any matter or thing under the Transaction Documents is not binding on the Contractor unless such agreement, consent or approval is given or made by the Contractor's Representative, or a person authorised by the Contractor's Representative in writing to give or make such agreement, acceptance, consent or approval.

25.6 Performance reviews

The Contractor acknowledges that the Customer may from time to time undertake assessments and reviews of performance of the TLS Activities, compliance with the Collaboration Principles and Interface Requirements and otherwise with the terms of the Transaction Documents. The Customer may develop metrics and performance measures for this purpose and the Contractor must reasonably co-operate with the Customer in undertaking such assessments, including by providing such information and reports as may be requested by the Customer in connection with the same.

25.7 Interpretation

For the purposes of this clause 25, Transaction Documents does not include the Delivery Agreement.

26 Resolution of Matters

26.1 Issue Resolution

- (a) The parties intend to adopt a collaborative and cooperative approach to resolving Matters, and to that end have agreed that only Matters which:
 - (i) are material in the context of the Program, being those:
 - (A) for an amount greater than \$100,000 (or such other amount agreed from time to time); or

- (B) which either party (acting reasonably) contends have, had, or have the potential to have, an impact on the Contractor's ability to perform the TLS Activities; or
 - (C) which either party (acting reasonably) contends have, had, or have the potential to have, an adverse safety impact; or
- (ii) the parties are unable to resolve within the timeframes stipulated in the relevant contractual provision governing the Matter (or, if no timeframe is stipulated or if there is no such contractual provision, within twenty (20) Business Days (or such other period as agreed from time to time) of the Matter first being raised by a party); or
 - (iii) any other Matter which this Agreement stipulates will be subject to the Issue Resolution Procedures set out in Schedule 17 (Issue Resolution Procedure),
- (such Matters being "Issues") will, subject to paragraph (b), be resolved through the Issue Resolution Procedures.
- (b) Notwithstanding paragraph (a), it is the intention of the parties to resolve as many Issues as possible without recourse to the Issue Resolution Procedures.
 - (c) Subject to paragraph (b), any:
 - (i) Issues must be dealt with in accordance with the Issue Resolution Procedures set out in Schedule 17 (Issue Resolution Procedure); and
 - (ii) Disputes must be dealt with in accordance with the Dispute Resolution Procedures set out in Schedule 18 (Dispute Resolution Procedure).
 - (d) Neither party may:
 - (i) issue a Dispute Notice under section 1.1 (Dispute notice) of Schedule 18 (Dispute Resolution Procedure) or follow the Dispute Resolution Procedures without first complying with paragraph (c)(i); or
 - (ii) seek to resolve by way of court proceedings or otherwise, a Matter, an Issue or a Dispute, other than in accordance with paragraphs (a) to (c), Schedule 17 (Issue Resolution Procedure) and Schedule 18 (Dispute Resolution Procedure) (as applicable).
 - (e) Information provided on a without prejudice basis by a party during or in connection with the Matter resolution processes detailed in paragraphs (a) to (c) must not be used against that party in any Dispute Resolution Procedures except on the question of costs of the Dispute Resolution Procedures.
 - (f) Unless expressly provided otherwise in this Agreement (including in Schedule 17 (Issue Resolution Procedure) and Schedule 18 (Dispute Resolution Procedure)), despite the existence of a Matter (including an Issue or Dispute) or the provision of any notice by the Customer or the Contractor under Schedule 17 (Issue Resolution Procedure) or Schedule 18 (Dispute Resolution Procedure), the Contractor must:
 - (i) except where the Agreement has been terminated, continue to carry out the TLS Activities; and

- (ii) otherwise comply with, and will not be relieved from, its obligations under this Agreement.
- (g) Nothing in this Agreement (including in Schedule 17 (Issue Resolution Procedure) and Schedule 18 (Dispute Resolution Procedure)):
 - (i) will prejudice the right of a party to seek urgent injunctive relief from a court;
 - (ii) will limit the operation or effect of any other provision of this Agreement that requires either party to give notice to the other party in order to preserve an entitlement to make a claim or any conditions precedent, limitation or exclusion clause;
 - (iii) is intended to limit or prevent the operation and proceedings of the governance forums detailed in Schedule 21 (Governance and Management) in accordance with the terms of reference for those forums; or
 - (iv) is intended to prevent either party from raising a Variation in accordance with the Variation Procedures.

26.2 Complaints and Notification

- (a) The Contractor must immediately notify the Customer if any:
 - (i) complaint is made, or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or Direction is made,

by anyone (including any Government Authority or any landowner, lessee or licensee on or near the Delivery Locations) against the Contractor or any of its Subcontractors or their respective employees in respect of any aspect of carrying out the TLS Activities, including:
 - (iv) Contamination arising out of, or in connection with, the TLS Activities;
 - (v) the Contractor's non-compliance with any Approval (or any condition or requirement thereunder), the Project Management Plan or any Law regarding the Environment;
 - (vi) the implementation of the Project Management Plan or the Contractor's community liaison plan;
 - (vii) the Contractor's use or occupation of the Delivery Locations; or
 - (viii) loss or damage of the kind referred to in clause 12.4 (Loss or damage to third party property).
- (b) The Contractor must respond to complaints and enquiries received regarding the TLS Activities and that of its Subcontractors in accordance with the PR.

27 Records and Audit

27.1 Records

The Contractor must:

- (a) keep (and must ensure that each Subcontractor keeps) full and proper, up-to-date books of accounts and records in accordance with Industry Best Practice:
 - (i) relating to matters reasonably required by the Customer and other matters relating to the performance of its obligations under this Agreement; and
 - (ii) as may be reasonably required in order to verify the:
 - (A) Contractor's compliance with its obligations under this Agreement; and
 - (B) accuracy of the Fees,

(Records); and
- (b) maintain all Records, Reports, Project Plans and other plans developed under this Agreement during the Term and for seven (7) years after the termination or expiry of this Agreement or any Work Order (whichever is the later).

27.2 Audit and Inspection

- (a) Without limiting any other clause of this Agreement, the Customer (or its Representatives) may audit and Inspect the Contractor and any Subcontractors at all reasonable times in respect of any matter relating to this Agreement, including to:
 - (i) verify the accuracy of any payment claims issued under this Agreement by reference to supporting records;
 - (ii) examine the performance of the TLS Activities (including all Records, Reports, Project Plans and other plans developed under this Agreement);
 - (iii) examine the Contractor's TLS Spares Inventory;
 - (iv) conduct a review or audit of the Contractor's Sites, facilities, safeguards, policies, procedures and security measures in place to protect any Customer Data and the Customer's Confidential Information, including practices for physical security, logical security, back-ups, business continuity plans, systems and processes, and procedures and systems in relation to preventing the introduction of Disabling Code;
 - (v) conduct penetration testing;
 - (vi) verify the required quality certification and compliance with applicable quality or WHS management system(s), work practices and procedures applicable to the performance of this Agreement; or
 - (vii) investigate an actual or suspected fraud, a Security Event (physical or logical), a Probity Event, or an actual or suspected Event of Default.

- (b) The Customer must provide the Contractor (or its Subcontractors) with at least three (3) Business Days' notice of its intention to conduct an audit or Inspection, except in respect of an audit or Inspection for an event described in paragraph (a)(vii) (in which case, the Customer may provide less than twenty-four (24) hours' notice).
- (c) If the Customer provides notice under paragraph (b), the Contractor must provide, and must ensure its Subcontractors provide, the Customer or its Representative (or both of them) and the audit / Inspection team put together by the Customer, on request, with (subject to the Customer and/or its Representative (as applicable) complying with the Contractor's reasonable access and security requirements and any Third Party entering into a confidentiality agreement substantially in the form of Schedule 24 (Form of Confidentiality Deed Poll)):
- (i) access to any premises occupied by it, or any Subcontractor, and make suitable facilities available to accommodate the audit or Inspection and the audit / Inspection team;
 - (ii) access to (including the right to copy) any Records, Reports, Project Plans, other plans developed under this Agreement, books, accounts, files, tapes, recordings, records and other documents relating to the performance of the TLS Activities and/or its obligations under this Agreement (however, the Contractor will not be required to disclose its profit margins or costs associated with performing the TLS Activities);
 - (iii) copies of the documents mentioned in paragraph (c)(ii);
 - (iv) access to any audits conducted by the Contractor (under clause 27.5 (Contractor audit) or otherwise), whether access is required on the Contractor's Sites or otherwise;
 - (v) save to the extent prohibited by Law, employment and training records;
 - (vi) access to its facilities and systems relating to the performance of the TLS Activities and/or its obligations under this Agreement;
 - (vii) the opportunity to interview relevant Contractor Personnel relating to the performance of the TLS Activities and/or its obligations under this Agreement; and
 - (viii) all reasonable assistance relating to the conduct of the audit or Inspection.
- (d) If the Customer provides notice under paragraph (b) in respect of a matter set out in paragraph (a)(iv), the Contractor must, in addition to its obligations under paragraph (c), as soon as reasonably practicable:
- (i) compare the level of current safeguards and security measures, as set out in the Customer's Policies as provided to the Contractor and/or as are in place at the relevant time, with the ISO 27001 standard (as updated from time to time); and
 - (ii) provide the results of the audit to the Customer in writing as soon as reasonably practicable.

27.3 Financial Assessment

Without limiting or otherwise restricting clauses 24 (Benchmarking) and 27.2 (Audit and Inspection), the Contractor acknowledges and agrees that:

- (a) the Customer may, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments (**Financial Assessment**) of the Contractor and any Subcontractors;
- (b) the Financial Assessment may be undertaken at three (3) monthly (or longer) intervals from the Commencement Date; and
- (c) it must, if requested by the Customer, within ten (10) Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Customer under, out of, or in connection with the Financial Assessment (however, the Contractor will not be required to disclose its profit margins or costs associated with performing the TLS Activities).

27.4 Timing, Costs and Remediating Non-compliance

- (a) Subject to paragraph (b), each party will bear its own costs associated with any audit or Inspection conducted by the Customer under clause 27.2 (Audit and Inspection) or Financial Assessment.
- (b) If any audit, Inspection or Financial Assessment shows that the Contractor is not complying with this Agreement (including any Project Plan) in any respect, without limiting any of the Customer's rights or remedies:
 - (i) the Contractor must reimburse the Customer for its reasonable costs associated with performing such audit, Inspection or Financial Assessment;
 - (ii) the Contractor must:
 - (A) take such action as is necessary (including any recommendations arising from any audit, Inspection or Financial Assessment) to remedy the non-compliance promptly upon receipt of notice by the Customer;
 - (B) demonstrate to the Customer's reasonable satisfaction that such non-compliance has been remedied (including through preparing an Action Plan, if required by the Customer); and
 - (C) promptly put in place appropriate preventative mechanisms to prevent reoccurrence of such non-compliance; and
 - (iii) the Customer may conduct follow-up audits, Inspections or Financial Assessments at the Contractor's cost until the Contractor has demonstrated to the Customer's reasonable satisfaction that such non-compliance has been remedied.
- (c) If an audit, Inspection or Financial Assessment shows that a Conflict of Interest, Probity Event, fraud or any security breach has occurred, then without limiting any other right or remedy it may have under this Agreement or at Law, the Customer may immediately by notice require the Contractor to remove any Contractor Personnel responsible for, or involved in, such Conflict of Interest, Probity Event, fraud or security breach from performing the TLS Activities for the Customer, and the Contractor must comply with that notice immediately.

27.5 Contractor audit

- (a) The Contractor must provide the Customer with a program of Contractor-led audits and management or project reviews.
- (b) Without limiting this clause 27, the Contractor must, where requested by the Customer, share with the Customer the results of any self-verification, management or project review or audit conducted by the Contractor that relates in whole or in part to the Program.

28 Probity Events and Conflicts of Interest

28.1 Notice

- (a) Without limiting any other clause in this Agreement, the Contractor must give notice to the Customer as soon as it becomes aware that a Probity Event or Conflict of Interest has occurred or is likely to occur. Such notice must describe the nature of the Probity Event or Conflict of Interest and the circumstances giving rise to it or likely to give rise to it.
- (b) The Customer may give notice to the Contractor if the Customer becomes aware that a Probity Event or Conflict of Interest has occurred or is likely to occur.
- (c) Without prejudice to clause 49.1(a)(x), on receipt of a notice under paragraph (a) or the issue of a notice under paragraph (b), the Customer may approve the Contractor continuing to perform the TLS Activities, which approval may be subject to conditions specified by the Customer (including requirements relating to separation arrangements) to ensure appropriate management of the Conflict of Interest.

28.2 Investigations

The Contractor must:

- (a) promptly comply with any reasonable request from the Customer for access to Contractor Personnel or access to the personnel of any Associate of the Contractor for the purpose of undertaking any investigations that the Customer may wish to carry out in relation to a Probity Event or Conflict of Interest; and
- (b) use reasonable endeavours to ensure that the Contractor Personnel or the personnel of any Associate of the Contractor co-operate with the Customer and comply with any reasonable requests for information that the Customer may make in the course of its investigations.

28.3 Remedial action

- (a) Upon the issue of a Probity Event Notice, the parties must meet at a time nominated or agreed by the Customer to discuss the occurrence of the actual or likely Probity Event or Conflict of Interest. During any such meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Contractor to ensure that the Probity Event or Conflict of Interest does not occur or its impact is minimised.
- (b) If the parties are unable to agree on appropriate actions within five (5) Business Days of such meeting or the Contractor fails to implement any actions agreed

under paragraph (a), the Customer may give notice to the Contractor setting out the action it must take to address the adverse effect of the Probity Event or Conflict of Interest. Such action may include:

- (i) terminating any Subcontract under clause 20.11 (Termination of Subcontractors);
- (ii) procuring the relevant Contractor Personnel (or the personnel of any Associate of the Contractor) to cease having involvement, shares, entitlement, contract, arrangement, significant influence, or power or control over the Contractor or Contractor's Associate; or
- (iii) removing any such personnel from any further involvement with this Agreement.

28.4 Statement of Interests and Associations

The Customer may, at any time, require the Contractor to sign and procure that each of its Representatives and/or Subcontractors signs and delivers to the Customer, the Statement of Interests and Associations in the form attached in Schedule 30 (Statement of Interests and Associations).

Part H Information Handling and Security

29 Intellectual Property

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30 Customer Data

30.1 Ownership

- (a) The Contractor acknowledges that the Customer Data is and remains the property of TfNSW and all rights, title and interests, including Intellectual Property Rights, in the Customer Data will remain with or vest in TfNSW as Assigned IP under the Delivery Agreement. Notwithstanding the foregoing, the Customer Data is the Confidential Information of the Customer.
- (b) The Contractor must ensure the Customer has access at all times (and without condition or additional charge) to all Customer Data (in an industry standard format) whilst in the possession or under the control of the Contractor or any of its Subcontractors.

30.2 Use of Customer Data

- (a) The Contractor must retain only the Customer Data that the Customer has agreed the Contractor may retain and must only retain that Customer Data for the period of time and in the volumes notified by the Customer from time to time, after which date the Contractor must destroy the Customer Data or return it to the Customer, at the Customer's election.
- (b) The Contractor must remove all Customer Data from any of its media taken out of service and must destroy or securely erase such media in accordance with the relevant Customer Policy or as requested by the Customer.
- (c) The Contractor is responsible for validating any Customer Data as sufficient to enable the Contractor to perform the TLS Activities in accordance with the Contract Specifications. The Contractor is not required to validate the accuracy of any Customer Data. However, the Contractor must notify the Customer of issues with or errors in the Customer Data that are detected by the Contractor and provide reasonable details of the issues or errors to the Customer as soon as reasonably

practicable (and in any event, within twenty-four (24) hours of becoming aware of the issues or errors).

30.3 Security and confidentiality of the Customer Data

- (a) The Contractor acknowledges that the Customer Data is Confidential Information of the Customer (and not of the Contractor or its Associates) and is subject to the confidentiality obligations in clause 31 (Confidentiality).
- (b) The Contractor must maintain, enforce and continuously improve a security environment and safety and security procedures and safeguards in connection with the TLS Activities, the TMS Subsystem and the Contractor's and its Subcontractors' associated systems (including procedures and safeguards against the destruction, loss, disclosure, alteration or unauthorised access or use of Customer Data) that:
 - (i) are consistent with the security and control requirements set out in the Contract Specifications and the Services Schedule;
 - (ii) are no less rigorous than those maintained by the Customer as of the Execution Date (or implemented by the Customer in the future as notified by the Customer);
 - (iii) are no less rigorous than those maintained by the Contractor for its own information of a similar nature from time to time;
 - (iv) are in accordance with Industry Best Practice;
 - (v) are consistent with the following International Standards for Information Security (available from the Australian Standards website, www.standards.org.au):
 - (A) AS/NZS ISO/IEC 27001:2013 Information Security Management Systems - Requirements;
 - (B) AS/NZS ISO/IEC 27002:2013 Code of Practice for Information Security Management; and
 - (C) ISO/IEC 27005:2011 Information Security Risk Management;
 - (vi) are adequate to meet the requirements of the Customer Policies relating to privacy, secrecy, security, records retention and data; and
 - (vii) comply with all Laws applicable to the Customer's and the Contractor's use and custody of the Customer Data.
- (c) Without limiting paragraph (a) and clause 30.7 (Reconstruction of Data), the Contractor must:
 - (i) at all times use appropriate, sophisticated and up-to-date pro-active security threat prevention Software, including virus detection systems and intrusion detection systems for preventing and detecting Disabling Code;
 - (ii) ensure that all of the Contractor's systems are constantly updated throughout the Term to address security vulnerabilities and changes in the threat environment;

- (iii) not remove or transfer Customer Data to any non-Customer premises or from the Customer Systems without obtaining the prior approval of the Customer or as expressly authorised by and in accordance with this Agreement;
 - (iv) provide the Customer with security-relevant information including security intelligence, near-miss incident or relevant updates to the Contractor's data security policies which may impact the security of the Customer Data and Systems; and
 - (v) promptly inform the Customer of any security threats or Disabling Code and the steps necessary to avoid their introduction.
- (d) The Contractor must keep the Customer informed at all times of the Contractor's current safety and security procedures and safeguards in respect of the Customer Data and keep the Customer informed of any amendments to such procedures and safeguards as they are made from time to time.
- (e) In the event of any conflict between any data or security requirements applicable to the Customer Data, Personal Information or the System under this Agreement, the most stringent or higher level of security standard will apply.

30.4 Security Event

If the Contractor becomes aware of an actual, alleged or suspected Security Event, including any relating to Customer Data, the Contractor must:

- (a) immediately notify the Customer of such Security Event;
- (b) within forty-eight (48) hours from the notification:
 - (i) conduct an investigation (with the Customer's participation if so desired by the Customer) of such Security Event;
 - (ii) perform a risk assessment and root cause analysis;
 - (iii) develop an Action Plan for the Customer approval; and
 - (iv) provide a written report to the Customer of such risk assessment, root cause analysis and Action Plan;
- (c) remediate the effects of such Security Event within twenty-four (24) hours from the conclusion of the investigation in paragraph (b)(i); and
- (d) provide the Customer with such assurances as the Customer reasonably requests that such Security Event will not recur.

30.5 No transfer of Customer Data outside of NSW

- (a) The Contractor must not, without the Customer's prior consent (which may be provided subject to conditions):
 - (i) transfer, or permit the transfer, outside of NSW any Customer Data which is a State Record or Personal Information held in connection with this Agreement; or

- (ii) allow or permit access to such Customer Data by any person who is outside of NSW at the time of such access.
- (b) If the Customer provides the Contractor with consent under paragraph (a), the Contractor must comply with any conditions imposed by the Customer in relation to the Customer Data the subject of the consent.

30.6 Data recovery and back-up

Without limiting any other terms of this Agreement, the Contractor must:

- (a) to the extent the Customer Data is within the possession or under the control of the Contractor or any Contractor Personnel, maintain back-ups in accordance with Industry Best Practice and as required by this Agreement and the Contract Specifications; and
- (b) if there is a loss of, or damage to, Customer Data, reload the relevant data saved during the last back-up.

30.7 Reconstruction of Data

As part of the TLS Activities, the Contractor is responsible for developing and maintaining procedures for the reconstruction of lost the Customer Data which reflect Industry Best Practice and are no less rigorous than those maintained by the:

- (a) Customer as of the Execution Date (or implemented by the Customer in the future); and
- (b) Contractor for its own information of a similar nature from time to time.

30.8 Disabling Code

- (a) The Contractor must not, and must ensure the Contractor Personnel do not:
 - (i) supply or connect, or permit to be supplied or connected, to the System, the Customer Environment, Works or Assets any product or system containing a Disabling Code; or
 - (ii) insert or activate, or permit to be inserted or activated, any Disabling Code into the System, the Customer Environment, Works or Assets at any time.
- (b) If the Contractor becomes aware that any Disabling Code is found to have been installed, released or otherwise introduced into any part of the Customer Environment or Works or Assets:
 - (i) the Contractor must promptly provide all information reasonably requested by the Customer in relation to the Disabling Code, its manner of introduction and the effect the Disabling Code has had or is likely to have;
 - (ii) if the Disabling Code causes a loss of operational efficiency or loss of data, reasonably assist the Customer to mitigate the effect of the Disabling Code and to assist the Customer to recover the efficiency and/or data; and
 - (iii) where the Disabling Code was introduced by the Contractor or any Contractor Personnel or otherwise in circumstances where the Contractor did not comply with its obligations in respect of security or Disabling Code

under this Agreement, in addition to any other rights that the Customer may have, the Contractor must pay the Losses incurred by the Customer relating to:

- (A) identifying and removing the Disabling Code; and
- (B) restoring any data lost, damaged or corrupted as a result of the Disabling Code to the last backed-up version of that data and otherwise remedying the impact of the Disabling Code.

31 Confidentiality

31.1 Obligations of confidence

- (a) Each party must:
 - (i) use the other party's Confidential Information solely for the purposes of exercising rights or performing obligations under this Agreement;
 - (ii) notify the other party of any potential, suspected or actual unauthorised access, reproduction or use of the other party's Confidential Information which comes to its attention; and
 - (iii) keep the other party's Confidential Information confidential and not disclose it to any Third Party except as:
 - (A) provided for in clause 31.2 (Permitted use and disclosures); or
 - (B) otherwise permitted under this Agreement.
- (b) These obligations of confidence extend to any Confidential Information provided to or obtained by a party prior to entry into this Agreement and includes Confidential Information provided or obtained under the ECI Agreement.

31.2 Permitted use and disclosures

- (a) Each party may disclose Confidential Information of the other party as follows:
 - (i) to its officers, agents, professional advisors (including lawyers), employees, contractors, sub-contractors and insurers; or
 - (ii) to any auditor, expert, mediator or arbitrator appointed under this Agreement,

in each case on a "need-to-know" and confidential basis. This paragraph (a) does not apply to Permitted Sublicensees which are governed by paragraph (d).
- (b) Confidential Information of a party may also be disclosed with the prior written consent of that party.
- (c) Subject to paragraph (d) and (f), each party who discloses Confidential Information of the other pursuant to paragraph (a) must ensure that such information is kept confidential by the recipients on the basis set out in this clause 31.

- (d) Without limiting paragraph (a), the Customer may also disclose any Confidential Information of the Contractor or any Contractor Personnel to any person who is a Permitted Sublicensee.
- (e) The Contractor acknowledges and agrees that, in relation to Confidential Information disclosed to any Permitted Sublicensee that is a party to any other agreement or deed (including the Confidentiality and Intellectual Property Deed Poll) in favour of the Contractor under which the Permitted Sublicensee has a right to receive and use the Contractor's (or any Contractor Personnel's) Confidential Information (**Other Confidentiality Agreement**):
- (i) any Claim by the Contractor or any Contractor Personnel that any such Permitted Sublicensee has used such Confidential Information in breach of any obligations of confidence must be brought by the Contractor or relevant Contractor Personnel against the relevant Permitted Sublicensee under the Other Confidentiality Agreement; and
 - (ii) the Customer is not liable for the acts or omissions of the Permitted Sublicensee in connection with that Confidential Information and the Contractor is not entitled to, and waives any rights it has or may have to, bring any Claim against the Customer.
- (f) The Customer will notify the Contractor each time a Permitted Sublicensee enters into a deed poll on substantially the same terms as the Confidentiality and Intellectual Property Deed Poll executed by the Contractor.
- (g) Where requested by the Customer (and where the relevant Permitted Sublicensee is not a party to an Other Confidentiality Agreement), the Contractor must enter into a non-disclosure deed with the Permitted Sublicensee in the form set out in Schedule 24 (Form of Confidentiality Deed Poll), or such other non-disclosure deed as agreed between the parties but which is on substantially the same terms as the deed set out in Schedule 24 (Form of Confidentiality Deed Poll). Where such non-disclosure deed is entered into:
- (i) any Claim by the Contractor that any such Permitted Sublicensee has used the Contractor's Confidential Information in breach of the non-disclosure deed must be brought by the Contractor against the relevant Permitted Sublicensee under the non-disclosure deed; and
 - (ii) the Customer is not liable for the act or omission of the Permitted Sublicensee in connection with that Confidential Information and the Contractor is not entitled to, and waives any rights it has or may have to bring any Claim against the Customer.
- (h) Notwithstanding anything to the contrary in this Agreement, either party may disclose Confidential Information of the other party where such Confidential Information is required to be disclosed:
- (i) by applicable Law, by a court or Government Authority, provided that, prior to disclosing any such Confidential Information, the party making the disclosure has promptly notified the other party to allow that party to take all reasonable steps to maintain such Confidential Information in confidence; or
 - (ii) in accordance with the rules of any stock exchange upon which the securities of the party making the disclosure are listed.

31.3 Confidentiality Deed Poll

Unless otherwise agreed, the Contractor must ensure that each officer, employee, Subcontractor or agent of the Contractor involved in the performance of the TLS Activities duly execute and deliver to the Customer a Confidentiality Deed Poll in the form set out in Schedule 24 (Form of Confidentiality Deed Poll).

31.4 Security

Each party must take reasonable steps to protect the Confidential Information of the other party from unauthorised use or disclosure, and in any event steps no less protective than those taken to protect that party's own Confidential Information.

31.5 Records and retention of Customer Confidential Information

- (a) On the date any Customer Confidential Information is no longer needed for the purposes of the Contractor performing the TLS Activities, the Contractor and each of its Representatives must within fourteen (14) Business Days after such date:
 - (i) cease using the relevant Customer Confidential Information; and
 - (ii) subject to any legal requirement in relation to the retention of records (including any requirement under the rules of any stock exchange), deliver to the Customer, or, at the Customer's option, destroy (in accordance with approved destruction methods) or De-Identify all tangible records of Customer Confidential Information in the power, possession or control of the Contractor or any person to whom it has given access to these records, including any tape or backup records.
- (b) If requested by the Customer, the Contractor must provide evidence satisfactory to the Customer that all Customer Confidential Information has been delivered to the Customer or destroyed or De-Identified in accordance with this clause 31.5.

31.6 Publicity

- (a) The Contractor must not make any public statement about the Transaction Documents or the Program, or anything related to the subject matter of the Transaction Documents or the Program, without the prior consent of the Customer.
- (b) Paragraph (a) will not apply where the Contractor is required to make a public statement in order to comply with the rules of any stock exchange upon which the securities of any Related Body Corporate of the Contractor are listed, provided that, prior to making such statement, the Contractor consults with the Customer regarding the form and content of the statement.

32 Privacy

32.1 Privacy compliance

If the Contractor collects, uses, discloses, transfers or otherwise handles any Personal Information in connection with this Agreement, it must:

- (a) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;

- (b) comply with any Customer Policies related to privacy; and
- (c) not do anything or engage in any practice which if done or engaged in by the Customer, would be a breach of any Privacy Laws.

32.2 General privacy obligations

Without limiting clause 32.1 (Privacy compliance), the Contractor must:

- (a) (and must ensure the Contractor Personnel) collect, use, disclose, transfer or handle any Personal Information only to the extent necessary to perform its obligations in accordance with this Agreement;
- (b) not disclose any Personal Information to any other person (including to a Subcontractor) without the prior consent of the Customer or, subject to paragraph (e), as required by Law;
- (c) ensure that Contractor Personnel who have access to any Personal Information:
 - (i) are made aware of the obligations in this clause 32; and
 - (ii) if requested by the Customer, ensure that such Contractor Personnel sign written undertakings (in a form acceptable to the Customer) to comply with the obligations in this clause 32;
- (d) without limiting any of the Contractor's other obligations under this Agreement, take all technical, organisational and other security measures as are reasonably within the Contractor's power to protect any Personal Information from:
 - (i) misuse, interference and loss; and
 - (ii) unauthorised access, Modification or disclosure;
- (e) notify the Customer:
 - (i) as soon as reasonably practicable after the Contractor receives any request or complaint concerning any Personal Information;
 - (ii) immediately after the Contractor becomes aware that a disclosure of any Personal Information may be required by Law; and
 - (iii) immediately if the Contractor becomes aware of any breach of this clause 32, or of any Data Breach which has occurred or which the Contractor has reasonable ground to suspect may have occurred;
- (f) promptly comply with any requests and/or Directions from the Customer from time to time:
 - (i) concerning the collection, use, disclosure, transfer, handling, access or correction of any Personal Information; and
 - (ii) for information, assistance and co-operation to allow the Customer to investigate breaches of this clause 32, or a Data Breach and to comply with its obligations under the Privacy Laws; and

- (g) without limiting the above, in relation to the Data Breach, if the Contractor forms the view that it is or may be required to notify affected individuals of a Data Breach under the Privacy Laws, ensure that:
- (i) before making any such notification it promptly discusses such matter with the Customer in good faith and complies with any reasonable Directions issued by the Customer in relation to such notification, including as to whether the Contractor or the Customer will be the person responsible for fulfilling the relevant notification requirements; and
 - (ii) where the Customer determines that the Contractor will be the party responsible for fulfilling the relevant notification requirements, comply with all such notification requirements in accordance with the Privacy Laws.

33 Government Disclosure

33.1 GIPAA

- (a) The Contractor acknowledges that the Customer may be required to publish certain information concerning the Transaction Documents:
- (i) in accordance with sections 27 – 35 of the *Government Information (Public Access) Act 2009* (NSW); and
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,
- and the Contractor must provide to the Customer any other information which the Customer reasonably requires to comply with its obligations under this paragraph (a).
- (b) If the Contractor reasonably believes that any part of the Transaction Documents contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Contractor should immediately advise the Customer in writing, identifying the provisions and providing reasons so that the Customer may consider seeking to exempt those provisions from publication however is under no obligation to do so.

33.2 Disclosure to other agencies

- (a) The Contractor authorises the Customer to make information concerning the Contractor, Contractor Personnel and/or the Transaction Documents available to any Government Authorities (whether in NSW or any other jurisdiction), including:
- (i) any information provided by or on behalf of the Contractor or any Contractor Personnel to the Customer;
 - (ii) any information relating to the Contractor's or any Contractor Personnel's performance under this Agreement; and
 - (iii) the terms of the Transaction Documents or any Subcontract.

- (b) The Contractor acknowledges that:
- (i) any information about the Contractor or any Contractor Personnel from any source, including substantiated reports of unsatisfactory performance, may be considered by the Customer and any Government Authority in considering whether to offer the Contractor or any Contractor Personnel future opportunities for NSW government work;
 - (ii) the communication of such information to any Government Authority is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (iii) the Customer has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's and Contractor Personnel's performance under the Transaction Documents and that it will participate in the Customer's "Contractor Performance Reporting" process.

33.3 No limitation

- (a) Nothing in this clause 33 or any other provision of this Agreement operates to limit or restrict any of the Customer's rights to publish or disclose (on the internet or otherwise) information relating to:
- (i) the Contractor's performance with respect to the Transaction Documents; or
 - (ii) any tendering process for an agreement analogous to or similar to the Transaction Documents.

Part I Compliance

34 Mandatory Requirements and Approvals

34.1 Mandatory Requirements

(a) The Contractor must:

- (i) perform (and procure that all Contractor Personnel and Subcontractors perform), the TLS Activities in accordance with; and
- (ii) ensure that:
 - (A) the TMS Subsystem, and
 - (B) all Spares on delivery,

comply and perform in accordance with all of the following, being the **Mandatory Requirements**:

- (iii) Laws;
 - (iv) Approvals (including any conditions or requirements under them) that:
 - (A) the Contractor is required to obtain;
 - (B) are listed in the Services Schedule or otherwise in the Contract Specifications; or
 - (C) have been obtained by the Customer or a Third Party, and in respect of which the Contractor has been provided notice;
 - (v) Standards, including any standards developed in accordance with clause 36.2(b); and
 - (vi) provisions of the Contractor's AEO Authorisation and the ASA requirements in accordance with clause 36.
- (b) The Contractor must:
- (i) diligently monitor no less than once every six (6) months all Changes in Law, Changes in Approvals and Changes in Standards;
 - (ii) without prejudice to the notification requirements contained in section 5 (Changes in Laws, Approvals and Standards) of Schedule 6 (Work Orders and Variation Procedures), notify the Customer within ten (10) Business Days of becoming aware of any Change in Laws, Change in Approvals or Change in Standard;
 - (iii) comply with all Changes in Laws;
 - (iv) comply with all Changes in Approvals; and
 - (v) comply with Changes in Standards, where required by section 5.3 (Changes in Standards) of Schedule 6 (Work Orders and Variation Procedures).

- (c) Other than as set out in Schedule 6 (Work Orders and Variation Procedures), the Contractor will not be entitled to make, and the Customer will not be liable upon, any Claim arising out of or in connection with:
- (i) any Change in Law, Change in Approval or Change in Standard;
 - (ii) any Law, Approval or Standard obtained or issued or which otherwise takes effect after the date of this Agreement; or
 - (iii) any:
 - (A) assumptions the Contractor makes; or
 - (B) failure by the Contractor to adequately satisfy itself;
- as to what work methodologies might be permissible under all Mandatory Requirements.

34.2 Contractor to obtain and maintain Approvals

- (a) The Contractor must:
- (i) obtain (or procure) and maintain all Approvals required for the Contractor to perform its obligations under this Agreement other than those Approvals which this Agreement (including a Work Order) expressly states that a Rail Transport Entity has obtained or requires a Rail Transport Entity to obtain or maintain;
 - (ii) give all notices and pay all fees and other amounts which it is required to pay to Government Authorities in respect of the performance of its obligations under this Agreement;
 - (iii) without prejudice to clause 34.1(a)(iv), comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals to the extent relevant to the TLS Activities (whether obtained by the Contractor, or obtained by a Rail Transport Entity and in respect of which the Contractor has been provided notice), including those conditions and requirements that a Rail Transport Entity is required, under the terms of the Approvals, to comply with, satisfy, carry out and fulfil;
 - (iv) not cause any Rail Transport Entity to fail to comply with, carry out or fulfil the requirements of any Approval as defined in clauses 34.1(a)(iv)(A) to (C) that the Rail Transport Entity is required to comply with, carry out or fulfil; and
 - (v) affect all insurances, provide any security and execute any undertakings or agreements or any other document required by any relevant Government Authority in respect of any Approval which the Contractor must obtain, maintain or comply with.
- (b) Except to the extent provided otherwise in this Agreement (including a Work Order), the Contractor must:
- (i) prepare and submit:

- (A) to each relevant Government Authority all applications and associated documents for the purposes of obtaining all Approvals; and
- (B) all studies and reports required because of the design of the Works or the TMS Subsystem proposed by the Contractor; and
- (ii) without limiting paragraph (i), provide to the Customer copies of all documents (including applications, notices, orders or directions) and details of all other communications relating to the TLS Activities that are:
 - (A) requested by the Customer in relation to an Approval or dealing with a Government Authority;
 - (B) received by the Contractor (or a Subcontractor) from a Government Authority (including Approvals and other notices) as soon as possible after they are received by the Contractor (or Subcontractor); and
 - (C) given by the Contractor (or a Subcontractor) to a Government Authority.
- (c) If the Contractor (or a Subcontractor) is required under this Agreement to prepare for submission, or submit, any documents to a Government Authority to obtain an Approval, or pursuant to an Approval, the Contractor must:
 - (i) provide the Customer with a copy of those documents for Review before they are submitted to the Government Authority;
 - (ii) consider any comments made by the Customer on Review of the documents; and
 - (iii) in relation to any documents which the Contractor is required to prepare for submission by the Customer, deliver a final version of the documents to the Customer in order to enable the Customer to submit the relevant document to the Government Authority on time.
- (d) The Contractor indemnifies and must keep indemnified the Customer Indemnified Persons against any Loss suffered by any of them arising out of or in connection with a failure by the Contractor to comply with this clause 34.2.

34.3 Contractor to assist Customer

The Contractor must provide the Customer and the Rail Transport Entities with all reasonable assistance to enable each of them to:

- (a) comply with all applicable Mandatory Requirements; and
- (b) obtain, satisfy or fulfil the conditions and requirements in respect of any:
 - (i) Approvals which are obtained by any of them; or
 - (ii) conditions and requirements of Approvals which have been obtained by the Customer or a Rail Transport Entity and in respect of which the Contractor has been provided notice, including those conditions and requirements that a Rail Transport Entity is required, under the terms of the Approvals, to comply with, satisfy, carry out and fulfil,

relating to the TLS Activities and the Program.

35 Accreditation

35.1 Customer's Accreditation Variation

The Contractor acknowledges that:

- (a) the Rail Transport Entities may need to obtain Accreditation Variations in order to deliver and operate the Program;
- (b) the Contractor will be required to provide material inputs to enable the Rail Transport Entities to obtain the Accreditation Variations within the timeframes required;
- (c) a failure to obtain, or delay in obtaining, the Accreditation Variations will have a significant adverse impact on the ability of the Rail Transport Entities to fulfil the Operations Functions;
- (d) as at the Execution Date, ONRSR's requirements in relation to Accreditation Variations are not yet fully known, and are likely to evolve as the Program matures;
- (e) the process for obtaining Accreditation Variations will be an iterative one, and will require the Contractor to cooperate flexibly and responsively with the Rail Transport Entities;
- (f) ONRSR will require the safety management systems of the Rail Transport Entities to:
 - (i) cover all relevant aspects of the Program; and
 - (ii) include measures to address safety risks arising from the Program and their interfaces with related activities of the Rail Transport Entities, including appropriate measures regarding competency, communication, risk management and continuous improvement; and
- (g) it is in the interests of the Rail Transport Entities, the Contractor and ONRSR for the Accreditation Variation Applications to be coordinated effectively.

35.2 Coordination of Accreditation Variation Applications

Having regard to the acknowledgements made by the Contractor in clause 35.1 (Customer's Accreditation Variation), the Contractor must:

- (a) deal with the Customer (or, if required by the Customer, with the System Integrator as its nominee) as the single point of contact for the Contractor in connection with the Contractor's input into the Accreditation Variation Applications;
- (b) subject to paragraph (a), cooperate in good faith with, and do all things reasonably necessary to enable and assist, the Rail Transport Entities to obtain all relevant Accreditation Variations, including by:
 - (i) preparing and submitting to the Customer in a form, and as, reasonably required by the Customer:

- (A) all inputs requested by the Customer to the Accreditation Variation Documents;
- (B) all supporting documentation and certificates referred to in clause 35.3 (Contractor to prepare Accreditation Variation Documents); and
- (C) any other information and documentation that any Rail Transport Entity may reasonably require in connection with the Accreditation Variation,

within the time specified in the Review Procedures or, if no time is specified, then in a timely manner and in a form reasonably required by the Customer; and

- (ii) responding to queries or requests by the Customer in a timely manner and within the time reasonably required by the Customer; and
- (c) not do, or omit to do, anything that may hinder or delay a Rail Transport Entity from obtaining an Accreditation Variation.

35.3 Contractor to prepare Accreditation Variation Documents

- (a) The Contractor must develop and submit to the Customer for Review, in accordance with the Review Procedures, draft and final inputs to the Accreditation Variation Documents that are in accordance with:
 - (i) the Contractor's safety accreditation strategy;
 - (ii) the Rail Safety National Law;
 - (iii) the safety management systems of the relevant Rail Transport Entities;
 - (iv) any requirements of ONRSR for the Accreditation Variation Document; and
 - (v) the other requirements of this Agreement.
- (b) Each input to an Accreditation Variation Document submitted by the Contractor to the Customer for Review in accordance with the Review Procedures must be accompanied by:
 - (i) supporting documentation in such form as the Customer may reasonably require to demonstrate that the inputs provided comply with the requirements of paragraph (a); and
 - (ii) a certificate from an appropriately qualified person issued on behalf of the Contractor stating that the inputs provided comply with the requirements of paragraph (a).
- (c) If ONRSR rejects or requires changes to, or further information in respect of, an Accreditation Variation Application, then the Contractor must, if requested by the Customer, promptly make the necessary changes to its input to the Accreditation Variation Documents or provide the further information (or both, as required by ONRSR).

35.4 Continuing obligations

The Contractor must:

- (a) operate under the Customer's or a Rail Transport Entities' Accreditation for the TLS Activities in accordance with a Rail Transport Entity's Accreditation requirements;
- (b) liaise and co-operate with the Rail Transport Entities, and do everything reasonably necessary to enable and assist each Rail Transport Entity to:
 - (i) maintain any Accreditation; and
 - (ii) comply with their other obligations under the Rail Safety National Law in relation to rail safety,to the extent that any Rail Transport Entities' Accreditation or rail safety obligations are affected by the Program and/or the TLS Activities;
- (c) not do, or omit to do, anything which may cause any:
 - (i) Rail Transport Entity to breach any term of its Accreditation; or
 - (ii) Rail Transport Entity's Accreditation to be suspended or cancelled; and
- (d) give ONRSR such access to premises and information as ONRSR lawfully requests to fulfil its functions with respect to the Program and the TLS Activities, within the time requested.

36 ASA Compliance

36.1 AEO Authorisation

- (a) The Contractor must without limiting or otherwise restricting paragraph (c):
 - (i) obtain prior to commencing the TLS Activities; and
 - (ii) maintain throughout the Term,the AEO Authorisation necessary for completion of those engineering services forming part of the TLS Activities for which the Contractor (or an Associate of the Contractor) is responsible, including all the engineering services defined in the Contract Specifications.
- (b) The Contractor acknowledges that the ASA will assess, and is the body empowered to grant, AEO status to the Contractor and its Subcontractors to carry out such engineering services, including on the basis of the procedures of, and undertakings given by the Contractor (and its Associates) as set out in the Project Plans.
- (c) The AEO matrix set out in Appendix 03 of the PR sets out the engineering services the subject of the Contractor's AEO Authorisation which the Contractor is required to deliver as part of the TLS Activities.

36.2 ASA Compliance

- (a) The Contractor must:
- (i) comply, and ensure the Contractor Personnel comply, with the conditions of its AEO Authorisation, and the ASA Requirements applicable to the TLS Activities;
 - (ii) have in place, maintain and consistently apply, at all times when performing the TLS Activities, engineering management methodologies and undertake all safety assurance activities for the successful delivery and assurance of the TLS Activities and TMS Subsystem that comply with the AEO Authorisation and ASA Requirements and the requirements of this Agreement;
 - (iii) develop and maintain a competency management system for the TLS Activities as part of its AEO Authorisation;
 - (iv) carry out its own assurance on the TLS Activities and the TMS Subsystem;
 - (v) participate in any assurance process conducted by the System Integrator or as required by the Customer or the System Integrator, as part of the System Integrator's assurance of the System;
 - (vi) cooperate, and ensure the Contractor Personnel cooperate, fully with the ASA in the performance of the ASA's functions;
 - (vii) provide access to premises and resources as reasonably required by the ASA, including so that it can effectively carry out its review, surveillance and audit functions;
 - (viii) comply, and ensure the Contractor Personnel comply, with the Directions, instructions and requirements issued by the ASA;
 - (ix) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;
 - (x) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
 - (xi) provide the Customer with such reasonable assistance as may be reasonably required by the Customer to enable the Customer to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (b) The Contractor must work with the Customer and the ASA to develop appropriate standards for the Program.
- (c) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Customer nor the ASA will be liable for) any Claim arising out of or in connection with the obligation to comply with the requirements of ASA and the AEO Authorisation.

37 Safety

37.1 Rail Safety Work

Without limiting any other obligation in this Agreement, the Contractor must:

- (a) ensure that any Contractor Personnel who will undertake any Rail Safety Work in connection with the TLS Activities hold and maintain Rail Safety Work certification and comply with the:
 - (i) Rail Safety National Law;
 - (ii) Customer Policies on drug and alcohol testing and fatigue management; and
 - (iii) Customer Policies related to Rail Safety Work, including Rail Safeworking Standard 4TP-ST-014.3.0;
- (b) prior to any Rail Safety Worker carrying out any Rail Safety Work in connection with the TLS Activities, provide the Customer with the Competence Records in the form Directed by the Customer (which may be electronic);
- (c) ensure that any Rail Safety Worker who carries out Rail Safety Work has the competence to carry out the work;
- (d) ensure that each Rail Safety Worker used in connection with the TLS Activities has a form of identification that is sufficient to enable the type of competence and training undertaken by that Rail Safety Worker to be checked by a rail safety officer; and
- (e) in performing the TLS Activities:
 - (i) not adversely affect the operation of the Network or associated infrastructure, Rollingstock and facilities, unless a shutdown or other operation has been scheduled in advance with the Customer;
 - (ii) not adversely affect the safety of the Network or associated infrastructure, Rollingstock and facilities; and
 - (iii) ensure there is no damage to the Network, associated infrastructure, Rollingstock and facilities.

37.2 Workplace health and safety obligations

- (a) Without limiting any of the Contractor's other obligations under this Agreement, the Contractor must:
 - (i) carry out the TLS Activities:
 - (A) safely and in a manner that does not put the health and safety of persons at risk; and
 - (B) in a manner that protects property;

- (ii) comply with, be responsible for, and assume liability for all of its obligations under any applicable Laws relating to work health, safety and rehabilitation management including the WHS Legislation;
- (iii) insofar as the Contractor, in carrying out the TLS Activities, is a person conducting a business or undertaking that:
 - (A) designs plant, substances or structures to whom section 22 of the WHS Act applies;
 - (B) manufactures plant, substances or structures to whom section 23 of the WHS Act applies;
 - (C) imports plant, substances or structures to whom section 24 of the WHS Act applies;
 - (D) supplies plant, substances or structures to whom section 25 of the WHS Act applies; or
 - (E) installs, constructs or commissions plant or structures to whom section 26 of the WHS Act applies,

then to the extent that the obligations under that section apply to the TLS Activities, the Contractor must comply with the applicable obligations under the WHS Legislation;

- (iv) develop, document and implement a contract specific Safety Management System and Safety Management Plan in accordance with the WHS Legislation, the WHS Guidelines and the PR;
- (v) carry out the TLS Activities in accordance with the Safety Management Plan;
- (vi) create a safe working environment for ensuring the safety of all authorised personnel on the Delivery Locations and ensure that no unauthorised individual gains access to the Delivery Locations;
- (vii) supervise any Subcontractor's activities and ensure that they are complying with all relevant Laws, their respective obligations under the WHS Legislation, all relevant Approvals and the PR in relation to WHS management on the Delivery Locations;
- (viii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein and provide the Customer with those written assurances together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
- (ix) take reasonable steps to ensure the health, welfare and safety of the Contractor Personnel, including in the performance of the TLS Activities;
- (x) consult with the Customer as required to enable the Customer to discharge its obligations under clause 294 of the WHS Regulation;

- (xi) notify the Customer immediately (and in any event within twelve (12) hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in connection with the TLS Activities;
 - (xii) promptly inform the Customer and the relevant authorities of the occurrences of any serious injury (or any other matter as required by Part 3 of the WHS Act) suffered by any person in connection with the TLS Activities or any event which would create a risk for the Customer Indemnified Persons and/or the Contractor Personnel;
 - (xiii) comply with, and procure that all Contractor Personnel comply with, any reasonable Directions issued by the Customer in relation to work, health, safety or the environment;
 - (xiv) comply with its obligation under the WHS Legislation to consult, cooperate, and coordinate activities with all other persons (including Rail Transport Entities and Interface Contractors) who have a work health and safety duty in relation to the same matter;
 - (xv) exercise a duty of utmost good faith to the Customer in carrying out the TLS Activities to enable the Customer to discharge the Customer's duties under the WHS Legislation; and
 - (xvi) to the extent permitted by Law, indemnifies and must keep indemnified the Customer Indemnified Persons against all Claims which may be imposed under, or which may arise out of enforcement of any section of, the WHS Legislation as a result of any breach by the Contractor or the Contractor Personnel of the WHS Legislation, including any refusal or failure by the Contractor or the Contractor Personnel to comply with any Directions and requests of the Customer Indemnified Persons.
- (b) If the Customer reasonably considers there is a risk to the health and safety of people or damage to property arising from the TLS Activities, the Customer may Direct the Contractor to change its manner of working or to cease working.
- (c) The Contractor must advise the Customer at all times of the name of the senior management representative responsible for implementing the safety requirements of this Agreement and monitoring the effectiveness of the Contractor's safety management system in complying with all safety requirements.
- (d) The Contractor's Design Documentation must:
- (i) take into account best work health and safety practice applicable to the construction, utilisation, operation, safety and/or maintenance of the Program; and
 - (ii) be subject to a health, safety and environment review by a suitably qualified person at appropriate stages of the design development process (if any) to verify the design's compliance with the WHS Legislation.
- (e) The Contractor must prepare the Safety Report in accordance with the requirements of, and otherwise discharge its obligations under, the WHS Legislation. The Contractor must give a copy of the Safety Report to the Customer within the timeframe set out in the PR or as otherwise notified by the Customer.

37.3 Safe Work Method Statement

The Contractor must:

- (a) undertake an assessment of the risks associated with the provision of the Works and prepare and submit to the Customer within one (1) month of the Commencement Date a Safe Work Method Statement (**SWMS**) specific for each site relevant to the Works that meets the requirements of the Customer Policies and that complies with the requirements of Part 6.3 of the WHS Regulation;
- (b) maintain and keep up to date each SWMS; and
- (c) ensure that the TLS Activities are carried out in accordance with the SWMSs, and if a risk to the health or safety of a person arises because of non-compliance with any SWMS, ensure that work is stopped immediately and not resumed until the relevant SWMS is complied with (unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the Contractor must stop the work as soon as it is safe to do so).

37.4 Principal Contractor

- (a) In this clause 37.4:
 - (i) the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation;
 - (ii) **Control** of an area of a Delivery Location means undertaking all the activities required to manage and control all access to and across an area of the Delivery Location and maintaining the temporary and permanent infrastructure provided by the Contractor. Such activities will include managing, controlling and maintaining the security of an area of the Delivery Location conducting basic familiarisation and safety inductions for all those accessing an area of the Delivery Location (but not inductions specific to Interface Contractor Work), operating and maintaining the temporary and permanent infrastructure provided by the Contractor and liaising with Government Authorities; and
 - (iii) **Interface Contractor Work** means certain works that an Interface Contractor has been appointed by a Rail Transport Entity to undertake at a Delivery Location under an Interface Contractor Agreement.
- (b) For the purpose of the WHS Legislation and this Agreement, the Works and any Interface Contractor Work is taken to be part of the same 'construction project'.
- (c) During any period:
 - (i) for which the Contractor is specified in the Services Schedule or the relevant Work Order as being; or
 - (ii) that the Customer Directs the Contractor to be,in Control of any part of a Delivery Location:

- (iii) the Customer engages the Contractor as the principal contractor in respect of the TLS Activities and all Interface Contractor Work carried out on that part of the Delivery Location;
 - (iv) the Customer authorises the Contractor to have management and Control of each workplace at which the TLS Activities and the Interface Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (v) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (d) To the extent not prohibited by Law, the Contractor indemnifies and must keep indemnified the Customer Indemnified Persons against any Loss suffered or incurred by any Customer Indemnified Person arising out of or in connection with the Contractor's failure to discharge the duties imposed on a principal contractor by the WHS Legislation that the Contractor is required to discharge in accordance with this clause 37.4.
- (e) Where the:
- (i) Contractor is not specified in the Services Schedule or the relevant Work Order as being; or
 - (ii) the Customer has not Directed that the Contractor is to be, in Control of a part of a Delivery Location, the Contractor:
- (iii) acknowledges that the person who is specified in the Services Schedule or relevant Work Order as being, or whom the Customer has otherwise notified the Contractor as being, in Control of that part of the Delivery Location is the principal contractor in respect of all construction work carried out by or on behalf of the Customer on that part of the Delivery Location during the period during which that person is in Control of that part of the Delivery Location; and
 - (iv) must comply with any exercise by the person referred to in paragraph (iii) of such authority as is necessary to enable that person to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.
- (f) For the purposes of this clause 37.4, notwithstanding what is set out in the Services Schedule, relevant Work Order or Direction, in respect of any part of a Delivery Location which the Services Schedule, relevant Work Order or Direction specifies that the Contractor is in Control:
- (i) the Contractor is also deemed to be in Control of any access points to that Delivery Location; and
 - (ii) the Contractor is deemed to be in Control for all periods that the Contractor is performing TLS Activities, notwithstanding that the TLS Activities or Interface Contractor Work is not construction work.
- (g) The Contractor must comply with any Direction by the Customer for the purposes of compliance with a condition or restriction of the Customer's Accreditation, except

to the extent that compliance with the Direction of the Customer is inconsistent with the Contractor's obligations under paragraphs (c)(iii) to (c)(v).

37.5 Safety Interface Agreement

Where required under the Services Schedule, a Work Order or by Law, the Contractor must:

- (a) subject to paragraph (b), enter into Safety Interface Agreements with Interface Contractors; and
- (b) prior to execution of any Safety Interface Agreement, submit a draft of the Safety Interface Agreement to the Customer for Review.

38 Industrial relations

- (a) The Contractor must perform its obligations under this Agreement so as to minimise industrial relations disputes and ensure that a good industrial climate is maintained.
- (b) The Contractor must ensure that at all times it complies with any and all employment and industrial relations obligations to the Contractor Personnel, including ensuring that:
 - (i) all relevant awards and formal industrial agreements are adhered to;
 - (ii) good safety practices in accordance with relevant legislation, awards and procedures contained in the relevant industry agreements are maintained; and
 - (iii) industrial relations are professionally managed.
- (c) Without prejudice to the generality of the foregoing provisions of this clause, the Contractor must, in carrying out the TLS Activities:
 - (i) assume sole responsibility for and manage all aspects of industrial relations of the Contractor Personnel for the TLS Activities;
 - (ii) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
 - (iii) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all Contractor Personnel engaged in any capacity in connection with the TLS Activities, are always observed in full;
 - (iv) keep the Customer fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the TLS Activities and the Program;
 - (v) without limiting clause 39.3 (NSW Code and NSW Guidelines), comply with all the requirements of the NSW Code and the NSW Guidelines;
 - (vi) submit to the Customer, before beginning work on the Delivery Locations, a statement detailing the:

- (A) location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (B) names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the TLS Activities; and
 - (C) names of those responsible for coordinating industrial relations for the TLS Activities;
- (vii) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the TLS Activities;
- (viii) before beginning work on the Delivery Locations, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
- (A) payment of remuneration to employees;
 - (B) annual leave provisions;
 - (C) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (D) workers' compensation insurance, including self-insurance arrangements (the Contractor's statement must also attest to the Contractor's compliance with its obligation to procure workers' compensation insurance under clause 54 (Insurance));
 - (E) superannuation fund membership and contributions; and
 - (F) over-award payments such as redundancy fund contributions; and
- (ix) continue to provide during the TLS Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the TLS Activities.
- (d) If the Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the Contractor under paragraph (c)(viii).
- (e) The industrial relations requirements contained in this Agreement and the NSW Code, and the NSW Guidelines:
- (i) are in addition to, but are not in substitution for, any requirements of Law; and
 - (ii) do not limit the powers of the Customer or the liabilities and responsibilities of the Contractor.
- (f) The Contractor warrants and acknowledges that it has allowed in the Fees for all the costs and expenses involved with complying with all the requirements of this

Agreement relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

- (g) The Contractor indemnifies and must keep indemnified the Customer Indemnified Persons against any Loss or Claim suffered or incurred as a result of or in connection with any industrial relations dispute or Industrial Action which arises as a result of an act or omission of the Contractor or any of its Associates.

39 NSW Government obligations

39.1 SME Participation Plan – Reporting and Compliance

- (a) This clause 39.1 applies in connection with the Contractor's Small & Medium Enterprises Participation Plan submitted under the NSW Government's Small and Medium Enterprise and Regional Procurement Policy (**SMERPP**).
- (b) The Contractor acknowledges that the Customer may take into consideration non-compliance by the Contractor with the SMERPP when evaluating other tenders submitted by the Contractor to the Customer in the future and may report such non-compliance to other NSW Government Authorities including to Procurement NSW.
- (c) The Contractor must comply with the requirements and commitments provided for in the SMERPP and take all steps reasonably required to enable the Customer to monitor compliance by the Contractor with the SMERPP.
- (d) The parties acknowledge and agree that:
- (i) the Customer may establish mechanisms to monitor compliance by the Contractor with its commitments under the SMERPP; and
 - (ii) non-compliance by the Contractor with the SMERPP commitments will constitute a material breach for the purposes of paragraph (a) of the definition of Material Breach.

39.2 Transport planning

- (a) The Contractor acknowledges that the Customer or any Government Authority may make policy decisions in relation to the development and implementation of transport planning in New South Wales as it sees fit. Nothing in this Agreement restricts this.
- (b) The Contractor must participate as reasonably required by any Rail Transport Entities in the development and implementation of transport planning. This participation may involve:
- (i) attending meetings, consultation forums and other similar events;
 - (ii) reviewing and contributing to the development of proposals and strategies put forward by the Rail Transport Entities or other transport operators and stakeholders;
 - (iii) providing comments on the impact of proposals and strategies on the Program; and

- (iv) cooperating in good faith in the implementation of the Customer's public transport policy objectives, as notified to the Contractor.
- (c) The Contractor will have no entitlement to make any Claim against any Customer Indemnified Person or any other Government Authority with respect to any consequence of such person exercising, or not exercising, any right or power in relation to the development and implementation of transport planning in New South Wales, except as expressly provided in this Agreement.

39.3 NSW Code and NSW Guidelines

- (a) In addition to terms defined in this Agreement, terms used in this clause have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.
- (b) Subject to paragraph (c), the Contractor must at all times comply with, and meet any obligations imposed by the NSW Code and the NSW Guidelines.
- (c) The Contractor's obligations with respect to the NSW Guidelines will apply only to the extent that the Contractor is performing activities within the scope of the NSW Guidelines.
- (d) The Contractor must notify the CCU and the Customer of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within twenty-four (24) hours of becoming aware of the possible non-compliance.
- (e) Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (f) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- (g) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (h) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including the Delivery Locations;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Works;
 - (v) have access to personnel; and
 - (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor and its Associates.

- (i) The Contractor and its Associates must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (j) The Contractor warrants that at the time of entering into this Agreement, neither it, nor any of its Associates, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (k) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (l) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.
- (m) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a Claim against the Customer or the State of NSW for such costs.
- (n) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the TLS Activities and any other obligation under this Agreement, or from liability for any Defect or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (o) Where a change in this Agreement or the TLS Activities is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Customer (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change,

and the Customer will Direct the Contractor as to the course it must adopt within ten (10) Business Days of receiving notice.

40 International obligations

40.1 Anti-bribery and anti-corruption

Without limiting any other provision of this Agreement, the Contractor must:

- (a) comply with all applicable anti-bribery and anti-corruption legislation, including the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) and similar Laws of other countries that are applicable;
- (b) maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
- (c) use all reasonable endeavours to ensure that Contractor Personnel, officers, employees and agents comply with this clause.

40.2 Anti-slavery and human trafficking

Without limiting any other provision of this Agreement, the Contractor must:

- (a) not engage in (and take reasonable steps to ensure that in the Contractor's operations and supply chains there are not) activities, practices or conduct:
 - (i) that would constitute an offence under Modern Slavery Laws; or
 - (ii) which occurs outside of an Australian jurisdiction which would constitute an offence under Modern Slavery Laws if it had taken place within the relevant Australian jurisdiction;
- (b) notify the Customer as soon as reasonably practicable after it becomes aware of any actual or suspected activity, practice or conduct of the kind described in paragraph (a);
- (c) provide the Customer with all information and records reasonably requested by the Customer, in order for the Customer to comply with its reporting obligations under the *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2018* (NSW) and equivalent legislation in the other Australian states and territories, within thirty (30) days of the Customer's request; and
- (d) warrant that it will comply with the mandatory reporting requirements under the *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2018* (NSW) and equivalent legislation in the other states and territories, to the extent applicable, and provide a copy of its modern slavery statement produced in accordance with such legislation to the Customer within thirty (30) days of being required to produce such statement under the relevant legislation.

40.3 Compliance with USA Export Regulations

- (a) The parties acknowledge that the U.S. Export Administration Regulations set forth in Title 15 of the U.S. Code of Federal Regulations "Commerce and Foreign Trade" control the export and re-export of certain controlled commercial items that may form part of the information disclosed to the Contractor pursuant to this Agreement (in particular, information received by the Customer from ARTC in respect of ATMS) (the **Sensitive Information**).

- (b) The Contractor acknowledges that the Customer (and, if applicable, ARTC) is bound to comply with the U.S. Export Administration Regulations in respect of such Sensitive Information. As such, and without prejudice to the Contractor's obligation to comply with the Mandatory Requirements set out in clause 34.1 (Mandatory Requirements), the Contractor:
- (i) must comply, and ensure all Contractor Personnel and Subcontractors comply, with the U.S. Export Administration Regulations in respect of the use and handling of such Sensitive Information;
 - (ii) agrees that any such information will be clearly labelled by ARTC with restrictions that will apply to relevant information disclosure and dissemination to and within the Contractor (which may exclude the information from being provided to people who are citizens of, or have certain connections with, foreign countries), and the Contractor must comply, and ensure all Contractor Personnel and Subcontractors comply, with those restrictions; and
 - (iii) must not, and must ensure that its Contractor Personnel and Subcontractors do not, do anything that would result in the Customer failing to comply with its obligations under the U.S. Export Administration Regulations or to any Third Party (including ARTC) in respect of such Sensitive Information.

41 Environmental

The Contractor acknowledges and agrees that:

- (a) if any of the TLS Activities, or the activities of any of the Contractor Personnel, in connection with the TLS Activities (the **Relevant Matters**) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Customer's activities under the NGER Legislation;
- (b) if, despite the operation of paragraph (a), the Customer incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Customer or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Customer, do all things reasonably necessary to ensure the liability is transferred to the Contractor;
- (c) if the Customer requests it, the Contractor must provide Greenhouse Data to the Customer:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Customer to comply with the NGER Legislation irrespective of whether the Customer or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Customer from time to time;
- (d) the Contractor must also provide to the Customer all Greenhouse Data and other information which the Contractor provides to any other person under the NGER

Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;

- (e) the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause, and keep that Greenhouse Data for at least seven (7) years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by the Customer to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) the Customer may provide or otherwise disclose the Greenhouse Data and any other information which the Customer obtains under this clause to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Customer sees fit; and
- (g) nothing in this clause 41 is to be taken as meaning that the Customer has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Government Authority.

42 Event management

- (a) The Contractor must develop and implement clear guidelines for anticipating, and for responding to, any Event arising (or which may arise) from the performance of the TLS Activities, and establish procedures to ensure that the Customer is promptly notified of any Event in accordance with the PR as it applies to Incident and Security Management.
- (b) Without limiting paragraph (a), if the Contractor becomes aware of an Event, the Contractor must, at its cost:
 - (i) immediately inform the Customer of the Event;
 - (ii) keep the Customer informed about the Event; and
 - (iii) provide the Customer with sufficient information to enable the Customer to assess the nature of the Event and the likely effect of the Event.
- (c) If any Event causes or is likely to cause the:
 - (i) Network, NSW Rail Assets or any Rail Transport Entity Sites;
 - (ii) safety of any Rail Transport Entity's passengers, station patrons or representatives of the Customer or any Rail Transport Entity; or
 - (iii) operations of the Network,

to be at risk (as determined by the Customer in its absolute discretion), the Contractor must:

- (iv) immediately co-operate with the Customer requests in respect of the Event (including by ceasing to carry out that part of the TLS Activities in respect of which the Event applies and, if applicable, ceasing any access rights it has in respect of the Network or vacating the Rail Corridor); and
 - (v) at its cost assist the Customer and/or the relevant Rail Transport Entity to take such action as the Customer Directs is necessary to avert any danger and ameliorate the risk.
- (d) In relation to any environmental or safety Event involving Contamination or other waste that arises during the performance of the TLS Activities, the Contractor must:
- (i) promptly take all appropriate action to manage and dispose of all Contamination or other waste arising from the Event;
 - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Government Authority; and
 - (iii) manage the incident in a manner which minimises damage to the reputation of the Customer including complying with any reasonable request of the Customer.
- (e) Without prejudice to the Customer's other rights under this Agreement, if the Customer forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Event, that the Contractor is not taking adequate measures to manage the Event or control or eliminate the adverse impact or the risk of such an Event arising in the future, the Customer may take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Event. If the Customer takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Customer.
- (f) Without prejudice to the Customer's other rights under this Agreement, the Customer may issue a Direction under clause 46 (Suspension) requiring the Contractor to suspend the carrying out of the whole or any part of the TLS Activities in the event of any Event, involving:
- (i) a significant spill of Contamination;
 - (ii) any accident or release of Contamination which it believes may pose a danger to health, life or property;
 - (iii) any actual damage to the Environment or a significant risk of harm to the Environment; or
 - (iv) any safety incident occurs which leads to, or has the potential to lead to, a fatality or injury to any person (including any incident which must be reported to SafeWork NSW) or damage to property.
- (g) The Contractor will not be entitled to make, and the Customer will not be liable upon, any Claim for any Loss arising out of or in connection with:

- (i) any suspension due to a Direction to suspend issued, or for a failure to issue a notice to suspend, in the circumstances set out in paragraph (f); or
 - (ii) complying with a Direction issued under paragraph (f).
- (h) The Customer may recover (as a debt due from the Contractor to the Customer) its reasonable costs and expenses for any action the Customer deems necessary to avoid the issue of any notice to suspend in the circumstances set out in paragraph (f) due to the Contractor's, its agents' or its Subcontractors' act or omissions in performing the TLS Activities.

43 Dealings with regulators

43.1 Cooperation with Investigative Authorities

Without limiting any other provision of this Agreement, the Contractor must:

- (a) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
- (b) cooperate with and respond to any lawful requests made by an Investigative Authority, within the time requested; and
- (c) not hinder or delay any Investigative Authority in carrying out its duties.

43.2 Enforcement

The Contractor must comply with any requirement, notice, order or direction received from or given by any Investigative Authority in connection with the TLS Activities, including any infringement notice, fine or penalty.

Part J Non-performance

44 Action Plans and Enhanced Cooperation

44.1 Preparation of Action Plans

- (a) If requested to do so by the Customer or if required by this Agreement, the Contractor must prepare an Action Plan and submit the Action Plan to the Customer in accordance with this clause 44.
- (b) The draft Action Plan must specify (in a level of detail reasonably satisfactory to the Customer):
 - (i) the process for identifying, and where applicable must identify, the cause of the failure, deficiency in the TLS Activities (including their failure to meet the Service Levels), problem or concern (**Failure**) that the Action Plan is intended to remedy or prevent;
 - (ii) if remedy of the Failure is possible, the actions that will be implemented by the Contractor to effect that remedy;
 - (iii) the actions that will be implemented by the Contractor to prevent the same or a substantially similar Failure from occurring in the future;
 - (iv) the costs (if any) of implementing the Action Plan;
 - (v) a timeline for the implementation of the Action Plan; and
 - (vi) any other content that may reasonably be requested by the Customer from time to time.
- (c) The Action Plan will be discussed at the Contract Management and Governance Meeting, as required by the Customer.

44.2 Implementation of Action Plans

- (a) Once an Action Plan is approved by the Customer, the Contractor must implement that Action Plan:
 - (i) at no cost to the Customer, unless otherwise agreed between the parties and set out in the Action Plan; and
 - (ii) in accordance with the timeframe and other terms specified in that Action Plan.
- (b) The provision by the Contractor, the approval by the Customer, and/or the implementation of, an Action Plan does not waive, limit, prejudice or otherwise affect any other rights or remedies the Customer may have under this Agreement or at Law, including the Customer's right to:
 - (i) terminate this Agreement (wholly or in part) under clause 49 (Termination); and/or
 - (ii) claim or recover Losses.

- (c) In addition to any other rights that the Customer may have, the Customer may exercise its rights under clause 44.3 (Enhanced Cooperation Right) and/or immediately terminate the TLS Activities in whole or in part if:
 - (i) a draft Action Plan is submitted two (2) or more times in relation to the same Failure and none of the versions of the Action Plan have been approved by the Customer;
 - (ii) the Contractor fails to implement an Action Plan; or
 - (iii) the Contractor implements an Action Plan and the:
 - (A) Action Plan fails to remedy the Failure that gave rise to the development and implementation of the Action Plan; or
 - (B) same, or a substantially similar, Failure as that which gave rise to the development and implementation of the applicable Action Plan occurs.

44.3 Enhanced Cooperation Right

If any of the circumstances referred to in clause 44.2(c)(i) to 44.2(c)(iii) occur or the Customer reasonably considers that the Action Plan procedure set out in clauses 44.1 (Preparation of Action Plans) and 44.2 (Implementation of Action Plans) either is not appropriate on its own or has not resolved or is not likely to resolve the relevant Failure, then the Customer may require the Contractor to:

- (a) enable the Customer or its nominated Customer Personnel to work alongside and supervise the Contractor Personnel to understand and collaborate on how to resolve the relevant Failure;
- (b) promptly provide the Customer or its nominated Customer Personnel with such information (in addition to any information required to be provided under the other provisions of this Agreement), and access to the Delivery Locations used in the provision of the TLS Activities as the Customer may reasonably request to enable it fully to understand the nature and causes of the Failure, other information relevant to the TLS Activities, and the steps (if any) being taken or considered by the Contractor to remedy such Failure; and
- (c) procure that such members of the Contractor's senior management engaged or familiar with the delivery of the TLS Activities:
 - (i) attend in person, at the Customer's chosen location, meetings with representatives of the Customer as soon as reasonably practicable and on no more than two (2) Business Days' notice; and
 - (ii) are directly responsible for management and oversight of resolution of the relevant circumstances, problem, risk or issue, remotely providing comprehensive daily updates (or updates at such other frequency as the Customer may require) on such resolution to the Customer.

45 Performance Remediation

- (a) The Customer may exercise the rights described in paragraph (b) immediately where:

- (i) in the Customer's opinion, the performance of the TLS Activities poses or is likely to pose a safety concern or a risk to persons or property;
 - (ii) in the Customer's opinion, the Contractor has suffered an Insolvency Event or is evidencing an intention to do any act that would constitute an Insolvency Event;
 - (iii) any Asset fails to pass any testing, Review, Verification or validation activities to the Customer's satisfaction (acting reasonably) more than two (2) times, and the Contractor fails to remedy that failure within a period of ten (10) Business Days (or such longer period as may be agreed by the parties);
 - (iv) the Contractor fails, or in the Customer's opinion is likely to fail, to comply with or perform any obligation under this Agreement, and:
 - (A) the default or non-performance is incapable of being remedied; or
 - (B) the Contractor fails to remedy the default or non-performance, or the act or omission likely to result in the default or non-performance, within two (2) Business Days of the Customer notifying the Contractor to do so (or such longer period as notified by the Customer); or
 - (v) any event occurs which would entitle TfNSW to terminate the Delivery Agreement or the Customer to terminate this Agreement, in whole or in part.
- (b) If one of the events described in paragraph (a) occurs, the Customer may by notice to the Contractor, at its option:
- (i) assist, or engage a Third Party to assist, the Contractor to perform any part of the affected TLS Activities (the **Affected Activities**);
 - (ii) nominate Customer representatives to be included in the Contractor's team tasked with the resolution of the breach and restoration of the Affected Activities, in which case the Contractor must:
 - (A) ensure that such Customer representatives are invited and permitted to be involved in all aspects of the resolution and restoration; and
 - (B) comply with any Directions given to the Contractor Personnel by such Customer representatives;
 - (iii) appoint a person as remediation manager to manage the Contractor's performance of the Affected Activities;
 - (iv) take control of the Affected Activities, and in so doing take any action that the Customer or its nominee believes is necessary to restore or rectify the Affected Activities, including having the Customer or its nominee:
 - (A) give Directions to Contractor Personnel;
 - (B) do all other things the Customer considers necessary to take over control of the Affected Activities; and/or
 - (C) provide goods or perform services which are the same as or similar to the Affected Activities itself or procure such goods or services from a Third Party (or require the Contractor to do so);

- (v) without limiting the above, assist, or engage a Third Party to assist, the Contractor in managing the performance of a Subcontractor, or perform itself, or engage a Third Party to perform, the obligations under a subcontract;
 - (vi) require the novation of a subcontract on the terms of clause 20.10 (Novation of Key Subcontracts) as if that clause applied to all Subcontractors and not just Key Subcontractors; and/or
 - (vii) take such other action as is reasonably necessary to restore the affected function or remedy the relevant issue.
- (c) The Customer will continue to pay the Fees for the duration of the performance remediation. The Contractor will reimburse the Customer the costs incurred by the Customer as a result of any exercise by the Customer of its rights under this clause 45. Amounts payable by the Contractor to the Customer under this paragraph (c) will be deducted from the Contractor's payment claim following the process set out in clause 22 (Invoices and Payment) for the next payment that is due following incurrence of those costs by the Customer provided that if the Customer terminates this Agreement prior to such payment becoming due, any amounts payable under this paragraph (c) will become a debt due and payable by the Contractor within twenty (20) Business Days of demand by the Customer.
- (d) The Customer must cease the exercise of its performance remediation activities if the Contractor demonstrates to the Customer's satisfaction that the Contractor is able to recommence performance of the Affected Activities as required by this Agreement. The Customer may at any time cease to exercise its performance remediation activities by notice to the Contractor. The Contractor must resume performance of its obligations under this Agreement that are the subject of the performance remediation in accordance with the period specified in the notice.
- (e) The Contractor must fully cooperate with the Customer (and its nominees) and provide all reasonable assistance, access, materials and work-in-progress at no charge in connection with the Customer's exercise of its rights under this clause 45, which may include provision of the Contractor's Equipment or copies of the Software (including associated source code).
- (f) Nothing in this clause limits the Contractor's liability to the Customer in relation to any default or non-performance by the Contractor under this Agreement, including any right of damages or termination under this Agreement.
- (g) The Contractor will not be liable for any damage caused to the Customer to the extent caused by the Customer exercising its performance remediation rights or to the extent arising due to the acts or omissions of a Rail Transport Entity or any Other Contractor as part of the exercise by the Customer of its performance remediation activities under this clause 45.
- (h) Without limiting any other term of this clause 45, where the Customer provides any assistance, materials or resources to support or help the Contractor in performance of any TLS Activities or the conduct of any remediation activities, the provision of such assistance, materials or resources in no way limits the Contractor's obligations or warranties under this Agreement or reduces the Contractor's liability under this Agreement. This paragraph (h) applies regardless of whether such assistance, materials or resources are provided under or in accordance with clause 44.3 (Enhanced Cooperation Right), this clause 45 or otherwise.

46 Suspension

- (a) The Customer may at any time, by notice to the Contractor, suspend any or all aspects of this Agreement (including in respect of one or more Deployment Areas) for such period as the Customer considers necessary (**Suspension Notice**).
- (b) Subject to paragraph (c), if the Customer serves a Suspension Notice, then:
 - (i) both parties will be relieved from their obligations under this Agreement in respect of the suspended aspects of this Agreement only for the period specified in the Suspension Notice; and
 - (ii) the Contractor must recommence performance of its obligations in respect of those suspended aspects on the date specified in the Suspension Notice or as otherwise Directed by the Customer.

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[REDACTED]

■ [REDACTED]

- (d) Each of the following is a condition precedent to the Contractor being entitled to recover Fees or costs under paragraph (c):
- (i) the relevant Fees or costs have not been incurred as a result of, and the suspension has not otherwise been caused by, the Contractor's failure to comply with the Collaboration Principles or the Interface Requirements;
 - (ii) unless the parties agree otherwise, the Contractor has followed and continues to follow the process set out in clause 26 (Resolution of Matters) and section 2.1 (Issue Resolution Process) of Schedule 17 (Issue Resolution Procedure), including by providing an Initial Early Warning Notice and, where required, a Detailed Early Warning Notice within the timeframes set out in, and that meets the requirements of, section 2 (Issue Resolution Procedure) of Schedule 17 (Issue Resolution Procedure);
 - (iii) the cause and extent of the suspension is beyond the reasonable control of the Contractor; and
 - (iv) the Contractor has used and continues to use all reasonable endeavours to mitigate the effects of the suspension and works and co-operates with the Rail Transport Entities and Other Contractors to mitigate the extent and impact of the suspension and any associated costs or expenses.
- (e) If any of the conditions precedent in paragraph (d) are not satisfied:
- (i) no Fees or costs will be recoverable under paragraph (c) in respect of the suspension;
 - (ii) the Customer will not be liable upon any Claim by the Contractor; and
 - (iii) the Contractor cannot make any Claim against the Customer,
- arising out of or in connection with the suspension.
- (f) Without limiting or otherwise restricting this clause 46, if the suspension under paragraph (a) arises as a result of the Contractor's failure to carry out its obligations in accordance with this Agreement (including under clause 36.1 (AEO Authorisation) or where the Contractor fails to comply with its obligations in relation to its AEO Authorisation or ASA compliance in accordance with this Agreement):
- (i) paragraphs (b)(i), (b)(ii) and (c) will not apply with respect to the Contractor;
 - (ii) the Customer may set out in its Suspension Notice the steps that the Contractor must take before the Customer will issue a Direction pursuant to paragraph (b)(ii), and the Contractor must comply with such steps; and

- (iii) the Contractor will not be entitled to make, and the Customer will not be liable for, any Claim arising out of, or in connection with, the suspension.
- (g) This clause sets out the Contractor's sole and exclusive rights and remedies in relation to a suspension and any costs or expenses arising as a consequence of it. Notwithstanding any other provision of this Agreement (including any provision of this Agreement entitling the Contractor to an increase in the Fees for additional costs, or to the payment of additional costs), the amounts payable pursuant to paragraph (c) will be a limitation upon the Customer's liability to the Contractor for any delay, disruption or additional costs or expenses that:
- (i) the Contractor incurs or encounters in performing the TLS Activities; or
 - (ii) arises out of, or in connection with, the suspension,
- and the Contractor will not be entitled to make, nor will the Customer be liable upon, any Claim in these circumstances other than for the amount which is payable by the Customer in accordance with paragraph (c).

47 Financial Standing and Unconditional Undertaking

47.1 Evidence of financial standing or financial arrangements

- (a) Without limiting clause 27 (Records and Audit), the Contractor must, as and when requested by the Customer from time to time, promptly, and in any event within the period stated in the Customer's request, provide the Customer with a copy of such evidence reasonably required by the Customer which demonstrates the:
 - (i) Contractor's financial capacity to meet all of its obligations under this Agreement; and
 - (ii) Guarantor's financial capacity to perform its obligations under the TLS Parent Company Guarantee.
- (b) The Contractor must promptly notify the Customer of:
 - (i) any material change to any information provided by the Contractor under paragraph (a); and
 - (ii) any material change in the Contractor's or the Guarantor's financial standing which may affect, or is likely to affect, their financial capacity to meet all of their obligations under the Transaction Documents.
- (c) The Contractor must assist and fully co-operate with, and procure that the Guarantor assists and fully co-operates with the requirements or requests of the Customer or its nominees in relation to any review of:
 - (i) any information provided by the Contractor or the Guarantor under this clause; or
 - (ii) the Contractor's or the Guarantor's financial capacity to meet their obligations under the Transaction Documents.

47.2 Form of Unconditional Undertaking

(a) The unconditional undertakings to be provided under this clause 47 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Agreement.

[REDACTED]

- (c) The Customer:
 - (i) may have recourse to any unconditional undertaking provided under this Agreement, where, in the Customer’s opinion, the Contractor is not ensuring or has not ensured the due and proper performance of its obligations under this Agreement;
 - (ii) is not obliged to pay the Contractor interest on:
 - (A) any unconditional undertaking; or
 - (B) the proceeds of any unconditional undertaking if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in paragraph (c)(ii)(B) on trust for the Contractor.
- (d) The Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any unconditional undertaking provided under this Agreement or receiving payment under any such unconditional undertaking; or

- [REDACTED]
- [REDACTED]
- [REDACTED]

47.5 Additional Unconditional Undertaking

- (a) If at any time the unconditional undertakings provided under this clause 47 have a total value less than the amount set out in clause 47.2(b), the Customer may Direct the Contractor to provide additional security in the form of an unconditional undertaking so as to ensure that the proportion of the Fees which the unconditional undertakings represent does not diminish.
- (b) The Contractor must provide such additional security in the form of an unconditional undertaking within ten (10) Business Days of a Direction under paragraph (a).
- (c) If paragraph (a) applies in respect of any unconditional undertaking and the Customer has not received from the Contractor an additional unconditional undertaking within ten (10) Business Days required under paragraph (b) then, irrespective of anything contained in, and without limiting the Customer's rights under, this Agreement or the unconditional undertaking, the Customer may make a demand under the unconditional undertaking for the entire amount payable under that unconditional undertaking and thereafter retain the proceeds.

48 Force Majeure

48.1 Force Majeure Events

- (a) If a party is unable to perform an obligation under this Agreement because of a Force Majeure Event (the **Affected Party**), then:
 - (i) as soon as reasonably practicable (and in any event no later than ten (10) Business Days) after the Force Majeure Event arises, the Affected Party must notify the other party and describe in reasonable detail the nature of the Force Majeure Event and the extent to which the Affected Party is unable to perform its obligation;
 - (ii) where an Affected Party complies with paragraph (a)(i), subject to clause 48.2(a), the Affected Party will not be liable for any failure to perform those

obligations for the duration of the delay arising directly out of the Force Majeure Event; and

- (iii) the parties must use their best endeavours to minimise the impact of any Force Majeure Event (including using best endeavours to continue to perform the relevant obligations) and resume performance of any suspended obligations in accordance with this Agreement as soon as possible.
- (b) The Affected Party must take all reasonable steps to mitigate any Losses caused to the other party and itself.

48.2 No relief

- (a) Neither party is relieved from (or excused from any liability in connection with):
 - (i) their obligations under this Agreement where the Force Majeure Event is within their reasonable control or where it:
 - (A) could have been prevented by the Affected Party taking reasonable precautions;
 - (B) could be remedied or overcome by the Affected Party through the use of alternate sources, workarounds or other means; or
 - (C) results from any act or omission on the part of the Affected Party or its Associates (including a breach of a Transaction Document by the Affected Party); and
 - (ii) any obligation to pay money because of a Force Majeure Event, provided that the Customer will not be liable to pay any Fees in connection with any TLS Activities that have not been performed by the Contractor as a result of a Force Majeure Event in accordance with clause 48.1(a)(ii) until such time as those TLS Activities are performed.
- (b) Any failure to perform by a Subcontractor will not constitute a Force Majeure Event in respect of the Contractor unless the Subcontractor was itself subject to a Force Majeure Event.
- (c) The Contractor will not be entitled to any additional payment from the Customer or to recover any additional costs it may incur as a result of the occurrence or the rectification of any Force Majeure Event to which the Contractor, its Subcontractors or agents are subject.

48.3 Termination

If a delay or non-performance by the Contractor arising out of a Force Majeure Event continues for more than forty-five (45) Business Days, the Customer may terminate the Agreement in whole or in part with immediate effect by giving notice to the Contractor.

49 Termination



[REDACTED]

- [REDACTED]

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49.4 Termination by the Customer for convenience

- (a) The Customer may terminate this Agreement in whole or in part, at any time by giving the Contractor at least twenty (20) Business Days' notice.
- (b) Where the Customer terminates under paragraph (a), the Contractor must do everything that is reasonably practicable to mitigate its losses arising as a consequence of a termination under paragraph (a), including:
 - (i) not entering into arrangements for the pre-payment of service fees, licence fees or maintenance for more than twelve (12) months in advance without the Customer's prior written consent;
 - (ii) redeploying the Contractor Personnel where possible;
 - (iii) repurposing the Contractor's Equipment;
 - (iv) facilitating the sale of any of the Contractor's Equipment which the Customer elects not to purchase pursuant to clause 49.7(b); and
 - (v) terminating Subcontractors in accordance with their terms, if applicable, so as to minimise any liability to pay compensation for early termination.

- (c) Subject to paragraphs (b) and (e), where the Customer terminates this Agreement under paragraph (a), the Contractor will be entitled to payment of the following amounts as determined by the Customer:
- (i) for work carried out prior to the date of termination:
 - (A) subject to clause 22.1 (Payment claims), the amount which would have been payable if this Agreement had not been terminated and the Contractor had submitted a payment claim under clause 22.1 (Payment claims) for work carried out to the date of termination; and/or
 - (B) in relation to any work carried out prior to the date of termination pursuant to a Work Order that is attributable to a Payment Milestone that:
 - has commenced under the Work Order; and
 - is yet to be payable under clause 22.1 (Payment claims),a proportional amount of the Payment Milestone based on demonstrable progress against the Acceptance Criteria of that Payment Milestone; and
 - (ii) the amounts expressly set out as “Termination Costs” in Schedule 15 (Pricing Terms) (**Termination Costs**), provided that the Customer is only required to pay such Termination Costs to the extent that:
 - (A) those Termination Costs are unavoidable and are directly, reasonably and necessarily incurred by the Contractor as a result of the termination;
 - (B) those Termination Costs have not already been recovered by the Contractor (including as part of the Fees);
 - (C) the Contractor substantiates that those costs have been or will be incurred to the Customer’s satisfaction (acting reasonably);
 - (D) those costs relate solely to TLS Activities provided at the date the notice to terminate was given;
 - (E) those costs relate exclusively to TLS Activities provided solely for the Customer and would not have been incurred or required to have been incurred by the Contractor for any other reason; and
 - (F) the Contractor has not been able to mitigate those costs, including despite complying with its obligation under paragraph (b).
- (d) Subject to paragraphs (b) and (e), where the Customer terminates this Agreement in whole under paragraph (a), the Customer will return all unconditional undertakings then held by the Customer under clause 47 (Financial Standing and Unconditional Undertaking) provided that the Contractor has complied with all its obligations under this clause 49.4 and clause 50 (Disengagement).

- (e) Paragraph (c) sets out the only amounts the Customer is required to pay in the event the Customer terminates under paragraph (a). For the avoidance of doubt, in no event will Termination Costs payable by the Customer include any amounts for:
 - (i) redundancy or retrenchments costs; or
 - (ii) loss of profit of the Contractor or any Contractor Personnel.
- (f) Once the Customer has paid the amounts in paragraph (c), no further compensation is payable for that termination.

49.5 Termination by the Contractor for cause

- (a) Without prejudice to the Customer's obligations under clause 22 (Invoices and Payment), the Contractor may terminate this Agreement, as a whole, by notice to the Customer if:
 - (i) any Fees due and payable by the Customer under this Agreement are more than two (2) months overdue;
 - (ii) after those Fees have become more than two (2) months overdue, the Contractor has raised the overdue payment the subject of paragraph (i) at the relevant governance forum and has issued an Early Warning Notice in respect of the amount overdue stating that the Contractor intends to terminate the Agreement if the Customer does not pay the overdue amount within thirty (30) days after receipt of the Early Warning Notice;
 - (iii) the Customer fails to pay such overdue amount to the Contractor within thirty (30) days after receipt of the Early Warning Notice issued pursuant to paragraph (ii); and
 - (iv) there is no dispute between the Customer and the Contractor in relation to such Fees.
- (b) The parties acknowledge that the termination rights set out in this clause 49.5 are an exhaustive statement of the Contractor's rights to terminate this Agreement.

49.6 Partial Termination

- (a) A reference to termination of this Agreement "*in part*" in this clause 49 (Termination) means termination of one or more Work Orders, termination of particular parts of this Agreement or termination of the TLS Activities for one or more Deployment Areas.
- (b) If the Customer exercises a right to terminate in part under this clause 49:
 - (i) the Customer has the sole discretion as to which part or parts of this Agreement are to be terminated; and
 - (ii) the Customer must specify:
 - (A) appropriate variations to the remaining portion of this Agreement; and
 - (B) how the rights and obligations in clause 50 (Disengagement) must be implemented by the Contractor in respect of the terminated parts.

49.7 Consequences of expiry or termination

- (a) Except as set out otherwise in this Agreement, the expiry or termination of this Agreement does not affect:
 - (i) either party's rights in respect of any breach of this Agreement occurring before such expiry or termination;
 - (ii) the obligations of the parties to make a payment under this Agreement which was due before such expiry or termination, as further described in Schedule 15 (Pricing Terms);
 - (iii) the obligations of the parties to perform any other act under this Agreement which was due before such expiry or termination; and/or
 - (iv) each perpetual licence granted by the Contractor under this Agreement (which to avoid doubt will continue in full force and effect).
- (b) Without prejudice to the Customer's exercise of its other rights under this Agreement, on expiry or termination of this Agreement the Contractor must, as requested by the Customer, offer to the Customer the Contractor's Equipment, Assets, Software and Third Party contracts on the terms set out in Schedule 15 (Pricing Terms) and Schedule 22 (Disengagement).

49.8 Return of Information

- (a) On termination or expiry of this Agreement for any reason the Contractor must, as requested by the Customer:
 - (i) return all Customer Data and Customer Confidential Information in the format specified by the Customer; or
 - (ii) destroy, delete or De-Identify any Customer Data and Customer Confidential Information,and certify to the Customer that it has done so.
- (b) Without limiting paragraph (a), if this Agreement is frustrated or terminated, the Contractor must:
 - (i) immediately deliver the original and all but one copy of all Customer Data, Customer Confidential Information and Document Deliverables (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to the Customer; and
 - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Customer reasonably requires in relation to the Customer Data, Customer Confidential Information and Document Deliverables.
- (c) Paragraph (a) does not apply to the extent that a party is required by Law to retain the other party's Confidential Information.

49.9 Survival

Clauses 26 (Resolution of Matters), 27 (Records and Audit), 29 (Intellectual Property), 30 (Customer Data), 31 (Confidentiality), 32 (Privacy), 33 (Government Disclosure), 49 (Termination), 50 (Disengagement), 51 (Representations and warranties), 52 (Indemnities), 53 (Liability), 54 (Insurance), 55 (Notices), 57 (General), Schedule 17 (Issue Resolution Procedure), Schedule 18 (Dispute Resolution Procedure) and Schedule 22 (Disengagement), and any other provisions which are expressed to survive or by their nature impose continuing obligations on the relevant parties, separate and independent from the other obligations of the parties, will survive the termination or expiry of this Agreement.

50 Disengagement

50.1 Disengagement Services

The Contractor acknowledges and agrees that the Contractor must provide all assistance necessary and as may be required by the Customer:

- (a) to achieve an orderly and staged transition of the TLS Activities (in whole or in part) (including any relevant information, knowledge, systems and assets) from the Contractor to the Customer or a Replacement Contractor to enable the Customer to continue to obtain the benefit of such TLS Activities (including all relevant information, knowledge, systems and assets) for the business purposes of the Customer with minimal risk, disruption, hindrance or discontinuity; and
- (b) in connection with the Customer's performance of the TLS Activities itself or its sourcing and appointment of any Replacement Contractor,

including those services detailed in Schedule 22 (Disengagement).

50.2 Provision of Disengagement Services

- (a) If:
 - (i) one or more of the TLS Activities expires or is terminated (in whole or in part) for any reason; and/or
 - (ii) this Agreement expires or is terminated (in whole or in part, including any Work Order) for any reason,

the Contractor must, on and from the relevant Disengagement Commencement Date and for the Disengagement Period, provide the Disengagement Services in accordance with this clause 50 and Schedule 22 (Disengagement) and in accordance with the Disengagement Plan.

- (b) If this Agreement expires or is terminated only in part (including the expiry or termination of one or more of the TLS Activities), the obligations of the Contractor under this clause 50 will, in respect of that expiry or termination, apply only to the extent necessary or desirable by the Customer to ensure the orderly transition to the Customer or its nominated Replacement Contractor of those TLS Activities which are the subject of or are impacted by the partial expiry or termination.
- (c) Without prejudice to its obligations under paragraph (a), during the Disengagement Period the Contractor must:

- (i) to the extent required by the Customer, continue to provide the TLS Activities in accordance with this Agreement and for the relevant Fees (until notified by the Customer); and
 - (ii) take such steps to minimise any disruption to the Customer and each Customer Indemnified Person in connection with the transition or disengagement of the TLS Activities.
- (d) The Customer may, by notice to the Contractor, elect to require the Contractor to transition some or all of the terminated or expired TLS Activities so that as such TLS Activities are disengaged or handed over to the Customer or its nominee Replacement Contractor (whether in a staged manner or otherwise) they may cease to be provided by the Contractor.
- (e) The Customer may disclose Confidential Information of the Contractor to any prospective suppliers that the Customer is considering appointing as a supplier for particular products or services, provided that any such disclosure of the Contractor's Confidential Information will exclude, or be reasonably redacted to exclude, Confidential Information of the Contractor that is sensitive pricing information.

50.3 Fees for Disengagement Services

The Contractor may only charge the Customer for the provision of Disengagement Services to the extent allowed by and in accordance with Schedule 15 (Pricing Terms) and Schedule 22 (Disengagement). The Contractor may not charge fees for Disengagement Services if the Disengagement Services involve the remediation of past performance issues (including any work required in order to ensure documentation or other records are up to date).

Part K Risk Allocation

51 Representations and warranties

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52 Indemnities

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53 Liability

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54 Insurance

54.1 Customer effected insurance

- (a) This clause 54.1 only applies to the extent that there are any Customer Insurance Policies anticipated under this Agreement.
- (b) The Customer will, from the Commencement Date, effect the Customer Insurance Policies.
- (c) The Customer Insurance Policies are subject to the exclusions, conditions and excesses noted in the policies and the Contractor:
 - (i) must satisfy itself of the nature and extent of the Customer Insurance Policies; and
 - (ii) acknowledges that the Customer Insurance Policies do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits, and the Contractor may at its cost, take out insurance to:
 - (A) insure any risks not insured by the Customer Insurance Policies; or
 - (B) cover any such exclusions, conditions or excesses in that insurance, which the Contractor wants to insure against or cover.
- (d) The Contractor acknowledges and agrees that nothing in this Agreement:
 - (i) entitles the Contractor to require the Customer to bring a Claim under the Customer Insurance Policies; or
 - (ii) constitutes a waiver of the Contractor's liability, or of the Customer's right to bring a Claim against the Contractor, in respect of any Losses for which the Contractor would otherwise have been liable,by virtue of the Customer Insurance Policies being in place.

54.2 Contractor's obligation to effect insurance

- (a) The Contractor must take out and maintain the Contractor Insurance Policies on the terms and for the periods required by Item 5 (Contractor Insurance Policies) of Schedule 2 (Agreement Details) and otherwise in this Agreement (including any Work Order).
- (b) The Contractor Insurance Policies taken out by the Contractor must provide coverage that meets the requirements of Item 5 (Contractor Insurance Policies) of Schedule 2 (Agreement Details) and otherwise in this Agreement (including in any Work Order) with deductibles no greater than those specified in Item 5 (Contractor Insurance Policies) of Schedule 2 (Agreement Details) and otherwise in this Agreement (including in any relevant Work Order).
- (c) If the Customer at any time reasonably requires the Contractor to:
 - (i) insure against a risk not specifically provided for or contemplated under the Contractor Insurance Policies; or
 - (ii) increase the extent of, or change the terms of, the Contractor Insurance Policies,it may notify the Contractor and request that the Contractor give effect to the Customer's requirements.
- (d) The Contractor must promptly inform the Customer of the amount of any additional premium payable to give effect to a requirement of the Customer under paragraph (c) before it implements the requirement (using reasonable endeavours to minimise any increase in or maximise the reduction in the cost of any additional, increased or varied insurances) and the Customer will advise the Contractor whether it still requires the Contractor to give effect to that requirement.
- (e) Any additional premiums paid on any additional, increased or varied insurances required by the Customer under paragraph (d), as well as any brokerage and Taxes payable in respect of those premiums, will be reimbursed by the Customer to the Contractor at cost.

54.3 Premiums and Excesses

- (a) The Contractor must punctually pay:
 - (i) all premiums, excesses and other amounts payable in respect of the Contractor Insurance Policies; and
 - (ii) where it bears the risk of the relevant loss or damage, or is required to indemnify the Customer or the Customer Indemnified Persons under this Agreement, all excesses in relation to insured matters under the Customer Insurance Policies (if any) in accordance with the policy terms. The Contractor may effect its own insurance to cover the amount of any such excesses.
- (b) If an insurer requires payment of any amounts under a Contractor Insurance Policy by the Customer, or (where paragraph (a)(ii) applies) payment of any excesses under a Customer Insurance Policy (if any) by the Customer, the Customer may recover the payment of such amount from the Contractor as a debt due and payable immediately.

54.4 Insurance requirements generally

The Contractor must ensure that each Contractor Insurance Policy (other than the workers compensation insurance and compulsory third party motor vehicle insurance):

- (a) is, unless otherwise approved by the Customer, taken out and maintained with an insurer that:
 - (i) has the Required Rating;
 - (ii) is authorised under the *Insurance Act 1973* (Cth) to carry on an insurance business in Australia, or such equivalent legislation as may apply in the jurisdiction in which the insurer is incorporated; and
 - (iii) is supervised by the Australian Prudential Regulation Authority, or such equivalent regulatory body as may exist in the jurisdiction in which the insurer is incorporated;
- (b) does not contain any non-market-standard exclusions, endorsements or alterations unless it is first approved in writing by the Customer;
- (c) for the Marine Transit Insurance and the Public and Product Liability Insurance policies only, names TfNSW, the Customer, NSW Trains and TAHE as additional insureds under the policy for the purposes of this Program only, and extends to cover the Contractor's Subcontractors and others described in the relevant policy, by specifying them within the definition of "insured" for their respective rights and interests;
- (d) except in relation to the Professional Indemnity Insurance policy, includes a waiver clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
- (e) except in relation to the Marine Transit Insurance policy, includes a cross liability clause in which the insurer agrees:
 - (i) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them; and
 - (ii) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any insurance;
- (f) contains a term which requires the lead insurer or the Contractor's broker to give the Customer thirty (30) Business Days' notice prior to the:
 - (i) lead insurer giving the Contractor a notice of cancellation;
 - (ii) lead insurer cancelling the policy on the request of the Contractor;
 - (iii) lead insurer giving the Contractor any other notice in respect of the policy; or
 - (iv) Contractor Insurance Policy lapsing.

To the extent that the Contractor is unable to comply with this paragraph (f) only, having taken all reasonable steps to do so, the Contractor must provide notice to

the Customer immediately upon becoming aware of any of the facts set out in paragraphs (i) to (iv) of this paragraph(f);

- (g) except in relation to the Professional Indemnity Insurance, contains a term providing that notice of a claim by any insured will be accepted by the insurer as notice by all insureds;
- (h) does not exclude coverage for innocent non-disclosure;
- (i) for the Public and Product Liability Insurance policy only, if the TLS Activities are to be carried out on or near rail, does not contain any exclusions or limitations in cover in respect of works conducted on or near rail;
- (j) for the Public and Product Liability Insurance policy only, if written on an occurrence basis, provides that a single deductible is payable for each occurrence regardless of whether a claim or claims are brought against one or more insureds;
- (k) for the Professional Indemnity Insurance policy only, if written on a claims-made basis, provides that a single deductible is payable for each claim regardless of whether a claim or claims are brought against one or more insureds;
- (l) does not contain any 'other insurance' provisions that attempt or purport to limit or restrict coverage where another insurance policy may also potentially respond; and
- (m) is governed by and construed (as it relates to Claims or Loss arising under or related to this Agreement only) according to the Laws of any jurisdiction in Australia, and, in the case of all policies other than legal liability policies, includes a provision under which each party to that policy agrees to:
 - (i) submit to the non-exclusive jurisdiction of the courts of any jurisdiction in Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to that policy; and
 - (ii) waive any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if the venue falls within paragraph (m)(i).

54.5 Compliance with policies

The Contractor must:

- (a) comply at all times with the terms and conditions of each Contractor Insurance Policy;
- (b) not do or permit, or omit to do, anything which would prevent the Customer from complying with the terms of each Customer Insurance Policy (if any);
- (c) not do or permit, or omit to do, anything which prejudices the Insurance Policies or the eligibility or ability to claim under any Insurance Policy;
- (d) if necessary, rectify anything which might prejudice any Insurance Policy;
- (e) reinstate a Contractor Insurance Policy if it lapses;

- (f) not cancel, vary (in a manner that would adversely affect the Customer or the exercise of the Customer's rights under this Agreement) or allow a Contractor Insurance Policy to lapse without prior approval of the Customer;
 - (g) immediately notify, and ensures that its Subcontractors similarly notify, the Customer of any:
 - (i) event which may result in an Insurance Policy lapsing or being cancelled or of any fact or circumstance or change in circumstances which may prejudice an Insurance Policy; and
 - (ii) occurrence that may give rise to a claim under an Insurance Policy, or if it receives any claim or notice in connection with an Insurance Policy, if that claim would:
 - (A) have a material impact on insurance proceeds available under that Insurance Policy; or
 - (B) affect the Contractor's ability to comply with its obligations under this Agreement, including this clause,
- and keep the Customer informed of subsequent developments concerning the claim;
- (h) do everything reasonably required by the Customer (or any other person in whose name the relevant Customer Insurance Policy, if any, is effected) to enable the Customer or such other person to claim, collect or recover money due under the Customer Insurance Policy;
 - (i) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might prejudice or affect any such Insurance Policy or the payment of all or any benefits under the Insurance Policy;
 - (j) subject to paragraph (k), diligently pursue any material claim which it has under any Contractor Insurance Policy; and
 - (k) not compromise, settle, prosecute or enforce a claim under any Insurance Policy without the prior written consent of the Customer.

54.6 Evidence of insurance

The Contractor must provide to the Customer:

- (a) certified copies of all renewal certificates within ten (10) Business Days after it receives them from the insurer or broker; and
- (b) whenever requested by the Customer:
 - (i) certified copies of cover notes;
 - (ii) a certificate of currency satisfactory to the Customer confirming that the Contractor Insurance Policies have been effected and maintained in accordance with this clause 54; and

- (iii) the opportunity to view any Contractor Insurance Policy (including policy schedules, wording and endorsements) with the Contractor's Representative present.

54.7 Failure to insure

If the Contractor fails to maintain any Contractor Insurance Policy in accordance with this clause 54, or fails to provide evidence satisfactory to the Customer under clause 54.6(b) the Customer may, without prejudice to any other rights it may have:

- (a) terminate this Agreement by giving notice to the Contractor; or
- (b) effect the Contractor Insurance Policy itself, and the cost will be a debt due from the Contractor to the Customer.

54.8 Proportionate liability and the Contractor Insurance Policies

The Contractor must ensure that the Contractor Insurance Policies required to be taken out pursuant to clause 54.2(a):

- (a) cover any legal liability contractually assumed by the Contractor and its Associates under this Agreement, including to the extent that the Customer, the Contractor and any other person insured under those Contractor Insurance Policies have contracted out of the operation of Part 4 of the *Civil Liability Act 2002* (NSW) or assumed liability for others under this Agreement;
- (b) without limiting paragraph (a), cover the Contractor for potential liability to the Customer assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
- (c) not exclude any potential liability due to the exclusion of the operation of Part 4 of the *Civil Liability Act 2002* (NSW) the Contractor may have to the Customer under or in connection with this Agreement.

54.9 Liabilities unaffected

- (a) The effecting of insurance by the Contractor and the approval of any Contractor Insurance Policy, terms of insurance or insurer by the Customer does not limit any obligations or liabilities of the Contractor (including the obligation to effect the Contractor Insurance Policies).
- (b) The Contractor bears the risk of the Insurance Policies being inadequate to enable the Contractor to fulfil its obligations under this Agreement.

Part L Miscellaneous

55 Notices

55.1 Notice requirements

- (a) A notice, consent or other communication under this Agreement is only effective if it is:
- (i) in writing and in legible English, signed by or on behalf of the party giving it;
 - (ii) addressed to the party to whom it is to be given; and
 - (iii) subject to paragraph (d), sent through the Customer's chosen collaboration and document management tool, as notified to the Contractor from time to time, unless that is not technically possible or the parties agree otherwise, in which case:
 - (A) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that party's address; or
 - (B) sent by email to that party's email address,

in each case as set out in paragraph (b), as updated from time to time by a party under paragraph (c).

- (b) For the purposes of this clause 55, the relevant address and email address of each party is set out in Schedule 2 (Agreement Details).
- (c) Where a party notifies the other party of an updated address or email address, the other party must use those updated contact details for the purpose of giving notices under this Agreement.
- (d) A notice terminating this Agreement must be given by pre-paid mail (by airmail, if the addressee is overseas) or delivered to the relevant party's address (although a copy of that notice must also be sent through the Customer's chosen collaboration and document management tool or by email, as applicable).

55.2 Notice takes effect

- (a) Subject to paragraph (b), a notice, consent or other communication under this Agreement is, in the absence of earlier receipt, regarded as given, provided, served, issued and received:
- (i) if it is sent through the Customer's chosen collaboration and document management tool, when it becomes visible to all other participants to that tool;
 - (ii) if it is delivered, on delivery at the address of the relevant party;
 - (iii) if sent by email, at the time it was transmitted by the sender provided that if the sender receives a message indicating that it has not been successfully transmitted provided that where an "out of office" reply, delivery error or similar response is returned in response to that email the email will not be

taken to be received and the sender will use the alternative methods of sending the notice in accordance with this clause; or

- (iv) if it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside Australia, on the fifth Business Day after the day of posting.
- (b) If a notice, consent or other communication under this Agreement is given and received on a day that is not a Business Day or after 5.00pm (local time in the place of receipt) on a Business Day, it is regarded as being given and received at 9.00am on the next Business Day.

56 Machinery of Government

56.1 Rights and benefits of the Customer

- (a) Unless expressly stated otherwise, or as the context otherwise requires, each promise by the Contractor (whether by way of warranty, representation, indemnity, undertaking or other form of obligation or promise) is to be taken to be in favour of the Customer and to create a right or benefit of the Customer.
- (b) The rights and benefits of the Customer provided for under this Agreement are intended to be for, and are held by the Customer for, the benefit of the Customer in its own right to support the discharge of its duties in relation to, and liabilities arising from, the performance of the Operations Functions, and also for the benefit of:
 - (i) TAHE to the extent it is the owner of the rail property assets, rolling stock and rail infrastructure in NSW; and
 - (ii) the Rail Transport Entities to support the discharge of their respective duties in relation to, and liabilities arising from, the performance of the Operations Functions.

56.2 Benefits held on trust

- (a) The Customer holds as trustee for the Customer Indemnified Persons the benefit of:
 - (i) each indemnity, waiver and release given by the Contractor under this Agreement in favour of the Customer Indemnified Persons;
 - (ii) the TLS Parent Company Guarantee; and
 - (iii) each right to the extent that such right is expressly stated to be for the benefit of a Customer Indemnified Persons.
- (b) The Contractor acknowledges the existence of such trusts and consents to:
 - (i) the Customer:
 - (A) having recourse to the TLS Parent Company Guarantee, as trustee for and on behalf of the Customer Indemnified Persons; and

- (B) exercising rights in relation to, or otherwise enforcing such indemnities, releases and their rights on behalf of, the Customer Indemnified Persons;
 - (ii) the Customer having recourse to the TLS Parent Company Guarantee, or otherwise enforcing the TLS Parent Company Guarantee, as if the same had been given directly to and for the benefit of the Customer Indemnified Person as a named obligee; and
 - (iii) each Customer Indemnified Person exercising rights in relation to, or otherwise enforcing the indemnities, releases and other rights as if they were a party to this Agreement.
- (c) To the extent that the Customer does not have actual authority from a Customer Indemnified Person to act as trustee on behalf of the Customer Indemnified Person as contemplated in this clause 56.2, then as between the Customer and the Contractor, the Customer will be deemed to have sought and obtained that authority to act as trustee for that Customer Indemnified Person.
- (d) The caps and exclusions of liability in clause 53 (Liability) apply in aggregate as between the Contractor on the one hand and the Customer and the Customer Indemnified Persons on the other hand.

56.3 Transfer of Functions

The Contractor:

- (a) acknowledges that the Customer may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of the Customer may be transferred to or vested in another entity;
- (b) without limitation to paragraph (a), acknowledges that some or all of the powers, functions, assets, liabilities, responsibilities of the Customer may be transferred to or vested in Rail Transport Entities;
- (c) agrees to do anything (including to execute any document), and must procure that its Associates do anything (including to execute any document) required to give full effect to any of the matters contemplated in paragraphs (a) and (b); and
- (d) will have no claim or entitlement to payment of any costs arising from any of the above.

56.4 Government Authorities

- (a) This Agreement will not unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Rail Transport Entities or the ASA to exercise any of their respective functions and powers pursuant to any Law; or
 - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter, including any functions or powers required to be exercised by any Rail Transport Entity pursuant to any Configuration Management Framework.

- (b) Without limiting paragraph (a), anything the Rail Transport Entities or the ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any Law or the ASA Charter will be deemed not to be an act or omission by that Rail Transport Entity or the ASA (including a breach of contract) under or in connection with this Agreement and will not entitle the Contractor to make any Claim against a Rail Transport Entity or the ASA.
- (c) The Contractor:
 - (i) waives any Claims that it may have against the Customer as a result of the exercise by any Rail Transport Entity or the ASA of their respective functions and powers either as an AEO or under any Law, the ASA Charter or the Configuration Management Framework; and
 - (ii) acknowledges and agrees that:
 - (A) there are many Government Authorities (other than the Rail Transport Entities and the ASA) with jurisdiction over aspects of the TLS Activities, the Rail Corridor and other matters affecting and affected by the TLS Activities;
 - (B) such Government Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the TLS Activities (including, the exercise by persons (including individuals) acting on behalf of such Government Authorities of powers and functions, including as necessary for such Government Authorities to comply with their statutory functions and powers); and
 - (C) it bears the full risk of all occurrences of the kind referred to in paragraph (ii)(B) and will not be entitled to make, and the Customer will not be liable upon, any Claim arising out of or in connection with such occurrences.

56.5 Novation to Government Authorities

- (a) Without prejudice to the generality of clause 57.13(a), the Customer may at any time, at its sole discretion, novate this Agreement to any Government Authority, any successor in title to the Customer or any other person that assumes the functions or obligations of the Customer.
- (b) If the Customer elects to novate this Agreement in accordance with paragraph (a), the Customer will provide the Contractor with a duly completed Deed of Novation and the Contractor must execute the Deed of Novation and return it to the Customer within five (5) Business Days of receipt of the relevant Deed of Novation.
- (c) If the Contractor fails to properly execute the Deed of Novation within the time period specified in the previous paragraph, then for the purpose of executing the Deed of Novation, the Contractor irrevocably appoints the Customer to be its attorney with full power and authority to complete the particulars and execute, sign, send and deliver in the name of the Contractor the Deed of Novation and all notices, deeds and documents for that purpose.

56.6 Piggybacking

The Contractor acknowledges and agrees that if a Government Authority (including a “public transport agency” (as defined in the *Transport Administration Act 1988* (NSW)) requests the Contractor to provide services or other things to it that are the same or similar to the Works or other things required to be provided by the Contractor under this Agreement, the Contractor must enter into a separate agreement with the relevant Government Authority on terms no less favourable than the terms of this Agreement, having regard to any necessary changes required to reflect:

- (a) the particulars of the relevant services or other activities that the Contractor will provide to the relevant Government Authority; and
- (b) that the relevant services or other activities are to be supplied by the Contractor to the relevant Government Authority.

57 General

57.1 Definitions in the Glossary

A term or expression starting with a capital letter:

- (a) which is defined in Schedule 1 (Definitions and Interpretation) has the meaning given to it in Schedule 1 (Definitions and Interpretation);
- (b) which is defined in the Corporations Act, but is not defined in Schedule 1 (Definitions and Interpretation), has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Act, but is not defined in the Corporations Act or Schedule 1 (Definitions and Interpretation), has the meaning given to it in the GST Act.

57.2 Interpretation

The interpretation clause in Schedule 1 (Definitions and Interpretation), sets out rules of interpretation for this Agreement.

57.3 Vienna Convention

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

57.4 No partnership or employment relationship

Nothing in this Agreement:

- (a) may be deemed to constitute a partnership, joint venture, agency or other legal relationship between the Customer and the Contractor other than that of supplier and purchaser and/or service provider and recipient; and
- (b) authorises either party to waive any obligation for which the other party may be responsible or to incur any liability on behalf of the other party.

57.5 Merger

No term of this Agreement merges on completion of any transaction contemplated by this Agreement.

57.6 Further assurances

Except as expressly provided in this Agreement, each party must, at its own expense, promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by them.

57.7 Severability

- (a) If a provision, or the application of any provision, of this Agreement is wholly or partially void or unenforceable in a jurisdiction:
 - (i) it is severed to the extent that it is void or unenforceable from the remainder of this Agreement for the purposes of enforcement in that jurisdiction; and
 - (ii) the remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (b) Paragraph (a) has no effect if the severance:
 - (i) alters the basic nature of this Agreement; or
 - (ii) is contrary to public policy.

57.8 Indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination of this Agreement.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

57.9 Waivers and exercise of rights

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. Any waiver is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent exercise of that or of any other right or remedy.

- (d) No Inspection, audit, agreement, approval, acceptance, review, attendance, payment of any payment claim, permission or comment by the Customer:
 - (i) constitutes a waiver of any default, admission of liability or acceptance of any act or omission of the Contractor or its Associates, or that a TLS Activity has been properly provided;
 - (ii) is an admission of the value of or completion of any work; or
 - (iii) affects the Contractor's obligation to perform this Agreement in accordance with its terms.

57.10 Entire agreement

The Transaction Documents constitute the entire agreement between the parties concerning its subject matter and replaces all previous agreements and understandings about that subject matter.

57.11 Governing law and submission to jurisdiction

- (a) This Agreement will be interpreted under and governed by the Laws of the State of New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of New South Wales, including for the avoidance of doubt, the Federal Court of Australia sitting in the State of New South Wales.

57.12 Costs and expenses

Unless specified otherwise in this Agreement, each party must pay its own costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this Agreement.

57.13 Assignment

- (a) The Customer may assign any of its rights, or novate to a Rail Transport Entity, a Government Authority, any successor in title to the Customer or any other person that assumes the functions or obligations of the Customer, its rights and obligations, under this Agreement without the consent of the Contractor. The Contractor must execute any document reasonably requested by the Customer to give effect to the assignment or novation.
- (b) The Contractor must not assign any of its rights, or novate its rights and obligations, under this Agreement without the prior consent of the Customer.
- (c) A breach of paragraph (b) by the Contractor entitles the Customer to terminate this Agreement.

57.14 To extent not excluded by Law

The rights, duties and remedies granted or imposed under the provisions of this Agreement operate to the extent not excluded by Law.

57.15 Counterparts

This Agreement may be executed in any number of counterparts which, when taken together, will constitute one instrument.

57.16 Attorneys

Each attorney executing this Agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

57.17 Ambiguous Terms

- (a) If the Customer considers, or if the Contractor notifies the Customer that it considers that there is an ambiguity, inconsistency or discrepancy in this Agreement, then the Customer will resolve such ambiguity, inconsistency or discrepancy in accordance with clause 3.2(a) of this Agreement.
- (b) Only if any ambiguity, inconsistency or discrepancy is not resolved under paragraph (a), then the Customer may Direct the interpretation of this Agreement. The Contractor must follow any such Direction.
- (c) The Customer, in giving a Direction in accordance with paragraph (b), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Agreement.
- (d) Any Direction which the Customer gives in accordance with paragraph (b) will be given within twenty-eight (28) days of receipt of the notice from the Contractor under paragraph (a).

57.18 Time limits

Where in this Agreement any obligation of a party is required to be performed within a specified time or on a specified date, that obligation will be deemed to continue after that time or date if the party fails to comply with that obligation within that time or on that date.

57.19 Approvals and consents

Unless this Agreement expressly provides otherwise, all approvals, consents, decisions, waivers or exercises of discretion required (whether expressly or impliedly) or able to be given or made by the Customer may be given, not given, made, not made, exercised, not exercised, withheld or conditioned by the Customer in its absolute discretion and the Contractor acknowledges that the Customer and the Customer Representative, in granting any approval, consent or waiver, or making any decisions or exercising any discretion under or in connection with this Agreement in relation to such matters, will not assume any duty of care, responsibility or liability to the Contractor or any other person and will not be taken to have agreed that any matter that is the subject of any approval, consent, waiver, decision or exercise of a discretion is in compliance with this Agreement.

57.20 Rights do not affect risk allocation

- (a) The Customer has various rights under this Agreement which are designed to give the Customer the ability to monitor the performance of the Contractor's obligations. Those rights include:

- (i) the right to Review Design Documentation, Project Plans, Action Plans, Document Deliverables, Verification Reports, and other documents which the Contractor must submit to the Customer for Review;
 - (ii) rights to inspect, monitor or audit the TLS Activities and the Performance Monitoring System;
 - (iii) the right to notify the ASA of any non-conformance in the performance of the TLS Activities that relates to the authorisation granted by the ASA;
 - (iv) the right to Direct the Contractor in relation to certain matters under this Agreement; and
 - (v) rights to attend Verification Activities.
- (b) The Contractor acknowledges that:
- (i) it has sole responsibility for ensuring that the TLS Activities comply with this Agreement; and
 - (ii) the Customer is relying on the skill, expertise and judgment of the Contractor in delivery of the TLS Activities.
- (c) Without limiting paragraph (a), no Rail Transport Entity nor the Customer Representative assumes or owes any duty of care to the Contractor to:
- (i) Review, (or if it does Review it, in Reviewing), any Submitted Document for errors, omissions or compliance with this Agreement;
 - (ii) Accept or reject the TLS Activities or the Assets;
 - (iii) observe, participate in or conduct any Verification Activity or Inspection or, if it does not observe, participate in or conduct any Verification Activity or Inspection, to identify any non-compliance with this Agreement of any Asset verified; or
 - (iv) inspect the TLS Activities or the Assets for Defects, errors, omissions or compliance with the requirements of this Agreement.
- (d) No exercise of, failure to exercise, or notice in respect of such rights or the incorporation of the Customer's, any Stakeholders' or Other Contractor's comments into any Document Deliverable or any associated feedback or comments will:
- (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities, obligations or responsibilities under this Agreement or otherwise according to Law;
 - (ii) lessen or otherwise affect the warranties given by the Contractor under this Agreement;
 - (iii) prejudice or limit the Customer's rights, or the rights of any Rail Transport Entity, against the Contractor whether under this Agreement or otherwise according to Law;

- (iv) without limiting paragraph (b)(ii), preclude the Customer or any Rail Transport Entity, from subsequently asserting that the Contractor has not fulfilled its obligations whether under this Agreement or otherwise according to Law;
 - (v) constitute a Variation or a Variation Request;
 - (vi) entitle the Contractor to make any other Claim under this Agreement;
 - (vii) affect the Fees or otherwise entitle the Contractor to be reimbursed for any costs and expenses incurred or otherwise compensated;
 - (viii) be construed as a Direction by the Customer to do or not do anything;
 - (ix) constitute an instruction to accelerate, disrupt, prolong or vary any of the TLS Activities (unless expressly Directed in writing); or
 - (x) affect the time for the performance of the Contractor's obligations.
- (e) The Contractor will not be relieved from compliance with any of its obligations under this Agreement or from any of its liabilities whether under this Agreement or otherwise according to Law, nor will the rights of the Customer whether under this Agreement or otherwise according to Law be limited or otherwise affected as a result of:
- (i) implementation of or compliance with the PR, any Action Plan, Contractor Project Plan, any other plan developed under this Agreement or the quality assurance requirements of this Agreement;
 - (ii) any audits or other monitoring by any Rail Transport Entity or any acting on behalf of the Customer of the Contractor's compliance with this Agreement;
 - (iii) any release, consent, authorisation, approval or agreement by the Customer; or
 - (iv) any failure by any Rail Transport Entity, the Customer Representative or anyone acting on behalf of the Customer, to detect any Defect or non-compliance, particularly whilst witnessing any Verification Activity under paragraph (c)(iii), including where any failure arises from any negligence on the part of any Rail Transport Entity, the Customer Representative or any other person.
- (f) Any certificate, approval or acceptance issued by the Customer will not:
- (i) constitute an approval by the Customer that the Contractor has performed its obligations in accordance with this Agreement;
 - (ii) be taken as an admission or evidence that the TLS Activities have been performed in accordance with this Agreement; or
 - (iii) prejudice any rights or powers of the Customer under this Agreement or otherwise according to Law, including any rights which the Customer may have in respect of Defects.
- (g) Whether or not this Agreement prescribes a particular work method, or a work method is otherwise a part of this Agreement or reviewed or approved (expressly

or impliedly) by the Customer, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of the Customer, uses another work method will not:

- (i) entitle the Contractor to make any Claim against the Customer arising out of or in connection with the work method proving to be impractical or impossible or any change in the work method; or
- (ii) cause this Agreement to be frustrated.

57.21 Certification

For the purposes of this Agreement, a copy of a document will be regarded as duly certified by the Contractor if it is certified as a true copy by a director, secretary or general manager of the Contractor.

57.22 Best and reasonable endeavours

If the Customer is required under the terms of this Agreement to exercise best or reasonable endeavours, the Contractor acknowledges that the Customer:

- (a) will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) cannot guarantee the relevant outcome; and
- (c) by undertaking to exercise best or reasonable endeavours, does not agree to:
 - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Agreement if the Customer regards that exercise as not in the public interest;
 - (iii) develop policy or legislate by reference only or predominantly to the interests of the Agreement;
 - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Agreement; or
 - (v) act in any other way that the Customer regards as not in the public interest.

57.23 English language

All communications between the parties and all Materials provided by the Contractor (including the Assets) must be in the English language.

57.24 Discretion

- (a) Subject to any express provision in this Agreement to the contrary:
 - (i) a provision of this Agreement which says that the Customer “may” do or not do something is not to be construed as imposing an obligation on the Customer to do or not do that thing; and

- (ii) there will be no procedural or substantive limitation upon the manner in which the Customer may exercise any discretion, power or entitlement conferred by the Agreement.
- (b) Without limiting paragraph (a), the Customer will not be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the Agreement conferring the discretion, power or entitlement.



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Schedule 1 Definitions and Interpretation

1 Definitions

The following definitions apply in this Agreement:

Accept, Accepted, or Acceptance means in relation to any Asset or Milestone requiring Acceptance under a Work Order, that the Asset or Milestone meets the relevant Acceptance Criteria.

Acceptance Certificate means a certificate issued by the Customer in the form of Schedule 11 (Form of Acceptance Certificate) certifying that an Asset or Milestone has achieved Acceptance.

Acceptance Criteria means, in respect of an Asset or Milestone, the acceptance criteria for that Asset or Milestone set out in the relevant Work Order.

Access Indemnity has the meaning given in clause 9.4(a)(ii).

Accreditation means accreditation (including provisional accreditation) in accordance with the requirements of the Rail Safety National Law, including any regulation, guidelines or ordinance made pursuant to the Rail Safety National Law.

Accreditation Variation means the variation to any Accreditation which must be obtained from ONRSR under or in accordance with the Rail Safety National Law as a consequence of the Program.

Accreditation Variation Application means all and any applications or submissions required to be made to ONRSR under or in accordance with the Rail Safety National Law in order to obtain any Accreditation Variation.

Accreditation Variation Documents means all documentation required to be prepared and submitted to ONRSR to support an Accreditation Variation Application.

Action Plan means a plan in a form reasonably satisfactory to the Customer containing the information required by clause 44 (Action Plans and Enhanced Cooperation).

Additional Support Services means:

- (a) implementation work with respect to an Update;
- (b) Minor Enhancements;
- (c) any other services not specified in Schedule 5 (Services Schedule), as varied from time to time;
- (d) any services contemplated by Schedule 5 (Services Schedule) that are expressly stated as being required to be performed under a Work Order; or
- (e) the supply of additional Spares to the Customer.

Additional Verification Activities has the meaning given in section 4 (Additional Verification Activities) of Schedule 9 (Verification).

Adjusted Charge means a Charge that has been varied by the application of an Escalation Factor (as defined in section 6.1 (Escalation) of Schedule 15 (Pricing Terms)) under Schedule 15 (Pricing Terms).

Advanced Train Management System or **ATMS** means a system for the control of trains being implemented by Australian Rail Track Corporation on the Australian Rail Track Corporation Network.

AEO Authorisation means an authorisation issued by the ASA to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any conditions of the authorisation, for the purposes of entering into a contract with a Rail Transport Entity.

Affected Activities has the meaning given in clause 45 (Performance Remediation).

Affected Party has the meaning given in clause 48.1(a).

Agreement has the meaning given in clause 3.1(a).

Alert Event means an actual or likely event or circumstance which arises or could arise because of the TLS Activities, and which may interfere with or threaten:

- (a) the use of any Rail Transport Entity Sites;
- (b) the safe operation of the Network;
- (c) the operational capacity or efficiency of the Network; or
- (d) the future safe operation of the Network or the future operational capacity or efficiency of the Network,

and including any event or circumstance which has or is likely to have a material detrimental effect on:

- (e) the Network, NSW Rail Assets and any Rail Transport Entity Sites;
- (f) the safety of any Rail Transport Entity's passengers, station patrons or representatives of any Rail Transport Entity; or
- (g) the operation of the Network.

Approval means any licence, permit, consent, approval, determination, certification or exemption from or by any Government Authority or under a Mandatory Requirement (or any requirement made under any Mandatory Requirement) which must be obtained or satisfied (as the case may be):

- (a) in accordance with this Agreement;
- (b) to carry out the TLS Activities including, for the avoidance of doubt, all things affecting rail operations; or
- (c) to enable the Customer to occupy and use for its intended purpose the completed Works or a part thereof,

but does not include the CCB Gates.

Approved for Construction Design means the set of all Design Documentation that:

- (a) have been Confirmed at the end of the Detailed Design Review under the Delivery Agreement or this Agreement (as applicable); and
- (b) which the Contractor has marked 'approved for construction' in accordance with the requirements set out in the TfNSW Configuration Management Plan and the ASA Engineering Drawings & CAD Requirements T MU MD 00006 ST.

Approved Subcontractor means a:

- (a) Pre-Approved Subcontractor; or
- (b) Subcontractor in respect of which the Customer has provided consent in accordance with clause 20.4 (Seeking Customer approval of subcontracting).

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Entities and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on the TfNSW website from time to time (as of the Execution Date: www.asa.transport.nsw.gov.au/industry/asset-standards-authority).

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

Asset Management Failure has the meaning given in clause 15.2.

Asset Management System has the meaning given in Appendix 6 (Technical Glossary) to the PR.

Asset or Assets means all items designed, developed, supplied, delivered, provided, produced, tested or commissioned by or on behalf of the Contractor under this Agreement or the Delivery Agreement, and includes:

- (a) the TMS Subsystem and all of the components that make up the TMS Subsystem, including the Software;
- (b) Document Deliverables;
- (c) Spares, Tools, consumables and chattels, unfixed goods and materials supplied as part of the TLS Activities or the Contractor's Activities under the Delivery Agreement; and
- (d) any part of the Works that the Contractor is required to design, procure, construct, implement, modify, integrate or bring into operational readiness,

including as further described in this Agreement (including the Services Schedule) and the Delivery Agreement.

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

Asset Management Plan means the plan of that name defined in Appendix 6 (PR Definitions) of the PR.

Asset Management System has the meaning given in Appendix 6 (PR Definitions) of the PR.

Asset Register means the register of Assets contemplated by the PR.

Asset Standards Authority or **ASA** means the unit within TfNSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets. Information about the ASA and the network and asset standards can be found on the TfNSW website from time to time (as of the Execution Date: www.asa.transport.nsw.gov.au/industry/asset-standards-authority).

Assigned IP [REDACTED]

Associates means, in relation to a person that is a corporation, any Related Body Corporate of that person, and any of their respective Representatives, and:

- (a) in the case of the Contractor, includes the Subcontractors and their Representatives;
- (b) in the case of the Customer, includes the State, TfNSW, TAHE, each other entity controlled by the Secretary of Transport for NSW and, in each case, their Representatives; and
- (c) in the case of the State, includes:
 - (i) the Minister for Transport and Infrastructure;
 - (ii) the Secretary of Transport for NSW; and
 - (iii) any other person to whom the State delegates a right, power, function or duty from time to time,

but only insofar as each is acting in connection with the Program.

ATMS Interoperability Subsystem means the component of the System developed to allow an “advanced train management system” (**ATMS**) fitted train to traverse the Digital Systems Program fitted area.

ATO means automatic train operation.

ATO Standard means the international Standards relating to ATO over ETCS, including:

- (a) SUBSET-125: System Requirements Specification
- (b) SUBSET-126: ATO-OB / ATO-TS Interface (FFFIS application layer);
- (c) SUBSET-130: ETCS-OB / ATO-OB Interface (FFFIS application layer);
- (d) SUBSET-131: ATO-TS / TMS Interface (FIS); and
- (e) SUBSET-139: ATO-OB / Train Interface (FIS),

which, as of the SOW Execution Date for Statement of Work 1 is in draft form.

Audit Assets has the meaning given in clause 15.3.

Australian Rail Track Corporation or **ARTC** means Australian Rail Track Corporation Limited (ABN 75 081 455 754). **Australian Rail Track Corporation Network** means the network that is managed by the Australian Rail Track Corporation.

Authorised Engineering Organisation or AEO means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering organisation status by the Asset Standards Authority.

Batch Defect [REDACTED]

■ [REDACTED]

■ [REDACTED]

Batch of Assets means Assets which have been or will be delivered together to the relevant Delivery Location on a particular date.

Benchmarking has the meaning given in clause 24 (Benchmarking).

[REDACTED]

Building Code means the Building Code 2013 issued under subsection 27(1) of the *Fair Work (Building Industry) Act 2012* (Cth).

Business Change means:

- (a) any Divestiture;
- (b) any restructure, dissolution, merger or transfer of a substantial part of the assets, staff, and liabilities of any person's business or operations; or
- (c) any consolidation, reconstitution or replacement (including the performance of common functions) of a person or a part of a person, with any other entity, or the transfer of any of that person's powers or functions to any other entity.

Business Continuity Plan means the business continuity plan approved by the Customer in accordance with Schedule 19 (Business Continuity and Disaster Recovery).

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

Business Hours means any eight (8) hour period between 7am and 7pm on any Business Day.

Business Requirements Specification or **BRS** means the document that contains TfNSW's business requirements for the System, as set out in Schedule 3 (System Definition and Requirements).

CCB Gate or **Configuration Management Gates** means each TfNSW Configuration Control Board Gate being the governance stages instituted by TfNSW in order to manage and control any changes to the configuration of assets on the Network, as further described in the ASA Standard T MU AM 04001 PL: Configuration Project Plan.

CCU means the NSW Government's Construction Compliance Unit.

Change in Approval means any one or more of the following that occurs after the Execution Date:

- (a) the introduction of a new Approval not existing at the Execution Date; or
- (b) the amendment of an Approval existing at the Execution Date.

Change in Law means any one or more of the following that occurs after the Execution Date:

- (a) the amendment, repeal or change of a Law existing at the Execution Date; or
- (b) the enactment of a new Law not existing at the Execution Date.

Change in Standard

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Change Manager means the change manager appointed by the Customer.

Change of Interest means:

- (a) a change in Ownership; or
- (b) a Business Change,

of the Contractor or any of its Relevant Related Bodies Corporate.

Charges means the charges and Fee components as defined and explained in Schedule 15 (Pricing Terms) to be used in the calculation of the Fees.

Claim means any claim, action, demand or proceeding including any claim, action, demand or proceeding relating to or in respect of any Transaction Document or the TLS Activities.

Collaboration Participants has the meaning given in clause 5.4(c).

Collaboration Principles has the meaning given in clause 5.4(c).

Commencement Date means the date of entry into in revenue service operation of the System in the first Deployment Area.

Competence Records means, with respect to any Rail Safety Worker engaged in connection with the TLS Activities (including those engaged by Subcontractors), the following information:

- (a) the rail safety training undertaken by the Rail Safety Worker, including when, and for how long, the training was undertaken;
- (b) the qualifications of the Rail Safety Worker, including (if applicable):
 - (i) the units of competence undertaken to achieve the qualification;
 - (ii) the level of qualification attained;
 - (iii) if, and when, a re-assessment of competence is to be conducted;
 - (iv) if, and when, any re-training is due and was undertaken; and
 - (v) the name of any organisation conducting training or re-training;
- (c) the name and qualifications of any person who assessed the competence of the worker; and
- (d) any further information requested by the Customer with respect to the competence of the Rail Safety Worker.

Concept Design means:

- (a) the design for the TMS Subsystem prepared for Deployment Stage 1 as part of the Contractor's response to the RFP (as attached to Statement of Work 1 under the Delivery Agreement);
- (b) the design for any visualisation of the TMS Subsystem (as attached to Statement of Work 3 under the Delivery Agreement); and
- (c) any additional concept designs delivered by the Contractor under the Delivery Agreement or Schedule 8 (Design Activities) and Confirmed.

Condition Auditor has the meaning given in clause 15.3.

Confidential Information in relation to a Disclosing Party, means:

- (a) all information relating to the business or affairs of the Disclosing Party disclosed, communicated or delivered to, learnt by, developed by or which otherwise comes to the knowledge of or into the possession of, the Recipient under or in connection with this Agreement or the performance of the TLS Activities; and
- (b) the terms of this Agreement (including pricing),

but excludes any such information which the Recipient can establish:

- (c) is or became generally available in the public domain otherwise than through a breach of confidence;
- (d) was independently developed by the Recipient; or
- (e) was rightfully received by the Recipient from a Third Party (that is not a Permitted Sublicensee) who is under no obligation of confidentiality in respect of that information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party.

For the avoidance of doubt, the following information will be Customer's Confidential Information:

- (f) the Customer IP;
- (g) information developed by the Contractor specifically for the Customer;
- (h) Confidential Information of a Rail Transport Entity; and
- (i) all information provided to the Contractor by or on behalf of a Rail Transport Entity or their Associates in relation to the TLS Activities, the Program or the Works.

Confidentiality and Intellectual Property Deed Poll means the deed poll executed by the Contractor as a condition precedent to commencement of the Delivery Agreement but relating to this Agreement, the form of which is attached to this Agreement in Schedule 25 (Confidentiality and Intellectual Property Deed Poll).

Configuration Change Acceptance Notice (or CCN) means a notice of that name (or an equivalent notice that replaces this notice) issued by the Configuration Control Board in respect of Design Documentation.

Configuration Control Board or CCB means the TfNSW Infrastructure and Works Configuration Control Board, being a governance body established by TfNSW to manage and control any changes to the configuration of assets on the Network, or its replacement.

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

Confirmed means the document has been submitted for Review and:

- (a) has been returned marked by the Customer with a statement 'no comments' in accordance with the Review Procedures;
- (b) has been returned by the Customer with minor comments that the Customer has agreed to allow the Contractor to address as part of a subsequent Review in accordance with section 6.1(b) of Schedule 7 (Review Procedures); or
- (c) or is deemed under the Review Procedures to have been returned marked 'no comments',

and **Confirmed Documents** and **Confirmed Technical Documents** will be interpreted accordingly.

Conflict of Interest means any conflict of interest of any nature including:

- (a) any proven or alleged breach or default by the Contractor or its Associates of any Law, agreement, order or award binding on the Contractor or its Associates, whether admitted or contested, which may materially affect in an adverse manner the ability of the Customer to obtain the TLS Activities from the Contractor;
- (b) the supply or proposed supply of goods or services or advisory services by the Contractor or its Associates in relation to the other Subsystems; and

- (c) the supply or proposed supply of goods or services to or from a person in a manner or to an extent that may:
 - (i) adversely affect the ability of the Customer to obtain the TLS Activities from the Contractor;
 - (ii) adversely affect the Customer's ability to compete in the market; or
 - (iii) prejudice or be likely to prejudice the confidentiality or privacy of any Confidential Information of the Customer.

Contamination means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

Contract Specifications has the meaning given in clause 3.1(b).

Contract Value at any point in time means the total aggregate value of all amounts then paid or payable to the Contractor under this Agreement, including all Work Orders, and for the purposes of this definition, "payable" includes amounts that are not yet due and payable but which would be payable if both parties were to continue to properly perform all of their respective obligations under this Agreement, including all Work Orders, for the remainder of the Term. Further, where any fees are time and materials, volume or effort based, the amounts payable will be calculated on pro rata basis having regard to a reasonable forecast or estimate of volume of services to be provided or required during the remaining Term. For the purposes of performing this calculation, amounts paid or payable under all Work Orders entered into under the Agreement at any time (including under Work Orders which may have already been performed and completed at the time of the calculation) are taken into account.

Contractor Deed Poll means the deed poll executed by the Contractor in favour of Rail Corp, TfNSW and such other entities as may be nominated by the Customer, as a condition precedent to commencement of the Delivery Agreement but relating to this Agreement, the form of which is attached to this Agreement in Schedule 26 (Form of Contractor Deed Poll).

Contractor Indemnified Persons means the Contractor and its Associates.

Contractor Infringement Claim means any Claim alleging that the Contractor-Licensed IP, Assigned IP, Assets or Works, or their use (as contemplated by clause 51.2(z)), exploitation or possession by the Customer or its Associates or any Customer Indemnified Persons in accordance with any rights provided under this Agreement, infringe the Intellectual Property Rights or Moral Rights of any person.

Contractor Inputs has the meaning given in section 1.2(a) of Schedule 16 (Interface Requirements).

Contractor Insurance Policies means:

- (a) the insurance policies set out in Item 5 (Contractor Insurance Policies) of Schedule 2 (Agreement Details); and
- (b) such other insurance policies as are required to be obtained by the Contractor pursuant to this Agreement (including any Work Order).

Contractor-Licensed IP [REDACTED]

Contractor Personnel means any individuals engaged in the performance of the Contractor's obligations under this Agreement, including the employees, secondees from other entities, individuals engaged by the Contractor as contractors on a labour hire basis, agents and its Subcontractors.

Contractor Sites means those Delivery Locations owned or managed by the Contractor.

Contractor Tools means all Tools other than the Licensed Tools.

Contractor's Equipment means any hardware, servers, peripherals, tools, appliances, machinery, network or communications infrastructure, or other equipment used by the Contractor in the execution of the TLS Activities but not forming part of the Assets.

Contractor's Representative means the relevant Contractor contact or their delegate, which as at the Execution Date is the person set out in Item 2 of Schedule 2 (Agreement Details), or such other replacement person as is notified by the Contractor to the Customer from time to time, and who is a Key Person for the purposes of the Agreement.

Contractor's Solution has the meaning given in clause 3.1(d).

Contractor's TLS Spares Inventory has the meaning given in clause 13.2(b).

Control has the meaning given in clause 37.4(a).

Controlling Entity means any entity which has Ownership over the Contractor or a Relevant Related Body Corporate.

Corporations Act means *Corporations Act 2001* (Cth).

Corrective Maintenance Services means those maintenance services which are generally corrective, reactive or unplanned in nature, including those described as "Corrective Maintenance Services" in the Services Schedule.

Critical Service Level means a critical service level as defined in Schedule 14 (Performance Framework).

Critical Service Level Trigger Event means:

- (a) three (3) consecutive failures of the same Critical Service Level; and/or
- (b) six (6) or more failures of the same Service Level over a rolling twelve (12) Measurement Periods.

Customer Data means all data, documents or records (including data, documents or records in relation to the customers, employees or suppliers of a Rail Transport Entity) of whatever nature and in whatever form relating to the business, networks and

operations of a Rail Transport Entity, whether subsisting before, during or after the Execution Date and whether created, generated or processed by the Contractor as part of, or in connection with, the TLS Activities, its other obligations under this Agreement or its obligations under the Delivery Agreement or provided by a Rail Transport Entity or a Third Party to the Contractor in connection with this Agreement or the Delivery Agreement, and includes:

- (a) data that may cause a Rail Transport Entity reputational or brand damage or may cause a Rail Transport Entity to become subject to fines or other action by applicable governmental or regulatory authorities if the subject of unauthorised information disclosure, loss or corruption;
- (b) data that is Personal Information;
- (c) data that is corporate proprietary or financial information such as may be subject to the Corporations Act or would be the subject of Intellectual Property Rights owned by the Customer;
- (d) diagrammatic or schematic data, including data representing networks, maps or technology;
- (e) any data (including metadata) processed, communicated or generated in performance of the Works or operation of the TMS Subsystem, including coding and performance data; and
- (f) any transformations, Modifications, derivations or insights created or generated from any other Customer Data.

Customer Environment means the Network and the Customer's technology environment.

Customer Indemnified Persons means:

- (a) the Customer;
- (b) the Customer's Associates;
- (c) TfNSW;
- (d) TAHE;
- (e) the State, including:
 - (i) the Minister for Transport and Infrastructure;
 - (ii) the Secretary of Transport for NSW; and
 - (iii) any other person to who the State delegates a right, power, function or duty from time to time;
- (f) each other entity controlled by the Secretary of Transport for NSW; and
- (g) each Rail Transport Entity,

and each of their respective Representatives.

Customer Infringement Claim means any Claim alleging that the Customer IP infringes the Intellectual Property Rights or Moral Rights of any person.

Customer Insurance Policies means the insurance policies, if any, set out in Item 6 (Customer Insurance Policies) of Schedule 2 (Agreement Details).

Customer IP means:

- (a) the Customer's Pre-Existing IPR;
- (b) Assigned IP;
- (c) all Intellectual Property Rights in Materials provided by a Rail Transport Entity to the Contractor for the purposes of this Agreement or the Delivery Agreement; and
- (d) all Intellectual Property Rights in Customer Data.

Customer Personnel means the officers, employees, consultants, agents and contractors of the Customer.

Customer Policies means:

- (a) the Customer policies, standards, guidelines and procedures set out in the PR, as updated by notice from the Customer from time to time; and
- (b) all other Customer policies, standards, guidelines and procedures as notified by the Customer to the Contractor from time to time, including through any Customer vendor portal or publicly available website,

(including updates to the same).

Customer Representative means the relevant Customer contact or delegate, which as at the Execution Date is the person set out in Item 2 (Representatives) of Schedule 2 (Agreement Details), or such other replacement contact as notified by the Customer to the Contractor from time to time.

Customer Sites means those Delivery Locations owned or managed by the Customer.

Customer Systems means any system which is physically or functionally attached to, associated with, or required to be attached, associated or interfaced with the System or Subsystems (including systems of a Rail Transport Entity).

Customer's Maintenance Spares Inventory has the meaning given in clause 13.2(a).

Data Breach means any:

- (a) unauthorised access to, or unauthorised disclosure of, or breach of security relating to any Personal Information or Customer Data; or
- (b) loss, corruption or damage of any Personal Information or Customer Data.

Deed of Novation means the deed in Schedule 27 (Form of Deed of Novation).

De-Identified or **De-Identify** has the same meaning as in the *Privacy Act 1988* (Cth).

Defect means any Asset, or any aspect of an Asset, which is not in accordance with this Agreement, and including:

- (a) any defect, deficiency, fault, error or omission in an Asset;

- (b) any failure of an Asset to meet the Contract Specifications; and
- (c) any failure of the TMS Subsystem to pass Acceptance or Verification, or any other issue which would cause the TMS Subsystem or associated Assets not to pass Acceptance or Verification.

Defects Liability Period (or DLP) means:

- (a) in respect of an Asset supplied or delivered under the Delivery Agreement, the period from the date on which an “Acceptance Certificate” (as that term is defined in the Delivery Agreement) is issued by TfNSW in respect of that Asset until the applicable “DLP Expiry Date” (as that term is defined in the Delivery Agreement); and
- (b) in respect of any Asset supplied or delivered under this Agreement, including any Asset delivered under a Work Order, the period from the date on which the Asset is Accepted until the applicable DLP Expiry Date.

Delivery Agreement means the agreement between TfNSW and the Contractor for the delivery of the TMS Subsystem (IPD-19-7821) entered into on or about the Execution Date.

Delivery Impact Statement means, in respect of each Work Order Proposal or Variation Proposal, where the Contractor considers that the Work Order Proposal or Variation Proposal:

- (a) will or may give rise to a:
 - (i) variation in respect of the Delivery Agreement, a “Variation Proposal” (as that term is defined in the Delivery Agreement) in respect of that proposed variation that is in the form and contains the information required under the Delivery Agreement;
 - (ii) Claim under or in connection with the Delivery Agreement, reasonable details of that proposed Claim, including the basis of the Claim and the extent and quantum of the Claim; or
 - (iii) change to the costs, resources or efforts required under the Delivery Agreement which would not constitute a variation to the Delivery Agreement, reasonable details of those changes, including the basis of the changes and the extent and quantum of the changes; or
- (b) does not have any consequential impact on the Delivery Agreement, a statement to that effect,

in each case in a form reasonably requested by the Customer.

Delivery Location means:

- (a) the locations set out in the Services Schedule;
- (b) such additional locations approved by the Customer from time to time in accordance with clause 9.1; and
- (c) any locations from which the Contractor Personnel who are primarily based at a location described in paragraphs (a) or (b) are working from time to time, provided that those Contractor Personnel comply with the remote

working policies of the Contractor and such other requirements as the Customer may nominate from time to time (including, for example, relating to security, confidentiality and workplace health and safety).

Deployment Areas means each section of the Network onto which the TMS Subsystem will be deployed, and includes Package 1A, Package 1B and each Future Deployment Area.

Deployment Stage means each stage of the design, development and rollout of the TMS Subsystem under the Delivery Agreement.

Deployment Stage 1 means the initial design, development and rollout of the TMS Subsystem under the Delivery Agreement.

Design Activities means the TLS Activities required to be undertaken in connection with the design of the Works (or any part thereof) or Assets, including the development of Design Documents in accordance with the Design Development Process.

Design Development Process has the meaning given in section 2 (Design Development Process overview) of Schedule 8 (Design Activities).

Design Development Requirements means the Customer's requirements for the Design Activities, as more specifically identified in Schedule 8 (Design Activities) and the Design Development Requirements set out in the PR.

Design Documentation or Design Documents means:

- (a) all Technical Documents that are design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, digital records, Software and all other relevant data) in computer readable and written forms, or stored by any other means, required by this Agreement or necessary to be produced by the Contractor or a Designer to design and construct the TMS Subsystem; and
- (b) documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Agreement,

and includes the Designs.

Design Life of an Asset means:

- (a) in respect of the TMS Subsystem deployed in connection with any Deployment Stage, a period of twenty (20) years from the commencement of TLS Activities in respect of that Deployment Stage; and
- (b) in respect of any other Asset, the greater of:
 - (i) twenty (20) years from the commencement of TLS Activities in respect of that Asset or such lesser Design Life period for that Asset as may be specified in the SSRS;
 - (ii) the period of serviceable use for which it has been designed; and
 - (iii) any longer period specified in the Contract Specifications.

Design Phase means the stages through which the Design Documents are to be progressed, as described further in the PR, and include:

- (a) the Preliminary Design Review;
- (b) the Detailed Design Review;
- (c) the Test Readiness Review; and
- (d) the System Verification Review.

Design Presentations has the meaning given in section 5 (Design Presentations) of Schedule 8 (Design Activities).

Design Working Group has the meaning given in section 4 (Collaborative Design) of Schedule 8 (Design Activities).

Designer means each Subcontractor engaged by the Contractor to undertake the Design Activities (or any part of them).

Designer's Team means the team of persons (including the Designers) engaged in the Design Activities (or any part of them).

Designs means the Concept Design, the Preliminary Design, the Detailed Design, the Approved for Construction Design and any Design Documents produced as a result of the Test Readiness Review or the System Verification Review.

Detailed Design means the Design Documentation submitted for Review, and Confirmed, as part of the Detailed Design Review.

Detailed Design Review or DDR means the review conducted in accordance with the PR.

Detailed Early Warning Notice means a notice issued under section 2.1(d) (Issue Resolution Process) of Schedule 17 (Issue Resolution Procedure).

Determinable Matters has the meaning given in clause 53.5.

Direct Loss [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

Direction means any decision, demand, determination, direction, instruction, order, rejection or requirement. **Direct** and **Directed** have a corresponding meaning.

Direction to Proceed has the meaning given in section 4 (Directions to Proceed) of Schedule 6 (Work Orders and Variation Procedures).

Disabling Code means any computer virus or other code which is intended to or would have the effect of intercepting, accessing, copying, disrupting, impairing, denying or otherwise adversely affecting security, performance, integrity, reliability, access to or use of any information technology, data, equipment, network, including worms, spyware, adware, key loggers, trojans and any new types of programmed threats that may be classified.

Disaster means:

- (a) any unplanned interruption of the TLS Activities, including any interruption arising as a result of a Force Majeure Event, or any incident or event that has the potential to result in an unplanned interruption of the TLS Activities;
- (b) any Force Majeure Events or incidents that affect, or have the potential to affect, the management of critical information and communication systems, including restoration and protection of data; and
- (c) any Force Majeure Events or incidents that affect, or have the potential to affect, the management of critical business processes including rail safety, work health and safety, operational processes, financial and accounting, human resources and payroll, information and communications technology and procurement.

Disclosing Party means a party which discloses or gives access to its Confidential Information to the other party or whose business or affairs are the subject matter of the Confidential Information.

Disengagement means the process of transferring responsibility for the provision of the whole or any part of the TLS Activities from the Contractor to the Customer or a Replacement Contractor.

Disengagement Commencement Date means the date that the Customer requests the Contractor to commence providing Disengagement Services in respect of some or all TLS Activities as notified pursuant to section 1.2(c) of Schedule 22 (Disengagement).

Disengagement Charges has the meaning given in section 8.3 of Schedule 15 (Pricing Terms).

Disengagement Period has the meaning given in section 1.2(c) of Schedule 22 (Disengagement).

Disengagement Plan means a written plan for Disengagement developed in accordance with section 3 of Schedule 22 (Disengagement) and approved by the Customer in writing.

Disengagement Services means the services to be provided by the Contractor during the Disengagement Period, described in clause 50.1 (Disengagement Services) and Schedule 22 (Disengagement).

Dispute means an Issue in relation to which a party has issued a Dispute Notice.

Dispute Notice means a notice issued under section 1.1 (Dispute Notice) of Schedule 18 (Dispute Resolution Procedure).

Dispute Resolution Procedures means the procedures set out in Schedule 18 (Dispute Resolution Procedure).

Divestiture means any sale or divestiture of all or part of any person, its business or other assets, in whatever form (including by way of an initial public offering of shares).

DLP Expiry Date [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Document Deliverable means a document that is provided or is required to be provided by or on behalf of the Contractor, and includes:

- (a) Technical Documents (including Design Documentation);
- (b) documents required to be produced under the PR, including those documents listed in Appendix 02 (Schedule of Deliverables) to the PR and each Project Plan;
- (c) any document required to be produced under the Services Schedule;
- (d) plans, processes, programs, manuals, samples, mock-ups, models, approvals or conditions in any format, or any other document or thing; and
- (e) Reports.

Draft Defect Rectification Plan has the meaning given in section 5 (Defects on Acceptance) of Schedule 10 (Acceptance).

DTRS Subsystem means the component of the System that provides wireless communication between the TMS Subsystem and the Onboard Subsystem through the existing digital train radio system for the Network.

ECI Agreement means the agreement between the Contractor and TfNSW pursuant to which the Contractor was engaged to perform certain activities during the ECI Process.

ECI Process means the Early Contractor Involvement (ECI) phase of the Program involving a number of shortlisted Third Parties and the Contractor for the Trackside Subsystem and the TMS Subsystem.

Enhancement means a Major Enhancement and a Minor Enhancement.

Environment means components of the earth, including:

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

ERA Standards means the “European Union Agency for Railways” (**ERA**) standards and specifications including, for clarity, as updated from time to time.

Estimated Rectification Cost has the meaning given in clause 15.3 (Condition Audit).

ETCS means European Train Control System.

Event means:

- (a) any work health and safety event, environmental event or Security Event arising, or which is likely to arise, from the performance of (or failure to perform) the TLS Activities including:
 - (i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;
 - (ii) loss of containment, escape of or migration of Contamination off-site and into the Environment;
 - (iii) any fire or dangerous event on the Delivery Locations;
 - (iv) a Security Event;
 - (v) any unauthorised removal of trees;
 - (vi) a non-compliance with an Approval or Mandatory Requirement; or
 - (vii) any public complaint;
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment; and
- (c) any Alert Event,

and includes:

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

Event of Default has the meaning given in clause 49.1(a).

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

Execution Date means the date on which this Agreement is signed by the last party to execute it.

Excusable Event has the meaning given in section 8 of Schedule 14 (Performance Framework).

Executive Leadership Team Meeting means the governance forum of that name described in Schedule 21 (Governance and Management).

Expert Referral Date means the date that the parties agree in writing to refer a Dispute to expert determination under Schedule 18 (Dispute Resolution Procedure).

Extended Term means any period of extension exercised under clause 1.4(a)(i).

Failure has the meaning given in clause 44.1 (Preparation of Action Plans).

Fees means the fees for the provision of the TLS Activities, calculated in accordance with Schedule 15 (Pricing Terms).

Financial Assessment has the meaning given in clause 27.3 (Financial Assessment).

Fit for purpose must be interpreted in accordance with paragraph (w) of section 2 (Interpretation) of this Schedule 1 (Definitions and Interpretation), and similar references in this Agreement (including, for example, “fit for its intended purpose”) will be construed accordingly. Any use of the term Fit for purpose or similar terms in this Agreement will be interpreted in accordance with paragraph (w) of section 2 (Interpretation) of this Schedule 1 (Definitions and Interpretation), whether used in their capitalised form or their lower case form.

Fixed Telecommunications Network Subsystem (or FTN Subsystem) means the fixed telecommunications network used as the backbone for the System.

Force Majeure or Force Majeure Event [REDACTED]

- [REDACTED]
- [REDACTED]

■ [REDACTED]

■ [REDACTED]

Future Deployment Area means any sections or stages of the rollout of the System not included in Deployment Stage 1.

Future Project Work means:

- (a) a Major Enhancement or an Upgrade; and
- (b) any other project work defined as “Future Project Work” under the Delivery Agreement.

Government Authority includes any governmental or semi-governmental or local government authority, administrative or judicial board, tribunal or court, department, commission, public authority, minister, statutory corporation, authority or instrumentality (and includes the ASA) and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Program.

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

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

relating to any aspect of any Relevant Matters.

GST means the tax imposed by the GST Act and the related imposition Laws of the Commonwealth.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

GST Determination has the meaning given in clause 22.3 (Recipient Created Tax Invoices).

Guarantor means the entity or entities that are required to execute the TLS Parent Company Guarantee, as further described in Schedule 2 (Agreement Details).

Independent Safety Assessor means the independent safety advisor appointed by TfNSW in accordance with the PR.

Indirect Loss means loss or damage other than Direct Loss.

Industrial Action means industrial action of any description, including industrial action involving:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the

result of which is a restriction or limitation on, or a delay in, the performance of work;

- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work; and
- (c) a failure or refusal by a majority of the work force employed or engaged by the Contractor or its Associates to attend for work.

Industry Best Practice means in relation to any activity, the exercise of a degree of skill, diligence, prudence and foresight which would be reasonably and ordinarily expected from a skilled and experienced international professional organisation providing goods and services which are substantially similar to the type and complexity of the TLS Activities or the relevant part of them.

Information Documents and Materials means all information, data, documents or other material (whether written, non-written or oral) provided to the Contractor by or on behalf of the Customer, any Other Contractor or any Stakeholder in relation to the Program prior to the Execution Date other than the Reliance Material and includes any documents referred to in the Transaction Documents.

Infringement Claim means a Contractor Infringement Claim or Customer Infringement Claim as the context requires.

Initial Early Warning Notice means a notice issued under section 2.1(c) (Issue Resolution Process) of Schedule 17 (Issue Resolution Procedure).

Initial Project Plans means the Project Plans listed in Appendix 05 (Initial Project Plans) of the PR.

Initial Term has the meaning given in clause 1.3 (Initial Term).

Insolvency Event in relation to a party (**insolvent party**) means the happening of any one or more of the following events:

- (a) an application is made to a court for an order (which application is not set aside within twenty-one (21) days of being made), or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under the Corporations Act ss 436A, 436B or 436C;
- (d) a controller (as defined in the Corporations Act s 9) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

- (h) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable Law (including under the Corporations Act ss 459C(2) or 585) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) it is taken to have failed to comply with a statutory demand as a result of the Corporations Act s 459F(1);
- (j) a notice is issued under the Corporations Act ss 601AA or 601AB;
- (k) a writ of execution is levied against it or a material part of its property;
- (l) it ceases to carry on business or threatens to do so; or
- (m) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

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

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

Insurance Policies means:

- (a) the Contractor Insurance Policies; and
- (b) the Customer Insurance Policies.

Intellectual Property Rights includes any and all industrial and intellectual property rights of any nature both in Australia and throughout the world, and includes any patents, registered designs and domain names, copyright (including future copyright), trade or service marks (whether registered or unregistered), trade secrets, know-how, rights in relation to circuit layouts, or other proprietary right or right to registration of such rights.

Interface Contractor means:

- (a) any Rail Transport Entity;
- (b) any Third Party, including an Other Contractor, that supplies goods or services to a Rail Transport Entity;
- (c) each Lead Supplier to an interface where the Contractor is also a Participating Supplier; and
- (d) each Participating Supplier to an interface where the Contractor is also a Lead Supplier or Participating Supplier.

Interface Contractor Agreement means an agreement between a Rail Transport Entity and an Interface Contractor.

Interface Contractor Matrix means the table set out in Attachment A to Schedule 15 (Interface Requirements) to the Delivery Agreement, as updated from time to time.

Interface Control Document or **ICD** means a document detailing a technical interface relevant to the TMS Subsystem. The Interface Control Documents will be developed under the Delivery Agreement.

Interface Requirements means the Interface Requirements set out in Schedule 16 (Interface Requirements).

Interface Specification Document or **ISD** means a document detailing technical interfaces relevant to the TMS Subsystem, as contained in Schedule 3 (System Definition and Requirements).

Interface Work or **Interfacing Work** means any work or activities undertaken by any Interface Contractor which will:

- (a) interface or integrate with or affect or be affected by the TLS Activities, the Works or the Assets; or
- (b) require the Contractor to interface or co-ordinate works with the Interface Contractor,

including any such work described in the PR, any Work Order, the Interface Contractor Matrix, the ICDs and ISDs and the interface and integration of any Interfacing System.

Interfacing System means:

- (a) each Subsystem with which the TMS Subsystem is required to interface or integrate, including as identified in the Contract Specifications or the Interface Contractor Matrix; and
- (b) each other system, solution, hardware, network or Software, including legacy or new, with which the TMS Subsystem is required to interface or integrate, as set out in the Contract Specifications or the Interface Contractor Matrix.

Investigative Authority means any Government Authority authorised to undertake investigative action under the Rail Safety National Law, Rail Safety National Regulations or the *Transport Safety Investigations Act 2003* (Cth). It includes the ONRSR, the Independent Transport Safety Regulator, the Australian Transport Safety Bureau and the Office of Transport Safety Investigations.

Issue has the meaning given in clause 26.1 (Issue Resolution).

Issue Resolution Procedures means the procedure set out in section 2 (Issue Resolution Procedure) of Schedule 17 (Issue Resolution Procedure).

Key Delivery Positions means those positions or roles designated as key by the Customer in the Services Schedule.

Key People or **Key Person** means those Contractor Personnel filling Key Delivery Positions and identified as Key People in the Services Schedule, and includes any additional persons or replacement persons approved by the Customer in writing to fill such Key Delivery Positions.

Key Service Level means a Service Level identified as such in Schedule 14 (Performance Framework).

Key Subcontract Novation has the meaning given in clause 20.5(c).

Key Subcontracts means:

- (a) any Subcontract with a “Key Subcontractor” that is identified as such in a Work Order;
- (b) any Subcontract with an Approved Subcontractor that is identified as a Key Subcontractor in Item 3 of Schedule 2 (Agreement Details); and
- (c) such other subcontracting of particular TLS Activities as nominated by the Customer from time to time.

Labour Rates means the labour rate elements of the Schedule of Rates, as set out in Schedule 15C (Labour Rates).

Law means:

- (a) any acts or delegated legislation (including ordinances, regulations, by-laws, orders, awards and proclamations) of any relevant jurisdiction, and any document or policy enforceable under such act or delegated legislation, as they exist from time to time;
- (b) any judgement, decision, requirement, official interpretation or administrative direction by any Government Authority;
- (c) common law; and
- (d) the requirements and conditions of Approvals.

Lead Supplier means, in respect of a technical interface, the entity identified as the “Lead Supplier” in any SOW, the Interface Contractor Matrix or otherwise in the relevant ISD in respect of that technical interface.

Legal Opinion means a legal opinion:

- (a) from:
 - (i) lawyers to the Contractor, authorised to practise in the place of incorporation of the Contractor, stating that this Agreement is binding and enforceable against the Contractor; or
 - (ii) lawyers to the Guarantor, authorised to practise in the place of incorporation of the Guarantor, stating that the TLS Parent Company Guarantee is binding and enforceable against the Guarantor;
- (b) which states that it may be relied upon by the Customer; and
- (c) in a form and substance reasonably satisfactory to the Customer.

Licensed Tools means those Tools identified in a Statement of Work under the Delivery Agreement or a Work Order as being Licensed Tools.

Linked Claim has the meaning given to it in section 1.4 (Linked Claims) of Schedule 18 (Dispute Resolution Procedure).

Loss [REDACTED]

[REDACTED]

Maintenance Works Program means the program described in the PR.

Major Enhancement [REDACTED]

- [REDACTED]
- [REDACTED]

Mandatory Requirements has the meaning given in clause 34.1 (Mandatory Requirements).

Material means material in any form, including documents, reports (including the Reports), Assets, Contractor’s Equipment, information, data, Software and Tools.

Material Breach [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Matter means any direction, event, circumstance, act, omission, fact, matter, exercise of entitlement, demand or thing (and includes any allegation, Claim, exercise of entitlement or demand) of any nature, whether present or future, fixed or unascertained, actual or contingent, at Law, in equity, under statute, under or in connection with this Agreement or otherwise (including in connection with the existence, validity or termination of the Agreement or for an increase in the Fees, the payment of money (including damages), or for any other form of relief).

MCD means the Maintenance Concept Definition set out in Schedule 3 (System Definition and Requirements).

Measurement Period has the meaning given in section 1 of Schedule 14 (Performance Framework).

Milestone means any milestone set out in a Work Order.

Milestone Date means the date by which a Milestone must be Accepted, as specified in a Work Order and as amended pursuant to a Variation.

Minimum Commitment Period means the minimum amount of time a Key Person (including any replacement Key Person) is required to be committed by the Contractor to be retained in a Key Delivery Position, as set out in the Services Schedule.

Minor Defect

Minor Enhancement means a Modification to the TMS Subsystem (bespoke or commercial off-the-shelf) that provides the TMS Subsystem with amended functionality or minor additional functionality and that is not a Major Enhancement.

Modern Slavery Laws means any anti-slavery and human trafficking Laws, including:

- (a) Divisions 270 and 271 of the Criminal Code Act 1995 (Cth);
- (b) sections 80D, 80E, 91G(1)-(3), 91H, 91HAA and 93AA-93AC of the Crimes Act 1900 (NSW); and
- (c) where Delivery Locations are outside of NSW, Laws equivalent to any of the Laws referred to in paragraphs (a) and (b) in the relevant jurisdictions.

Modification means an alteration, adaptation, enhancement or development of a work.

Moral Rights means the rights conferred by Part IX of the *Copyright Act 1968* (Cth).

Network means the TfNSW Metropolitan Heavy Rail network as set out in ASA TS TOC.3. At the Commencement Date, the TfNSW Metropolitan Heavy Rail means the network bounded by Newcastle Interchange (165.746km), Woodville Junction (163.981 km and 164.045 km), Bomaderry (153.630 km), Unanderra (91.080 km), Macarthur (57.965 km), and Bowenfels (158.800 km) but does not include the South Sydney Freight Line and Metropolitan Freight Network (bound by Marrickville 6.370 km, Flemington South Junction 18.909 km, and Sefton Park East Junction 21.285 km). In addition, Light Rail Networks and Metro Networks are not included in the TfNSW Metropolitan Heavy Rail network.

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

Non-NSW Based Resource means those Contractor Personnel that are located at Delivery Locations outside of NSW as set out in the Services Schedule.

Notifiable Event means any Event which is required to be or, in the opinion of the Customer ought to be, notified to a Government Authority or regulator.

NSW Based Resource means those Contractor Personnel that are located at Delivery Locations in NSW as set out in the Services Schedule.

NSW Code means the New South Wales Government Code of Practice for Procurement (January 2005).

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (as published by the NSW Treasury July 2013).

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

NSW Trains mean the operator of intercity and regional trains in NSW constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

Objectives has the meaning given in clause 2.1 (Objectives).

Obsolete means where any Asset (or any part of it) is obsolete or otherwise transitions from:

- (a) being available from or fully supported by the original manufacturer to being either not available or not fully supported, where the Contractor has not ratified and tested, in accordance with Schedule 5 (Services Schedule), a functionally compatible substitute Asset; or
- (b) operability to non-functionality or non-operability due to external reasons, other than on a temporary basis,

and **Obsolescence** has a corresponding meaning.

OCD means the Operations Concept Definition set out in Schedule 3 (System Definition and Requirements).

Onboard Subsystem means the components of the System to be implemented on board Rollingstock, including an upgrade to ETCS Level 2 and ATO. There may be more than one Onboard Subsystem.

ONRSR means the Government Authority or other person having jurisdiction in New South Wales from time to time responsible for reviewing and evaluating matters relating to the safe operation of railway operations and advising or making recommendations to the NSW Minister for Transport and Infrastructure, as appropriate, and, at the Execution Date, is the Office of the National Rail Safety Regulator.

Open Source Software means any Software which, as a condition of its use, Modification or distribution, requires that such Software, any Modification to that Software or any other Software with which such Software is combined or distributed be:

- (a) disclosed or distributed in source code or object code form;
- (b) licensed for the purposes of making Modifications; or
- (c) redistributable,

to any Third Parties.

Operations Functions means the functions and responsibilities of the Customer and the Rail Transport Entities as passenger transport operators of the Network and elsewhere or as the owners or managers of the rail infrastructure or Rollingstock.

Organisational Chart has the meaning given in clause 19.7(a)(i).

Other Confidentiality Agreement has the meaning given in clause 31.2(e) and includes any deed poll entered into by a Permitted Sublicensee which is on substantially the same terms as the Confidentiality and Intellectual Property Deed Poll.

Other Contractor means a Third Party that provides goods or services to a Rail Transport Entity in relation to the Program, and includes:

- (a) the System Integrator;
- (b) the Independent Safety Assessor;
- (c) the Change Manager;
- (d) the actual and potential suppliers for each of the Subsystems (including the Rail Transport Entities solely in their role as a participant in the Program); and
- (e) the subcontractors engaged by the Third Parties listed above in the provision of goods or services to a Rail Transport Entity in relation to the Program (but not a Subcontractor of the Contractor).

Ownership has the meaning given to ‘control’ in section 50AA of the Corporations Act.

Package 1A means the T4 Eastern Suburbs and Illawarra section of the Network between Cronulla and Sutherland (subject to the exact transition points being defined by TfNSW).

Package 1B means the T4 Eastern Suburbs and Illawarra section of the Network between Bondi Junction and Redfern (subject to the exact transition points being defined by TfNSW).

Packages means each of the contract packages for the Subsystems.

Participating Supplier means, in respect of a technical interface, an entity identified as a “Participating Supplier” in any SOW, the Interface Contractor Matrix or otherwise in the relevant ISD in respect of that technical interface.

Payment Event means a Milestone or other event that entitles the Contractor to payment of an amount, as further described in Schedule 15 (Pricing Terms) and as detailed in the relevant Work Order.

Payment Milestone means a Milestone that is identified as a Payment Event in a Work Order.

Performance Monitoring System or PMS means a system to be developed by the Contractor to the Customer’s reasonable satisfaction to enable the monitoring and reporting requirements set out in Schedule 14 (Performance Framework) and Schedule 20 (Reports).

Permitted Sublicensee means:

- (a) each Other Contractor solely for the purposes of enabling the Other Contractor to perform its obligations in connection with rail networks in NSW;

- (b) any Third Party whom any Stakeholder engages, or is considering engaging, for the purpose of that Third Party providing goods or services to any Stakeholder subject to the relevant Third Party entering into a confidentiality agreement substantially in the form of Schedule 23 (Form of Confidentiality Deed Poll); and
- (c) each of the Stakeholders.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion, or any combination of them.

PPSA means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act.

Pre-Approved Subcontractors means:

- (a) any Subcontractor specified in Item 3 of Schedule 2 (Agreement Details) as an Approved Subcontractor; and
- (b) any “Approved Subcontractors” identified in a Work Order.

Pre-Existing IPR means Intellectual Property Rights:

- (a) existing as at the Execution Date; and
- (b) created after the Execution Date independently of the Program,

but does not include the Intellectual Property Rights created by the Contractor for purposes of the Program during the ECI Process.

Preliminary Design means the Design Documentation submitted for Review, and Confirmed, as part of the Preliminary Design Review.

Preliminary Design Review means the review conducted in accordance with the PR.

Preliminary Issue has the meaning given in paragraph (d) of Attachment B (ADR Agreement) to Schedule 18 (Dispute Resolution Procedure).

Pricing Principles means the pricing principles detailed in section 3 of Schedule 15 (Pricing Terms).

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means:

- (a) the Privacy Act;
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);

- (d) any legislation (to the extent that such legislation applies to the Customer or the Contractor or any other recipient of Personal Information) from time to time in force in:
 - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that the Customer, the Contractor or any Personal Information processed or handled in connection with this Agreement is subject to the laws of that jurisdiction),

affecting or regulating privacy or Personal Information; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

Probity Event means an event, matter, situation or thing that in the Customer's opinion:

- (a) has a material adverse effect on the honesty or integrity of the Contractor, an Associate of the Contractor, or any of the Contractor Personnel;
- (b) relates to the Contractor, an Associate of the Contractor or the Contractor Personnel and has a material adverse effect on:
 - (i) the public interest; or
 - (ii) the reputation of, or public confidence in, the Customer or the NSW Government; or
- (c) involves a material failure by the Contractor to achieve or maintain:
 - (i) reasonable standards of ethical behaviour; or
 - (ii) standards of behaviour expected of a party engaged on a Government project.

Probity Event Notice means a notice given by the Contractor or the Customer to the other party in accordance with clause 28.1 (Notice) or 28.2 (Investigations) (as applicable) in relation to a Probity Event.

Proceed at Risk has the meaning given in section 6.2 of Attachment A (Review Procedure) to Schedule 7 (Review Procedures).

Proceed at Risk Notice has the meaning given in section 6.2 of Attachment A (Review Procedure) to Schedule 7 (Review Procedures).

Process Requirements or **PR** means the document contained in Schedule 4 (Process Requirements (PR)).

Program has the meaning given in Recital B.

Prohibited Change of Interest [REDACTED]

- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

Project Management Plan means the document of that name required to be provided and implemented by the Contractor pursuant to the PR.

Project Plan means each plan, system or strategy referenced in, or developed or subsequently updated pursuant to, the PR (whether developed by TfNSW, the Customer or the Contractor) including:

- (a) the Initial Project Plans;
- (b) the Significant Project Plans set out in Appendix 07 to the PR;
- (c) the Systems Engineering Management Plan; and
- (d) all subsidiary plans, programs, and supporting documents and information.

Project Related Bodies Corporate means a Related Body Corporate of the Contractor that performs some or all of the obligations of the Contractor under this Agreement and includes:

- (a) any Related Body Corporate that performs any part of the TLS Activities; and
- (b) any Related Body Corporate that owns or licences any of the Contractor-Licensed IP.

Proposed Key Person has the meaning given in clause 19.5(e).

Qualified Subcontractor has the meaning given in clause 20.1(d).

Qualifying Change in Approval [REDACTED]

Qualifying Change in Law [REDACTED]

Qualifying Change in Standard [REDACTED]

- [REDACTED]
- [REDACTED]

Rail Safety has the meaning given in the Rail Safety National Law.

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

Rail Safety Work has the meaning given in section 8 of the Rail Safety National Law.

Rail Safety Worker has the meaning given in section 4 of the Rail Safety National Law.

Rail Transport Entity means:

- (a) TfNSW (and each of its divisions);
- (b) TAHE;
- (c) Sydney Trains;
- (d) NSW Trains;

- (e) any other entity or entities from time to time established, constituted or appointed to operate railway passenger services on the Network;
- (f) Australian Rail Track Corporation; and
- (g) any other Government Authority in New South Wales that owns or operates railway infrastructure or Rollingstock from time to time.

Rail Transport Entity Sites means those Delivery Locations owned or managed by a Rail Transport Entity, and includes a Customer Site.

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

Recipient means the party which receives, possesses or is given access to Confidential Information from the Disclosing Party.

Recipient Created Tax Invoice means an invoice generated by the Customer in accordance with clause 22 (Invoices and Payment) that satisfies the requirements of the GST Act, *Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities*.

Records has the meaning given in clause 27.1 (Records).

Recurrent Defect means a Defect in an Asset or sub-system of an Asset which has the same cause and which, in any rolling twelve (12) month period:

- (a) affects six (6) or more of the same sub-systems of any type of Asset; or
- (b) the Customer reasonably believes will, or is reasonably likely to, fulfil the criteria described in paragraph (a) with the passing of time.

Reimbursable Expense has the meaning given in Schedule 15 (Pricing Terms).

Rejection Certificate means a certificate issued by the Customer in the form of Schedule 12 (Form of Rejection Certificate).

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

Relevant Matter has the meaning given in clause 41 (Environmental).

Relevant Related Bodies Corporate means:

- (a) the Guarantor;
- (b) any Related Body Corporate that performs any part of the TLS Activities;
- (c) any Related Body Corporate that owns or licences any of the Contractor-Licensed IP;
- (d) any Related Body Corporate that has Ownership of the Contractor or any of the entities covered by paragraphs (a) to (c) above; or
- (e) any entity in the ownership chain beginning with the ultimate parent company of the Contractor and ending with the Contractor.

Reliance Material means the information and documents identified as “Reliance Material” under the Delivery Agreement.

Remediation Period has the meaning given in clause 15.2(c) (Asset Management Failures).

Replacement Contractor means one or more Third Parties nominated by the Customer to whom the TLS Activities are transitioned in accordance with clause 50 (Disengagement).

Report means each of the reports described in this Agreement, including the PR, Schedule 14 (Performance Framework), Schedule 20 (Reports) or the Services Schedule.

Representative means, in respect of an entity, any person acting for or on behalf of that entity and includes any director, officer, employee, contractor or professional advisor of that entity.

Request for Proposal or **RFP** has the meaning given in Recital E.

Required Rating [REDACTED]

[REDACTED]

[REDACTED]

Resolution Institute means the Resolution Institute of 13-15 Bridge Street, Sydney NSW 2000.

Resource Plan means the resource plan set out in the Services Schedule and which meets the requirements set out in clause 19.7 (Organisational Chart and Resource Plan).

Review of a document means the review of that document in accordance with the Review Procedures.

Review Period means the period for Review of a Submitted Document in accordance with the Review Procedures.

Review Procedures means the procedures for Review of Submitted Documents described in Schedule 7 (Review Procedures).

Reviewing Party means the party responsible for conducting a Review in accordance with the Review Procedures.

RFP Process the process outlined in the RFP including the submission of a response to the RFP, the assessment of responses by TfNSW and the short-listing of certain respondents.

Rollingstock means a vehicle that operates on or uses the Network.

Safety Interface Agreement means an interface agreement, as defined in the Rail Safety National Law, in a form reasonably required by the Customer.

Safety Management Plan means the Project Plan of that name.

Safety Management System means the safety management system to be developed implemented and maintained by the Contractor pursuant to the PR.

Safety Report means the report required to be prepared by a designer of a structure by section 295 of the WHS Regulation.

Safe Work Method Statement (SWMS) has the meaning given in section 5 of the *Work Health and Safety Regulation 2017* (NSW).

Schedule of Rates means the schedule of rates set out in Schedule 15A (Pricing Tables) and Schedule 15C (Labour Rates), as amended in accordance with the Pricing Principles.

Security Event means any actual or suspected:

- (a) Data Breach;
- (b) breach of the Contractor's obligations or any requirements with respect to privacy, data protection or security under this Agreement or in the Contractor's Specifications; or
- (c) any other security incident, event or breach, including:
 - (i) any contaminated, malicious, harmful or disabling code introduced into an Asset; and
 - (ii) any weakness, failure or vulnerability in the data security environment or controls of the Contractor or any Contractor Personnel (including regardless of whether or not that security incident, event or breach, weakness, failure or vulnerability was exploited).

Security Interest means any:

- (a) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements);
- (b) 'security interest' as defined in the PPSA; and/or
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

Sensitive Information has the meaning given in clause 40.3 (Compliance with USA Export Regulations).

Service Credits means a reduction in the fees payable by the Customer to the Contractor for the Contractor's failure to meet a Service Level for the TLS Activities, as specified in Schedule 14 (Performance Framework).

Service Levels means, in respect of the TLS Activities, any minimum service levels specified in Schedule 14 (Performance Framework), and includes:

- (a) Critical Service Levels;

- (b) Key Service Levels; and
- (c) Service Indicators.

Service Indicator means a Service Level identified as such in Schedule 14 (Performance Framework).

Services Schedule means Schedule 5 (Services Schedule) together with any Work Order entered into under this Agreement from time to time.

Small & Medium Enterprises Participation Plan means the Contractor’s plan referred to in clause 39.1 (SME Participation Plan – Reporting and Compliance).

SMERPP has the meaning given in clause 39.1 (SME Participation Plan – Reporting and Compliance).

Software is any computer program or programming (including source code and object code) and includes Modifications, any software, tools or object libraries embedded in that software and all Materials relating to that software and/or its design, development, Modification, operation, support or maintenance.

SOW or **Statement of Work** means a statement of work executed by TfNSW and the Contractor under the Delivery Agreement.

Spares means rotables and capital spares for the Assets and other spare parts for the Assets.

Spares and Consumables Strategy means the strategy so described in the Contractor’s Asset Management Plan as created under the Delivery Agreement and includes any updates made to that strategy under this Agreement or the Delivery Agreement that are Confirmed.

Special Conditions means any terms and conditions specified in the “Special conditions” section of a Work Order that are expressly stated to prevail to the extent of any inconsistency with the terms of this Agreement, with reference to clause 4.2 (Order of Precedence).

Specification means a document that fully describes a design element or its interfaces in terms of requirements (functional, performance, constraints, and design characteristics) and the qualification (validation) conditions and procedures for each requirement (and includes the SRS and SSRS).

Stakeholders means Third Parties who are connected with the Program, including:

- (a) Rail Transport Entities;
- (b) ONRSR; and
- (c) the Asset Standards Authority,

but does not include Other Contractors (including TfNSW in its capacity as an Other Contractor).

Standards [REDACTED]
[REDACTED]
[REDACTED]

- (b) the TMS Subsystem;
- (c) the Onboard Subsystems;
- (d) the DTRS Subsystem;
- (e) the Fixed Telecommunications Network Subsystem;
- (f) the ATMS Interoperability Subsystem; and
- (g) other components as identified by the parties from time to time,

each of which will be delivered by Rail Transport Entities under individual supply contracts with the Contractor and Other Contractors.

Subsystem Requirements Specification or SSRS means each Specification for each Subsystem. The SSRS for the TMS Subsystem is as set out in Schedule 3 (System Definition and Requirements).

Supplied Items means those items, goods, materials and things (whether at a Delivery Location or not) entrusted to the Contractor by a Rail Transport Entity, an Other Contractor or an Interface Contractor for the purposes of carrying out the TLS Activities, as described in the Services Schedule or a Work Order under this Agreement, or a Statement of Work under the Delivery Agreement.

Suspension Notice has the meaning given in clause 46 (Suspension).

System means a signalling and train control system comprising:

- (a) cab signalling;
- (b) a Traffic Management System;
- (c) Automated Train Operations Grade of Automation 2 (once the ATO has been incorporated into the System as contemplated under the Delivery Agreement); and
- (d) relevant Subsystems,

and which is European Train Control System (Level 2) compliant and meets the BRS.

System Architecture Description or SAD means:

- (a) **the Contractor's System Architecture Description**, being the description of the architecture of the TMS Subsystem prepared by the Contractor as part of the Contractor's response to the RFP which forms part of the Concept Design; and
- (b) **TfNSW's System Architecture Description**, being the description of the architecture of the TMS Subsystem prepared by or on behalf of TfNSW which forms part of Schedule 3 (System Definition and Requirements).

System Definition and Requirements has the meaning given in clause 3.1(c).

Systems Engineering Management Plan means the Project Plan of that name described in the PR.

System Integrator means the entity appointed by TfNSW as its systems integrator for the Program pursuant to a System Integration Services Agreement between TfNSW and the System Integrator entered into on 30 November 2018.

System Requirements Specification or **SRS** means the specification for the System as set out in Schedule 3 (System Definition and Requirements).

System Verification Review or **SVR** means the review conducted in accordance with the PR.

TAHE means Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353) who is the owner of rail property assets, rolling stock and rail infrastructure in NSW constituted by section 4(1) of the *Transport Administration Act 1988 (NSW)*.

Target Condition has the meaning given in clause 15.4 (Target Condition).

Taxes means a tax, levy, duty, charge, deduction or withholding, including stamp duties and other fees payable in respect of the execution of this Agreement and the performance of obligations under this Agreement, however described, imposed by Law or a Government Authority, together with any related interest, penalty, fine or other charge, other than a tax on net income and Australian GST.

Technical Documents means all technical documents associated with the specification, design, development, manufacture, construction, verification, operation, maintenance, and disposal of the TMS Subsystem, including those which the Contractor is required to create as part of, or for the purposes of, performing the TLS Activities. It includes all technical documents whether they are Assigned IP or Contractor Licensed-IP.

Technical Glossary means Part H of Schedule 4 (System Definition and Requirements).

Technical Package has the meaning given in Appendix 6 (PR Definitions) of the PR.

Term means the Initial Term and (if applicable) the Extended Term(s), and includes any Disengagement Period(s).

Termination Costs has the meaning given in clause 49.4(c) (Termination by the Customer for convenience).

Test Readiness Review means the review conducted in accordance with the PR.

Testing and Commissioning Plan means TfNSW's plan of that name as provided to the Contractor by TfNSW.

TfNSW means Transport for New South Wales, a NSW Government agency constituted under the *Transport Administration Act 1988 (NSW)*.

TfNSW Statement of Business Ethics means the document titled 'Transport for NSW Statement of Business Ethics' which can be found on the TfNSW website from time to time (as at the Execution Date:
https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/statement-business-ethics_0.pdf).

Third Party means a person who is not a:

- (a) party to this Agreement; or

- (b) Related Body Corporate of the Contractor.

TLS Activities means all things which the Contractor is required to do to comply with its obligations under this Agreement, including:

- (a) performance of the Works;
- (b) supply of the Assets in accordance with this Agreement;
- (c) supply of any Additional Support Services under a Work Order;
- (d) provision of the Contractor's Equipment; and
- (e) anything customarily performed in connection with the performance of, or incidental or ancillary to, the obligations in paragraphs (a) to (d).

TLS Activities Commencement Date occurs in accordance with clause 4.1(c).

TLS Parent Company Guarantee means the parent company guarantee executed by the Contractor and the parent company of the Contractor as a condition precedent to commencement of the Delivery Agreement but relating to this Agreement, the form of which is attached to this Agreement in Schedule 28 (Form of TLS Parent Company Guarantee).

TLS Phase Performance Report or TLSPPR means a report prepared by the Contractor, detailing the Contractor's performance against the Service Levels in accordance with section 1.2 of Schedule 20 (Reports).

TMS Subsystem means the Traffic Management System component of the System, and includes those elements of any interfaces required to be built, maintained or supported by the Contractor as contemplated by the Contract Specifications. The TMS Subsystem is to be delivered under the Delivery Agreement, and supported under this Agreement. References to the TMS Subsystem are to that Subsystem as Modified from time to time. Further details regarding the capability of the TMS Subsystem are set out in the SSRS.

TMS TLS Relationship Meeting means the governance forum of that name described in Schedule 21 (Governance and Management).

TMS Visualisation means the capability of the TMS Subsystem relating to visualising information from non ETCS L2 areas of the Network, the Specifications for which are set out in section 6 – Monitor Network in the TMS SSRS and ISD85.

Tools means all tools required for the efficient use, maintenance, modification, operation, support, configuration, repair or monitoring of the TMS Subsystem (or any component of it) that do not form part of the TMS Subsystem, including:

- (a) the Contractor Tools; and
- (b) the Licensed Tools.

Trackside Agreements means any agreements entered into by the Customer or TfNSW for the design, build, implementation and through-life support of a Trackside Subsystem as part of the Program.

Trackside Subsystem means the component of the System that includes ETCS Level 2 trackside elements and signalling equipment, and includes those elements of any interfaces required to be built, maintained or supported by a Trackside Supplier as

contemplated by the Contract Specifications. There may be more than one Trackside Subsystem.

Trackside Supplier means the supplier(s) for the design, build, implementation and through-life support of a Trackside Subsystem under the Trackside Agreements.

Traffic Management System means an electronic system that is capable of generating and receiving information such as the train status and location, providing fault diagnosis information, identifying rectification action required and storage of vehicle data.

Transaction Documents means:

- (a) this Agreement (including any Work Order entered into under this Agreement);
- (b) the Delivery Agreement;
- (c) the TLS Parent Company Guarantee;
- (d) the Confidentiality and Intellectual Property Deed Poll; and
- (e) any other documents contemplated by, or entered into under or in connection with, the documents listed in (a) to (d).

Unit Rate has the meaning given in Schedule 15 (Pricing Terms).

Update means Software that has been produced primarily to overcome defects in, or to improve the operation of, the relevant part of the Software without significantly altering the Contract Specifications, whether or not that Software has also been extended, altered or improved by adding additional functionality or performance enhancement.

Upgrade means a newer and/or superior model or version of an Asset including, in respect of Software, any new release that has been produced primarily to extend, alter or improve the Software by adding additional functionality or performance enhancement (whether or not defects in that Software are also corrected).

Variation has the meaning given in clause 4.3 (Variations).

Variation Procedures means the Variation Procedures set out in section 3 (Variations) of Schedule 6 (Work Orders and Variation Procedures).

Variation Proposal means the proposal for how to implement a Variation that meets the requirements of section 3.2 (Variation Proposal) of Schedule 6 (Work Orders and Variation Procedures).

Variation Request means a request for a Variation issued by the Customer in accordance with section 3.1 (Variation Request) of Schedule 6 (Work Orders and Variation Procedures) and setting out details of the proposed Variation, including the Customer's requirements for the proposed Variation.

Verification or Verified means the process by which the Contractor demonstrates to the Customer that the Assets identified as requiring Verification in the Services Schedule or the PR meet the requirements of this Agreement, including the Contract Specifications.

Verification Activity means:

- (a) any and all Verification activities required by a Work Order and/or the Contract Specifications;
- (b) any and all Verification activities identified in the Verification Plan;
- (c) any and all Verification activities supporting and participating in the testing of interfaces between the TMS Subsystem and other components of the System;
- (d) any and all Verification activities supporting and participating in testing, verification and validation of the System, including system integration and operational testing; and/or
- (e) any and all Verification activities which are otherwise (in the opinion of the Customer) reasonably required for the Customer to verify whether the Contractor has performed its obligations under this Agreement, including any additional Verification of the TLS Activities:
 - (i) that have previously failed a Verification Activity; or
 - (ii) after the rectification of those TLS Activities,

and for the avoidance of doubt includes the Additional Verification Activities.

Verification Plan means the Project Plan of that name to be developed by the Contractor pursuant to the PR.

Verification Procedure means the Contractor's procedure used to carry out the Verification Activities developed pursuant to the PR.

Verification Program means the element of the Contractor's Program relating to the Verification Activities developed pursuant to the PR.

Verification Report means a report (including supporting documentation) on the conduct of a Verification Activity, as amended and updated in accordance with this Agreement and which meets the requirements of the PR.

WHS means work health and safety.

WHS Act means the *Work Health and Safety Act 2011* (NSW) and equivalent legislation in other jurisdictions.

WHS Guidelines means the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (May 2014) or any document issued from time to time which amends or substitutes this document.

WHS Legislation means:

- (a) the WHS Act;
- (b) the WHS Regulation; and
- (c) any legislation in other States and Territories of Australia addressing work health and safety which applies to the TLS Activities.

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW) and equivalent legislation in other jurisdictions.

Withdrawal Notice has the meaning given in section 2.4(a)(i) of Schedule 17 (Issue Resolution Procedure).

Works means:

- (a) the works, functions, tasks and responsibilities described in the Services Schedule and any Work Order entered into in accordance with this Agreement, including any works, functions, tasks or responsibilities required for the Contractor to perform the TLS Activities;
- (b) the works, functions, tasks and responsibilities described in the PR, including any Variations thereto, including any works, functions, tasks or responsibilities related to the PR required for the Contractor to perform the TLS Activities; and
- (c) anything customarily performed in connection with the performance of, or incidental or ancillary to, the works, functions, tasks and responsibilities in paragraphs (a) or (b).

Work Order means a work order for the performance of Additional Support Services by the Contractor, requested by the Customer in accordance with the process under section 2 of Schedule 6 (Work Orders and Variation Procedures).

Work Order Commencement Date means (as applicable):

- (a) the date on which the Customer approves the relevant Work Order under section 2.3(i) of Schedule 6 (Work Orders and Variation Procedures); or
- (b) the date on which the Customer notifies the Contractor that all of the conditions precedent to the commencement of the Work Order have either been satisfied or waived, under section 2.3(ii) of Schedule 6 (Work Orders and Variation Procedures).

Year means each period of twelve (12) months commencing from the Commencement Date.

2 Interpretation

In this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) a reference to “dollar”, “\$” or “AUD” is to Australian currency;
- (d) a reference to time is to Sydney, Australia time;
- (e) a reference to a document or instrument (including this Agreement) is to that document or instrument as varied, novated, ratified or replaced from time to time and, unless the contrary intention appears, a reference in this Agreement to any Project Plan or Document Deliverable is a reference to the latest version of that Project Plan or Document Deliverable;

- (f) a reference to a party is to a party to this Agreement, and a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation or statutory transfer;
- (g) a reference to a part, clause, party, Schedule, Attachment or Annexure is a reference to a part and clause of, and a party, Schedule, Attachment or Annexure to, this Agreement and a reference to this Agreement includes any part, clause, Schedule, Attachment or Annexure;
- (h) a reference to the PR includes all Sections, Appendices and Annexures to the PR, and any reference in the PR to "Contractor's Activities" shall, for the purposes of this Agreement and the Contractor's performance of its obligations under or in connection with the PR, be deemed to be references to the "TLS Activities" as defined in this Agreement;
- (i) an expression importing a natural person includes any individual, estate of an individual, company or other body corporate, partnership, trust, joint venture (whether incorporated or unincorporated), association, Government Authority and other entity;
- (j) a reference to a position, body, or authority of or within the Customer includes a reference to any position, body or authority which replaces or supersedes it or takes over its duties;
- (k) a reference to any Government Authority, institute, association or body is:
- if that Government Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Government Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
- if that Government Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Government Authority, institute, association or body;
- (l) a reference to a statute, regulation, proclamation, ordinance, by-law, code or other law includes all statutes, regulations, proclamations, ordinances, by-laws, codes or other laws amending, consolidating, re-enacting or replacing it, whether passed by the same or another Government Authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (m) headings and boldings are inserted for convenience and do not affect interpretation;
- (n) where a word or phrase is specifically defined, other parts of speech or grammatical forms of that word or phrase have a corresponding meaning;
- (o) a reference to anything (including any right) includes a part of that thing but nothing in this clause 2 (Interpretation) implies that performance of part of an obligation constitutes performance of the obligation;

- (p) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (q) the meaning of general words is not limited by specific examples introduced by “including”, or “for example” or similar expressions;
- (r) terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended;
- (s) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably;
- (t) a reference to Customer standards, operating principles, or company policies includes any variations, amendments, updates, or replacements of them;
- (u) a reference to an organisational role or position includes any replacement or substitute position as notified from time to time;
- (v) a provision requiring the Contractor to do something will be interpreted as requiring the Contractor to do that thing at no additional cost to the Customer, unless explicitly stated otherwise, and any reference in this Agreement to something being at “no additional cost to the Customer” or “at the Contractor’s cost” or similar is for clarity only;

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- (x) a reference to “construction” includes development, manufacture, supply, installation, integration, testing and commissioning;
- (y) any reference to information will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

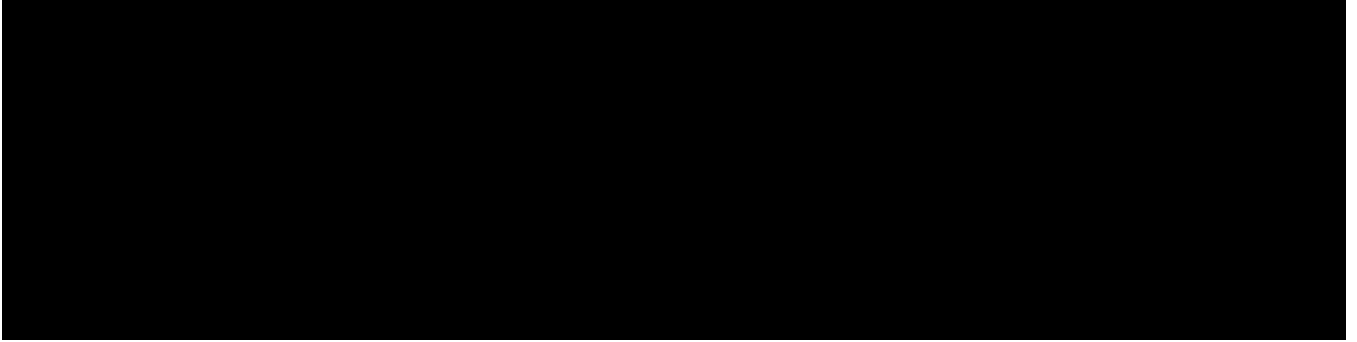
- (z) in addition to the meaning given in the GST Act, the term “GST” includes a notional liability for GST;
- (aa) if the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on or by the next Business Day;
- (bb) where the term ‘Supplier’ is used in any Transaction Document, it shall be deemed to be a reference to the ‘Contractor’ as defined in this Agreement, unless the context requires otherwise; and
- (cc) where this Agreement provides that the Contractor cannot make a claim, or the Customer is not liable, in respect of an event, then the Contractor is also not entitled to claim that event as an Excusable Event.

<p>5 Contractor Insurance Policies (clause 54)</p>	<p>Professional Indemnity insurance</p>	<p>A group professional indemnity insurance policy which is renewed annually with a cover of [REDACTED] per claim and in the annual aggregate, to be maintained for the Term and for [REDACTED] following the end of the Term.</p> <p>The policy must cover the Contractor in respect of liability of the Customer and Third Parties in respect of any claim arising out of any damage caused by the acts, errors or omissions of the Contractor and its Representatives in the course of carrying out the TLS Activities.</p> <p>The Contractor must ensure that its Subcontractors have professional indemnity insurance on equivalent terms (including as to the value of the cover), unless the Customer agrees that such insurance is not relevant to their scope of work.</p> <p>The professional indemnity insurance is not required to be a localised policy.</p>
	<p>Marine Transit insurance</p>	<p>The Contractor must hold Worldwide to Worldwide (including Transits anywhere within Australia) cover for any materials, equipment or components which are used in connection with the TLS Activities for the full replacement value of property in transit including insurance and freight. The maximum deductibles permitted are: [REDACTED]</p> <p>The insurance must be maintained for the Term of this Agreement plus [REDACTED]</p>
	<p>Workers compensation insurance</p>	<p>Insurance in respect of all claims and liabilities arising whether at common law or under statute relating to workers' compensation or employer's liability from any accident or injury to any person employed by the Contractor in connection with this Agreement. The insurance must comply with the Laws of the relevant jurisdiction in which the obligations of this Agreement are to be carried out.</p> <p>Where permitted by Law, the insurance cover must be extended to indemnify the Customer Indemnified Persons for the Customer Indemnified Persons' statutory liability for persons employed by the Contractor.</p> <p>The Contractor must ensure that its Subcontractors are similarly insured in respect of their employees.</p>
	<p>Public and Product Liability insurance</p>	<p>A group public and product liability insurance policy covering:</p>

		<p>(a) the respective rights and interests and liabilities to Third Parties of the Customer, the Contractor, the parties' Representatives and all Subcontractors from time to time;</p> <p>(b) the parties' respective liability to each other,</p> <p>for loss or damage to property (including the Customer's property and Third Party property) and the death of or injury to any person (other than liability which the Law requires to be covered under a Workers Compensation Insurance policy) arising out of, or in any way in connection with, the TLS Activities.</p> <p>The policy must be renewed annually with a minimum cover of [REDACTED] per claim and in the annual aggregate.</p> <p>The policy must remain in place at all times at which the Contractor performs the TLS Activities (and at least until expiry of the Term).</p> <p>Maximum deductible: [REDACTED] (If nothing is stated, the maximum [REDACTED])</p> <p>The Contractor must ensure that Key Subcontractors have public and product liability insurance on equivalent terms.</p>
<p>6 Customer Insurance Policies (clause 54)</p>	<p>Not Applicable</p>	<p>Not Applicable</p>
<p>7 Notices (clause 55.1(b))</p>	<p>Customer</p>	<p>[REDACTED] [REDACTED]</p> <p>[REDACTED] [REDACTED]</p> <p>[REDACTED] [REDACTED]</p>

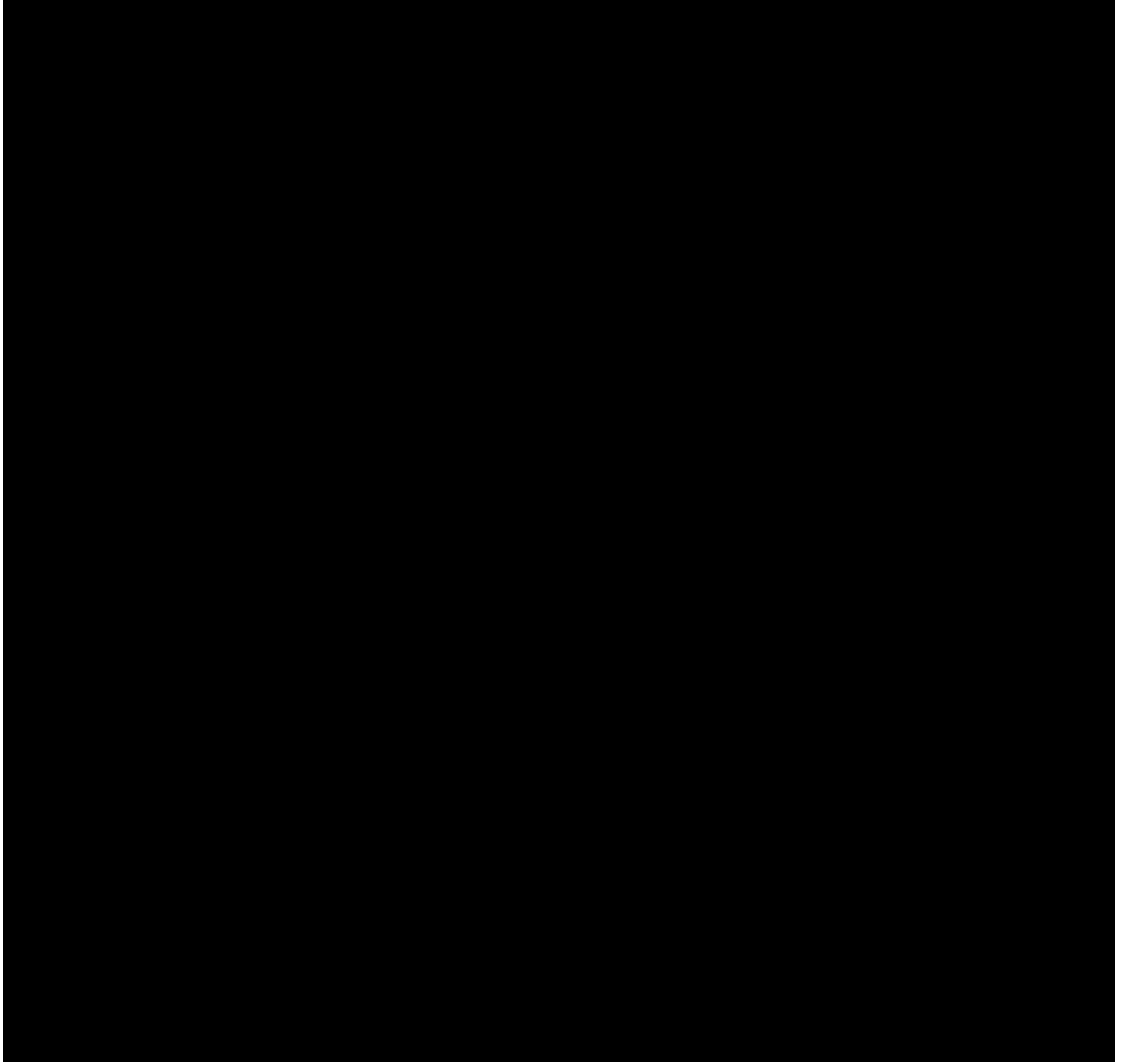
	Contractor	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8	Interface Contractors	Interface Contractors N/A

Schedule 3 System Definition and Requirements



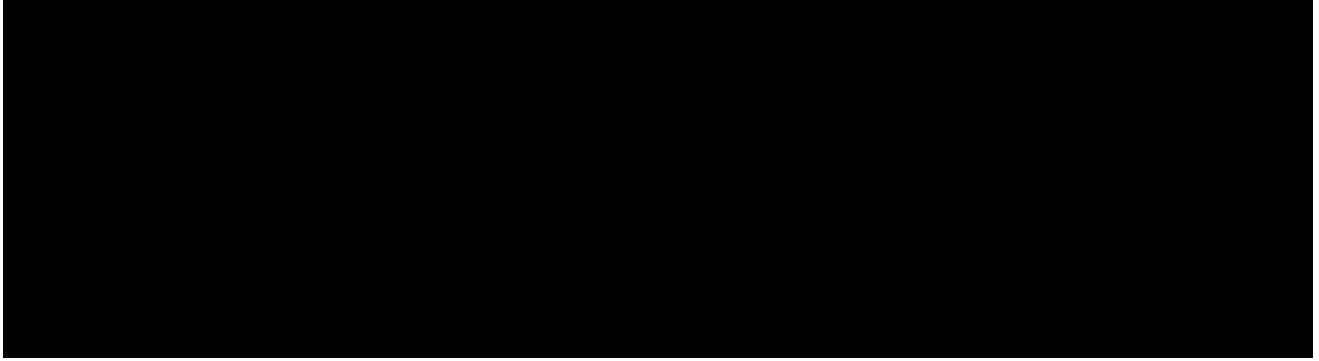


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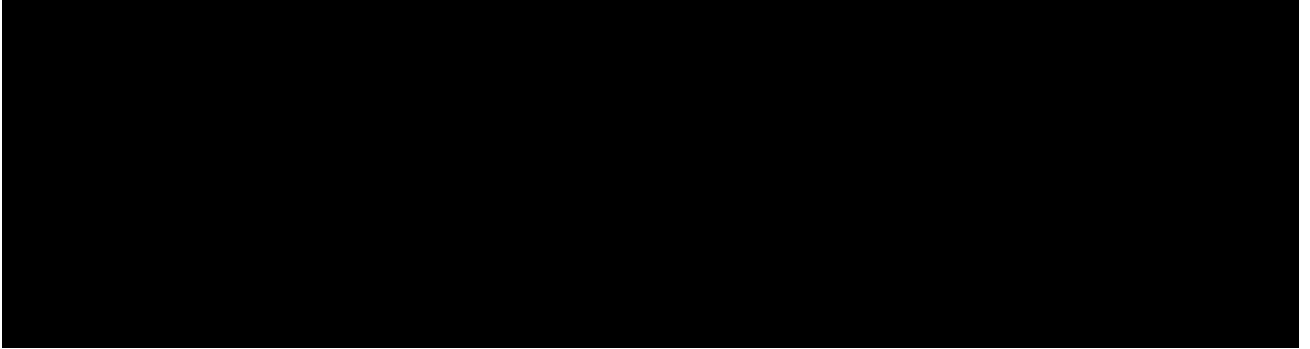


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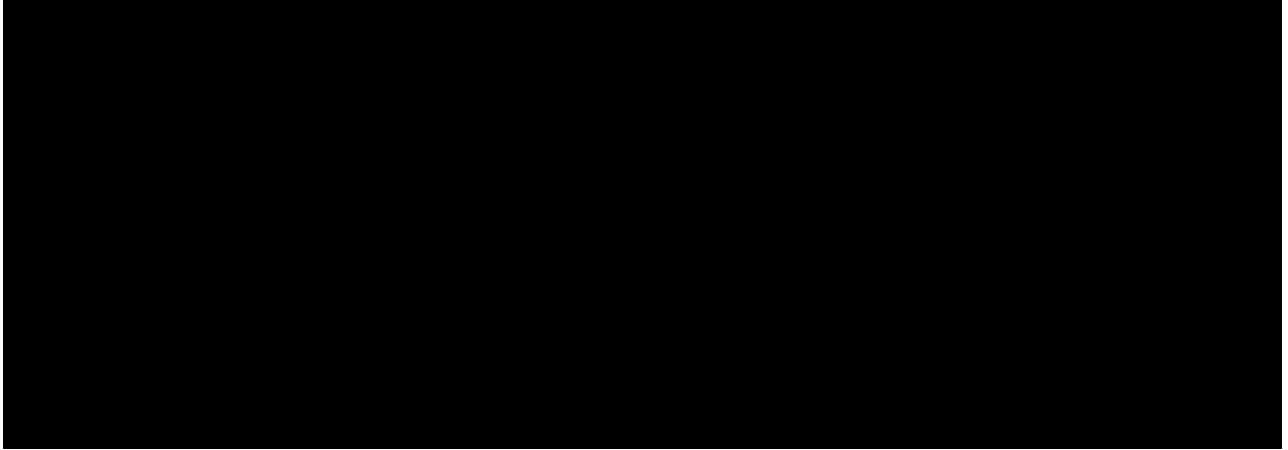


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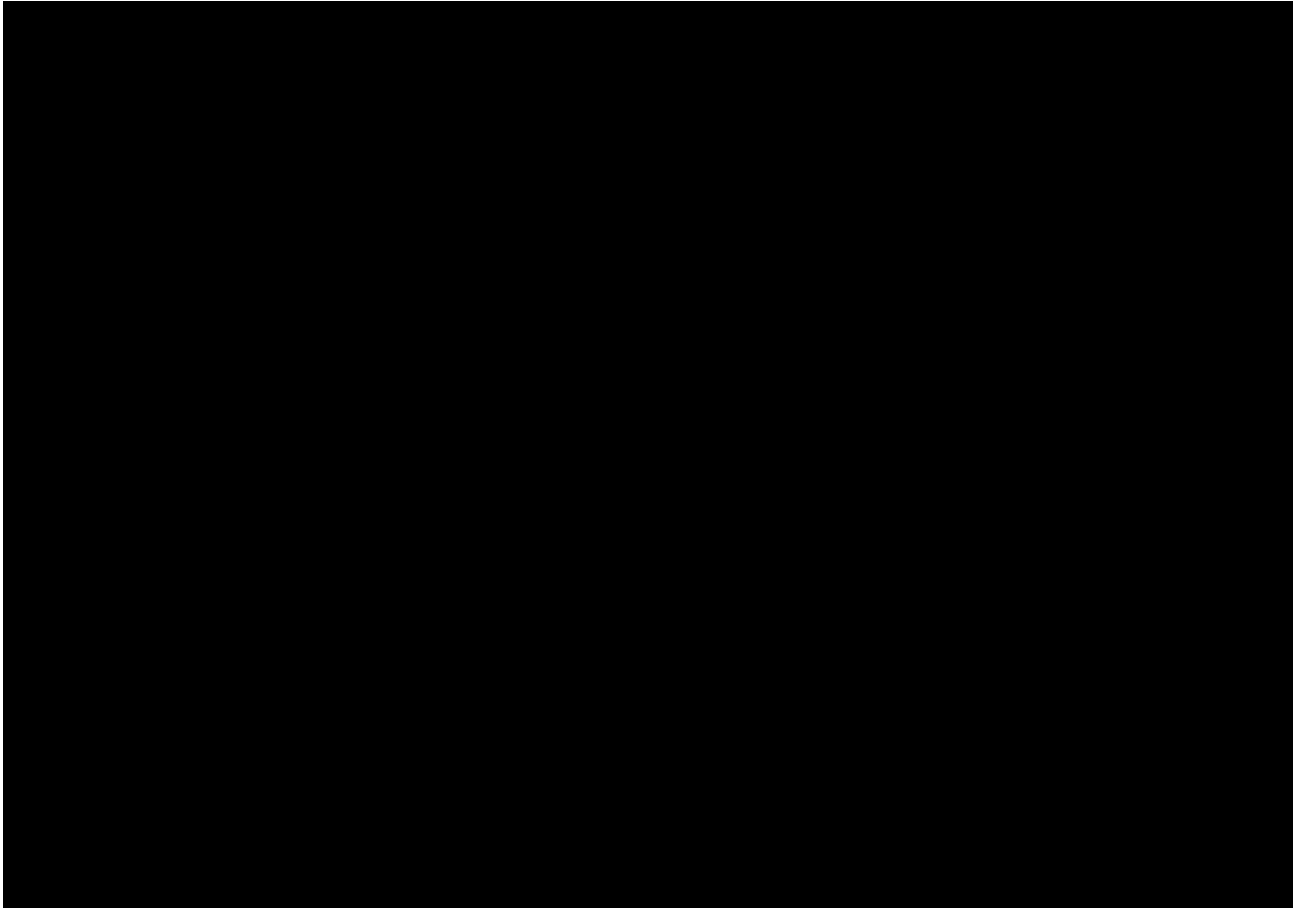


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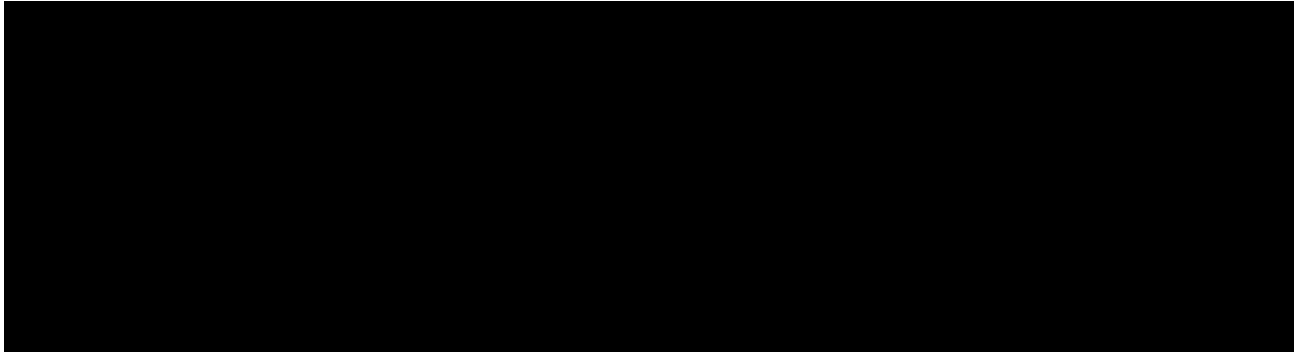


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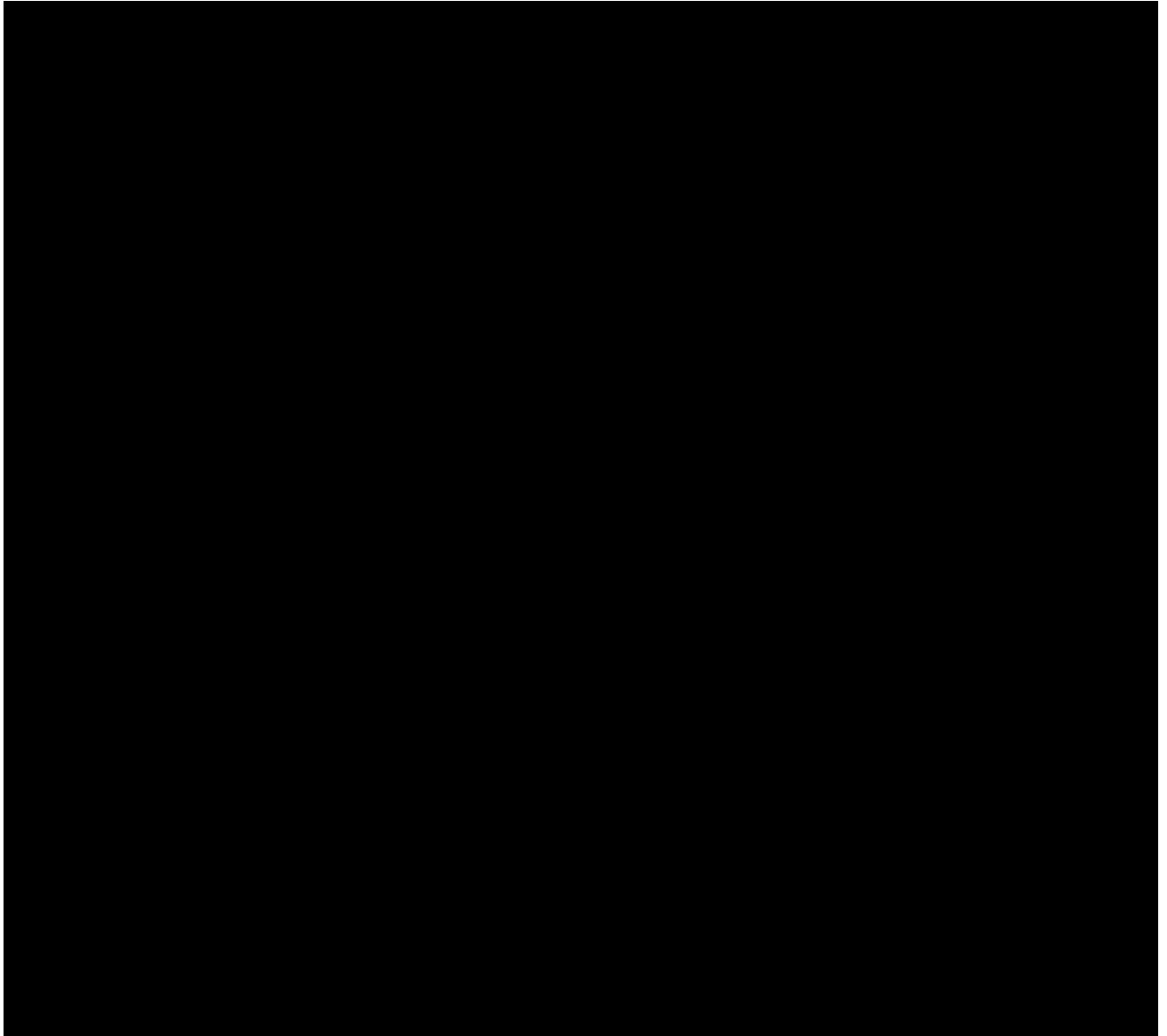
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Schedule 4 Process Requirements (PR)





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Schedule 5 Services Schedule

See separate document



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Schedule 5A Template Work Order for Additional Support Services

See separate document



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Schedule 6 Work Orders and Variation Procedures

1 General

1.1 Coverage

This Schedule 6 sets out the process the parties must comply with:

- (a) to agree a Work Order for Additional Support Services (as set out in section 2 (Work Orders for Additional Support Services));
- (b) in order to implement a Variation (as set out in section 3 (Variations));
- (c) where the Customer wishes to issue a Direction to Proceed (as set out in section 4 (Directions to Proceed)); and
- (d) in the event of a Change in Laws, Change in Approvals and Change in Standards (as set out in section 5 (Changes in Laws, Approvals and Standards)).

1.2 Customer discretion and binding nature

- (a) The Customer is under no obligation to proceed with any Variation Request, Variation Proposal, Work Order Proposal or Direction to Proceed.
- (b) A Variation Proposal or Work Order Proposal is only binding on the parties when it has been executed by the Customer, following which it will be incorporated into and governed by the terms and conditions of this Agreement.
- (c) The Contractor must not make any Claim in respect of, or commence implementing, a Variation Proposal or a Work Order Proposal unless and until the Customer has either Directed it to do so in accordance with section 4 (Directions to Proceed) or executed the Variation Proposal or Work Order Proposal in accordance with this Schedule 6.

1.3 Obligation to supply

- (a) The Contractor must not withhold its consent to a Variation Proposal or a Work Order Proposal to the extent such Variation Proposal or Work Order Proposal is required to give effect to a Change in Laws, Change in Approvals or Change in Standards.
- (b) The parties agree to work together so as to effect any Variation Proposal or Work Order Proposal without detriment to the Assets or the Program.
- (c) Notwithstanding any provision of this Agreement to the contrary, if:
 - (i) any Variation (or Direction to Proceed) is required to any part of the Contractor's Solution or the TLS Activities to enable the Contractor's Solution, the TLS Activities or the TMS Subsystem to meet or comply with any other part of the Contract Specifications or this Agreement; or
 - (ii) the Contractor otherwise proposes or requests a Variation to (or a Direction to Proceed to vary) any part of the Contractor's Solution or the TLS Activities

to meet the requirements of the Contract Specifications or this Agreement in a different way than is currently proposed,

the Contractor is not entitled to any increase in Fees or any extension of time (including under any associated Variation or Direction to Proceed) and the Contractor will have no Claim against the Customer arising out of or in connection with such a Variation or Direction to Proceed, except where the relevant Variation or Direction to Proceed referred to in paragraphs (i) or (ii) is necessitated by a Variation separately initiated by the Customer to this Agreement. For clarity, this paragraph (c) does not limit the operation of section 5 of this Schedule 6 (Work Orders and Variation Procedures).

2 Work Orders for Additional Support Services

2.1 Request for Work Order Proposal

- (a) The Customer may request a Work Order Proposal from the Contractor for Additional Support Services.
- (b) If the Customer wishes to request a Work Order Proposal the Customer may:
 - give a draft Work Order to the Contractor; or
 - provide the Contractor with a description of the Additional Support Services that are required,and require the Contractor to prepare and submit a Work Order Proposal in response.
- (c) Each Work Order Proposal must be in the form as set out in and contain the relevant information anticipated in Schedule 5A (Template Work Order for Additional Support Services) and, unless agreed otherwise between the parties, must be valued in accordance with Schedule 15 (Pricing Terms) and, in particular, the pricing model set out in Tab 8 – Labour Rates of Schedule 15A (Pricing Tables).
- (d) The Contractor acknowledges and agrees that, in respect of any Work Order, the Customer may request that any interfaces to the TMS Subsystem external or adjacent systems are designed as open interfaces.

2.2 Provision of Work Order Proposal

- (a) The Contractor must within twenty (20) Business Days of receiving a request from the Customer pursuant to section 2.1(a), provide to the Customer (as applicable):
 - the Contractor's proposed amendments to the draft Work Order; or
 - a proposed draft Work Order,which proposal will constitute a **Work Order Proposal** for the purposes of this Schedule, together with a Delivery Impact Statement in accordance with section 7 (Delivery Impact Statement).

2.3 Customer discretion as to Work Order Proposal

- (a) Without limiting section 1.2(a), following the Customer's receipt of the Contractor's Work Order Proposal, the Customer may:
- approve the Work Order Proposal as-is, in which case each party will execute the draft Work Order as soon as reasonably practicable and the Contractor must implement the Work Order in accordance with its terms;
 - approve the Work Order Proposal subject to the satisfaction of certain conditions precedent, in which case each party will execute the draft Work Order as soon as reasonably practicable, however the Work Order Commencement Date will be the date on which those conditions precedent have been satisfied to the Customer's reasonable satisfaction;
 - (iii) reject the Work Order Proposal, in which case section 2.4(b) will apply; or
 - (iv) notify the Contractor that it requires changes to the Work Order Proposal, in which case section 2.4(a) will apply.

2.4 Rejection of or changes to Work Order Proposal

- (a) If the Customer notifies the Contractor that it requires any changes to a Work Order Proposal, then the Contractor must, within the timeframe required by the Customer or if no timeframe is specified then, at a minimum, within ten (10) Business Days, update and re-submit the Work Order Proposal to the Customer incorporating the requested changes following which the process in section 2.2 (Provision of Work Order Proposal) shall apply to the re-submitted Work Order Proposal.
- (b) If the Customer rejects the Work Order Proposal, then the parties must work together to agree on a mutually acceptable resolution to the matters set out in the Work Order Proposal. If the parties are unable to reach an agreement within ten (10) Business Days (or such longer period agreed between the parties) after the date of the Customer's rejection of the Work Order Proposal, then the Customer may:
- treat the non-agreement as an Issue for the purposes of clause 26 (Resolution of Matters); or
 - notify the Contractor under section 1.2(a) that it elects not to proceed with the Work Order Proposal in which case the Contractor is not entitled to treat such rejection as an Issue for the purposes of clause 26 (Resolution of Matters).

3 Variations

3.1 Variation Request

- (a) Subject to paragraph (b):
- the Customer may require a Variation by issuing a Variation Request (in the form set out in Attachment A (Customer Initiated Variation) as updated by the Customer from time to time) to the Contractor; and

the Contractor may recommend to the Customer a Variation by setting out the reasons for the Variation, in which case the Customer may issue a Variation Request (in the form set out in Attachment B (Contractor Initiated Variation) as updated by the Customer from time to time) to the Contractor in response to any such recommendation.

- (b) The parties agree to discuss any potential Variation at the next occurring meeting of the Contract Management and Governance Meeting prior to the issue of a formal Variation Request by the Customer.

3.2 Provision of Variation Proposal

Following:

- (a) the Customer's issuance of a Variation Request under section 3.1 (Variation Request); or
- (b) where this Agreement otherwise requires the parties to agree a Variation,

the Contractor must, within the period set out in the Customer's Variation Request (or if no time is specified, within twenty (20) Business Days of receipt of the Customer's Variation Request, or of the event giving rise to the requirement to agree a Variation where paragraph (b) applies) provide the Customer with a Variation Proposal in the form set out in and containing the information anticipated in Attachment A (Customer Initiated Variation) or Attachment B (Contractor Initiated Variation) (as applicable) and a Delivery Impact Statement in accordance with section 7 (Delivery Impact Statement).

3.3 Customer discretion as to Variation Proposal

Without prejudice to section 1.2(a), following the Customer's receipt of the Contractor's Variation Proposal, the Customer may:

- (a) approve the Variation Proposal as-is, in which case each party will execute the Variation and the Contractor must implement the relevant Variation without delay in accordance with the terms of this Agreement;
- (b) reject the Variation Proposal, in which case section 3.4(b) will apply; or
- (c) notify the Contractor that it requires any changes to the Variation Proposal, in which case section 3.4(a) will apply.

3.4 Rejection of or changes to Variation Proposal

- (a) If the Customer notifies the Contractor that it requires any changes to the Variation Proposal, then the Contractor must, within the timeframe required by the Customer (or if no timeframe is specified then, at a minimum, within ten (10) Business Days), re-submit the Variation Proposal to the Customer incorporating the requested changes following which the process in section 3.3 (Customer discretion as to Variation Proposal) shall apply to the re-submitted Variation Proposal.
- (b) If the Customer rejects the Variation Proposal, the parties must work together to agree on a mutually acceptable resolution to the matters set out in the Variation Proposal.
- (c) If the Variation Request was initiated by the Contractor under section 3.1(a)(i) and the parties are unable to reach an agreement under paragraph (b) within ten (10)

Business Days (or such longer period agreed between the parties) after the date of the Customer's rejection of the Variation Proposal, then either party will be entitled to treat such rejection as an Issue for the purposes of clause 26 (Resolution of Matters).

3.5 Omissions

If a Variation or Direction to Proceed requires the omission or deletion of any part of the Works or TLS Activities:

- (a) the Customer may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) the Customer will not be liable upon any Claim by the Contractor arising out of or in connection with any work being omitted or deleted from the TLS Activities whether or not the Customer thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work; and
- (c) the adjustment to the Fees arising from the work that has been omitted or deleted will be valued in accordance with the Pricing Principles set out in Schedule 15 (Pricing Terms).

3.6 Contractor's Entitlements

This Schedule is an exhaustive code of the Contractor's rights in any way in connection with any Variation or Direction to Proceed. The Contractor waives all rights at Law to make any Claim against the Customer in any way in connection with any of the matters set out in this Schedule otherwise than in accordance with the terms of this Agreement.

4 Directions to Proceed

- (a) Whether or not the parties have agreed the terms of a Variation Proposal or Work Order Proposal in accordance with this Schedule (**Direction to Proceed Event**), the Customer may at any time Direct the Contractor to commence implementing the Direction to Proceed Event before it is agreed (**Direction to Proceed**) by giving the Contractor notice stating that it is a "Direction to Proceed" under this section. The Customer may also issue a Direction to Proceed subject to conditions, including any capped pricing. If the Contractor receives such a Direction to Proceed:

the Contractor must implement the relevant Direction to Proceed Event without delay in accordance with the terms of this Agreement, subject to any conditions specified by the Customer; and

subject to paragraph (g), unless agreed otherwise between the parties, the Direction to Proceed Event will be valued in accordance with section 6 (Pricing Principles) and the Contractor may submit a payment claim in accordance with clause 22.1 in respect of the TLS Activities performed to implement the Direction to Proceed Event in accordance with the Direction to Proceed, subject to any cap that applies as a condition to the Direction to Proceed.

- (b) The Contractor must comply with a Direction to Proceed irrespective of:

- the nature, extent or value of the work the subject of the Direction to Proceed;
- the location or timing (including the impact on any Work Order) of the work involved in the Direction to Proceed;
- (iii) whether or not it agrees with any or all of the terms of the Direction to Proceed; or
- (iv) any Issue or Dispute related to the Direction to Proceed (or any associated Direction to Proceed Event, including in respect of Fees).
- (c) A Direction to Proceed issued under this section does not:
- relieve the Contractor from its obligations to provide a Variation Proposal or Work Order Proposal (as applicable) and any amendments to a Variation Proposal or Work Order Proposal);
- relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Agreement); or
- (iii) limit or otherwise affect either party's rights under this Agreement.
- (d) Once a Variation or Work Order is executed for such Direction to Proceed, subject to paragraph (g):
- any adjustment to the Fees for such Variation or the agreed Fees under the Variation or Work Order will apply retrospectively from the date of the Direction to Proceed;
- any amounts paid under paragraph (a)(ii) are deemed to be amounts paid under the Variation or Work Order; and
- (iii) to the extent that there has been any over or under payment for any month, then the difference will be paid by the relevant party to the other party to true-up such amounts.
- (e) If, at any time after the issue of a Direction to Proceed and prior to the execution of a Variation or Work Order (as applicable), the Customer elects not to proceed with the relevant Direction to Proceed, the Customer will so notify the Contractor and:
- this section will no longer apply in respect of the relevant Direction to Proceed and any corresponding Direction to Proceed will cease; and
- subject to paragraph (g), the Fees payable in respect of the TLS Activities performed in accordance with the Direction to Proceed to the date of the Customer's notice under this paragraph (e) will be calculated in accordance with section 6.
- (f) There is no limitation on the power of the Customer to issue a Direction to Proceed, and no Direction to Proceed will invalidate this Agreement.
- (g) For clarity, in no circumstances will the Contractor be entitled to any costs or amounts for complying with a Direction to Proceed, where such Direction to Proceed is in relation to remedying a breach or non-compliance with this Agreement (including a Defect) or addressing the consequences of such a breach

or non-compliance, or where the Contractor is not entitled to any costs or compensation in respect of the relevant Variation.

5 Changes in Laws, Approvals and Standards

5.1 Changes in Laws

- (a) If a Change in Law occurs, the Contractor must within ten (10) Business Days of becoming aware of the Change in Law, submit a notice to the Customer stating that it considers this section 5.1 applies:
- containing details of the Change in Laws and stating whether the Contractor considers them a Qualifying Change in Law;
 - stating the impact that the Change in Law has on the Contractor's ability to meet the performance standards for the TLS Activities set out in this Agreement or the Milestones (if any) under a Work Order;
- (iii) stating the impact the Change in Law would have on the Contract Specifications; and
- (iv) stating the Contractor's estimate of any increase or decrease (as the case may be) in the Contractor's cost of carrying out the TLS Activities arising out of or in connection with complying with any Qualifying Change in Law (if any), including sufficient information to support the estimates.
- (b) If the Customer considers that any Change in Law necessitates a Variation, the Customer may:
- issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 3.2 (Variation Proposal) for the Change in Law;
 - issue a Direction to Proceed under section 4 (Directions to Proceed) directing that the requirements of this Agreement be varied to implement the Change in Law; or
- (iii) take such other action as the Customer considers necessary to ensure that the TMS Subsystem complies with the Change in Law.
- (c) Whether or not a Change in Law requires a Variation, the Contractor is not entitled to any increase in Fees in respect of any of the actions in paragraphs (b)(i) to (iii) (including any Variation or Direction to Proceed) except in respect of a Qualifying Change in Law.
- (d) Whether or not the Customer considers that a Change in Law necessitates a Variation, the Contractor must implement and comply with each Change in Law.

5.2 Changes in Approvals

- (a) If a Change in Approval occurs the Contractor must:
- if the relevant Approval was obtained by the Customer, within ten (10) Business Days of the date on which the Contractor becomes aware or ought

reasonably to have become aware of the Change in Approval taking effect;
or

otherwise, within ten (10) Business Days of the Change in Approval taking effect,

notify the Customer of the Change in Approval and (if applicable) provide detailed particulars of the reason why the Change in Approval necessitates a Variation.

- (b) If the Contractor gives a notice under paragraph (a) and the Customer considers that the Change in Approval necessitates a Variation, the Customer may:

issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 3.2 (Variation Proposal) for the Change in Approval; or

issue a Direction to Proceed under section 4 (Directions to Proceed) directing that the requirements of this Agreement be varied to implement the Change in Approval.

- (c) Whether or not a Change in Approval requires a Variation, the Contractor is not entitled to any increase in Fees in respect of any of the actions in paragraphs (b)(i) or (b)(ii) (including any Variation or Direction to Proceed) except in respect of a Qualifying Change in Approval.
- (d) Whether or not the Customer considers that the Change in Approval necessitates a Variation, the Contractor must implement and comply with each Change in Approval.

5.3 Changes in Standards

- (a) Where:

the Contractor notifies the Customer of a Change in Standard in accordance with clause 34.1(b)(ii); or

the Customer notifies the Contractor of a Change in Standard,

the parties will discuss the Change in Standard at the next occurring meeting of the Contract Management and Governance Meeting.

- (b) Within no more than twenty (20) Business Days of such meeting, the Customer must either:

issue a Variation Request requiring the Contractor to prepare a Variation Proposal in accordance with section 3.2 (Variation Proposal) for the Change in Standard, on the basis that the Customer wishes to consider the full impact of the requirement to comply with the Change in Standard;

issue a Direction to Proceed under section 4 (Directions to Proceed) Directing that the requirements of this Agreement be varied to implement, or to avoid or mitigate the consequences of, the Change in Standard; or

- (iii) Direct the Contractor to disregard the Change in Standard for the purposes and period set out in the notice, provided that the Customer must Direct the Contractor to comply with the relevant Change in Standard if a failure to

comply with that Change in Standard would result in the Contractor being in breach of any Law or Approval.

- (c) Without prejudice to paragraph (b), the Customer's intention is that Changes in Standards relating to Minor Enhancements will be addressed under this Agreement, and that Changes in Standards relating to Major Enhancements will be addressed under the Delivery Agreement.
- (d) Whether or not a Change in Standard requires a Variation, the Contractor is not entitled to any increase in Fees in respect of any of the actions in paragraphs (b)(i) to (iii) (including any Variation or Direction to Proceed) except in respect of a Qualifying Change in Standard.
- (e) Unless the Customer issues a Direction under paragraph (b)(ii) (to avoid) or (b)(iii) (to disregard) the Change in Standard, the Contractor must implement and comply with each Change in Standard regardless of whether or not the Contractor considers that the Change in Standard necessitates a Variation.

5.4 General

Other than where the Contractor is entitled to compensation in accordance with this clause 5 in respect of a Qualifying Change in Law, Qualifying Change in Standard or Qualifying Change in Approval, the Contractor is liable for the consequences of, and will have no Claim in respect of the TLS Activities against the Customer arising out of or in connection with a Change in Law, Change in Standard or Change in Approval and any Variation or Direction to Proceed to reflect, implement or comply with such Change in Law, Change in Standard or Change in Approval will be at no additional cost or charge to the Customer.

6 Pricing principles

The Fees applicable to each Work Order, Variation and any increase in Fees attributable to a Qualifying Change in Law, Qualifying Change in Approval or Qualifying Change in Standard will be determined in accordance with the Pricing Principles in Schedule 15 (Pricing Terms).

7 Delivery Impact Statement and TLS Impact Statement

- (a) In respect of each Work Order Proposal or Variation Proposal, the Contractor must provide a Delivery Impact Statement as follows:

to the Customer, at the same time and in conjunction with the preparation and delivery of the Work Order Proposal or Variation Proposal (as applicable); and

to TfNSW as a notice under the Delivery Agreement, at the same time or as soon as reasonably practical following, delivery of the Delivery Impact Statement to the Customer under paragraph (a)(i).

- (b) The parties acknowledge that :

a Delivery Impact Statement is only binding on TfNSW and the Contractor when it has been executed by TfNSW in accordance with paragraph 8(c) of Schedule 7 (New SOWs and Variation Procedures) of the Delivery Agreement; and

for any Work Order Proposal or Variation Proposal for which the Contractor has provided a Delivery Impact Statement indicated that there is an impact to the Delivery Agreement, that Work Order Proposal or Variation Proposal, whether initiated by the Contractor or the Customer, is only binding if the Delivery Impact Statement has been signed by TfNSW and the Contractor.

- (c) The Contractor acknowledges that it has obligations under the Delivery Agreement to provide TfNSW and the Customer with a TLS Impact Statement in accordance with the Delivery Agreement, in connection with any variation proposal or proposal for a new statement of work in respect of the Delivery Agreement. Following receipt of a TLS Impact Statement, the Customer will:

approve the TLS Impact Statement as-is, by executing the TLS Impact Statement; or

notify the Contractor that it requires changes to the TLS Impact Statement, in which case the Contractor must within ten (10) Business Days, resubmit the TLS Impact Statement to the Customer incorporating the requested changes.

- (d) Subject to paragraph (e)(ii), notwithstanding that the Customer has executed a TLS Impact Statement in accordance with paragraph (c)(i), there will be no change to this Agreement and any changes set out in the TLS Impact Statement are only binding on the parties, when a Variation has been executed by both parties in accordance with this Schedule. Any Variation Proposal provided to the Customer in relation to any changes identified in a TLS Impact Statement will be treated as a Customer Initiated Variation for the purposes of section 3.2.

- (e) To the extent permitted by Law, the Contractor:

waives all rights at Law and under the Delivery Agreement to make any Claim against any Customer Indemnified Person and to raise any variation in respect of the Delivery Agreement that arises out of or in connection with any Work Order Proposal or Variation Proposal (including as a consequence of the implementation of any associated Work Order or Variation), except for those Claims or variations expressly identified in a Delivery Impact Statement provided by the Contractor at the same time as the Work Order Proposal or Variation Proposal as required by paragraph (a) and that has been executed by TfNSW in accordance with paragraph (b); and

waives all rights at Law and under this Agreement to make any Claim against any Customer Indemnified Person and to raise any Variation or Work Order Proposal that arises out of or in connection with any variation proposal or proposal for a new statement of work in respect of the Delivery Agreement (including as a consequence of the implementation of any associated variation to or statement of work under the Delivery Agreement), except for those Claims, Variations or Work Orders expressly identified in a TLS Impact Statement provided to the Customer in accordance with the requirements of the Delivery Agreement and executed by the Customer in accordance with paragraph(c)(i).



Attachment A Customer Initiated Variation

See separate document

Customer Initiated Variation

This document has been designed to fulfil the requirements where the Customer has required a Variation pursuant to section 3.1(a)(i) of Schedule 6 (Work Orders and Variation Procedures).

Section 1 constitutes the Customer’s Variation Request pursuant to section 3.1(a)(i) of Schedule 6 (Work Orders and Variation Procedures) of the TLS Agreement.

Section 2 constitutes the Contractor’s Variation Proposal pursuant to section 3.2(a) of Schedule 6 (Work Orders and Variation Procedures) of the TLS Agreement.

Section 3 (when signed) constitutes the Customer’s approval or rejection of the Contractor’s Variation Proposal, withdrawal of the proposed Variation, or notification to the Contractor that it requires certain changes to the Contractor’s Variation Proposal, pursuant to section 3.3 of Schedule 6 (Work Orders and Variation Procedures) of the TLS Agreement.

Section 4 constitutes the Delivery Impact Statement pursuant to section 7 of Schedule 6 (Work Orders and Variation Procedures) of the TLS Agreement and when signed by TfNSW, constitutes TfNSW’s approval of the Delivery Impact Statement or notification to the Contractor that it requires certain changes to the Delivery Impact Statement, pursuant to section 8 of Schedule 7 (New SOWs and Variation Procedures) of the Delivery Agreement.

SECTION 1 - CUSTOMER INITIATED VARIATION REQUEST <i>[To be completed by Sydney Trains]</i>			
Project Contract No		Sydney Trains RFTA No.	RFTA [nnnnn]
Subject			
Subsystem:	TMS Subsystem		
Initiated by:	Customer Representative		
Submitted By:	Customer Representative	Sydney Trains Issue No.	
Submitted To:	Contractor Representative	Submission Date:	
Correspondence Ref.			
Contract Document Ref.			
CWBS Ref. No.			
Summary of Variation Proposed:			
Date by which Variation Proposal is to be submitted:			
Attachments			
Submitted by Customer Representative	Signed:	Date:	

SECTION 2 – CONTRACTOR'S VARIATION PROPOSAL	
Variation Proposal No.:	[Insert]
Details of Variation Proposed:	[Insert]
Changes to or impacts on the TLS Activities:	[Insert]
Changes to the Contract Specifications:	[Insert]
Changes to the Resource Plan, Key People and Organisational Chart:	[Insert]
Contractor's proposed adjustments (increase or decrease) to the Fees (including costs of implementing the Variation and any one-off costs, including any cost savings) of such Variation calculated in accordance with section 6 (Pricing Principles) of Schedule 6 (Work Orders and Variation Procedures):	[Insert]
Impacts on the workmanship, durability or functional integrity of any element of the Works or Assets:	[Insert]
Impacts on the Project Plans: [Insert]	[Insert]
Details of the timetable and process for implementing the Variation:	[Insert]
Impacts on Approvals or Accreditations (which the Contractor must, as far as practicable seek to avoid):	[Insert]
Effects on the Delivery Locations:	[Insert]
Training Requirements:	[Insert]
Impacts on the Disengagement Plan:	[Insert]
Effects which the Variation will have on the Contractor's ability to satisfy any warranty given by the Contractor under or to perform any of the Contractor's obligations under the TLS Agreement:	[Insert]
Details of any corresponding changes required to be made to the TLS Agreement:	Current wording: [Insert]

	Proposed wording (include deleted text as strikethrough text and underline new text): [Insert]	
<p>If the Contractor considers that the Variation may result in a delay or impact on Service Levels:</p> <p>Details (including substantiation) of the period of the delay or any impacts on the Service Levels:</p> <p>Where possible, date by which the Contractor requires the Customer’s decision on whether or not to proceed, such that the Contractor will not be delayed in the performance of the TLS Activities or impacted in meeting Service Levels:</p>	<p>[Insert]</p> <p>[Insert]</p>	
Details of any anticipated impacts on Other Contractors and other Subsystems:	[Insert]	
Any other information requested by the Customer:	[Insert]	
Other:	[Insert]	
<p>Confirmation that the proposed Variation:</p> <p>(a) will not adversely affect the functional integrity of any of the elements of the TMS Subsystem; and</p> <p>(b) will not adversely affect the quality standards required under the TLS Agreement.</p>		
Attachments	[None/insert]	
Submitted by Contractor’s Representative	Signed:	Date:

SECTION 3 - ELECTION BY CUSTOMER		
APPROVED	[Yes / No]	
REJECTED	[Yes / No]	
VARIATION REQUEST WITHDRAWN	[Yes / No]	
CHANGES REQUIRED TO VARIATION PROPOSAL	[Yes / No]	
Timeframe for re-submission of Contractor's Variation Proposal:	[Insert]	
Customer Representative	Signed:	Date:

SECTION 4 – DELIVERY IMPACT STATEMENT		
<p>[Insert Delivery Impact Statement, as follows:</p> <p>(a) where the Contractor considers that the Variation Proposal will or may give rise to a:</p> <ul style="list-style-type: none"> a. variation in respect of the Delivery Agreement, a “Variation Proposal” under the Delivery Agreement (as defined in the Delivery Agreement) in respect of that proposed variation that is in the form and contains the information required under the Delivery Agreement; b. Claim under or in connection with the Delivery Agreement, reasonable details of that proposed Claim, including the basis of the Claim and the extent and quantum of the Claim; or c. change to the costs, resources or efforts required under the Delivery Agreement which would not constitute a variation to the Delivery Agreement, reasonable details of those changes, including the basis of the changes and the extent and quantum of the changes; or <p>(b) where the Contractor considers that the Variation Proposal does not have any consequential impact on the Delivery Agreement, a statement to that effect]</p>		
Approval by TfNSW		
APPROVED	[Yes / No]	
CHANGES REQUIRED	[Yes / No]	
TfNSW Representative	Signed:	Date:



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Attachment B Contractor Initiated Variation

See separate document

Contractor Initiated Variation

This document has been designed to fulfil the requirements where the Contractor has recommended a Variation pursuant to section 3.1(a)(ii) of Schedule 6 (Work Orders and Variation Procedures).

- Section 1 constitutes the Customer’s Variation Request pursuant to section 3.1(a)(ii) of Schedule 6 (Work Orders and Variation Procedures) of the TLS Agreement.
- Section 2 constitutes the Contractor’s Variation Proposal pursuant to section 3.2(a) of Schedule 6 (Work Orders and Variation Procedures) of the TLS Agreement.
- Section 3 (when signed) constitutes the Customer’s approval or rejection of the Contractor’s Variation Proposal, or notification to the Contractor that it requires certain changes to the Contractor’s Variation Proposal, pursuant to section 3.3 of Schedule 6 (Work Orders and Variation Procedures) of the TLS Agreement.
- Section 4 constitutes the Delivery Impact Statement pursuant to section 7 of Schedule 6 (Work Orders and Variation Procedures) of the TLS Agreement and when signed by TfNSW, constitutes TfNSW’s approval of the Delivery Impact Statement or notification to the Contractor that it requires certain changes to the Delivery Impact Statement, pursuant to section 8 of Schedule 7 (New SOWs and Variation Procedures) of the Delivery Agreement.

SECTION 1 – CONTRACTOR INITIATED VARIATION REQUEST <i>[To be completed by Sydney Trains following a Variation being recommended by the Contractor]</i>			
Project Contract No		Sydney Trains RFTA No.	RFTA [nnnnn]
Subject			
Subsystem:	TMS Subsystem		
Initiated By:	Contractor Representative		
Submitted By:	Customer Representative	Sydney Trains Issue No.	
Submitted To:	Contractor Representative	Submission Date:	
Correspondence Ref.			
Contract Document Ref.			
CWBS Ref. No.			
Summary of Variation Proposed:			
Date by which Variation Proposal is to be submitted:			
Attachments			
Submitted by Customer Representative	Signed:		Date:

SECTION 2 – CONTRACTOR’S VARIATION PROPOSAL	
Variation Proposal No.:	[Insert]
Details of Variation Proposed:	[Insert]
Changes to or impacts on the TLS Activities:	[Insert]
Changes to the Contract Specifications:	[Insert]
Changes to the Resource Plan, Key People and Organisational Chart:	[Insert]
Contractor’s proposed adjustments (decrease) to the Fees (including any cost savings) of such Variation calculated in accordance with section 6 (Pricing Principles) of Schedule 6 (Work Orders and Variation Procedures):	[Insert]
Impacts on the workmanship, durability or functional integrity of any element of the Works or Assets:	[Insert]
Impacts on the Project Plans:	[Insert]
Details of the timetable and process for implementing the Variation:	[Insert]
Impacts on Approvals or Accreditations (which the Contractor must, as far as practicable seek to avoid):	[Insert]
Effects on the Delivery Locations:	[Insert]
Training Requirements:	[Insert]
Impacts on the Disengagement Plan:	[Insert]
Effects which the Variation will have on the Contractor’s ability to satisfy any warranty given by the Contractor under or to perform any of the Contractor’s obligations under the TLS Agreement:	[Insert]
Details of any corresponding	Current wording: [Insert]

changes required to be made to the TLS Agreement:	Proposed wording (include deleted text as strikethrough text and underline new text): <u>[Insert]</u>	
Details of any anticipated impacts on Other Contractors and other Subsystems:	<u>[Insert]</u>	
Any other information requested by the Customer:	<u>[Insert]</u>	
Other:	<u>[Insert]</u>	
<p>Confirmation that the proposed Variation:</p> <ul style="list-style-type: none"> (a) will not adversely affect the functional integrity of any of the elements of the TMS Subsystem; and (b) will not adversely affect the quality standards required under the TLS Agreement. 		
Attachments	<u>[None/insert]</u>	
Submitted by Contractor's Representative	Signed:	Date:

SECTION 3 - ELECTION BY CUSTOMER		
APPROVED	[Yes / No]	
REJECTED	[Yes / No]	
CHANGES REQUIRED TO VARIATION PROPOSAL	[Yes / No]	
Timeframe for re-submission of Contractor's Variation Proposal:	[Insert]	
Customer Representative	Signed:	Date:

SECTION 4 – DELIVERY IMPACT STATEMENT		
<p>[Insert Delivery Impact Statement, as follows:</p> <p>(a) where the Contractor considers that the Variation Proposal will or may give rise to a:</p> <ul style="list-style-type: none"> a. variation in respect of the Delivery Agreement, a “Variation Proposal” under the Delivery Agreement (as defined in the Delivery Agreement) in respect of that proposed variation that is in the form and contains the information required under the Delivery Agreement; b. Claim under or in connection with the Delivery Agreement, reasonable details of that proposed Claim, including the basis of the Claim and the extent and quantum of the Claim; or c. change to the costs, resources or efforts required under the Delivery Agreement which would not constitute a variation to the Delivery Agreement, reasonable details of those changes, including the basis of the changes and the extent and quantum of the changes; or <p>(b) where the Contractor considers that the Variation Proposal does not have any consequential impact on the Delivery Agreement, a statement to that effect]</p>		
Approval by TfNSW		
APPROVED	[Yes / No]	
CHANGES REQUIRED	[Yes / No]	
TfNSW Representative	Signed:	Date:



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Schedule 7 Review Procedures

1 General

1.1 Application

This Schedule applies:

- (a) where a Document Deliverable must be submitted for Review under this Agreement (including updates to a Document Deliverable submitted for Review) (**Submitted Document**); and
- (b) to define the Review Procedures.

1.2 Types of Document Deliverables

Unless the Customer agrees otherwise, the Contractor must prepare and submit the following types of Document Deliverables for Review:

- (a) Document Deliverables which are required to fully evidence that:
 - the Agreement requirements and all Contract Specifications have been met;
 - all System and TMS Subsystem requirements:
 - (A) are satisfied by the design of the TMS Subsystem;
 - (B) will be and have been implemented by the manufacture and/or construction of the TMS Subsystem; and
 - (C) in each case have been Verified;
 - (iii) all Defects have been investigated and rectified;
 - (iv) hazards and risks in relation to, or in connection with, the TLS Activities have been mitigated so far as is reasonably practicable;
 - (v) configuration changes have been fully implemented; and
 - (vi) the process required for Review of Document Deliverables identified in this Agreement and the PR have been followed;
- (b) Document Deliverables that are listed as Document Deliverables for submission in any Project Plan;
- (c) Technical Documents;
- (d) Design Documentation;
- (e) Document Deliverables that are deemed significant by the Customer as contemplated by the Customer's 'Process for the Engineering Diligence Review for AEO Designs and Assets';
- (f) Document Deliverables that are required to operate the NSW Rail Assets;

- (g) Document Deliverables that are updated or amended, having previously achieved a Confirmed Document status; and
- (h) Document Deliverables that are otherwise required to be submitted to the Customer for Review and/or approval under this Agreement, the PR or the Services Schedule including those Document Deliverables required to be submitted by the Contractor as part of its obligations as an AEO.

1.3 Timing of submission

- (a) The Contractor must submit the above Document Deliverables to the Customer or the Reviewing Party (as applicable) for Review:

in accordance with:

- (A) the timeframes set out in a Work Order;
- (B) the Contract Specifications;
- (C) the Design Development Requirements (as applicable); and
- (D) the Review Procedures;

in each case:

- (A) on or before the time required in the documents referred to in paragraph (i); and
- (B) where no specific time is so provided, allowing a reasonable time period to enable the Reviewing Party to Review the Submitted Documents and for the Contractor to implement any updates to the Document Deliverable as contemplated by clause 8.6 (Updating of Document Deliverables) without any delay to the progress of the TLS Activities.

- (b) The Contractor warrants that a Document Deliverable will by the time required by paragraph (a)(ii):

satisfy the requirements of the Agreement including the Contract Specifications and the Services Schedule; and

be and remain at all relevant times fit for purpose.

Attachment A Review Procedure

1 Submission and review

1.1 Submission

When Submitted Documents are submitted for Review, the submission must include:

- (a) details of the Submitted Document, its nature and the relevant clause, schedule or annexure of this Agreement under which it is submitted for Review;
- (b) the Submitted Document itself; and
- (c) any other information required under this Agreement or otherwise necessary for the Customer to review the Submitted Document and respond in accordance with these Review Procedures.

1.2 Review

- (a) Where this Agreement requires the Contractor to submit a Submitted Document for Review, the Customer may elect to review the Submitted Document(s) itself or to appoint another entity to perform the review on its behalf (the entity responsible for conducting the review being the **Reviewing Party**).
- (b) The Reviewing Party may review, or may appoint another person to review (which person will be the Reviewing Party for the purposes of this Schedule), the Submitted Document and provide any comments in writing to the Contractor in accordance with these Review Procedures and this Agreement within the Review Period.

1.3 Review Period

The 'Review Period' for a Submitted Document is twenty (20) Business Days (or such longer period as the parties may agree) from the date the Reviewing Party receives the relevant information reasonably required to support the request for Review or comment or in order to make the election or determination. Provided that in each case if at any time during the Review Period the Reviewing Party reasonably requires additional information concerning the request for Review or comment or in order to make the election or determination and such information is available or able to be obtained if the Contractor uses reasonable endeavours to obtain it, then the Review Period will not include the time that the Contractor takes to provide that information after the request for that additional information is made.

2 Further Information

The Contractor must as soon as reasonably practicable upon request by the Reviewing Party submit any further information, data or documents, and make available appropriately qualified Contractor Personnel, that the Reviewing Party reasonably requires in order to be able to review the Submitted Document and respond in accordance with these Review Procedures.

3 Comments on Submitted Documents

3.1 No Comment on Submitted Document

The Reviewing Party may return a Submitted Document to the Contractor with or without comments. If the Reviewing Party has no comments on a Submitted Document, the Reviewing Party may mark that document with a statement 'No comment'.

3.2 No intention to comment

If the Reviewing Party decides that it does not intend to Review, comment on or respond to any Submitted Document submitted in accordance with section 1.1 (Submission) within the Review Period it may notify the Contractor of the same, and upon receipt of such notification, the Reviewing Party will be deemed to have returned the Submitted Document to the Contractor marked with the statement 'No comment'.

3.3 Failure to comment

Subject to section 3.4 (Late comments), if a Reviewing Party has not commented on or responded to any Submitted Document in accordance with section 1.1 (Submission) by the day that is fifteen (15) Business Days into the Review Period, then:

- (a) the Contractor must immediately notify the Customer; and
- (b) if the Reviewing Party has not, within the Review Period, commented or responded or requested additional time to Review, the Reviewing Party will be deemed to have returned the Submitted Document to the Contractor marked with the statement 'No comment'.

3.4 Late comments

If the Reviewing Party fails to comment on or respond to any Submitted Documents within the relevant Review Period, or otherwise wishes to raise a comment on a Submitted Document after the expiry of the Review Period for the Submitted Document, the Reviewing Party may nevertheless later raise comments on the relevant Submitted Document, in which case these Review Procedures will apply to those comments as if they had been provided within the Review Period.

3.5 Response to Submitted Document

The Reviewing Party may provide comments in respect of a Submitted Document in accordance with section 4 (Grounds on which the Reviewing Party may make comments).

3.6 Substantial comments

If the Reviewing Party provides the Contractor with comments in respect of the Submitted Document under section 4 (Grounds on which the Reviewing Party may make comments), the Reviewing Party must provide sufficient details to the Contractor to substantiate those comments.

4 Grounds on which the Reviewing Party may make comments

4.1 General

The Reviewing Party may provide comments in respect of a Submitted Document and the Contractor must address those comments on the Submitted Document where the Reviewing Party considers that:

(a) a Submitted Document:

is incomplete, of poor quality or otherwise is not in a condition to allow the Reviewing Party to adequately review it;

is not fit for purpose;

(iii) does not comply with the relevant Mandatory Requirements; or

(iv) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of this Agreement in respect of the Submitted Document;

(b) the Contractor's performance of its obligations under this Agreement would be adversely affected by the implementation of the Submitted Document;

(c) any Other Contractor's or any Interface Contractor's performance of its activities, including any obligations under any relevant Interface Contractor Agreement, would be adversely affected by the implementation of the Submitted Document;

(d) the implementation of the Submitted Document or proceeding on the basis of the Submitted Document would adversely affect any right of any Rail Transport Entity under this Agreement or Interface Contractor Agreement or its ability to enforce any such right;

(e) the ability of any Rail Transport Entity to exercise their respective rights or to perform their respective obligations or responsibilities, including under this Agreement or Interface Contractor Agreement would be adversely affected by the implementation of the Submitted Document;

(f) the ability of the Customer or other Rail Transport Entity to undertake their Operations Functions or to otherwise perform their responsibilities in respect of the Network would be adversely affected by the implementation of the Submitted Document; or

(g) the implementation of the Submitted Document would be likely to result in an increase to a Rail Transport Entity's obligations or responsibilities or liabilities or potential or contingent liabilities, including under this Agreement or any Interface Contractor Agreement.

4.2 Project Plans

Where the Submitted Document is a Project Plan, or any revision of such plan, in addition to its rights under section 4.1 (General), the Reviewing Party may provide comments in respect of the Submitted Document and the Contractor must address those comments on the Submitted Document where the Reviewing Party considers that:

- (a) without limiting section 4.1(a)(iv), it does not comply with the requirements for the relevant Project Plan set out in this Agreement;
- (b) carrying out the relevant TLS Activities in the period or at the times suggested is reasonably likely to interfere with the carrying out of the Operations Functions of a Rail Transport Entity in respect of the Network or the activities of any Interface Contractor;
- (c) there is a risk that the safety of any person would be adversely affected;
- (d) the period for carrying out work under the plan would exceed or fall short of the period reasonably required for the relevant work;
- (e) the plan is otherwise not in accordance with Industry Best Practice; or
- (f) the Life Cycle Costs to the NSW Rail Assets to a Rail Transport Entity will be increased.

4.3 Technical Documents

Where the Submitted Document is a Technical Document, in addition to its rights under section 4.1 (General), the Reviewing Party may provide comments in respect of the Submitted Document and the Contractor must address those comments on the Submitted Document where the Reviewing Party considers that the relevant Technical Document:

- (a) fails to mitigate safety risk so far as is reasonably practicable;
- (b) is not a consistent or logical extension of the Confirmed Technical Document;
- (c) is not consistent with the physical configuration of the NSW Rail Assets;
- (d) fails to consider or address feedback from Stakeholders; or
- (e) is not in accordance with Industry Best Practice.

5 Document Management

The Contractor must compile and maintain a register of the date of receipt and content of each Submitted Document submitted, and must regularly update that register to record each Submitted Document to which it receives:

- (a) a response or comment from the Reviewing Party, including that response or comment; and
- (b) no response or comment or is deemed not to receive any response or comment from the Reviewing Party in accordance with sections 3.1 to 3.3.

6 Compliance with Submitted Documents

6.1 Comments on Submitted Documents

- (a) Where any Reviewing Party comments on a Submitted Document under section 4 (Grounds on which the Reviewing Party may make comments), the Contractor must, subject to paragraph (b), prior to proceeding with any relevant part of the

TLS Activities (or anything else the subject of the Submitted Document) in accordance with the Submitted Document:

amend the Submitted Document in accordance with the Reviewing Party's comments to ensure that the Submitted Document meets the requirements of this Agreement; and

re-submit the Submitted Document (as amended) to the Reviewing Party,

and the provisions of sections 1 to 7 (inclusive) will re-apply until such time as the Submitted Document is returned to the Contractor without any comment or with the statement 'No comment'.

- (b) Where minor comments that have no material impact have been made on a Submitted Document, the Customer may agree that the Submitted Document may be amended and re-submitted in accordance with paragraph (a) as part of a subsequent Review rather than prior to the Contractor proceeding with any relevant part of the TLS Activities (or anything else the subject of the Submitted Document). In such circumstances the Contractor must amend and re-submit the Submitted Document in accordance with paragraph (a) at the relevant time for Review agreed to by the Customer.

6.2 Proceeding at risk to implement Technical Package

- (a) Subject to paragraph (b), the Contractor may proceed with the relevant TLS Activities in respect of a Technical Package at its own risk notwithstanding that a Reviewing Party has:

not reviewed one or more Technical Documents related to that Technical Package in accordance with the Review Procedures; or

issued comments in respect of one or more Technical Documents related to that Technical Package in accordance with section 4 (Grounds on which the Reviewing Party may make comments) and the Contractor has not completed the process required to be completed under section 6.1 (Comments on Submitted Documents),

(Proceed at Risk).

- (b) The Contractor:

may not Proceed at Risk without the verification and subsequent written authorisation of the Customer; and

subject to paragraph (i), otherwise may only Proceed at Risk if the Contractor has:

- (A) complied with its obligations under the Review Procedures (other than completion of the process required to be completed under section 6.1); and
- (B) notified the Customer of its intention to Proceed at Risk in relation to the relevant Technical Package (**Proceed at Risk Notice**).

- (c) If the Contractor Proceeds at Risk in accordance with paragraph (a):

the Contractor must prepare the Technical Documents required for the next stage (if any) of Review contemplated in the Systems Engineering Project Plan for Review and submit it to the Reviewing Party within the times and in the manner required by this Agreement notwithstanding that the Contractor may have Proceeded at Risk in relation to that Technical Package;

the Reviewing Party may review any Submitted Documents in respect of that Technical Package in accordance with section 4 (Grounds on which the Reviewing Party may make comments) notwithstanding that the Contractor may have Proceeded at Risk in relation to that Technical Package;

- (iii) the Customer may, in addition to the rights of a Reviewing Party under section 4 (Grounds on which the Reviewing Party may make comments) of the Review Procedures, Direct the Contractor to amend, rectify, change or modify any as-built (or partially completed) Assets or Works which relate to that Technical Package to resolve any issues identified by the Reviewing Party as part of its Review under section 4 (Grounds on which the Reviewing Party may make comments) of the Review Procedures with respect to the relevant Submitted Documents; and
 - (iv) the Contractor must promptly comply with any Direction given by the Customer in accordance with paragraph (iii).
- (d) The Contractor is not entitled to make any Claim against the Customer arising out of or in connection with the exercise by the Contractor of its right to Proceed at Risk in accordance with paragraph (a).

7 Significance of Review

- (a) The parties acknowledge and agree that these Review Procedures are solely for the purposes of enabling the Customer to monitor the progress of, and provide feedback on, the Contractor's compliance with the requirements of this Agreement in its conduct of the TLS Activities.
- (b) Nothing which occurs under these Review Procedures will:
 - relieve the Contractor from, or alter or affect, the Contractor's liabilities, obligations or responsibilities in relation to the Submitted Document under this Agreement or under any Mandatory Requirement;
 - prejudice the Customer's rights against the Contractor under this Agreement or under a Mandatory Requirement; or
- (iii) be construed as a Direction by the Customer to do or not do anything.
- (c) The Customer does not assume or owe any duty of care to the Contractor to review or, if it does review, in reviewing the Submitted Documents submitted by the Contractor for errors, omissions or compliance with this Agreement or any Mandatory Requirement.

Schedule 8 Design Activities

1 Design Documentation

- (a) This section should be read in conjunction with other parts of this Agreement that relate to the development of Design Documents, including in particular:
- clause 8 (Document Deliverables);
 - Schedule 7 (Review Procedures); and
 - (iii) the Design Development Requirements set out in the PR.
- (b) The Contractor agrees that:
- the purpose of the Design Development Process is:
- (A) to optimise the design of the Asset/Milestone; and
 - (B) to develop, refine and finalise the Design Documentation through to Confirmed Documents; and
- the Design Development Process will be a consultative and progressive process, and will involve, amongst other things, appropriate consultation between Stakeholders, the Contractor, Other Contractors and the Customer.
- (c) The Contractor must conduct and manage, and must provide all resources required for the conduct of, all aspects of the Design Development Process.

2 Design Development Process overview

The Contractor must:

- (a) design, document and comply with the Systems Engineering Management Plan for the conduct of the Design Development Process in a timely fashion, and:
- so as to meet the relevant times set out in a Work Order;
 - at the times and in accordance with the process set out in the PR; and
 - (iii) at the times and by the dates set out in a Work Order;
- (b) except to the extent the Customer agrees otherwise, ensure that the Design Documents are submitted for Review in the sequence and at the time described in the Systems Engineering Management Plan, and, on submission, must be developed to the level described in the Systems Engineering Management Plan;
- (c) except as set out in the Systems Engineering Management Plan or agreed by the Customer in writing, develop the Design Documents through each Design Phase until it is a Confirmed Document;

- (d) for each Design Phase, as relevant:
- develop, consult on, submit for Review, respond to the Reviewing Party's comments on and refine the Design Documents all in accordance with section 3 (Design development coordinator obligations), the Design Development Requirements in the PR and the Review Procedures; and
 - facilitate and participate in the Design Presentations contemplated in section 5 (Design Presentations) and the interactions with Stakeholders and Other Contractors contemplated under the Design Development Requirements in the PR; and
- (e) in developing Design Documents for Review, ensure that the input of the Customer (and, where applicable, other Stakeholders and Other Contractors arising from prior interactions contemplated under the Design Development Requirements in the PR) is addressed.

3 Design development coordinator obligations

- (a) The Contractor must:
- without prejudice to its obligations under Schedule 21 (Governance and Management), convene and manage meetings with the Customer in respect of the design of the TMS Subsystem;
 - convene and manage all Design Presentations;
 - (iii) manage the submission of the Design Documents to the Customer or the Reviewing Party (as applicable) in accordance with the Review Procedures and the Project Plans; and
 - (iv) otherwise consult with the Customer throughout the Design Development Process,
- in accordance with the Systems Engineering Management Plan and this Schedule 8.
- (b) If the Contractor does not properly co-ordinate the submission of Design Documents (whether due to the level of development, content, or timing of submission or otherwise not being in accordance with the Systems Engineering Management Plan or this Agreement):
- the Customer or the Reviewing Party (as applicable) may require the Contractor to re-submit the nominated Design Documents in a compliant and co-ordinated way within a time period determined by the Customer; and
 - the Contractor will not be entitled to make any Claim against the Customer in respect of any resulting delay.

4 Collaborative Design

- (a) The Contractor must coordinate and attend one or more initial collaborative design meetings with the Customer to:

commence planning of the Design Development Process;

discuss and develop:

- (A) appropriate protocols and processes for the submission of Design Documents to the Customer for Review;
- (B) a nominal schedule for Design Development Presentations and meetings with Stakeholders and Other Contractors; and
- (C) appropriate protocols and processes for conducting the meetings and recording their outcomes.

- (b) The Contractor must fully support any design working group established by or on behalf of the Customer (**Design Working Group**), including by ensuring attendance of and participation in the group of such number of suitably qualified Contractor Personnel as required by the Customer from time to time. The objectives of the Design Working Group will be to:

facilitate discussion on all design issues relating to the Asset/Milestone;

informally exchange information regarding the development of design of the Asset including when appropriate:

- (A) the manner in which and times by which the Design Documentation is to be completed;
- (B) number, names and outlines of the content of documentation packages which will be submitted;
- (C) types of documents to be included in each package;
- (D) approximate numbers of drawings to be included in each package; and
- (E) names of Government Authorities and other persons having jurisdiction over matters which may be relevant to each package;

(iii) set direction for future design processes and schemes;

(iv) meet regularly but in any event as required to keep the Customer informed regarding the progress of the Design; and

(v) consider the Customer's feedback on the design process.

- (c) It is not intended that the Design Working Group will:

avoid, replace or supplant the operation of Schedule 7 (Review Procedures);
or

generate presentation materials for subsequent consideration and formal evaluation.

- (d) Without limiting any other provision of this Agreement, nothing which occurs during a Design Working Group meeting or as part of the process for such meetings will:

relieve the Contractor of its obligations, or constitute a waiver of any of the Customer's rights, under this Agreement; or

be constructed as a Direction or notice by the Customer to do or not to do anything and the parties confirm that all discussions, debates, disagreements and resolutions on any matters raised at meetings of the Design Working Group are only for the purpose of satisfying the objectives in paragraph (b) and will not give rise to any obligation on the part of the Contractor to comply with anything which the Customer or the Customer's advisors say or do as part of the process for such meetings.

- (e) The Customer is entitled to invite and have third parties (and their consultants) attend and participate in Design Working Group meetings.

5 Design Presentations

- (a) The Contractor must organise, manage and undertake, in collaboration with the Customer, Stakeholders and Other Contractors, appropriate meetings (**Design Presentations**):

within ten (10) to fifteen (15) Business Days after the submission of the Technical Documents to the Customer for Review; and

otherwise at the request of the Customer (acting reasonably),

and in all cases, at convenient times to facilitate attendance by the Stakeholders and other relevant Third Parties.

- (b) The Contractor must give the Customer and other proposed attendees no less than ten (10) Business Days' notice of the conduct of a Design Presentation, stating the date and time of the Design Presentation.
- (c) At each Design Presentation, the Contractor must make available sufficient members of the Designer's Team (as determined appropriately by the Contractor) and any other person reasonably requested by the Customer, to demonstrate:

the approach adopted for design, standards to be adopted, and assumptions made;

the approach to interfaces with:

- (A) other Subsystems and the Interfacing Systems;
- (B) existing structures and the surrounding environment;
- (C) Rail Transport Entities; and
- (D) Other Contractors and Interface Contractors;
- (iii) the status of review of the Design Documentation by the relevant Government Authorities;
- (iv) how the current proposed Design Documentation reflects the Concept Design; and

- (v) the interrelationship with other design elements of the Assets.
- (d) The Contractor must include in each Design Presentation such materials as are reasonably required for the Customer (and any other persons the Customer reasonably requires) to understand and comment on the concepts and details the subject of the Design Presentations.
- (e) Without prejudice to the foregoing provisions of this section, the Contractor must also attend design coordination meetings when requested to do so by the Customer, including for the purpose of identifying, reviewing, coordinating or resolving any matters of common interest between the Contractor and Other Contractors.
- (f) The purpose of the Design Presentations is:
 - for the Contractor to present the content and intent of the relevant Design Documentation to the Customer after the Customer has first had reasonable opportunity to familiarise itself with the Design Documentation;
 - to give the Customer the opportunity to provide input into the development of the Design Documentation by participating in a consultative process between the Contractor, Stakeholders, Other Contractors, and any nominated Associate of the Contractor, the Customer, Stakeholders and Other Contractors; and
 - (iii) to enable the Customer to obtain a better understanding of, and to query, the Contractor's approach to the Asset/Milestone before completion of the Customer's review.



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Schedule 9 Verification

1 Obligation to conduct Verification Activities

1.1 Verification Activities

- (a) The level of Verification Activities required will be specified in the relevant Work Order.
- (b) If the Contractor is required to conduct Verification Activities then the Contractor must carry out the Verification Activities in accordance with this Agreement, including:
 - clause 5 (Supply obligations);
 - this Schedule 9;
 - (iii) the Verification Plan, Verification Procedure and Verification Program;
 - (iv) the Testing and Commissioning Plan;
 - (v) the Contract Specifications; and
 - (vi) the requirements of the Work Order under which the Verification Activities are being performed.
- (c) The Customer (and its nominees, including the System Integrator) may, but are not obliged to, attend and witness the conduct of all Verification Activities.
- (d) The Customer may Direct that any part of an Asset not be covered up or made inaccessible during Verification Activities without the Customer's prior written consent.

2 Integration and operational testing

The Contractor acknowledges and agrees that supporting integration, operational testing and validation of the System forms part of the Verification Activities for the TMS Subsystem, and this Schedule 9 applies accordingly (**System Verification**).

3 Defects discovered as a result of testing, review or Verification

If, as a result of any test, review or Verification (including any System Verification), any Defect is identified, the Contractor must, track, report on, manage and rectify the Defect in accordance with clause 18 (Defect Rectification) and reconduct the test, review or Verification as soon as practicable, including regression testing.

4 Additional Verification Activities

- (a) At any time, on giving the Contractor reasonable notice, the Customer may carry out, or Direct the Contractor to carry out, additional Verification Activities beyond those contemplated in the Verification Plan, Verification Procedure, Verification Program and Work Order (**Additional Verification Activities**).

- (b) The Contractor must provide all reasonable assistance required by the Customer in relation to any Additional Verification Activities.
- (c) On completion of Additional Verification Activities, the Contractor must promptly make good the work Verified (including as required by section 3 (Defects discovered as a result of testing, review or Verification) so that it fully complies with this Agreement.

5 Costs of Verification

- (a) Notwithstanding anything to the contrary, the Contractor is responsible for, must pay its own costs of, and will not be entitled to charge the Customer any Fees in respect of, supporting, participating in or conducting any Verification Activity to the extent that any Verification Activity:

involves retesting, review or Verification of:

- (A) an Asset, including the TMS Subsystem, or other item within the scope of the TLS Activities that is subject to Verification, where that Asset or item has previously failed any Verification Activity; or
- (B) the System, any Subsystem or Interfacing System where the System, Subsystem or Interfacing Subsystem has failed a Verification Activity due to a Defect in an Asset, including the TMS Subsystem, or other item within the scope of the TLS Activities; or

is an Additional Verification Activity:

- (A) required to be performed as a result of Assets or Work covered up or made inaccessible by the Contractor without the prior written approval of the Customer;
 - (B) in respect of TLS Activities undertaken to correct or overcome a Defect; or
 - (C) where the results of the Additional Verification Activity show that:
 - the TLS Activities have not been performed in accordance with this Agreement; or
 - there is a Defect.
- (b) The Contractor is responsible for and indemnifies (and must keep indemnified) each Customer Indemnified Person for their costs and any additional costs claimed or incurred by any Other Contractor or Interface Contractor in:

retesting, reviewing or verification of:

- (A) an Asset, including the TMS Subsystem, or other item within the scope of the TLS Activities that is subject to Verification, where that Asset or item has previously twice failed any Verification Activity; or
- (B) the System, any Subsystem or Interface Subsystem, where the System, Subsystem or Interface Subsystem has twice failed a

Verification Activity due to any Defect in an Asset, including the TMS Subsystem, or other item within the scope of the TLS Activities; or

an Additional Verification Activity:

- (A) required to be performed more than twice as a result of Assets or Work covered up or made inaccessible by the Contractor without the prior written approval of the Customer;
- (B) in respect of TLS Activities undertaken more than twice to correct or overcome a Defect; or
- (C) where the results of the Additional Verification Activity show on more than two occasions that:
 - the TLS Activities have not been performed in accordance with this Agreement; or
 - there is a Defect.



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Schedule 10 Acceptance

1 Obligation to conduct Acceptance

If the Contractor is required to present any Asset developed under a Work Order (or any part of it) for Acceptance (including as part of testing of the system), or the Contractor must achieve Acceptance of any Milestone under a Work Order, then the Contractor must do so in accordance with this Agreement, including:

- (a) clause 5 (Supply obligations);
- (b) this Schedule 10;
- (c) the Systems Engineering Management Plan;
- (d) the Contract Specifications; and
- (e) the requirements of any Work Order under which the Acceptance is being performed.

2 Acceptance of Document Deliverables

For any Milestones that relate to Document Deliverables that are subject to Review:

- (a) the Contractor must submit the Document Deliverable for Review in accordance with this Agreement, including the Review Procedures; and
- (b) in addition to any other applicable Acceptance Criteria, Acceptance of the Milestone will only be achieved when all relevant Document Deliverables required for that Milestone achieve 'Confirmed' status.

3 Acceptance of Assets and Milestones

- (a) For any Asset or Milestone which requires Acceptance:

the Contractor must notify the Customer at least five (5) Business Days prior to the date upon which the Contractor anticipates meeting the Acceptance Criteria for the Asset/Milestone;

the Customer will, within five (5) Business Days of receipt of a notice under paragraph (i), review the relevant TLS Activities the subject of that notice, and:

- (A) if the Customer is satisfied that the Acceptance Criteria for the Asset/Milestone have been met, issue an Acceptance Certificate for the Asset/Milestone:
 - identifying the date of Acceptance; and
 - listing any Minor Defects that the Contractor is required to rectify in accordance with section 5 (Defects on Acceptance); or

- (B) if the Customer is not satisfied that the Acceptance Criteria for the Asset/Milestone have been met, issue a Rejection Certificate to the Contractor:
- identifying the date of rejection; and
 - listing any items which must be rectified before Acceptance can occur; and
- (iii) where the Contractor receives a Rejection Certificate under paragraph (ii) then the Contractor must continue to perform the relevant TLS Activities so as to meet the Acceptance Criteria for the Asset/Milestone and thereafter notify the Customer when it considers it has met the Acceptance Criteria for the Asset/Milestone, following which paragraph (ii) and this paragraph (iii) will continue to apply until the Customer issues a notice under paragraph (ii)(A).
- (b) If the Contractor fails to give a notice required under paragraph (a)(i) or (a)(iii), the Customer may at any time and for any reason issue a notice under paragraph (a)(ii)(B) for the relevant Asset/Milestone.

4 Effect of Certificates

An Acceptance Certificate is final and binding on the parties for the purposes only of establishing the date on which Acceptance of an Asset/Milestone occurred.

5 Defects on Acceptance

- (a) It is a condition of Acceptance that the relevant Asset/Milestone is free from all Defects, other than Defects to which paragraph (b) applies and (if applicable) in respect of which the Customer has approved a Draft Defect Rectification Plan.
- (b) Without prejudice to clause 18.2 (Defect Rectification), the Customer may, in respect of any:
- Defect, advise the Contractor that the Customer will accept the Asset/Milestone, or any part thereof, despite the Defect. In such a situation, the Fees will be reduced by the amount determined by the Customer, acting reasonably, which represents the higher of the cost of correcting the Defect (or the relevant part of it) and the diminution in the value to the Customer of the relevant Asset/Milestone;
 - Defect, rectify the Defect itself or have a Third Party do so; and/or
- (iii) Minor Defect, advise the Contractor that such Minor Defect is not required to be rectified prior to achievement of Acceptance (as applicable), in which case:
- (A) the Contractor must provide the Customer with a draft plan identifying the proposed schedule for the rectification of those Minor Defects by the Contractor to occur after achievement of Acceptance (**Draft Defect Rectification Plan**); and

- (B) if the Customer rejects the Draft Defect Rectification Plan:
- the Customer must provide its written reasons for the rejection; and
 - the Contractor must resubmit the Draft Defect Rectification Plan (and this paragraph (b) will reapply until the Customer approves the Draft Defect Rectification Plan).
- (b) The Customer must act reasonably in the circumstances in determining which of the options in paragraphs (b)(i), (b)(ii) and, where applicable, (b)(iii), it elects to pursue in respect of any Defect.
- (c) For clarity, at the point at which the Customer approves the Draft Defect Rectification Plan it will become a Defect Rectification Plan and the Contractor must implement and comply with the Defect Rectification Plan.



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Schedule 11 Form of Acceptance Certificate

Acceptance Certificate

Date:

To: Siemens Mobility Pty Ltd (ABN 39 625 304 556) (Contractor)

From: Sydney Trains (ABN 38 284 779 682) (Customer)

This certificate is given in accordance with the TMS TLS Agreement between the Customer and the Contractor dated _____, with respect to the Program. Words defined in the TMS TLS Agreement have the same meaning in this certificate.

In accordance with the terms of section 3(a)(ii)(A) of Schedule 10 (Acceptance) of the TMS TLS Agreement, the Customer certifies that the following Asset or Milestone meets the Acceptance Criteria:

[insert].

The Customer hereby gives notice of the Minor Defects (if any) affecting the abovementioned Asset or Milestone, as identified in the attached list.

For the purposes of the TMS TLS Agreement, the date of this certificate is the date of Acceptance in respect of the above Asset or Milestone.

Signed for and on behalf of the Customer by:

Name

Signature

Position (Customer Representative)

Date

Attachment – List of Minor Defects

No.	Minor Defect
1	[Insert]



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Schedule 12 Form of Rejection Certificate

Rejection Certificate

Date:

To: Siemens Mobility Pty Ltd (ABN 39 625 304 556) (Contractor)

From: Sydney Trains (ABN 38 284 779 682) (Customer)

This certificate is given in accordance with the TMS TLS Agreement between the Customer and the Contractor dated _____, with respect to the Program. Words defined in the TMS TLS Agreement have the same meaning in this certificate.

In accordance with the terms of section 3(a)(ii)(B) of Schedule 10 (Acceptance) of the TMS TLS Agreement, the Customer gives notice that the following Asset or Milestone **does not** meet the Acceptance Criteria for the Asset or Milestone:

[insert].

The Customer hereby gives notice of the required rectification work which must be completed before the abovementioned Asset or Milestone may be re-submitted for Acceptance, as identified in the attached list.

Signed for and on behalf of the Customer by:

Name	Signature
Position (Customer Representative)	Date

Attachment – List of Required Rectification Work

No.	Description of Required Rectification Work
1	[insert]



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Schedule 13 Collaboration Principles

Part A - Digital Systems Team Charter

See separate document

Digital Systems Team Charter

TEAM STATEMENT

WHO WE ARE

We are a diverse, authentic team driven by a clear purpose.

We are committed to learning and growing together.

VISION

Seamless digital transformation of Sydney's rail network

MISSION

Modernising Sydney's rail systems with world class ETCS-L2 cab signalling, automatic train operation and traffic management

VALUES & BEHAVIOURS



GROWTH

We are committed to a culture of learning and growth. We actively contribute and generate opportunities to share information and best practice, creating an ecosystem of knowledge across the cluster and industry.



COLLABORATION

We support and work together towards common goals. We foster connections across the cluster, industry, and other rail networks. We leverage international expertise to deliver world-class results.



INTEGRITY

We are trusted professionals who do what we say, keep our promises and are honest. We are transparent and fair. We take personal responsibility for our work and actions.



CREATIVITY

We welcome diverse views and innovate to solve problems with the courage to speak up and challenge. We actively seek out new, better ways of working.



WELL-BEING

We embrace diversity and create a safe, respectful working environment and celebrate our differences. We believe that a flexible approach leads to good work-life balance.

PROGRAM BENEFITS

Better customer information



Lower energy consumption



Reduced journey times



Higher capacity for current and future demand



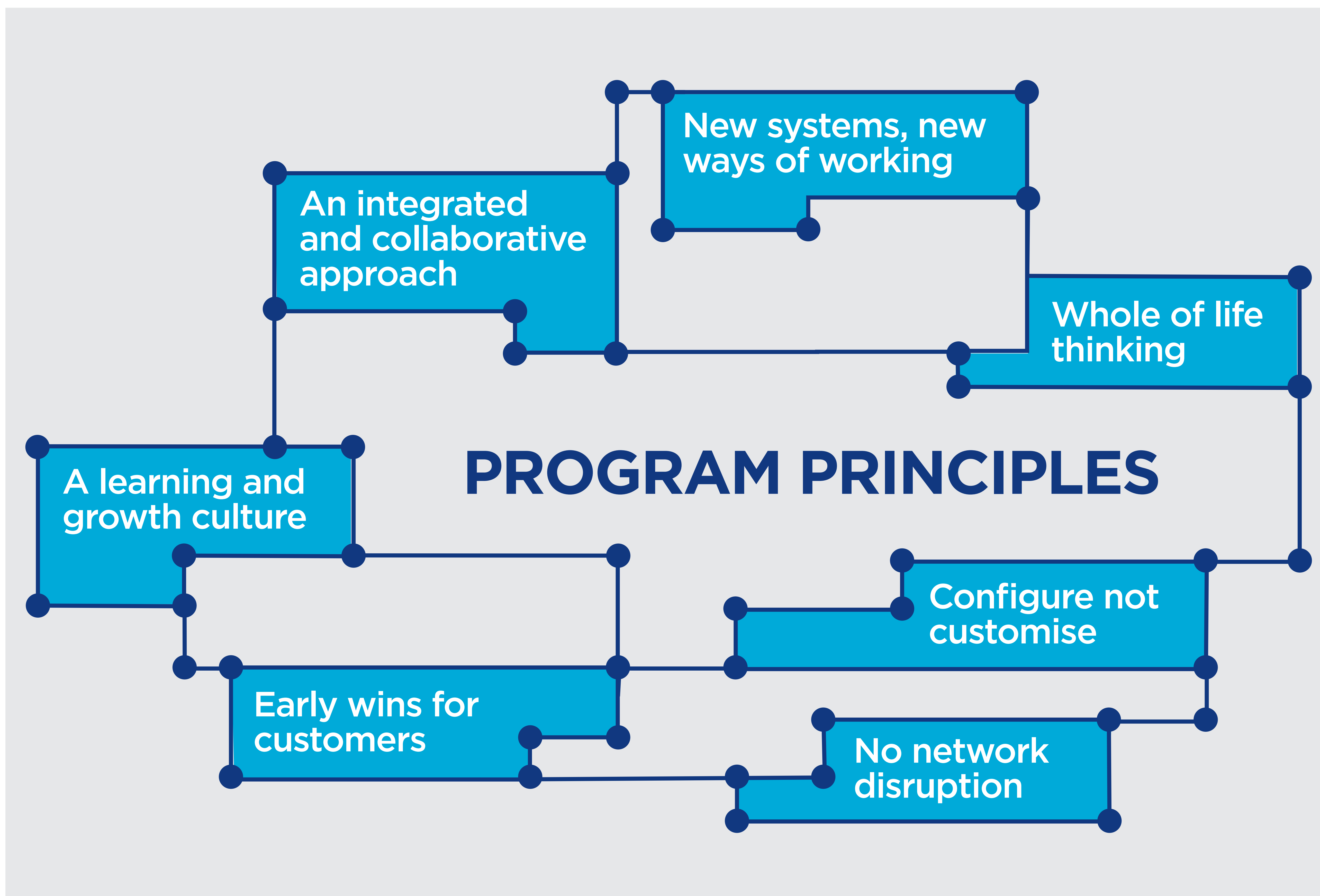
More reliable services



Lower capex and opex costs



Safer and more efficient operation and maintenance



Safer and more efficient operation and maintenance



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Part B - Draft Collaboration Principles

See separate document

Collaboration Principles

1. Purpose

- 1.1. Due to the complexity of the Program, collaboration between differing parties working on the Program is required to ensure the Program is successful.
- 1.2. Lessons learned from similar projects from around the world demonstrate that by actively encouraging collaboration between different parties, managing the complexity, risks and issues is possible.
- 1.3. Collaboration is *the process of two or more people or organisations working together to complete a task or achieve a goal*¹.

2. Collaboration Principles

The Collaboration Principles, and their respective meaning and expectation for the Program are set-out in Table 1. The intent of this Collaboration Principles schedule is for it to be jointly developed in consultation with Collaboration Participants as part of the collaboration framework established for management of the Program and may be updated from time to time.

Table 1:

	Principle	What does this mean?	Expectation
1.	Program first (best for Program)	<ul style="list-style-type: none"> • Shifting the perspective from self-interest (individual party's interest) to joint interests • Understand that all parties win or lose together (reputation risk of all parties needs to be managed) 	<ul style="list-style-type: none"> • Commitment of all parties to the success of the Program (signing of Collaboration Charter) • Each party must not only take ownership of its own individual work and inputs but also the outcomes of the whole Program • The parties will work together to overcome great challenges and make the Program a success for all participants • The parties will celebrate the Program successes
2.	Be open (information sharing)	<ul style="list-style-type: none"> • Communicating openly, freely and honestly at all levels in the Program and freely sharing information appropriate to enable positive Program outcomes, whilst respecting each other's confidential information and intellectual property 	<ul style="list-style-type: none"> • Communicate regularly, honestly, openly, and skilfully – including when conflicts arise • Maintain open risk and opportunity registers (without prejudice)

¹ Insert reference Holding definition (agree definition)

Digital Systems Program - Collaboration Principles

	Principle	What does this mean?	Expectation
		<ul style="list-style-type: none"> Proactive communication and information sharing is key to Program success Good communications enable good relationships and efficient operations 	<ul style="list-style-type: none"> Proactively share information in the spirit of collaboration, efficiency, that may assist other parties in successful delivery and support of the achievement of common goals
3.	Respect and understanding for all people on the Program	<ul style="list-style-type: none"> In order to achieve collaboration all parties must individually and collectively respect and be understanding of the perspectives of each party 	<ul style="list-style-type: none"> Listen to and acknowledge the different views and perspectives and give fair consideration to those views and perspectives in the context of success of the whole Accept that there may be a need for trade-offs in order to ensure the success of the Program and the subsequent success of all parties involved Endeavour to create safe spaces for open dialogue where parties can trust that their vulnerabilities will not be exploited and their ideas will be considered, valued and respected Have brave and honest discussions that will facilitate innovation in approach and delivery of the Program
4.	Raising issues early without blame and shame		<ul style="list-style-type: none"> Each party will own its mistakes and seek to remedy them quickly Accept that things don't always go to plan and that all parties will need to proactively support each other in the resolution of issues or the remedy of errors Adopt a 'win-win' mindset and ensure those involved in administering agreements between parties have the skills required for 'win-win' outcomes
5.	Work through uncertainty by building on each other's ideas		<ul style="list-style-type: none"> Participate in collaborative discussions and ensure that the right people within each party's respective organisations are involved and informed in a timely manner

3. Collaboration Charter

- 3.1. A structured approach to establishing collaboration is required so all parties understand what is and expectations are of collaboration on the Program.
- 3.2. A jointly developed commitment to collaboration between TfNSW and Collaboration Participants will be encapsulated in an agreed collaboration charter to be developed during the Delivery Phase of the Program.
- 3.3. The agreed collaboration charter will include two levels:

Level 1 – Strategic overview

This includes the agreed vision of Program outcomes, strategic goals with measurements, integrated milestones, and identification of collaboration governance.

Level 2 – Processes and behaviours to support the collaborative commitment

This includes a collaborative issue resolution process, interface management and collaborative behaviours.

4. Collaborative Ways of Working

- 4.1. The agreed collaboration charter will be supported by agreed collaborative ways of working on the Program developed during the Delivery Phase. These will include, a commitment by each Collaborative Participant to:
 - its leadership belief in and promotion of collaboration;
 - a co-located office space;
 - sharing of risk and issue registers;
 - use of TeamBinder for document management;
 - use of collaborative tools to present project management information and evidence of issues; and
 - training of team to support the agreed collaborative behaviours.



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Schedule 14 Performance Framework

See separate document



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Schedule 15 Pricing Terms

See separate document



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Schedule 15A Pricing Tables

See separate document



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Schedule 15B Resource Unit Definitions

See separate document



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Schedule 15C Labour Rates

See separate document



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Schedule 15D Pricing Volumes

See separate document



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Schedule 16 Interface Requirements

1 Interface co-operation and collaboration

1.1 General

- (a) Without limiting section 2 (Interfacing Systems), the Contractor:

acknowledges the importance of active co-operation and collaboration with Interface Contractors to facilitate the overall maintenance and support of the System and delivery of the Program; and

agrees to provide such co-operation and assistance to Interface Contractors and do everything reasonably possible to ensure, where relevant, the ongoing interconnection and compatibility between the TMS Subsystem and Interfacing Systems, and between the Works and Interfacing Works as defined in Schedule 5 (Service Schedule).

- (b) The Contractor must comply with the Customer's reasonable requests to co-operate and collaborate with Interface Contractors, including in connection with the effective and efficient delivery of maintenance and support for the System and delivery of the Program.

- (c) In addition, the Contractor must:

provide all reasonable co-operation and collaboration required by the Customer to enable the maintenance and support (including future design, development and deployment) of the System, the TMS Subsystem, Interfacing Systems and associated services to be carried out in a co-ordinated, effective and timely manner, including in respect of:

- (A) management and resolution of incidents, issues and problems;
- (B) assessment of variation requests;
- (C) technical change management; and
- (D) Stakeholder engagement and consultation;

cooperate and coordinate with the owners of all existing services, as part of the TLS Activities;

- (iii) co-operate, support, assist and share information and Materials with Interface Contractors in a timely manner to help enable each Interface Contractor to comply with its obligations to the Customer and, where relevant, perform maintenance and support of its Interfacing System;
- (iv) not unduly interfere with, obstruct, impede, damage or delay the works, performance or operations of Interface Contractors or any Interfacing Works;
- (v) work with each Interface Contractor, to mitigate so far as is reasonably practicable those risks, including risks to the Program, that are within the Contractor's control, including any risk to health and safety;

- (vi) avoid any unnecessary duplication of effort;
- (vii) identify and raise at the appropriate governance forum potential issues and risks before they have a chance to affect other Interface Contractors or the Customer so as to avoid undue cost, risk and disruption to Interface Contractors, Interfacing Works, Interfacing Systems or the Program;
- (viii) assist with any testing and/or any quality assurance activities to be undertaken by any Rail Transport Entity or any Interface Contractor;
- (ix) provide prompt access to any of their resources, systems, Software and other Materials required by the Interface Contractors to enable them to provide their Interfacing Works and to deal with security and/or compliance issues, assessments and actions;
- (x) permit Interface Contractors to execute the Interface Work on the applicable parts of the Delivery Locations or on any adjacent property to the Delivery Locations:
 - (A) at the same time as the Contractor is performing the TLS Activities; and
 - (B) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Customer,

and for this purpose ensure they have safe, clean and clear access to those parts of the Delivery Locations, or property adjacent to the Delivery Locations, required by them for the purpose of carrying out their work;

- (xi) protect the Works and other improvements on the Delivery Locations in Control of the Contractor from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors;
- (xii) fully co-operate with Interface Contractors, and do everything necessary to facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be Directed by the Customer;
- (xiii) be responsible for coordinating the TLS Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Customer (in accordance with paragraph (xiv)) SWMSs for those parts of the Works which are adjacent to or interface with any Interface Work, at least fifteen (15) Business Days prior to commencing the work described in the relevant SWMS;
- (xiv) provide for the purposes of paragraph (xiii) (unless otherwise Directed by the Customer) the number and form of copies of the SWMSs specified in this Agreement; and
- (xv) attend interface coordination meetings chaired by the Customer or its nominee with Interface Contractors and others each fourteen (14) days, or at other times to be advised by the Customer, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces.

1.2 Contractor Inputs and information sharing

- (a) Without limiting any other term of this Agreement, but subject to paragraph (g), the Contractor agrees to provide information and Materials relevant to its Works, the TMS Subsystem and the TLS Activities to the Customer, TfNSW, the System Integrator and any Interface Contractor as necessary or desirable to facilitate the effective and efficient maintenance and support (including future design, deployment and development) of the System, the Program, the TMS Subsystem and any Interfacing System, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work or Interfacing Systems with the Works, TMS Subsystem or the TLS Activities (the **Contractor Inputs**). This information and Material may include details of all operating environments, APIs, tools, methodology information, system constraints, information concerning interfacing, interoperation and operating parameters, information concerning defects and incidents, information regarding scheduling and planning.
- (b) Where information or Materials are required from an Interface Contractor, the Contractor agrees to give at least ten (10) days (except in special circumstances) and at all times reasonable notice requesting the information or Materials and specifying the date by which such information or Material is required. However, the Contractor must ensure that any request under this paragraph provides the Interface Contractor with the longest possible time for the provision of the information. A copy of each request must also be provided to the Customer.
- (c) Where any Contractor Inputs are required to be provided by the Contractor, such Contractor Inputs, must be:
- provided in a timely manner and, where the date requested is reasonable, by the requested date; and
 - of a high quality and standard.
- (d) The Contractor must:
- ensure and warrant that its Contractor Inputs are accurate; and
 - cooperate, meet with, liaise, and share information so that the Contractor and each Interface Contractor each comply with the provisions of the relevant Approvals.
- (e) All communications and correspondence between the Contractor and any Other Contractor or Interface Contractor must be via the Customer's chosen collaboration and document management tool as notified to the Contractor from time to time. The Contractor must ensure that any material oral conversations must also be recorded and confirmed in writing using that collaboration and document management tool. The Contractor acknowledges that the Customer will have visibility of and access to all such communications and correspondence.
- (f) The Contractor must ensure that a copy of all Contractor Inputs provided or received by that Contractor are sent to the Customer's chosen collaboration and document management, with a copy to the Customer.
- (g) The Contractor may exclude pricing information, and information from which pricing can be determined from the Contractor Inputs that it makes available to Interface Contractors.

1.3 Co-ordination of works

- (a) The Contractor agrees to identify and notify the Customer and the relevant governance forums of any dependencies and risks associated with the delivery of its TLS Activities having regard to the services provided by other Interface Contractors.
- (b) The Contractor agrees to proactively and carefully plan and co-ordinate and interface its activities with those of Interface Contractors in a manner which supports the maintenance and operation of the System, including by:
 - providing sufficient allowance for the performance of activities by Interface Contractors;
 - (re)allocating resources and rescheduling activities and otherwise seeking to mitigate the effect of any program restructure or delay, regardless of the cause or causes of such delay or program restructure;
 - (iii) reviewing all programs provided by Interface Contractors and confirming that they adequately allow for the TLS Activities and the interfaces of the Interface Work with the TLS Activities;
 - (iv) monitoring the progress of the Interface Work (to the extent practicable);
 - (v) notifying the Customer of any interface or sequence of activities that may affect the performance of the TLS Activities or Interface Works; and
 - (vi) providing the Customer and Interface Contractors with sufficient information about the current and expected TLS Activities to assist them to coordinate Interface Works with the TLS Activities.
- (c) Further, the Contractor acknowledges that:
 - the timing of the Interface Contractors' activities will be as discovered by the Contractor;
 - any delay in the performance of the TLS Activities or in the Contractor providing information to, or co-operating and co-ordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Program in a way which may lead to the Customer and/or its Associates suffering or incurring additional costs, losses and damages; and
 - (iii) it will plan and perform its TLS Activities in a manner which recognises those potential impacts and minimises any potential delay or disruption.

1.4 Fix first

- (a) The Contractor must cooperate with the Customer, TfNSW, the System Integrator and Interface Contractors, and not refuse to be involved, in any resolution, rectification or investigation of an incident, issue or problem, even where it considers it is not responsible for that incident, issue or problem. Further, the Contractor commits to not permitting legal or contract impacts or discussions to delay resolution, rectification or investigation actions.

- (b) The Contractor must use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
- the provision of information;
 - the obtaining of information;
 - (iii) the adequacy of information provided to, or received from, Interface Contractors;
 - (iv) the compatibility and integration of the Works and TMS Subsystem with the Interface Work and Interfacing Systems;
 - (v) coordination in accordance with these Interface Requirements and the Collaboration Principles; and
 - (vi) technical issues with the information provided to, or received from, Interface Contractors.
- (c) Without limiting Schedule 17 (Issue Resolution Procedure), the Contractor must, in the event that, including despite using its best endeavours, and working closely and iteratively with the Interface Contractors, the Contractor and any Interface Contractor fail to resolve a problem between them:
- give an Initial Early Warning Notice in accordance with Schedule 17 (Issue Resolution Procedure) to the Customer with a copy to the Interface Contractor describing the problem; and
 - attend any coordination meetings as requested, and to be chaired, by the Customer or its nominee, and in good faith work with those present to attempt to resolve the problem.
- (d) The Contractor must promptly advise the Customer of all matters arising out of the liaison with Interface Contractors that may involve a change to the delivery of the TLS Activities under this Agreement or otherwise have an adverse effect upon the Program.

1.5 Interface Disputes

- (a) The Contractor must promptly give the Customer an Initial Early Warning Notice of any interface issue or dispute with any Interface Contractor, and the process set out in Schedule 17 (Issue Resolution Procedure) applies.
- (b) Without limiting paragraph (a), following receipt of the Contractor's Early Warning Notice under paragraph (a), the Customer may:
- convene a meeting between the Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Customer); and
 - work in good faith with the Contractor and the Interface Contractor to resolve the issue or dispute.

1.6 No Claims arising out of Interface Work

The Contractor:

- (a) acknowledges and agrees that:

no act or omission by an Interface Contractor in connection with any Interface Works will, whether or not it causes any delay, disruption or interference to the TLS Activities, entitle the Contractor to make a Claim against the Customer, except as set out in section 2 (Interfacing Systems); and

except where the Customer Directs a Variation in circumstances where the Contractor has fully complied with these Interface Requirements, the Contractor is not entitled to make, and the Customer will not be liable upon, any Claim by the Contractor arising out of or in connection with:

(A) the Interface Contractors carrying out their work; or

(B) any act or omission of an Interface Contractor; and

- (b) warrants that the Fees contain sufficient allowances for the assumption by the Contractor of the obligations and risks under these Interface Requirements, including the cost of all the design iterations and other Works required to accommodate Interface Works and interface and integration with each Interfacing System.
- (c) This section 1.6 does not apply to a Third Party who is not providing goods or services to a Rail Transport Entity in relation to the Program and is not listed in Schedule 2 (Agreement Details) or in a Work Order.

2 Interfacing Systems

- (a) The Contractor must maintain and support the TMS Subsystem in accordance with the ICD and ISD. Any changes that may be made to the TMS Subsystem as part of the TLS Activities (including through an Update or Minor Enhancement) must be consistent with the ICD and ISD and otherwise be backwards compatible with the technical interface unless otherwise agreed. Any variations to the ICD and ISD must be made under the Delivery Agreement and not under the TLS Agreement.
- (b) Provided that each Interfacing System is built by the relevant Interface Contractor in accordance with the ICD, the Contractor is liable for the maintenance and support of the technical interface with that Interfacing System and ensuring that the TMS Subsystem and that Interfacing System are fully integrated and compatible with each other so as to enable the TMS Subsystem to operate in accordance with the Contract Specifications.
- (c) A failure by the relevant Interface Contractor to maintain and support the Interfacing System in accordance with the ICD may, if it is an Excusable Event, entitle the Contractor to relief from Service Levels as an Excusable Event under Schedule 14 (Performance Framework).
- (d) Except as outlined in paragraph (c), the Customer will not be liable upon any Claim by the Contractor arising out of or in connection with any technical interface with an Interface Contractor.

Schedule 17 Issue Resolution Procedure

1 General Principles

- (a) The parties acknowledge and agree that the objective of the Issue Resolution Procedures as set out in section 2 (Issue Resolution Procedure) is for the parties to work together to promptly resolve Issues through negotiation.
- (b) Neither party may issue a Dispute Notice under section 1 (Disputes) of Schedule 18 (Dispute Resolution Procedures) in respect of an Issue unless the process specified in section 2 (Issue Resolution Procedure) of this Schedule has been followed.
- (c) Nothing in this Schedule:
 - is intended to prevent the Customer from extending the timeframes associated with the Issue Resolution Procedures or from requiring additional information to be provided and/or notices to be resubmitted by the Contractor in connection with any Issues raised by the Contractor; or
 - is intended to prevent the parties from agreeing an alternative timeframe associated with the Issue Resolution Procedures in respect of a particular Issue.
- (d) If a provision of this Schedule requires a party to give notice in accordance with this paragraph (d), then that party must give that notice:
 - to the other party; and
 - to the chair of the relevant meeting or forum at which the matter is required to be discussed or escalated, care of the Customer Representative.
- (e) If a provision of this Schedule requires the Contractor to give a particular notice to the Customer in respect of an Issue, the Contractor will only do so once in respect of that Issue and will not provide multiple such notices in respect of that Issue (including where that Issue remains ongoing).

2 Issue Resolution Procedure

2.1 Issue Resolution Process

- (a) Subject to section 1 (General Principles), unless otherwise agreed in writing all Issues must be raised in accordance with, and follow the process specified in this section 2 as illustrated in Attachment A (Issue Resolution Procedure).
- (b) Without prejudice to paragraph (c) (including as to the timeframes set out in paragraph (c)), the parties will seek to resolve any and all Issues during the ten (10) Business Days following the dates identified in paragraphs (c)(i) or (c)(ii) (as applicable), such that those Issues are dismissed without the requirement for further action to be taken. If the parties are able to so resolve any such Issues, the party that has raised the Issue will not be required to provide an Initial Early Warning Notice in respect of the Issue in accordance with paragraph (c).

- (c) Notwithstanding paragraph (b), within ten (10) Business Days of:

for Issues as described in clauses 26.1(a)(i) and 26.1(a)(iii), the earlier of:

- (A) the date when the party that has raised the Issue first became, or could reasonably have become, aware of the occurrence of the Issue; and
- (B) the date when the party that has raised the Issue could reasonably have been aware of the entitlement to raise the Issue; and

for Issues as described in clause 26.1(a)(ii), the expiry of the relevant timeframes or time periods contemplated in clause 26.1(a)(ii) for resolution of the Matter which gives rise to the Issue,

the party that has raised the Issue must provide an **Initial Early Warning Notice** in accordance with section 1(d) for discussion at the next occurring **Contract Management and Governance Meeting**, or at a specially convened meeting of the Contract Management and Governance Meeting at a time agreed by both parties where the next occurring meeting is not scheduled to occur within five (5) Business Days of recipient party's receipt of the Initial Early Warning Notice.

- (d) If the whole or any part of an Issue raised in the **Initial Early Warning Notice** is not resolved at the **Contract Management and Governance Meeting**, then, within ten (10) Business Days of such meeting, the party that has raised the Issue must deliver a **Detailed Early Warning Notice** in accordance with section 1(d) for further discussion of the Issue at the **Contract Management and Governance Meeting**.
- (e) Where the Contractor is the party that has raised the Issue, within ten (10) Business Days of the date the Customer receives a Detailed Early Warning Notice, the Customer may request the Contractor to provide additional information and materials and the Contractor must provide the additional information and material as a re-submission of the Detailed Early Warning Notice within such time as reasonably required by the Customer.
- (f) Subject to section 1 (General Principles) and paragraphs (g) and (h):

within five (5) Business Days of the receiving party's receipt of the Detailed Early Warning Notice under paragraph (d) (or, where the Contractor has raised the Issue, the later to occur of the Customer's receipt of the Detailed Early Warning Notice under paragraph (d) and the Customer's receipt of additional information and materials under paragraph (e) (if applicable)), the parties agree to convene the **Contract Management and Governance Meeting** to discuss and seek to resolve the **Detailed Early Warning Notice**. The parties agree that the Contract Management and Governance Meeting is solely empowered to resolve Issues such that those Issues are dismissed without the requirement for further action to be taken;

within two (2) Business Days of the meeting of the Contract Management and Governance Meeting referred to in paragraph (i) either party may escalate the Issue to the **Executive Leadership Team Meeting** by notice under section 1(d) if the whole or any part of an Issue raised in the Detailed Early Warning Notice is not resolved (as anticipated in paragraph (i)) at such meeting;

- (iii) within three (3) Business Days of the receiving party's receipt of a notice under paragraph (ii), the parties agree to convene the **Executive Leadership Team Meeting** to discuss and seek to resolve the **Detailed Early Warning Notice**;
- (iv) in respect of Issues raised by the Contractor only, if the Executive Leadership Team Meeting is unable to resolve the Issue, the Customer Representative may (at its sole discretion) elect to make a unilateral determination in respect of the Issue, in which case the Contractor may elect to either
 - (A) approve such determination (which determination will then be final and binding), in which case the Contractor must issue a Withdrawal Notice in accordance with section 2.4(a)(i), or
 - (B) reject such determination, in which case paragraph (v) will apply;
- (v) if:
 - (A) in respect of Issues raised by the Contractor only, the Customer Representative elects not to exercise its right under paragraph (iv); or
 - (B) in respect of Issues raised by the Customer only, if the meeting of the Executive Leadership Team Meeting referred to in paragraph (iii) is unable to resolve the whole or any part of the Issue,

then within two (2) Business Days of the meeting of the Executive Leadership Team Meeting referred to in paragraph (iii) either party may escalate the Issue to the **TMS TLS Contractor Relationship Meeting** by notice under section 1(d);
- (vi) within three (3) Business Days of the receiving party's receipt of a notice under paragraph (v), the parties agree to convene the **TMS TLS Relationship Meeting** to discuss and seek to resolve the Issue. If the parties are able to resolve the Issue at the meeting of the TMS TLS Relationship Meeting but such that the Issue requires further action to be taken in respect of it, the resolution will be raised for ratification at the next occurring **Executive Leadership Team Meeting**, or at a specially convened meeting of the Executive Leadership Team Meeting at a time agreed by both parties where the next occurring meeting is not scheduled to occur within five (5) Business Days of the Issue having been resolved at the meeting of the TMS TLS Relationship Meeting;
- (vii) if the TMS TLS Relationship Meeting referred to in paragraph (vi) is unable to resolve the whole or any part of the Issue, either party may notify the other party under section 1 (General principles) of Schedule 18 (Dispute Resolution Procedures).
- (g) If a regular meeting of the meeting or forum as outlined in Schedule 21 (Governance and Management) is not scheduled to occur within the timeframes required in paragraph (f), then the parties must convene a special meeting or forum to meet at a time that is agreed but within the timeframes required by paragraph (f).
- (h) If, at any point in the Issue Resolution Procedures set out in this section 2.1 (Issue Resolution Process), the Customer is of the view that an Issue the subject of an Initial Early Warning Notice or Detailed Early Warning Notice involves one or more

Interface Contractors or Rail Transport Entities, then the Customer may notify the Contractor that it proposes to include appropriate representatives of such Interface Contractors and/or Rail Transport Entities in discussions with the Contractor as part of the Issue Resolution Procedures, or refer the matter to such other multi-party forum nominated by the Customer.

2.2 Prescribed Notices

- (a) For the purposes of section 2.1(c), an Initial Early Warning Notice must:
- be expressly identified as an Initial Early Warning Notice given under section 2.1(c);
 - identify if the matter upon which the Initial Early Warning Notice is based has already been notified to the recipient party by the party that has raised the Issue (by number);
 - (iii) set out general details of the matter upon which the Initial Early Warning Notice is based;
 - (iv) set out the activities or TLS Activities affected; and
 - (v) identify whether the matter is likely to affect the cost, completion, progress or quality of the TLS Activities, the Program, the services of an Other Contractor, the delivery of the functions of a Rail Transport Entity, or the System.
- (b) For the purposes of section 2.1(d), a Detailed Early Warning Notice must:
- be expressly identified as a Detailed Early Warning Notice given under section 2.1(d);
 - set out detailed particulars of the Issue, including the date or dates of the Matter referenced in the Detailed Early Warning Notice and identify what Issue (if any) is based on that Matter;
 - (iii) attach the key documents and other materials that are relevant to the Detailed Early Warning Notice and relied on in support of any Issue;
 - (iv) set out the legal basis for the Issue (if any), whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
 - (v) contain any such other information required by the recipient party; and
 - (vi) in the case of an Issue involving a financial remedy, set out:
 - (A) information concerning the nature of the pricing, costs, loss or damages suffered or incurred;
 - (B) details of the amount claimed and how it has been calculated;
 - (C) the mitigation being effected;

- (D) where the Issue is to be assessed by reference to a clause in the Agreement, detailed particulars and quantification of the matters required pursuant to that clause;
- (E) where the Issue is for loss or damages, details of the Losses actually incurred; and
- (F) detailed financial justification (including accounting records) for the Issue.

2.3 Bar

█ [REDACTED]

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█ [REDACTED]

█ [REDACTED]

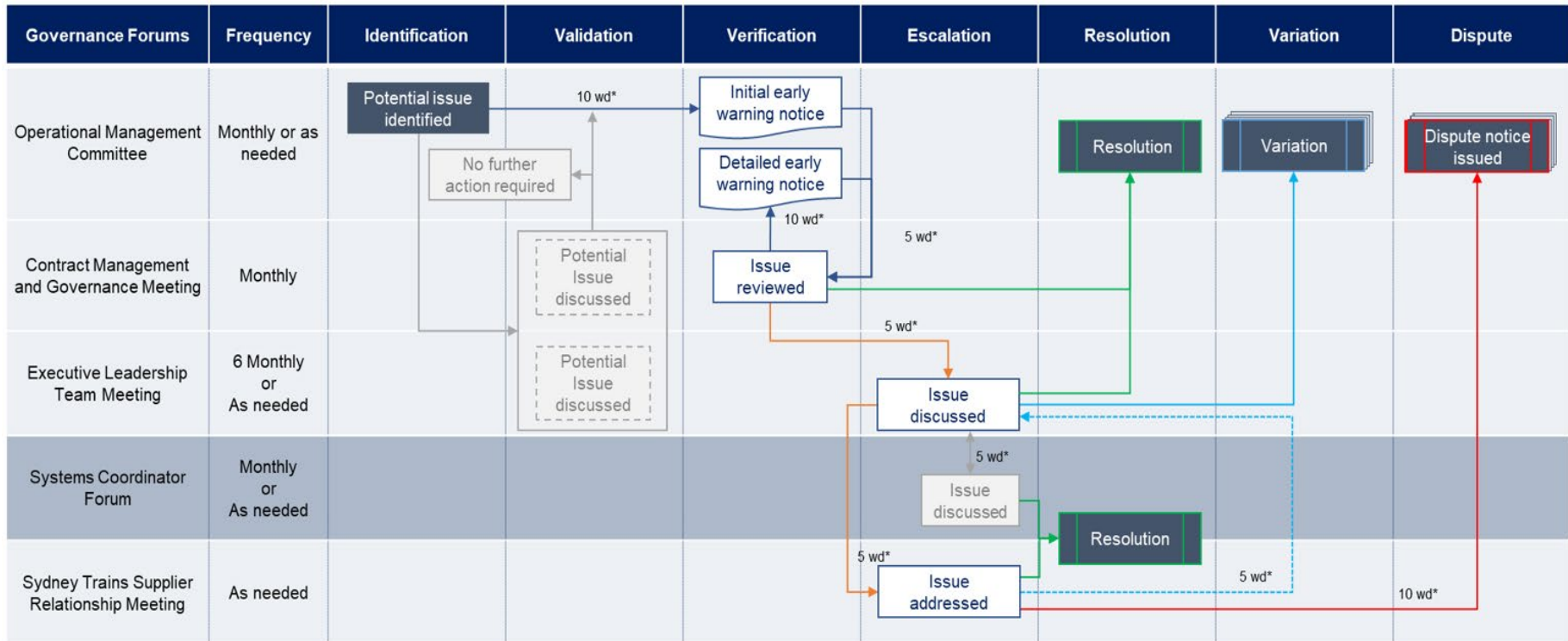
2.4 Agreement

- (a) If agreement is reached by the parties in relation to all or any part of a matter raised in an Initial Early Warning Notice or a Detailed Early Warning Notice in any of the meetings or forums set out in section 2.1 (Issue Resolution Process) or otherwise, then:
 - the party that has raised the Issue must promptly issue a notice to the other party withdrawing such agreed matters, setting out, in detail, the extent of the withdrawal (**Withdrawal Notice**);
 - the receiving party may confirm the Withdrawal Notice or notify the party that has raised the Issue that the Withdrawal Notice does not accurately describe the agreement that has been reached; and
 - (iii) if the receiving party confirms the Withdrawal Notice then such matters will be deemed to be settled to the extent of such confirmation and the receiving party will be released from any liability to the party that has raised the Issue to the extent of any such confirmation.
- (b) If the receiving party does not confirm the Withdrawal Notice within five (5) Business Days of the date of the Withdrawal Notice being received by the receiving



party, then the parties must meet within five (5) Business Days in order to agree on the Withdrawal Notice, or failing such agreement the matter must continue to be escalated between the parties in accordance with the process set out in section 2.1 (Issue Resolution Process).

Attachment A Issue Resolution Procedure



*working days to resolve steps / complete documentation





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Schedule 18 Dispute Resolution Procedure

1 Disputes

1.1 Dispute Notice

- (a) Subject to sections 1(b) of Schedule 17 (Issue Resolution Procedure) and clause 26.1(g), either party may notify the other party of a Dispute by provision of a Dispute Notice in accordance with paragraph (b), in which case the parties must follow the Dispute Resolution Procedures set out in this Schedule 18.
- (b) The Dispute Notice must:
- be expressly identified as a Dispute Notice under paragraph (a);
 - specify the Issue in dispute;
 - (iii) provide detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and Law;
 - (iv) set out the position which the party believes is correct both in relation to liability and quantum;
 - (v) provide detailed particulars of the quantum of the matters in dispute; and
 - (vi) if applicable, set out any information, bases of claim or other matters that differ from the matters provided to the other party under section 2.2(b) of Schedule 17 (Issue Resolution Procedure).
- (c) Within ten (10) Business Days of the receiving party's receipt of a Dispute Notice under paragraph (a), the parties must convene the **TMS TLS Relationship Meeting** to meet and discuss whether the parties can agree on a resolution to the Dispute or, if the parties are unable to agree on a resolution, whether the parties can agree to refer:
- the Dispute to mediation or for expert determination; and/or
 - a preliminary issue in respect of liability or quantum to a mediator or expert,
- provided that neither party may institute mediation or expert determination without the prior written agreement of the other party in the form included in Attachment B (ADR Agreement) or on such other terms as agreed in writing.
- (d) If the parties have not otherwise resolved the Dispute within twenty (20) Business Days of the TMS TLS Relationship Meeting first meeting in accordance with paragraph (c), either party may refer the Dispute to arbitration under section 1.3 (Arbitration) by notice to the other party, and the Dispute must be resolved by way of arbitration and not by way of court proceeding.
- (e) Where the Customer acting reasonably considers that a Dispute involves one or more Interface Contractors or Rail Transport Entities, then the Customer may, by agreement with such Interface Contractors and Rail Transport Entities, join them to a multilateral mediation or expert determination, and the Contractor must accept their joinder to the multilateral mediation or expert determination.

1.2 Expert Determination

- (a) Where the parties agree to refer the Dispute to expert determination under section 1.1(c) (**Expert Referral Date**), the Dispute must, where permitted by law, be submitted to an expert for final and binding determination in accordance with the process set out in Attachment A (Expert Determination Process).
- (b) Subject to paragraph (c), the expert determination will be conducted in accordance with and subject to The Resolution Institute (Australia) Expert Determination Rules (or, if the Resolution Institute ceases to exist, the Rules for Expert Determination of the Law Society of New South Wales). The rules governing the process for the expert determination may only be varied by written agreement of the parties and the expert.
- (c) Rule 2 of The Resolution Institute (Australia) Expert Determination Rules (or Rule 2 of the Rules for Expert Determination of the Law Society of New South Wales if applicable) regarding appointment of the expert will not apply. The expert must be appointed in accordance with the Expert Determination Rules described in Attachment A (Expert Determination Process).
- (d) The determination of the Dispute must be completed within a timeframe reasonably nominated by the Customer of the date of the expert's acceptance of the appointment (or such other period as agreed in writing between the Customer, the Contractor and the expert).
- (e) Each party must bear its own costs in respect of any expert determination and pay half of the expert's costs, irrespective of the expert determination.

1.3 Arbitration

- (a) The parties agree that where a Dispute is referred to arbitration under section 1.1(d):
 - (i) any such arbitration will be conducted according to the Australian Centre for International Commercial Arbitration Rules (ACICA Rules) and administered by the Australian Centre for International Commercial Arbitration;

the seat of the arbitration will be Sydney, Australia;
 - (iii) the tribunal is to consist of one arbitrator appointed according to the ACICA Rules;
 - (iv) the language of the arbitration is English;
 - (v) subject to clause 53.3 (Indirect and consequential damages), the arbitrator will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (vi) section 24 of the *International Arbitration Act 1974* (Cth) will apply to an international arbitration.
- (b) By agreeing to conduct the arbitration in accordance with the ACICA Rules, the parties are not contracting out of the Model Law for the purpose of section 21 of the *International Arbitration Act 1974* (Cth).
- (c) Either party may give a notice to the other requiring the arbitration to be conducted in accordance with the ACICA Rules dealing with expedited arbitration.

- (d) The parties agree that the arbitrator may, on the application of either party, allow an Interface Contractor or Rail Transport Entity who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. The arbitrator may make a single final award, or separate awards, in respect of all parties joined in the arbitration.

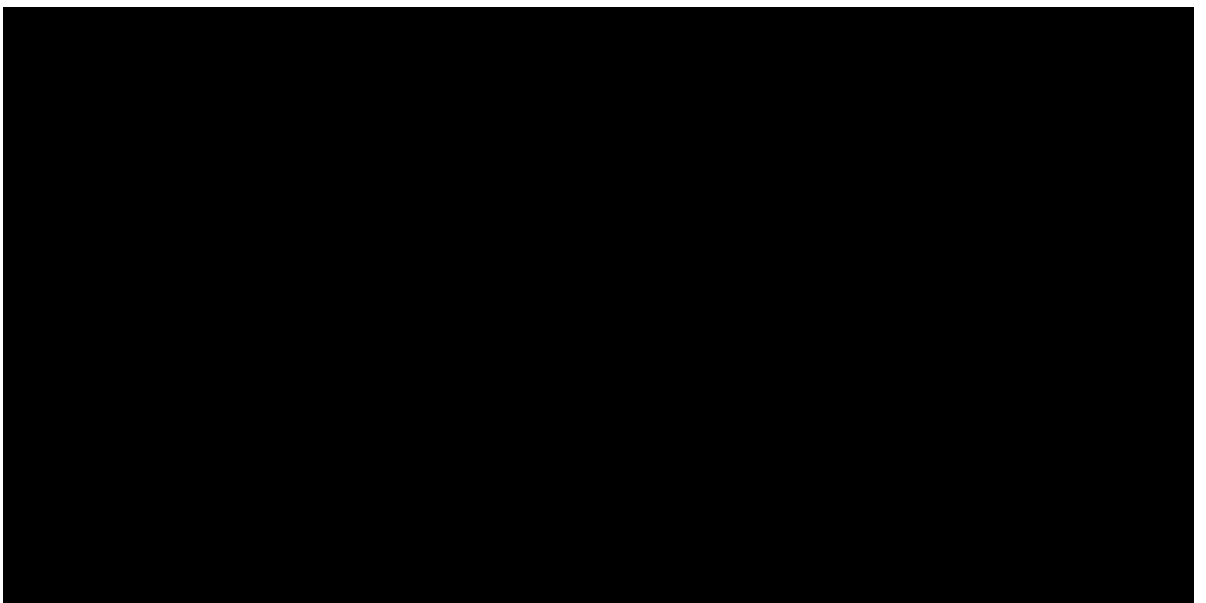
- (e) The parties agree to the following further general principles relating to the procedure of the arbitration:
 - that the parties have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

 - that any arbitration will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and

- (iii) that in conducting the arbitration, the arbitrator must take into account the matters set out at in paragraphs (i) and (ii), particularly in deciding issues such as:
 - (A) the number of written submissions that will be permitted;
 - (B) where appropriate, the length of written submissions;
 - (C) the extent of document discovery permitted, if any;
 - (D) the consolidation of proceedings, when requested;
 - (E) the joinder of parties, when requested;
 - (F) the length of any hearing, if any; and
 - (G) the number of experts, if any, each party is permitted to appoint.

- (f) Any award of the arbitrator will be final and binding upon the parties.

1.4 Linked Claims





Attachment A Expert Determination Process

1 Expert Determination Process

1.1 Expert Determination Appointment Rules

Any expert determination under section 1.2 (Expert Determination) of Schedule 18 (Dispute Resolution Procedure) is to be conducted by:

- (a) an independent industry expert agreed in writing by the Contractor and the Customer. For this purpose, each party will nominate two (2) preferred independent industry experts within ten (10) Business Days of the Expert Referral Date; or
- (b) an independent industry expert appointed by the Resolution Institute (or, if the Resolution Institute ceases to exist or ceases to nominate experts to resolve an expert determination process, the President of the Law Society of New South Wales) where:

the parties are unable to agree upon an independent industry expert within thirty (30) Business Days after the Expert Referral Date; or

an agreed independent industry expert:

- (A) is unavailable;
- (B) declines to act; or
- (C) does not respond within three (3) Business Days to a request from the parties for advice as to whether he or she is able to conduct the determination.

1.2 Expert Determination Appointment Agreement

The parties must enter into an agreement with the appointed expert on the terms prescribed in the Expert Determination Appointment Agreement or such other terms as the parties and the expert agree.

EXPERT DETERMINATION APPOINTMENT AGREEMENT

To: [Expert]

By the TMS TLS Agreement dated (**Agreement**) between the Customer and Siemens Mobility Pty Ltd (**Contractor**) the parties agreed to submit certain Disputes to an expert for determination through an expert determination process under the Agreement.

A Dispute has arisen between the parties. A summary of the Dispute is attached. The parties agree to appoint you to act as the expert to determine the Dispute in accordance with the procedure described under the Agreement.

The expert determination will be conducted in accordance with and subject to The Resolution Institute (Australia) Expert Determination Rules (or, if the Resolution Institute ceases to exist, the Rules for Expert Determination of the Law Society of New South Wales) (excluding Rule 2 regarding appointment of the expert). The rules governing the process for the expert determination may only be varied by written agreement between you, the Customer and the Contractor.

The parties agree to pay you an amount calculated as follows: [insert].

The determination of the Dispute must be completed within sixty (60) Business Days (or such other period as may be agreed in writing between you, the Customer and the Contractor) of the date of your acceptance of this appointment.

Dated:

For the Customer

For the Contractor

For the expert

Attachment B ADR Agreement

By the TMS TLS Agreement dated (**Agreement**) between the Customer and Siemens Mobility Pty Ltd (**Contractor**) the parties agreed to discuss:

- (a) whether referral for mediation or to expert determination may be an appropriate forum for resolving a Dispute the subject of a Dispute Notice; and
- (b) whether to refer a preliminary issue in respect of liability or quantum which is the subject of a Dispute Notice to a mediator or expert.

A Dispute has arisen between the parties. A copy of the Dispute Notice is attached. The parties have discussed the Dispute and agreed to appoint:

- (c) an expert to determine the Dispute in accordance with section 1.1(c)(i) of Schedule 18 (Dispute Resolution Procedure); or
- (d) an expert to determine a preliminary issue in respect of liability or quantum (**Preliminary Issue**) in accordance with the procedure described under section 1.1(c)(ii) of Schedule 18 (Dispute Resolution Procedure); or
- (e) a mediator to endeavour to settle the Dispute by mediation conducted in Sydney, Australia in accordance with section 1.1(c)(i) of Schedule 18 (Dispute Resolution Procedure) and subject to The Resolution Institute (Australia) Mediation Rules (or, if the Resolution Institute ceases to exist, the ACICA Mediation Rules); or
- (f) a mediator to endeavour to settle a preliminary issue in respect of liability or quantum (**Preliminary Issue**) by mediation conducted in Sydney, Australia in accordance with section 1.1(c)(ii) of Schedule 18 (Dispute Resolution Procedure) and subject to The Resolution Institute (Australia) Mediation Rules (or, if the Resolution Institute ceases to exist, the ACICA Mediation Rules).

[NOTE: select one of the alternatives from (c) to (f) and insert details of the Preliminary Issue, if applicable]

- (g) The parties agree the Preliminary Issue to be referred to the mediator/expert [delete as applicable] will be [details to be inserted]. Pending resolution of the expert determination/completion of the mediation concerning the Preliminary Issue [delete as applicable] the Dispute shall be otherwise stayed.
- (h) Nothing in this ADR Agreement will prejudice the right of a party to seek urgent injunctive relief from a court.
- (i) All capitalised terms used in this ADR Agreement have the meaning under the Agreement, unless the context otherwise requires.

Dated:



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Schedule 19 Business Continuity and Disaster Recovery

1 Business Continuity Plan

The Contractor:

- (a) must have, maintain and comply with a Business Continuity Plan which sets out the disaster recovery and business continuity processes to be implemented by the Contractor in the event of a Disaster, including:
 - the processes the Contractor will implement to protect its work and any part of the TMS Subsystem within its control; and
 - the steps that the Contractor will take to recommence provision of the TLS Activities;
- (b) must ensure that the Business Continuity Plan is sufficient to encompass any site or location from which the Contractor, any Representative of the Contractor or a Subcontractor operates, or other site or location from which any of the TLS Activities are or will be performed (or tasks and activities relevant to the TLS Activities undertaken), provided that in respect of the Customer's locations, the Business Continuity Plan will only be relevant to the extent it deals with the provision of resources working at such Customer locations and the procedures for replacing any such resources who are unable to perform the TLS Activities provided to the Customer under this Agreement;
- (c) where requested by the Customer, test or modify the Business Continuity Plan and any alternate facilities to:
 - ensure it is effective in managing risks relevant to service continuity and in responding to relevant events;
 - demonstrate to the Customer that the Contractor has the ability to recover from a Disaster and to recommence provision of the TLS Activities in accordance with the Contractor's obligations under this Agreement; and
 - (iii) ensure it is properly integrated with the Customer's own business continuity and disaster recovery processes, provided that any such requested testing or Modifications do not place a significant burden on the Contractor;
- (d) provide the Customer with a copy of the Business Continuity Plan (including any updates) upon request;
- (e) without limiting paragraph (a), if a Disaster occurs, must implement the relevant recovery, back-up and response activities set out in the Business Continuity Plan at the times and in accordance with the corresponding procedures set out in the Business Continuity Plan;
- (f) acknowledges and agrees that the Customer will not be required to pay any Fees for any TLS Activities that are not provided as a result of a Disaster;
- (g) acknowledges and agrees that the Customer may immediately terminate this Agreement where the Business Continuity and Disaster Recovery Plan is either not implemented as required under this Agreement, or is implemented and the applicable Disaster continues to materially prevent, hinder or delay performance of

the TLS Activities for more than five (5) Business Days, provided that such termination shall be deemed to be a termination without fault of the Contractor except where:

the Business Continuity and Disaster Recovery Plan did not comply with Industry Best Practice, and where the Customer had not agreed in writing that such non-compliance was acceptable and such non-compliance resulted in the applicable Disaster continuing to materially prevent, hinder or delay performance of the TLS Activities; or

the Contractor failed to comply with the Contractor's obligations under the Business Continuity and Disaster Recovery Plan, and such failure resulted in the applicable Disaster continuing to materially prevent, hinder or delay performance of the TLS Activities;

(h) if requested by the Customer (in its sole discretion), must allow the Customer's observation and assessment of the testing of the Business Continuity and Disaster Recovery Plan or provide the Customer with an independent assessment and assurance in writing that the Contractor has successfully tested the Business Continuity and Disaster Recovery Plan; and

(i) must:

provide to the Customer the Contractor's criteria and procedures for declaring:

(A) a threat to the Contractor's ability to provide the TLS Activities uninterrupted to the Customer; and

(B) an actual disruption to the Contractor's continuous provision of the TLS Activities, to the extent that such criteria and procedures are not specified within the Business Continuity and Disaster Recovery Plan in a level of detail which the Customer considers, acting reasonably, to be necessary, and provided that nothing in the foregoing limits the Customer's ability to declare a Disaster;

immediately notify the Customer of any threat or any disruption to Contractor's ability to provide the TLS Activities; and

(iii) for the duration of any disruption to the TLS Activities, provide to the Customer a formal status report each day until the TLS Activities are restored.

2 Business Continuity Plan updates

- (a) The Contractor must keep the Business Continuity and Disaster Recovery Plan and associated plans and processes up to date so that they remain consistent with the then current TLS Activities and provide for any changes in the provision of the TLS Activities (including the provision of Additional Support Services) or the facilities supporting the provision of the TLS Activities.
- (b) The Contractor must conduct an operational test of the Business Continuity and Disaster Recovery Plan at least once every twenty-four (24) months and must provide the Customer with the result of that testing.

- (c) The Contractor must make any reasonable changes to the Business Continuity and Disaster Recovery Plan requested by the Customer from time to time, where those changes relate to the provision of the TLS Activities.
- (d) The Contractor must consult with the Customer on the updating of its plans and processes to amend the Business Continuity and Disaster Recovery Plan in order to address any major service, audit or security requirements of the Customer or any Governmental Authority.



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Schedule 20 Reports

See separate document



Traffic Management System (TMS)
Through Life Support Agreement
Digital Systems Program
Schedule 20 – Reports

Contract Number: CW2405133

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1. Reporting Requirements

1.1. General

- 1.1.1. Without limiting any reporting requirements set out elsewhere in this Agreement (including in the PR and the Services Schedule), the Contractor must:
- a) prepare and submit to the Customer for Review the Reports listed in Table 1 below, in the form required or approved by the Customer from time to time, in accordance with:
 - (i) the frequency stipulated in that table, unless otherwise agreed by the Customer; and
 - (ii) the requirements set out in this Schedule and the Agreement; and
 - b) without limiting paragraph (i), provide to the Customer, in a form reasonably requested by the Customer, such other reports as are reasonably requested by the Customer from time to time (together with, where requested by the Customer, detailed supporting information (including access to source data)).
- 1.1.2. The Contractor must also provide to the Customer any information requested by the Customer if such information is deemed necessary by the Customer (acting reasonably) to perform its review of a submitted Report.
- 1.1.3. Without prejudice to paragraph (a) above, each Report must be:
- a) relevant and appropriate to the purpose for which it is developed;
 - b) accessible by the Customer, other Rail Transport Entities and their Associates;
 - c) in fully text searchable computer readable form (or in such other form as agreed with the Customer from time to time) and without any security restrictions;
 - d) written in the English language;
 - e) of a reasonable standard in terms of its presentation, accuracy and scope; and
 - f) the most current and up-to-date version available.
- 1.1.4. The Contractor shall obtain the Customer's approval of the proposed Report format.

Table 1 - Reports and Frequency

Report	Frequency
TLS Phase Performance Report	
TLS Phase Performance Report (TLSPPR)	Monthly No later than five (5) Business Days after the end of every month.
Commercial Monthly Report	
Commercial Monthly Report	Monthly First Business Day of each month.
Timesheets (only applicable for TLS Activities delivered on a Unit Rate or Target Budget basis where Labour Rates as defined in Schedule 15 (Pricing Terms) are utilised)	

Report	Frequency
Timesheet for each Contractor Personnel	Second Business Day of each week.
Contractor Mobilisation Form	As required following commencement of new Contractor Personnel.
Annual Performance Review Report	
Annual Performance Review Report (APRR)	Annually No later than ten (10) Business Days after the end of each Year.
Security Event Report	
Security Event Report	Within forty-eight (48) hours of the occurrence of a Security Event.

1.2. TLS Phase Performance Report

1.2.1. The TLSPPR shall, at a minimum, address and detail the status and progress of the TLS Activities in the previous month.

1.2.2. The TLSPPR shall commence with an executive summary and must include details of any Initial Early Warning Notices or Detailed Early Warning Notices that the Contractor wishes to provide notice of.

1.2.3. The TLSPPR must address the TLS Activities, including:

- a) the status and progress of the TLS Activities, including:
 - (i) all Assets (including tools and Spares);
 - (ii) all Document Deliverables; and
 - (iii) all Approvals;
- b) any Action Plans or Drill Down Reviews undertaken or prepared;
- c) significant changes in circumstances affecting the TLS Activities, including Variations;
- d) the status of any Work Orders;
- e) the status of each proposed Key Subcontract;
- f) where applicable, the status of any activities against all the requirements of Approvals; and
- g) delays, including the cause of delay, and actions planned and/or underway to resolve the delay.

1.2.4. The TLSPPR must detail the Contractor's performance against the Service Levels described in Appendix 1 of Schedule 14 (Performance Framework) to the Agreement including:

- a) TMS Subsystem reliability, including:
 - (i) the actual reliability rate of the TMS Subsystem (measured by reference to the Mean Time Between System Affecting Failures) calculated in accordance with the Performance Framework;

- (ii) the plan to achieve required reliability; and
 - (iii) histograms of Defect types for the Subsystem;
 - b) Incident response time, detailing:
 - (i) Response Time to Major Incidents by Priority Level calculated in accordance with Schedule 14 (Performance Framework); and
 - (ii) Response Time to Minor Incidents by Priority Level calculated in accordance with Schedule 14 (Performance Framework); and
 - c) Incident resolution times, detailing:
 - (i) Resolution Times for Major Incidents by Priority Level calculated in accordance with Schedule 14 (Performance Framework); and
 - (ii) Resolution Times for Minor Incidents by Priority Level calculated in accordance with Schedule 14 (Performance Framework).
- 1.2.5. The TLSPPR must include trend reporting of all the Service Indicators described in Appendix 2 of Schedule 14 (Performance Framework) to the Agreement.
- 1.2.6. The TLSPPR shall report the Fees payable for the preceding month.
- 1.2.7. The TLSPPR shall address scheduled maintenance, including:
 - a) maintenance due and not completed (i.e. overdue or deferred) on each Asset;
 - b) risk assessment and recovery plan for overdue maintenance;
 - c) a summary of major planned activities over the next month and quarter; and
 - d) summary of any Asset management procedure changes.
- 1.2.8. The TLSPPR shall address unscheduled maintenance, including:
 - a) summary of unscheduled maintenance on each Asset;
 - b) reference to failure investigations for unexpected Defects and recurrent Defects, that identify the:
 - (i) containment actions;
 - (ii) root cause;
 - (iii) risk assessment;
 - (iv) corrective actions; and
 - (v) preventative actions; and
 - c) any reimbursable repairs:
 - (i) in progress;
 - (ii) completed within the expected time to complete; and
 - (iii) not completed within the expected time to complete.
- 1.2.9. The TLSPPR shall address configuration changes, including:
 - a) design configuration updates, operational updates, operational downloads, or physical retrievals:

- (i) in progress;
- (ii) completed within the expected time to complete; and
- (iii) not completed within the expected time to complete;
- b) modification status including:
 - (i) Assets modified;
 - (ii) Assets to be modified;
 - (iii) planned completion date; and
 - (iv) exceeding the time to complete under the Configuration Management Plan; and
- c) Variations.

1.2.10. The TLSPPR shall address risk, including:

- a) a description of each significant risk to the Objectives;
- b) the cause and potential consequences of each significant risk;
- c) the actions planned and underway to treat the significant risk;
- d) Spares required, but unavailable;
- e) significant changes in the supply chain (including Obsolescence); and
- f) changes to Subcontracting arrangements.

1.2.11. The TLSPPR shall address work health and safety, including:

- a) leading safety indicators and proactive actions; and
- b) lagging safety indicators for all Delivery Locations where the TLS Activities are, such as:
 - (i) details of injuries and near misses;
 - (ii) lost time injuries; and
 - (iii) medically treated injuries.

1.2.12. The TLSPPR shall address Contractor Personnel, including:

- a) for each Delivery Location:
 - (i) minimum, maximum, and average number of Contractor Personnel on-site;
 - (ii) average number of Apprentices and Trainees; and
 - (iii) total hours worked per Delivery Location; and
- b) significant changes in circumstances affecting Contractor Personnel.

1.2.13. The TLSPPR shall address compliance, including:

- a) any non-compliance or non-conformance of the Works and TLS Activities, and the steps taken by the Contractor to address those non-compliances or non-conformances;

- b) details of all corrective and preventative actions taken by the Contractor, the status of those actions and audits of such actions;
- c) the status and progress of:
 - (i) Reviews;
 - (ii) Document Deliverables requiring update; and
 - (iii) audits and any remedial directions;
- d) verification metrics;
- e) quality metrics addressing key non-conformances, identifying actions planned and underway to treat the non-conformances;
- f) significant changes in circumstances affecting compliance, including with regards to Key Subcontractors; and
- g) compliance with environment and sustainability management requirements.

1.2.14. The TLSPPR shall detail any inputs required from the Customer in the next reporting period.

1.2.15. The TLSPPR shall include the following, if changes have occurred:

- a) an updated project risk register, identifying changes;
- b) an updated project hazard log, identifying changes;
- c) an updated organisation chart, identifying changes; and
- d) an update to the current Maintenance Works Program, identifying changes.

1.3. Commercial Monthly Report

1.3.1. The exact format and layout of the Commercial Monthly Report will be agreed between the parties upon commencement of the TLS Activities, and at any other times required or agreed by the Customer, but must include at a minimum the information set out in paragraph (b).

1.3.2. The Contractor must include in the Commercial Monthly Report the following information for the previous month:

- a) a summary of the status of progress at the end of the previous month, as compared to the timeframes set out in this Agreement;
- b) a summary of any open or unresolved Initial Early Warning Notices or Detailed Early Warning Notices;
- c) for TLS Activities delivered on a Unit Rate or Target Budget basis, details of hours expended and cost incurred in the relevant month per Contractor Personnel with a breakdown of activities undertaken (if applicable);
- d) any Reimbursable Expense items being claimed (if applicable), including details of authorisation and amounts claimed substantiated with receipts;
- e) a cumulative of the total amounts incurred in connection with the TLS Activities provided during the relevant month;
- f) details of the amounts claimed under a payment claim to date and the amount of the payment claim(s) in the relevant month;

- g) where relevant, cost reporting to monitor on a monthly basis the Actual Cost, Forecast Cost to Complete and Forecast Final Cost against the Target Budget (as amended), and separate lists for the cost of approved Variations, claims and outstanding claims for Variations;
- h) percentage of the Works complete and Assets delivered, and a forecast for completion of those Works / delivery of those Assets;
- i) details of Fees invoiced against any Target Budget or estimated charges based on the Labour Rates (as applicable);
- j) details of unconditional undertakings on foot and their status;
- k) details of Service Credits and their status;
- l) cooperation, coordination, industrial relations and interface matters with Other Contractors;
- m) activities of a mediator or similar process under the Dispute Resolution Procedures where established under the Agreement;
- n) a narrative including:
 - (i) the activities completed in the relevant month and a look ahead of activities;
 - (ii) key risks;
 - (iii) detailed explanation of any slippages against the timeframes set out in this Agreement;
 - (iv) list of Assets; and
 - (v) any relevant information that would assist the Customer in managing the program of activities and the outturn cost; and
- o) any other information the Customer reasonably requires.

1.3.3. The Contractor must highlight to the Customer any forecast / anticipated departure from the estimated total Fees (either above or below) at the earliest possible time to permit appropriate action to be taken.

1.4. Annual Performance Review Report

1.4.1. The Annual Performance Review Report (APRR) shall, as a minimum, address and detail the performance of the TLS Activities over the previous Year against each of the Service Levels set out in Schedule 14 (Performance Framework).

1.4.2. The APRR shall include the findings of the Asset Condition Assessments performed during the previous Year.

1.4.3. The APRR shall report on the status of all unconditional undertakings, including rating and value.

1.4.4. The APRR shall report on how the Contractor, and their Subcontractors, are complying with obligations under NSW and international Laws and policies including under:

- a) the NSW Government's Small and Medium Enterprise and Regional Procurement Policy (as required under clause 39.1 of the Agreement);

- b) the NSW Code and NSW Guidelines (as required under clause 39.3 of the Agreement);
- c) all applicable anti-bribery and anti-corruption legislation, including the Crimes Act 1914 (Cth), the Criminal Code Act 1995 (Cth) and similar Laws of other countries that are applicable (as required under clause 40.1 of the Agreement);
- d) the Modern Slavery Act 2018 (Cth), Modern Slavery Act 2018 (NSW) and equivalent legislation in the other Australian states and territories (as required under clause 40.2 of the Agreement);
- e) the U.S. Export Administration Regulations set forth in Title 15 of the U.S. Code of Federal Regulations “Commerce and Foreign Trade” (as required under clause 40.3 of the Agreement);
- f) the National Greenhouse and Energy Report Act 2007 (Cth) (as required under clause 41.1 of the Agreement); and
- g) such other matters as the Customer may require.

1.4.5. Any such reports must include:

- a) any positive works undertaken throughout the year for the TLS Activities;
- b) identifying any incidents and areas of concern throughout the year for the TLS Activities; and
- c) be signed and dated by the Contractor and all Subcontractors of the Contractor.

1.4.6. The APRR shall address any other information the Customer’s Representative reasonably requires from time to time.

1.5. Timesheets

1.5.1. For TLS Activities delivered on a Unit Rate or Target Budget basis, the Contractor must submit a daily timesheet for each Contractor Personnel involved in providing such Contractor’s Activities, clearly showing:

- a) accurate recording of the time spent in the performance of the Contractor’s Activities; and
- b) a daily record of tasks performed.

1.5.2. The timesheet submitted will need to be authorised by the Contractor’s Representative and demonstrate the activities that have been undertaken in delivering the TLS Activities.

1.5.3. The Contractor must provide TfNSW with substantiation reports for timesheets payment claims in accordance with clause 22.1 (Payment Claims) of the Agreement.

1.5.4. Where a calendar month end occurs during a week for which Timesheets are required, the Contractor Representative may authorise a partial week leading up to the calendar month end in order to facilitate invoicing within the time requirements of clause 22.1 (Payment Claims) of the Agreement.

1.5.5. A Timesheet for the remainder of any partial week will be required to be authorised on the second Business Day of the following week.

1.6. Security Event Report

1.6.1. The Contractor must include in the Security Event Report the following details of reported Security Events:

- a) classification of Security Event report and classification of system attacked;
- b) Future prevention solution;
- c) Security Event timing;
- d) Security Event type;
- e) Security Event status;
- f) Security Event cause;
- g) Severity;
- h) Impacted applications, Assets, sites, business lines, users, networks, other parties (including external Customer business partners and users and Third Party providers);
- i) Resolution/mitigation;
- j) Future prevention solution; and
- k) Trend analysis.



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Schedule 21 Governance and Management

See separate document



Traffic Management System (TMS)
Through Life Support Agreement
Digital Systems Program
**Schedule 21 – Governance and
Management**

Contract Number:

CW2405133

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1. Introduction

- 1.1.1. This Schedule specifies the roles, structures, forums and TLS Activities relating to the overall management and governance of this Agreement, including:
- a) the applicable governance roles and structures;
 - b) a description of each governance forum; and
 - c) associated governance and management reporting obligations.

2. Governance

2.1. Governance Roles

2.1.1. The Contractor must appoint and ensure that it has in place the following governance roles:

- a) **Senior Contractor Representative:** a nominated executive who will be required from time to time to meet with the nominated Customer executive to discuss the status of the relationship between the parties and the progress of the TLS Activities;
- b) **Contractor's Representative:** a nominated senior individual located in NSW (unless agreed otherwise by the Customer) and allocated to the Customer as the principal point of contact between the parties in relation to this Agreement in accordance with clause 25 (Governance) of this Agreement. The Contractor's Representative will have overall responsibility for the Contractor's performance of its obligations under this Agreement;
- c) **Director TLS** (or equivalent role): a nominated individual located in NSW who has responsibility within the Contractor for delivery of the TLS Activities under this Agreement;
- d) **Manager TLS:** a nominated individual located in NSW who has direct responsibility within the Contractor for the day-to-day execution of the TLS Activities; and
- e) **Commercial/Contract Manager:** a nominated individual or team located in NSW who has responsibility within the Contractor for all commercial and contractual issues arising under or in connection with this Agreement. This will necessitate an intimate knowledge of the provisions of this Agreement.

2.2. Governance Structure

2.2.1. Governance for the System operates across a number of layers:

- a) **System-wide governance:** for management and governance relating to the System as a whole, and assurance related to safety and all Subsystems, including:
 - (i) corporate governance; and
 - (ii) System-wide supplier governance; and
- b) **Agreement governance:** for management and governance of each supply agreement (and the provision of goods and services under it) forming part of the System (including this Agreement and each Other Contractor Agreement).

2.2.2. This Schedule is not intended to address the detail of "System-wide governance". However, Tables 1 and 2 below and Schedule 20 (Reports) outline the Contractor's primary role and minimum input required in relation to each of the multi-party forums that are part of the System-wide governance framework.

2.2.3. Tables 1 and 2 below detail, in respect of each of the Agreement governance forums:

- a) attendees;
- b) the responsibilities of that forum;
- c) the roles of each of the parties;
- d) the frequency of meetings and the logistics associated with such meetings; and
- e) the key interfaces between that governance forum and other governance forums.

- 2.2.4. The Contractor must comply with its obligations as set out in Tables 1 and 2 as though those obligations were set out fully in this section.

- 2.2.5. The minimum input for each forum that the Contractor is required to deliver is as described in Tables 1 and 2 below and in Schedule 20 (Reports).

Table 1 – Agreement Governance TMS Through Life Support Forums

Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
1. TMS TLS Relationship Meeting	Customer Customer executive(s) Contractor Senior Contractor Representative	<ul style="list-style-type: none"> ▪ To ensure alignment of goals by extending communication and co-operation to the senior level of each organisation; ▪ Health check on state of the relationship; ▪ Act as the escalation point for matters arising at lower governance levels; ▪ Act as the escalation point for Issues escalated in accordance with Schedule 18 (Issue Resolution Procedures); ▪ Act as the final governance escalation point for Disputes raised in accordance with Schedule 19 (Dispute Resolution Procedure); and ▪ Other matters, as required. 	Customer Leads, manages, runs, and participates. Contractor Contributes to, and participates in, the forum.	Annual, or as requested by the Customer Meetings held at a location nominated by the Customer	<ul style="list-style-type: none"> ▪ Escalation of matters from the Executive Leadership Team Meeting
2. Executive Leadership Team Meeting	Customer Customer Representative Contractor Contractor's Representative	<ul style="list-style-type: none"> ▪ Health check on status of the TLS Activities; ▪ Reviewing and monitoring initiatives relating to TLS Activities progress; ▪ Monitor and manage issues relating to: <ul style="list-style-type: none"> ○ payments 	Customer Leads, manages, runs, and participates. Contractor Issues updated TLS Phase Performance	Six (6)-monthly, or as requested by the Customer Meetings held at a location nominated by the Customer	<ul style="list-style-type: none"> ▪ Escalation of matters from the Contract Management & Governance Meeting ▪ Escalation of matters to the TMS

Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
		<ul style="list-style-type: none"> ○ Variations (including any waivers of technical requirements proposed by the Contractor) ○ Disagreements relating to scope ▪ Foster a collaborative relationship between the parties; ▪ Discuss and approves innovation and continuous improvement initiatives; ▪ Act as the escalation point for matters arising at lower governance levels; and ▪ Act as the escalation point for Issues escalated in accordance with Schedule 17 (Issue Resolution Procedures). 	<p>Report and Commercial Monthly Report</p> <p>Contributes to, and participates in, the forum.</p>		<p>TLS Relationship Meeting</p>
3.	<p>Contract Management & Governance Meeting</p> <p>Customer Commercial/Contract Manager Business Representative(s)</p> <p>Contractor Project Director Commercial/Contract Manager</p>	<ul style="list-style-type: none"> ▪ Review progress against planned initiatives; ▪ Review performance against Service Levels; ▪ Discuss key challenges and plan risk mitigations; ▪ Provide mobilisation/resourcing update including review of resource plan; 	<p>Customer</p> <p>Contributes to, and participates in, the forum.</p> <p>Contractor</p> <p>Issues TLS Phase Performance Report and Commercial Monthly Report.</p>	<p>Monthly</p> <p>Meetings held at a location nominated by the Customer</p>	<ul style="list-style-type: none"> ▪ Escalation of matters from the Operational Management Committee ▪ Escalation of matters to Executive Leadership Team Meeting

Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
		<ul style="list-style-type: none"> ▪ Review and discuss Work Health & Safety (WHS) reporting and address any emerging WHS-related risk; ▪ Contract management oversight of the project; ▪ Review spend against agreed budget and spend forecasts; ▪ Discuss payment claims and assessments; ▪ Manage pricing reviews and amended pricing for additional TLS Activities (including as introduced under a Work Order); ▪ Discuss Variations (including as to scope, time, and price), Change in Laws, Change in Standards and Change in Approvals; ▪ Drive innovation and continuous improvement initiatives; ▪ Provide advice to other forums and governance roles as required; ▪ Act as the escalation point for matters arising at lower governance levels; and 	<p>Leads, manages, runs, and participates.</p>		<ul style="list-style-type: none"> ▪ Interface with the Systems Coordinator Forum

Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
		<ul style="list-style-type: none"> Act as the escalation point for Issues escalated in accordance with Schedule 17 (Issue Resolution Procedures). 			
4.	Operational Management Committee Customer Manager Operations Technology Manager Wireless Operations Contractor Manager TLS	<ul style="list-style-type: none"> Monitor and review performance of all TLS Activities for the period; Identify service improvement initiatives; Monitor all fault, restoration and resolution activities; Ongoing management, monitoring and reporting of TMS service performance: routine maintenance, spares monitoring, planned works; Identify, report and address any emerging Work Health & Safety (WHS) risk; and Escalates unresolved issues to Contract Management & Governance Meeting and/or Systems Co-ordinator Forum as appropriate. 	Customer Manages and runs the forum. Approves or rejects changes. Contractor Issues TLS Phase Performance Report and Resource Plan prior to meeting. Contributes to, and participates in, the forum.	Monthly, or as required by the Customer Meetings held at a location nominated by the Customer	<ul style="list-style-type: none"> Escalation of matters to the Contract Management & Governance Meeting
5.	Systems Coordinator Forum Customer Director Systems Integration	<ul style="list-style-type: none"> Discuss and seek to address inter-supplier TLS issues identified in other forums; Discuss variations to other Subsystems to understand the change, risks, schedule and 	Customer Manages and runs the forum.	Monthly, or as required by the Customer Meetings held at a location	<ul style="list-style-type: none"> Interface with the Contract Management & Governance Meeting

Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
	<p>Contractor Director TLS Other technical roles as required</p> <p>ASA Representative(s)</p> <p>TfNSW As required</p>	<p>assurance implications for the TMS Subsystem; and</p> <ul style="list-style-type: none"> Provide information and guidance regarding Variations to the TMS Subsystem to support Other Contractors to understand the change, risks, schedule and assurance implications for their Subsystems. 	<p>Contractor Contributes to, and participates in, the forum.</p>	<p>nominated by the Customer</p>	
6.	<p>Working Groups (refer to Table 2 for further details on each Working Group)</p> <p>Customer As required</p> <p>Contractor Discipline lead(s) as required</p> <p>TfNSW As required</p>	<ul style="list-style-type: none"> Oversight of specific streams/areas; Review, agree, endorse and coordinate and facilitate proposed methods, approaches and actions for each program workstream; Ensure the quality and relevance of deliverables and the continual review and update of relevant Working Group documents; Ensure the Working Group allows an integrated approach and remains consistent with relevant assurance processes and requirements while following the relevant Working Group plan; 	<p>Customer Manages and runs the forums.</p> <p>Contractor Compiles and presents submissions in the forum in accordance with Customer or TfNSW format as appropriate</p> <p>(Refer to Table 2 for further details).</p>	<p>(Refer to Table 2 for the frequency of each Working Group)</p> <p>Meetings held at a location nominated by the Customer or TfNSW</p>	<ul style="list-style-type: none"> Escalation of matters to the Operational Management Committee and to the Systems Coordinator Forum Interface with other multi-party forums

Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
		<ul style="list-style-type: none"> ▪ Review cross organisational strategic issues, management of interface issues, and agree a course of action; ▪ Support the program in managing stakeholder relationships and ensure stakeholder collaboration and acceptance is evident as part of the working group; ▪ Provide effective decision making, which is both ethical and responsible, in line with the Transport Code of Conduct and delegation levels and ensure decisions and deliverables are timely and aligned with program objectives; ▪ Early risks and potential issues identification and definition of mitigation activities; and ▪ Escalate matters as appropriate to higher governance levels. (Refer to Table 2 for further details).			
7.	Customer Customer Representative Contractor	<ul style="list-style-type: none"> ▪ To discuss the outcome of the Annual Performance Review (as defined in section 2.3 below); and 	Customer Manages and runs the forum.	Annual Meetings held at a location nominated by the Customer	<ul style="list-style-type: none"> ▪ Interface with the Executive Leadership Team Meeting

Forum	Attendees	Responsibilities	Roles	Frequency & Logistics	Interfaces with other Forums
	Contractor's Representative Project Director	<ul style="list-style-type: none"> ▪ Review performance assessments rated as “unsatisfactory” and agree on a rectification strategy. 	<p>Contractor</p> <p>Issues Annual Performance Review Report.</p> <p>Contributes to, and participates in, the forum.</p>		

Table 2 Working Groups

	Working Group	Estimated End Date	Lead / Chair	Indicative Frequency*
1.	Human Factors	Final Acceptance (TMS Subsystem), as defined in the Delivery Agreement	System Integrator	Monthly
2.	Systems Engineering (including Human Factors, System Assurance)	Final Acceptance (TMS Subsystem), as defined in the Delivery Agreement	System Integrator	Monthly
3.	Asset Management (including Asset Information)	Duration of the Term	System Integrator	Monthly
4.	Competency & Learning	Duration of the Term	Customer	Monthly
5.	Data and Technology Management Strategy	Final Acceptance (TMS Subsystem) as defined in the Delivery Agreement	Customer	Quarterly
6.	RAM (including performance against targets and performance improvements)	Final Acceptance (TMS Subsystem) as defined in the Delivery Agreement	System Integrator	Monthly
7.	Interoperability/ARTC/ATMS	[TBA]	Customer	Ad-hoc as required
8.	Operational Rules, Operations Standards & Operational Process	Final Acceptance (TMS Subsystem), as defined in the Delivery Agreement	System Integrator	Monthly
9.	Network Strategy (including Network Assurance)	Final Acceptance (TMS Subsystem), as defined in the Delivery Agreement	Customer	Quarterly

* Frequency of Working Groups will be reviewed every six (6) months to ensure alignment with the requirements of each phase of the Program.

2.3. Annual Performance Review

- 2.3.1. Within ten (10) Business Days after the end of each Year, in respect of that Year, the Contractor shall facilitate the Customer conducting a review (**Annual Performance Review**) of:
- a) the overall standard of the Contractor's performance of the TLS Activities, including by reference to:
 - (i) the Contractor's performance against the Service Levels set out in Schedule 14 (Performance Framework); and
 - (ii) the overall amount of Service Credits that have been applied to the Fees; and
 - b) the overall health and quality of the working relationship between the parties.
- 2.3.2. The outcome of the Annual Performance Review will be a reasonable determination by the Customer, either that:
- a) the Contractor's performance and the relationship between the parties has been satisfactory; or
 - b) the Contractor's performance or the relationship between the parties has not been satisfactory, in which case paragraph 2.3.8 will apply.
- 2.3.3. To assist the Customer to undertake its assessment, the Contractor shall prepare a report (**Annual Performance Review Report**) in respect of the relevant Year in compliance with section 2.3.5 of Schedule 20 (Reports) and provide that report to the Customer within ten (10) Business Days after the end of that Year.
- 2.3.4. The Contractor shall also provide promptly any further information reasonably requested by the Customer for the review.
- 2.3.5. The Customer shall use reasonable endeavours to complete the Annual Performance Review within thirty (30) Business Days after receipt of the Contractor's Annual Performance Review Report and any other information requested by the Customer.
- 2.3.6. The Customer Representative will confirm the outcome of the Annual Performance Review to the Contractor's Representative within five (5) Business Days of completion of the Customer's assessment.
- 2.3.7. The Customer Representative will call a meeting (**Annual Performance Review Meeting**) to discuss the outcome of the Annual Performance Review, as set out in Table 1, within ten (10) Business Days of the date the outcome of the Annual Performance Review was confirmed under paragraph 2.3.6.
- 2.3.8. If the Customer determines that the Contractor's performance has not been satisfactory or that the relationship between the parties has not been satisfactory:
- a) the Customer Representative may Direct the Contractor to prepare an Action Plan setting out steps that shall be taken by the Contractor to improve its performance and/or to improve the working relationship between the parties; and

- b) the Contractor must provide an Action Plan including its proposed strategy to the Customer Representative for Review in accordance with clause 44 of the Agreement.

2.3.9. A Direction given by the Customer Representative under paragraph 2.3.8 may:

- a) give strategic direction to the Contractor for its performance of the TLS Activities in the future; or
- b) identify measures that, without obligation, the Customer is willing to implement to assist the Contractor to:
 - (i) improve its performance against the Service Levels set out in Schedule 14 (Performance Framework);
 - (ii) reduce or avoid Service Credits; or
 - (iii) improve the working relationship between the parties.

2.4. General

- 2.4.1. Within the governance structure, some of the governance forums will be bilateral and will only include representatives from the Customer and the Contractor. Other forums may be multi-lateral and participation will be required by the Contractor, Key Subcontractors, Stakeholders and Other Contractors as necessary.
- 2.4.2. For each governance forum, more detailed terms of reference will be determined by the Customer from time to time and will be notified to the Contractor. Each party shall ensure that the terms of reference of each relevant governance forum are communicated to its relevant attendees, and that such attendees understand, and comply with, the relevant terms of reference.
- 2.4.3. From time to time, the Contractor may be required by the Customer to attend other Customer forums, reviews, committees or meetings, and the Contractor must participate in these when and where requested by the Customer.
- 2.4.4. Where the Customer is of the view that matters arising under this Agreement involve or may impact on any Other Contractor, the Customer may refer and raise that matter for discussion at a Program-wide governance forum (including, for example, the Systems Coordinator Forum). Similarly, the Customer may refer matters raised for discussion at a Program-wide governance forum for discussion at any appropriate "Agreement governance" forum under this Agreement.
- 2.4.5. Prior to each governance forum meeting:
 - a) the Contractor will submit to the relevant chair any agenda items which they would like to discuss during the meeting at least five (5) Business Days prior to the meeting;
 - b) the Contractor will communicate the names of their appointed members and changes thereof, if any, in writing to the relevant chair five (5) Business Days before the meeting; and
 - c) the chair shall prepare an agenda, to be delivered to the Contractor prior to the meeting.

- 2.4.6. In participating in the meetings of the governance forums, the Contractor must:
- a) prepare for and participate fully and actively in the meetings and associated activities;
 - b) where nominated as the lead or chair for the governance forum, provide and manage all required information (e.g. scheduling, bookings, agenda preparation and distribution, minutes / meeting records, document management, management of actions, etc.);
 - c) ensure all action items allocated to it are completed within the specified timeframes, or if no timeframe is provided then within a reasonable time;
 - d) ensure adequate and suitably skilled and experienced Contractor Personnel attend and participate in the meeting and all its attendees are authorised to perform their respective responsibilities and make any necessary decisions at such meetings; and
 - e) provide such information and documentation as the relevant governance forum requires in connection with agenda items and to discharge its responsibilities.
- 2.4.7. The parties must ensure that within five (5) Business Days of the relevant meeting:
- a) meeting minutes are taken by the relevant chair and distributed to the members of the meeting; and
 - b) the following representatives of each party approve the minutes in writing and provide the same to the other party, with such approval taking effect at the time the last representative signs the minutes and provides the same to the other party:
 - (i) Working Groups – No approval required;
 - (ii) Operational Management Committee – The Customer’s Manager Operations Technology, and the Contractor’s Manager TLS;
 - (iii) Contract Management & Governance Meeting – The Customer’s Commercial/Contract Manager and the Contractor’s Commercial/Contract Manager;
 - (iv) Executive Leadership Team Meeting – The Customer Representative and the Contractor’s Representative;
 - (v) TMS TLS Relationship Meeting – The Customer’s executive (or appropriate delegate) and the Contractor’s Senior Contract Representative; and
 - (vi) Annual Performance Review Meeting – The Customer Representative and the Contractor’s Representative
 - c) The governance framework set out in this Schedule will be reviewed by the Customer on a regular basis. Where required, the governance framework may be revised, by notification from the Customer (and without the need for a Variation).
 - d) The Contractor will also participate in and provide information to relevant governance forums under the Delivery Agreement where required, including participating in the following delivery forums:
 - (i) Program Executive Forum;and providing relevant information and feedback into:
 - (ii) Contract Representative Meetings;

- (iii) Delivery Management Meetings; and
- (iv) Commercial Management Meetings.

2.5. Governance and Management Reporting

- 2.5.1. The Contractor must comply with the reporting requirements in Schedule 20 (Reports).
- 2.5.2. The Contractor acknowledges that where a report is identified as being the responsibility of another organisation, it must provide inputs and such assistance as is required to the Customer or the relevant organisation in the preparation of identified reporting requirements.
- 2.5.3. The Contractor must, on request from the Customer, attend relevant meetings to report on key matters and participate in discussions related to the Program or TLS Activities.



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Schedule 22 Disengagement

See separate document



Traffic Management System (TMS)
Through Life Support Agreement
Digital Systems Program
Schedule 22 – Disengagement

Contract Number:

CW2405133

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1. Introduction

1.1. Introduction

1.1.1. This Schedule, together with clause 50 (Disengagement) of the Agreement, sets out the Contractor's obligations in relation to Disengagement.

1.2. Scope

1.2.1. The Contractor must provide the Disengagement Services set out in this Schedule, which include:

- (a) general Disengagement assistance, as specified in section 2 (General Disengagement Assistance) of this Schedule, which must be provided by the Contractor throughout the Term and as requested by the Customer in accordance with this Schedule;
- (b) provision of the Disengagement Plan for approval by the Customer in accordance with section 3 (Preparation and Approval of Disengagement Plan) of this Schedule; and
- (c) specific Disengagement assistance, as specified in section 4 (Specific Disengagement Assistance) of this Schedule, which must be provided by the Contractor during the Disengagement Period in respect of any Removed Services.

1.2.2. For the purpose of this Schedule, the term 'Removed Services' refers to those TLS Activities which are removed from the scope of the Agreement as a result of one or more of the following events:

- (a) expiry of the Agreement (in whole or in part, including any Work Order);
- (b) termination of the Agreement (in whole or in part, including any Work Order) for any reason; and
- (c) termination of any of the TLS Activities (or any part of any of the TLS Activities) for any reason.

1.2.3. The Contractor must provide the Specific Disengagement Services in section 4 from the Disengagement Commencement Date (i.e. the date specified in a notice by the Customer (which may be a date prior to the expiry or termination of this Agreement or the relevant TLS Activities)) and for so long as is necessary to enable achievement of the objectives of this Schedule (including those set out in section 1.3), up to a maximum period of three (3) years from the Disengagement Commencement Date (or as otherwise Directed by the Customer) (**Disengagement Period**).

1.3. Objectives

1.3.1. The objectives of the Disengagement Services are, amongst other things:

- (a) to enable the Customer to assess options for substitution of the Removed Services and the planning for and conduct of tender, re-negotiation or other selection processes (including in-source evaluation);

- (b) to enable the Customer to plan for the transition of the Removed Services from the Contractor to the Customer or a Replacement Contractor;
- (c) to enable the Customer to transition the Removed Services from the Contractor to the Customer or a Replacement Contractor;
- (d) to enable the Customer or a Replacement Contractor to perform the Removed Services in substitution for the Contractor from handover of the Removed Services; and
- (e) to eliminate or minimise any disruption or deterioration of the TLS Activities or the System during and as a result of Disengagement.

1.4. Customer Nominees

1.4.1. The Contractor acknowledges that, from time to time in connection with the Disengagement and the performance of its obligations under this Schedule and the Disengagement Plan, the Customer may require the Contractor to engage with, persons nominated by the Customer, including any Replacement Contractor as though it was engaging with the Customer under this Agreement. In such circumstances, the Contractor must engage with such persons in accordance with the Customer's request.

2. General Disengagement Assistance

2.1. Assistance with Assessments, Tenders and other Processes

2.1.1. Notwithstanding clause 50.2 (Provision of Disengagement Services) of the Agreement, at any time requested by the Customer during the Term (whether or not the Removed Services have actually been removed from the scope of the Agreement) the Contractor must provide reasonable assistance to the Customer in relation to assessing options for substitution of any or all of the TLS Activities and the planning for and conduct of tender, re-negotiation or other selection processes (including in-source evaluation), including the provision of all documentation required by the Customer in accordance with section 2.2 (Provision of Information and Documentation) below and reasonable assistance in providing knowledge and information relevant to the TLS Activities, to support the Customer in developing the following:

- (a) performance histories related to the TLS Activities and the TMS Subsystem;
- (b) inventories of Assets and Third-Party contracts related to the TLS Activities and the TMS Subsystem;
- (c) inventories of data and documentation related to the TLS Activities;
- (d) technical and environment descriptions related to the TLS Activities and the TMS Subsystem;
- (e) technical and / or operational training materials; and
- (f) scope of service descriptions.

2.2. Provision of Information and Documentation

2.2.1. Notwithstanding clause 50.2 (Provision of Disengagement Services) of the Agreement, the Contractor must also provide, within thirty (30) days of receipt of a notice from the Customer (which may be issued at any time, and whether or not the Removed Services have actually been removed from the scope of the Agreement), all information and documentation required by the Customer in respect of any planning or assessment by the Customer relating to any aspect of Disengagement of the TLS Activities and the planning for and conduct of tender, re-negotiation or other selection processes (including in-source evaluation). This may include any of the documentation listed in Appendix A (Disengagement Documentation and Data) to this Schedule.

2.2.2. The Contractor must ensure that all documentation provided to the Customer under this section 2.2:

- (a) is in the format specified by the Customer (acting reasonably) in its notice (and, where no format is specified, in soft copy format where applicable) and that the documentation is otherwise readable and useable by the Customer using existing functionality that is available to the Customer; and
- (b) is in a form that will not restrict the Customer's ability to use the information as part of any assessment or other selection process, including by disclosing the information and documentation publicly or to select Third Parties, provided that such documentation may only be disclosed by the Customer to Third Parties that are subject to reasonable confidentiality obligations relating to their use of such documentation and that the use of such documentation is limited in accordance with the scope of the licence in clause 29.2(a)(ii) of the Agreement.

2.2.3. Any Contractor Confidential Information provided to the Customer pursuant to this section 2.2 is subject to clause 31 (Confidentiality) of the Agreement, and the use and disclosure as contemplated by sections 2.2 and 2.3 is permitted use and disclosure under clause 31 (Confidentiality) of the Agreement.

2.3. Use, Copying and Modification of Documentation

2.3.1. The Contractor must permit:

- (a) the use, disclosure, copying and modification by the Customer of all documentation, information and data provided by the Contractor under this Schedule for the purposes of any assessment or selection process; and
- (b) the use, disclosure, copying and modification of such documentation, information and data by Third Parties such as potential Replacement Contractors participating in the process subject to those Third Parties being subject to reasonable confidentiality obligations relating to their use of such documentation, information and data and that their use is limited to in accordance with the scope of the licence in clause 29.2(b).

2.4. No Interference

2.4.1. The Contractor must not interfere in any tender or other such processes conducted by the Customer, and must comply with all reasonable Directions of the Customer concerning participation in such process.

2.5. No Charges for General Disengagement Assistance

- 2.5.1. The Customer is not liable for any Fees or expenses incurred by the Contractor as a result of the provision of general Disengagement assistance by the Contractor in accordance with this section 2.

3. Preparation and Approval of Disengagement Plan

3.1. Preparation of Disengagement Plan

3.1.1. No later than 180 days after the Commencement Date, the Contractor must provide to the Customer for approval a Disengagement Plan that meets the requirements of the Agreement (including this Schedule). The Disengagement Plan provided by the Contractor must provide a description of all tasks and activities necessary or desirable to conduct Disengagement as efficiently and effectively as possible (including a list of those things the parties did at the start of this Agreement to effect the TLS Activities). At a minimum, the Disengagement Plan must, unless otherwise agreed in writing by the Customer, address the following:

- (a) approach and strategy for the Disengagement, including in relation to ensuring continuity of the TLS Activities and the TMS Subsystem;
- (b) methodology and processes for Disengagement, including:
 - (i) the process describing how the Contractor will comply with the project closing requirements of AS/NZS ISO/IEC 15288; and
 - (ii) if applicable, the processes for managing the Disengagement process describing how the Contractor will comply with the requirements of the TLS Agreement and, in particular, the Disengagement process set out in clause 50 (Disengagement) of the TLS Agreement;
- (c) tasks, activities, Milestones, TLS Activities and Assets;
- (d) allocation of roles and responsibilities between the Contractor and the Customer or its selected Replacement Contractor;
- (e) a timeline and schedule to execute all of the activities set out in the Disengagement Plan and complete Disengagement by the expiry of the relevant Disengagement Period, including a Disengagement project schedule in MS Project format;
- (f) details of the Key Contractor Personnel who are proposed to perform the Disengagement Services (including number of FTEs & skills and experience of such Key Contractor Personnel);
- (g) processes for managing all legal arrangements pertinent to the Assets which will require transfer, assignment or novation from the Contractor to the Customer or its authorised nominees (including its selected Replacement Contractor), including:

- (i) contracts;
 - (ii) interfaces;
 - (iii) agreements;
 - (iv) warranties and guarantees;
 - (v) Intellectual Property Rights in Assigned IP; and
 - (vi) supply and procurement arrangements;
- (h) processes describing how the Contractor will ensure all Assets are at the target condition by the end of the Disengagement Period;
- (i) processes describing how the Contractor will manage the transition of the Assets from the Contractor to the Customer and/or any authorised nominee (including its selected Replacement Contractor), including:
- (i) notifying the location and condition of each Asset;
 - (ii) provision of learning and assessment;
 - (iii) provision of Spares and consumables; and
 - (iv) provision of Tools;
- (j) approach to assignment or novation of any Subcontracts and any other Third Party contracts to ensure effective transition;
- (k) the transfer of any licences;
- (l) access to premises and systems;
- (m) cut-over strategies;
- (n) testing strategy, acceptance procedure and criteria;
- (o) training strategy (including training of the staff of the Customer / the Replacement Contractor, as applicable) and plans for facilitating knowledge transfer;
- (p) security requirements, including the transfer of security entitlements, passes, contractor identification, procurement entitlements, or any other related matters;
- (q) the processes describing how the Contractor will manage all configuration change, safety, environment, and quality actions to be closed out by the Contractor before handover;
- (r) process for return to the Customer of, or destruction of (at the Customer's election), Materials, data and the Customer's Confidential Information;
- (s) communication plan;
- (t) interdependencies;

- (u) risk management;
- (v) a preliminary meeting between the Customer, the Contractor and any Replacement Contractor to discuss the execution of the Disengagement Plan and identify the status of any issues facing the TLS Activities;
- (w) the handover of:
 - (i) all operational data;
 - (ii) all documents related to the TLS Activities that are Assigned IP or Contractor-Licensed IP to which TfNSW or the Customer has been granted a licence extending beyond the Term in accordance with this Agreement;
 - (iii) a summary of issues identified by the Contractor during the performance of the TLS Activities, the key decisions related to those issues and the history of those decisions;
 - (iv) correspondence with any Government Authority; and
 - (v) all other records which are Assigned IP or Contractor-Licensed IP to which TfNSW or the Customer has been granted a licence extending beyond the Term in accordance with this Agreement,

in a form readily useable by the Customer or any Replacement Contractor;

- (x) a post-implementation review meeting (at the Customer's discretion) between the Customer, the Contractor and, if required by the Customer, any Replacement Contractor; and
- (y) any other transition arrangements reasonably requested by the Customer or otherwise necessary to enable the Customer or the Replacement Contractor to seamlessly perform the TLS Activities immediately after their termination or expiry, with minimal risk, disruption, hindrance or discontinuity.

3.1.2. To the extent that the Disengagement Plan does not deal with any of the matters referred to above, such matters will be deemed to be incorporated into the Disengagement Plan, and the Contractor must comply with the requirements contemplated above and do so in a timely manner.

3.2. Updating the Disengagement Plan

3.2.1. The Contractor must, at its own cost, update the Disengagement Plan at least every twelve (12) months during the Term (including as may be necessary to reflect any changes in the TLS Activities), and must submit the updated Disengagement Plan for Review. The Disengagement Plan for the purposes of this Agreement will be the most current version of the Disengagement Plan which has been approved in writing by the Customer (which version will be deemed to replace the previous version of the Disengagement Plan).

3.3. Detailed Disengagement Plan

3.3.1. In addition to any obligations under clause 50 (Disengagement) of the Agreement, if requested by the Customer, the Contractor must, within thirty (30) days of request by the

Customer, prepare a detailed Disengagement Plan for Disengagement of specific Removed Services (Detailed Disengagement Plan). The Detailed Disengagement Plan is subject to approval by the Customer and must, among other things:

- (a) to the extent relevant, be based on the updated Disengagement Plan approved by the Customer in accordance with sections 3.1 (Preparation of Disengagement Plan) and 3.2 (Updating the Disengagement Plan) above;
- (b) be prepared in consultation with the Customer and take account of the Customer specific requirements and any obligations for the Disengagement;
- (c) provide names and details of the Key Contractor Personnel that will provide the Disengagement Services, including the following details in respect of each Key Contractor Personnel proposed by the Contractor: name, role, proposed utilisation level, expected duration of allocation to the Disengagement and the Labour Rate for each such resource calculated in accordance with Schedule 15 (Pricing Terms).
- (d) where the Contractor proposes a resource that also provides the TLS Activities (other than Disengagement Services), specify how that resource's time will be shared between delivery of the TLS Activities and performance of the Disengagement Services;
- (e) provide details of the migration assistance to be provided for the specific Disengagement including, as applicable, segregation and migration of environments, equipment, Infrastructure, systems, tools, communication links, Software and data required in relation to the Disengagement or relating to specific business programs or specific the Customer or business partners;
- (f) as applicable, identify and provide details of the integration of environments, equipment, systems, tools, communication links, Software and data required in relation to the Disengagement, including integration between:
 - (i) the Removed Services to be provided by the Customer / a Replacement Contractor and the TLS Activities (if any) to be retained by the Contractor; and
 - (ii) the Customer and any of the Customer's business partners and external users; and
- (g) if requested by the Customer, provide a staged or phased Detailed Disengagement Plan.

3.4. Customer's Approval of the Disengagement Plans

3.4.1. Approval of the Disengagement Plan by the Customer will not in any way limit the Contractor's obligations under the Agreement, including its obligations to provide the Disengagement Services in accordance with this Schedule.

4. Specific Disengagement Assistance

4.1. During the Disengagement Period

4.1.1. The Contractor must provide the Disengagement Services set out in this section 4 until:

- (a) the acceptance criteria set out in the Disengagement Plan have been met, as reasonably determined by the Customer; or
- (b) the expiry of the Disengagement Period,

as nominated by the Customer.

4.1.2. Within ten (10) Business Days from the Disengagement Commencement Date, each party must appoint, and notify the other party of, a suitably qualified representative to act as its single point of contact for the Disengagement Services (each a Disengagement Assistance Manager).

4.1.3. The Contractor must conduct the Disengagement Services to meet the objectives specified in section 1.3 (Objectives) of this Schedule, including by:

- (a) continuing to provide the TLS Activities for such period as may be requested by the Customer in writing on a month to month basis (meaning the Customer may terminate the requested TLS Activities by giving a month's notice), for which the Customer will continue to pay the relevant Fees;
- (b) providing all information and assistance to, and answer questions from, the Customer and the Replacement Contractor reasonably necessary to conduct the Disengagement as efficiently and effectively as possible;
- (c) using its best endeavours to mitigate the Customer's costs resulting from the Disengagement, including the Customer's costs in relation to Other Contractors;
- (d) continuing to provide the TLS Activities to the standards required under the Agreement;
- (e) not making any material change to the level of service or number or Contractor Personnel assigned to perform TLS Activities under this Agreement;
- (f) ensuring the TLS Activities and day-to-day operations are not detrimentally affected subject to any agreed disruptions or outages as specified in the Disengagement Plan;
- (g) co-operating and working in conjunction with all parties involved in the transition of the Removed Services, including the Customer, the Replacement Contractor and other Third Party suppliers to the Customer involved in the Disengagement; and
- (h) complying with all instructions, protocols, procedures and Directions provided by the Customer in relation to the conduct of the Disengagement of the Removed Services.

4.2. Knowledge Transfer

4.2.1. The Contractor must transfer all knowledge regarding the Removed Services and the TMS Subsystem to the Customer, including by:

- (a) providing the Customer with all documentation, information and data reasonably required to enable the Customer or a Replacement Contractor to assume responsibility for continued performance of the Removed Services in an orderly manner and so as to minimise disruption to the TMS Subsystem and to the Customer's business and operations, including provision, where applicable, of any of the documents, information and data listed in Appendix A (Disengagement Documents and Data) or updated versions if previously provided in accordance with section 2 (General Disengagement Assistance), and explaining any aspect of such documentation, information and data where requested to do so by the Customer;
- (b) explaining the impact of the Removed Services on the Customer's business and the delivery of its critical business functions, including how those TLS Activities are delivered and managed in order to ensure the Customer's critical business requirements are met (for example, what operational and management practices are applied to ensure the Removed Services are able to meet the standards for those described in the Agreement);
- (c) explaining the procedures, operations, object libraries, reference files, operating scripts, management processes and other standards to the Customer Personnel or the personnel of the Replacement Contractor (if different);
- (d) explaining the use of materials, tools, procedures, equipment and Software in the delivery of the TLS Activities to the Customer Personnel or the personnel of the Replacement Contractor (if different);
- (e) explaining the interfaces and interdependencies for all Removed Services and Infrastructure used to deliver the Removed Services;
- (f) explaining and reviewing all test, data and production Software libraries with the Customer Personnel or the personnel of the Replacement Contractor (if different);
- (g) introducing the Customer Personnel or the personnel of the Replacement Contractor (if different) to Third Parties relevant to the delivery of the Removed Services (including, for example, Software suppliers and Third Party maintenance providers) and providing contact names and details for all such Third Parties;
- (h) allowing the Customer Personnel or the personnel of the Replacement Contractor (if different) to shadow Contractor Personnel in the provision of the Removed Services, including graduated handover of responsibilities to the Customer Personnel or the personnel of the Replacement Contractor (if different);
- (i) providing shadow Contractor Personnel for the Removed Services following migration to the Customer or the Replacement Contractor; and
- (j) providing training and training documentation for the transfer of knowledge to the Customer Personnel or the personnel of the Replacement Contractor (if different).

4.3. Access

4.3.1. The Contractor must provide the Customer with reasonable access to the Contractor's premises, Equipment and systems required for the purpose of effecting Disengagement of the Removed Services. This may include allowing the Customer to load Software or tools onto equipment or systems under the Contractor's control and supervision for the purpose of preparing for and undertaking operational transition, subject to reasonable prior notice and compliance by the Customer with reasonable security requirements.

4.4. Use, Copying and Modification of Documentation

4.4.1. The Contractor must permit:

- (a) the use, copying and modification by the Customer of all documentation, information and data to be provided under this Schedule for the purpose of providing the specific Disengagement assistance referred to in this section 4 or ensuring service continuity during and after the Disengagement Period; and
- (b) the use, copying and modification of such information and documentation by Third Parties nominated by the Customer such as the Replacement Contractor or Other Contractors preparing for and undertaking transition of the Removed Services to new service delivery arrangements, provided that such documentation may only be disclosed by the Customer to third parties that are subject to reasonable confidentiality obligations relating to their use of such documentation and that the use of such documentation is limited in accordance with the scope of the licence in clause 29.2(b).

4.4.2. Any Contractor Confidential Information provided to the Customer pursuant to this section 4 (Specific Disengagement Assistance) is subject to clause 31 (Confidentiality) of the Agreement, and the use and disclosure as contemplated by section 4 (Specific Disengagement Assistance) is permitted use and disclosure under clause 31 (Confidentiality) of the Agreement.

4.5. Operational Transition

4.5.1. Without limiting clause 50 (Disengagement), as part of the Disengagement Services the Contractor must perform all activities required to effect a smooth Disengagement of operational responsibilities for the Removed Services and without impact on any TLS Activities that are not removed.

4.5.2. This includes, to the extent applicable to the Removed Services and as requested by the Customer, the following:

- (a) providing all documentation, information and data requested in accordance with section 4.2(a) of this Schedule, including updated versions of documentation provided under section 2.2 (Provision of Information and Documentation) (updated for currency);
- (b) delivering Software (but excluding source code except as provided by (l) below) and SOE images used to provide the Removed Services;

- (c) delivering object libraries, reference files, scripts and Software tools used to provide the Removed Services (but excluding source code except as provided by (l) below);
- (d) delivering systems support profiles and monitoring and system logs;
- (e) with respect to work in progress, stabilising such work in progress for continuity during Disengagement, and providing any required training requested in accordance with section 4.2 (Knowledge Transfer) of this Schedule to achieve Disengagement without loss of momentum or adverse impact on timetables. For each work in progress, the Contractor will propose for the Customer's review and approval, a Milestone and associated Acceptance Criteria that denotes the point at which the work in progress is considered 'suitable' for complete transfer of responsibility;
- (f) providing the Customer with any incident or problem logs the Customer does not already have;
- (g) freezing all or any discretionary Software changes, other than emergency Modifications necessary to address processing incidents and problems;
- (h) providing assistance in notifying Third Party suppliers of the procedure to be followed during Disengagement;
- (i) novating or assigning Third Party contracts for Contractor's Equipment, Software or TLS Activities to the Customer in accordance with the requirements of the Disengagement Plan;
- (j) transferring Assets to the Customer in accordance with the requirements of this Schedule;
- (k) providing reasonable assistance to the Customer in establishing or transferring naming conventions;
- (l) in respect of:
 - (i) any Assigned IP; or
 - (ii) Contractor Licenced IP only where the Customer has be granted a licence pursuant to this Agreement to modify or adapt extending beyond the Term,

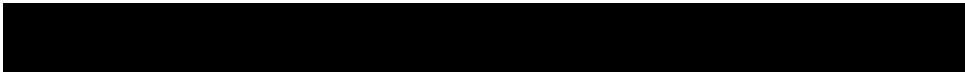
deliver to the Customer all source code required to be provided to the Customer under this Agreement (if not previously provided to the Customer) in a form reasonably requested by the Customer as well as delivering the object code, technical specifications and Materials, and user documentation for the Software and any other material which a relevantly qualified programmer would require to modify or adapt that Software;
- (m) delivering the content listings of all relevant requested data files and copies of control file information to the Customer;
- (n) providing reasonable assistance to the Customer in loading the data files;

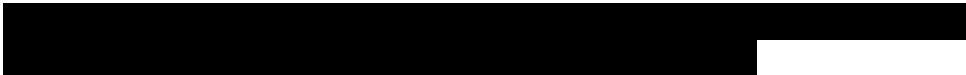
- (o) providing reasonable assistance to the Customer with the movement of data from then existing systems or databases to the new environment;
- (p) providing an image copy of each operating system environment in dump/restore mode to the Customer;
- (q) in conjunction with the Customer, participating in all migration planning activities;
- (r) providing reasonable assistance to the Customer in the execution of testing, including conducting parallel operations and testing;
- (s) conducting rehearsals of each migration prior to cut-over as scheduled by the Customer;
- (t) working in conjunction with the Customer to conduct cut-over and migration of the Removed Services at times specified by the Customer;
- (u) providing post cut-over and service stabilisation assistance following Disengagement of the Removed Services;
- (v) if requested by the Customer, transferring the organisational structure developed during the Term to support the delivery of the Disengagement Services and TLS Activities. Specifically, the Contractor must:
 - (i) document, update and provide functional organisation charts, operating level agreements with Third Party suppliers, phone trees, contact lists, and standard operating procedures; and
 - (ii) transfer physical and logical security processes and tools, including cataloguing and tendering all badges and keys, documenting ownership and access levels for all passwords, and instructing the Customer or its nominee in the use and operation of security controls;
- (w) training and informing the Customer or its nominee (including any Replacement Contractor) of the then-current policies and procedures with regard to backup and business continuity;
- (x) providing continuity of TLS Activities and operations throughout the Disengagement.

4.6. Offer to Transfer Contractor's Equipment, Software and Service Agreements

4.6.1. The Customer retains the right to purchase or lease any item of Contractor's Equipment or to license any item of Software used by the Contractor to perform the TLS Activities from the Contractor during a Disengagement (of all or part of the TLS Activities).

4.6.2. The Contractor must:

- (a) offer to provide the Customer with continued use of each item of Contractor's Equipment used to deliver the Removed Services in accordance with section 4.7 (Contractor's Equipment and Other Material);
- (b) 

- 
- (c) provide use of each Third Party contract used to deliver the Removed Services not otherwise obtainable by the Customer from the relevant Third Party on reasonable commercial terms.

4.6.3. In relation to any Material that the Customer wishes to continue to use, the Contractor must do all things as Directed by the Customer that are necessary to effect that continued use, including:

- (a) obtaining all necessary Third Party consents if possible; and
- (b) preparing and executing all required bills of sale, assignment and novation deeds.

4.7. Contractor's Equipment and Other Material

4.7.1. For Contractor's Equipment used to provide the Removed Services, at the Customer request, the Contractor must sell or assign to the Customer that Contractor's Equipment or lease that Contractor's Equipment, for the amounts calculated in accordance with section 9 (Transfer of Equipment and Software) of Schedule 15 (Pricing Terms).

4.8. Third Party Contracts

4.8.1. The Contractor must, in relation to all goods and services used to deliver the Removed Services (including Software support and Contractor's Equipment maintenance contracts):

- (a) use its best endeavours to include terms in any of the Contractor's contracts with Third Parties to enable the novation of such contracts to the Customer at no cost and
- (b) promptly notify the Customer prior to entry into any such contract if the Contractor is unable to obtain the inclusion of such terms into the contract.

4.8.2. If novation rights were achieved under 4.8(a)(i), at the Customer's request, the Contractor must promptly perform all actions necessary to effect such novation contracts; and

4.8.3. If novation rights were not achieved under 4.8(a)(i), at the Customer's request, the Contractor must attempt again to use best endeavours to novate any of the Contractor's contracts to the Customer at no cost.

4.9. Removal of Assets

4.9.1. The Contractor must give notice to the Customer before removing any Contractor's Equipment or Software used in providing the Removed Services, documents or other Materials from the Customer, Contractor or Third Party premises.

4.9.2. The Contractor must perform all activities requested by the Customer in relation to:

- (a) segregation and removal of Contractor's Equipment, Software, Materials, documents and other physical assets from the Customer, Contractor or Third Party premises; and

- (b) the delivery and installation of these items at the new premises at which they are to be installed.

4.10. Engaging Contractor Personnel

- 4.10.1. The Customer or its nominee will be permitted to make offers of employment to hire, without interference from the Contractor, any Contractor Personnel involved in performing the Removed Services for the majority of their working time during the twelve (12)-month period before the start of the Disengagement Period.
- 4.10.2. The Customer will notify Contractor of the Contractor Personnel to which it will extend offers of employment under this section 4.10 (Engaging Contractor Personnel) and consult with the Contractor on the process for doing so. However, this does not constrain the Customer from retaining the services of Contractor Personnel who respond to any form of position vacant advertisement.
- 4.10.3. After notification by the Customer or its nominee under this section 4.10 (Engaging Contractor Personnel), the Contractor must:
 - (a) waive any rights the Contractor may have under contracts with those Contractor Personnel restricting their ability to be recruited or hired by the Customer or its nominee, with the exception of existing termination periods up to four (4) weeks;
 - (b) give the Customer or its nominee reasonable access to such Contractor Personnel for interviews and recruitment;
 - (c) consult with the Customer before making any material changes to individual employee or contractor job designations or positions or reassigning those Contractor Personnel to other Contractor work or customers during the Disengagement Period; and
 - (d) provide reasonable assistance to the Customer, where appropriate, to obtain any authorisation from individual employees and contractors required for the Customer to undertake the activities set out in this section 4.10.

4.11. Licences Granted by the Customer

- 4.11.1. Unless expressly set out otherwise in the Disengagement Plan, and subject to the clauses of the Agreement that deal with such matters (including clause 29 (Intellectual Property)), all licences, leases and authorisations granted by the Customer to the Contractor in relation to the Removed Services are terminated with effect from the expiry of the Disengagement Period, unless otherwise Directed by the Customer.

Appendix A – Disengagement Documentation and Data

1. Volume and charge details for the period requested by the Customer, including trending information.
2. Resourcing details including staff numbers, roles, functions, FTE utilisations by role, work volumes and hours by role, staffing locations.
3. Facilities details including costs, space requirements, environmental requirements, maintenance requirements and Infrastructure/service requirements.
4. Actual and historical performance against committed performance measures (scorecard and service levels), and service-level arrangements with Subcontractors.
5. Historical performance of each equipment component, system and application.
6. Service desk records (including contact profiles, incident and problem tracking, resolution and post incident review documentation, security and access control records, moves, add and changes (MACs) and service request records), reports and knowledge databases.
7. Software development and maintenance performance data and status reports associated with Software support.
8. Capacity, usage, traffic and work load reports and plans.
9. Change management documentation and reports including change and release schedules, statistics, sample historical change profiles.
10. A copy of any CMDB, configuration and/or asset data base.
11. A full inventory of all equipment used to perform the Removed Services (whether exclusively or shared) including up-to-date and accurate asset numbers, serial numbers, make/model and specifications, maintenance histories, installation dates, end of life details, acquisition/lease details, warranty details, operating system Software details, locations, functionality and role, environment, installed applications, databases and middleware and Third Party maintenance agreements.
12. Net book values for equipment, as at the date specified by the Customer.
13. Full lease details for all equipment that is under lease, whether such leases are in the name of the Customer or Contractor, including details of lease pre-payments, remaining lease payments, residual lease values and early pay-out charges.
14. For equipment maintenance contracts, full details of all upfront, pre-paid and on-going fees (including variations).
15. A full inventory of all Software (system Software, management tools, middleware, database Software, office automation and applications) including, up-to-date and accurate product descriptions, version numbers, currency, vendor details, licence and maintenance details and description of function and installation details (including which devices and locations).
16. Full details of all licence and maintenance fees, including up-front, pre-paid and on-going fees and fees for growth, licence changes and additional modules.
17. A full inventory of all Third Party contracts, including Software contracts, equipment contracts, lease contracts, maintenance contracts and Third Party service provider contracts
18. To the extent known, the cost to the Customer of continuing to use all equipment, Software and Third Party contracts for the performance of the Removed Services.

19. Technical specifications, schematics, diagrams and workbooks including service and configuration details, designs, copies of scripts and workflow information, connectivity and integration details.
20. Technology plans, refresh plans, asset upgrade plans.
21. Architecture standards and documentation.
22. Operational procedures and scripts for each device and component used to perform the Removed Services including start up and shut down procedures, back-up and recovery procedures, archiving and data retention procedures, installation, migration and release procedures, patch management procedures, production acceptance procedures, testing procedures, security procedures including access control, database administration procedures, scheduling procedures.
23. Documentation for all TLS Activities or Removed Services, where required in relation to relevant Software to be provided under this Schedule.
24. Details of databases and their management.
25. Content listings of all relevant requested data files and copies of control file information.
26. Security documentation including security audit reports, details of physical and logical security processes and tools, security standards, policies and procedures.
27. Business process documentation including workbooks.
28. An up-to-date and accurate list of all contract materials and the register of the Customer, Contractor and Third Party Intellectual Property Rights related to the Removed Services.
29. Details of work in progress including projects, work orders and additional TLS Activities work.
30. Disaster recovery plan and disaster recovery test results and reports.
31. Any other information concerning the Removed Services required by the Customer.



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Schedule 23 Form of Subcontractor Deed

See separate document

Schedule 23 Form of Subcontractor Deed

Deed dated the day of 20

Between (“the **Customer**”)

And (“the **Contractor**”)

And [insert name, and ACN/ABN if applicable] (“the **Subcontractor**”)

Recitals

- (a) The Customer and the Contractor have agreed on the terms and conditions of the TMS TLS Agreement.
- (b) The Contractor has engaged or will engage the Subcontractor under the Subcontract to perform part of the Program.
- (c) The Customer and the Subcontractor have agreed that the Subcontractor will, in addition to its obligations to the Contractor under the Subcontract, owe obligations directly to the Customer as set out in this Deed.

The parties agree

1 Agreed Terms and Interpretation

1.1 Definitions

The following definitions apply in this Deed:

Affected Activities has the meaning given in clause 2.1(b)(i)(D).

Subcontract means the document entitled **[Subcontract]** dated **[*]** and entered into between the Contractor and the Subcontractor.

TMS TLS Agreement means the agreement entitled “TMS TLS Agreement” dated **[*]** and entered into between the Customer and the Contractor.

1.2 Definitions in TMS TLS Agreement

Subject to clause 1.1, capitalised terms used in this Deed that are defined in the TMS TLS Agreement have the same meaning in this Deed.

1.3 Rules for interpreting this Deed

The rules of interpretation set out in section 2 of Schedule 1 (Definitions and Interpretation) of the TMS TLS Agreement apply to the interpretation of this Deed as if they were incorporated into this Deed.

1.4 Business Days

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

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

1.5 Contra proferentum

In the interpretation of this Deed, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this document or any provision in it.

1.6 The Contractor

The Contractor is a party to this Deed for the purposes only of acknowledging that the Subcontractor will not be in breach of the Subcontract by complying with its obligations under this Deed.

1.7 Exclusion of *Civil Liability Act 2002 (NSW)*

- (a) To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations and liabilities of any party arising under or in relation to this Deed howsoever such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of any party under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
 - (i) the Contractor and the Subcontractor must not seek to apply part 4 of the *Civil Liability Act 2002 (NSW)* in relation to any claim by the Customer against the Contractor or Subcontractor (whether in contract, tort or otherwise) in relation to this Deed; and
 - (ii) if any of the provisions of part 4 of the *Civil Liability Act 2002 (NSW)* are applied to any claim by the Customer against the Contractor or Subcontractor (whether in contract, tort or otherwise) in relation to this Deed, the Contractor or Subcontractor will indemnify and must keep indemnified the Customer against any loss, damage, cost or expense which the Customer is not able to recover from the Contractor or Subcontractor because of the operation of part 4 of the *Civil Liability Act 2002 (NSW)*.

2 Subcontractor's Undertakings

2.1 Undertakings

- (a) The Subcontractor acknowledges, represents, warrants and undertakes for the benefit of the Customer as follows:
- (i) it will fully comply with:
 - (A) all of its obligations under the Subcontract and this Deed; and
 - (B) all the terms and conditions of the TMS TLS Agreement, as though references in the TMS TLS Agreement to the “Contractor” were references to the “Subcontractor”, but only to the extent they are relevant to the goods and services to be provided by the Subcontractor. The Subcontractor acknowledges that the following provisions of the TMS TLS Agreement will be relevant to the goods and services to be provided by the Subcontractor: provisions relating to sites, personnel, compliance obligations (including workplace health and safety), action plans, enhanced co-operation and supervision, performance remediation (including step-in), subcontracting, interface requirements, termination and disengagement rights, and the intellectual property, confidentiality, privacy and security provisions of the TMS TLS Agreement;
 - (ii) it is reputable and has, or has access to, sufficient experience, expertise and ability to perform its obligations to the standards required by the Subcontract and the TMS TLS Agreement;
 - (iii) it has exercised and will continue to exercise, in accordance with Industry Best Practice, the level of skill, care and diligence in performing its duties under the Subcontract which may reasonably be expected of a contractor experienced in the performance of the same or similar activities to those provided under the Subcontract and those expected as part of the Program, provided that, other than as expressly set out in this Deed, the Subcontractor will have no greater obligations to the Customer by virtue of this Deed than it would have had if the Customer had been named as the Contractor under the Subcontract;
 - (iv) the activities performed or required to be performed by the Subcontractor will be performed and completed:
 - (A) in accordance with the Subcontract and this Deed;
 - (B) in accordance with all applicable Laws;
 - (C) with due care and skill, and in a proper and professional manner;
 - (D) using (including installing) materials, equipment and goods, that will be to the quality and standard specified in the Subcontract, but if no standard is specified, new and of merchantable quality and which are and will remain at all relevant times fit for their purpose as specified in the Subcontract; and
 - (E) so that the works carried out or performed by the Subcontractor, when completed, will be and will remain at all relevant times fit for their intended purpose as specified in the Subcontract;

- (v) it has exercised and will continue to exercise reasonable skill, care and diligence in connection with the selection and supervision of its employees, agents, subcontractors and contractors;
 - (vi) if at any time called upon to do so by the Customer, it must:
 - (A) extend to the Customer any guarantee of the performance of the Subcontract or any warranty provided to the Contractor;
 - (B) provide the Customer, or any person authorised by the Customer, with such information related to the products and/or services provided under the Subcontract as the Customer may reasonably require; and
 - (C) allow the Customer, or any person authorised by the Customer, on reasonable notice, to inspect the performance of the Subcontract as the Customer may reasonably require;
 - (vii) it will not hold itself out as being, or otherwise purport to be, the agent of the Customer in connection with the execution of the Subcontract;
 - (viii) it must maintain, either by itself, or through the Contractor, a suitable and adequate level and cover of insurance as appropriate to reflect the nature of the activity, service or goods the subject of the Subcontract;
 - (ix) the copy documents annexed to this Deed at Annexure A confirm the substance of all the relevant risks, indemnity and liability insurances required to be taken out by the Subcontractor, that such insurances are valid and the premiums for the current periods of insurance have been duly paid, that the Subcontractor is not aware (after having made due and careful enquiry) of any circumstances likely to give rise to any claim under such insurances, and that the Subcontractor will maintain such insurances for so long as is required under the Subcontract and this Deed;
 - (x) in relation to any insurance policies, the details of which have been provided to the Subcontractor, it will not do anything that may invalidate any such insurance policy or any indemnity to which the Customer or the Customer Indemnified Persons may be entitled;
 - (xi) it will promptly inform the Customer of any material default by the Contractor under the Subcontract; and
 - (xii) it acknowledges the importance to the Customer and the Program of the Collaboration Principles and, where requested by the Customer, agrees to be a Collaboration Participant and adopt the Collaboration Principles.
- (b) The Subcontractor acknowledges that the Customer has the right under the TMS TLS Agreement to:
- (i) require the Contractor to:
 - (A) enable the Customer or its nominated Personnel to work alongside and supervise the Contractor Personnel (including the Subcontractor) to understand and collaborate on how to resolve certain relevant circumstances, problems, risks or issues;
 - (B) promptly provide the Customer or its nominated Personnel with such information (in addition to any information required to be provided under the other provisions of this Agreement), and access to the Delivery Locations used in the provision of the TLS Activities as the

Customer may reasonably request to enable it fully to understand the nature and causes of certain circumstances, problems, risks or issues, other information relevant to the TLS Activities, and the steps (if any) being taken or considered by the Contractor (and Subcontractor) to remedy such circumstances, problems, risks or issues;

- (C) procure that such members of the Contractor's (and Subcontractor's) senior management engaged or familiar with the delivery of the TLS Activities:
 - attend in person, at the Customer's chosen location, meetings with representatives of the Customer as soon as reasonably practicable and on no more than two (2) Business Days' notice; and
 - be directly responsible for management and oversight of resolution of certain circumstances, problems, risks or issues, remotely providing comprehensive daily updates (or updates at such other frequency as the Customer may require) on such resolution to the Customer; and
- (D) enable the Customer to assist, or engage a Third Party to assist, the Contractor to perform any part of the affected TLS Activities (the **Affected Activities**);
- (ii) nominate the Customer representatives to be included in the Contractor's team tasked with the resolution of the breach and restoration of the Affected Activities, in which case:
 - (A) the Subcontractor must ensure that such Customer representatives are invited and permitted to be involved in all aspects of the resolution and restoration where relevant to the Subcontractor; and
 - (B) the Subcontractor must comply with any Directions given to the Contractor Personnel by such Customer representatives;
- (iii) appoint a person as remediation manager to manage the Contractor's performance of the Affected Activities;
- (iv) take control of the Affected Activities, and in so doing taking any action that the Customer or its nominee believes is necessary to restore or rectify the Affected Activities, including having the Customer or its nominee:
 - (A) give Directions to Contractor Personnel (including the Subcontractor);
 - (B) do all other things the Customer considers necessary to take over control of the Affected Activities;
 - (C) provide goods or perform services which are the same as or similar to the Affected Activities itself or procure such goods or services from a Third Party (or require the Contractor to do so);
- (v) without limiting the above, assist or engage a third party to assist, the Contractor in managing the performance of the Subcontract, or perform itself or engage a third party to perform, the obligations under the Subcontract; and/or
- (vi) take such other action as is reasonably necessary to restore the affected function or remedy the relevant issue.

- (c) If the Customer exercises any of the rights referred to in clause 2.1(b), the Subcontractor:
- (i) acknowledges that the Customer may exercise those rights in respect of activities to be performed by the Subcontractor under the Subcontract;
 - (ii) agrees that it will permit the Customer to exercise those rights;
 - (iii) must fully cooperate with the Customer (and its nominees) and provide all reasonable assistance, access, materials and work-in-progress at no charge to the Customer, in connection with the Customer's exercise of its rights, which may include provision of equipment or copies of Software (including associated source code); and
 - (iv) must comply with any Directions of the Customer that relate to its exercise of those rights under or in respect of the Subcontract.

2.2 Reliance on representations and warranties

The Subcontractor acknowledges and agrees that the Customer entered into this Deed in reliance on the undertakings and warranties made in clause 2.1 (Undertakings).

2.3 Indemnities

The Subcontractor indemnifies and must keep the Customer and each Customer Indemnified Person (and each of their respective officers, employees, agents and representatives) indemnified from and against all claims and Loss arising out of, or in connection with a:

- (a) breach by the Subcontractor of any of the undertakings, representations or warranties given by it under clause 2.1 (Undertakings); or
- (b) failure by the Subcontractor to comply with any of its other obligations under this Deed.

2.4 Discontinuance of the Customer or any Customer Indemnified Persons

Subject to any contrary legislative intention:

- (a) if the Customer or any Customer Indemnified Persons is reconstituted, renamed or replaced, or if its powers or functions are transferred to another entity, this Deed is deemed to refer to that new entity;
- (b) if the Customer or any Customer Indemnified Persons ceases to exist, this Deed is deemed to refer to that entity which serves substantially the same purpose or object as the former entity; and
- (c) notwithstanding any other provision of this Deed, the Customer may transfer this Deed and any rights under this Deed to any new or substitute entity referred to in paragraphs (a) and (b) of this clause 2.4.

3 Liability of Subcontractor

- (a) The liability of the Subcontractor under this Deed is not affected by the Customer exercising or refraining from exercising any or all of its rights in respect of the Contractor under the TMS TLS Agreement or under any other document or

agreement entered into or provided under or in connection with the TMS TLS Agreement or at Law or in equity.

- (b) Any:
- (i) information provided to, and any inspection undertaken by, the Customer or any person authorised by the Customer under clauses 2.1(a)(vi)(B) and 2.1(a)(vi)(C); or
 - (ii) exercise of the Customer's rights referred to in clauses 2.1(b),
- will not limit or discharge the obligations of the Subcontractor under the Subcontract nor will it relieve the Subcontractor from any liability which it may have in respect of any defect or default in or relating to the Program.
- (c) For the avoidance of doubt, other than as expressly set out in this Deed, the Subcontractor will have no greater obligations or liabilities to the Customer under, arising out of, or in connection with, this Deed, than it would have had if the Customer had been named as the contractor under the Subcontract, to the extent that those obligations or liabilities relate to the Subcontract or this Deed.

4 Novation of Contractor's Rights and Obligations

4.1 Novation

- (a) Upon the Customer giving to the Subcontractor notice stating that it is exercising its rights to novate the Subcontract, the Subcontractor must:
- (i) do all things necessary to:
 - (A) subject to paragraph (b) below, execute the Subcontract novation in the form of Schedule 31 (Form of Subcontractor Deed of Novation) to the TMS TLS Agreement;
 - (B) give effect to the Subcontract novation; and
 - (C) assist the Customer to assume the responsibilities of a counterparty to the Subcontract; and
 - (ii) not exercise any right or power under the Subcontract that may be contrary to the interests of the Customer, or refuse to exercise any right or power under the Subcontract for the interests of the Customer, pending novation of the Subcontract.
- (b) Following the effective date of the novation of the Subcontract:
- (i) the Subcontractor must perform for the Customer all of the obligations of the Subcontractor to the Contractor under the Subcontract;
 - (ii) the Customer must assume all the rights and undertake all the obligations of the Contractor under the Subcontract; and
 - (iii) the Subcontractor will have the same rights against the Customer as it had against the Contractor, and the Customer will have the same rights against the Subcontractor as the Contractor had against the Subcontractor, under the Subcontract.

- (c) Alternatively, the Customer may in its discretion require a novation to its nominee on the above terms. If the Customer requires a novation to its nominee, the Subcontractor will enter into any document necessary to formalise this arrangement.

4.2 Obligations prior to Novation

- (a) Clause 4.1 (Novation) will not operate to require the Customer to assume any obligations of the Contractor under the Subcontract which relate to the period prior to the date of the Customer notifying the Subcontractor under clause 4.1 (Novation).
- (b) The Customer will not be subject to any set-off or counterclaim which arises out of circumstances which relate to the period prior to the date of a notice given under clause 4.1 (Novation).
- (c) The parties agree that nothing in this Deed will, by implication or otherwise release or prejudice or effect the rights, powers and remedies which the Subcontractor had against the Contractor under the Subcontract and arising prior to the notice issued by the Customer under clause 4.1 (Novation) and the parties acknowledge that the rights of the Subcontractor to recover against the Contractor for any act, default or omission of the Contractor arising prior to such notice are not fettered or reduced by the continuing obligations of the Customer.

5 Notices

5.1 Notice requirements

- (a) A notice, consent or other communication under this Deed is only effective if it is:
 - (i) in writing, and in legible English, signed by or on behalf of the person giving it;
 - (ii) addressed to the party to whom it is to be given; and
 - (iii) either:
 - (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (B) sent by email to the party's email address,

in each case as set out in clause 5.3 (Address for notices), as updated from time to time by a party under paragraph (b).
- (b) Where a party notifies another party of an updated address or email address, the notified parties must use those updated contact details for the purpose of giving notices under this Deed.
- (c) A notice terminating or novating this Deed must be given by pre-paid mail (by airmail, if the addressee is overseas) or delivered to the relevant party's address.

5.2 When a notice is given

- (a) Subject to paragraph (b), a notice, consent or other communication under this Deed is, in the absence of earlier receipt, regarded as given, provided, served, issued and received:

- (i) if it is delivered, on delivery at the address of the relevant party;
 - (ii) if sent by email, at the time it was transmitted by the sender provided that if the sender receives a message indicating that it has not been successfully transmitted provided that where an "out of office" reply, delivery error or similar response is returned in response to that email the email will not be taken to be received and the sender will use the alternative methods of sending the notice in accordance with this clause; or
 - (iii) if it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside Australia, on the fifth Business Day after the day of posting.
- (b) If a notice, consent or other communication under this Deed is given and received on a day that is not a Business Day or after 5.00pm (local time in the place of receipt) on a Business Day, it is regarded as being given and received at 9.00am on the next Business Day.

5.3 Address for notices

A person's address and email address are those set out below, or as the person notifies the sender:

Subcontractor

Address: [Insert]
Email address: [Insert]
Attention: [Insert]

Contractor

Address: 160 Herring Road, Macquarie Park, NSW 2113
Email address: [Insert]
Attention: [Insert]

Customer

Address: Ground Level, 36-46 George Street, Burwood NSW 2134
Email: [Insert]
Attention: [Insert], Deputy Executive Director (Commercial and Supply Chain)

6 General

6.1 Amendment and assignment

- (a) This Deed can only be amended, supplemented, replaced or novated by another document signed by the parties.
- (b) The Customer may assign any of its rights, or novate its rights and obligations, under this Deed without the consent of the Contractor or the Subcontractor. The Subcontractor and Contractor must execute any document reasonably requested by the Customer to give effect to the assignment or novation.

- (c) The Contractor may only assign, transfer or otherwise deal with this Deed, where the Contractor has assigned, transferred or otherwise dealt with the TMS TLS Agreement.
- (d) The Subcontractor must not assign, transfer or otherwise deal with this Deed unless the Customer has approved such assignment, transfer or dealing in writing.

6.2 Liability of the Customer and Customer Indemnified Persons

The Subcontractor and Contractor acknowledge to the Customer that nothing contained in this Deed is intended to, nor will it render the Customer and Customer Indemnified Persons liable to the Subcontractor or Contractor in relation to any matters arising out of, or in connection with, this Deed or otherwise.

6.3 Cumulative rights and remedies

Any right, power or remedy that a person may have under this Deed is in addition to, and is not exclusive of, nor does it replace or limit, any other right, power or remedy that the person may have.

6.4 Indemnities

- (a) No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed.
- (b) Unless expressly provided otherwise, each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.
- (c) Each indemnity in this Deed survives the expiry or termination of this Deed.
- (d) An indemnified party must take all reasonable steps to minimise the loss it has suffered or is likely to suffer as a result of an event giving rise to an indemnity under this Deed. If the indemnified party does not take reasonable steps to minimise such loss then the amount payable by the indemnifying party will be reduced proportionately in each case.

6.5 Governing law

- (a) This Deed is governed by the Law in force in the state of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of New South Wales, including for the avoidance of doubt, the Federal Court of Australia sitting in the State of New South Wales.

6.6 Expenses

Each party will be responsible for its own costs and expenses incurred in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this Deed;
- (b) the transactions that this Deed contemplates; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Deed.

6.7 Giving effect to this Deed

Each party must, at its own expense, promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Deed and any transactions contemplated by them.

6.8 Waivers and exercise of rights

- (a) No waiver of a right or remedy under this Deed is effective unless it is in writing and signed by the party granting it. Any waiver is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) Except as expressly provided to the contrary in this Deed, the Customer may conditionally or unconditionally in its absolute discretion give or withhold any consent, agreement, approval or waiver under this Deed.
- (c) A single or partial exercise of a right or remedy under this Deed does not prevent a further exercise of that or of any other right or remedy.
- (d) Failure to exercise or delay in exercising a right or remedy under this Deed does not operate as a waiver or prevent exercise of that or of any other right or remedy.
- (e) No Inspection, audit, agreement, approval, acceptance, review, attendance, payment of any payment claim, permission or comment by the Customer:
 - (i) constitutes a waiver of any default, admission of liability or acceptance of any act or omission of the Subcontractor or that a Contractor's Activity has been properly provided; or
 - (ii) affects the Subcontractor's obligation to perform this Deed in accordance with its terms.

6.9 Operation of this Deed

- (a) This Deed constitutes the entire agreement between the parties concerning its subject matter and replaces all previous agreements and understandings, about that subject matter.
- (b) If a provision, or the application of any provision, of this Deed is wholly or partially void or unenforceable in a jurisdiction:
 - (i) it is severed to the extent that it is void or unenforceable from the remainder for the purposes of enforcement in that jurisdiction; and
 - (ii) the remainder has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (c) Paragraph (b) has no effect if the severance:
 - (i) alters the basic nature of this Deed; or
 - (ii) is contrary to public policy.

6.10 No Partnership or employment relationship

Nothing in this Deed:

- (a) may be deemed to constitute a partnership, joint venture, agency or other legal relationship between the Customer, the Contractor, and the Subcontractor other than that of customer, provider and sub-provider respectively; and
- (b) authorises either party to waive any obligation for which the other party may be responsible or to incur any liability on behalf of the other party.

6.11 No Merger

No term of this Deed merges on completion of any transaction contemplated by this Deed.

6.12 Counterparts

This Deed may be executed in any number of counterparts which, when taken together, will constitute one instrument.

6.13 Attorneys

Each attorney executing this Deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.



Annexure A

Execution page

Executed as a deed

Signed, sealed, delivered by
Sydney Trains (ABN 38 284 779 682)

By *[insert name of Sydney Trains' representative]* as authorised signatory

In the presence of: *[insert name of witness not a party to this Deed]*

Signature of Sydney Trains' representative

Signature of Sydney Trains' witness

Print Name

Print Name

Date

Date

Signed, sealed, delivered by
Siemens Mobility Pty Ltd (ABN 39 625 304 556)

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date

Signed, sealed, delivered by *[insert Subcontractors' name and ACN/ABN]*

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date



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Schedule 24 Form of Confidentiality Deed Poll

See separate document

Schedule 24 Form of Confidentiality Deed Poll

Contract Number: _____

Contractor: _____

(“Contractor”)

Confidentiality Deed Poll made at _____ **on:** ___/___/___

By:

Name: _____

Address: _____

(“Recipient”)

In favour of:

Sydney Trains

(“Principal”)

Background

The Principal and the Contractor entered into the Contract numbered above (“Contract”), in which the Contractor agreed to perform certain services.

It is a requirement of the Contract that the Contractor procures such of its officers, employees, subcontractors and agents as are required by the Principal to sign an individual confidentiality deed poll.

The Contractor has requested, and the Recipient has agreed, to execute this deed poll.

All capitalised terms used in this deed poll and not otherwise defined have the meaning given to them in the Contract.

Confidential Information

1. *Confidential Information* is:

- (a) any and all information (including, without limitation, information contained in proposals, designs, tenders, reports, advices, minutes of meetings or correspondence) in any form relating to the Contract or to the Principal or a Rail Transport Entity which has come to the knowledge or possession of the Recipient by any means;
- (b) any material produced by the Contractor or the Recipient under the Contract; and

- (c) the terms of the Contract (including any statement of work entered into under it), but excludes any such information which the Recipient can establish:
- (d) is or became generally available in the public domain other than through a breach of confidence;
- (e) was independently developed by the Recipient; or
- (f) was rightfully received by the Recipient from a third party (that is not a Rail Transport Entity or Other Contractor) who is under no obligation of confidentiality in respect of that information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Principal.

For the avoidance of doubt, the following information will be the Principal's Confidential Information:

- (g) information developed by the Contractor specifically for the Principal;
- (h) Confidential Information of a Rail Transport Entity; and
- (i) all information provided to the Proponent by or on behalf of the Principal, a Rail Transport Entity or their Associates in relation to the TLS Activities, the Program or the Works.

In the event of uncertainty as to whether:

- (j) any information is Confidential Information; or
- (k) any information is lawfully within the public domain,

that information is taken to be Confidential Information and the Confidential Information is taken to be not within the public domain, unless the Recipient is informed by the Principal in writing to the contrary.

Warranty and covenant

2. The Recipient warrants and covenants that it will treat and keep the Confidential Information in the strictest of secrecy and confidentiality and expressly acknowledges and agrees that the Confidential Information is of a secret and confidential nature.
3. The Recipient warrants and covenants that it will do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.
4. Subject to paragraph 6 below, the Recipient may not disclose to any person other than:
 - (a) the Principal;
 - (b) the legal advisors and employees of the Recipient and the Recipient's Related Bodies Corporate on the condition that the employment contracts of such employees contain suitable confidentiality provisions which protect the confidentiality of the Confidential Information to the same extent as this deed poll; or
 - (c) a person who has signed a confidentiality deed poll in the form of this document in favour of the Principal pursuant to the Contract,the Confidential Information, that the Confidential Information has been made available to the Recipient or that discussions or negotiations are taking place concerning the Contract.
5. The Recipient undertakes:
 - (a) to protect and safeguard Confidential Information against unauthorised use or disclosure;
 - (b) not to use Confidential Information for any reason or purpose except as directed by the Principal; and
 - (c) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

Authorised disclosure

- 6. If the Principal’s representative approves in writing the disclosure of Confidential Information, the Recipient may disclose that Confidential Information in accordance with the terms of that approval.

Return of Confidential Information

- 7. If the Principal requests it, the Recipient must:
 - (a) promptly return to the Principal all documents and other physical records of Confidential Information in its possession, custody, power or control;
 - (b) if any Confidential Information in the possession, custody, power or control of the Recipient is in a form that cannot be detached from valuable equipment (including, but not limited to, Confidential Information stored by electronic, electromagnetic or other means), the Recipient must permanently delete and erase the Confidential Information; and
 - (c) provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or deleted and erased, as appropriate.

Continuing obligation

- 8. The obligations of the Recipient under this deed poll continue after the completion or termination of:
 - (a) the Contract; and
 - (b) the Recipient’s employment, engagement or assignment with the Contractor.

Injunctive relief

- 9. In the event of a breach by the Recipient of the Recipient’s obligations under this deed poll, then in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal will be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.

Further assurances

- 10. The Recipient must do all things and execute all documents, including but not limited to executing any agreements of assignment, or agreements under hand or seal, which may be required by the Principal to give effect to the provisions of this Confidentiality Deed Poll at a later date.

Non-waiver

- 11. The failure of the Principal to enforce any of the provisions of this deed poll or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of the Principal to enforce that or any other provision at a later date.

Jurisdiction

- 12. This deed poll is governed by and subject to the laws of New South Wales.

No revocation

- 13. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a Deed Poll

Signed, sealed, delivered by the Recipient:

in the presence of:

Recipient

Witness

Name (please print)

Name (please print)



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Schedule 25 Confidentiality and Intellectual Property Deed Poll

See separate document



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Schedule 26 Form of Contractor Deed Poll

See separate document



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Schedule 27 Form of Deed of Novation

See separate document

Schedule 27 Form of Deed of Novation

Dated the Effective Date

Parties Sydney Trains (ABN 38 284 779 682) (**Retiring Party**)
Siemens Mobility Pty Ltd (ABN 39 625 304 556) (**Continuing Party**)
[] (**Substitute Party**)

Recitals

- A The Retiring Party and the Continuing Party are parties to the Contract.
- B The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1 Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears, and in this deed:

Contract means the agreement between the Retiring Party and the Continuing Party entitled TMS TLS Agreement, and includes:

- (a) all the Work Orders formed in accordance with the Contract; and
- (b) any and all other agreements entered into between the Retiring Party and the Continuing Party under or in connection with the foregoing,

except for any Work Order or agreements that are identified in the Schedule as being excluded.

Contract Guarantees means the guarantees or unconditional undertakings (if any) issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank, insurer or, where required by the Contract, by a Related Entity of that party.

Effective Date means the date on which the last party to execute this deed executes this deed.

Liability means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

Related Entity has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation,
- and, unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, two (2) or more persons binds or benefits them jointly and severally;
- (c) an expression importing a natural person includes any individual, estate of an individual, company or other body corporate, partnership, trust, joint venture (whether incorporated or unincorporated), association, Government Authority and other entity;
- (d) a reference to a party is to a party to this deed, and a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation or statutory transfer;
- (e) a reference to a document or instrument (including this deed) is to that document or instrument as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute, regulation, proclamation, ordinance, by-law, code or other law includes all statutes, regulations, proclamations, ordinances, by-laws, codes or other laws amending, consolidating, re-enacting or replacing it, whether passed by the same or another Government Authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a part, clause, party, Schedule, Attachment or Annexure is a reference to a part and clause of, and a party, Schedule, Attachment or Annexure to, this deed and a reference to this deed includes any part, clause, Schedule, Attachment or Annexure;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the meaning of general words is not limited by specific examples introduced by "including", or "for example" or similar expressions; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

2 Condition Precedent to Novation

Clause 3 (Novation) of this deed shall have no force and effect until the Effective Date.

3 Novation

3.1 Novation

On and from the Effective Date:

- (a) the parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract; and
- (b) any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

On and from the Effective Date:

- (a) the Substitute Party:
 - (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract, in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party (but provided that the Substitute Party will not assume any obligations and/or Liabilities of the Retiring Party under or in respect of the Contract arising or accruing before the Effective Date); and
- (b) the Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

The Continuing Party releases the Retiring Party from:

- (a) any obligation or Liability under or in respect of the Contract arising or accruing on or from the Effective Date; and
- (b) any Claim it has against the Retiring Party under or in respect of the Contract with regards to a matter arising on or from the Effective Date,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

3.4 Release by Retiring Party

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract arising or accruing on or from the Effective Date; and
- (b) any Claim it has against the Continuing Party under or in respect of the Contract with regards to a matter arising on or from the Effective Date,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

4 Ongoing Rights of Retiring Party

4.1 Direct Enquiries

In addition to any other rights which the Retiring Party may have, the Continuing Party and the Substitute Party each agree that the Retiring Party may make enquiries directly of the Continuing Party for the purpose of establishing whether the Continuing Party is complying with its obligations under the Contract.

4.2 Retiring Party to have benefit of Promises

- (a) The Continuing Party warrants in favour of the Retiring Party that in performing the TLS Activities it will comply with its obligations under the Contract and that the Retiring Party will continue to have the benefit of all promises, undertakings, covenants and warranties made or given by the Continuing Party under the Contract as if the Retiring Party remained a party to the Contract.
- (b) Without limiting the above, the Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence in performing the TLS Activities including in issuing any certificates it is required to issue under the Contract and further acknowledges that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in issuing those certificates and acknowledges that:
 - (i) in performing the TLS Activities, it will owe a duty of care to the Retiring Party; and
 - (ii) it is aware that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in performing the TLS Activities and the warranties given by the Continuing Party in this deed.

4.3 Report by Continuing Party

- (a) The Continuing Party must act in good faith and in the best interests of the Retiring Party and promptly advise the Retiring Party about any matter in which the Continuing Party has been instructed by the Substitute Party to provide the TLS Activities in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Contract.

5 Insurance

On and from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract;
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party (or, if applicable, the benefit of cover is extended to the Substitute Party) as required by the Contract; and
- (c) the Substitute Party must take the necessary steps to ensure that, for all insurances required to be effected by the Substitute Party under the terms of the

Contract, the Continuing Party is named (or, if applicable, the benefit of cover is extended to the Continuing Party) as required by the Contract.

6 Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees on and from the Effective Date with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
 - (b) in the case of the Substitute Party, the Continuing Party.
-

7 Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

8 Representations and warranties

8.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

8.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

8.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

9 Duties, Costs and Expenses

9.1 Stamp Duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

9.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

9.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

10 General

10.1 Governing law

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

10.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph (a).

10.3 Amendments

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

10.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

10.5 Counterparts

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

10.6 Severance

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

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

10.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

10.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.



Executed as a deed

Signed, sealed and delivered by
Sydney Trains (ABN 38 284 779 682)

By *[insert name of Sydney Trains' representative]* as authorised signatory

In the presence of: *[insert name of witness not a party to this Deed]*

Signature of Sydney Trains' representative

Signature of Sydney Trains' witness

Print Name

Print Name

Date

Date

Signed, sealed and delivered by

Siemens Mobility Pty Ltd (ABN 39 625 304 556)

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date

Signed, sealed and delivered by **[Insert appropriate signature block for Substitute Party]**

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date



Schedule – Work Orders and other agreements excluded from definition of Contract:



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Schedule 28 Form of TLS Parent Company Guarantee

See separate document



[Page intentionally blank]

Schedule 29 Form of Unconditional Undertaking

See separate document



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Schedule 30 Statement of Interests and Associations

See separate document



Schedule 30 Statement of Interests and Associations

Date:

Name:

Organisation:

To: Sydney Trains

In relation to: The Digital Systems Program

Declaration

I[insert full name] of
..... [insert business address]

agree and acknowledge that, except for the matters disclosed below:

1. To the best of my knowledge and belief, I do not have:
 - (a) any financial or other interest, either directly or indirectly, in;
 - (b) any immediate family members (spouse, children, parents or siblings) or close friends with any financial or other interest in; or
 - (c) any other interest or association, either directly or indirectly with,

the entities listed below.

Disclosure

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

(if further space is required please attach a separate signed letter)



I undertake to:

1. notify Sydney Trains as soon as possible after I become aware of any matter which could affect the accuracy or completeness of the statements made in this deed or which would make them incorrect if this deed was given again; and
2. make a further updated declaration as soon as practicable.

I confirm that the statements set out in this deed are true and correct as at the date indicated below.

Executed as a Deed Poll

Signed, sealed and delivered by the Contractor: in the presence of:

Contractor

Witness

Name (please print)

Name (please print)

Date

Date



[Page intentionally blank]

Schedule 31 Form of Subcontractor Deed of Novation

See separate document

Schedule 31 Form of Subcontractor Deed of Novation

Dated the Effective Date

Parties **[Insert Contractor details] (Retiring Party)**
 [Insert Subcontractor details] (Continuing Party)
 Sydney Trains (ABN 38 284 779 682) **(Substitute Party)**

Recitals

- A The Retiring Party and the Continuing Party are parties to the Contract.
- B The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1 Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears, and in this deed:

Contract means the agreement between the Retiring Party and the Continuing Party entitled **[insert description of Subcontract]** and includes any and all agreements formed in accordance with the Contract (except for any agreements that are identified in the Schedule as being excluded).

Contract Guarantees means the guarantees or unconditional undertakings (if any) issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank, insurer or, where required by the Contract, by a Related Entity of that party.

Effective Date means the date on which the last party to execute this deed executes this deed.

Liability means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

Related Entity has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

1.2 Interpretation

In this deed, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, two (2) or more persons binds or benefits them jointly and severally;
- (b) an expression importing a natural person includes any individual, estate of an individual, company or other body corporate, partnership, trust, joint venture (whether incorporated or unincorporated), association, Government Authority and other entity;
- (c) a reference to a party is to a party to this deed, and a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation or statutory transfer;
- (d) a reference to a document or instrument (including this deed) is to that document or instrument as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute, regulation, proclamation, ordinance, by-law, code or other law includes all statutes, regulations, proclamations, ordinances, by-laws, codes or other laws amending, consolidating, re-enacting or replacing it, whether passed by the same or another Government Authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a part, clause, party, Schedule, Attachment or Annexure is a reference to a part and clause of, and a party, Schedule, Attachment or Annexure to, this deed and a reference to this deed includes any part, clause, Schedule, Attachment or Annexure;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) the meaning of general words is not limited by specific examples introduced by "including", or "for example" or similar expressions; and
- (j) a reference to "\$" or "dollar" is to Australian currency.

2 Condition Precedent to Novation

Clause 3 (Novation) of this deed shall have no force and effect until the Effective Date.

3 Novation

3.1 Novation

On and from the Effective Date:

- (a) the parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract; and
- (b) any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

On and from the Effective Date:

- (a) the Substitute Party:
 - (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract, in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party (but provided that the Substitute Party will not assume any obligations and/or Liabilities of the Retiring Party under or in respect of the Contract arising or accruing before the Effective Date); and
- (b) the Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

The Continuing Party releases the Retiring Party from:

- (a) any obligation or Liability under or in respect of the Contract arising or accruing on or from the Effective Date; and
- (b) any Claim it has against the Retiring Party under or in respect of the Contract with regards to a matter arising on or from the Effective Date,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

3.4 Release by Retiring Party

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract arising or accruing on or from the Effective Date; and
- (b) any Claim it has against the Continuing Party under or in respect of the Contract with regards to a matter arising on or from the Effective Date.

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

3.5 Acknowledgment by the Retiring Party

- (a) The Retiring Party acknowledges and agrees that the Substitute Party will only be bound by the Contract on and from, and will only assume obligations and Liability under or in respect of the Contract arising or accruing on or after, the Effective Date.
- (b) The Retiring Party indemnifies and must keep indemnified the Substitute Party against any Liability suffered or incurred by, or any Claim made against, the Substitute Party in connection with any obligations or matters under or in respect of the Contract arising or accruing before the Effective Date.

4 Insurance

On and from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract;
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party (or, if applicable, the benefit of cover is extended to the Substitute Party) as required by the Contract; and
- (c) the Substitute Party must take the necessary steps to ensure that, for all insurances required to be effected by the Substitute Party under the terms of the Contract, the Continuing Party is named (or, if applicable, the benefit of cover is extended to the Continuing Party) as required by the Contract.

5 Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees on and from the Effective Date with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

6 Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

7 Representations and warranties

7.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

7.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

7.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

8 Duties, Costs and Expenses

8.1 Stamp Duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

8.2 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

8.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

9 General

9.1 Governing law

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

9.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph (a).

9.3 Amendments

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

9.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

9.5 Counterparts

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

9.6 Severance

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

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

9.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

9.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.



Executed as a deed

Signed, sealed and delivered by
Sydney Trains (ABN 38 284 779 682)

By [insert name of Sydney Trains' representative] as authorised signatory

In the presence of: [insert name of witness not a party to this Deed]

Signature of Sydney Trains' representative

Signature of Sydney Trains' witness

Print Name

Print Name

Date

Date

Signed, sealed and delivered by [Insert appropriate signature block for Retiring Party]

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date

Signed, sealed and delivered by [Insert appropriate signature block for Continuing Party]

in accordance with s127 of the *Corporations Act 2001* (Cth) by:

Signature Director

Signature of Director/Secretary

Print name

Print name

Date

Date

Schedule – Agreements excluded from definition of Contract:

[list excluded agreements, if any]



[Page intentionally blank]

Schedule 32 Form of Access Indemnity

See separate document

Schedule 32 Form of Access Indemnity

DATE [insert]

BETWEEN Sydney Trains (ABN 38 284 779 682) (**Customer**)

AND Siemens Mobility Pty Ltd (ABN 39 625 304 556) (**Contractor**)

1 Recitals

- A The Customer and the Contractor entered into an agreement numbered [insert] (**TLS Agreement**).
 - B The Customer is able to procure access to the Delivery Location.
 - C The Contractor wishes to gain access to the Delivery Location.
 - D This Indemnity records the arrangements between the parties in relation to any such access to the Delivery Location.
-

2 Operative

- (a) In this Indemnity, any word, expression, reference or term used which is defined in the TLS Agreement and is not specifically defined in this Indemnity will, unless the context requires otherwise, have in this Indemnity the same meaning as in the TLS Agreement.
- (b) In consideration of the Customer providing or procuring the provision of access to the Delivery Location, the Contractor covenants and agrees with the Customer that:
 - the Contractor will make good any damage to the Delivery Location caused by it (or on its behalf) in connection with the access to the Delivery Location;
 - the Contractor releases and indemnifies the Customer Indemnified Persons on demand from and against any Loss (including any Claim made by, or liability to, a third party) the relevant Customer Indemnified Person may suffer or incur arising out of, or in respect of, or in connection with an act or omission of the Contractor in the course of any access to the Delivery Location, except to the extent that the wrongful act or omission of the relevant Customer Indemnified Person has caused or contributed to that Loss; and
 - (iii) in the conduct of accessing the Delivery Location, the Contractor will do all reasonable acts and things to minimise any disruption to the Customer or its invitees and to minimise inconvenience and disruption to the operation of the Delivery Location.
- (c) The Contractor's liability to the Customer or the Customer Indemnified Persons under this deed (whether arising in contract, tort (including negligence), statute, equity, an indemnity or otherwise):

will not exceed the liability the Contractor has under the TLS Agreement;
and

- (ii) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the TLS Agreement, and will not (save to the extent the liability of the Contractor would be uncapped in accordance with clause 53.2 (Uncapped Liability) of the TLS Agreement) exceed the Contractor's total aggregate liability under the Delivery Agreement as set out in Schedule 2 Item 4 (Liability Cap) of the TLS Agreement.
- (d) Each party must bear their own costs in relation to the Customer providing or procuring the provision of access to the Contractor to a Delivery Location.
- (e) This Indemnity is governed by and construed in accordance with the law of New South Wales.
- (f) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

Executed as a deed

Signed, sealed, delivered by Sydney Trains by its authorised representative in the presence of:

Signature of witness

Signature of authorised representative

Full name of witness

Full name of authorised representative

Signed, sealed, delivered by Siemens Mobility Pty Ltd in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director



Execution page

