

**List of redactions – Standing Offer Deed (Contract No. CW2362679) for the Manufacture, Store and Supply of Concrete Sleepers and Guardrails with Rocla Pty Ltd**

The following table lists the basis for all redactions in the contracts under section 32 of the *Government Information (Public Access) Act 2009*.

There is no intention to release any of the material redacted in these contracts at a later date.

References to page numbers are references to pages in the PDF in its entirety.

<b>Page number(s) of redaction</b>	<b>Basis for redaction</b>
4, 22	Personal Information
23	Personal Information; Commercial-In-Confidence
25 - 40	Commercial-In-Confidence
48	Commercial-In-Confidence
79 - 81	Commercial-In-Confidence
134 - 138	Commercial-In-Confidence
150 - 151	Personal Information
209 – 210	Commercial-In-Confidence
215	Personal Information; Commercial-In-Confidence
216 - 221	Commercial-In-Confidence

# Standing Offer Deed

## Contract No. CW2362679

# Manufacture, Store and Supply of Concrete Sleepers and Guardrails

Sydney Trains (ABN 38 284 779 682)  
Principal

Rocla Pty Ltd (ABN 31 000 032 191)  
Contractor

Version: 2.0  
Date: July 2018

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# Standing Offer Deed

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## Standing Offer Deed made at Sydney on the Commencement Date

**Parties** Sydney Trains ABN 38 284 779 682 of Level 20, 477 Pitt Street, Sydney NSW 2000  
(Principal)  
GIPA Act s.14, Table 3(a)

Rocla Pty Ltd ABN 31 000 032 191 of ~~Uni Park, Building 5 Suite 53, 195 Wellington Road Clayton VIC 3169~~ (Contractor) *Level 4, 68-72 Watentoo Road Macquarie Park NSW 2113*  
GIPA Act s.14, Table 3(a)

## Background

The Principal and the Contractor have agreed to put in place arrangements by which the Principal can procure works, goods, services or other activities from the Contractor on a standing offer basis on the terms and conditions of this Deed.

## Agreement

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed capitalised terms have the same meaning as in the General Conditions (unless they are assigned a different meaning below) and the following terms have the meaning assigned to them below:

**Commencement Date** means the date on which this Deed has been signed by the last party to sign.

**Contractor's Activities** means all activities that the Contractor performs, or is required to perform, to exercise its rights or comply with its obligations under any Contract.

**Contractor's Representative** means the person so nominated in the Key Details for Standing Offer Deed.

**Deed** means this Standing Offer Deed.

**Expiry Date** means the expiry date set out in the Key Details for Standing Offer Deed.

**General Conditions** means the terms and conditions set out in Annexure E.

**Guarantor** has the meaning given in clause 7.2(a)(ii).

**Key Details for Standing Offer Deed** means the particulars to this Deed in Annexure A.

**Key Performance Indicators** or **KPIs** means the key performance indicators:

- (a) in Schedule 11 to the Appendix; and
- (b) if any, set out in Annexure D.

**Legal Opinion** means a legal opinion:

- (a) from:
  - (i) lawyers to the Contractor, authorised to practice in the place of incorporation of the Contractor, stating that this Deed is binding and enforceable against the Contractor; or

(ii) lawyers to the Guarantor, authorised to practice in the place of incorporation of the Guarantor, stating that the parent company guarantee is binding and enforceable against the Guarantor,

(as applicable); and

(b) which states that it may be relied upon by the Principal; and

(c) in a form reasonably satisfactory to the Principal.

**Option Period 1** means the period stated in the Key Details for Standing Offer Deed.

**Option Period 2** means the period stated in the Key Details for Standing Offer Deed.

**Option Period 3** means the period stated in the Key Details for Standing Offer Deed.

**Principal's Representative** means the person so nominated in the Key Details for Standing Offer Deed or any other person nominated by the Principal from time to time under clause 2.8 to replace that person.

**Purchase Order** means a document titled "Purchase Order" issued by the Principal to the Contractor in accordance with clause 3.1(a)(ii) or 3.3(a)(i).

**Quotation** has the meaning given in clause 3.2(b).

**Request for Quotation** means a Request for Quotation in the form (or substantially in the form) set out in Annexure C.

**Schedule of Prices** means the schedule of rates and prices set out in Annexure B.

**Statement of Work** means the statement of work set out in:

(a) Exhibit A to the General Conditions (if any); and

(b) Attachment 1 to the Request for Quotation.

**Term** has the meaning given in clause 2.1.

## 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 liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

(e) a reference to a document (including the Deed) is to that document as varied, novated, ratified or replaced from time to time;

- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of the Deed, and a reference to the Deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Deed, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) 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;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency; and
- (m) to the extent that:
  - (i) any amounts are payable to the Contractor under this Deed or any Contract by reference to hourly or daily rates; and
  - (ii) the Contractor's Personnel is engaged in the relevant Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),

the Contractor will be entitled to payment in respect of such time on a pro rata basis.

### **1.3 No bias against drafting party**

No term or provision of this Deed will be construed against a party on the basis that the Deed or the term in question was put forward or drafted by or on behalf of that party.

### **1.4 Novation**

- (a) The Principal may at any time, at its sole discretion, novate this Deed or any Contract to any Authority, any successor in title to the Principal or any other person that assumes the functions or obligations of the Principal.
- (b) If the Principal elects to novate this Deed or any Contract in accordance with paragraph (a), the Principal will provide the Contractor with a duly completed Deed of Novation and the Contractor must execute and return to the Principal such Deed of Novation within 5 Business Days of receipt of the relevant Deed of Novation.
- (c) If the Contractor fails to properly execute a relevant Deed of Novation within the time period specified in the previous paragraph, then for the purpose of executing the relevant Deed of Novation, the Contractor irrevocably appoints the Principal 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 relevant Deed of Novation.

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## **2. Operation**

### **2.1 Term**

This Deed commences on the Commencement Date and expires on the Expiry Date, unless it is extended in accordance with clause 2.2 or terminated earlier in accordance with this Deed (Term).

### **2.2 Extension**

(a) The Principal may in its sole discretion:

- (i) extend the Term once by Option Period 1;
- (ii) if the Principal exercised its right to extend the Term by Option Period 1 in accordance with clause 2.2(a)(i), extend the Term once by Option Period 2; and
- (iii) if the Principal exercised its right to extend the Term by Option Period 2 under clause 2.2(a)(ii), extend the Term once by Option Period 3,

by giving written notice to the Contractor at least 30 days before the end of the then current Term (or such shorter period as agreed between the parties).

(b) Any extension exercised in accordance with clause 2.2 will be on the terms and conditions in effect on, and takes effect from, the end of the then current Term.

(c) Notwithstanding clause 2.1, if after the expiry of the Term the parties purport to enter into a Contract in accordance with the procedures set out in clause 3:

- (i) a Contract will be formed;
- (ii) that Contract will be valid and binding on the parties; and
- (iii) each party must comply with the terms of that Contract.

### **2.3 Minimum guarantee of work**

Unless otherwise agreed between the parties from time to time during the Term, the Principal will engage the Contractor to supply from the Contractor's manufacturing facility (at 11 Drapers Road, Braemar Mittagong NSW 2572) a minimum of 1,250 units of Goods per calendar month in accordance with the relevant Purchase Order.

The Principal is otherwise not, by executing this Deed, bound to engage the Contractor to carry out any works or supply any goods, services or other activities.

### **2.4 No guarantee of exclusivity**

The Principal is not, by executing this Deed, restricted in any way from engaging any person to carry out any works or supply any goods, services, or other activities:

- (a) of any type, including work or supply similar to the works, goods, services or other activities which may be required of the Contractor; or
- (b) at any location where, or in respect of any project that, the Contractor may be required to perform works or to supply goods, services or other activities.

### **2.5 No representation**

Clauses 2.3 and 2.4 apply even though the Principal may have provided the Contractor with a forecast or estimate of the works, goods, services or other activities that the Principal may

require at any time and the Contractor acknowledges that any forecasts or estimates do not constitute a representation of the works, goods, services or other activities the Principal may require in any period.

## 2.6 Non-reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
  - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or
  - (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,for the purposes of entering into the Deed, except to the extent that any such information, data, representation, statement or document forms part of the Deed;
- (b) warrants that it enters into the Deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into the Deed relying upon the warranties in paragraphs (a) and (b).

## 2.7 Discretion

Subject to any express provision in the Deed to the contrary:

- (a) a provision of the Deed which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
- (b) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Deed.

Without limiting the previous paragraph, neither the Principal nor the Principal's Representative will 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 provision of the Deed conferring the discretion, power or entitlement.

## 2.8 Principal's Representative

The Principal may by written notice:

- (a) replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment; and
- (b) appoint persons to exercise any of the Principal's Representative's functions under this Deed, and revoke any such appointment.

## 2.9 Key people

The Contractor must in respect of each Contract:

- (a) employ those people specified in the Key Details for Standing Offer Deed in the jobs specified in the Key Details for Standing Offer Deed;

- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

## **2.10 Removal of persons**

The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Contractor's Activities who in the reasonable opinion of the Principal's Representative is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again employed in the Contractor's Activities.

## **2.11 Policies, Codes and Standards**

- (a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with:
  - (i) the Code of Conduct;
  - (ii) the Policies, Codes and Standards; and
  - (iii) Schedule 1 to the Appendix.
- (b) For the purposes of paragraph (a):
  - (i) any reference to "NSW government sector employees" or "Sydney Trains employees" in the Policies, Codes and Standards is to be read as a reference to the Contractor's employees; and
  - (ii) any references to "the Contract" in Schedule 1 to the Appendix are to be read as references to this Deed.

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## **3. Requests for Quotation and Purchase Orders**

### **3.1 Request for Quotation or Purchase Order for Goods**

- (a) The Principal may:
  - (i) if it wishes the Contractor to submit a Quotation for works, goods, services or other activities, issue to the Contractor a Request for Quotation; or
  - (ii) if the Principal requires only the supply of Goods and/or Services for which a price has been included in the Schedule of Prices, issue a Purchase Order to the Contractor setting out, as applicable:
    - A. details of the Goods and/or Services;
    - B. the quantity of Goods and Date(s) for Delivery; and/or
    - C. the period, dates or times for the performance of the Services (which period, dates or times will be deemed to be the Term of Services),

which the Principal requires, in which case paragraph (b) and clauses 3.2, 3.3 and 3.4 will not apply.

- (b) Each Request for Quotation issued by the Principal under clause 3.1(a)(i) must specify the details required by:
  - (i) Part 1 of the Request for Quotation that sets out:
    - A. identification details for the Request for Quotation; and
    - B. the time within which the Contractor must provide a response to the Request for Quotation under clause 3.2(a);
  - (ii) Part 2 of the Request for Quotation that sets out the relevant "Key Details" for Schedule 1 of the General Conditions (other than the contract price); and
  - (iii) Attachment 1 of the Request for Quotation that sets out the Statement of Work.
- (c) The Principal is not required to sign any Request for Quotation or Purchase Order given under or in connection with this Deed.

### 3.2 Quotation

- (a) Within the time specified in the Request for Quotation, or if no time is specified, within 5 Business Days, the Contractor must:
  - (i) prepare and submit a Quotation in accordance with clause 3.2(b); or
  - (ii) notify the Principal's Representative that the Contractor will not submit a Quotation.
- (b) Where the Contractor wishes to submit a quotation in accordance with clause 3.2(a)(i), the Contractor must return to the Principal's Representative a completed copy of the Request for Quotation by:
  - (i) setting out the proposed Contract Price in Part 2 of the Request for Quotation, calculated in accordance with the Schedule of Prices;
  - (ii) duly completing all remaining relevant particulars in the Request for Quotation; and
  - (iii) the Contractor's Representative executing Part 3 of the Request for Quotation,  
  
(Quotation).

### 3.3 Review of Quotations

- (a) After receiving a Quotation from the Contractor under clause 3.2 or 3.3(c)(i), the Principal may by notice in writing, within 20 Business Days (or such longer period as agreed):
  - (i) accept the Quotation by issuing a Purchase Order enclosing or attaching the relevant Quotation;
  - (ii) request the Contractor to submit an amended Quotation by providing a notice setting out the aspects of the Quotation which require amendment; or
  - (iii) reject the Quotation.

- (b) If the Principal does not issue any notice under clause 3.3(a) to the Contractor within the time required by clause 3.3(a), the Principal will be deemed to have rejected the Quotation.
- (c) If the Principal requests the Contractor to submit an amended Quotation under clause 3.3(a)(ii), the Contractor must, within 2 Business Days:
  - (i) submit an amended Quotation that addresses the issues identified in the Principal's notice under clause 3.3(a)(ii); or
  - (ii) notify the Principal's Representative that the Contractor will not submit an amended Quotation, in which case the Contractor's original Quotation is deemed to be rejected.
- (d) Where the Contractor submits an amended Quotation under clause 3.3(c)(i), this clause 3.3 will reapply.

### 3.4 Refusal to provide or amend a Quotation

If the Contractor notifies the Principal's Representative:

- (a) under clause 3.2(a)(ii), that the Contractor will not submit a Quotation; or
  - (b) under clause 3.3(c)(ii), that the Contractor will not submit an amended Quotation,
- then:
- (c) the Contractor must provide the Principal with detailed reasons why the Contractor will not submit the Quotation or the amended Quotation (as the case may be);
  - (d) the Contractor must provide the Principal with any further information requested by the Principal's Representative regarding the reasons why the Contractor will not submit the Quotation or the amended Quotation (as the case may be);
  - (e) the Principal may exclude the Contractor from any other arrangements that the Principal makes to engage a person to carry out works or supply goods, services or activities that are similar to those proposed under the relevant Request for Quotation; and
  - (f) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the Contractor's exclusion from the arrangements contemplated by clause 3.4(e).

### 3.5 Costs

The Contractor is responsible for all costs it incurs arising out of, or in connection with, the procedures contemplated by this clause 3 and the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of such costs.

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## 4. Formation of individual Contracts

- (a) If the Principal:
  - (i) accepts a Quotation by issuing a Purchase Order in accordance with clause 3.3(a)(i); or
  - (ii) issues a Purchase Order in accordance with clause 3.1(a)(ii),

the Principal and the Contractor will be deemed to have entered into a separate binding Contract on the date determined in accordance with clause 4(b).

- (b) The date on which a Contract under clause 4(a) will be deemed to be formed is the date the Contractor is deemed by clause 10.1 to have received notice of the relevant Purchase Order.
- (c) The Principal and the Contractor must carry out their respective obligations under each Contract formed in accordance with clause 4(a) from the date on which the Contract is deemed to be formed under clause 4(b).

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## **5. Security**

### **5.1 Form of security**

This clause 5.1 applies where so stated in the Key Details for Standing Offer Deed.

The Contractor must provide security in the form of 2 Unconditional Undertakings each for 50% of the amount specified in the Key Details for Standing Offer Deed.

Security must be provided within 10 Business Days of the Commencement Date.

### **5.2 Release of security**

Subject to its rights to have recourse to the security, the Principal must:

- (a) within 10 Business Days of expiry of the Term, release one of the Unconditional Undertakings provided under clause 5.1; and
- (b) release the balance of the security then held when:
  - (i) the last Defects Liability Period under every Contract has expired; and
  - (ii) the Contractor has complied with all of its obligations under the Deed and each Contract.

If the Principal terminates the Deed pursuant to clause 9.1(a) then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it.

### **5.3 Replacement security**

- (a) If the Principal holds security provided under clause 5.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor, the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security, provide the Principal with replacement security in the form of an Unconditional Undertaking in exchange for the security which is being replaced.
- (b) If paragraph 5.3(a) applies in respect of any security and the Principal has not received from the Contractor replacement security in the form of an Unconditional Undertaking at least 20 Business Days prior to the expiry date for that undertaking then, irrespective of anything contained in, and without limiting the Principal's rights under, the Deed or the security, the Principal may make a demand under the security for the entire amount payable under that security and thereafter retain the proceeds.
- (c) Subject to the Principal's rights under the Deed to use these proceeds, the proceeds from any demand made by the Principal pursuant to paragraph 5.3(b) will be paid to the Contractor at the same time as the Principal would have been required to return the security from which the proceeds were obtained.

## 5.4 Additional Security

- (a) If, at any time during the Term, the value of the Unconditional Undertakings provided under clause 5.1 represents less than 10% of the combined value of the Contract Prices (as adjusted) for each Contract formed under this Deed (**Combined Contract Value**), then the Principal may direct the Contractor to provide additional security so that the amount of the security held by it is equal to 10% of the Combined Contract Value.
- (b) The Contractor must provide additional security in the form of an Unconditional Undertaking within 10 Business Days of a direction under clause 5.4(a).

## 5.5 Interest

The Principal:

- (a) is not obliged to pay the Contractor interest on any Unconditional Undertaking provided under clause 5.1 including the proceeds of any bank guarantee if it is converted into cash; and
- (b) does not hold the proceeds or money referred to in paragraph (a) on trust for the Contractor.

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## 6. Indexation and Review of Rates

If specified in the Key Details for Standing Offer Deed, the rates and prices in the Schedule of Prices will be adjusted by the method of indexation or adjustment (if any) set out in Part 2 of the Schedule of Prices.

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## 7. Other requirements

### 7.1 KPIs

- (a) The Contractor in performing the Contractor's Activities must comply with the KPIs as amended in accordance with this Deed.
- (b) The Contractor must report to the Principal's Representative at the frequency specified in the Key Details for Standing Offer Deed in the form of a report (**KPI Performance Report**) in a form satisfactory to the Principal which:
  - (i) provides an analysis of the performance of the Contractor in meeting the KPIs;
  - (ii) identifies any non-compliances;
  - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and
  - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.
- (c) The Contractor acknowledges and agrees that:
  - (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
  - (ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal;
  - (iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the

amended KPIs, including being advised of the reasons for the amendment; and

- (iv) where the Principal amends the KPIs pursuant to clause 7.1(c)(iii), the amended KPIs will only apply to Contracts formed after the Principal's written notification to the Contractor of the amendments to the KPIs.
- (d) The Principal and the Contractor must meet at the times specified in the Key Details for Standing Offer Deed, to monitor and review the Contractor's performance under each Contract and, if required by the Principal, the Contractor's compliance with any action plan.

## 7.2 Parent Company Guarantee

- (a) If the Contractor is required by the Key Details for Standing Offer Deed to provide a parent company guarantee the Contractor must, on the Commencement Date, provide the Principal's Representative with a parent company guarantee:
  - (i) in the form set out in Schedule 5 of the Appendix with all particulars completed; and
  - (ii) duly executed by the person named in the Key Details for Standing Offer Deed (**Guarantor**).
- (b) If the Contractor has provided a parent company guarantee in accordance with clause 7.2(a), the Contractor will not be required to provide a parent company guarantee under the General Conditions of any subsequent Contract.

## 7.3 Deed Poll

- (a) The Contractor must, within 5 Business Days of the Commencement Date, provide to the Principal an executed deed poll in favour of Transport for NSW, RailCorp and NSW Trains in the form set out in Schedule 2 (Alternative 2) to the Appendix.
- (b) Where the Contractor provides a deed poll in accordance with clause 7.3(a), the Contractor will not be required to provide a deed poll under the General Conditions of any subsequent Contracts.

## 7.4 Insurance

At any time during the Term, the Principal's Representative may request, and the Contractor must provide, copies of certificates of currency, and any other evidence reasonably required by the Principal's Representative, to confirm that the Contractor has in place the insurances required under the General Conditions.

## 7.5 Confidentiality

The Contractor must, and must ensure its Personnel, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with any Request for Quotation, Purchase Order, Contractor's Activities or this Deed to any person other than:

- (a) as necessary to perform the Contractor's Activities;
- (b) with respect to any matter already within the public domain; or
- (c) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange).

The Contractor must not disclose any information concerning the Deed for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning the Deed.

## 7.6 Intellectual Property

- (a) Title and ownership of Intellectual Property Rights in all material developed or created or required to be developed or created by either party under this Deed (other than any Intellectual Property Rights of the Contractor pre-existing as at the Commencement Date) (**Deed Material**) will vest immediately upon its creation in the Principal.
- (b) The Principal grants to the Contractor a licence to use the Deed Material for the purposes of the Contractor's performance of this Deed or any Contract.

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## 8. Disputes

- (a) If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with this Deed, or either party's conduct before the Deed, the dispute or difference must be determined in accordance with the procedure in this clause 8.
- (b) Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:
  - (i) the dispute or difference;
  - (ii) particulars of the party's reasons for being dissatisfied; and
  - (iii) the position which the party believes is correct.
- (c) The Principal's Representative and the Contractor (or their nominees) must, within 5 Business Days of a notice being given under clause 8(b), meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference.
- (d) Whether or not negotiations have taken place under clause 8(c), if it is not resolved within 10 Business Days after a notice is given under clause 8(b), the dispute or difference must be referred to senior executives of each party (as nominated by each party) who must:
  - (i) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
  - (ii) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.
- (e) If the senior executives of each party have not resolved the dispute or difference or agreed on an alternative process for resolving the dispute or difference within 25 Business Days after a notice is given under clause 8(b), either party may commence court proceedings in respect of the dispute or difference.
- (f) Despite the existence of a dispute or difference between the parties, the parties must continue to perform their obligations under this Deed.

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## 9. Termination or expiry

### 9.1 Termination or expiry of this Deed

- (a) Without prejudice to any of the Principal's other rights, the Principal may at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Deed effective from the time stated in the Principal's notice, or if no such time is stated, at the time the notice is given to the Contractor.

- (b) Subject to clauses 9.1(c) and 9.1(d), the Principal will not be liable upon any Claim arising out of or in connection with any termination of this Deed under clause 9.1(a).
- (c) The Principal and the Contractor agree that if this Deed is terminated, discharged (including through expiry of the Term) or becomes frustrated, the separate Contracts formed in accordance with clause 4 of this Deed will not be affected and must be fulfilled in accordance with the terms of the relevant Contract, unless the parties otherwise agree in writing.
- (d) Termination of this Deed will not prevent either party from relying on rights accrued under the Deed prior to such termination.

## 9.2 Termination of a Contract

The Principal and the Contractor agree that the termination, discharge or frustration of any Contract will not affect the operation of this Deed or the operation of any other Contract.

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## 10. General provisions

### 10.1 Notices

- (a) All communications (including notices, consents, approvals, requests and demands) including:
  - (i) any Request for Quotation or Purchase Order issued by the Principal pursuant to clause 3.1 or 3.3; and
  - (ii) any Quotation submitted by the Contractor pursuant to clause 3.2, under or in connection with this Deed;
  - (iii) must be in writing;
  - (iv) subject to clause 3.1(c), must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
  - (v) must be delivered or posted by prepaid express post to the address or sent by email to the email address (including through the Ariba platform), of the Principal's Representative or the Contractor's Representative (as applicable);
  - (vi) are taken to be received by the addressee:
    - A. (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
    - B. (in the case of express post sent to an address in another country) on the fourth Business Day after the date of posting;
    - C. not used;
    - D. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 10.1(a)(v); and
    - E. (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

- (b) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Commencement Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.
- (c) The parties will not be liable to each other or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:
  - (i) the transmission of any harmful code (such as viruses) to each other by electronic mail (including any document attached to electronic mail); or
  - (ii) any failure by a party to notify the other that it may have received any harmful code (such as viruses) from the other in any electronic mail (including in any document attached to electronic mail).

## 10.2 Governing Law

This Deed is governed by and must be construed according to the Law of the State of New South Wales.

## 10.3 Jurisdiction

Each party irrevocably:

- (a) submits to the exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that 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 clause 10.3(a).

## 10.4 Counterparts

- (a) 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.
- (b) A party who has executed a counterpart of this Deed may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this Deed executed by it will not affect the validity of this Deed.

## 10.5 Entire agreement

This Deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or

- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the Commencement Date and that are not expressly included in this Deed.

## **10.6 Amendments**

This Deed may only be amended by a deed executed by or on behalf of both the Principal and the Contractor.

## **10.7 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.

## **10.8 Assignment**

The Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under this Deed to any Authority, any successor in title to the Principal or any other person that assumes the functions or obligations of the Principal, or create or allow to exist, a security interest over or in respect of the Deed or any right or interest of the Principal under the Deed.

The Contractor cannot assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of the Principal.

If the Principal, in its absolute discretion, approves a novation of this Deed, the Contractor must provide the Principal with a duly completed and executed Deed of Novation.

## **10.9 Consents**

A consent required under the Deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless the Deed expressly provides otherwise.

## **10.10 Expense**

Except as otherwise provided in the Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Deed.

## **10.11 Severance**

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

## 10.12 Indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiry of the Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Deed.

## 10.13 United Nations Convention not applicable

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

## 10.14 English language

All communications between the parties and all documentation provided in connection with this Deed must be in the English language.

## 10.15 No partnership, joint venture or other fiduciary relationship

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

## 10.16 Exchange of information between government agencies

- (a) The Contractor authorises the Principal and its Personnel to make information concerning the Contractor and the Deed available to NSW government departments or agencies, including:
  - (i) any information provided by the Contractor to the Principal;
  - (ii) any information relating to the Contractor's performance under the Deed; and
  - (iii) the terms of the Deed.
- (b) The Contractor acknowledges and agrees that:
  - (i) any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work;
  - (ii) the communication of such information to any NSW government department or agency is a communication falling within section 30 of the Defamation Act 2005 (NSW); and
  - (iii) the Principal has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under the Deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

## 10.17 Proportionate liability

- (a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Deed with respect to proportionate liability are as specified in the 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 must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
  - (ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

## 10.18 Piggybacking

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

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

## 10.19 If the Contractor is a Trustee

If the Contractor enters into the Contract as trustee for a trust (**Contractor Trust**), without limiting any other provision of the Contract, the Contractor represents and warrants that:

- (a) the Contractor is the only trustee of the Contractor Trust;
- (b) the Contractor has unqualified power under the constitution of the Contractor Trust to perform its obligations under this Contract;
- (c) no action is currently taking place or pending to remove the Contractor as trustee of the Contractor Trust or to appoint additional trustees of the Contractor Trust;
- (d) the Contractor has entered into this Contract in its capacity as trustee of the Contractor Trust and for the benefit of the beneficiaries of the Contractor Trust;
- (e) the Contractor has the right to be fully indemnified out of the assets of the Contractor Trust in respect of the obligations incurred by it in relation to this Contract;

- (f) there is no subsisting breach of the constitution of the Contractor Trust; and
- (g) the Contractor Trust has not been terminated and there is no action pending to terminate the Contractor Trust.

**10.20 Legal Opinion**

If:

- (a) the Contractor is incorporated outside of Australia the Contractor must, on the Commencement Date, provide a Legal Opinion supporting, and in respect of, the execution of this Deed; and
- (b) the Guarantor is incorporated outside of Australia the Contractor must, on the Commencement Date, provide a Legal Opinion supporting, and in respect of, the execution of the parent company guarantee required by clause 7.2(a).

Executed as a deed

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

GIPA Act s.14, Table 3(a)

Signature of witness  
GIPA Act s.14, Table 3(a)

Full name of witness

GIPA Act s.14, Table 3(a)

Signature of authorised delegate  
GIPA Act s.14, Table 3(a)

Full name of authorised delegate

Date

1 October 2019

Executed by **Rocla Pty Ltd** ABN 31 000 032  
191 in accordance with section 127 of the  
Corporations Act 2001 (Cth):

GIPA Act s.14, Table 3(a)

Signature of director  
GIPA Act s.14, Table 3(a)

Full name of director

Date

GIPA Act s.14, Table 3(a)

Signature of company secretary/director  
GIPA Act s.14, Table 3(a)

Date

23/09/2019.

Annexure A - Key Details for Standing Offer Deed

Clause 1 - Definitions and interpretation	
1	<p>Contractor's Representative: (Clause 1.1)</p> <p>GIPA Act s.14, Table 3(a)</p>
2.	<p>Principal's Representative: (Clause 1.1)</p> <p>GIPA Act s.14, Table 3(a)</p>
3.	<p>Expiry Date (Clause 1.1)</p> <p>GIPA Act s.14, Table 4(b)</p>
4.	<p>Option Period 1 (Clause 1.1)</p>
5	<p>Option Period 2 (Clause 1.1)</p>
6.	<p>Option Period 3 (Clause 1.1)</p> <p><i>Not applicable</i></p>
7	<p>Key people (Clause 2.9)</p> <p><i>Person</i>                      <i>Position</i> GIPA Act s.14, Table 3(a)</p>
8.	<p>Security (Clause 5)</p> <p>Clause 5.1 applies: <i>no</i></p>
9.	<p>Indexation and review of rates (Clause 6)</p> <p><i>Applicable</i></p> <p>If applicable:</p> <ul style="list-style-type: none"> <li>Consumer Price Index Calculation based on Contractor KPI (Clause 7.1) Performance (Annexure D) in accordance with Part 1 of Annexure B applies.</li> <li>CPI indexation in accordance with clause 1 of Part 2 of Annexure B <i>does not</i> apply.</li> <li><i>Alternative 1 (WPI) and Alternative 2 (PPI)/Alternative 1 (WPI) AND Alternative 2 (PPI)</i> of clause 2 of Part 2 of Annexure B do not apply.</li> <li>the foreign currency adjustment in clause 3 of Part 2 of Annexure B <i>does not</i> apply. <a href="#">Click here to enter text.</a></li> </ul> <p>(If nothing is specified, not applicable.)</p>
10.	<p>Frequency of KPI reporting and times at which</p> <p><i>The Contractor must produce a KPI Performance Report every 3</i></p>

	<p><b>Principal and Contractor to meet:</b> (Clause 7.1)</p>	<p><i>months starting from the Commencement Date]</i></p> <p><i>The Principal and the Contractor must meet every 3 months to review the Contractor's performance, unless otherwise agreed in writing by the Principal.</i></p>
<p>11.</p>	<p><b>Is a parent company guarantee required?:</b> (Clause 7.2)</p>	<p><i>No</i></p>

## Annexure B - Schedule of Prices and Indexation

### Part 1 - Schedule of Prices

Annexure B: Schedule of Prices and Indexation   Part 1 - Schedule of Prices							
Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Sleeper Prestressed Concrete, Medium Duty (MD) E-Clip (MDEC), e2003 system, Low Profile, 25T Axle Load, 9199 Shoulder.	Each				
		Sleeper Prestressed Concrete, Heavy Duty (HD) E-Clip (HDEC), e2003 system, 30T Axle Load, 9199 Shoulder. Also known as Type 5.	Each				
		Sleeper Prestressed Concrete Heavy Duty Fastclip (HDFC), FC1507system 30T axle load, 10824 Shoulder. Jewellery consists of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads.	Each				
		Sleeper Prestressed Concrete Medium Duty Fastclip (MDFC), FC1507 system 25T axle load, 10824 Shoulder. Jewellery consists of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads.	Each				
		Sleeper Prestressed Concrete Heavy Duty (HDFCN), FC1509 system 30T axle load, 10530 Shoulder. Jewellery consists of 4No. FC1509 Clips, 4No. INFC10292NL Toe Insulators, 4 No. INFC10531 Side Post Insulators and 2No.RPFC10531 Pads.	Each				

**Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices**

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDECGR1), also 1st sleeper in Transition set, e2003 Multilok System for Guard Rail (GR) and e2003 system for running rail 30T axle load (Includes 4No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDECGR2), 2nd sleeper in Transition set, e2003 Multilok System for Guard Rail and e2003 system for running rail 30T axle load (Includes 4No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDECGR3), 3rd sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 30T axle load (Includes 4No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDECGR4), 4th sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 30T axle load (Includes 3No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDECGR5), 5th sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 30T axle load (Includes 2No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDECGR6), 6th sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 30T axle load (Includes 2No. sliding shoulder only).	Each				

**Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices**

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDECGR1), also 1st sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 25T axle load (Includes 4No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDECGR2), 2nd sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 25T axle load (Includes 4No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDECGR3), 3rd sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 25T axle load (Includes 4No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDECGR4), 4th sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 25T axle load (Includes 3No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDECGR5), 5th sleeper in Transition set, e2003 Multilok System for Guard rail and e2003 system for running rail 25T axle load (Includes 2No. sliding shoulder only).	Each				

**Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices**

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s. 14, Table 4(b)							
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDEGR2), 6th sleeper in Transition set, e2003 Multiok System for Guard rail and e2003 system for running rail 25T axle load (Includes 2 No. sliding shoulder only).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDFCGR1), also 1st sleeper in Transition set, e2003 Multiok System for Guard rail and FC1507 system for running rail 30T axle load. (Includes 4No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDFCGR2), 2nd sleeper in Transition set, e2003 Multiok System for Guard rail and FC1507 system for running rail 30T axle load. (Includes 4No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDFCGR3), 3rd sleeper in Transition set, e2003 Multiok System for Guard rail and FC1507 system for running rail 30T axle load. (Includes 4No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each				

**Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices**

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDFCGR4), 4th sleeper in Transition set, e2003 Multilok System for Guard rail and FC1507 system for running rail 30T axle load. (Includes 3No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDFCGR5), 5th sleeper in Transition set, e2003 Multilok System for Guard rail and FC1507 system for running rail 30T axle load. (Includes 2No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each				
		Sleeper Prestressed Concrete Heavy Duty Guard Rail (HDFCGR6), 6th sleeper in Transition set, e2003 Multilok System for Guard rail and FC1507 system for running rail 30T axle load. (Includes 2No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each				
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDFCGR1), also 1st sleeper in Transition set, e2003 Multilok System for Guard rail and FC1507 system for running rail 25T axle load. (Includes 4No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No.	Each				

Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			Total Goods Unit Cost \$ (A+B+(C/3))	*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)		
GIPA Act s.14, Table 4(b)								
		INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).						
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDFCGR2), 2nd sleeper in Transition set, e2003 Multiok System for Guard rail and FC1507 system for running rail 25T axle load. (Includes 4No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each					
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDFCGR3), 3rd sleeper in Transition set, e2003 Multiok System for Guard rail and FC1507 system for running rail 25T axle load. (Includes 4No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each					
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDFCGR4), 4th sleeper in Transition set, e2003 Multiok System for Guard rail and FC1507 system for running rail 25T axle load. (Includes 3No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each					
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDFCGR5), 5th sleeper in Transition set, e2003 Multiok System for Guard rail and FC1507 system for running rail 25T axle load. (Includes 2No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK	Each					

**Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices**

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Side Post Insulators and 2No.RPFC9184 Pads).		GIPA Act s.14, Table 4(b)			
		Sleeper Prestressed Concrete Medium Duty Guard Rail (MDFCGR6), 6th sleeper in Transition set, e2003 Multilok system for Guard rail and FC1507 system for running rail 25T axle load. (Includes 2No. sliding shoulder and running rail Jewellery of 4No. FC1507 Clips, 4No. 8494 Toe Insulators, 4 No. INFC7551BK Side Post Insulators and 2No.RPFC9184 Pads).	Each				
		Bearer Prestressed Concrete for Alternative 1 Plates. Alternative Guardrail 1 (AGR1) and 1st Bearer in Transition set, 30T, 12 Plastic ferrules cast in to suit 24 Dia Screwspike	Each				
		Bearer Prestressed Concrete for Alternative 1 Plates. Alternative Guardrail 2 (AGR2) as 2nd Bearer in Transition set, 30T, 12 Plastic ferrules cast in to suit 24 Dia Screwspike	Each				
		Bearer Prestressed Concrete for Alternative 1 Plates. Alternative Guardrail 3 (AGR3) as 3rd Bearer in Transition set, 30T, 12 Plastic ferrules cast in to suit 24 Dia Screwspike	Each				
		Bearer Prestressed Concrete for Alternative 1 Plates. Alternative Guardrail 4 (AGR4) as 4th Bearer in Transition set, 30T, 12 Plastic ferrules cast in to suit 24 Dia Screwspike	Each				

**Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices**

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Bearer Prestressed Concrete for Alternative 1 Plates. Alternative Guardrail 5 (AGR5) as 5th Bearer in Transition set, 30T, 10 Plastic ferrules cast in to suit 24 Dia Screwsipike	Each				
		Bearer Prestressed Concrete for Alternative 1 Plates. Alternative Guardrail 6 (AGR6) as 6th Bearer in Transition set, 30T, 10 Plastic ferrules cast in to suit 24 Dia Screwsipike	Each				
		Bearer Prestressed Concrete for Alternative 1 Plates. Alternative Guardrail 7 (AGR7) as 7th Bearer in Transition set, 30T, 10 Plastic ferrules cast in to suit 24 Dia Screwsipike	Each				
		Sleeper Prestressed Concrete Guard Rail Heavy Duty and 1st sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 4No. Screwsipikes M24x165mm long, 4No. Double Helical Washers, Min. 3mm HDPE Pads, 4No. Delkor Type A rail clip washers and 4No. Insulators only).	Each				

Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Sleeper Prestressed Concrete Guard Rail Heavy Duty as 2nd sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 4No. Screws/pikes M24x165mm long, 4No. Double Helical Washers, Min. 3mm HDPE Pads, 4No. Delkor Type A rail clip washers and 4No. Insulators only).	Each				
		Sleeper Prestressed Concrete Guard Rail Heavy Duty as 3rd sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 4No. Screws/pikes M24x165mm long, 4No. Double Helical Washers, Min. 3mm HDPE Pads, 4No. Delkor Type A rail clip washers and 4No. Insulators only).	Each				
		Sleeper Prestressed Concrete Guard Rail Heavy Duty as 4th sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 3No. Screws/pikes M24x165mm long, 3No. Double Helical Washers, 2No. Min. 3mm HDPE Pads, 3No. Delkor Type A rail clip washers and 3No. Insulators only).	Each				
		Sleeper Prestressed Concrete Guard Rail Heavy Duty as 5th sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 2No. Screws/pikes M24x165mm long, 2No. Double Helical Washers, 1No. Min. 3mm HDPE Pads, 2No. Delkor Type A rail clip washers and 2No. Insulators only).	Each				

Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Sleeper Prestressed Concrete Guard Rail Heavy Duty as 6th sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 2No. Screws/Spikes M24x165mm long, 2No. Double Helical Washers, 1No. Min. 3mm HDPE Pads, 2No. Delkor Type A rail clip washers and 2No. Insulators only).	Each				
		Sleeper Prestressed Concrete Guard Rail Medium Duty and 1st sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 4No. Screws/Spikes M24x165mm long, 4No. Double Helical Washers, Min. 3mm HDPE Pads, 4No. Delkor Type A rail clip washers and 4No. Insulators only).	Each				
		Sleeper Prestressed Concrete Guard Rail Medium Duty as 2nd sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 4No. Screws/Spikes M24x165mm long, 4No. Double Helical Washers, Min. 3mm HDPE Pads, 4No. Delkor Type A rail clip washers and 4No. Insulators only).	Each				
		Sleeper Prestressed Concrete Guard Rail Heavy Duty as 3rd sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 4No. Screws/Spikes M24x165mm long, 4No. Double Helical Washers, Min. 3mm HDPE Pads, 4No. Delkor Type A rail clip washers and 4No. Insulators only).	Each				

GIPA Act s.14, Table 4(b)

**Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices**

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup				*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	Total Goods Unit Cost \$ (A+B+(C/3))	
GIPA Act s. 14, Table 4(b)								
		Sleeper Prestressed Concrete Guard Rail Medium Duty as 4th sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 3No. Screws/pikes M24x165mm long, 3No. Double Helical Washers, 2No. Min. 3mm HDPE Pads, 3No. Delkor Type A rail clip washers and 3No. Insulators only).	Each					
		Sleeper Prestressed Concrete Guard Rail Medium Duty as 5th sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 2No. Screws/pikes M24x165mm long, 2No. Double Helical Washers, 1No. Min. 3mm HDPE Pads, 2No. Delkor Type A rail clip washers and 2No. Insulators only).	Each					
		Sleeper Prestressed Concrete Guard Rail Medium Duty as 6th sleeper in Transition set. Delkor 'A' clip System for Guard rail and e2003 system for running rail 30T axle load. (Includes 2No. Screws/pikes M24x165mm long, 2No. Double Helical Washers, 1No. Min. 3mm HDPE Pads, 2No. Delkor Type A rail clip washers and 2No. Insulators only).	Each					
		Pandrol Clip (E2003) for e2003 eclip system	Each					
		Pandrol Insulator (INE 55088) for e2003 eclip system	Each					
		Pandrol Rail Pad (RPE8853) for e2003 eclip system	Each					
		Pandrol Clip (FC1507) for FC1507 Fastclip System assembly FCASSY9319NL	Each					

**Annexure B: Schedule of Prices and Indexation | Part 1 - Schedule of Prices**

Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods Long Description (max 240 characters)	Unit of Measure	Sleeper (Goods) Cost Breakup			*Minimum Purchase Order Quantity (Units)
				Goods Unit Cost \$ (Excluding Jewellery) (A)	Jewellery Unit Cost \$ (B)	Dunnage Unit Cost \$ (C)	
GIPA Act s.14, Table 4(b)							
		Pandrol Toe Insulator (8494 NATURAL) for FC1507 Fastclip System assembly FCASSY9319NL	Each				
		Pandrol Side Post Insulator (INFC7551BK) for FC1507 Fastclip System	Each				
		Pandrol Rail Pad (RPFC9184) for FC1507 Fastclip System	Each				
		Pandrol Clip (FC1509) for FC1509 Fastclip System assembly FCASSY10856NL	Each				
		Pandrol Toe Insulator (INFC10293NL NATURAL) for FC1509 Fastclip System assembly FCASSY10856NL	Each				
		Pandrol Side Post Insulator (INFC10292NL) for FC1509 Fastclip System Assembly 10856	Each				
		Pandrol Rail Pad (RPFC10531) for FC1509 Fastclip System	Each				

\* Notes:  
GIPA Act s.14, Table 4(b)

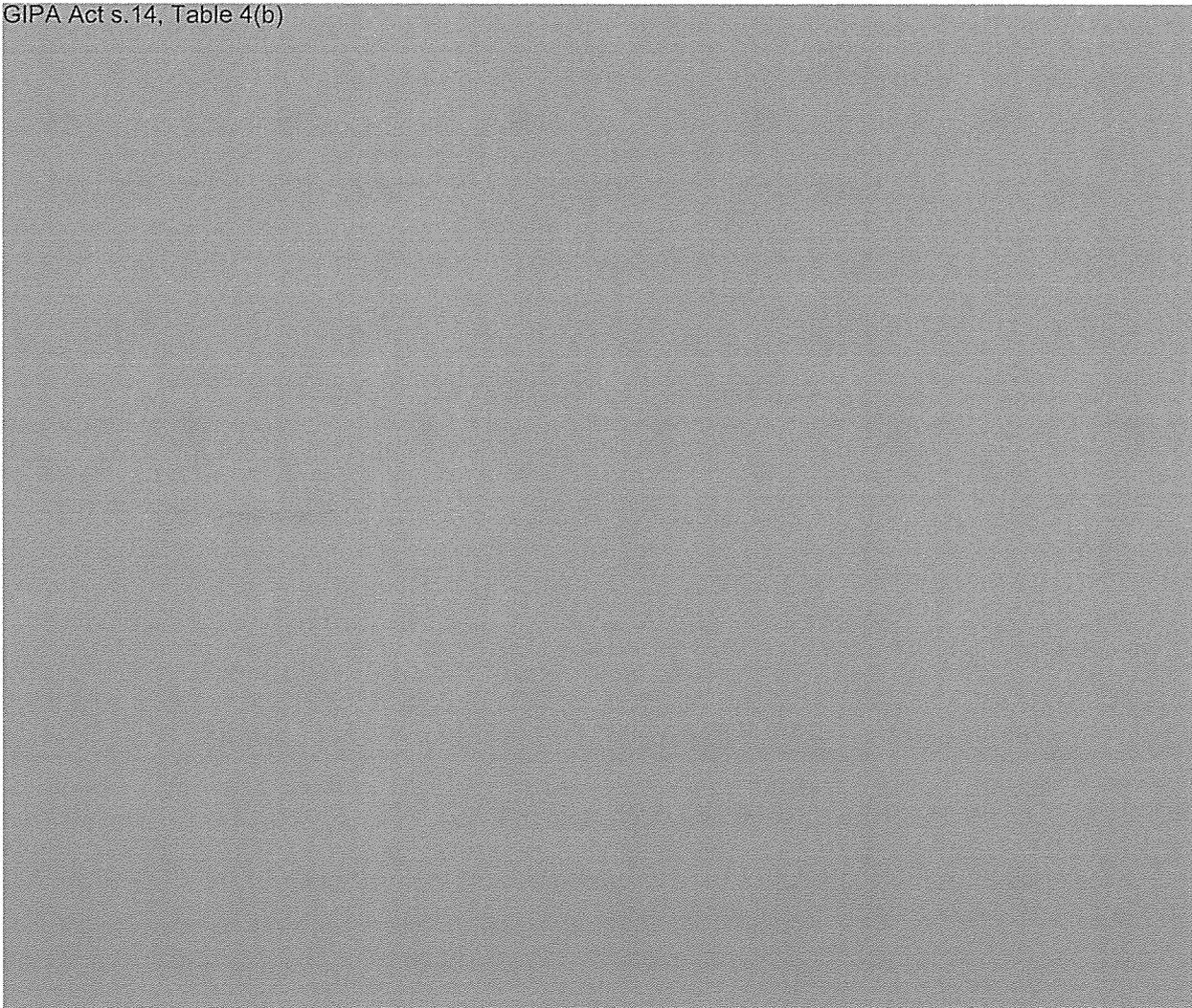


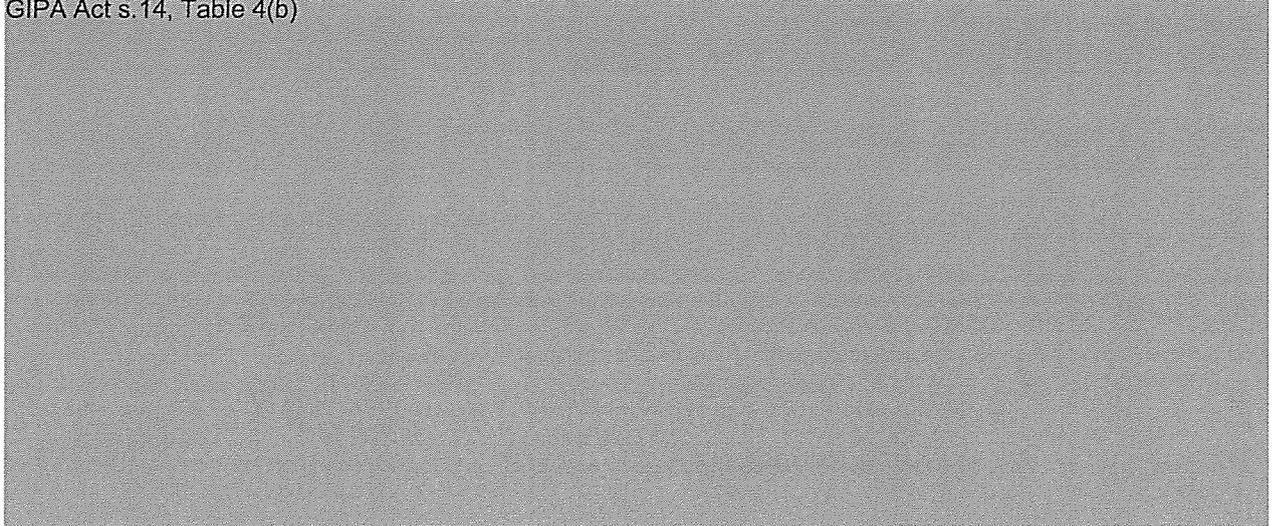
Annexure B: Schedule of Prices and Indexation			
Principal's Material	Contractor's	Contractor's default Manufacturing	Storage Location
GIPA Act s.14, Table 4(b)		Not applicable	GIPA Act s.14, Table 4(b)
		Not applicable	
GIPA Act s.14, Table 4(b)			

Consumer Price Index Calculation based on Contractor KPI (Clause 7.1) Performance (Annexure D)

- (a) Once each year during the Term, either party may provide a notice to the other requesting that any prices in the Schedule of Prices relating to the supply to be reviewed.
- (b) If either party provides a notice, the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree a revised Schedule of Prices which reflects the Contractor's actual, direct, proven and reasonable increases or decreases in costs.
- (c) If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date following the yearly anniversary of the Commencement Date (Rates Adjustment Date).
- (d) If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice, the prices in the Schedule of Prices relating to the supply of Services will be adjusted on and from the Rates Adjustment Date by the amount given by the following formula:

GIPA Act s.14, Table 4(b)





## Part 2 - Indexation

This Part 2 is only applicable where specified in the Key Details for Standing Offer Deed.

---

### 1. CPI Indexation

- (a) Any prices in the Schedule of Prices will be indexed for movements in the CPI on and from the date following each yearly anniversary of the Commencement Date (CPI Adjustment Date) in accordance with the following formula:

$$A \text{ (CPI Indexed)} = A \times \frac{CPI_{q-2}}{CPI_{Base}}$$

Where:

A is the monetary amount originally specified in this Deed;

$CPI_{q-2}$  is the last CPI published prior to the CPI Adjustment Date;

$CPI_{Base}$  is the last CPI published prior to the Commencement Date; and

CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS), or as otherwise determined in accordance with paragraph (b).

- (b) If the CPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Principal's Representative and any necessary consequential amendments are to be made.

---

### 2. General Review of Prices

#### 2.1 Alternative 1 - General Review of Prices for Supply of Services or Labour

- (a) This alternative applies to the supply of services or labour not subject to CPI indexation and where specified in the Key Details for Standing Offer Deed that this alternative applies.

- (b) Once each year during the Term, either party may provide a notice to the other requesting that any prices in the Schedule of Prices relating to the supply of services or labour be reviewed in accordance with this clause.
- (c) If either party provides a notice under paragraph (b), the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree a revised Schedule of Prices which reflects the Contractor's actual, direct, proven and reasonable increases or decreases in costs.
- (d) If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date following the yearly anniversary of the Commencement Date (**Rates Adjustment Date**).
- (e) If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice under paragraph (b), the prices in the Schedule of Prices relating to the supply of Services will be adjusted on and from the Rates Adjustment Date by the amount given by the following formula:

$$AP = P \times (WPI 2 / WPI 1)$$

Where:

AP is the adjusted price for the relevant services or labour;

P is the price for the services or labour originally specified in the Schedule of Prices (as adjusted in accordance with this clause from time to time);

WPI means the "Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses" as maintained and published quarterly by the Australian Bureau of Statistics, or as otherwise determined in accordance with paragraph (g);

WPI 1 is the last WPI published prior to the Commencement Date, or from the second year of the Term onwards, the previous Rates Adjustment Date; and

WPI 2 is the last WPI published prior to the Rates Adjustment Date.

- (f) If paragraph (e) applies the Principal's Representative will calculate the adjusted prices and provide written notice of the adjusted prices to the Contractor.
- (g) If the WPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Principal's Representative and any necessary consequential amendments are to be made.

## 2.2 Alternative 2 - General Review of Prices for Supply of Goods

- (a) This alternative applies to the supply of Goods not subject to CPI indexation and where specified in the Key Details for Standing Offer Deed that this alternative applies.
- (b) Once each year during the Term, either party may provide a notice to the other requesting that the prices in the Schedule of Prices relating to the supply of Goods be reviewed in accordance with this clause.
- (c) If either party provides a notice under paragraph (b), the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree a revised Schedule of Prices which reflects the Contractor's actual, direct, proven and reasonable increases or decreases in costs.

- (d) If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date following the yearly anniversary of the Commencement Date (**Rates Adjustment Date**).
- (e) If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice under paragraph (b), the prices in the Schedule of Prices relating to the supply of Goods will be adjusted on and from the Rates Adjustment Date by the amount given by the following formula:

$$AP = P \times (PPI\ 2 / PPI\ 1)$$

Where:

AP is the adjusted price for the relevant Goods;

P is the price for the Goods originally specified in the Schedule of Prices (as adjusted in accordance with this clause from time to time);

**Producer Price Index** or PPI means the Producer Price Index published by the Australian Bureau of Statistics for Series ID A2305166A, or as otherwise determined in accordance with paragraph (g);

**PPI 1** is the last Producer Price Index published prior to the Commencement Date or, from the second year of the Term onwards, the previous Rates Adjustment Date; and

**PPI 2** is the Producer Price Index published prior to the Rates Adjustment Date.

- (f) If paragraph (e) applies the Principal's Representative will calculate the adjusted prices and provide written notice of the adjusted prices to the Contractor.
- (g) If the PPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Principal's Representative and any necessary consequential amendments are to be made.

---

### 3. Foreign Exchange Adjustments

- (a) This clause applies where specified in the Key Details for Standing Offer Deed.
- (b) Where this clause applies the relevant Australian dollar amount of any rate or price which is stated to be subject to a foreign currency adjustment (**Foreign Currency Amount**) will be adjusted in accordance with this clause on each date on which the Schedule of Prices provides that a foreign currency adjustment is to occur (**FX Review Date**).
- (c) The Foreign Currency Amount will be adjusted based on movements in the relevant exchange rate in accordance with the following formula:

$$FCA\ (Adjusted) = FCA \times [XR\ (current) / XR\ (base)]$$

Where:

**FCA (Adjusted)** is the relevant Foreign Currency Amount as adjusted;

**FCA** is the relevant Foreign Currency Amount specified in the Schedule of Prices which is to be subject to a foreign currency adjustment;

XR (**current**) is the relevant exchange rate published by the Reserve Bank of Australia as at the relevant FX Review Date; and

XR (**base**) is the relevant exchange rate specified in the Schedule of Prices as at the Commencement Date.

**Annexure C - Request for Quotation**

<b>Part 1 of the Request for Quotation - Identification</b>					
<p>This Request for Quotation is issued by the Principal under the Standing Offer Deed between the Principal and <i>[insert]</i></p> <p>Contract No: <i>[insert]</i></p> <p>Request for Quotation No: <i>[insert]</i></p> <p>Contractor response required by: <i>[insert]</i></p>					
<b>Part 2 of the Request for Quotation - Additional Project Details for Schedule 1 (Key Details) in General Conditions</b>					
<b>Contract Price:</b> (Clause 1.1)	<i>[Contractor to complete based on Schedule of Prices]</i>				
<b>Date for Delivery:</b> (Clause 1.1)	<p><i>[Note to user: only applicable to the <u>Goods and/or Services Contract</u>, otherwise delete this row]</i></p> <p>Where there are no Separable Portions, for the Goods is: <i>[insert]</i></p> <p>Where there are Separable Portions, for each Separable Portion is:</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Separable Portion</th> <th style="text-align: left;">Date for Delivery</th> </tr> </thead> <tbody> <tr> <td><i>[insert]</i></td> <td><i>[insert]</i></td> </tr> </tbody> </table>	Separable Portion	Date for Delivery	<i>[insert]</i>	<i>[insert]</i>
Separable Portion	Date for Delivery				
<i>[insert]</i>	<i>[insert]</i>				
<b>Defects Liability Period:</b> (Clause 1.1)	<p><i>[Note to user: only applicable to the <u>Goods and/or Services Contract</u> and the <u>Construction Works Contract</u> otherwise delete this row]</i></p> <p><i>[insert]</i></p> <p>(12 months unless otherwise stated.)</p>				
<b>Separable Portions</b> (Clause 1.1)	<p><i>[Note to user: only applicable to the <u>Goods and/or Services Contract</u> and the <u>Construction Works Contract</u> otherwise delete this row]</i></p> <p><i>[Describe each Separable Portion of the Works / Goods and/or the Services, or insert 'Not applicable']</i></p>				
<b>Term of Services</b> (Clause 1.1)	<p><i>[Note to user: only applicable to <u>Goods and/or Services Contract</u> and only where Services are being provided for a set period, otherwise delete this row]</i></p> <p><i>[Insert term of Contract in relation to Services - for how long or until when the Services must be carried out. eg. 12 months from Date of Acceptance of Goods or 12 Months from Award Date. Specify when the Term for Services starts and ends.]</i></p> <p><i>(Only applicable if Services are being provided.)</i></p>				

<p><b>Security</b> (Clause 4)</p>	<p><i>[Note to user: only applicable to <u>Goods and/or Services Contract</u> or the <u>Construction Works Contract</u>, otherwise delete this row. Consider whether the Contractor has already provided adequate security under the Standing Offer Deed.]</i></p> <p>Clause 4.1 applies: <i>[yes / no]</i></p> <p><i>[Select yes if the Contractor is required to provide security]</i></p> <p><b>Amount</b></p> <p>Security is required for <i>[insert amount, or insert 'not applicable']</i>.</p>								
<p><b>ASA Authorisation</b> (Clause 8.10 of the Supply of Goods and/or Services Contract and the Construction Works Contract or clause 7.14 of the Professional Services Contract)</p>	<p><i>[The Contractor or its Subcontractor is the AEO and the Contractor's or its Subcontractor's ASA Authorisation applies OR The Principal is the AEO and the Principal's ASA Authorisation applies]</i></p> <p>(If nothing is stated, the Contractor or its Subcontractor is the AEO and the Contractor's or its Subcontractor's ASA Authorisation applies.)</p>								
<p><b>Accredited person</b> (Clause 8.12 of the Supply of Goods and/or Services Contract and the Construction Works Contract or 7.16 of the Professional Services Contract)</p>	<p><i>[Insert who holds the rail safety Accreditation relevant to the Contractor's Activities e.g. the Principal or the Contractor]</i></p> <p>(If nothing is stated, then the Principal holds the Accreditation.)</p>								
<p><b>Cap on delay costs</b> (Clause 10.11)</p>	<p><i>[Note to user: only applicable to the <u>Goods and/or Services Contract</u> and the <u>Construction Works Contract</u> otherwise delete this row]</i></p> <p><i>[\$[insert] per day]</i></p> <p>(If nothing is stated, 0.5% of the Contract Price per day.)</p> <p><i>[insert] % of the Contract Price in the aggregate</i></p> <p>(If no amount is specified, 10% of the Contract Price in the aggregate.)</p>								
<p><b>Liquidated damages payable by Contractor for delay in achieving Acceptance after the Date for Delivery:</b> (Clause 13.11)</p>	<p><i>[Note to user: only applicable to <u>Goods and/or Services Contract</u> otherwise delete this row]</i></p> <p>Where there are no Separable Portions, for the Goods is: <i>[\$[insert] per day.]</i></p> <p>Where there are Separable Portions, for each Separable Portion is:</p> <table border="0" data-bbox="635 1579 1378 1702"> <thead> <tr> <th style="text-align: left;">Separable Portion</th> <th style="text-align: left;">Liquidated damages</th> </tr> </thead> <tbody> <tr> <td><i>[insert]</i></td> <td><i>[\$[insert] per day]</i></td> </tr> <tr> <td><i>[insert]</i></td> <td><i>[\$[insert] per day]</i></td> </tr> <tr> <td>.....</td> <td></td> </tr> </tbody> </table> <p>(If nothing is stated 0.5% of the Contract Price per day.)</p>	Separable Portion	Liquidated damages	<i>[insert]</i>	<i>[\$[insert] per day]</i>	<i>[insert]</i>	<i>[\$[insert] per day]</i>	.....	
Separable Portion	Liquidated damages								
<i>[insert]</i>	<i>[\$[insert] per day]</i>								
<i>[insert]</i>	<i>[\$[insert] per day]</i>								
.....									

**Part 3 of the Request for Quotation - Execution by the Contractor's Representative of original Quotation**

Submitted by the Contractor's Representative:

[Contractor to complete]

Name:

Signature:

Date:

## Attachment 1 to the Request for Quotation - Statement of Work

*[Sydney Trains to insert Statement of Work detailing specific requirements for the Works, Goods and/or Services or Professional Services to be provided under the specific Contract. These requirements are in addition to the requirements in the Statement of Work in Exhibit A of the General Conditions]*

(If nothing is attached, the Statement of Work in Exhibit A of the General Conditions applies.)

Annexure D - KPIs

KRA	KPI	Weight	Definition	Calculation Method	Target
Safety	Corrective Actions	GIPA Act s.14, Table 4(b)			
Delivery	SIFOT				
Quality	Quality				
Innovation & Customer Service	SOH Reporting				
	Dispatch Reporting				
	KPI Reporting				

## Annexure E - General Conditions

See attached.

# Supply of Goods and/or Services Contract

## Manufacture, Store and Supply of Concrete Sleepers and Guardrails

Contract No. CW2362679

## General Conditions

Sydney Trains  
Principal

Rocla Pty Ltd (ABN 31 000 032 191)  
Contractor

Version: 2.0  
Date: July 2018

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## General Conditions of Contract

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### 1. Definitions and interpretation

#### 1.1 Definitions

In the Contract, unless the context indicates otherwise:

**Acceptance** means, subject to clause 13.7, the stage when in respect of the Goods:

- (a) the Goods comply with the requirements of the Contract and have been delivered in full to the Principal at the Delivery Point;
- (b) the Tests (if any) which are required by the Contract to be carried out and passed before Acceptance is achieved for the Goods have been carried out and passed;
- (c) all documents and other information referred to in the Contract, including all Approvals, which are required for the use, operation and maintenance of the Goods have been supplied to the Principal's Representative; and
- (d) the Contractor has done everything which the Contract requires it to do as a condition precedent to Acceptance, including those things described in clause 8.6.

**Accreditation** means accreditation as referred to in Part 3, Division 4 of the Rail Safety National Law.

**Act of Prevention** means any one of:

- (a) a breach of the Contract by the Principal;
- (b) any other act or omission of the Principal, the Principal's Representative or an Other Contractor engaged by the Principal; or
- (c) a Variation the subject of a Direction by the Principal's Representative.

**Appendix** means the Appendix to these General Conditions of Contract.

**Approval** means any licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of any Authority having any jurisdiction in connection with the Contractor's Activities or under any applicable Law, which must be obtained or satisfied to carry out the Contractor's Activities or use the Goods for their intended purpose.

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

**ASA Charter** means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the ASA (as amended from time to time), which is available at <http://www.asa.transport.nsw.gov.au/> or upon request from the Principal's Representative.

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

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

**Asset Services** means the aspects of the Contractor's Activities which relate to the Asset Lifecycle of NSW Rail Assets.

**Asset Standards Authority** or **ASA** means the unit within Transport for NSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets as defined in the ASA Charter.

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

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

**Award Date** means:

- (a) where a Standing Offer Deed exists, the date on which the Contract came into existence as determined in accordance with the Standing Offer Deed; or
- (b) otherwise, the date on which the Formal Instrument of Agreement has been completed and signed by the last party to sign.

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

**Change in Law** means a change in an existing Law or a new Law, but does not include:

- (a) a change in an Approval or a new Approval; or
- (b) a change in an existing Law, or a new Law, relating to taxes.

**Claim** includes any claim for an increase in the Contract Price or for payment of money (including damages) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the Contractor's Activities, the Goods and Services or either party's conduct before the Contract; or
- (c) otherwise at Law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution.

**Code of Conduct** means the Principal's Code of Conduct which is available, as at June 2018, at <https://www.transport.nsw.gov.au/about-us/who-we-are/culture-and-values> or upon request from the Principal's Representative, as updated from time to time.

**Competence Records** means, with respect to any Rail Safety Worker engaged in connection with the Contractor's 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 Principal with respect to the competence of the Rail Safety Worker.

**Confidentiality Undertaking** means a deed in the form of Schedule 6 of the Appendix.

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

**Consequential Loss** means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
- (b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent.

**Contract** means the contractual relationship between the parties constituted by:

- (a) either:
  - (i) where a Standing Offer Deed exists, the Purchase Order issued by the Principal in accordance with the terms of the Standing Offer Deed; or
  - (ii) otherwise, the Formal Instrument of Agreement;
- (b) these General Conditions of Contract;
- (c) the Key Details as amended (if applicable) by a Purchase Order;
- (d) the Schedules, Exhibits and Appendix;
- (e) the Statement of Work; and
- (f) the other documents (if any) referred to in the Key Details.

**Contract Price** means the amount specified in the Key Details as adjusted, subject to clause 16.5, under the Contract.

**Contractor's Activities** means all things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations and includes the supply of the Goods and Services, Variations, Tests and rectification work.

**Contractor's Representative** means the person so named in the Key Details or any other person from time to time appointed as the Contractor's Representative in accordance with clause 3.5.

**Date for Delivery** means in respect of the Goods, the date, or period of time, specified in the Key Details, as adjusted under the Contract, for achieving Acceptance.

**Date of Acceptance** means, subject to clause 13.7:

- (a) the date of Acceptance set out in a Notice of Acceptance; or
- (b) the date on which Acceptance is deemed to have been achieved under clause 13.4(b).

**Deed of Novation** means the deed in the form set out in Schedule 10 of the Appendix.

**Defect** means any aspect of the Contractor's Activities, the Goods and Services, or any part thereof, which is not in accordance with the requirements of the Contract.

**Defects Liability Period** means the period which:

- (a) in the case of the supply of Goods, commences on the Date of Acceptance of the Goods; and
- (b) in the case of the performance of Services, commences on the expiry of the Term of Services,

and which continues for the period described in the Key Details as extended by clause 9.12.

**Deliverables** means all items, materials, documentation (including the Design Documentation and any plans, drawings, manuals and specifications) and products produced, created or developed for the Principal by or on behalf of the Contractor as part of providing the Goods, Services or Contractor's Activities for the purposes of, or in anticipation of, this Contract, irrespective of whether they are produced, created or developed prior to the Award Date (but excluding the Goods).

**Delivery Point** means the location specified in the Statement of Work.

**Design Documentation** means all design documentation (including drawings, designs, specifications, manuals, patterns, models, samples, calculations and the like) and other information which is necessary for the Contractor to prepare (if any) to manufacture any part of the Goods or to perform the Services.

**Direction** means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement.

**Environment Protection Licence** means an environment protection licence granted under the Protection of the Environment Operations Act 1997 (NSW).

**Formal Instrument of Agreement** means the formal instrument of agreement to which these General Conditions of Contract are attached.

**Force Majeure Event** means:

- (a) riot, war, invasion or act of foreign enemies, acts of terrorism, or hostilities;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) industrial action in the form of a strike that is not specific to, or caused by, the Contractor; and

- (e) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions, regardless of severity,

but only where such events or circumstances:

- (a) are beyond the reasonable control of the affected party;
- (b) where the affected party is the Contractor, are such that a competent contractor would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under the Contract if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced contractor supplying similar goods and services; and
- (c) are not caused or contributed to in whole or in part by a breach by the affected party of the Contract.

**General Conditions of Contract** means these General Conditions of Contract.

**Goods** means the goods (if any) which the Contractor must deliver to the Principal under the Contract (including any replacement Goods referred to in clause 13.6), as more particularly described in the Statement of Work.

**Goods Insurance** means:

- (a) a policy of property insurance covering the Goods against loss or damage occurring during any period the Contractor bears the risk of such loss or damage under clause 5.1; and
- (b) if the things the care of which the Contractor is responsible for under clause 5.1 are in transit (including storage and transshipment) from any place outside of Australia, a policy of marine transit insurance covering the Goods against loss or damage occurring while in transit until delivery of the Goods to the Delivery Point on an "all risks" basis, including war, riots, strikes and civil commotion coverage.

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

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

**Guarantor** has the meaning given in clause 4.6(a)(ii).

**Incoterms 2010** means the publication called the ICC Incoterms published by the International Chamber of Commerce, 2010 Edition.

**Insolvency Event** means in relation to a party to the Contract, any of the following:

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the Contract for financial reasons;
- (b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any foreign law equivalent or other person with similar power is appointed to the party;
- (c) the party:

- (i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth) or under any bankruptcy, insolvency or analogous Law;
  - (ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act 2001 (Cth);
  - (iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act 2001 (Cth) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand;
  - (iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
  - (v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
  - (vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
  - (vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or
  - (viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or
- (d) any act is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b) or (c).

**Intellectual Property Rights** means any patent, registered design, trademark or name, copyright or other protected intellectual property right.

**Key Details** means the particulars which appear in Schedule 1.

**Key Performance Indicators or KPIs** means the key performance indicators:

- (a) in Schedule 11 of the Appendix; and
- (b) if any, set out in Schedule 3.

**Law** means:

- (a) any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by the Commonwealth or any State or Territory government;
- (b) common law and equity;
- (c) Approvals; and
- (d) any other relevant Authority requirements.

**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 the Contract 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 parent company guarantee is binding and enforceable against the Guarantor,
- (as applicable);
- (b) which states that it may be relied upon by the Principal; and
- (c) in a form reasonably satisfactory to the Principal.

**Moral Rights** means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886, being "droit moral" or other analogous rights arising under any applicable Law that exists or may come to exist anywhere in the world.

**Motor Vehicle Insurance** means a policy of insurance covering vehicle third party bodily injury and property damage in respect of all vehicles to be used by the Contractor (whether owned, rented or leased) in connection with the Contractor's Activities.

**Notice of Acceptance** means, subject to clause 13.7, a notice under clause 13.4(a)(ii) by the Principal's Representative stating that Acceptance of the Goods has been achieved.

**Notice of Dispute** has the meaning given in clause 15.1.

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

**NSW Trains** means the corporation by that name constituted by Part 3C of the Transport Administration Act 1988 (NSW).

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

**Option Period 1** means the period stated in the Key Details.

**Option Period 2** means the period stated in the Key Details.

**Option Period 3** means the period stated in the Key Details.

**Other Contractor** means any supplier, contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor and its Subcontractors.

**Personnel** means:

- (a) in respect of the Contractor, any directors, officers, employees, consultants, agents and Subcontractors of the Contractor; and
- (b) in respect of the Principal, any directors, officers, employees, consultants, agents and contractors of the Principal (other than the Contractor).

**Policies, Codes and Standards** means the most recent version of the following policies, codes and standards, as updated from time to time:

- (a) the policies, codes and standards that, as at June 2018, appear on the website: <https://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors>;

- (b) the policies, codes and standards that appear, as at June 2018, on the Railsafe website at <https://railsafe.org.au/>, including:
  - (i) the policy entitled "Health and Safety Policy"; and
  - (ii) the applicable specifications on the safety and environment specifications page, available, as at June 2018, at: [https://railsafe.org.au/safety-and-environment-specifications](https://railsafe.org.au/safety-and-environment-specifications;);
- (c) the New South Wales Government Code of Practice for Procurement (January 2005);
- (d) in relation to work, health and safety management, the Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (September 2013);
- (e) in relation to quality management, AS/NZS ISO 9001 and, if applicable, the NSW Government Quality Management Systems Guidelines for Construction (Edition 3 August 2013);
- (f) in relation to environmental management, AS/NZS ISO 14001 and, if applicable, the NSW Government Environmental Management System Guidelines (Edition 3 August 2013);
- (g) if applicable, the NSW Government Procurement Guideline "Skills and Training in the Construction Industry";
- (h) if applicable, the NSW Government Policy on Aboriginal Participation in Construction;
- (i) Australian Standard AS1085.14 – 2012;
- (j) RailCorp Engineering Standard ESC 230;
- (k) RailCorp Engineering Specification SPC 232;
- (l) in relation to barcoding of inventory and materials, the Implementation Guideline for Standardised Identification & Marking of Parts and Components in the Australian Rail Industry as amended or updated from time to time; and
- (m) any other policies, codes and standards that are notified to the Contractor by the Principal from time to time.

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

Pre-existing IPR in respect of a party means:

- (a) any Intellectual Property Rights belonging to that party that are pre-existing as at the Award Date, but does not include any Intellectual Property Rights developed by the Contractor or any of its Personnel for the purposes of, or in anticipation of, carrying out the Contractor's Activities; or
- (b) any Intellectual Property Rights that are brought into existence by or on behalf of that party, other than as a result of the performance of that party's obligations under this Contract,

and used by a party in performing its obligations under this Contract.

Principal's Representative means the person so nominated in the Key Details or any other person nominated by the Principal from time to time under clause 3.2 to replace that person.

**Product Liability Insurance** means a policy of product liability insurance:

- (a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time;
- (b) covering the parties' respective liability to each other; and
- (c) which complies with the requirements set out in clause 5.5(d),

for loss or damage to property (including the Principal's 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 Goods.

**Professional Indemnity Insurance** means a policy of insurance to cover claims for breach of professional duty (whether owed in contract or otherwise) or any act or omission in rendering of services by the Contractor or its Subcontractors in carrying out the Contractor's Activities.

**Public Liability Insurance** means a policy of public liability insurance:

- (a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time;
- (b) covering the parties' respective liability to each other; and
- (c) which complies with the requirements set out in clause 5.5(d),

for loss or damage to property (including the Principal's 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 Contractor's Activities.

**Purchase Order** means:

- (a) where a Standing Offer Deed exists, the 'Purchase Order' issued under the Standing Offer Deed (if any) and includes any annexures, schedules, exhibits and attachments to the Purchase Order; and
- (b) otherwise, the purchase order (or any document or documents together referred to by the Principal as the purchase order) issued by the Principal to the Contractor for the purposes of invoicing and payment.

**Qualifying Cause** means:

- (a) an Act of Prevention;
- (b) a Force Majeure Event; or
- (c) a Direction to suspend that satisfies clause 10.13(b).

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

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

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

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

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

**Schedule of Prices** means the document (if any) so described in Schedule 2.

**Separable Portion** means a separable portion of the Goods and Services identified as such in the Key Details.

**Services** means the services (if any) which the Contractor is required to perform under the Contract, as more particularly described in the Statement of Work.

**Site** means any land made available by the Principal to the Contractor to carry out the Contractor's Activities, if any, including any such land described in the Statement of Work.

**SOP Act** means the Building and Construction Industry Security of Payment Act 1999 (NSW).

**Standing Offer Deed** means the deed entitled "Standing Offer Deed" between the Contractor and the Principal to which these General Conditions of Contract are annexed (if applicable).

**Statement of Work** means:

- (a) the document in Exhibit A (if any); and
- (b) where a Standing Offer Deed exists, any Statement of Work attached to the Purchase Order.

**Subcontractor** means any person engaged by the Contractor for the performance of any of the Contractor's Activities.

**Sydney Trains** means the corporation by that name constituted by Part 3B of the Transport Administration Act 1988 (NSW).

**Term of Services** means the period described as such in the Key Details (as extended pursuant to clause 2.3).

**Tests** means:

- (a) the tests and procedures specified in the Statement of Work which are to be carried out before or after the Goods have been delivered to the Principal;
- (b) any other tests required by the Principal's Representative; and
- (c) any other tests required to ascertain whether the Goods and Services or a specified part thereof meet the requirements of the Contract,

and each of them is a Test.

**Transport for NSW** means the corporation by that name constituted by section 3C of the Transport Administration Act 1988 (NSW).

**Unconditional Undertaking** means an unconditional undertaking (duly stamped) on terms, and given by a financial institution, approved by the Principal (and the terms of the unconditional undertaking set out in Schedule 4 of the Appendix are approved by the Principal).

**Variation** means, unless otherwise stated in the Contract, any change to the Goods and Services including any addition, increase, decrease, omission, deletion or removal to or from the Goods and Services.

**WHS Legislation** means legislation relating to health and safety at work including:

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

**WHS Management Plan** means the work health and safety plan to be prepared by the Contractor under clause 7.5, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with WHS Legislation; and
- (c) comply with the specific requirements of Part 6.4 of the Work Health and Safety Regulation 2017 (NSW) in relation to the matters that a WHS management plan must include.

**Workers Compensation Insurance** means a policy of insurance to insure against liability for death of or injury to employees, including liability by statute and at common law.

## 1.2 Interpretation

In the Contract:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it;
  - (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
  - (j) 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;
  - (k) "includes" in any form is not a word of limitation;
  - (l) a reference to "\$" or "dollar" is to Australian currency;
  - (m) the word "Subcontractor" will include suppliers and consultants;
  - (n) if any term in Schedule 2 or the Statement of Work refers to a term included in Incoterms 2010, the rules and definitions governing that term in Incoterms 2010 will apply;
  - (o) any reference to the Contractor's Activities, Goods, Services, Design Documentation or any other document or thing being fit for their intended purpose (or any similar reference) will be read as referring to the purpose having regard to:
    - (i) the Principal's objective of operating and maintaining a safe, reliable, effective and efficient rail network and of obtaining value for money outcomes when procuring goods, services, activities and other things from contractors; and
    - (ii) any purpose contemplated in or reasonably ascertainable from:
      - A. the Contract and, if applicable, any Standing Offer Deed; and
      - B. to the extent relevant for determining the purpose in connection with a Variation, any document provided by the Principal to the Contractor specifically in connection with the Variation.
- For the avoidance of doubt, unless specified in a Purchase Order or otherwise agreed by the parties from time to time:
- (iii) the Contractor is not responsible for installing the Goods; and
  - (iv) the Contractor will have no liability to the Principal under this clause 1.2(o) to the extent that the Goods are used by the Principal for a purpose other than a purpose contemplated under clauses 1.2(o)(i) and 1.2(o)(ii); and
- (p) to the extent that:
    - (i) any amounts are payable to the Contractor under the Contract by reference to hourly or daily rates; and

- (ii) the Contractor's Personnel is engaged in the relevant Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),

the Contractor will be entitled to payment in respect of such time on a pro rata basis.

### **1.3 No bias against drafting party**

No term or provision of the Contract will be construed against a party on the basis that the Contract or the term in question was put forward or drafted by or on behalf of that party.

### **1.4 Provisions limiting or excluding liability**

Any provision of the Contract which seeks to limit or exclude a liability of a party, is to be construed as doing so only to the extent permitted by applicable Law.

### **1.5 Discretion**

Subject to any express provision in the Contract to the contrary:

- (a) a provision of the Contract which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
- (b) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Contract.

Without limiting the previous paragraph, neither the Principal nor the Principal's Representative will 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 provision of the Contract conferring the discretion, power or entitlement.

### **1.6 Authorities**

- (a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
  - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
  - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter, including any functions or powers required to be exercised by the Principal or any Rail Transport Agency pursuant to any Configuration Management Framework.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under the Contract.
- (c) The Contractor:
  - (i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal, any Rail Transport Agency or the ASA of their respective functions and powers either as an AEO or under any

legislation, the ASA Charter or the Configuration Management Framework; and

- (ii) acknowledges and agrees that:
  - A. there are many Authorities with jurisdiction over aspects of the Contractor's Activities, the Rail Corridor, and other matters affecting and affected by the Contractor's Activities;
  - B. such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
  - C. it bears the full risk of all occurrences of the kind referred to in clause 1.6(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

## 1.7 Separable Portions

(a) In the Contract:

- (i) the expressions:
  - A. Acceptance;
  - B. Date of Acceptance;
  - C. Date for Delivery;
  - D. Delivery Point;
  - E. Defect;
  - F. Defects Liability Period; and
  - G. Notice of Acceptance,

apply separately to each Separable Portion and references therein to the Goods, the Services or the Contractor's Activities mean so much of the Goods, the Services or the Contractor's Activities as are comprised in the relevant Separable Portion; and

- (ii) subclauses 5.1 and 5.3 and clauses 2, 9, 10 and 13 apply separately to each Separable Portion and references therein to the Goods, the Services or the Contractor's Activities mean so much of the Goods, the Services or the Contractor's Activities as are comprised in the relevant Separable Portion.

(b) Separable Portions may be directed by the Principal's Representative who shall clearly identify for each Separable Portion:

- (i) the portion of the Goods or Services;
- (ii) the Date for Delivery (if applicable); and

- (iii) the respective security and liquidated damages (all calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Separable Portion to the Contract Price for the Goods or Services).

## 1.8 Novation

- (a) The Principal may at any time, at its sole discretion, novate the Contract to any Authority, any successor in title to the Principal or any other person that assumes the functions or obligations of the Principal.
- (b) If the Principal elects to novate the Contract in accordance with paragraph (a), the Principal 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 Principal within 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 Principal 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.

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## 2. Parties' obligations

### 2.1 Contractor's obligations

- (a) The Contractor must carry out the Contractor's Activities and for this purpose:
  - (i) where the Contractor's Activities include the supply of Goods:
    - A. supply the Goods; and
    - B. ensure that the Goods achieve Acceptance,by the Date for Delivery; and
  - (ii) where the Contractor's Activities includes the performance of Services, perform the Services during the Term of Services.
- (b) The Contractor must ensure that the Goods and Services will be fit for their intended purposes.

### 2.2 Principal's obligations

The Principal must, in accordance with the requirements of the Contract:

- (a) accept the Goods;
- (b) allow the Contractor to perform the Services;
- (c) give the Contractor sufficient access to the Site to allow it to carry out the Contractor's Activities on the later of:
  - (i) the date that the Contractor has provided the Principal's Representative with:
    - A. any Unconditional Undertaking and parent company guarantee required under clause 4;

- B. any evidence of any insurance taken out by the Contractor which is required under the Contract; and
  - C. a duly executed Confidentiality Undertaking as required by clause 6.14; or
- (ii) the date specified in the Statement of Work;
- (d) subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor's Activities; and
  - (e) pay the Contract Price.

### 2.3 Extension of Term of Services

- (a) The Principal may (in its absolute discretion):
  - (i) extend the Term of Services once by Option Period 1;
  - (ii) if the Principal exercised its right to extend the Term of Services by Option Period 1 in accordance with clause 2.3(a)(i), extend the Term of Services once by Option Period 2; and
  - (iii) if the Principal exercised its right to extend the Term by Option Period 2 in accordance with clause 2.3(a)(ii), extend the Term once by Option Period 3,by giving written notice at least 30 days before the end of the Term of Services (or such other notice period as the parties may agree).
- (b) Any extension exercised in accordance with paragraph (a) will be on the terms and conditions in effect on, and takes effect from, the end of the then current Term of Services but the Contract Price payable for the further period will be equal to the Contract Price payable for the prior equivalent period of the original Term of Services, escalated by the amount set out in the Key Details.

### 2.4 KPIs

- (a) This clause 2.4 does not apply where a Standing Offer Deed exists.
- (b) The Contractor in performing the Contractor's Activities must comply with the KPIs as amended in accordance with this Contract.
- (c) The Contractor must report to the Principal at the frequency specified in the Key Details in the form of a report (**KPI Performance Report**) in a form satisfactory to the Principal which:
  - (i) provides an analysis of the performance of the Contractor in meeting the KPIs;
  - (ii) identifies any non-compliances;
  - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and
  - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.

- (d) The Contractor acknowledges and agrees that:
- (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
  - (ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal; and
  - (iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment.
- (e) The Principal and the Contractor must meet at the times specified in the Key Details, to monitor and review the Contractor's performance under this Contract and the KPIs and, if required by the Principal, the Contractor's compliance with any action plan.

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### **3. Personnel**

#### **3.1 Principal's Representative**

The Principal's Representative will give Directions and carry out all its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).

The Contractor must comply with any Direction by the Principal's Representative given under a provision of the Contract.

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

#### **3.2 Replacement of Principal's Representative**

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

Any substitute Principal's Representative appointed under this clause 3.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

#### **3.3 Principal's Representative's representative**

The Principal's Representative may:

- (a) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under the Contract;
- (b) not appoint more than one person to exercise a specific function under the Contract; and
- (c) revoke any appointment under paragraph (a) by notice in writing to the Contractor.

All references in the Contract to the Principal's Representative include a reference to a representative appointed under this clause 3.3.

### **3.4 Contractor's Representative**

The Contractor must ensure that the Contractor's Representative is present at any location where the Contractor's Activities are being carried out at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.

A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.

If the Principal's Representative makes a reasonable objection to the appointment of a representative by the Contractor, the Contractor must terminate the appointment and appoint another representative, subject again to the reasonable objection of the Principal's Representative.

### **3.5 Key people**

The Contractor must:

- (a) employ those people specified in the Statement of Work, including the Contractor's Representative, in the jobs specified in the Statement of Work;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative (acting reasonably) of at least equivalent experience, ability and expertise.

### **3.6 Removal of persons**

The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Principal's Representative is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again employed in the Contractor's Activities.

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## **4. Security**

### **4.1 Form of security**

This clause 4.1 applies where so stated in the Key Details.

The Contractor must provide security in the form of 2 Unconditional Undertakings each for an amount representing 5% of the Contract Price.

Security must be provided within 10 Business Days of the Award Date.

### **4.2 Release of security**

Subject to its rights to have recourse to the security, the Principal must:

- (a) within 10 Business Days of the last Date of Acceptance or the expiry of the Term of Services (whichever is the later), release one of the Unconditional Undertakings provided under clause 4.1; and
- (b) release the balance of the security then held when:
  - (i) the last Defects Liability Period (including any extensions under clause 9.12) has expired;
  - (ii) the Contractor has provided the Principal with the final payment claim required by clause 12.8; and
  - (iii) the Contractor has complied with all of its obligations under the Contract.

If the Principal terminates the Contract pursuant to clause 14.7 then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it when the Contractor has complied with its obligations under clause 14.8(b).

#### 4.3 Replacement security

- (a) If the Principal holds security provided under clause 4.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor, the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security, provide the Principal with replacement security in the form of an Unconditional Undertaking in exchange for the security which is being replaced.
- (b) If paragraph (a) applies in respect of any security and the Principal has not received from the Contractor replacement security in the form of an Unconditional Undertaking at least 20 Business Days prior to the expiry date for that undertaking then, irrespective of anything contained in, and without limiting the Principal's rights under, the Contract or the security, the Principal may make a demand under the security for the entire amount payable under that security and thereafter retain the proceeds.
- (c) Subject to the Principal's rights under the Contract to use these proceeds, the proceeds from any demand made by the Principal pursuant to paragraph (b) will be paid to the Contractor at the same time as the Principal would have been required to return the security from which the proceeds were obtained.

#### 4.4 Additional Security

- (a) If the Principal directs a Variation under clause 11.2 which increases the Contract Price, the Principal may direct the Contractor to provide additional security so as to ensure that the amount of the security then held by it equals 10% of the Contract Price.
- (b) The Contractor must provide additional security in the form of an Unconditional Undertaking within 10 Business Days of a Direction under clause 4.4(a).

#### 4.5 Interest

The Principal:

- (a) is not obliged to pay the Contractor interest on any Unconditional Undertaking provided under clause 4.1 including the proceeds of any bank guarantee if it is converted into cash; and

- (b) does not hold the proceeds or money referred to in paragraph (a) on trust for the Contractor.

#### 4.6 Parent company guarantee

- (a) Subject to clause 4.6(b), if the Contractor is required by the Key Details to provide a parent company guarantee, the Contractor must, on the Award Date, provide the Principal's Representative with a parent company guarantee:
  - (i) in the form set out in Schedule 5 of the Appendix with all particulars completed; and
  - (ii) duly executed by the person named in the Key Details (Guarantor).
- (b) The Contractor is not required to provide a parent company guarantee under clause 4.6(a) if it has provided a parent company guarantee under the Standing Offer Deed (if any).

#### 4.7 PPSA

- (a) To the extent the PPSA applies to any goods, materials or other items supplied by the Contractor to the Principal the Contractor warrants that:
  - (i) the supply of goods, materials or other items to the Principal does not breach any security agreement the Contractor has with a third party; and
  - (ii) the supply of goods, materials or other items to the Principal is within the ordinary course of the Contractor's business.
- (b) The Contractor indemnifies the Principal against any Claims against, or costs, losses or damages suffered or incurred by the Principal 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 Contractor's Activities; or
  - (ii) goods, materials or other items supplied to Principal by the Contractor infringing that third party's rights under the PPSA.

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## 5. Risks and insurance

### 5.1 Risk of Goods

The Contractor will bear the risk of and indemnify the Principal against:

- (a) any loss of or damage to:
  - (i) the Goods; and
  - (ii) unfixed goods and materials intended for incorporation in the Goods but not yet incorporated,until the date stated in the Key Details, notwithstanding that ownership of all or part of the Goods may previously have passed to the Principal under the Contract;
- (b) after the date stated in the Key Details, any loss of or damage to the Goods arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to the date stated in the Key Details; and

- (c) where the Services involve the refurbishment, overhaul or repair of, or any other work in relation to, any parts, plant, equipment or goods owned by the Principal, any loss or damage to such parts, plant, equipment or goods while they are in the care, custody or control of the Contractor.

## 5.2 Contractor's indemnity

The Contractor will indemnify the Principal against:

- (a) any loss of or damage to property of the Principal (other than property referred to in clause 5.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the Contractor's Activities provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, Principal's Representative or an Other Contractor engaged by the Principal may have contributed to the loss, damage, injury or death.

## 5.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must, unless otherwise directed by the Principal's Representative, promptly replace or otherwise make good any loss of, or repair the damage to, the Goods or any relevant unfixed goods and materials. The Contractor will bear the cost of such replacement, making good or repair.

## 5.4 Insurance by Principal

The Principal must, from the Award Date, effect the insurance (if any) specified in the Key Details.

The insurance is subject to the exclusions, conditions and excesses noted in the policies and the Contractor:

- (a) must satisfy itself of the nature and extent of the Principal's insurance;
- (b) acknowledges that the insurances effected by the Principal 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:
  - (i) insure any risks not insured by the Principal's insurance; or
  - (ii) cover any such exclusions, conditions or excesses in that insurance,which the Contractor wants to insure against or cover;
- (c) where it bears the risk of the relevant loss or damage under clause 5.1 or is required to indemnify the Principal under clause 5.2, must bear the cost of any excesses in the Principal's insurance;
- (d) will be responsible for paying or bearing all excesses in relation to insured matters under the insurances effected by the Principal in accordance with the policy terms; and
- (e) may effect its own insurance to cover the amount of any excess.

## 5.5 Contractor insurance obligations

The Contractor must:

- (a) from the Award Date effect and have in place the following insurance with insurers and on terms satisfactory to the Principal's Representative:
  - (i) Goods Insurance and Material Damage Insurance;
  - (ii) Public Liability Insurance;
  - (iii) Product Liability Insurance;
  - (iv) Workers Compensation Insurance;
  - (v) Motor Vehicle Insurance; and
  - (vi) if the Contractor's Activities involve design services or any other professional services, Professional Indemnity Insurance,for at least the amounts referred to and with the maximum deductibles specified in the Key Details;
- (b) in relation to the Workers Compensation Insurance ensure that each of its Subcontractors has similar insurance to the Workers Compensation Insurance covering the Subcontractors' employees;
- (c) ensure that if the Contractor's Activities are to be carried out on or near rail, the Public Liability Insurance does not contain any exclusions or limitations in cover in respect of works conducted on or near rail;
- (d) ensure that the Public Liability Insurance and the Product Liability Insurance comply with the requirements set out in the Key Details;
- (e) provide the Principal's Representative with copies of certificates of currency for the insurances referred to in paragraphs (a) and (b), as required by the Principal's Representative from time to time; and
- (f) upon request by the Principal's Representative, promptly provide the Principal's Representative with a copy of the certificate(s) of currency for any insurance policy that is either in the joint names of the Contractor, the Principal, NSW Trains, Transport for NSW and RailCorp, or extends the benefit of cover to the Principal, NSW Trains, Transport for NSW and RailCorp as insureds in respect of their vicarious liability for the acts or omissions of the Contractor and its Subcontractors.

## 5.6 Period of insurance

The insurance which the parties are required to have in place under this clause 5 must be maintained:

- (a) in the case of Material Damage Insurance, until the Principal collects the Goods from the Storage Area at the Delivery Point;
- (b) in the case of Goods Insurance, until the Contractor ceases to bear the risk of loss of or damage to the Goods under clause 5.1;
- (c) in the case of Public Liability Insurance, at all times at which the Contractor performs the Contractor's Activities (and at least until the expiry of the Term of Services);

- (d) in the case of Product Liability Insurance and Professional Indemnity Insurance, until the expiry of 6 years following the end of the Defects Liability Period;
- (e) in the case of Workers Compensation Insurance, at all times at which the Contractor performs the Contractor's Activities; and
- (f) in the case of Motor Vehicle Insurance, at all times that the vehicles are to be used by the Contractor in connection with the Contractor's Activities or are on the Site.

## 5.7 Insurers

Unless otherwise approved in writing by the Principal, the insurance which the Contractor is required to have in place under clause 5.5 must be maintained with insurers that:

- (a) are authorised under the Insurance Act 1973 (Cth) to carry on an insurance business in Australia and are supervised by the Australian Prudential Regulation Authority; and
- (b) have a credit rating of not less than A from Standard & Poor's, A2 from Moody's Investor Services or A- from A.M. Best Company.

## 5.8 Insurance obligations

The Contractor must ensure that it:

- (a) does not do anything which prejudices any insurance;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
- (e) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

## 5.9 Failure to insure

If the Contractor fails to:

- (a) provide copies of the certificate(s) of currency for any insurance policy together with evidence satisfactory to the Principal's Representative that the policy is current; or
- (b) effect insurance which is with insurers and on terms satisfactory to the Principal's Representative,

as required by clause 5.5, the Principal may, without prejudice to any other rights it may have, effect the insurance and the cost will be a debt due from the Contractor to the Principal.

#### 5.10 Notice of potential claim

The Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract, if that claim would:
  - (i) have a material impact on insurance proceeds available under that policy; or
  - (ii) affect the Contractor's ability to comply with its obligations under the Contract, including this clause 5;
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences which may give rise to a claim by them.

#### 5.11 Cross liability

Where the Contract requires insurance to be effected in joint names or extend the benefit of cover to the Principal, NSW Trains, Transport for NSW and RailCorp as insureds in respect of their vicarious liability for the acts or omissions of the Contractor and its Subcontractors, the party effecting the insurance must ensure that the insurance policy provides that:

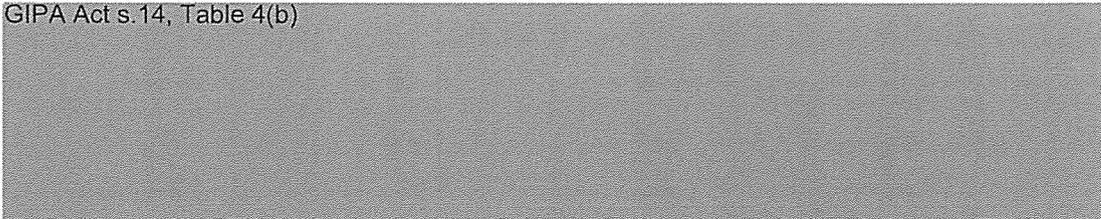
- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies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

#### 5.12 Liabilities unaffected

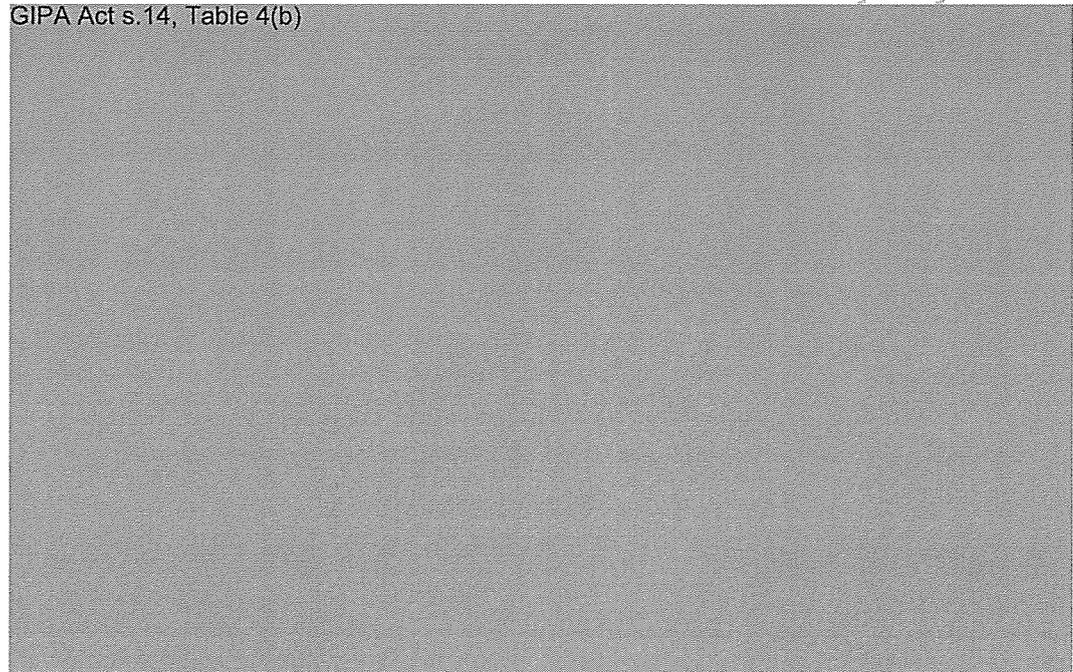
The effecting of insurance by the Contractor or the Principal and the approval of any insurance policy, terms of insurance or insurer by the Principal's Representative does not limit any obligations or liabilities of the Contractor (including the obligation to effect the insurances required by the Contract).

#### 5.13 Insurance warranties and representations

GIPA Act s.14, Table 4(b)



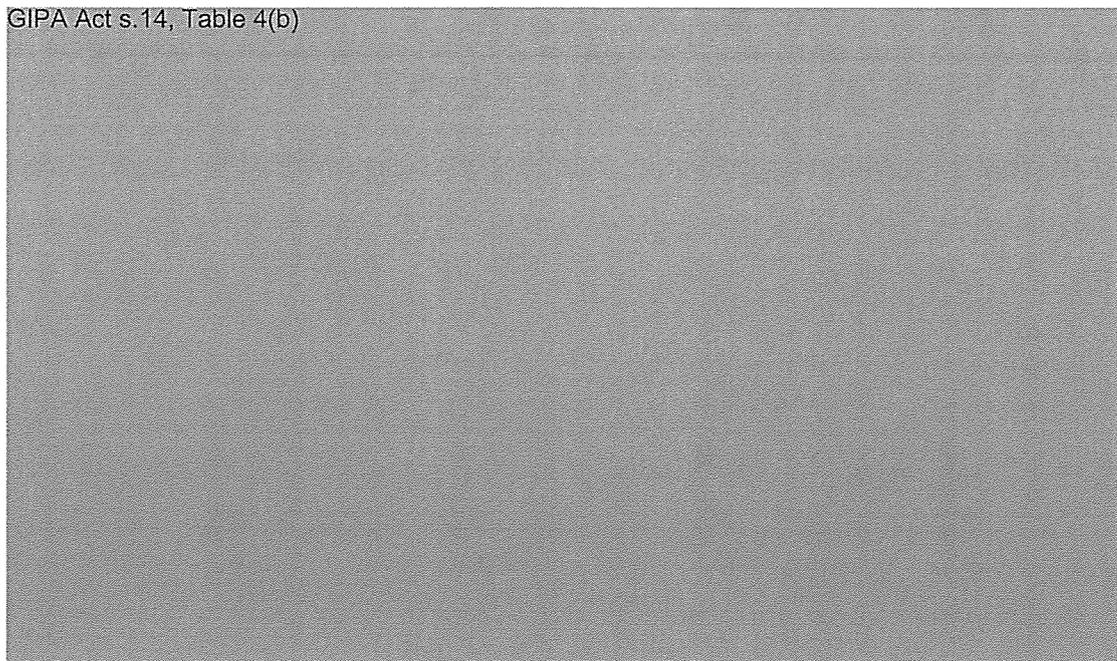
GIPA Act s.14, Table 4(b)



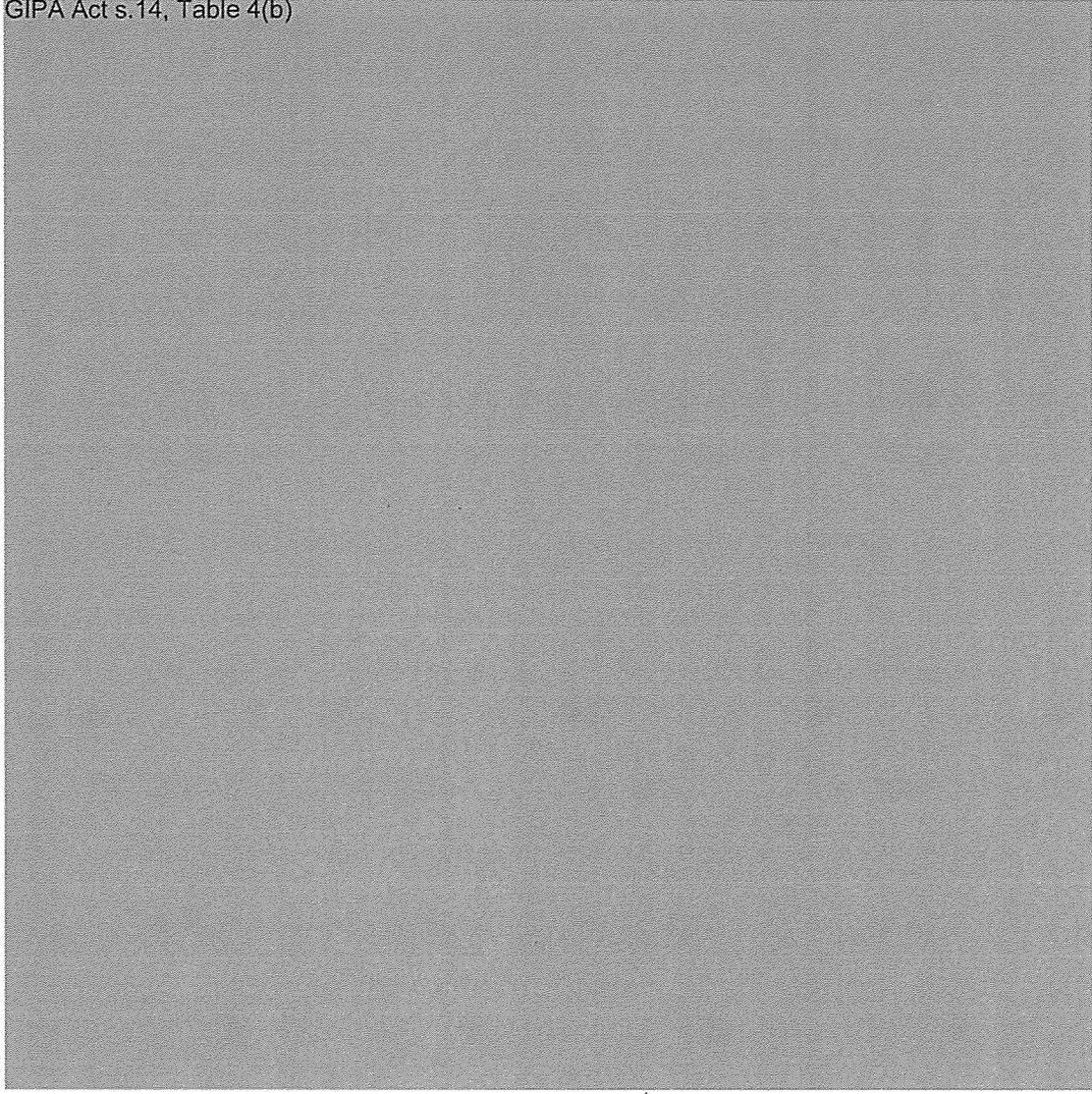
- (c) The Contractor:
- (i) acknowledges that the Principal is relying upon the acknowledgements, undertakings and warranties given in this clause 5.13 in executing this Contract; and
  - (ii) must indemnify the Principal against any and all Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any breach by the Contractor of the undertakings, warranties and representations given in this clause 5.13.

#### 5.14 Storage of Goods

GIPA Act s.14, Table 4(b)



GIPA Act s.14, Table 4(b)



**5.15 Survive termination**

Clauses 5.1 to 5.14 (inclusive) will survive any termination of the Contract.

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**6. Design and documentation**

**6.1 Principal's documents**

The Principal must provide to the Contractor the documents and number of copies of those documents specified in the Statement of Work.

**6.2 Contractor's design**

Clauses 6.2 to 6.5 apply if any design work is required as part of the Services.

The Contractor must:

- (a) design the Goods or parts thereof (as applicable) which the Contract requires it to design and for this purpose prepare all relevant Design Documentation; and

- (b) prepare all Design Documentation required for the performance of the Services.

The Contractor must submit the Design Documentation it prepares to the Principal's Representative in accordance with the program approved by the Principal's Representative under clause 10.2.

### **6.3 Principal's Representative may review Design Documentation**

The Principal's Representative may:

- (a) review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Contractor; and
- (b) within 15 Business Days of the submission by the Contractor of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in its reasonable opinion the Design Documentation does not comply with the requirements of the Contract.

If any Design Documentation is rejected, the Contractor must submit amended Design Documentation to the Principal's Representative.

The Contractor must not commence manufacture or production of the part of the Goods to which any Design Documentation which it has submitted to the Principal's Representative applies, unless the Principal's Representative has had 15 Business Days to review the Design Documentation and has not rejected the Design Documentation.

### **6.4 No obligation to review**

The Principal's Representative does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.

No review of, comments upon, rejection of, or failure to review or comment upon or reject, any Design Documentation prepared by the Contractor or any other Direction by the Principal's Representative about the Design Documentation will:

- (a) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to Law; or
- (b) prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to Law.

### **6.5 Copies of Design Documentation**

For the purposes of clauses 6.2 and 6.3, the Contractor must submit or resubmit to the Principal's Representative, the number of copies specified in the Statement of Work of any Design Documentation.

### **6.6 Fitness for purpose**

The Contractor warrants that:

- (a) any Design Documentation it prepares will be fit for its intended purpose;
- (b) upon delivery and (if applicable) upon Acceptance, the Goods will meet the requirements of the Contract and be fit for their intended purpose;
- (c) where the Services relate to the Goods, the Goods will remain fit for their intended purpose; and

- (d) documents provided by the Principal under clause 6.1 are accurate and suitable for their purposes under the Contract unless within 10 Business Days of receipt the Contractor gives written notice to the Principal's Representative of any deficiencies in such documents.

## 6.7 IP warranties and representations

The Contractor warrants and represents that:

- (a) it owns, or is licensed by the owner to use and sub-licence all Pre-existing IPR;
- (b) in carrying out the Contractor's Activities, the Contractor will not infringe the Intellectual Property Rights of any person; and
- (c) the Principal's (or any of the Principal's sub-licensees') use or receipt of any Deliverables, Goods or Services for any purpose will not infringe the Intellectual Property Rights of the Contractor or any third party.

## 6.8 Ownership

- (a) The Contractor agrees that, immediately upon the creation of any Deliverables, the Principal owns the Deliverables.
- (b) The Contractor assigns to the Principal all existing and future interest, title and rights (including Intellectual Property Rights) subsisting in and to any Deliverables (including any Deliverables which have been jointly created, developed or brought into existence by the Principal and Contractor) excluding all Pre-existing IPR.
- (c) The Contractor must promptly do all things reasonably required, including executing any documents, to further effect the assignment of the Intellectual Property Rights in the Deliverables from the Contractor to the Principal in this clause 6.8.
- (d) The Contractor must procure that its Personnel ensure that the ownership of the Intellectual Property Rights in the Deliverables which would, but for the application of this clause 6.8, vest in such Personnel, vest in or are transferred or assigned immediately to the Principal on and from the date of creation.

## 6.9 Pre-existing IPR

- (a) Each party will retain its Pre-existing IPR and nothing in this Contract assigns or transfers the Pre-existing IPR of one party to another. Neither party may assert or bring any claim for ownership of any or all of the other party's Pre-existing IPR.
- (b) The Contractor grants to the Principal a non-exclusive, irrevocable, perpetual, transferable (to any other Rail Transport Agency or Authority), royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights comprised in or subsisting in the Contractor's Pre-existing IPR to:
  - (i) allow the Principal the full benefit and enjoyment of the Goods, the Services, the Deliverables and Contractor's Activities;
  - (ii) use the Contractor's Pre-existing IPR:
    - A. to procure, undertake or perform any works, activities, goods or services in connection with any further upgrade or refurbishment of the Goods or Services, or any plant, equipment or infrastructure systems owned, operated or

maintained by the Principal or any other Rail Transport Agency;

- B. to install, operate, maintain and monitor the Goods or Services or any plant, equipment or infrastructure systems owned, operated or maintained by the Principal or any other Rail Transport Agency;
  - C. to integrate the Goods or Services with any other plant, equipment or infrastructure systems owned, operated or maintained by the Principal or any Rail Transport Agency; and
- (iii) disclose the Contractor's Pre-existing IPR on a confidential basis to third parties for the purposes of a tender process for any procurement in connection with the matters set out in clause 6.9(b)(ii).

For the avoidance of doubt and except to the extent such restriction is prohibited by applicable Law, the licence granted by the Contractor in clause 6.9(b) does not entitle the Principal or any sub-licensee or transferee of the Principal to commercialise the Contractor's Pre-existing IPR in the Goods.

- (c) The Principal grants to the Contractor a non-exclusive licence to use the Principal's Pre-existing IPR solely for the purpose of carrying out the Contractor's Activities.

## 6.10 Indemnity and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property Rights in or associated with the Goods and Services or any Deliverables provided by the Contractor or any breach by the Contractor of clause 6.11.

## 6.11 Moral Rights

The Contractor must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in the Deliverables and the Goods and Services to the extent necessary to ensure that the Principal may do or authorise any acts or omissions consistent with the ownership and licences granted by clauses 6.8 and 6.9 without infringing any Moral Rights.

## 6.12 Contractor to notify errors

The Contractor shall review any documentation which makes up the Contract, and any revisions of and additions to such documentation issued by the Principal's Representative for the purposes of the Contractor's Activities, for any ambiguity, discrepancy, inconsistency, errors, contradictions or omissions and promptly notify the Principal's Representative of any ambiguity, discrepancy, inconsistency, such errors, contradictions or omissions of which the Contractor becomes aware for the attention and action of the Principal's Representative.

## 6.13 Resolution of ambiguities

- (a) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, with those higher in the list having precedence over those lower in the list:
- (i) either:
    - A. where a Standing Offer Deed exists, the Purchase Order; or

- B. otherwise, the Formal Instrument of Agreement;
  - (ii) the General Conditions of Contract (including the Schedules and Appendix);
  - (iii) any Exhibits to the General Conditions of Contract other than the Statement of Work; and
  - (iv) the Statement of Work.
- (b) If either party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any documents provided to the Contractor by or on behalf of the Principal which the Contractor is required by the Contract to use for manufacture and production purposes:
- (i) the party must promptly give notice to the other; and
  - (ii) the Principal's Representative must instruct the Contractor as to the course it must adopt within 5 Business Days of the notice under subparagraph (b)(i).
- (c) If compliance with the Principal's Representative's instruction under subparagraph (b)(ii) causes the Contractor to incur more or less cost than a competent and experienced contractor (having the experience of a contractor that is an expert in carrying out work of a nature similar to the Contractor's Activities) could reasonably have anticipated if it had carefully examined the Contract documents on or before the Award Date, then the difference in cost, as determined by the Principal's Representative, will be added to or deducted from the Contract Price (as applicable).
- (d) If any ambiguity, discrepancy or inconsistency exists between the Statement of Work and any part of the Design Documentation (which the Contractor is entitled to use for manufacture and production purposes under clause 6.3) then, unless otherwise directed in writing by the Principal's Representative, the Statement of Work will prevail.

#### 6.14 Confidentiality

- (a) The Contractor must, within 5 Business Days of being requested by the Principal to do so, deliver to the Principal a duly executed Confidentiality Undertaking. The execution of the Confidentiality Undertaking will not limit the Contractor's obligations under this clause 6.14.
- (b) The Contractor must, and must ensure its Personnel, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with the Contractor's Activities or the Contract to any person other than:
  - (i) as necessary to perform the Contractor's Activities;
  - (ii) with respect to any matter already within the public domain; or
  - (iii) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange).
- (c) Without limiting clause 18.17, the Contractor acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:

- (i) the Government Information (Public Access) Act 2009 (NSW) (GIPA Act); 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 Principal any other information which the Principal reasonably requires to comply with its obligations under this paragraph (c).
- (d) If the Principal is required to include a copy of the Contract in the government contracts register pursuant to the GIPA Act:
    - (i) the Principal will not disclose Schedule 2 (except for the Contract Price) but may disclose the remainder of the Contract;
    - (ii) if the Contractor considers that the Principal should not disclose any other provisions of the Contract on the basis that their disclosure would fall within section 32(1) of the GIPA Act, the Contractor must within 10 Business Days of the Award Date give the Principal written notice of:
      - A. any provisions of the Contract it believes should not be disclosed for the reasons set out in section 32(1) of the GIPA Act; and
      - B. details of:
        - 1) the reasons why the provisions should not been disclosed;
        - 2) whether the provisions can be disclosed at a later date and, if so, when it is likely that they can be disclosed; and
        - 3) a general description of the types of provisions that the Contractor proposes should not be disclosed; and
    - (iii) in complying with its disclosure obligations under the GIPA Act, the Principal will consider, but will not be bound by, any proposal made by the Contractor under paragraph (d)(ii).

## 6.15 Media

The Contractor must not disclose any information concerning the Contract for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning the Contract.

## 6.16 Contractor to retain records

The Contractor must, for a period of seven years after completion of the Contractor's Activities, keep true and accurate accounts and records of:

- (a) all Contractor's Activities performed under the Contract; and
- (b) all associated accounts and records including all supporting materials used to generate and substantiate invoices submitted in respect of the Contractor's Activities.

## 6.17 Auditing and probity

The Contractor acknowledges and agrees that:

- (a) the Principal's Representative (or any other person nominated by the Principal's Representative) may carry out regular audits on the Contractor's compliance with its obligations under the Contract; and
- (b) upon receipt of reasonable notice in writing from the Principal, the Contractor must provide reasonable access during business hours to any premise where the Contractor's Activities are being undertaken to enable the Principal or its nominees to carry out any such audit and must co-operate with and provide all assistance requested by the Principal or its nominees when carrying out any such audit, including providing access to all relevant facilities, documentation, records and Personnel (including those of Subcontractors). Any commercially sensitive documentation or records may be viewed by the Principal or its nominees during an audit but not copied unless a copy is required to comply with any Law or as agreed between the parties.

## 6.18 Evidence of financial standing or financial arrangements

- (a) Any obligations under this clause 6.18 to provide information in relation to the Guarantor only apply if the Contractor is required to provide a parent company guarantee under clause 4.6.
- (b) The Contractor warrants to the Principal that the Contractor will at all times have sufficient financial capacity to meet all of its obligations under the Contract.
- (c) Without limiting clause 6.17, the Contractor must, as and when requested by the Principal's Representative from time to time, promptly, and in any event within the period stated in the Principal's Representative's request, provide the Principal's Representative with a copy of such evidence reasonably required by the Principal's Representative which demonstrates:
  - (i) the Contractor's financial capacity to meet all of its obligations under the Contract; and
  - (ii) the Guarantor's financial capacity to perform its obligations under the parent company guarantee.
- (d) The Contractor must promptly notify the Principal of:
  - (i) any material change to any information provided by the Contractor under paragraph (c); 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 Contract or the parent company guarantee (as applicable).
- (e) 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 Principal, the Principal's Representative or their nominees in relation to any review of:
  - (i) any information provided by the Contractor or the Guarantor under this clause 6.18; or

- (ii) the Contractor's or the Guarantor's financial capacity to meet their obligations under the Contract or the parent company guarantee (as applicable).

## 6.19 Survive termination

Clauses 6.7 to 6.11, and 6.14 to 6.17, and the licences granted to the Principal under them, will survive any termination of the Contract.

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## 7. Site and information

### 7.1 Contractor to inform itself

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating,

including:

- (c) visiting and inspecting the Site and its surroundings; and
- (d) making its own assessment of the risks associated with conditions at the Site and its surroundings,

and any failure by the Contractor to have done any of those things will not relieve the Contractor of its obligation to carry out and complete the Contractor's Activities in accordance with the Contract.

### 7.2 Site information

The Principal does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of any information or data made available to the Contractor as to the existing conditions at the Site and the Contractor acknowledges that such information or data does not form part of the Contract.

### 7.3 Site access

The Principal:

- (a) is not obliged to:
  - (i) provide the Contractor with sole access to the Site; or
  - (ii) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities; and
- (b) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.

### 7.4 Contractor's obligation to provide access

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to:
  - (i) the Principal, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and
  - (ii) others having a right of access to the Site;
- (b) at all reasonable times give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to the Goods and Services, the Site or any areas off-Site where Contractor's Activities are being carried out; and
- (c) provide the Principal and the Principal's Representative with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

## 7.5 Work health and safety

- (a) In this clause 7.5, the terms "construction work", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation.
- (b) The Principal engages the person identified in the Key Details as the principal contractor in respect of any construction work forming part of the Contractor's Activities.
- (c) Where the Principal engages the Contractor as the principal contractor:
  - (i) the Principal authorises the Contractor to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation;
  - (ii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
  - (iii) the Contractor's engagement and authorisation as principal contractor will continue while ever any Contractor's Activities that are construction work are carried out pursuant to the Contract, unless sooner revoked by the Principal terminating the Contract pursuant to any provision of the Contract or according to Law.
- (d) Where the Contractor is not engaged as the principal contractor, the Contractor must comply with the reasonable directions of the principal contractor in relation to any construction work forming part of the Contractor's Activities.
- (e) As a condition precedent to the Principal's obligation under the Contract to provide the Contractor with access to, or possession of the Site, the Contractor must prepare and submit a WHS Management Plan to the Principal's Representative for approval (such approval not to be unreasonably withheld).
- (f) No comment upon nor any review, acceptance or approval of the WHS Management Plan by the Principal's Representative will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.
- (g) Without limiting the Contractor's obligations under any other provision of the Contract, the Contractor must:

- (i) comply, and must ensure that its Subcontractors and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation (including any obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);
  - (ii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
  - (iii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;
  - (iv) insofar as the Contractor, in carrying out the Contractor's Activities is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and
  - (v) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation.
- (h) To the extent not prohibited by Law, the Contractor indemnifies the Principal against any Claims against, or loss suffered or incurred by, the Principal arising out of or in connection with the failure of the Contractor to discharge the duties imposed on a principal contractor under the WHS Legislation (if the Contractor has been engaged as principal contractor) or otherwise comply with this clause 7.5.

## 7.6 Non-reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
  - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or
  - (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;
- (b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

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## **8. Manufacture of Goods and provision of Services**

### **8.1 Description of Goods**

Subject to clause 6.13, the Contractor must manufacture and produce the Goods in accordance with:

- (a) the Statement of Work;
- (b) any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract and which the Contractor is entitled to use for manufacture and production purposes under clause 6.3;
- (c) any Direction of the Principal's Representative given or purported to be given under a provision of the Contract, including any Variation directed by the Principal's Representative by a document titled "Variation Order"; and
- (d) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract).

### **8.2 All work included**

The Contractor warrants that it has, and it will be deemed to have, allowed for the provision of all materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Statement of Work or any Design Documentation.

Any such materials and other work:

- (a) must be undertaken and provided by the Contractor; and
- (b) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

### **8.3 Compliance with Law**

The Contractor must in carrying out the Contractor's Activities:

- (a) comply with all applicable Law;
- (b) without limiting paragraph (a), comply with the Principal's Environment Protection Licence;
- (c) obtain all Approvals except for those specified in the Key Details which were either obtained prior to the Award Date or will be obtained after the Award Date by the Principal;
- (d) comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or specified in the Key Details) including those conditions and requirements which the Principal is required under the terms of the Approvals specified in the Key Details to comply with, carry out and fulfil; and
- (e) prepare and give the Principal's Representative any documents that an Authority requires in order for the Principal to obtain the Approvals it requires to use the Goods.

### **8.4 Change in Law**

If there is a Change in Law after the Award Date and:

- (a) the Change in Law could not reasonably have been anticipated at the Award Date; and
- (b) compliance with the Change in Law by the Contractor:
  - (i) has a direct adverse effect on the Contractor in providing the Goods and Services; and
  - (ii) directly results in an increase in the Contractor's costs of providing the Goods and Services,

then the additional costs necessarily and reasonably incurred by the Contractor in complying with the Change in Law, as determined by the Principal's Representative, will be added to the Contract Price.

## 8.5 Subcontracting

The Contractor:

- (a) must not subcontract the whole of the Contractor's Activities;
- (b) must not subcontract any work without the prior written approval of the Principal's Representative, other than to the Subcontractors specified in the Key Details;
- (c) will be fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
- (d) will be vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees and agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.

## 8.6 Subcontractor warranties

- (a) The Contractor must, as a condition precedent to Acceptance of the Goods or any Separable Portion, procure and provide the Principal with those warranties described in the Statement of Work from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty.
- (b) These warranties:
  - (i) must be in the terms prescribed in Schedule 7 of the Appendix; and
  - (ii) will not derogate from any rights which the Principal may have against the Contractor in respect of the subject matter of these warranties.

## 8.7 Cleaning up

In carrying out the Contractor's Activities, the Contractor must keep the Site clean and tidy and free of refuse.

## 8.8 The environment

The Contractor must ensure that in carrying out the Contractor's Activities it does not pollute, contaminate or otherwise damage the environment.

## 8.9 Principal may act

The Principal may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

The costs, expenses and damages suffered or incurred by the Principal in so carrying out such an obligation will be a debt due from the Contractor to the Principal.

## 8.10 ASA Authorisation

To the extent that the Contractor's Activities include the Asset Lifecycle of a NSW Rail Asset, the Contractor must carry out those aspects of the Contractor's Activities in accordance with the ASA Authorisation specified in the Key Details.

## 8.11 ASA compliance

- (a) The Contractor must (and must ensure that its Personnel) comply with the conditions of the applicable ASA Authorisation referred to in clause 8.10.
- (b) The Contractor must:
  - (i) if the Contractor's ASA Authorisation applies under clause 8.10, hold and maintain its ASA Authorisation for so long as the Contractor's Activities are carried out; and
  - (ii) (and must ensure that its Personnel) comply with the conditions of the applicable ASA Authorisation.
- (c) The Contractor must (and must ensure that its Personnel):
  - (i) implement and comply with the requirements of any ASA Requirements applicable to the Asset Services;
  - (ii) cooperate fully with the ASA in the performance of the ASA's functions;
  - (iii) provide access to premises and resources as reasonably required by the ASA, including so that it can effectively carry out its review, surveillance and audit functions;
  - (iv) comply with the directions, instructions and requirements issued by the ASA;
  - (v) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;
  - (vi) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
  - (vii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (d) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the requirement to obtain ASA Authorisation or the obligation to comply with the requirements of ASA and the ASA Authorisation.

## 8.12 Rail safety and Accreditation

- (a) The Contractor warrants that it either:
  - (i) has, in which case it must at all times retain, the Accreditation required for the performance of the Contractor's Activities; or
  - (ii) will perform the Contractor's Activities pursuant to the Accreditation of the person stated in the Key Details.
- (b) The Contractor must:
  - (i) liaise and co-operate with the Principal, and do everything necessary to enable and assist the Principal and any Rail Transport Agency to:
    - A. maintain their respective Accreditations, including obtaining any variation to any Accreditations required as a result of the Contractor's Activities to be performed in accordance with the Contract; and
    - B. comply with their respective obligations in relation to rail safety, including under the Rail Safety National Law;
  - (ii) except as required by Law, not do, or omit to do, anything which may cause an Accreditation to be suspended or cancelled; and
  - (iii) give any Authority such access to premises and information as the Authority lawfully requests to fulfil its functions with respect to the Contractor's Activities, within the time requested.

## 8.13 Competence Records

Without limiting or otherwise restricting any other provision of the Contract, the Contractor must:

- (a) prior to any Rail Safety Worker carrying out any Rail Safety Work in connection with the Contractor's Activities, provide the Principal with the Competence Records in the form directed by the Principal (which may be electronic);
- (b) ensure that any Rail Safety Worker who carries out Rail Safety Work in connection with the Principal's railway operations has the competence to carry out that work; and
- (c) ensure that each Rail Safety Worker used in connection with the Contractor's 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.

## 8.14 Policies, Codes and Standards

- (a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with:
  - (i) the Code of Conduct;
  - (ii) the Policies, Codes and Standards; and
  - (iii) Schedule 1 of the Appendix.

- (b) For the purposes of clause 8.14(a), any reference to "NSW government sector employees" or "Sydney Trains employees" in the Policies, Codes and Standards is to be read as a reference to the Contractor's employees.

#### **8.15 Deed poll**

- (a) Subject to clause 8.15(b), the Contractor must, within 5 Business Days of the Award Date, provide to the Principal an executed deed poll in favour of Transport for NSW, RailCorp and NSW Trains in the form set out in Schedule 2 (Alternative 1) of the Appendix.
- (b) The Contractor is not required to provide a deed poll under clause 8.15(a) if it has provided a deed poll under the Standing Offer Deed (if any).

#### **8.16 Requirements for working in Rail Corridor**

If the Contractor is required to work in the Rail Corridor for the performance of the Contractor's Activities, the Contractor must comply with the requirements which appear in Schedule 3 of the Appendix.

#### **8.17 Co-operation with Other Contractors**

The Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

#### **8.18 Basis of Contract Price**

The Contractor acknowledges that unless otherwise expressly stated in the Contract, the Contract Price:

- (a) is firm and inclusive of all taxes (other than GST), duties (including customs duty) and governmental charges imposed or levied in Australia or overseas; and
- (b) includes the cost of any packaging, marking, handling, insurance and any other applicable costs and charges, and costs of compliance with all other statutory, award or other legal or contractual requirements.

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### **9. Quality and Defects**

#### **9.1 Manufacture and production**

The Contractor must, in carrying out the Contractor's Activities:

- (a) use workmanship:
- (i) of the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Goods and Services; and

- (ii) which is fit for its purpose;
- (b) use materials:
  - (i) which are new and comply with the requirements of the Contract, and to the extent not fully described in the Contract, which are consistent with the best industry standards for work of a nature similar to the Goods and Services; and
  - (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Goods and Services;
- (c) use care, skill, judgment and diligence to the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor's Activities;
- (d) carry out the Contractor's Activities in a manner that is safe to both people and the environment, in accordance with Law and best industry standards for work of a nature similar to the Contractor's Activities;
- (e) minimise any disruption, interference or inconvenience to the Principal or its Personnel, including the Principal's operations, or any Other Contractors;
- (f) ensure that the Contractor's Personnel engaged in carrying out the Contractor's Activities are suitably qualified and competent;
- (g) where the Services relate to the Goods, perform the Services in a manner so as to enable the Goods:
  - (i) to operate in accordance with the requirements of the Statement of Work; and
  - (ii) to be fit for their intended purpose; and
- (h) comply with the requirements of the Contract.

## 9.2 Quality assurance

The Contractor:

- (a) must implement a quality assurance system representing best industry standards;
- (b) must allow the Principal's Representative access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:
  - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
  - (ii) any Direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system;
  - (iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the quality assurance system; or

- (iv) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any Defect including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

### 9.3 Right to inspect

The Principal's Representative may at any time inspect the Contractor's Activities.

The Contractor acknowledges that:

- (a) the Principal's Representative owes no duty to the Contractor to:
  - (i) inspect the Contractor's Activities; or
  - (ii) review manufacture and production for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
- (b) no inspection of the Contractor's Activities or review of manufacture and production by the Principal's Representative will in any way lessen or otherwise affect:
  - (i) the Contractor's obligations whether under the Contract or otherwise by Law; or
  - (ii) the Principal's rights against the Contractor whether under the Contract or otherwise by Law.

### 9.4 Testing

The Contractor must carry out all Tests required by the Contract.

All Tests are to be carried out in accordance with any procedure:

- (a) set out in the Contract which may apply to the Tests; or
- (b) if no procedure exists, as reasonably directed by the Principal's Representative.

### 9.5 Test not passed

If the Goods and Services fail any Test, the Contractor must:

- (a) promptly remedy the cause of the failure;
- (b) give the Principal's Representative notice of the cause and the remedial action taken; and
- (c) reschedule, re-perform and report on results of the Test until the Test is passed.

Neither the carrying out of a Test nor the issue of a Test report or certificate will release the Contractor from any of its responsibilities, obligations or liabilities under the Contract (including the repair or replacement or both of any part of the Goods and Services damaged during the course of any Test).

### 9.6 Further Tests and opening up

At any time before the expiry of the Defects Liability Period, the Principal's Representative may direct the Contractor:

- (a) to repeat any Test already carried out (whether or not the Test was previously passed);
- (b) to carry out a Test not otherwise required by the Contract; or
- (c) to open up or uncover any part of the Goods and Services for inspection or testing,

and the Contractor must comply with any such Direction as soon as practicable and must reinstate and make good any part of the Goods and Services so tested, inspected, opened up or uncovered.

## 9.7 Costs of testing

If:

- (a) the Principal's Representative directs the Contractor to carry out a Test (including a retest) or to open up or uncover any part of the Goods and Services for inspection or testing, and that Test or that opening up or uncovering:
  - (i) is not otherwise required by the Contract; or
  - (ii) does not relate to a Defect in respect of which the Principal's Representative gave an instruction under clause 9.8; and
- (b) the results of the Test or the opening up or uncovering show the work is in accordance with the Contract,

the reasonable additional costs necessarily incurred by the Contractor in complying with the Direction, as determined by the Principal's Representative, will be added to the Contract Price.

## 9.8 Defects

- (a) Subject to paragraph (b), the Contractor must correct all Defects.
- (b) If, prior to the expiry of the Defects Liability Period, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor an instruction specifying the Defect and doing one or more of the following:
  - (i) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur; or
  - (ii) advising the Contractor that the Principal will accept the Goods and Services, or any part thereof, despite the Defect.

## 9.9 Correction of Defect

If an instruction is given under clause 9.8(b)(i), the Contractor must correct the Defect:

- (a) within the reasonable time specified in the Principal's Representative's instruction; and
- (b) at times and in a manner which cause as little inconvenience to the users of the Goods and Services as is reasonably possible.

## 9.10 Claim for correction of Defect

Where an instruction is given under clause 9.8(b)(i):

- (a) the Contractor will only be entitled to make a Claim for correcting a Defect (or the relevant part of it) if the Defect (or the relevant part of it) is something for which the Contractor is not responsible; and
- (b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect (or the relevant part of it) will be treated as if it were a Variation the subject of a Direction by the Principal's Representative and clause 11.3 applied.

### 9.11 Acceptance of work

If:

- (a) an instruction is given under clause 9.8(b)(ii); and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Contract Price will be reduced by the amount reasonably determined by the Principal's Representative which represents the cost of correcting the Defect (or the relevant part of it).

### 9.12 Extension of Defects Liability Period

If:

- (a) the Principal's Representative gives the Contractor an instruction under clause 9.8(b)(i) during the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Defects Liability Period will be extended for the work required by the instruction for a period of 12 months, commencing upon completion of the correction of the Defect (or the relevant part of it).

### 9.13 Legal rights not affected

Neither the Principal's rights, nor the Contractor's liability, whether under the Contract or otherwise according to Law in respect of Defects, whether before or after the expiry of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon the Principal or Principal's Representative by this clause 9 or any other provision of the Contract;
- (b) the failure by the Principal or the Principal's Representative to exercise any such rights; or
- (c) any instruction of the Principal's Representative under clause 9.8.

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## 10. Time

### 10.1 Progress and time

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities with due expedition and without delay; and
- (b) deliver the Goods to the Delivery Point, and ensure that Acceptance occurs, by the Date for Delivery.

## 10.2 Programming

The Contractor must:

- (a) within 10 Business Days of the Award Date, submit to the Principal's Representative, a program of the Contractor's Activities which must contain the details required by the Contract or which the Principal's Representative otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less than once per month (unless otherwise required by the Principal's Representative) to take account of:
  - (i) changes to the program;
  - (ii) delays which may have occurred, including any for which the Contractor is granted an extension of time under clause 10.8; and
  - (iii) extensions of time granted by the Principal's Representative under clause 10.11; and
- (c) give the Principal's Representative copies of all programs for its approval.

## 10.3 Contractor not relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Principal's Representative will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Contract, especially (without limitation) the obligation to achieve Acceptance of the Goods by the Date for Delivery;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the carrying out of the Principal's or Principal's Representative's Contract obligations.

## 10.4 Acceleration chosen by Contractor

If the Contractor chooses to accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Acceptance before the Date for Delivery; and
- (b) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

## 10.5 Delays entitling Claim

If the Contractor is or will be delayed by a Qualifying Cause in a manner which will prevent it from achieving Acceptance by the Date for Delivery unless that date is extended, the Contractor may claim an extension of time.

## 10.6 Extension of time Claim

To claim an extension of time under clause 10.5 the Contractor must:

- (a) within 10 Business Days of the commencement of the occurrence causing the delay submit a written claim to the Principal's Representative for an extension to the relevant Date for Delivery which:
  - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
  - (ii) states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the Contractor has been or will be delayed in achieving delivery of the Goods in the manner set out in clause 10.7(c); and
- (b) if the effects of the delay continue beyond the period of 10 Business Days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim for an extension to the Principal's Representative:
  - (i) every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay; and
  - (ii) containing the information required by paragraph (a).

#### 10.7 Conditions precedent to extension

It is a condition precedent to the Contractor's entitlement to an extension of time that:

- (a) the Contractor must give the written claims required by clause 10.6 as required by that clause;
- (b) the cause of the delay was beyond the reasonable control of the Contractor; and
- (c) the Contractor must have actually been delayed in achieving Acceptance by a Qualifying Cause in a manner which will prevent it from achieving Acceptance by the relevant Date for Delivery unless that date is extended.

#### 10.8 Extension of time

Subject to clause 10.9, if the conditions precedent in clause 10.7 have been satisfied, the Date for Delivery will be extended by a reasonable period determined by the Principal's Representative and notified to the Principal and the Contractor within 15 Business Days of the Contractor's written claim under clause 10.6(a), but where further Claims are submitted under clause 10.6(b), then within 15 Business Days of the last of those Claims.

#### 10.9 Reduction in extension of time

The Principal's Representative will reduce any extension of time it would otherwise have notified to the Principal and the Contractor under clause 10.8 to the extent that the Contractor:

- (a) contributed to the delay; or
- (b) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

#### 10.10 Concurrent Delays

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a Qualifying Cause, then to the extent that the delays are concurrent, the Contractor is not entitled to an extension of time with respect to the relevant Date for Delivery.

### 10.11 Unilateral extensions

Whether or not the Contractor has made, or is entitled to make, a Claim for an extension of time under this clause 10, the Principal's Representative may, in its absolute discretion at any time and from time to time by written notice to the Contractor and the Principal, unilaterally extend the Date for Delivery.

The power to extend any Date for Delivery under this clause 10.11:

- (a) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 10.11 for the benefit of the Contractor; and
- (b) is not a Direction which can be the subject of a dispute pursuant to clause 15 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

### 10.12 Delay costs

- (a) The Contractor will not be entitled to make any Claim against the Principal for delay or disruption costs arising out of or in any way in connection with delay or disruption in the execution or completion of the Contractor's Activities, however that delay or disruption may have been caused, other than under this clause 10.12.
- (b) Subject to clause 10.12(e), where an extension of time has been granted under clause 10.8 for delay caused by a breach of Contract by the Principal, the Principal will pay the Contractor such reasonable extra costs (if any) as are necessarily incurred by the Contractor as a result of that delay as determined by the Principal's Representative. The Contractor must take reasonable steps to mitigate the extra costs incurred by it as a result of the delay.
- (c) The extra costs payable to the Contractor under this clause 10.12 will not include any profit, loss of profit or offsite overheads.
- (d) Any delay or disruption costs payable under this clause will be a limitation upon the Principal's liability to the Contractor in respect of any Claim by the Contractor for any loss suffered or incurred by the Contractor arising out of or in any way in connection with any delay and disruption which the Contractor suffers or encounters in carrying out the Contractor's Activities as a result of a breach of Contract by the Principal.
- (e) The Principal's liability to the Contractor under clause 10.12 is limited to:
  - (i) the amount per day; and
  - (ii) the total aggregate amount,stated in the Key Details.

### 10.13 Suspension

The Principal's Representative may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities.

If a suspension under this clause 10.13 arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or

- (b) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
  - (i) an instruction to suspend under this clause 10.13 will entitle the Contractor to be paid by the Principal the reasonable extra costs (not including any profit, loss of profit or offsite overheads) necessarily incurred by the Contractor as a result of the suspension as determined by the Principal's Representative;
  - (ii) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
  - (iii) the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this paragraph (b).

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## 11. Variations

### 11.1 Variation price request

At any time prior to the later of the last Date of Acceptance of the Goods or the expiry of the Term of Services, the Principal's Representative may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Price Request", the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (a) the adjustment (if any) to the Contract Price to carry out the proposed Variation; and
- (b) the effect (if any) which the proposed Variation will have on the then approved program, including the relevant Date for Delivery.

### 11.2 Variation order

Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 11.1, the Principal's Representative may at any time prior to the last Date of Acceptance of the Goods and Services (but without limiting clause 5.3), instruct the Contractor to carry out a Variation by issuing a written document to the Contractor titled "Variation Order" in which the Principal's Representative will state one of the following:

- (a) the proposed adjustment to the Contract Price as set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or
- (b) any adjustment to the Contract Price will be determined under clauses 11.3(b) and 11.3(c).

No Variation will invalidate the Contract irrespective of the nature, extent or value of the goods or services the subject of the Variation.

### 11.3 Adjustment for Variation

Subject to clause 16.1, the Contract Price will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative by:

- (a) where clause 11.2(a) applies, the agreed amount; or

- (b) an amount determined by the Principal's Representative using any rates or prices which appear in the Schedule of Prices to the extent they are applicable to, or it is reasonable to use them for valuing the Variation, to which will be added:
- (i) the following percentage or percentages of the amount determined:
    - A. where the adjustment to the Contract Price is to be an increase, those percentages specified in Schedule 2 for non-time related overheads and profit; or
    - B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in Schedule 2 for overheads and profit; and
  - (ii) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor; or
- (c) to the extent paragraph (b) does not apply, a reasonable amount:
- (i) to be agreed between the parties; or
  - (ii) failing agreement, determined by the Principal's Representative, to which will be added:
  - (iii) the following percentage or percentages of the amount determined:
    - A. where the adjustment to the Contract Price is to be an increase, those percentages specified in Schedule 2 for non-time related overheads and profit; or
    - B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in Schedule 2 for overheads and profit; and
  - (iv) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor.

#### 11.4 Omissions and deletions

If a Variation the subject of a Direction by the Principal's Representative omits or deletes any part of the Goods and Services, the Principal may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.

#### 11.5 Variations requested by Contractor

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

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Principal including the amount; and
- (c) any benefits which will flow to the Principal from the Variation.

## 11.6 Principal's Representative's determination

After a request is made by the Contractor in accordance with clause 11.5, the Principal's Representative will, in its absolute discretion, give a written notice to the Contractor:

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

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

## 11.7 Variation approved by Principal's Representative

If the Principal's Representative issues a written notice under clause 11.6 approving the Contractor's request under clause 11.5:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Principal arising out of, or in any way in connection with, the Variation;
- (b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Price will be reduced by the amount offered by the Contractor in its request; and
- (c) the Contractor will be responsible for all parts of the Goods and Services which are in any way affected by the Variation.

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## 12. Payment

### 12.1 Payment obligation

Subject to clause 12.9 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor:

- (a) the Contract Price; and
- (b) any other amounts which are payable by the Principal to the Contractor under the Contract.

### 12.2 Payment claims

The Contractor must give the Principal's Representative claims for payment on account of the Contract Price and any other amounts payable by the Principal to the Contractor under the Contract:

- (a) subject to clause 12.4:
  - (i) on the 25th day of each month after the Award Date or where that day is not a Business Day, the next Business Day; and
  - (ii) at the time required by clause 12.8;
- (b) in such form which the Principal's Representative reasonably requires; and
- (c) which are based on the Schedule of Prices to the extent such prices are relevant.

The Contractor cannot include in any payment claim under this clause 12.2, a Claim which is barred by clause 16.5.

The Contractor agrees with the Principal that a payment claim submitted to the Principal's Representative under this clause 12.2 is received by the Principal's Representative as agent for the Principal.

### 12.3 Payment statements

The Principal's Representative must within 10 Business Days of receiving a payment claim under clauses 12.2 or 12.8 give the Contractor, on behalf of the Principal, a payment statement which states:

- (a) the value of the work completed in accordance with the Contract;
- (b) the amount already paid to the Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and
- (e) if the amount in paragraph (d) is less than the amount claimed in the payment claim:
  - (i) the reason why the amount in paragraph (d) is less than the amount claimed in the payment claim; and
  - (ii) if the reason for the difference is that the Principal has retained, deducted, withheld or set off payment for any reason, the reason for the retention, deduction, withholding or setting off payment.

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Contractor's Activities covered by the payment statement has been satisfactorily carried out in accordance with the Contract.

Failure by the Principal's Representative to set out in a payment statement an amount which the Principal is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set off any amount under the Contract.

Unless the Principal has notified the Contractor under clause 12.13(g) that it will issue a recipient created tax invoice (RCTI) for a taxable supply made by the Contractor to the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative, provide to the Principal a valid tax invoice that complies with the GST Legislation in respect of that taxable supply for the amount set out as payable in the payment statement. If clause 12.13(g) applies, the Principal will provide the RCTI for the amount set out as payable in the payment statement together with the payment statement.

### 12.4 Conditions precedent to payment

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) any Unconditional Undertakings and parent company guarantee required under clause 4, or under the Standing Offer Deed (if any);

- (b) evidence of any insurance taken out by the Contractor which is required under clause 5.5;
- (c) a duly executed deed poll as required under clause 8.15;
- (d) a duly executed Confidentiality Undertaking as required by clause 6.14(a); and
- (e) documents showing compliance by the Contractor with clause 12.10.

## 12.5 Payment

- (a) Subject to clause 12.9, the Principal must pay the Contractor the amount set out as payable in the payment statement:
  - (i) if the SOP Act applies to the Contract, within 15 Business Days of receipt by the Principal's Representative of the payment claim under clause 12.2; or
  - (ii) if the SOP Act does not apply to the Contract, within 30 days of the last to occur of:
    - A. issue by the Principal's Representative of the payment statement under clause 12.3; and
    - B. receipt by the Principal's Representative of the documents referred to in clause 12.4.
- (b) If a payment statement issued under clause 12.3 shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 5 Business Days of receipt by the Contractor of the payment statement.
- (c) Upon the Principal paying to the Contractor the amount payable pursuant to a payment statement, all Goods (or part thereof), plant, equipment, materials or other goods for which an amount is included in the payment statement will become the property of the Principal free of any security interest regardless of whether or not the Goods (or part thereof), plant, equipment, materials or other goods have been incorporated into the Goods or delivered to the Principal.

## 12.6 Payment on account

Any payment statement or payment of moneys is not:

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

Payment is only to be taken as payment on account.

## 12.7 Undelivered Goods

The Contractor is not entitled to claim payment for, and the Principal's Representative is not to include in any payment statement any amount for, any Goods (or part thereof) that have not been delivered to the Principal unless:

- (a) the Contractor has established to the satisfaction of the Principal's Representative that it has paid for the Goods (or part thereof) in question and that the Goods (or part thereof):
  - (i) are properly stored, set aside and labelled the property of the Principal and adequately protected and insured; and
  - (ii) will, upon payment to the Contractor of the amount payable pursuant to a payment statement which includes an amount for Goods (or part thereof) in question, become the property of the Principal free of any security interest; and
- (b) the Contractor has given the Principal additional security in the form of an Unconditional Undertaking equivalent to the amount claimed in relation to the Goods (or part thereof) in question.

If the Contractor has given the Principal additional security for undelivered Goods, the Principal must release it to the Contractor once the Goods in question have been delivered to the Principal in accordance with the Contract.

Any payment to be made to the Contractor by the Principal for undelivered Goods (or part thereof), whether pursuant to this clause 12.7 or otherwise, is an advance payment for the purposes of section 415D(9), 434J(8) or 451E(8) of the Corporations Act 2001 (Cth) (as applicable), until such time until the Goods (or part thereof) in question have been delivered to the Principal in accordance with the Contract.

## 12.8 Final payment claim and notice

Within 20 Business Days after the expiry of the last Defects Liability Period, the Contractor must give the Principal's Representative:

- (a) a payment claim which must include all amounts which the Contractor claims from the Principal on account of the Contract Price or otherwise under the Contract; and
- (b) notice of any other amounts which the Contractor claims from the Principal,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period.

The payment claim and notice required under this clause 12.8 are in addition to the other notices which the Contractor must give to the Principal's Representative under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

After the date for submitting the payment claim and notice under this clause 12.8 has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period except for any Claim included in a payment claim or notice under this clause 12.8 which is given to the Principal's Representative within the time required by, and in accordance with the terms of, clause 12.8.

## 12.9 Right of set off

The Principal may deduct from any moneys otherwise due to the Contractor and from any security held by the Principal:

- (a) any debt or other moneys due from the Contractor to the Principal (including any debt from the Contractor to the Principal pursuant to section 26C of the SOP Act); or
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act; or
- (c) any Claim to money which the Principal has against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under or in connection with the Contract, any other contract formed under the Standing Offer Deed (if applicable), or relating to the Contractor's Activities.

The rights given to the Principal under this clause 12.9 are in addition to and do not limit or affect any other rights of the Principal under the Contract or at Law and nothing in the clause affects the right of the Principal to recover from the Contractor the whole of the debt or Claim in question or any balance that remains owing.

Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 12.9, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause.

Clause 12.9 will survive any termination of the Contract.

#### **12.10 Evidence of payment of workers and Subcontractors**

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) a statutory declaration in the form of Schedule 8 of the Appendix, together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared; and
- (b) copies of all relevant certificates of currency in respect of Workers Compensation Insurance which the Contractor has in place in connection with the Contractor's Activities.

#### **12.11 Interest**

The Principal will pay simple interest at the 90 day bank bill rate on any amount which has been set out as payable by the Principal's Representative in a payment statement under clause 12.3, but which is not paid by the Principal within the time required by the Contract.

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

#### **12.12 SOP Act**

- (a) This clause applies if the SOP Act applies to the Contract.
- (b) The Contractor agrees with the Principal that the date prescribed in clause 12.2(a) as the date on which the Contractor must make a payment claim is, for the purposes of section 8 of the SOP Act, the "reference date" (as defined in the SOP Act).
- (c) For the purposes of section 17(3) of the SOP Act, the Contractor irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that

term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of the Contract.

- (d) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:
- (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 12.3; and
  - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("overpayment"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (e) Without limiting clause 12.9, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (f) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
- (i) the Principal may lead and rely upon Division 2A of the SOP Act as a defence to any Claim for the money by the Contractor from the Principal; and
  - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
    - A. any period for which money owed by the Principal to the Contractor has been unpaid; and
    - B. the date by which payment of money owed by the Principal to the Contractor must be made.
- (g) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of the SOP Act.
- (h) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Contractor to the Principal.
- (i) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:
- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
  - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within 5 days of the occurrence of the event in sub-paragraph (i) or (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with

such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

## 12.13 GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with the Contract, including the Contractor's Activities, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 12.13(b) will be paid to the Supplier at the same time as the other consideration for the supply is paid to the Supplier.
- (d) If any party is required under the Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Price) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of the Contract, where the Recipient is the Contractor, it will not be obliged to pay any amount on account of GST to the Principal (whether under this clause 12.13 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a valid tax invoice that complies with the GST Legislation in respect of that taxable supply.
- (f) Where the Supplier is the Contractor, the Contractor must issue a valid tax invoice to the Principal in respect of any taxable supply made by the Contractor to the Principal (including under clause 12.3) as a condition precedent to the Principal being obliged to pay any amount on account of GST to the Contractor in respect of such taxable supply.
- (g) The parties agree that, if notified in writing by the Principal, the following will apply to taxable supplies made by the Contractor to the Principal under or in connection with the Contract:
  - (i) where the GST Legislation permits, the Principal will issue to the Contractor an RCTI for each taxable supply (other than an Excluded Supply as defined in this clause) made by the Contractor to the Principal under the Contract. The parties may agree in writing from time to time on any taxable supply made by the Contractor to the Principal under the Contract for which the Principal will not issue RCTIs (**Excluded Supply**);
  - (ii) the Principal will issue to the Contractor a recipient created adjustment note for any adjustment event relating to a supply in respect of which it issues an RCTI; and
  - (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal (other than in respect of a taxable supply that is an Excluded Supply).

Each party acknowledges and warrants that at the time of entering into the Contract 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 the Goods and Services

Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities (RCTI 2017/6) or other determination or ruling issued by a taxation authority relating to the issuance of RCTIs (RCTI Requirement). The Principal will not issue a document that would otherwise be an RCTI after the Principal or the Contractor cease to be registered for GST, or after the Principal or the Contractor cease to comply with any RCTI Requirement.

- (h) Where the Principal issues RCTIs to the Contractor in accordance with clause 12.13(g), the Contractor will indemnify or reimburse the Principal on demand for any loss, cost, expense, penalty, fine, interest, fee or other amount incurred in relation to the Principal issuing RCTIs while:
  - (i) the Contractor is not registered for GST and/or otherwise fails to satisfy, or comply with, any RCTI Requirement and the Principal has not been notified by the Contractor as such; or
  - (ii) the details contained in any RCTI or recipient created adjustment note issued by the Principal are incorrect, inaccurate or misleading as a result of information provided by the Contractor to the Principal.
- (i) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 12.13 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).
- (j) In this clause 12.13:
  - (i) terms defined in GST Legislation have the meaning given to them in GST Legislation, unless the context suggests otherwise;
  - (ii) GST includes amounts defined as "GST" under the GST Legislation and "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory); and
  - (iii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

#### **12.14 Subcontractor's statement**

- (a) The Contractor must:
  - (i) submit a signed subcontractor's statement, in the form set out in Schedule 12 of the Appendix, together with any payment claims submitted under clause 12.2 or 12.8; and
  - (ii) ensure that any such subcontractor's statement is not dated before the date of the relevant payment claim.
- (b) The Contractor acknowledges that pursuant to the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW):
  - (i) the subcontractor's statement is required to be provided to the Principal; and

- (ii) the Principal may withhold any payment due to the Contractor under this Contract until the Contractor gives a subcontractor's statement in the form of Schedule 12 of the Appendix. Any penalty for late payment under the Contract does not apply to any payment withheld under this clause 12.14(b)(ii).

## **12.15 Payment of Subcontractors**

The Contractor acknowledges and agrees that, without limiting clause 12.10:

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

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## **13. Delivery and Acceptance**

### **13.1 Prerequisites to delivery**

Prior to delivery of the Goods, the Contractor must ensure that:

- (a) the Goods:
  - (i) have been manufactured and produced in accordance with the Contract;
  - (ii) have been packed and marked in strict compliance with:
    - A. the Implementation Guideline for Standardised Identification & Marking of Parts and Components in the Australian Rail Industry as amended or updated from time to time; and
    - B. the requirements of the Statement of Work (including in relation to any specified size, weight or handling limitations); and
  - (iii) are free from Defects, except for minor Defects:
    - A. which do not prevent the Goods from being reasonably capable of being used for their intended purpose; and
    - B. which can be corrected without prejudicing the convenient use of the Goods;
- (b) the Tests before delivery and any other Tests which are required by the Contract to be carried out and passed before delivery of the Goods, have been carried out and passed;
- (c) all documents and other information which are required for the delivery and installation of the Goods have been supplied to the Principal's Representative; and
- (d) any other conditions precedent to delivery of the Goods stated in the Contract have been satisfied.

### **13.2 Contractor to notify and deliver**

The Contractor must:

- (a) not deliver the Goods to the Delivery Point before the date or time specified in the Statement of Work;
- (b) give the Principal's Representative written notice 10 Business Days prior to the date it will deliver the Goods to the Delivery Point;
- (c) package the Goods to ensure reasonable protection against theft or damage during transit, delivery and whilst loading and unloading;
- (d) ensure that all protective coatings are safe and will not in any way affect the condition of the Goods;
- (e) clearly label the Goods with the relevant Purchase Order number and Delivery Point;
- (f) ensure that the Goods are packaged and secured during transportation in a safe and secure manner, in compliance with Law or as otherwise directed by the Principal, including the requirements set out in the Statement of Work;
- (g) deliver the Goods to the Principal's Representative at the Delivery Point by the Date for Delivery using the mode of delivery described in the Statement of Work; and
- (h) unload or load the Goods at the Delivery Point (unless the Statement of Work states that this is not required).

The Principal may direct the Contractor to change the Delivery Point or the mode of delivery. The Contractor must comply with any such Direction. If compliance with any such Direction causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the Direction, the difference in cost, as reasonably determined by the Principal's Representative, will be added to or deducted from the Contract Price (as applicable).

Subject to clause 12.5(c), unless transferred at any earlier time, ownership of the Goods supplied by the Contractor under the Contract will transfer to the Principal, free of any security interest, on delivery to the Delivery Point.

### 13.3 Information accompanying delivery

The Contractor must provide with each consignment of Goods:

- (a) a delivery note (**Delivery Note**) containing the following information:
  - (i) the Contractor's name and address;
  - (ii) description and quantity of Goods supplied;
  - (iii) the reference numbers of the Contract and the Purchase Order;
  - (iv) the name and contact details of the person who issued the Purchase Order;
  - (v) details of the Delivery Point and Date for Delivery; and
- (b) the information required by the document entitled "General Safety Specification for Contractors" which can be obtained from the Railsafe website or by contacting the Principal's Representative;
- (c) the results of any Tests required to be carried out by the Contractor before delivery or Acceptance; and

- (d) all information necessary for the proper and safe handling, transportation, storage, use, operation, maintenance, repair and disposal of the Goods.

#### **13.4 Principal's Representative to inspect**

- (a) The Principal's Representative may:
  - (i) as soon as practicable after the delivery of the Goods to the Delivery Point under clause 13.2, inspect the Goods;
  - (ii) if satisfied that Acceptance has been achieved, issue a notice to the Contractor stating the date upon which the Principal's Representative determines Acceptance was achieved; and
  - (iii) if not satisfied that Acceptance has been achieved, issue a notice to the Contractor under clause 13.5.
- (b) If the Principal's Representative does not give a notice under either clause 13.4(a)(ii) or 13.4(a)(iii) within 10 Business Days of delivery of the Goods to the Delivery Point, Acceptance will be deemed to have been achieved.

#### **13.5 Notice where failure to achieve Acceptance**

A notice under this clause 13.5 will:

- (a) state the reasons why the Principal's Representative is not satisfied Acceptance of the Goods has been achieved; and
- (b) do one of the following:
  - (i) require the Contractor to continue with the Contractor's Activities so as to achieve Acceptance of the Goods, in which event clause 13.6 will apply;
  - (ii) accept the Goods although the Principal's Representative is not satisfied Acceptance has been achieved, in which event clause 13.7 will apply; or
  - (iii) reject all or part of the Goods, in which event clause 13.8 will apply.

#### **13.6 Contractor to continue with Contractor's Activities**

If the Contractor is required by a notice under clause 13.5 to continue with the Contractor's Activities so as to achieve Acceptance of the Goods, the Contractor must:

- (a) promptly remove the Goods, if necessary;
- (b) diligently continue with the Contractor's Activities so as to achieve Acceptance as promptly as possible, including, if necessary, replacing the Goods;
- (c) give the Principal's Representative written notice 10 Business Days prior to the date it will deliver the Goods or replacement Goods to the Delivery Point, or if already at the Delivery Point and not removed, submit the Goods for testing, in which case clause 13.4 will apply again; and
- (d) deliver the Goods or replacement Goods to the Principal's Representative at the Delivery Point on that date.

If ownership of the Goods or any part thereof has passed to the Principal under the Contract and the Goods or part thereof are replaced under this clause 13.6, ownership of the Goods or

relevant part thereof will pass back to the Contractor when ownership of the replacement Goods or part passes to the Principal under the Contract.

### **13.7 Acceptance of Goods**

If the Goods are accepted in a notice under clause 13.5(b)(ii):

- (a) Acceptance will be deemed to have been achieved;
- (b) the Date of Acceptance will be deemed to be the date the notice under clause 13.5 is given;
- (c) the notice under clause 13.5 will be deemed to be the Notice of Acceptance for the Goods;
- (d) the Contractor must correct all Defects in accordance with clauses 9.8 and 9.9 other than any Defects which the Principal's Representative notifies the Contractor in writing that it need not correct; and
- (e) in the case of any Defects for which the Contractor is responsible and for which the Principal's Representative gives a notice under paragraph (d), the Contract Price will be reduced by an amount determined by the Principal's Representative as representing whichever is the greater of the cost to the Principal of correcting those Defects and the reduction in the value of the Goods to the Principal as a result of those Defects.

The Principal's Representative may give a notice under paragraph (d) at any time prior to the issue of the Contractor's final payment claim under clause 12.8. If the amount of any reduction to the Contract Price required by paragraph (e) is greater than the unpaid balance of the Contract Price, the difference will be a debt due from the Contractor to the Principal.

### **13.8 Rejection of Goods**

If any Goods are rejected in a notice under clause 13.5:

- (a) the Contractor must:
  - (i) repay any amounts previously paid to it by the Principal in relation to the rejected Goods; and
  - (ii) upon repayment promptly remove the rejected Goods from the Delivery Point or the Principal's possession as the case may be;
- (b) in the case of rejection of all of the Goods, unless the Principal notifies the Contractor otherwise, the Contract will be terminated from the date the notice under clause 13.5 is given; and
- (c) ownership of the rejected Goods will, to the extent it has passed to the Principal under the Contract, pass back to the Contractor upon the Contractor's compliance with paragraph (a).

The Contractor's obligations under paragraph (a) will survive any termination of the Contract under paragraph (b).

### **13.9 Ownership of Goods**

To the extent that ownership of the Goods has not already passed to the Principal under the Contract, it will pass to the Principal upon the issue of a Notice of Acceptance for the Goods (or upon a deemed Acceptance under clause 13.4(b), as applicable), free of any security interest.

### 13.10 Effect of Notice of Acceptance

A Notice of Acceptance and a deemed Acceptance under clause 13.4(b) will not:

- (a) constitute approval by the Principal of the Contractor's performance of its Contract obligations;
- (b) be taken as an admission or evidence that the Goods complies with the Contract; or
- (c) prejudice any rights or powers of the Principal or Principal's Representative.

### 13.11 Liquidated damages

If the Date of Acceptance of the Goods or a Separable Portion has not occurred by the Date for Delivery of the Goods or the Separable Portion, the Contractor must pay liquidated damages at the rate specified in the Key Details for every day after the Date for Delivery until the Date of Acceptance, or until the Contract is terminated, whichever occurs first.

Without limiting the Principal's rights under the Contract, the amount payable under this clause 13.11:

- (a) is an agreed genuine pre-estimate of the Principal's damages if the Date of Acceptance does not occur by the Date for Delivery;
- (b) will be the Principal's sole remedy for damages arising from the Contractor's delay in achieving Acceptance by the Date for Delivery; and
- (c) will be a debt due from the Contractor to the Principal.

### 13.12 General damages if liquidated damages unenforceable

If the liquidated damages under clause 13.11 are found to be a penalty, or if clause 13.11 is found to be void or unenforceable for any reason (whether in whole or in part), then the Contractor will be liable to pay unliquidated damages at Law for the breach for which the liquidated damages under clause 13.11 would have been payable had the relevant liquidated damages or clause not been a penalty or not been void or unenforceable.

### 13.13 Cap on liquidated damages

The Contractor's total aggregate liability to the Principal under clauses 13.11 and 13.12 is limited to the amount stated in the Key Details.

### 13.14 No liquidated damages

If the rate provided in the Key Details in relation to clause 13.11 is specified as "nil", "N/A", "not applicable", "\$0" or words to similar effect:

- (a) clauses 13.11, 13.12 and 13.13 will not apply; and
- (b) the Contractor will be liable to pay unliquidated damages at law for the breach for which liquidated damages under clause 13.11 would have been payable if a rate for liquidated damages has been specified.

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## **14. Termination**

### **14.1 Preservation of rights**

Subject to clause 14.6, nothing in this clause 14 or that a party does or fails to do pursuant to this clause 14 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

### **14.2 Contractor default**

The Principal may give a written notice under clause 14.3 to the Contractor, if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;
- (b) suspends the Contractor's Activities in breach of clause 10.13 or otherwise does not regularly and diligently progress the Contractor's Activities with due expedition and without delay;
- (c) fails to provide security as required by clauses 4.1, 4.3 or 4.4 or a parent company guarantee as required by clause 4.6;
- (d) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5.5;
- (e) fails to use the materials or standards of workmanship required by the Contract;
- (f) does not comply with any Direction of the Principal's Representative made in accordance with the Contract;
- (g) abandons the Contractor's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (h) is in breach of any applicable Law;
- (i) fails to comply with a KPI action plan required by the Principal under this Contract or under the Standing Offer Deed (if any);
- (j) would become liable to the Principal for liquidated damages or unliquidated damages under clauses 13.11 or 13.12 for an amount exceeding the amount referred to in clause 13.13, but for the cap on liability under clause 13.13;
- (k) fails to comply with clause 6.18 or 12.15(b); or
- (l) is otherwise in breach of the Contract.

### **14.3 Contents of notice of default**

A notice under this clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the breach relied upon; and
- (c) that the Principal requires the Contractor to remedy the breach within 15 Business Days of receiving the notice.

#### 14.4 Termination for insolvency or breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons; or
- (b) the Contractor does not remedy a breach of Contract the subject of a notice under clause 14.3 within 15 Business Days of receiving the notice under clause 14.3,

then the Principal may by written notice to the Contractor terminate the Contract.

#### 14.5 Principal's entitlements after termination

Subject to clause 14.1, if:

- (a) the Principal terminates the Contract under clause 14.4;
- (b) the Contract is terminated under clause 13.8(b); or
- (c) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract,

then, subject to clause 13.8:

- (d) the Principal will:
  - (i) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or 12.8 or a payment statement under clause 12.3; and
  - (ii) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination or repudiation; and
- (e) the Contractor must immediately:
  - (i) except where clause 14.5(b) applies, deliver to the Delivery Point all items in which ownership has passed to the Principal under the Contract; and
  - (ii) hand over to the Principal all copies of:
    - A. documents provided by the Principal under clause 6.1; and
    - B. any Deliverables prepared by the Contractor to the date of termination (whether complete or not).

#### 14.6 Contractor's entitlements after termination

If the Principal repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:

- (a) be entitled to claim damages; and
- (b) not be entitled to a quantum meruit.

This clause 14.6 will survive any termination of the Contract.

#### 14.7 Termination for convenience

Without prejudice to any of the Principal's other rights, the Principal may:

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

#### 14.8 Costs

If the Principal terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
  - (i) for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of termination, provided that ownership of all goods and materials included in the value of work will vest in the Principal, free of any security interest, upon payment;
  - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Goods and Services for which the Contractor is legally bound to pay provided that:
    - A. the value of the goods or materials is not included in any previous payment by the Principal or the amount payable under sub-paragraph (i); and
    - B. ownership in the goods and materials will vest in the Principal, free of any security interest, upon payment; and
  - (iii) the reasonable direct costs incurred by the Contractor (excluding profit but including an amount for overheads) as a direct result of the termination,

but in no case will the total amount payable to the Contractor under the Contract (including under this clause 14.8) be more than the Contract Price; and

- (b) must:
  - (i) take all steps possible to mitigate the costs referred to in clause 14.8(a); and
  - (i) immediately:
    - A. deliver to the Delivery Point all items in which ownership has passed to the Principal under the Contract; and
    - B. hand over to the Principal all copies of:
      - 1) documents provided by the Principal under clause 6.1; and

- 2) any Deliverables (including any services and test documentation) prepared by the Contractor to the date of termination (whether complete or not).

The amount to which the Contractor is entitled under this clause 14.8 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract and the Contractor may not make any Claim against the Principal arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 14.8.

This clause 14.8 will survive the termination of the Contract by the Principal under clause 14.7.

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## **15. Disputes**

### **15.1 Notice of Dispute**

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Goods and Services or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 15.

Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:

- (a) the dispute or difference;
- (b) particulars of the party's reasons for being dissatisfied; and
- (c) the position which the party believes is correct.

### **15.2 Negotiation**

The Principal's Representative and the Contractor's Representative (or their nominees) must, within 5 Business Days of a notice being given under clause 15.1, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference.

### **15.3 Executive negotiation**

Whether or not negotiations have taken place under clause 15.2, if dispute or difference is not resolved within 10 Business Days after a notice is given under clause 15.1, it must be referred to senior executives of each party (as nominated by each party) who must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

### **15.4 Expert determination**

Whether or not negotiations have taken place under clause 15.3, if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the dispute or difference within 25 Business Days after a notice is given under clause 15.1, either party may submit the dispute or difference to an expert determination.

### **15.5 The expert**

The expert determination under clause 15.4 is to be conducted by an independent industry expert appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).

### **15.6 Not arbitration**

An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

### **15.7 Procedure for determination**

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

### **15.8 Disclosure of interest**

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

### **15.9 Costs**

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

### **15.10 Conclusion of expert determination**

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within 20 Business Days from the acceptance by the expert of his or her appointment.

### **15.11 Agreement with expert**

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

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 9 of the Appendix or such other terms as the parties and the expert may agree.

#### 15.12 Determination of expert

The determination of the expert:

- (a) must be in writing;
- (b) will be:
  - (i) substituted for the relevant Direction of the Principal's Representative (if applicable); and
  - (ii) final and binding,unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

#### 15.13 Arbitration

- (a) If:
  - (i) the expert fails to notify the parties of his or her decision within the time required by clause 15.10; or
  - (ii) a notice of appeal is given under clause 15.12,the dispute or difference will be referred to arbitration.
- (b) The arbitration will be conducted before a person to be:
  - (i) agreed between the parties; or
  - (ii) failing agreement within 20 Business Days of the referral to arbitration, appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).
- (c) To the extent that they are not inconsistent with the Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.
- (d) The seat of the arbitration will be Sydney, Australia.
- (e) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an expert under clause 15.12.
- (f) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

#### 15.14 Survive termination

This clause 15 will survive any termination of the Contract.

### 15.15 Continuation of obligations

Despite the existence of a dispute or difference between the parties, the parties must continue to comply with their obligations under the Contract.

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## 16. Notices

### 16.1 Notice of Variation

If the Contractor considers that a Direction by the Principal's Representative, which is not expressed to be a "Variation Order" under clause 11.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:

- (a) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;
- (b) within 15 Business Days of giving the notice under paragraph (a), submit a written claim to the Principal's Representative which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 16.1.

### 16.2 Notice of other Claims

Except for Claims for:

- (a) an extension of time under clause 10.6;
- (b) a Variation instructed in a "Variation Order" under clause 11.2 or to which clause 16.1 applies; or
- (c) payment under clause 12.2 or 12.8 of the original Contract Price specified in the Key Details,

the Contractor must give the Principal's Representative the notices required by clause 16.3 if it wishes to make a Claim against the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the Contract or the Contractor's Activities, the Goods and Services, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
  - (i) specified costs are to be added to the Contract Price; or
  - (ii) the Contract Price will be otherwise increased or adjusted, as determined by the Principal's Representative.

### 16.3 Prescribed notices

The notices referred to in clause 16.2 are:

- (a) a written notice within 5 Business Days of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
  - (i) that the Contractor proposes to make a Claim; and
  - (ii) the Direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written claim within 15 Business Days of giving the written notice under paragraph (a), which must include:
  - (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
  - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
  - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
  - (iv) details of the amount claimed and how it has been calculated.

### 16.4 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 16.1(b) or clause 16.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 20 Business Days after the written claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Principal's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

### 16.5 Time bar

If the Contractor fails to comply with clauses 16.1, 16.2, 16.3 or 16.4:

- (a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal, arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

### 16.6 Other provisions unaffected

Nothing in clauses 16.1, 16.2, 16.3, 16.4 or 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

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## 17. Limitation of liability

- (a) Subject to clause 17(b), but notwithstanding any other provision of the Contract:
- (i) neither party will be liable to the other for any Consequential Loss howsoever arising; and
  - (ii) the Contractor's aggregate liability to the Principal in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.
- (b) Clause 17(a) does not limit the Contractor's liability in respect of:
- (i) liability which cannot be limited at Law;
  - (ii) liability under clauses 5.2(b), 6.10, 13.11 or 13.12;
  - (iii) fraud, wilful misconduct or criminal conduct by the Contractor or any of its Personnel;
  - (iv) liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy required under the Contract in respect of that liability;
  - (v) liability for which, but for a failure by the Contractor to comply with its obligations under the Contract or under an insurance policy required under the Contract, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with the Contract; or
  - (vi) the Contractor's abandonment of its obligations under the Contract.
- (c) In determining whether an insurance policy extends to cover:
- (i) the Contract in respect of any matters referred to in clause 17(a) and the liability (if any) of the Contractor arising out of or in connection with the matter; or
  - (ii) the amount recovered or recoverable by the Contractor under an insurance policy in connection with a matter referred to in clause 17(a),
- (together the **Determinable Matters**), the limitation on the Contractor's liability pursuant to clause 17(a) will be disregarded and it must be assumed that the Contractor has paid in full the amount of its liability to the Principal (unlimited by clause 17(a)) in a manner which entitles the Contractor to claim under the relevant insurance policy.
- (d) The Contractor waives and disclaims any right or entitlement it may now or in the future have, but for clause 17(c), to:
- (i) not disregard clause 17(a), in connection with any determination of the Determinable Matters; or
  - (ii) do any of the following:
    - A. claim or assert (including by way of defence, counterclaim or third party proceeding); or

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

that clause 17(a) is not to be disregarded in connection with the determination of the Determinable Matters.

- (e) The parties agree that clauses 17(c) and 17(d) may be pleaded in bar to any Claim or assertion by:
- (i) the Contractor; or
  - (ii) any insurer;
- in any Claim to the effect that clause 17(a) is not to be disregarded as provided in clause 17(c).
- (f) If for any reason in relation to any Determinable Matter:
- (i) clauses 17(c) to 17(e) (or any of them) are unenforceable, void, voidable or illegal, then for the purpose of determining the Determinable Matters, clause 17(a) will be of no force or effect and will be treated as if they were severed from, and had never been terms of, the Contract; and
  - (ii) the Contractor, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to have regard to, clause 17(a) in determining the Determinable Matters, then for the purpose of determining the Determinable Matters, clause 17(a) will be treated as if it were severed from and had never been terms of, the Contract and as of no force or effect whatsoever as against the person(s) who is so not obliged, or who is so entitled.
- (g) Subject to clause 17(h), the Principal's aggregate liability to the Contractor in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.
- (h) Clause 17(g) does not limit the Principal's liability in respect of:
- (i) liability which cannot be limited at Law; or
  - (ii) fraud, wilful misconduct or criminal conduct by the Principal or any of its Personnel.

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## 18. Miscellaneous

### 18.1 Address for service

- (a) All communications (including notices, consents, approvals, requests and demands) under or in connection with the Contract:
- (i) must be in writing;
  - (ii) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
  - (iii) subject to clause 18.1(b), must be delivered or posted by prepaid express post to the address or sent by email to the email address, of the Principal's Representative or the Contractor's Representative (as

applicable) set out in this Contract or such other address or email address as may be notified in writing by a party to the other party; and

- (iv) are taken to be received by the addressee:
- A. (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
  - B. (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
  - C. not used;
  - D. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 18.1(a)(iii); and
  - E. (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

- (b) If:
- (i) the Contractor sends a notice under clause 10, 11, 12, 13, 14, 15 or 16 or concerning a claim for payment (including any communication in respect of the SOP Act); or
  - (ii) the Principal sends a notice under clause 11.2, 14.2, 14.3, 14.4, 14.7 or 15.1,

by email, the Contractor or the Principal (as applicable) must also deliver or post such notice to the relevant address provided in clause 18.1(a)(iii).

- (c) For the avoidance of doubt:
- (i) no notice referred to in clause 18.1(b) will be effective until it has been delivered or posted in accordance with clause 18.1(b); and
  - (ii) if a notice referred to in clause 18.1(b) is issued by both email and is also either delivered by hand or posted, both notices must be identical, and in the event that they are not identical, neither notice will constitute a valid notice.
- (d) Where clause 18.1(b) applies, the relevant notice will be taken to have been received on the date determined in accordance with clause 18.1(a)(iv)A, 18.1(a)(iv)B, 18.1(a)(iv)C or 18.1(a)(iv)D (as the case may be).
- (e) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.

- (f) The parties will not be liable to each other or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:
  - (i) the transmission of any harmful code (such as viruses) to each other by electronic mail (including any document attached to electronic mail); or
  - (ii) any failure by a party to notify the other that it may have received any harmful code (such as viruses) from the other in any electronic mail (including in any document attached to electronic mail).

## 18.2 Governing Law

The Contract is governed by and must be construed according to the Laws of the State of New South Wales.

## 18.3 Jurisdiction

Subject to clause 15.13, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the Contract; 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 clause 18.3(a).

## 18.4 Counterparts

- (a) This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Contract, and all together constitute one agreement.
- (b) A party who has executed a counterpart of this Contract may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this Contract executed by it will not affect the validity of this Contract.

## 18.5 Entire agreement

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; or
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the Award Date and that are not expressly included in this Contract.

## 18.6 Amendments

This Contract may only be amended by a document signed by or on behalf of both the Principal and the Contractor.

### 18.7 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 the Contract 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 the Contract.
- (b) A waiver or consent given by a party under the Contract 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 the Contract operates as a waiver of any other breach of that term or of a breach of any other term of the Contract.

### 18.8 Assignment

The Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under the Contract to any Authority, any successor in title to the Principal or any other person that assumes the functions or obligations of the Principal, or create or allow to exist, a security interest over or in respect of the Contract or any right or interest of the Principal under the Contract.

The Contractor cannot assign, novate or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal.

If the Principal, in its absolute discretion, approves a novation of this Contract, the Contractor must provide the Principal with a duly completed and executed Deed of Novation in relation to this Contract.

### 18.9 Consents

A consent required under the Contract from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless the Contract expressly provides otherwise.

### 18.10 Expense

Except as otherwise provided in the Contract, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Contract.

### 18.11 Severance

If at any time a provision of the Contract 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 the Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the Contract.

### 18.12 Indemnities

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

- (c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

#### **18.13 United Nations Convention not applicable**

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

#### **18.14 English language**

All communications between the parties and all documentation provided in connection with the Contractor's Activities (including the Deliverables) must be in the English language.

#### **18.15 Taxes**

- (a) Without limiting clause 8.3, the Contractor must pay all taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported plant, equipment and materials required for the Contractor's Activities.
- (b) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Contractor under the Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.
- (c) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax, the Contractor must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax.

#### **18.16 No partnership, joint venture or other fiduciary relationship**

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

#### **18.17 Exchange of information between government agencies**

- (a) The Contractor authorises the Principal and its Personnel to make information concerning the Contractor and the Contract available to NSW government departments or agencies, including:
  - (i) any information provided by the Contractor to the Principal;
  - (ii) any information relating to the Contractor's performance under the Contract; and
  - (iii) the terms of the Contract.
- (b) The Contractor acknowledges and agrees that:
  - (i) any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work;

- (ii) the communication of such information to any NSW government department or agency is a communication falling within section 30 of the Defamation Act 2005 (NSW); and
- (iii) the Principal has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under the Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

#### **18.18 Purchase Order where no Standing Offer Deed**

Where no Standing Offer Deed exists, any terms and conditions in any Purchase Order do not apply and will not bind the parties.

#### **18.19 Proportionate liability**

- (a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Contract with respect to proportionate liability are as specified in the Contract 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 must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
  - (ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

#### **18.20 Prior work**

The terms of the Contract apply to all of the work performed by the Contractor in connection with the Contractor's Activities even if it was performed prior to the Award Date.

Any payment made to the Contractor by the Principal in connection with the Contract or the Contractor's Activities prior to the Award Date will be treated as a payment under the Contract and will be in part discharge of the Principal's obligation to pay the Contract Price.

#### **18.21 Piggybacking**

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

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

#### 18.22 If the Contractor is a trustee

If the Contractor enters into the Contract as trustee for a trust (**Contractor Trust**), without limiting any other provision of the Contract, the Contractor represents and warrants that:

- (a) the Contractor is the only trustee of the Contractor Trust;
- (b) the Contractor has unqualified power under the constitution of the Contractor Trust to perform its obligations under this Contract;
- (c) no action is currently taking place or pending to remove the Contractor as trustee of the Contractor Trust or to appoint additional trustees of the Contractor Trust;
- (d) the Contractor has entered into this Contract in its capacity as trustee of the Contractor Trust and for the benefit of the beneficiaries of the Contractor Trust;
- (e) the Contractor has the right to be fully indemnified out of the assets of the Contractor Trust in respect of the obligations incurred by it in relation to this Contract;
- (f) there is no subsisting breach of the constitution of the Contractor Trust; and
- (g) the Contractor Trust has not been terminated and there is no action pending to terminate the Contractor Trust.

#### 18.23 Legal Opinion

If:

- (a) the Contractor is incorporated outside of Australia the Contractor must, on the Award Date, provide a Legal Opinion supporting, and in respect of, the execution of this Contract; and
- (b) the Guarantor is incorporated outside of Australia the Contractor must, on the Award Date, provide a Legal Opinion supporting, and in respect of, the execution of the parent company guarantee required by clause 4.6(a).

### Schedule 1 - Key Details

<b>Clause 1 - Definitions and interpretation</b>	
1. <b>Contract - Other documents forming part of the Contract</b> (Clause 1.1)	<i>[List any other Contract documents]</i> (If nothing is specified, nil.)
2. <b>Contract Price:</b> (Clause 1.1)	As per the Purchase Order.
3. <b>Contractor's Representative:</b> (Clause 1.1)	As per the key details of the Standing Offer Deed.
4. <b>Date for Delivery:</b> (Clause 1.1)	As per the Purchase Order.
5. <b>Defects Liability Period:</b> (Clause 1.1)	36 months  (12 months unless otherwise stated) (Where a Standing Offer Deed exists, as per the Purchase Order.)
6. <b>Option Period 1:</b> (Clause 1.1):	N/A
7. <b>Option Period 2:</b> (Clause 1.1)	N/A
8. <b>Option Period 3:</b> (Clause 1.1)	N/A
9. <b>Principal's Representative:</b> (Clause 1.1)	As per the key details of the Standing Offer Deed.
10. <b>Separable Portions:</b> (Clause 1.1)	As per the Purchase Order.
11. <b>Term of Services</b> (Clause 1.1)	As per the Purchase Order.
<b>Clause 2 - Parties' obligations</b>	
12. <b>Escalation of rates for extension:</b> (Clause 2.3(b))	GIPA Act s.14, Table 4(b)
13. <b>Frequency of KPI reporting and times at which Principal and Contractor to meet:</b> (Clause 2.4)	The Contractor must provide a KPI Performance Report at the end of each month and the Principal and the Contractor will meet every 3 months, unless otherwise agreed in writing by the Principal.
<b>Clause 4 - Security</b>	

14. Security to be provided by the Contractor: (Clause 4.1)	GIPA Act s.14, Table 4(b)
15. Is a parent company guarantee required?: (Clause 4.6)	GIPA Act s.14, Table 4(b)
Clause 5 - Risks and insurance	
16. Date for transfer of risk: (clause 5.1)	GIPA Act s.14, Table 4(b)
17. Insurance policies required to be effected by the Principal: (Clause 5.4)	GIPA Act s.14, Table 4(b)
18. Insurance policies required to be effected by the Contractor: (Clause 5.5(a))	<p>Material Damage Insurance GIPA Act s.14, Table 4(b)</p> <p>Goods Insurance GIPA Act s.14, Table 4(b)</p> <p>Public Liability Insurance GIPA Act s.14, Table 4(b)</p>

		GIPA Act s.14, Table 4(b)	
		Workers Compensation Insurance GIPA Act s.14, Table 4(b)	
		Motor Vehicle Insurance GIPA Act s.14, Table 4(b)	
		Professional Indemnity Insurance GIPA Act s.14, Table 4(b)	
19.	<b>Additional requirements for Product Liability Insurance and Public Liability Insurance</b> (Clause 5.5(d))	<p><i>[The Product Liability Insurance and Public Liability Insurance must extend the benefit of cover to the Principal, NSW Trains, Transport for NSW and RailCorp as insureds in respect of their vicarious liability for the acts or omissions of the Contractor and its Subcontractors]</i></p> <p>(If nothing stated, the Product Liability Insurance and Public Liability Insurance must be in the joint names of the Contractor, the Principal, NSW Trains, Transport for NSW and RailCorp)</p>	
20.	<b>Work health and safety - principal contractor</b> (Clause 7.5(b))	<p>The principal contractor for the purposes of the WHS Legislation is:</p> <p>.....</p> <p>(If nothing is stated, the principal contractor is the Contractor)</p>	
<b>Clause 8 - Manufacture and production</b>			
21.	<b>Existing Approvals and other Approvals which the Principal is to obtain:</b> (Clause 8.3(c))	None	
22.	<b>Pre-Approved Subcontractors</b> (Clause 8.5(b))	<b>Subcontractor</b>	<b>Part of the Contractor's Activities</b>
		<i>Not applicable</i>	<i>Not applicable</i>
		<i>Not applicable</i>	<i>Not applicable</i>
23.	<b>ASA Authorisation</b> (Clause 8.10)	As per the Purchase Order.	

24.	<b>Accredited person</b> (Clause 8.12)	<i>[Insert who holds the rail safety Accreditation relevant to the Contractor's Activities e.g. the Principal or the Contractor]</i>  (If nothing is stated, then the Principal holds the Accreditation)  (Where a Standing Offer Deed exists, as per the Purchase Order)
<b>Clause 10 - Time</b>		
25.	<b>Cap on delay costs</b> (Clause 10.12)	GIPA Act s.14, Table 4(b)
<b>Clause 13 - Delivery and Acceptance</b>		
26.	<b>Liquidated damages payable by Contractor for delay in achieving Acceptance after the Date for Delivery:</b> (Clause 13.11)	GIPA Act s.14, Table 4(b)
27.	<b>Cap on liquidated damages:</b> (Clause 13.13)	GIPA Act s.14, Table 4(b)
<b>Clause 17 - Limitation of liability</b>		
28.	<b>Limitation of liability (Contractor):</b> (Clause 17(a)(ii))	GIPA Act s.14, Table 4(b)

29.	<b>Limitation of liability (Principal):</b> (Clause 17(g))	GIPA Act s.14, Table 4(b)
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## Schedule 2 - Payment Schedule

(Where a Standing Offer Deed exists, the Schedule of Prices in Annexure B of the Standing Offer Deed applies).

For the purposes of clause 11.3:

- Percentage adjustments for valuing a Variation:**  
(Clause 11.3(b) and 11.3(c))
- (a) For non-time related overheads and profit where the adjustment is to be an increase:  
*Not applicable*
  - (b) For overheads and profit where the adjustment is to be a decrease:  
*Not applicable*

Schedule 3 - KPIs

As per Annexure D of the Standing Offer Deed

## Appendix

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## Schedule 1 - Policies, Codes and Standards

All clause references in this Schedule are references to clauses in this Schedule unless otherwise indicated.

Capitalised terms in this Schedule have the same meaning as in the General Conditions.

Any reference in this Schedule to a policy, guideline or other document is a reference to such policy, guideline or document as updated or replaced from time to time.

This Schedule applies without limiting any of the Contractor's obligations under the General Conditions.

---

### 1. Ariba Network

The Contractor acknowledges that:

- (a) the Principal generally conducts business with contractors electronically, including by transacting and exchanging data with contractors for the purposes of:
  - (i) creating purchase orders and for the acknowledgement of the receipt of purchase orders;
  - (ii) processing invoices and payments;
  - (iii) conducting spend analyses; and
  - (iv) supplier management;
- (b) as at the date of the Contract, the Principal uses:
  - (i) the Ariba Spend Management™; and
  - (ii) the Ariba Contractor Network™,(collectively, **Ariba**) as the platform for transacting and exchanging data with panel contractors;
- (c) if the Contractor is requested by the Principal to register as a "supplier" on Ariba, the Contractor must, at its own cost, do all things necessary to give effect to such request; and
- (d) the Principal may from time to time, in its absolute discretion, nominate a platform or tool other than Ariba as the platform for transacting and exchanging data with panel contractors, in which case, the Contractor must do all things required by the Principal, at its own cost, to enable transactions and the exchange of data to be undertaken using such other platform or tool.

---

### 2. Contractor's compliance with Government Policies and Agreements

- (a) The Contractor acknowledges that when selecting the Contractor, the Principal, as a NSW Government authority, was obliged to consider the Contractor's compliance with the:
  - (i) Policies, Codes and Standards;

- (ii) NSW Government Local Jobs First Plan, unless the Contractor's Activities are construction services;
  - (iii) NSW Government Preference Scheme, unless the Contractor's Activities are construction services;
  - (iv) Australian New Zealand Government Procurement Agreement; and
  - (v) Australia-United States Free Trade Agreement.
- (b) The Contractor warrants that any information it provided to the Principal in its tender proposal in respect of its compliance with the requirements of the documents listed in clauses 2(a)(i) to 2(a)(v) will remain true for the duration of the Contract.

---

### 3. Corruption Prevention

- (a) The Contractor warrants and represents to the Principal that:
- (i) it has not, and none of its Personnel have, engaged in any corrupt conduct at any time prior to the Award Date; and
  - (ii) it will not, and will ensure that its Personnel do not, at any time engage in any corrupt conduct.
- (b) Without limiting or otherwise restricting any other rights of the Principal under the Contract, if:
- (i) the Contractor or any of its Personnel are at any time found to have engaged in corrupt conduct; or
  - (ii) the Contractor is at any time found to have breached the warranty and representation given in clause 3(a),
- the Principal may terminate the Contract with immediate effect by giving written notice to the Contractor.
- (c) In this clause 3, terms which are defined in the *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) have the meaning given in the ICAC Act.

---

### 4. Statement of Business Ethics

- (a) Prior to the engagement of any Subcontractor, the Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Principal's or any Rail Transport Agency's Statement of Business Ethics found at <http://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors> that is one of the Policies Codes and Standards. The Contractor must retain the documentation required by this clause 4(a) for a period of seven years and must provide such documentation to the Principal as and when requested.
- (b) If a person has committed a material breach of the Principal's statement of business ethics and the Contractor has material information, knowledge of, or believes that such a breach has been committed, the Contractor must notify the Principal's Representative of such information, knowledge or belief.

---

## 5. Safety Management

- (a) The Contractor must provide its safe work method statements (as defined in the WHS Legislation) to the Principal's Representative within 10 Business Days of the date of the Contract.
- (b) If at any time the Contractor becomes aware of any health or safety hazard in relation to the Contractor's Activities either prior to or after performing the Contractor's Activities, the Contractor must, in addition to its hazard identification and reporting obligations under section 2 of the document entitled "General Safety specification for contractors" (available from the RailSafe website or by contacting the Principal's Representative) (**Safety Specification**), promptly review the Contractor's Activities and immediately suspend provision of any Contractor's Activities where there is a possibility of injury to persons or damage to property.
- (c) To the extent permitted by Law, the Contractor indemnifies the Principal from and against any and all claims, loss, expense or damage caused by, or arising out of, or in any way in connection with any breach by the Contractor or its Personnel of the Rail Safety National Law or this clause 5.
- (d) The Contractor's liability to indemnify the Principal under clause 5(c) will be reduced proportionally to the extent that the claim, loss, expense or damage was caused or contributed to by a negligent act or omission of the Principal or its Personnel.
- (e) The Principal may from time to time amend the obligations imposed upon the Contractor under the Safety Specification.

---

## 6. Work Health and Safety

- (a) Without limiting or otherwise restricting any other provision of the Contract, the Contractor acknowledges that it has read and understands and must comply with (and ensure its Personnel comply with) the sections of the Principal's or any Rail Transport Agency's safety management system which are relevant to the Contractor's Activities, found at <http://railsafe.org.au/sms-documents> and <http://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors> as amended from time to time, or as otherwise notified by the Principal to the Contractor.
- (b) The Contractor must establish, implement and maintain for the duration of the Contract, a work health and safety management system (**WHS Management System**) which:
  - (i) complies with paragraph (d) of the definition of Policies, Codes and Standards;
  - (ii) complies with the WHS Legislation;
  - (iii) reflects the Principal's minimum requirements set out in the Principal's safety management system described in paragraph (a); and
  - (iv) includes an ongoing commitment to the training of its Personnel.
- (c) If clause 3(b) includes conflicting obligations, the obligation which imposes the highest standard of health and safety applies.
- (d) The Contractor must:
  - (i) ensure that all of its Personnel comply with the WHS Management System (including identifying and exercising all necessary precautions

for the health and safety of all persons undertaking any part of the Contractor's Activities); and

- (ii) monitor the compliance of its Personnel with the WHS Management System and the relevant sections of the Principal's safety management system described in paragraph (a).
- (e) As required by the Principal, the Contractor must provide to the Principal's Representative in a format acceptable to the Principal:
- (i) acknowledgement of any changes to rail network documents such as rules, procedures, standards, manuals and other documents; and
  - (ii) evidence that any initiatives or changes referred to in clause 6(e)(i) have been communicated to its Personnel.
- (f) The Contractor acknowledges and agrees that:
- (i) the Principal's Representative may direct, and notify the Contractor of, changes to the WHS Management System required to comply with clause 6(b);
  - (ii) in the event that the Principal's Representative gives a direction in accordance with clause 6(f)(i), the responsibility of the Contractor under the Contract will not be relieved or reduced nor will the Principal be made responsible to the Contractor as a result of issuing that direction except to the extent that it gives rise to a Variation; and
  - (iii) in the event that the Principal discovers a non-compliance or breach of any safety requirement including, but not limited to, a breach of clause 5 or this clause 6, the Principal may immediately suspend the work associated with the non-compliance or breach. The suspension will not be lifted until the unsafe practice is removed or the breach rectified. All direct costs under this clause will be borne by the Contractor.

---

## **7. Environmental management**

### **7.1 General environmental obligations:**

The Contractor must :

- (a) comply with the requirements set out in the Principal's Environmental Management Specification for Contractors, which is located at <https://railsafe.org.au/safety-and-environment-specifications>;
- (b) if required by the Principal, provide a Site specific environmental management plan prepared in accordance with the NSW Government Environment Management System Guidelines found at <https://www.procurepoint.nsw.gov.au/environmental-management-systems> before commencing the Contractor's Activities;
- (c) comply with all Laws relating to the environment, policies and safety standards relevant to the Contractor's Activities; and
- (d) comply with any Direction in relation to environmental protection that may be given by any relevant Authority or the Principal or the Principal's Representative.

### **7.2 Responsible management of substances:**

The Contractor must:

- (a) not discharge, without lawful authority, any substance that could be harmful to the environment;
- (b) prevent the unlawful discharge, leakage or spillage of substances;
- (c) immediately report any leakage or spillage of any harmful substance at the Principal's premises to the Principal and any relevant Authority;
- (d) take immediate action to contain the leakage or spillage and minimise environmental damage and clean the area affected by the discharge of any substance (unless otherwise directed by the Principal's Representative or any relevant Authority);
- (e) comply with any direction in relation to environmental protection that may be given by any relevant Authority or the Principal; and
- (f) pay all costs associated with the remediation and clean up of any substances, including payment of fines and labour costs and any investigation to delineate the extent of any leakage or spillage.

### 7.3 Contractor's waste obligations

The Contractor must:

- (a) comply with the Statement of Work specifically in relation to the handling, classification, transportation, tracking and disposal of all waste generated as part of the Contractor's Activities.
- (b) ensure that all waste associated with the Contractor's Activities is assessed, classified, handled, transported, tracked and disposed of in compliance with all relevant Laws relating to the environment, including the Protection of the Environment Operations Act 1997 (NSW) (**Protection of the Environment Operations Act**) (as amended from time to time) and all requirements of a relevant Authority;
- (c) prior to disposing of any waste associated with the Contractor's Activities obtain the Principal's written approval in relation to every facility or premises at which the Contractor intends to dispose of that waste and then only dispose of that waste to the facility or premises approved by the Principal;
- (d) obtain and maintain waste tracking documentation in accordance with all relevant Laws relating to the environment, including the Protection of the Environment Operations (Waste) Regulation 2014 (NSW) (as amended from time to time);
- (e) in relation to every premises to which waste associated with the Contractor's Activities is transported, provide the Principal's Representative with a proper, accurately completed approved notice in accordance with Section 143 of the Protection of the Environment Operations Act which confirms that:
  - (i) the notice is issued by the owner or occupier of the premises to which waste associated with the Contractor's Activities will be transported; and
  - (ii) the place can lawfully be used as a waste facility for the relevant waste; and
  - (iii) there is no reason for the Contractor or the Principal to believe that the place could not lawfully be used as a waste facility for the waste;
- (f) obtain and maintain a waste tracking log and disposal dockets and submit the log and dockets, along with all other chain of custody documentation required by Laws

relating to the environment, to the Principal's Representative within 3 Business Days after each individual disposal so as to enable the Principal's Representative to verify that the above requirements have been met; and

- (g) take full responsibility for disposal of all waste and pay all fees and charges associated with assessment, classification, transport, tracking and disposal of waste including any waste levy.

#### 7.4 Indemnity

The Contractor is liable for and indemnifies the Principal in respect of:

- (a) any costs incurred by the Principal to enforce compliance with this clause 7; and
- (b) any loss suffered or incurred by the Principal, or any liability to, or Claims made by, a third party in connection with any breach by the Contractor of this clause 7.

---

### 8. Chain of responsibility legislation

- (a) Without limiting or otherwise restricting any of the Contractor's responsibilities or obligations under or in connection with the Heavy Vehicle Law, to the extent heavy vehicles are used in the performance of the Contractor's Activities, the Contractor:
  - (i) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
  - (ii) must ensure that:
    - A. any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;
    - B. operators carrying freight containers have a valid Container Weight Declaration; and
    - C. drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
  - (iii) must proactively provide reasonable assistance to the Principal's Representative to enable the Principal (and any of the Principal's Personnel) to satisfy its duties and responsibilities under the COR Laws;
  - (iv) must obtain and maintain, and ensure that each of its Personnel obtains and maintains, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
  - (v) must undertake any audits or monitoring as requested by the Principal's Representative to demonstrate compliance with this clause; and
  - (vi) warrants that it is familiar with and has the capability and resources to comply with the COR Laws and ensure that its Personnel comply with all COR Laws.
- (b) Where used in this clause 8:
  - (i) "Container Weight Declaration" has the meaning given in the Heavy Vehicle Law;

- (ii) "COR Laws" means any section of the Heavy Vehicle Law under which the Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle Law);
- (iii) "COR Systems" means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws;
- (iv) "Heavy Vehicle Law" means the:
  - A. Heavy Vehicle National Law (NSW) within the meaning of that term under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW); and
  - B. regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW) as amended, reproduced or updated from time to time; and
- (v) terms which are defined in the Heavy Vehicle Law have the meaning given in the Heavy Vehicle Law.

---

## 9. Aboriginal Participation in Construction

Where the NSW Government Policy on Aboriginal Participation in Construction (May 2015) (Policy) is applicable to the Contractor's Activities, the Contractor must:

- (a) comply with the requirements of the Policy;
- (b) within 60 days of the Award Date, provide to the Principal an "Aboriginal Participation Plan" in accordance with the Policy; and
- (c) provide to the Principal an "Aboriginal Participation Report" every 3 months in the form required by the Policy.

## Schedule 2 - (Alternative 1) Deed Poll where no Standing Offer Deed exists

This deed poll (Deed Poll) made on the date of execution of this deed poll

By: [Name of Contractor] (ABN [ ] of [ ] (Contractor),

in favour of: Rail Corporation New South Wales (ABN 59 325 778 353) of 477 Pitt Street,  
Sydney NSW 2000 (RailCorp)

NSW Trains (ABN 50 325 560 455) of 470 Pitt Street, Sydney NSW 2000 (NSW  
Trains).

Transport for NSW (ABN 18 804 239 602) of 18 Lee Street, Chippendale NSW  
2008 (Transport for NSW).

### Recitals

- A RailCorp owns the rail network and rail assets in NSW, including those in respect of which the Contractor's Activities will be provided by the Contractor.
- B Sydney Trains (ABN 38 284 779 682) (Principal) is responsible for the operation of passenger services in Sydney.
- C NSW Trains is responsible for the operation of passenger services in NSW outside Sydney.
- D Transport for NSW is responsible for the governance and delivery of transport services and infrastructure in NSW.
- E The Principal has entered into a contract with the Contractor dated on or about the date of this Deed Poll (Contract) for the Contractor's Activities.
- F It is a condition of the Contract that the Contractor executes this Deed Poll.

This deed witnesses that the Contractor hereby covenants, warrants and agrees with and for the benefit of RailCorp, NSW Trains and Transport for NSW as follows:

1. It will comply with its obligations under the Contract.
2. Upon completion of the Contractor's Activities, the Contractor's Activities will satisfy the requirements of the Contract.
3. The aggregate of the Contractor's liability to RailCorp under this Deed Poll, the Contractor's liability to NSW Trains under this Deed Poll, the Contractor's liability to Transport for NSW under this Deed Poll and the Contractor's liability to the Principal under the Contract:
  - (a) will not exceed the liability which the Contractor would have had under the Contract if the Contract had named, in place of the Principal, the Principal, RailCorp, NSW Trains and Transport for NSW jointly and severally; and
  - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Contract.
4. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
5. Subject to clause 3 wherever, pursuant to the terms of the Contract, the Contractor gives an indemnity in favour of the Principal, the Contractor gives the same indemnity in favour of

RailCorp, NSW Trains and Transport for NSW as if the relevant terms of the indemnity were set out in full in this Deed Poll.

6. RailCorp, NSW Trains or Transport for NSW may at any time, at their sole discretion, assign or novate this Deed Poll (or any right, benefit or interest thereunder) to any Authority, any successor in title to RailCorp, NSW Trains or Transport for NSW, or any other person that assumes the functions or obligations of either RailCorp, NSW Trains or Transport for NSW.
7. This Deed Poll is governed by the laws of the State of New South Wales.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp, NSW Trains and Transport for NSW.
9. Where terms used in this Deed Poll are defined in the Contract, those terms have the meaning given to them in the Contract.

**Executed as a deed poll.**

Executed by [Contractor] ABN [insert] in  
accordance with section 127 of the Corporations  
Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Schedule 2 - (Alternative 2) Deed Poll for Standing Offer Deed**

GIPA Act  
s.14, Table  
3(a)

This deed poll (Deed Poll) made on the date of execution of this deed poll

GIPA Act s.14, Table  
3(a)

Rocla Pty Ltd (ABN 31 000 032 191) of ~~Uni Park, Building 5 Suite 53, 195 Wellington Road Clayton VIC 3169~~ (Contractor), *Level 4, 68-72 Waterloo Road Macquarie Park NSW 2113*

in favour of:

Rail Corporation New South Wales (ABN 59 325 778 353) of 477 Pitt Street, Sydney NSW 2000 (RailCorp)

NSW Trains (ABN 50 325 560 455) of 470 Pitt Street, Sydney NSW 2000 (NSW Trains).

Transport for NSW (ABN 18 804 239 602) of 18 Lee Street, Chippendale NSW 2008 (Transport for NSW).

**Recitals**

- A RailCorp owns the rail network and rail assets in NSW, including those in respect of which the Contractor's Activities will be provided by the Contractor.
- B Sydney Trains (ABN 38 284 779 682) (Principal) is responsible for the operation of passenger services in Sydney.
- C NSW Trains is responsible for the operation of passenger services in NSW outside Sydney.
- D Transport for NSW is responsible for the governance and delivery of transport services and infrastructure in NSW.
- E The Principal has entered into a standing offer deed with the Contractor dated on or about the date of this Deed Poll (Deed) under which separate contracts may be formed from time to time for Contractor's Activities (Contracts).
- F It is a condition of the Deed that the Contractor executes this Deed Poll.

**This deed witnesses that the Contractor hereby covenants, warrants and agrees with and for the benefit of RailCorp, NSW Trains and Transport for NSW as follows:**

1. It will comply with its obligations under the Deed and each Contract.
2. Upon completion of the Contractor's Activities under each Contract, the Contractor's Activities will satisfy the requirements of the Contract.
3. The aggregate of the Contractor's liability to RailCorp under this Deed Poll, the Contractor's liability to NSW Trains under this Deed Poll, the Contractor's liability to Transport for NSW under this Deed Poll and the Contractor's liability to the Principal under each Contract:
  - (a) will not exceed the liability which the Contractor would have had under each Contract if the Contracts had named, in place of the Principal, the Principal, RailCorp, NSW Trains and Transport for NSW jointly and severally; and
  - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Contracts.
4. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.

5. Subject to clause 3 wherever, pursuant to the terms of the Contract, the Contractor gives an indemnity in favour of the Principal, the Contractor gives the same indemnity in favour of RailCorp, NSW Trains and Transport for NSW as if the relevant terms of the indemnity were set out in full in this Deed Poll.
6. RailCorp, NSW Trains or Transport for NSW may at any time, at their sole discretion, assign or novate this Deed Poll (or any right, benefit or interest thereunder) to any Authority, any successor in title to RailCorp, NSW Trains or Transport for NSW, or any other person that assumes the functions or obligations of either RailCorp, NSW Trains or Transport for NSW.
7. This Deed Poll is governed by the laws of the State of New South Wales.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp, NSW Trains and Transport for NSW.
9. Where terms used in this Deed Poll are defined in the Deed or a Contract, those terms have the meaning given to them in the Deed or the Contract (as the case may be).

Executed as a deed poll.

Executed by Rocla Pty Ltd (ABN 31 000 032 191) in accordance with section 127 of the Corporations Act 2001 (Cth):

GIPA Act s.14, Table 3(a)  
\_\_\_\_\_  
Signature of Director  
GIPA Act s.14, Table 3(a)  
\_\_\_\_\_  
Name of Director in full  
23/09/2019  
\_\_\_\_\_  
Date

GIPA Act s.14, Table 3(a)  
\_\_\_\_\_  
Signature of Secretary/other Director  
GIPA Act s.14, Table 3(a)  
\_\_\_\_\_  
Name of Secretary/other Director in full  
23/09/2019  
\_\_\_\_\_  
Date

## Schedule 3 - Principal's requirements for working in the Rail Corridor

All clause references in this Schedule are references to clauses in this Schedule unless otherwise indicated.

Capitalised terms in this Schedule have the same meaning as in the General Conditions, unless defined below.

---

### 1. Working in the Rail Corridor

#### 1.1 Definitions

In this clause:

**Approved Suppliers of Protection Officers** means the list of suppliers of Protection Officers maintained by the Principal, details of which can be obtained by contacting the Principal.

**Controlled Signal Blocking** has the meaning given in the RailSafe Network Rules.

**Danger Zone** has the meaning given in the RailSafe Network Rules.

**Local Possession Authority** has the meaning given in the RailSafe Network Rules.

**No Authority Required** has the meaning given in the RailSafe Network Rules.

**Principal's Safety Management System** means the sections of the Principal's safety management system which are relevant to the Contractor's Activities, found at <http://railsafe.org.au/sms-documents> and <https://www.transport.nsw.gov.au/about-us/who-we-are/sydney-trains/contractors> as amended from time to time, or as otherwise notified by the Principal to the Contractor.

**Possession** has the meaning given in the RailSafe Network Rules.

**Possession Protection Officer** has the meaning given in the RailSafe Network Rules.

**Protection Officer** has the meaning given in the RailSafe Network Rules.

**RailSafe Network Procedures** means the Network Procedures which can be obtained from the RailSafe website at <http://railsafe.org.au/procedures> or by contacting the Principal.

**RailSafe Network Rules** means the Network Rules which can be obtained from the RailSafe website at <http://railsafe.org.au/> or by contacting the Principal.

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

**Railway Operations** has the meaning given in the Rail National Law.

**Running Line** has the meaning given in the Rail Safety National Law.

**Track Occupancy Authority** has the meaning given in the RailSafe Network Rules.

**Track Work Authority** has the meaning given in the RailSafe Network Rules.

**Worksite** has the meaning given in clause 1.5(b).

## 1.2 General requirements

The Contractor must comply with the document entitled "General Safety Specification for Contractors" which can be obtained from the Railsafe website or by contacting the Principal's Representative (Safety Specification) which sets out the specific occupational health and safety requirements of the Contract, including such matters as safety requirements for carrying out work in the Rail Corridor and the Principal's policies with regard to drugs, alcohol and fatigue management.

## 1.3 Working in the Rail Corridor

- (a) The RailSafe Network Rules and RailSafe Network Procedures prescribe the rules and procedures for carrying out work in the Rail Corridor.
- (b) The Contractor must comply with, and must ensure that its Personnel and visitors comply with, the RailSafe Network Rules and RailSafe Network Procedures.
- (c) This Schedule does not limit or otherwise restrict the Contractor's obligation to comply with the RailSafe Network Rules and RailSafe Network Procedures.

## 1.4 Method of working in the Danger Zone

- (a) Without limitation, the RailSafe Network Rules prescribe:
  - (i) that work in the Danger Zone must be carried out only by using one of the following five methods:
    - A. Local Possession Authority;
    - B. Track Occupancy Authority;
    - C. Track Work Authority;
    - D. Controlled Signal Blocking; or
    - E. No Authority Required; and
  - (ii) mandatory minimum safety measures for each method.
- (b) If the Contractor is to provide the Contractor's Activities in the Danger Zone, the Contractor must carry out work in the Danger Zone using the method(s) notified by the Principal's Representative to the Contractor's Representative no later than 24 hours prior to the commencement of the relevant Contractor's Activities.

## 1.5 Working hours

- (a) Subject to the other provisions of this Schedule (including those relating to Possessions), the hours of work applicable to the Contractor's Activities to be carried out in the Rail Corridor and the Danger Zone will be notified by the Principal's Representative to the Contractor's Representative no later than 24 hours prior to the commencement date of the relevant Contractor's Activities.
- (b) The Principal does not guarantee access or Possessions for any sites at which the Contractor's Activities are to be carried out (**Worksite**) for the whole of the working hours notified by the Principal's Representative to the Contractor's Representative under clause 1.5(a).

## 1.6 Removal of 1500V electrical supply

The hours, times and locations during which the 1500V supply will be removed by the Principal will be notified by the Principal's Representative to the Contractor's Representative no later than 24 hours prior to the commencement date of the relevant Contractor's Activities.

## 1.7 Possessions

- (a) Possessions are closures and/or occupation of defined portions of one or more Running Lines to allow work to be carried out in the Danger Zone using either a Local Possession Authority or a Track Occupancy Authority. Subject to the requirements of this Schedule, the Principal's Representative will notify the Contractor's Representative of any Possessions no later than 24 hours prior to the commencement date of the relevant Contractor's Activities.
- (b) The Contractor:
  - (i) acknowledges that any Possession arranged by the Principal is not necessarily available for the sole purpose of allowing the Contractor's Activities to proceed in the Danger Zone;
  - (ii) acknowledges that the Principal does not guarantee Possessions for the whole of the Danger Zone working hours notified by the Principal's Representative to the Contractor's Representative under clause 1.5(a);
  - (iii) warrants that it shall, if directed by the Principal's Representative, coordinate the Contractor's Activities with:
    - A. Other Contractors engaged by the Principal to carry out work in the Danger Zone during the Possession(s); and
    - B. the Principal's Personnel operating and maintaining the Railway;
  - (iv) warrants that it shall comply with, and ensure that its Personnel comply with, any Direction that may be given by the Possession Protection Officer or any Protection Officer (whether engaged by the Contractor or the Principal), including a Direction to attend a safety briefing (or "Toolbox Talk") or to suspend work;
  - (v) warrants that it shall take all necessary steps to ensure that the Contractor's Activities in the Danger Zone are carried out utilising the specified methods and the arranged Possession(s) pursuant to clauses 1.4 and 1.7 respectively;
  - (vi) warrants that, unless otherwise approved by the Principal, it shall not carry out any of the Contractor's Activities in a way which may result in disruption or alteration of the Principal's Railway Operations;
  - (vii) acknowledges that the Principal may alter or cancel any Possession and as a result of this action the Principal's Representative may direct the Contractor to suspend the Contractor's Activities;
  - (viii) acknowledges that Possessions are difficult to obtain and are normally planned up to 12 months ahead of required dates, and as such arranged Possessions must be fully utilised; and
  - (ix) indemnifies the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in connection with:

- A. the under utilisation of any Possession during which the Contractor's Activities were, or ought to have been, carried out; or
- B. any disruption to the Principal's Railway Operations caused by a negligent act or omission of the Contractor or its Personnel relating to a Possession.

## 1.8 Protection Officers

- (a) All Worksites in the Rail Corridor must have a Protection Officer whose primary duty is to keep the Worksite and workers safe. The Contractor must (unless otherwise directed by the Principal) provide sufficient Protection Officers, possessing the Principal issued certificate of competency, to:
  - (i) assess the work to be carried out by the Contractor for safety and its potential to intrude on the Danger Zone;
  - (ii) ensure a safe place exists or can be created in the Danger Zone;
  - (iii) prepare Worksite protection plans;
  - (iv) ensure all work is carried out safely and in accordance with the RailSafe Network Rules and RailSafe Network Procedures; and
  - (v) keep records about Worksite protection arrangements.
- (b) When carrying out work in the Rail Corridor the Contractor must comply with, and must ensure that each of its Personnel complies with, any direction that may be given by a Protection Officer.
- (c) The Contractor must procure Protection Officers from one of the Principal's Approved Suppliers of Protection Officers and must not, without the Principal's written permission, provide or deploy a Protection Officer provided by any other supplier.

## 1.9 Clearances and other requirements

The Contractor must ensure that, when working in the Rail Corridor:

- (a) if specified in the Safety Specification or the Principal's Safety Management System, demarcation fencing (for example, star picket and plastic tape) is erected, as the minimum requirement, to indicate the horizontal boundary of the Danger Zone;
- (b) no metal object (including metal ladders, tapes, rules and scaffolding) is used or comes within six metres of the 1500V overhead wiring or equipment;
- (c) no person, plant or other object comes within one metre of the 1500V overhead wiring or equipment;
- (d) no structure that may affect entry to or egress from the Rail Corridor, or may obstruct the view of a train driver, is erected;
- (e) artificial lighting is not used to illuminate the place of work unless the Principal or the Possession Protection Officer approves the type and placement of the lighting;
- (f) level crossings are not constructed unless the Principal or the Possession Protection Officer gives the Contractor written permission; and

- (g) each of the Contractor's Personnel:
  - (i) wears high visibility safety clothing (including an orange coloured safety vest with retro reflective strips); and
  - (ii) does not wear any red or green coloured clothing.

#### 1.10 "Kick off" meeting

The Contractor's nominated safety Personnel must attend and participate in a "kick off" meeting to be held prior to the commencement of work at the Worksite. This meeting will be conducted by the Principal's Representative and attended by other stakeholders nominated by the Principal's Representative. The purpose of the meeting will be to discuss safety issues associated with the Worksite and the Contractor's Activities and to ensure that the Contractor understands its safety management obligations including its obligations to:

- (a) in consultation with the Principal, identify hazards associated with the Worksite and the Contractor's Activities to be carried out by the Contractor, assess the associated risks and either eliminate the risks or develop measures to effectively control the risks;
- (b) prepare safety management plans and safe work method statements; and
- (c) ensure that each of its Personnel:
  - (i) holds any required qualification or certificate of competency;
  - (ii) receives any required health assessment; and
  - (iii) is provided with all required safety induction training.

During the "kick off" meeting the Principal will provide the Contractor's nominated safety Personnel with initial induction training including an overview of the Code of Conduct and relevant policies with which the Contractor and its Personnel.

#### 1.11 Rail industry worker training

The Contractor must, before the Principal will provide the Contractor with access to the Rail Corridor, provide to the Principal satisfactory evidence that each of the Contractor's Personnel entering the Rail Corridor whose work will require them to intrude into the Danger Zone has:

- (a) completed and satisfied the requirements in the TLIF2080 Safely Access the Rail Corridor course (as updated or replaced from time to time) or an equivalent course as approved by the Principal in writing;
- (b) been issued a Rail Industry Worker (RIW) card (as updated or replaced from time to time), and
- (c) satisfied any other requirements relating to rail safety induction as notified by the Principal to the Contractor.

#### 1.12 Pre-work safety briefing

The Contractor must conduct pre-work safety briefings for all of its Personnel on a Worksite daily at the commencement of each shift and whenever work conditions change. During the pre-work safety briefings the Contractor must discuss:

- (a) any Worksite specific hazards;

- (b) safe work method statements setting out the risk assessments and controls associated with the work activities scheduled during the day or shift;
- (c) the Worksite protection in place and the boundaries of such protection;
- (d) the times at which protection will be in place;
- (e) the signals which will be given when it is necessary to clear the Railway Tracks;
- (f) the location of safe places / refuges to be used when required to clear the Railway Tracks; and
- (g) access and egress to the Worksite.

## Schedule 4 - Approved Form Of Unconditional Undertaking

This deed poll (Undertaking) made on the date of execution of this deed poll

In favour of: Sydney Trains ABN 38 284 779 682 of Level 20, 477 Pitt St, Sydney NSW  
(Principal)

Given by: [ ] (Institution)

### Recitals

- A. By a deed dated [\*] (Deed) between [ ] ABN [ ] (Contractor) and the Principal the Contractor agreed to carry out the Contractor's Activities (as defined in the Deed).
- B. Under the provisions of the Deed, the Contractor is required to provide this Undertaking to the Principal.

### Operative

1. The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of #(\$ ).
2. The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
3. The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Deed or the Contractor's Activities or acts or things to be executed, performed and done under the Deed or by reason of any breach or breaches of the Deed by the Contractor or the Principal.
4. The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.
5. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll.

Signed, sealed and delivered for and )  
 on behalf of [Insert] ABN [insert] by its )  
 attorney )

..... )  
 Name of attorney (print) )  
 Under power of attorney )  
 Registration Number / Book Number )  
(Powers of attorney created in Victoria do not have a number. Insert  
 the date of the power of attorney instead )

in the presence of:

.....  
 Signature of witness

.....  
 Name of witness (print)

.....  
 Signature of attorney  
 By executing this document the  
 attorney states that the attorney has  
 received no notice of revocation of the  
 power of attorney

.....20.....  
 Date

## Schedule 5 - Parent company guarantee

Deed of Guarantee and Indemnity made on the date on which the last party to execute this deed has executed this deed

Sydney Trains (ABN 38 284 779 682), of Level 20, 477 Pitt St Sydney NSW (Principal)

[ ] ABN [ ] of [ ] (Guarantor)

### RECITALS

- A. The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

### THIS DEED PROVIDES

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## 1. Definitions

### 1.1 Definitions and Interpretation

In this Deed:

[Delete either Option 1 or Option 2 as required]

[Option 1 - where PCG provided under Standing Offer Deed] Contract means each of:

- (a) the Standing Offer Deed (Contract Number: [ ]) dated on or about the date of this Deed between the Principal and the Contractor; and
- (b) each 'Contract' formed under that Standing Offer Deed.

[Option 2 - where PCG provided under separate contract] Contract means the Contract (Contract Number: [ ]) dated on or about the date of this Deed between the Principal and the Contractor.

Contractor means [ ] ABN [ ]

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or

of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Legal Opinion** means a legal opinion:

- (a) from lawyers to the Guarantor, authorised to practice in the place of incorporation of that Guarantor, stating that this deed is binding and enforceable against that Guarantor;
- (b) which states that it may be relied upon by the Principal; and
- (c) in a form reasonably satisfactory to the Principal.

**Obligations** means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Contractor and the Principal comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

**Security** means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

**Specified Rate** means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at or about 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or

- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

## 1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the Contract.

## 1.3 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
  - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;

- (i) a reference to:
  - (i) a party or clause is a reference to a party or clause of or to this Deed; and
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

#### 1.4 Limitation

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
  - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Contractor under the Contract;
  - (ii) the liability of the Guarantor under this Deed in connection with a breach of the Contract by the Contractor shall not be greater than the liability of the Contractor under the Contract in respect of the breach;
  - (iii) nothing in this Deed is intended to render the Contractor and the Guarantor liable for the same loss twice for the one breach of the Contract by the Contractor;
  - (iv) the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the Contractor under the Contract;
  - (v) where the Guarantor is performing any Obligation, the Guarantor will not be required to perform any such Obligation in a manner any different than that required by the Contract; and
  - (vi) payment by one of the Contractor or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment.
- (b) The limitation of liability under this clause 1.4 does not apply to liability to pay any interest in accordance with clause 7.3 of this Deed or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Obligations which arise from or would have arisen from any voided, voidable, unenforceable or irrecoverable Obligations referred to in clause 3(b) of this Deed (if those Obligations had not been voided, avoided, unenforceable or irrecoverable), subject to such

liability not exceeding the liability that the Contractor would have had if the Obligations had not been voided, voidable, unenforceable or irrecoverable.

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## **2. Guarantee**

### **2.1 Guarantee**

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

### **2.2 Payment by Guarantor**

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

### **2.3 Perform Obligations**

If the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Obligations.

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## **3. Indemnity**

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Contractor to perform the Obligations; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

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## **4. Liability as guarantor and indemnifier**

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

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## **5. Nature and preservation of liability**

### **5.1 Absolute liability**

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
  - (i) any person, whether named as a party or not, does not execute this Deed;

- (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
- (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

## 5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;
- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;
- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by,

the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;

- (o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor; or
- (p) the provisions of section 440J of the Corporations Act 2001 (Cth) operating to prevent or delay:
  - (i) the enforcement of this Deed against any Guarantor; or
  - (ii) any claim for contribution against any Guarantor.

### **5.3 No merger**

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.
- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

### **5.4 No obligation to gain consent**

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Contractor, or any particulars concerning any Obligation.

### **5.5 Appropriation**

- (a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
- (b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

### **5.6 Void or voidable transactions**

If:

- (a) the Principal has at any time released or discharged:
  - (i) the Guarantor from its obligations under this Deed; or
  - (ii) any assets of the Guarantor from a Security,

in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or

- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
  - (i) the Guarantor from its obligations under this Deed; or
  - (ii) any assets of the Guarantor from a Security;

and:

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

#### **5.7 No set-off, counterclaim**

Subject to clause 1.4(a)(iv), the liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.

#### **5.8 Claim on the Guarantor**

- (a) Subject to clause 5.8(b), the Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.
- (b) The Principal agrees not to make a claim or demand for payment of Guaranteed Money against the Guarantor under this Deed unless:
  - (i) the Principal has made a written claim or demand against the Contractor for such Guaranteed Money, a copy of which the Principal gives to the Guarantor at the same time as the Principal makes the claim or demand against the Contractor, and such Guaranteed Money remains unpaid, in whole or in part, for 10 Business Days after the claim or demand is made; or
  - (ii) an Insolvency Event has occurred in relation to the Contractor or the Guarantor.

#### **5.9 No representation by Principal etc.**

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Contractor or any other person.

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## **6. Representations and Warranties**

### **6.1 General representations and warranties**

The Guarantor or if there is more than one Guarantor, each Guarantor, represents and warrants to the Principal that:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law binding on it, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;
- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

### **6.2 Corporate representations and warranties**

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate to the extent they are material to the performance of the obligations of the Guarantor under this Deed.

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## **7. Payments**

### **7.1 On demand**

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

## 7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

## 7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3, provided that interest will not be payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

## 7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

## 7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

- (a) subject to clause 1.4(a)(iv), free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future taxes (not being taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those taxes; and
- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those taxes.

## 7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.

- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency (**Payment Currency**) other than the currency (**Agreed Currency**) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

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## 8. Expenses and stamp duties

### 8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

### 8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar taxes, including fines and penalties, financial institutions duty and debits tax, which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and
- (b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay taxes.

### 8.3 Goods and Services Tax

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed (GST Liability) then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

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## 9. Assignment

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

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## **10. Governing law, jurisdiction and arbitration**

### **10.1 Governing law**

This Deed, and where applicable the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

### **10.2 Jurisdiction**

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

### **10.3 Reference to arbitration**

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the Corporations Act 2001 (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

### **10.4 Powers of the arbitrator**

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

### **10.5 Consolidation**

The parties agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations.

### **10.6 Joinder**

The arbitral tribunal has the power, on the application of any party to the arbitration, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

## 10.7 Award final and binding

Any award will be final and binding upon the parties.

## 10.8 Guarantor incorporated outside Australia

If the Guarantor is incorporated outside of Australia, a Legal Opinion must be provided by the Guarantor to the Principal, on the date of execution of this Deed.

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## 11. Miscellaneous

### 11.1 Notices

(a) Any notices contemplated by this Deed must be in writing and delivered or posted by prepaid express post to the relevant address as set out below (or to any new address that a party notifies to the others):

(i) to the Principal: [ ]

(ii) to the Guarantor: [ ]

(b) A notice sent by prepaid express post will be taken to have been received by the addressee:

(i) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting; and

(ii) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting.

(c) Not used.

### 11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

### 11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

### 11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines, provided it includes particulars of the relevant default in the due and punctual performance of the Obligations.

### 11.5 Entire agreement

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

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

#### **11.6 Joint and several liability**

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

#### **11.7 Severance**

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

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

#### **11.8 Remedies cumulative**

Each Power is cumulative and in addition to each other Power available to the Principal.

#### **11.9 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
  - (i) a breach of any term of this Deed; or
  - (ii) any other failure by the Guarantor to comply with a requirement of this Deed,

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

#### **11.10 Consents**

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

#### 11.11 Vienna Convention

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

#### 11.12 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

#### 11.13 Variations

This Deed may only be varied by a document signed by or on behalf of both the Principal and the Guarantor.

#### 11.14 Provisions limiting or excluding liability

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

#### 11.15 Counterparts

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

#### 11.16 Confidentiality

- (a) Subject to paragraph (b), each party must keep the terms of this Deed confidential.
- (b) A party may make any disclosure in relation to this Deed:
  - (i) to a professional adviser, financial adviser, insurer, rating agency, financier or auditor if that person is obliged to keep the information disclosed confidential;
  - (ii) to the extent required to comply with any law, a requirement of a regulatory body (including any relevant stock exchange) or pursuant to administrative request or Parliamentary requirement;
  - (iii) to any of its employees or officers to whom it is necessary to disclose the information;
  - (iv) in connection with any legal or arbitral proceeding under or in relation to this Deed;
  - (v) to obtain the consent of a third party to a term of, or to an act under, this Deed;
  - (vi) to a "related body corporate", as defined in section 9 of the Corporations Act 2001 (Cth), as long as it advises that related body corporate of the confidential nature of the terms of this Deed;
  - (vii) (in the case of the Principal) to a potential assignee provided they agree to keep the terms of this Deed confidential;

- (viii) (in the case of the Principal) to a related agency or to its responsible Minister;
- (ix) with the prior consent of the other party to this Deed; or
- (x) if the information disclosed has come into the public domain through no fault of the party (or its Personnel or related bodies corporate) making the disclosure.

Executed as a deed.

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

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of authorised delegate

\_\_\_\_\_  
Date

Executed by [Insert name of Guarantor] ABN [insert] 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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 6 - Confidentiality Deed

**Given by:** [insert full legal name of Recipient (insert ABN)] of [insert registered address of Recipient] (Recipient) for and on behalf of itself and the Recipient Representatives (as defined in this Deed)

**In favour of:** Sydney Trains ABN 38 284 779 682 of Level 20, 477 Pitt Street, Sydney NSW 2000 (Sydney Trains) and the Sydney Trains Representatives (as defined in this Deed)

**Made:** at Sydney on the date the Recipient executes this Deed (date of this Deed).

### Background

- A Sydney Trains and the Recipient have entered into a contract entitled [insert] (Contract) dated on or about the date of this Deed pursuant to which the Recipient will carry out certain activities (Contractor's Activities).
- B It is a condition of the Contract that the Recipient enter into this Deed.
- C Sydney Trains has agreed to disclose certain Confidential Information to the Recipient for the Permitted Use on the terms and conditions of this Deed for the purposes of the Recipient providing services to Sydney Trains under the Contract between the parties.

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## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed (including the Background), unless the context otherwise requires:

**Claim** means any action, suit, claim, demand, cause of action or notice, of any nature whatsoever, at Law or in equity, including:

- (a) in contract, whether for breach or for an entitlement under a contract;
- (b) in tort for negligence or otherwise, including without limitation negligent misrepresentation;
- (c) for contribution or indemnity at common law, equity or statute;
- (d) for restitution, unjust enrichment or quantum meruit;
- (e) under or for breach of statute; or
- (f) in any other way,

whether for a Loss or a Remedy.

**Confidential Information** means:

- (a) information, including the Information Documents and any Personal Information, disclosed by or on behalf of Sydney Trains or the Sydney Trains Representatives to the Recipient or the Recipient Representatives (or of which the Recipient or the Recipient Representatives become aware) in the course of discussions in relation to the Permitted Use;

- (b) information acquired by the Recipient or the Recipient Representatives in the course of discussions prior to the date of this Deed in relation to the Permitted Use;
- (c) any Document or other correspondence provided by Sydney Trains to the Recipient or the Recipient Representatives, that:
  - (i) is by its nature confidential; or
  - (ii) is designated as confidential by Sydney Trains or the Sydney Trains Representatives from time to time; or
- (d) any other information which by its nature should reasonably be considered to be the confidential information of Sydney Trains or the Sydney Trains Representatives, or which the Recipient or the Recipient Representatives knows is confidential,

whether or not marked as "Commercial in Confidence", "Proprietary" or "Confidential", and which may be provided in writing, electronically, verbally or otherwise, but does not include any information which:

- (e) the Recipient can demonstrate to be in the public domain or was known to the Recipient at the time of disclosure other than through a breach of this Deed;
- (f) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt of the information from Sydney Trains or the Sydney Trains Representatives;
- (g) was independently developed by the Recipient or the Recipient Representatives;
- (h) is required by Law to be disclosed; or
- (i) comprises Intellectual Property Rights within the meaning of the Contract.

**Deed** means this Deed Poll.

**Information Documents** means any information, opinion, data or document in whatever form (including, electronic, verbal, written or visual):

- (a) issued or made available by, or on behalf of, Sydney Trains or the Sydney Trains Representatives to the Recipient or the Recipient Representatives in connection with this Deed or the Permitted Use; and
- (b) includes any information, opinion, data or document referred to, or incorporated by reference, in any such Information Documents,

whether or not such Information Documents were issued or made available to the Recipient before or after the date of this Deed.

**Information Security Requirements** means the following principles, policies, codes, Laws or directions relating to the storage, management, control and handling of information that is security classified and/or subject to a sensitive information label or other protective marking (such as dissemination limiting markers):

- (a) the most recent version of:
  - (i) the following principles, standards and policies of Sydney Trains: IS-SGD-70119, Information Security Classification and Labelling Standard; IS-SGD-70127, Information Security Standard; IS-SGD-70125, Secure Destruction; and, IS-SGD-70133, Information Security Incident Management;

- (ii) the NSW Government Information Classification and Labelling Guidelines;
- (iii) the NSW Government Digital Information Security Policy;
- (iv) the Australian Government Information Security Manual; and
- (v) the "Australian Government Information Security Management Guidelines", including:
  - A. Australian Government Security Classification System; and
  - B. Protectively Marking and Handling Sensitive and Security Classified Information and Material;
- (b) Premiers Memorandum M2006-08, Maintaining Confidentiality of Cabinet Documents and Other Cabinet Conventions;
- (c) legislation, including the State Records Act 1998 (NSW) and the Privacy Law; and
- (d) any other principles, policies, codes, Laws and directions that are notified to the Recipient by Sydney Trains to the Recipient from time to time, with respect to the same subject matter as the foregoing,

as replaced, amended or updated from time to time.

**Loss** means any money, cost (including reasonable legal costs and expenses), expense, damage, interest, penalty, fine, delay, disruption, costs and losses associated with a Remedy or detriment of any kind whatsoever.

**Law** means the common law and any legislation of the Parliament of the Commonwealth of Australia, of any State or Territory of the Commonwealth of Australia or of any other jurisdiction in force at any time and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation and, in each case, any consolidations, amendments, re-enactments and replacement.

**Permitted Use** means use for the purposes of the Recipient carrying out the Contractor's Activities under the Contract, and for no other purpose.

**Personal Information** has the same meaning as in the Privacy and Personal Information Protection Act 1998 (NSW).

**Privacy Laws** means the Privacy and Personal Information Protection Act 1998 (NSW), the Privacy Act 1988 (Cth), any applicable principles, codes of conduct or directions issued under those Acts and all other applicable Laws relating to privacy or personal information.

**Related Entity** in relation to:

- (a) the Recipient, has the meaning given to 'related body corporate' in section 9 of the Corporations Act 2001 (Cth); and
- (b) Sydney Trains, means any "public transport agency" (as defined in the Transport Administration Act 1988 (NSW)), the State of New South Wales, and any entity controlled by any of them.

**Remedy** means any entitlement, damages, interest, compensation, contribution, indemnity, injunction, specific performance, extension of time or other legal or equitable or statutory remedy of any kind whatsoever.

**Representatives** means:

- (a) in respect of the Recipient, any Related Entity of the Recipient and any directors, officers, employees, consultants, agents and contractors of Recipient and any Related Entity of the Recipient (the "Recipient Representatives"); and
- (b) in respect of Sydney Trains, any Related Entity of Sydney Trains and any directors, officers, employees, consultants, agents and contractors of Sydney Trains and any Related Entity of Sydney Trains (other than the Recipient) (the "Sydney Trains Representatives").

## 1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (c) a reference to a "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party or clause is a reference to a party or clause to or of this Deed;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (j) "includes" in any form is not a word of limitation.

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## 2. Representations and warranties regarding Information Documents

The Recipient acknowledges and agrees, for itself and the Recipient Representatives, that:

- (a) the Information Documents are provided by Sydney Trains for the information only of the Recipient or as otherwise required for the Permitted Use;
- (b) neither Sydney Trains or the Sydney Trains Representatives are responsible for, or make any representation or warranty (express or implied) in respect of, the contents of the Information Documents including the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, reports or investigations,

opinions, recommendations, findings or other information contained in the Information Documents for any purpose, including the Permitted Use; and

- (c) Sydney Trains has provided, or will provide, the Information Documents to the Recipient in reliance upon the acknowledgements and agreements contained in this clause 2.

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### **3. Recipient's obligations**

#### **3.1 Confidentiality**

The Recipient acknowledges and agrees, for itself and the Recipient's Representatives, that it will:

- (a) keep the Confidential Information confidential, safe, secure and protected against unauthorized use and access and, subject to clause 3.5, not disclose the Confidential Information to any person;
- (b) not use or permit the use of the Confidential Information for any purpose other than for the Permitted Use;
- (c) ensure Confidential Information is not copied or reproduced without the Sydney Trains' express written consent;
- (d) not introduce any Confidential Information into any computer system or other device operated, controlled or which may be accessed to any extent by a person other than the Recipient or the Recipient's Representatives to whom the Confidential Information has been disclosed in accordance with this Deed;
- (e) ensure that any Representative of the Recipient to whom the Recipient discloses Confidential Information:
  - (i) is aware of the confidentiality requirements of this Deed; and
  - (ii) is advised that he or she is strictly forbidden to disclose the Confidential Information to any other person or use the Confidential Information for any purpose other than as provided for in this Deed;
- (f) not issue any information, publication, document or article or make any statement to or advertise in any media about any matters relating to the Permitted Use or this Deed, unless otherwise approved in writing by Sydney Trains to do so; and
- (g) not attempt to access any Confidential Information other than the Confidential Information that they need to know and access for the purposes of the Permitted Use.

#### **3.2 Comply with Privacy Laws**

In relation to any Personal Information provided by Sydney Trains to the Recipient under or in connection with this Deed or its subject-matter, the Recipient warrants that it will comply with all applicable Privacy Laws including, if applicable, obtaining the consent of each individual to whom the Personal Information relates for the collection use and disclosure of that Personal Information.

#### **3.3 Not cause breach by Sydney Trains**

Where the Recipient is required to access, collect or disclose Personal Information on behalf of Sydney Trains, then the Recipient must comply with the Privacy and Personal Information

Protection Act 1998 (NSW) as if it were Sydney Trains accessing, collecting or disclosing the Personal Information.

### **3.4 Security measures**

The Recipient must ensure that any Confidential Information in its or the Recipient's Representatives' possession, custody or control is kept secure at all times, including by:

- (a) where the Recipient has access to Confidential Information by password or other secure means, the Recipient must not disclose that password or means of access to any other person unless it has been authorised in writing to do so by Sydney Trains; and
- (b) where applicable, complying with the Information Security Requirements.

### **3.5 When Recipient may disclose**

The Recipient may disclose Confidential Information:

- (a) with the prior written consent of Sydney Trains;
- (b) to the Recipient's Representatives, but only to the extent that each Recipient's Representative has a "need to know" the Confidential Information for the purposes of the Permitted Use; and
- (c) subject to clause 3.6, to the extent required by Law to do so.

### **3.6 Disclosure required by Law**

If the Recipient is required by Law to disclose any Confidential Information, the Recipient must before doing so immediately notify Sydney Trains and comply with any reasonable directions given by, or requirements of, Sydney Trains.

### **3.7 Inspections and audit**

The Recipient consents, and must procure the necessary consents from any Representative to which the Confidential Information is disclosed by the Recipient, to such inspections and audits as may be reasonably required by Sydney Trains for the purpose of auditing compliance by the Recipient and any relevant Representatives with the terms of this Deed after Sydney Trains has given the Recipient reasonable notice, to the extent practicable in the circumstances.

### **3.8 Breach of confidentiality obligations**

If the Recipient becomes aware of any actual, threatened or suspected breach of this Deed, including by the Recipient or any Representative of the Recipient, the Recipient must:

- (a) immediately notify Sydney Trains in writing and take all steps necessary to remedy, prevent or stop the actual, threatened or suspected breach of this Deed and comply with any reasonable directions issued by Sydney Trains regarding any unauthorised use or disclosure of the Confidential Information; and
- (b) provide such other assistance as may be reasonably required by Sydney Trains, including in relation to any Claim or proceedings that Sydney Trains may bring against any third party for unauthorised use or disclosure of the Confidential Information.

### 3.9 Return of Confidential Information

- (a) Subject to clause 3.9(b), if requested by Sydney Trains, the Recipient must:
- (i) promptly return to Sydney Trains all documents and other physical records of Confidential Information in its or the Recipient Representatives possession, custody or control;
  - (ii) delete the Confidential Information from any computer system or other device operated or controlled by, or which may be accessed by, the Recipient or the Recipient Representatives to which the Confidential Information has been disclosed by the Recipient;
  - (iii) where applicable, comply with the requirements of the Information Security Requirements in respect of the destruction or return of any Confidential Information; and
  - (iv) comply with any reasonable directions issued by Sydney Trains in respect of the Confidential Information.
- (b) If the Recipient is required by Law to retain any Confidential Information, and provided the Recipient has not breached any of its obligations under this Deed, the Recipient may retain one copy of part or all of the Confidential Information, to the extent that the Recipient is obliged to retain a copy of part of or all of the Confidential Information by Law. Any Confidential Information retained pursuant to any such obligation at Law shall continue to be subject to the obligations of this Deed.

### 3.10 Compliance with Information Security Requirements

The Recipient acknowledges and agrees that:

- (a) some, or all, of the Confidential Information is security classified, and/or subject to a sensitive information label or other protective marking (such as dissemination limiting markers) and must therefore be stored, managed, controlled and handled strictly in accordance with the Information Security Requirements;
- (b) prior to the date of this Deed it is familiar with and has read, and it will ensure that all relevant Recipient's Representatives are familiar with and have read, the Information Security Requirements;
- (c) it will, and it will ensure that all relevant Recipient's Representatives:
  - (i) at all times comply with and adhere to all relevant and applicable Information Security Requirements; and
  - (ii) cooperate with and assist Sydney Trains and the Sydney Trains' Representatives in the performance of any obligations or requirements of Sydney Trains and the Sydney Trains' Representatives under or in connection with the Information Security Requirements,in respect of any Confidential Information; and
- (d) it will not, and it will ensure that the Recipient Representatives do not, do anything which would:
  - (i) constitute a contravention of the Information Security Requirements by Sydney Trains; or
  - (ii) put Sydney Trains in breach of any Information Security Requirements.

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## 4. Sydney Trains may enforce Deed

### 4.1 Recipient acknowledgements

The Recipient:

- (a) agrees that:
  - (i) the obligations in this Deed are for the benefit of Sydney Trains and the Sydney Trains Representatives, and that Sydney Trains or the Sydney Trains Representatives may enforce the obligations herein; and
  - (ii) the Confidential Information is the exclusive property of Sydney Trains or Sydney Trains' Representatives and this Deed does not convey any proprietary or other interest in the Confidential Information to the Recipient or the Recipient Representatives; and
- (b) acknowledges that:
  - (i) the Confidential Information is valuable to Sydney Trains and Sydney Trains' Representatives that damages may not be an adequate remedy for Sydney Trains or the Sydney Trains Representatives for any breach of this Deed by the Recipient; and
  - (ii) Sydney Trains is, and any Sydney Train's Representatives are, entitled to seek injunctive relief as a remedy for any breach or threatened breach of this Deed by the Recipient, in addition to any other remedies available at Law or in equity under or independently of this Deed.

### 4.2 Breach by Representative

Where the Recipient discloses the Confidential Information to a Representative, a breach of a provision of this Deed by the relevant Representative will be deemed to be a breach of this Deed by the Recipient.

---

## 5. Release and Indemnity

### 5.1 Release

To the extent permitted by Law, the Recipient releases and forever discharges, and agrees to hold harmless and acquit Sydney Trains and each of Sydney Trains' Representatives from and against any and all Claims arising out of, relating to or in any way in connection with or incidental to:

- (a) the provision of, or purported reliance on, or use of, the Information Documents or any Confidential Information by the Recipient, the Recipient's Representatives or any other person associated with the Recipient to whom the Information Documents or any Confidential Information are disclosed by the Recipient;
- (b) any failure by Sydney Trains or the Sydney Trains Representative to provide any information to the Recipient; and
- (c) any fact, matter, circumstance, conduct, act, omission or thing in connection with any of those matters or things,

whether or not the parties were aware of the fact, matter, circumstance, conduct, act, omission or thing as at the date of this deed and including any Claims in respect of a Loss or a Remedy which the Recipient may suffer or incur in respect of the fact, matter, circumstance, omission or thing after the date of this Deed.

## 5.2 Indemnity

- (a) To the extent permitted by Law, the Recipient indemnifies and will keep indemnified each of Sydney Trains and the Sydney Trains Representatives (**Those Indemnified**) against:
- (i) any Loss incurred or suffered by Those Indemnified where such Loss is incurred by reason of or in connection with any breach of this Deed by the Recipient or the Recipient Representatives; and
  - (ii) any and all Claims by or on behalf of the Recipient, the Recipient's Representatives or any person claiming through, under, for, on behalf of or by virtue of the Recipient or the Recipient's Representatives, which have arisen or may arise in relation to the matters the subject of the release in clause 5.1.
- (b) The Recipient's liability to indemnify Those Indemnified will be reduced proportionally to the extent that any act or omission of Those Indemnified caused or contributed to the liability or loss.

---

## 6. General

### 6.1 No exclusion of Law or equity

This Deed must not be construed to exclude the operation of any principle of Law or equity intended to protect and preserve the confidentiality of the Confidential Information.

### 6.2 Waiver

The Recipient acknowledges and agrees that:

- (a) no waiver by Sydney Trains of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied; and
- (b) none of the provisions hereof shall be taken either at Law or in equity to have been varied, waived, discharged or released by Sydney Trains unless by its express consent in writing.

### 6.3 Governing Law

This Deed will be governed by and construed in accordance with the Law in force in the State of New South Wales. Each party submits to the exclusive jurisdiction of the Supreme Court of New South Wales and the courts competent to determine appeals from that court.

### 6.4 Continuing obligations

The obligations of the Recipient under this Deed continue after the completion or termination of any employment, engagement or assignment in respect of the Permitted Use.

### 6.5 Revocation or amendment

This Deed may not be revoked or otherwise modified or amended without the prior written consent of Sydney Trains.

Executed as a deed poll

[Note: Delete the execution block that is not applicable.]

**[If the Recipient is an individual]**

Signed, sealed and delivered by [insert full legal name of Recipient] in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Recipient

\_\_\_\_\_  
Full name and position of witness

\_\_\_\_\_  
Full name and position of Recipient

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Address of Recipient

\_\_\_\_\_  
Date

**[If the Recipient is a company]**

Executed by [insert] ABN [insert] in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of director/company secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 7 - Form of Subcontractor Warranty

This Deed Poll is made on the date the Warrantor executes this Deed Poll.

To: Sydney Trains ABN 38 284 779 682 of Level 20, 477 Pitt St, Sydney NSW (Principal)

[Add other beneficiaries as nominated by Sydney Trains] (Beneficiary).

By: That person described in Item 1 of the Schedule (Warrantor) which expression will include its successors and assigns

### Recitals

- A. The Warrantor has supplied the items described in Item 2 of the Schedule (**Equipment**) to the person described in **Item 3** of the Schedule (**Contractor**) or the person described in Item 4 of the Schedule, a subcontractor of the Contractor (**Subcontractor**), for the works (**Works**) being carried out by the Contractor under the contract described in Item 5 of the Schedule (**Contract**) with the Principal.
- B. It is a requirement of the Contract that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

### Operative

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#### 1. Quality

The Warrantor:

- (a) warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

---

#### 2. Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 7 of the Schedule:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

---

**3. Warrantor to bear cost**

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

---

**4. Principal not liable**

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

---

**5. This deed poll may not be revoked**

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

---

**6. Governing law**

This deed poll is governed by the laws of the State of New South Wales.

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**7. Jurisdiction**

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

---

**8. Enforcement of this deed poll**

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

## Schedule

- Item 1: Name and Address of Warrantor
- Item 2: Equipment  
(Recital A)
- Item 3: Contractor  
(Recital A)
- Item 4: Subcontractor  
(Recital A)
- Item 5: Contract  
(Recital A)
- Item 6: Detailed Warranty of Warrantor  
(Clause 1(b))
- Item 7: Period of Years  
(Clause 2)

**Insert period** years from the expiry of the last "Defects Liability Period" as defined in the General Conditions (including any extension under clause 9.12 of the General Conditions).

Executed as a deed poll.

Executed by [insert name of Warrantor] (ABN [insert ABN]) in accordance with s 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Schedule 8 - Form of Statutory Declaration**

<p><b>Statutory Declaration</b></p> <p style="text-align: right;"><i>Oaths Act (NSW) Ninth Schedule</i></p> <p>I, .....</p> <p>of .....</p> <p>do solemnly and sincerely declare that:</p> <p>1. I am the representative of:</p> <p>.....          ("the Contractor")          in the Office Bearer capacity of:</p> <p>.....</p> <p>2. The Contractor has a contract with the [ ..... ]:</p> <p>.....          ("the Contract")</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</p> <p>a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</p> <p>b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</p> <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 70%;">Employee:</th> <th style="text-align: left;">Amount unpaid or not accrued:</th> </tr> </thead> <tbody> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> </tbody> </table> <p>5. [Note: This clause 5 only applies where the Building and Construction Industry Security of Payment Act 1999 (NSW) applies to the Contract.] Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p> <p>Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW), with the exception of the items listed below:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been</p>	Employee:	Amount unpaid or not accrued:	.....	.....	.....	.....	.....	.....	.....	.....	
Employee:	Amount unpaid or not accrued:										
.....	.....										
.....	.....										
.....	.....										
.....	.....										

notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

- (a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and
- (b) that all their employees and subcontractors, as at the date of the making of such a declaration:
  - i) have been paid all remuneration and benefits due and payable to them by; or
  - ii) had accrued to their account all benefits to which they are entitled from; the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and
- (c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor:	Due amount unpaid:
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Employee, subcontractor or supplier:	Amount unpaid or not accrued:
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. I personally know the truth of the matters which are contained in this declaration .

12. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

*I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.*

Declared at ..... on .....

(place) (day) (month) (year)

.....  
 (Signature of Declarant)

Before me:

.....  
 (Signature of person before whom the declaration is made)

.....  
 (Name of the person before whom the declaration is made)

.....  
 (Title\* of the person before whom the declaration is made)

---

*And as a witness, I certify the following matters concerning the person who made this declaration (declarant):*

*[\*strike out the text that does not apply]*

1. \*I saw the face of the declarant.  
 OR  
 \*I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.

2. \*I have known the declarant for at least 12 months.  
 OR  
 \*I confirmed the declarant's identity using the following identification document:

.....  
 Identification document relied on  
 (may be original or certified copy)

.....  
 Signature of person before whom the declaration is made

Before me:

.....  
 (Signature of person before whom the declaration is made)

.....  
 (Name of the person before whom the declaration is made)

.....  
 (Title\* of the person before whom the declaration is made)

\* The declaration must be made before one of the following persons:  
 - where the declaration is sworn within the State of New South Wales:  
 (i) a justice of the peace of the State of New South Wales;  
 (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or  
 (iii) a notary public.  
 - where the declaration is sworn in a place outside the State of New South Wales:  
 (i) a notary public; or  
 (ii) any person having authority to administer an oath in that place.

**Annexure A**

**Supporting statement by head contractor regarding payment to subcontractors**

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: *[business name of head contractor]*

ABN: [ABN]

\* 1. has entered into a contract with: *[business name of subcontractor]*

ABN: [ABN]

Contract number/identifier: *[contract number/identifier]*

OR

\* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

\* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: ..... Date: .....

Full name: ..... Position/Title: .....

**Penalties**

*The Building and Construction Security of Payment Act 1999 provides that:*

Section 13(7) A head contractor must not serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim.

Maximum penalty: 200 penalty units.

And:

Section 13(8) A head contractor must not serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances.

Maximum penalty: 200 penalty units or 3 months imprisonment, or both.

**Attachment**

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Date of payment claim (head contractor claim)

## Schedule 9 - Terms of Expert Appointment

THIS AGREEMENT is made on the date the last party to execute this agreement executes this agreement

BETWEEN [insert name, company number and address] ("Principal")

AND [insert name, company number and address] ("Supplier")

AND [insert name and address] ("Expert")

### Recitals

- A. The Principal and the Supplier (together the **Parties** and each a **Party**) are parties to a contract (the **Contract**) for the design and supply of certain goods for the [ ] in [ ].
- B. By written notice dated [to be inserted], the [insert Principal or Contractor as applicable] has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 15 of the Contract (the **Matter**).
- C. Pursuant to clause 15 of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

### Operative part

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## 1. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
- (i) the Expert will act as an expert and not as an arbitrator;
  - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
  - (iii) the rules of evidence do not apply to the determination;
  - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2;
  - (v) in making the determination, the Expert may determine that a Party pay the other Party's costs of the expert determination.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

---

## 2. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

---

## 3. Costs and fees

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) Subject to any direction as to costs given by the Expert in the Expert's determination, the Parties agree as between themselves that:
  - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

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## 4. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

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## 5. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

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## 6. Governing law

This Agreement is governed by and is to be construed in accordance with the laws in force in the place stated in Schedule 1.

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## 7. Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the in the place stated in Schedule 1.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

## SCHEDULE 1

1. **The Matter**

[to be inserted when it comes time for Expert determination]

2. **Governing law - the place**

[insert place - it should be the same as that nominated for the purposes of clause 18.2 of the Contract.]

3. **Jurisdiction - the place**

[insert place - it should be the same as that nominated for the purposes of clause 18.3 of the Contract.]

4. **Place for conferences with Expert (clause 3.1 of Schedule 2)**

[insert place - it should be the same place as that nominated for meetings and hearings the purposes of clause 15.13 of the Contract.]

## SCHEDULE 2

### Rules for Expert Determination Process

#### 1. Commencement

Except as provided in clause 4.3 of these Rules, the Expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

#### 2. Written submissions

2.1 No later than 7 days after the date this process begins, Party A (ie the Party who gave notice under clause 15.1 of the Contract) must, in addition to any particulars provided by Party A under clause 15.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.

2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.

2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

#### 3. Conference

3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in the place nominated in Schedule 1.

3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.

3.4 The Parties:

(a) may be accompanied at a conference by legal or other advisers; and

(b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.

3.5 The conference must be held in private.

3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

#### 4. General

4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Contract.

- 4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:
- (a) with the prior consent of the Parties;
  - (b) as may be required by law; or
  - (c) as may be required in order to enforce the determination of the Expert.
- 4.3 The Expert must:
- (a) inform the Parties of:
    - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
    - (ii) any interest the Expert has in the matters in dispute; and
    - (iii) any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
  - (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise or it is otherwise determined under clause 15 of the Contract, terminate the proceedings.
5. **The determination**
- 5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 20 Business Days after the Expert's acceptance of appointment, the Expert must:
- (a) determine the Matter between the Parties; and
  - (b) notify the Parties of that determination.
- 5.2 The determination of the Expert must meet the requirements of the Contract.
- 5.3 To the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a party gives a notice of appeal to the other party in accordance with clause 15.12(b) of the Contract.
6. **Costs**
- Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.
7. **Modification**
- These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

## APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS

### Code of Conduct for an Expert

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

**SCHEDULE 3**

**The Expert's Fees and Disbursements**

[to be inserted when it comes time for expert determination]



## Schedule 10 - Deed of Novation

### Dated the Effective Date

Parties [ ] (Retiring Party)  
[ ] (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

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## 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], and where the agreement is a Standing Offer Deed, includes all the Contracts formed in accordance with the Standing Offer Deed (except for any Contracts that are identified in the Schedule as being excluded).

**Contract Guarantees** means the guarantees (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 or insurer and, 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.

**GST** means the Goods and Services Tax as defined in the A New Tax System (Goods and Services) Act 1999 (Cth).

**Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

**Related Entity** means:

- (a) in respect of [insert party which is Sydney Trains] any 'public transport agency' (as defined in the Transport Administration Act 1988 (NSW)), the State of NSW, and any entity controlled by any of them; and
- (b) in respect of the other parties, 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, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

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## 2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.

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## 3. Novation

### 3.1 Novation

- (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.
- (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

- (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.
- (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

- (a) The Continuing Party releases the Retiring Party from:
- (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, Claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of 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; and
- (b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

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## 4. Insurance

As 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; and
- (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.

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## 5. Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees 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.

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## 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.

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## 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.

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## 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.

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## 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 clause 9.2(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.

[insert appropriate execution blocks for each party]

**Schedule to Novation Deed**

Contracts excluded from definition of Contract: *[list Contracts, if any]*

### Schedule 11 - KPIs

There may be additional KPIs applicable to the Contractor's Activities. See Annexure D of the Standing Offer Deed (if any) or Schedule 3 of the General Conditions.

GIPA Act s.14,  
Table 4(b)

Key Performance Indicator (KPIs)		Measure
<b>Safety and environment</b>		
1.	Minor incidents	Number of minor safety/environmental incidents and near misses
2.	Major incidents	Number of major safety/environmental incidents, including Lost Time Injuries (LTIs), Medical Treatment Injuries (MTIs) and safe working incidents
3.	Incident reporting	Percentage of safety/environmental incidents reported on within the timeframe and in the format specified by Sydney Trains
4.	Corrective actions	Percentage of corrective actions closed out within the timeframe specified by Sydney Trains following inspection/audit/investigation by Sydney Trains
<b>Delivery</b>		
5.	Delivery In Full On Time (DIFOT)	Percentage of Contractor's Activities commenced and completed in accordance with contractual timeframes
6.	Rectification of defects or errors	Percentage of defects or errors in Contractor's Activities rectified or replaced within timeframe specified by Sydney Trains
7.	Management of subcontractors	Number of complaints received by Sydney Trains in relation to non-payment of subcontractors
<b>Quality</b>		
8.	Quality of workmanship	Number of instances of poor quality workmanship, including any damage to existing infrastructure and property
9.	Skills and experience of Personnel	Number of incidents of Contractor's Personnel who are not competent and/or appropriately accredited, qualified, licensed and/or trained
10.	Quality assurance	Number of instances of quality assurance documentation being out of date or incorrect
11.	Accuracy of invoices and other claims	Percentage of invoices and other claims under the Contract that have no errors and contain all required information
<b>Value</b>		
12.	Legitimacy of Contractor claims	Percentage of claims for variations, extensions of time, delays costs and other adjustments to

Key Performance Indicator (KPIs)		Measure
		the Contract Price accepted by Sydney Trains or upheld following dispute resolution (claims the subject of unresolved dispute resolution not be to counted)
13.	Cost saving initiatives	Number of tangible cost saving initiatives identified
<b>Innovation and Continuous Improvement</b>		
14.	Continuous improvement initiatives	Number of value adding initiatives identified to improve process efficiency and maintain best practice
15.	Performance Reports	Percentage of monthly KPI Performance Reports provided to Sydney Trains by the required date and which contain accurate and complete information

**Schedule 12 - Subcontractor's Statement**

**SUBCONTRACTOR'S STATEMENT  
REGARDING WORKERS COMPENSATION, PAYROLL TAX AND  
REMUNERATION (Note 1 - see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

**SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.**

Subcontractor: ..... ABN: .....

(Business name)

of .....

(Address of Subcontractor)

has entered into a contract with ..... ABN:.....

(Business name of principal contractor) (Note 2)

Contract number/identifier

.....

(Note 3)

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, (Note 4)

subject of the payment claim dated: ...../...../..... (Note 5)

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick  if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt

employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../..... (Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature ..... Full name.....

(g) Position/Title ..... Date ...../...../.....

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

## Notes

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987 (NSW), Schedule 2 Part 5 Payroll Tax Act 2007 (NSW) and section 127 of the Industrial Relations Act 1996 (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the Industrial Relations Act 1996 (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 (NSW) defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the Industrial Relations Act 1996 (NSW) states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

#### **Statement Retention**

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

#### **Offences in respect of a false Statement**

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

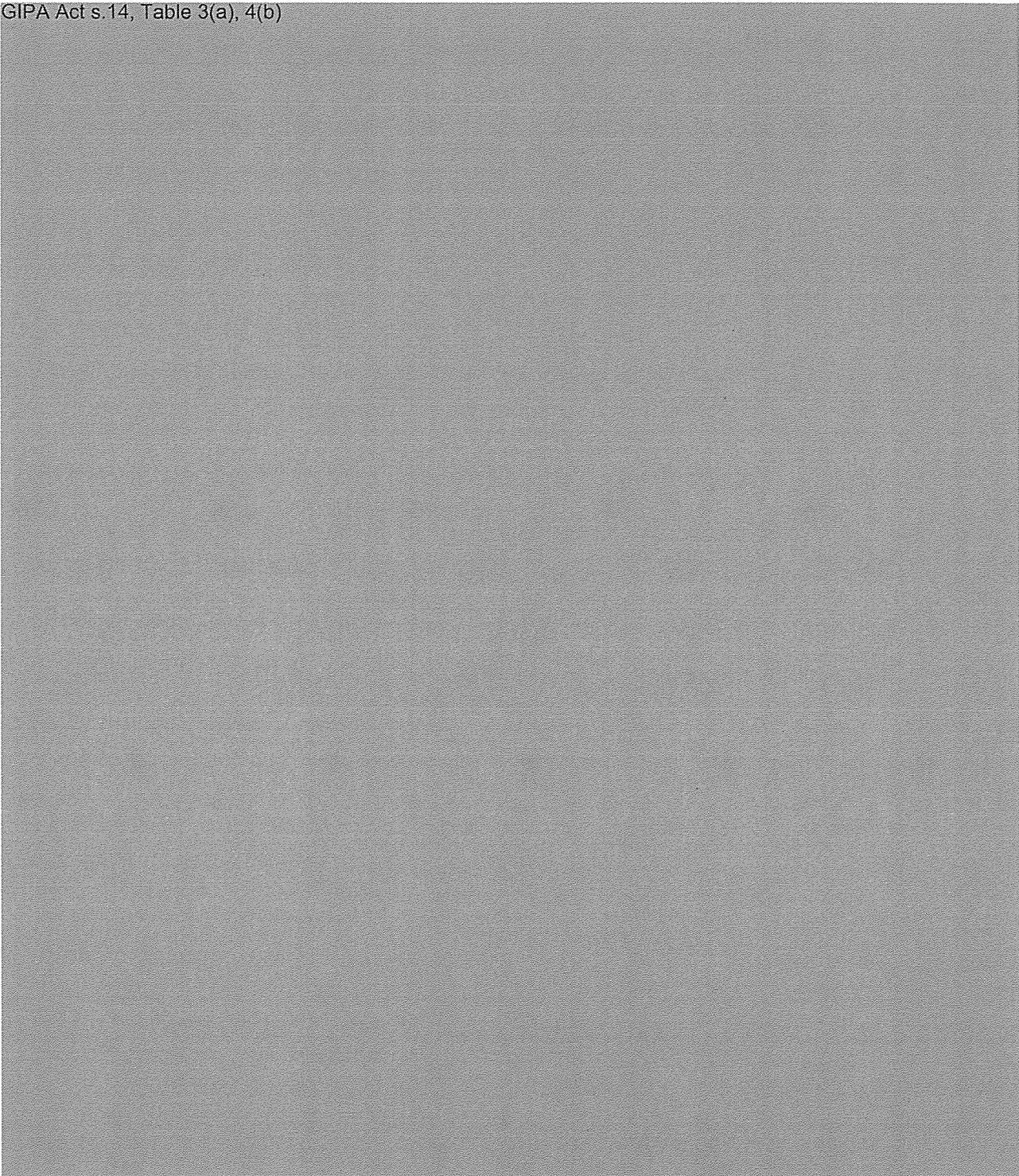
In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

#### **Further Information**

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**Schedule 13 - Insurance warranties and representations**

GIPA Act s.14, Table 3(a), 4(b)



**Exhibit A - Statement of Work**

The Contractor must supply the Goods in accordance with the specifications and standards below.

Engineering Specifications and Standards for Concrete Sleepers (Goods)		
Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods must comply with the below Railcorp/Australian Specifications/Standards
GIPA Act s.14, Table 4(b)		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14
		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14
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		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14

Engineering Specifications and Standards for Concrete Sleepers (Goods)		
Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods must comply with the below Railcorp/Australian Specifications/Standards
GIPA Act s. 14, Table 4(b)		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14
		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14
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		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14

Engineering Specifications and Standards for Concrete Sleepers (Goods)		
Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods must comply with the below Railcorp/Australian Specifications/Standards
GIPA Act s.14, Table 4(b)		Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14
		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14
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Engineering Specifications and Standards for Concrete Sleepers (Goods)		
Principal's Material (Goods) Numbers	Contractor's Material (Goods) Part Number	Goods must comply with the below Railcorp/Australian Specifications/Standards
GIPA Act s.14, Table 4(b)		Australian Standards AS1085.14
		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14
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<b>Engineering Specifications and Standards for Concrete Sleepers (Goods)</b>		
<b>Principal's Material (Goods) Numbers</b>	<b>Contractor's Material (Goods) Part Number</b>	<b>Goods must comply with the below Railcorp/Australian Specifications/Standards</b>
GIPA Act s.14, Table 4(b)		TRACK SUPPORT Australian Standards AS1085.14
		Railcorp Engineering Specification Track SPC 232 CONCRETE SLEEPERS Railcorp Engineering Standard Track ESC 230 SLEEPERS AND TRACK SUPPORT Australian Standards AS1085.14
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Further requirements:

GIPA Act s.14, Table 4(b)

1. **Delivery Point:**  
(Clause 1.1)
2. **Number of copies of Design Documentation to be submitted or resubmitted by the Contractor to the Principal:** 2  
(Clause 6.5)
3. **Warranties required to be procured by the Contractor from Subcontractors and provided to the Principal:** Warranties required  
(Clause 8.6)
4. **Earliest date and/or time when Goods may be delivered to the Delivery Point:** As per Purchase Order  
(Clause 13.2(a))
5. **Packaging requirements for transportation of the Goods:** As per instructions provided by the Principal  
(Clause 13.2(f))
6. **Mode of delivery:** As per instructions provided by the Principal  
(Clause 13.2(g))

