

**Maintenance Agreement for
Mechanised Track Patrol Vehicles**

Contract Number: CW46710

Parts A – Deed of Agreement

DEED OF AGREEMENT

THIS DEED is made on [1st April 2015]

BETWEEN **SYDNEY TRAINS (ABN 38 284 779 682)** of 18 Lee Street, Chippendale, NSW 2008 ("**Principal**")

AND **MER MEC S.p.A. Australian Branch (ABN 64 165 242 099)** C/- TMF Corporate Services (Aust) Pty Limited Level 16, 201 Elizabeth Street Sydney NSW 2000 Australia ("**Contractor**")

AND **MER MEC S.p.A.** of Via Oberdan 70 70043, Monopoli, BA, Italy ("**Mer Mec SpA**").

RECITALS

- A. Pursuant to the DBC Contract, RailCorp procured two mechanised track patrol vehicles (including application software) from Mer Mec SpA.
- B. The Principal operates a railway passenger service and for that purpose requires maintenance, repair and support services to be performed in respect of the System to assist it to inspect and certify rail infrastructure.
- C. The Contractor has offered to carry out such maintenance, repair and support services for the Principal in accordance with the Contract, and the Principal has accepted that offer.

OPERATIVE

1. The Principal and the Contractor hereby promise to carry out and complete their respective obligations in accordance with the following documents:
 - (a) this Deed of Agreement;
 - (b) the General Conditions of Contract, together with all attachments thereto (specifically including the Governance Requirements and the Reliability Requirements); and
 - (c) the Technical Specification.
2. For the purpose of the obligations referred to in Clause 1, the Principal and the Contractor acknowledge and agree that:
 - (a) the Principal:
 - (i) is a corporation constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW);

- (ii) in accordance with the *Transport Administration (General) Regulation 2013* (NSW), has a number of objectives under the *Transport Administration Act 1988* ("Act"), including to:
 - (A) deliver safe and reliable railway passenger services in New South Wales in an efficient, effective and financially responsible manner;
 - (B) be a successful business and, to that end:
 - (I) operate at least as efficiently as any comparable business; and
 - (II) maximise the net worth of the State of New South Wales' investment in the Principal; and
 - (C) exhibit a sense of social responsibility by having regard to the interests of the community in which it operates; and
 - (iii) in accordance with the *Transport Administration (General) Regulation 2013* (NSW), under the Act must operate railway passenger services in New South Wales;
- (b) the Contract represents a vital stage in the improvement of the efficiency, safety and reliability of railway passenger services in New South Wales;
 - (c) the due and proper performance of the Contract by the Contractor will significantly enhance the Principal's business; and
 - (d) without limiting any of the foregoing, a core part of the Principal's business in providing railway passenger services in the greater Sydney metropolitan area during the critical periods of 4.00am to 9.00am and 2.00pm to 7.00pm each Business Day and that any disruption and/or delay to these services inevitably:
 - (i) causes serious inconvenience to the many thousands of commuters who rely upon these peak period services to transport them efficiently and safely to and from their places of employment;
 - (ii) tarnishes the Principal's business reputation as a provider of efficient, safe and reliable railway passenger services; and
 - (iii) damages the Principal's business.

3. The Principal and the Contractor acknowledge and agree that:

- (a) one purpose of the Services under the Contract is to enable the Principal to more efficiently inspect and certify rail infrastructure to facilitate the efficient, safe and reliable conveyance of railway passengers and operation of the railway system of New South Wales. In particular, the Vehicles must be:
 - (i) able to operate with optimal safety and comfort for drivers and other members of the crew;

- (ii) maintained so as to minimise their whole of life cost; and
 - (iii) maintained so as to be capable of meeting the requirements of the Contract; and
 - (b) the Technical Specification, the Reliability Requirements and the Governance Requirements set out the minimum requirements for the achievement of these objectives and if any of these minimum requirements are inadequate for achieving these objectives, the Contractor must provide the Services under the Contract in a manner that ensures the objectives are achieved.
4. The Principal, Mer Mec SpA and the Contractor acknowledge and agree that certain services, works and activities ("**Early Works**") have been effected by Mer Mec SpA under the Early Works Agreement (or otherwise) prior to the Date of the Deed of Agreement.
5. The Principal and Mer Mec SpA agree that the Early Works Agreement is hereby immediately terminated upon the Date of the Deed of Agreement, without the need for either party to give notice to the other.
6. The parties:
- (a) acknowledge and agree that the Early Works form part of the Services under the Contract;
 - (b) acknowledge and agree that the performance of the Early Works by Mer Mec SpA will be deemed to be governed by the terms of the Contract, and the Contractor warrants to the Principal that the Early Works were carried out in accordance with the requirements of the Contract; and
 - (c) acknowledges that payments made to Mer Mec SpA in connection with the Early Works will be deemed to have been a payment by the Principal under the Contract on account of the Contract Price and other amounts payable under the Contract.
7. The Contractor confirms that the warranties and undertakings set out in the Contract apply to the Early Works as part of the Services under the Contract (without prejudice to the generality of such warranties and undertakings).

EXECUTED as a deed.

17th June 2015

SIGNED, SEALED AND DELIVERED)
for and on behalf of **SYDNEY TRAINS**)
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)

Signature of authorised delegate

GIPA Act s.14, Table 3(a)

Name of witness in full

GIPA Act s.14, Table 3(a)

Name of authorised delegate

SIGNED, SEALED AND DELIVERED)
for and on behalf of **MER MEC S.p.A.**)
(Australian Branch) by its authorised)
representative in the presence of:

GIPA Act s.14, Table 3(a)

Signature of Witness

GIPA Act s.14, Table 3(a)

Signature of authorised representative

GIPA Act s.14, Table 3(a)

Name of witness in full

GIPA Act s.14, Table 3(a)

Name of authorised representative

SIGNED, SEALED AND DELIVERED
for and on behalf of **Mer Mee SpA** by its
authorised delegate in the presence of:

)
)

GIPA Act s.14, Table 3(a)

GIPA Act s.14, Table 3(a)

Signature of Witness

Signature of authorised delegate

GIPA Act s.14, Table 3(a)

GIPA Act s.14, Table 3(a)

Name of witness in full

Name of authorised delegate

**Maintenance Agreement for
Mechanised Track Patrol Vehicles**

Contract Number: CW46710

**Part C
General Conditions of Contract**

**GENERAL CONDITIONS OF CONTRACT
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GENERAL CONDITIONS OF CONTRACT

1. APPLICABLE LAW, CURRENCY, LANGUAGE AND MEASUREMENT

The law of New South Wales will apply to the Contract and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

Unless otherwise provided under the Contract, payments will be calculated and made in Australian currency in Sydney, New South Wales. The party required to make a payment under the Contract may do so by way of electronic transfer of the payment to an account of a financial institution chosen by the other party.

The English language must be used for:

- (a) documents supplied under the Contract; and
- (b) communication between the Principal, the Principal's Representative and the Contractor.

Measurements of physical quantities will be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth).

2. DEFINITIONS, INTERPRETATION AND GENERAL PROVISIONS

2.1 Definitions

Except where the context otherwise requires, whenever used in this Contract, the following words and expressions have the meanings given to them in this Clause 2.1:

"Additional Services" means any additional services ordered by the Principal under clause 29.8, being services that are not Core Services.

"Approval" means any agreement, approval, consent, determination, licence, permission or permit, which is required from any relevant Authority or under any applicable Law or requirement made under a Law to provide the Services under the Contract.

"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.

"Business Day" means any day from Monday to Friday, excluding public holidays in New South Wales.

"CDRL No." means a Contract Deliverable designated by a "CDRL No." set out in Attachment B to the Governance Requirements.

"Change in Law" means:

- (a) a change in an existing Law (excluding an Approval); or
- (b) a new Law (excluding an Approval),

excluding a change in an existing Law, or a new Law;

- (c) relating to Taxes; or

- (d) which, as at the Date of the Deed of Agreement:
- (i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or
 - (ii) a party experienced and competent in the provision of services similar to the Services provided under the Contract would have reasonably foreseen or anticipated,

in substantially the same form as the change in an existing Law or new Law eventuating after the Date of the Deed of Agreement.

"Claim" includes any claim:

- (a) under, arising out of, or in connection with, the Contract;
- (b) arising out of, or in connection with, any task, thing or relationship connected with the provision of the Services under the Contract or either party's conduct before the Date of the Deed of Agreement; or
- (c) otherwise at law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

"Consequential Loss" means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach.

"Contract" means the agreement between the Principal and the Contractor for the provision of the Services evidenced by the Deed of Agreement and the documents specified in Clause 1 of the Deed of Agreement.

"Contract Deliverable" means any document, procedure, plan, programme, system or other item which the Contractor is required to develop and implement with respect to the provision of the Services under the Contract.

"Contract Documentation" means all documentation in computer readable or written forms brought (whether before, on or after the Date of the Deed of Agreement) or required to be brought into existence as part of, or for the purpose of, providing the Services under the Contract, including:

- (a) not used;
- (b) not used;
- (c) all Contract Deliverables; and

- (d) computer software (including both source code and object code versions (where the computer software has been specifically created or specifically modified for the purposes of providing the Services under the Contract)), including the Software.

"Contract Price" means the sum of the Core Fees and any Variable Fees.

"Contractor" means the person named as the "Contractor" in the Deed of Agreement.

"Contractor's Representative" means the person named in Attachment "A" or any other person from time to time appointed by the Contractor to replace that person under Clause 20.2.

"Contributed Spare Parts" means those Spare Parts provided to the Contractor by the Principal on or around the Date of the Deed of Agreement.

"Core Fees" means the fees calculated in accordance with Part 1 of Attachment "C" (which amount is exclusive of GST, unless specified otherwise), as may be adjusted under the Contract.

"Core Services" means the Maintenance Services, the Support Services and the Testing Services and any other services ancillary or incidental thereto, but excluding any Additional Services.

"Date of the Deed of Agreement" means the date appearing on the Deed of Agreement.

"DBC Contract" means the contract for the design, building and commission of mechanised track patrol vehicles entered into between RailCorp and Mer Mec SpA on 20 May 2011, as amended from time to time.

"DBC Contract Defect" means any defect (including any latent defect) or omission in a Vehicle or any aspect of the work under the DBC Contract which is not in accordance with the requirements of the DBC Contract, including any such defect, omission or aspect arising from:

- (a) the DBC Design not being in accordance with the requirements of the DBC Contract; or
- (b) any workmanship or materials required under the DBC Contract being of a lesser quality than that required by the DBC Contract or otherwise not being in accordance with the requirements of the DBC Contract.

"DBC Design" has the meaning given to the term "Design" in the DBC Contract.

"Deed of Agreement" or "Agreement" means the deed of agreement to which these General Conditions of Contract are attached.

"Defect" means any:

- (a) DBC Contract Defect;
- (b) Services Defect; or
- (c) Reliability Defect.

"Diagnostic System" means the Hardware, together with the Software located on the Vehicles, but specifically excluding the Office System.

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

"Early Works" has the meaning given in Clause 4 of the Deed of Agreement.

"Early Works Agreement" means the contract between the Principal and Mer Mec SpA dated on or around 28 May 2014 under which Mer Mec SpA provides to the Principal services similar or identical to the Services, with a contract reference number of CJ2034.

"Excepted Risk" means:

- (a) any default under the terms of the Contract or negligent act or omission of the Principal, the Principal's Representative or an Other Contractor engaged by either of them;
- (b) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents.

"Existing Intellectual Property" means all Intellectual Property relating to the Contract Documentation or the System that is in existence as at the earlier of the date of commencement of the provision of the Services under the Contract and the Date of the Deed of Agreement.

"Final Claim" means a payment claim under Clause 31.5.

"Final Payment Notice" means a payment notice issued under Clause 31.6.

"Geomatic" and **"GT"** means Geomatic Technologies Pty Limited (ACN 081 782 863) of Level 6, 4 Riverside Quay Southbank Victoria 3006.

"Good Industry Practices" means that degree of care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced expert professional contractor engaged in carrying out activities the same as or similar to the provision of the Services under the Contract for an organisation like the Principal, seeking to comply with its contractual and legal obligations and having regard to the requirements of the Principal and any other circumstances affecting the provision of the Services under the Contract.

"Governance Requirements" means the document named as such, the current version of which is set out in Attachment Z, including any further attachments thereto.

"GST" has the meaning given to it in the GST Legislation.

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

"Handover Plan" means a plan prepared by the Contractor in accordance with Clause 37.1.

"Hardware" means the components of the System which are tangible goods, plant and materials (specifically including the hardware provided by Mer Mec SpA under the DBC Contract) and

which are installed or otherwise located on the Vehicles as set out more fully in Attachment V, but specifically excluding the Vehicles themselves.

"Hazardous Materials" means any hazardous or other materials including any form of organic or chemical matter whether solid, liquid or gas (including asbestos, toluene and polychlorine biphenyls) which have the capacity to cause personal injury or death, damage to property, create a nuisance or in any way pollute or contaminate the environment.

"Information Documents" means:

- (a) the documents specified in Attachment "B" as "Information Documents";
- (b) all other documents provided to the Contractor prior to the Date of the Deed of Agreement and which were expressly stated to be "Information Documents"; and
- (c) any other information or document which is referred to or incorporated by reference in information or a document referred to in paragraphs (a) or (b).

"Intellectual Property" includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know-how), circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

"Key Performance Indicators" or "KPIs" means the key performance indicators set out in the Reliability Requirements.

"Key Person" means an individual referred to in Attachment "E", including the Contractor's Representative, as replaced from time to time in accordance with Clause 20.2.

"Law" means:

- (a) Commonwealth, New South Wales or local government legislation, including regulations, by-laws and other subordinate legislation;
- (b) common law or equity; and
- (c) Approvals.

"Maintenance Manual" means the manual of that name to be prepared, updated, amended and developed by the Contractor in accordance with the Technical Specification, the current version of which is set out in Attachment X.

"Maintenance Schedule" means the schedule set out in Attachment "K" for the performance of maintenance, repair, support and replacement activities forming part of the provision of the Services (in particular, the Maintenance Services) under the Contract, as that schedule may be updated, adjusted and amended in accordance with the Contract.

"Maintenance Services" means the services set out or referred to as such in the Technical Specification.

"Mer Mec SpA" has the meaning given in the Deed of Agreement.

"Office System" means the Software which is not located on the Vehicles, specifically including the Ramsys software.

"O&M Documentation" has the meaning given in the DBC Contract.

"OEM" means "original equipment manufacturer".

"Other Contractor" means any contractor (other than the Contractor and its subcontractors), consultant, tradesperson or other person engaged by the Principal, RailCorp or their agents or contractors to do work for them, including Geomatic.

"Payment Schedule" means the payment schedule set out in Part 11 of Attachment "C".

"Personnel" means:

- (a) in respect of the Contractor, any directors, officers, employees, consultants, agents, advisors, contractors, subcontractors and other persons engaged by the Contractor to perform its obligations under this Contract; and
- (b) in respect of the Principal, any directors, officers, employees, consultants, agents, advisors, contractors, subcontractors and other persons engaged by the Principal to perform its obligations under this Contract (other than the Contractor).

"PPS Act" means the *Personal Property Securities Act 2009* (Cth).

"PPS Law" means:

- (a) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time; and
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

"Principal" has the meaning given in the Deed of Agreement.

"Principal's Representative" means the person named in Attachment "A" as the Principal's Representative or any other person from time to time appointed by the Principal to replace that person under Clause 18.

"Ramsys" means the in-office client/server application software known as RAMSYS, the current version of which at the Date of the Deed of Agreement is version 2.7.3, including as the same may be modified, enhanced, improved or customised during the Term whether during the ordinary course or pursuant to any Additional Services.

"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) of Level 20, 477 Pitt Street, Sydney NSW 2000.

"Rate Card" means the schedule of hourly rates charged by the Contractor in respect of the various Additional Services set out therein, as found in Part 10 of Attachment C.

"Reference Documents" means:

- (a) the documents specified in Attachment "B" as "Reference Documents"; and
- (b) all other documents provided to the Contractor or Mer Mec SpA prior to the Date of the Deed of Agreement and which were expressly stated to be "Reference Documents".

"Reliability Defect" means any failure in respect of the System or the provision of the Services under the Contract to satisfy the Reliability Requirements.

"Reliability Requirements" means the document named as such, the current version of which is set out in Attachment Y, including any further attachments thereto.

"Security Interest" has the meaning given in Clause 38.1.

"Services" means the Core Services and any Additional Services.

"Services Defect" means any:

- (a) defect (including any latent defect), fault or omission in the Services provided under the Contract or any aspect of the provision of the Services under the Contract or the System which is not in accordance with the requirements of the Contract, including any such defect, fault, omission or aspect arising from any workmanship or materials being of a lesser quality than that required by the Contract or otherwise not being in accordance with the requirements of the Contract; or
- (b) without limiting the generality of paragraph (a) or Clause 3.3(i), failure by the Contractor to comply with Clause 3.3(i).

"Site" means the premises set out in Attachment "A".

"Site Conditions" means the physical conditions and characteristics of the Site, any land or other facilities to which the Contractor obtains access for the purpose of providing the Services under the Contract, and their surroundings, including water, atmospheric and sub-surface conditions and characteristics, equipment, tools and other physical constraints.

"Software" means the components of the System which are not Hardware.

"Spare Parts" means spare parts for the Hardware, excluding the Vehicles.

"Subcontract" means a subcontract with a Subcontractor.

"Subcontractor" means any person engaged by the Contractor in relation to the Contract (other than its employees) to supply goods or services (including professional services and plant hire) or any combination of these.

"Support Services" means the services set out or referred to as such in the Technical Specification.

"Sydney Trains" means the corporation by that name constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW).

"System" means the Diagnostic System and the Office System (as set out more fully in Attachment V), as the same may be amended, modified or updated in accordance with this Contract.

"Taxable Supplies" has the meaning given to it in GST Legislation.

"Taxes" means income, stamp, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

"Technical Specification" means the document of that name found in Part E of this Contract.

"Term" means the period of time commencing on the Date of the Deed of Agreement and expiring GIPA Act s.14, Table (4) unless extended in accordance with clause 2.20 or terminated in accordance with its terms.

"test" includes ascertain, check, examine, inspect and measure.

"Testing Services" means the testing services set out or referred to as such in the Technical Specification.

"Variable Fees" means the fees payable for the Additional Services, calculated in accordance with Part 2 of Attachment "C" (which amount is exclusive of GST, unless specified otherwise), as may be adjusted under the Contract.

"Variation" means a variation to the Services provided under the Contract, including any increase, addition, decrease, omission or change to the scope of the Services provided under the Contract.

"Vehicle" has the meaning given in the DBC Contract, but specifically excludes the Diagnostic System.

"Warranty Period" has the meaning given in the DBC Contract.

"WHS Legislation" means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW); and
- (b) all other Laws relating to work health and safety which apply in the jurisdiction or jurisdictions in which the work under the Contract are being executed.

"work under the DBC Contract" has the meaning given to the term "work under the Contract" in the DBC Contract.

2.2 Interpretation

In this Contract unless the context indicates a contrary intention:

- (a) the expression "person" includes an individual, body politic, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";

- (c) words denoting the singular include the plural and vice versa;
- (d) references to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
- (e) headings are for convenience only and do not affect interpretation;
- (f) references to Clauses or Attachments are references to Clauses or Attachments of, or to, this Contract;
- (g) references to this Contract or to any other deed, agreement, document or instrument are deemed to include, respectively references to this Contract or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (h) 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 object of that Authority, institute, association or body;
- (i) words denoting any gender include all genders;
- (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) a reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision and ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (l) no rule of construction applies to the disadvantage of a party on the basis that that party put forward the Contract or any part;
- (m) a reference to "\$" is to Australian currency;
- (n) where under the Contract:
 - (i) a Direction is required to be given;
 - (ii) payment of money must be made;
 - (iii) not used; or
 - (iv) a breach must be remedied,

within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in New South Wales will not be counted in computing the number of days;

- (o) for all purposes other than as set out in sub-clause (n), "day" means calendar day;
- (p) a reference to a "month" is a reference to a calendar month;
- (q) a reference to "an act or omission of the Contractor" includes a breach of the Contract by the Contractor; and
- (r) if the day on or by which anything is to be done under this Contract is not a Business Day, that thing must be done no later than the next Business Day.

2.3 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 Contract 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 Contract.
- (b) Any waiver or consent given by the Principal or the Principal's Representative under this Contract 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 or the Principal's Representative of a breach of any term of this Contract will operate as a waiver of another breach of that term or of a breach of any other term of this Contract.

2.4 Indemnity

The Contractor must indemnify the Principal against:

- (a) any liability to, or claim by, any person; and
- (b) all costs, losses and damages suffered or incurred by the Principal,

arising out of or in connection with **GIPA Act s.14, Table (4)**

2.5 Indemnities to Survive

Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract.

Nothing in this Clause 2.5 prevents any other provision of this Contract, as a matter of interpretation also surviving the termination of this Contract.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract.

2.6 Entire Contract

Despite any payments which may be made to the Contractor under Clause 31, this Contract is an entire contract.

2.7 Principal May Act

Without limiting Clause 34.1, if the Contractor fails to perform an obligation under the Contract that the Contractor was obliged to perform in accordance with the Contract, the Principal may:

- (a) in relation to any obligation:
 - (i) arising from a Direction given to the Contractor by the Principal or the Principal's Representative under a provision of the Contract; or
 - (ii) relating to the safety of any person or property,
either by itself or by a third party, perform the obligation without giving any notice to the Contractor of its intention to do so; or
- (b) in relation to any other obligation, either by itself or by a third party, perform the obligation, provided that:
 - (i) it or the Principal's Representative gives the Contractor a notice stating:
 - (A) the Principal's intention to perform the obligation; and
 - (B) a reasonable time within which the Contractor must:
 - (I) commence performance of the obligation in accordance with the Contract; and
 - (II) complete performance of the obligation in accordance with the Contract; and
 - (ii) the Contractor does not either:
 - (A) commence performance of the obligation in accordance with the Contract; or
 - (B) complete performance of the obligation in accordance with the Contract,
within the time stated in the Principal's or Principal's Representative's notice.

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

2.8 Evidence of Agreement

This Contract embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties and supersedes any prior agreement (whether in writing or not in writing) between the parties, in relation to the subject matter of this Contract.

2.9 Principal's Discretion

Subject to any contrary express provisions of this Contract, the Principal or the Principal's Representative may exercise his power or entitlement as conferred by this 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 in good faith or as required by any other legal doctrine which in any way limits the express words used in the provision of this Contract conferring the discretion, power or entitlement.

2.10 Assignment by Contractor

The Contractor must not assign or transfer, grant security over, or otherwise deal with, its rights or liabilities under the Contract without the prior written consent of the Principal.

2.11 Statutory Discretion

- (a) This Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal or RailCorp to exercise any of its functions and powers pursuant to any legislation.
- (b) The Contractor acknowledges and agrees that, without limiting sub-clause (a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by the Principal under this Contract and will not entitle the Contractor to make any Claim against the Principal.

2.12 Severability of Provisions

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

2.13 Joint and several liability

The obligations of the Contractor, if more than one person, under this Contract, are joint and several and each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Contract) of the other as if those acts or omissions were its own.

2.14 Cost

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Contract and the performance of its obligations in respect of this Contract.

2.15 Taxes

Without limiting Clause 10.1, the Contractor must pay all Taxes which may be payable in respect of the Services provided under the Contract, including any customs duty and primage applicable to imported materials, plant and equipment required for the provision of the Services under the Contract.

2.16 Variations

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

2.17 No partnership, joint venture or other fiduciary relationship

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

2.18 Provisions Limiting or Excluding Liability

Any provision of this Contract which seeks to limit or exclude a liability of the Principal or the Contractor is to be construed as doing so only to the extent permitted by law.

2.19 Contractor's cost

Except as expressly set out in the Contract, the Contractor must perform all of its obligations under the Contract at its own cost.

2.20 Extension of Term

The Principal may, in its absolute discretion, continually extend the Term GIPA Act s.14, Table (4) by notice in writing to the Contractor, provided it does so no later than 2 months (or such lesser period agreed by the parties in writing) before the expiry of the Term. For the avoidance of doubt, the Principal may exercise its right under this Clause 2.20 to extend the Term more than once and there is no limit on the number of times the Principal may exercise such right.

2.21 CPI adjustment of rates and prices

If:

- (a) the Principal issues a notice under Clause 2.20; and
- (b) within 1 month after the date of the Principal's notice under Clause 2.20, the Contractor notifies the Principal that the Contractor wishes the prices and rates in Attachment "C" to be adjusted in accordance with Attachment "F" for the period by which the Term is extended,

the prices and rates in Attachment "C" will be adjusted in accordance with Attachment "F" and such adjusted prices and rates will apply in respect of all relevant Services provided under the Contract carried out during the period by which the Term is extended in accordance with Clause 2.20.

2.22 Expiry of Term

The parties acknowledge and agree that the expiry of the Term does not limit or otherwise affect the rights, entitlements, obligations and liabilities of a party that accrued prior to the expiry of the Term.

3. BASIC OBLIGATIONS

3.1 Performance and Payment

In accordance with the requirements of the Contract:

- (a) the Contractor must provide the Services to the Principal in respect of the System; and
- (b) the Principal must pay the Contractor the Contract Price.

3.2 Contractor's Responsibility

The Contractor will be solely responsible for the provision of the Services to the Principal in accordance with the requirements of this Contract and acknowledges that the Principal is relying, and has relied, upon the advice, skill and judgment of the Contractor in the performance of the Services under the Contract.

3.3 Contractor's Warranties

The Contractor:

- (a) acknowledges and agrees that the Principal has entered into this Contract on the basis that the Contractor is an expert in the provision of the Services, using the most modern technology and methodology and that it possesses the level of skill and expertise that would be expected of such persons such as to meet or exceed Good Industry Practice;
- (b) warrants that prior to the Date of the Deed of Agreement it:
 - (i) fully examined, checked and carried out an independent evaluation of the Contract (including the Governance Requirements, the Reliability Requirements, the Technical Specification and the Reference Documents) to ascertain whether they are proper, adequate and suitable for the purposes of enabling it to provide the Services in accordance with the Contract, including compliance with sub-clause (h) below;
 - (ii) in carrying out the examination, checking and independent evaluation referred to in sub-clause (i) above, exercised the standard of skill and expertise that would be expected of persons who possess the level of skill and expertise referred to in sub-clause (a); and
 - (iii) promptly informed the Principal in writing of any:
 - (A) ambiguity, discrepancy, inconsistency, error, omission or inaccuracy which it discovered in the Contract (in particular the Governance Requirements, the Reliability Requirements, the Technical Specification and the Reference Documents) in carrying out the

- examination, checking and independent evaluation referred to in sub-clause (i); and
- (B) other aspect of the Governance Requirements, the Reliability Requirements, the Technical Specification or the Reference Documents which as a result of the examination, checking and independent evaluation referred to in sub-clause (i), it believed may render those documents (or any part of them) improper, inadequate or unsuitable for the purposes of enabling it to provide the Services under the Contract, including compliance with sub-clause (h) below;
- (c) acknowledges and agrees that:
- (i) any ambiguity, discrepancy, inconsistency, error, omission, inaccuracy or other aspect of the kind referred to in sub-clause (b)(iii) has been addressed by the Principal;
 - (ii) it carefully reviewed the Governance Requirements, the Reliability Requirements, and the Technical Specification and, prior to the Date of the Deed of Agreement, proposed such changes to those documents as were necessary to satisfy the requirements of sub-clause (c)(iii); and
 - (iii) to the extent that prior to the Date of the Deed of Agreement, the Governance Requirements, the Reliability Requirements, the Technical Specification or the Reference Documents (or any part of them) were improper, inadequate or unsuitable for the purposes of enabling the Contractor to provide the Services under the Contract, including compliance with sub-clause (h) below, due to any ambiguity, discrepancy, inconsistency, error, omission, inaccuracy or other aspect of the kind referred to in sub-clause (b)(iii), they are now so;
- (d) warrants that the Governance Requirements, the Reliability Requirements, the Technical Specification and the Reference Documents are proper, adequate and suitable for the purposes of enabling it to provide the Services under the Contract, including compliance with sub-clause (h) below;
- (e) warrants that it will immediately inform the Principal of any:
- (i) ambiguity, discrepancy, inconsistency, error, omission or inaccuracy which it discovers in the Governance Requirements, the Reliability Requirements, the Technical Specification or the Reference Documents while providing the Services under the Contract; and
 - (ii) other aspect of the Governance Requirements, the Reliability Requirements, the Technical Specification or the Reference Documents which the Contractor believes may render the same (or any part of them) improper, inadequate or unsuitable for the purposes of enabling it to provide the Services under the Contract, including compliance with sub-clause (h) below;
- (f) without limiting any other provision of the Contract, must ensure that the System is maintained, and otherwise provide the Services under the Contract:

- (i) in accordance with the Technical Specification, Maintenance Schedule and Maintenance Manual; and
 - (ii) so as to ensure that the Reliability Requirements are met or exceeded;
- (g) warrants that it will provide the Services under the Contract and otherwise maintain the System:
 - (i) in a proper and workmanlike manner;
 - (ii) using workmanship of the standard prescribed in the Contract or, to the extent it is not so prescribed, a standard consistent with the best industry standards for services of a nature similar to the Services provided under the Contract and which is fit for its purpose and otherwise meets or exceeds Good Industry Practice;
 - (iii) using parts, components, goods and materials of the nature described in the Contract, or failing any specific description then of the best quality available which are of merchantable quality and fit for their intended purpose;
 - (iv) in accordance with any Direction given to it by the Principal or the Principal's Representative under, or purportedly under, a provision of the Contract, including any Variation directed by the Principal's Representative by a document titled "Variation Order" under Clause 29.2; and
 - (v) in accordance with any guidelines, processes, procedures or directions specified or issued from time to time by suppliers or manufacturers of Spare Parts or any other materials or parts forming part of the System;
- (h) warrants that the System will be maintained and repaired by the Contractor in accordance with the Contract and otherwise so as to remain, at all times during the Term:
 - (i) fit and adequate for the purposes for which they are intended;
 - (ii) in accordance with the Contract, including the Technical Specifications; and
 - (iii) in a manner sufficient to meet or exceed the Reliability Requirements;
- (i) must provide the Services (in particular the Maintenance Services) in accordance with, and at the times required by, the Maintenance Schedule and the Maintenance Manual, and otherwise carry out all preventative maintenance, repair, rectification, replacement and restoration work on the System as may be necessary or desirable to ensure compliance with its warranties and obligations under the Contract (including the Reliability Requirements);
- (j) warrants that the System will be capable of continuous and reliable operation throughout the Term;
- (k) acknowledges and agrees that:
 - (i) one of the Principal's key objectives in entering into the Contract is to minimise the whole of life cost of the Vehicles and the System;

- (ii) not used;
- (iii) not used; and
- (iv) not used;
- (l) must provide the Services under the Contract:
 - (i) in a diligent, timely, safe and professional manner and (without limiting sub-clause (g)) otherwise in accordance with Good Industry Practices; and
 - (ii) in accordance with the requirements of Law, applicable Australian standards and codes of practice;
- (m) must provide advanced written notice to the Principal's Representative of any work or activities that was not otherwise approved in connection with the Maintenance Schedule;
- (n) warrants that:
 - (i) it will, at all times during the Term, act in a manner to, as applicable, satisfy, meet or exceed each of the KPIs;
 - (ii) if, in the providing of Services under the Contract, it is required to replace any asset, material, plant, equipment or part forming part of the System, the replacement asset, material, plant, equipment or part will be of equal quality to those required by the Contract or the DBC Contract (as applicable), and otherwise fit and adequate for the purposes for which they are intended; and
 - (iii) all plant, equipment and materials (including chemicals) used in connection with the provision of the Services under the Contract (whether forming part of the System or not) will be used, operated and installed in accordance with Law and the relevant manufacturer's instructions;
- (o) except to the extent otherwise provided in this Contract, is responsible for providing all facilities, equipment, tools and parts necessary for the proper provision of the Services under the Contract; and
- (p) warrants that it has and will maintain, and its officers, employees and Subcontractors have and will maintain, all licenses, Approvals, registrations, qualifications and experience necessary to provide the Services under the Contract in accordance with the Contract.

3.4 Warranties Unaffected

The Contractor agrees that the warranties given in Clause 3.3 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the provision of the Services under the Contract and all maintenance and repair of, and provision of Support Services in respect of, the System notwithstanding:

- (a) any design work or other work carried out by others prior to, on or after the Date of the Deed of Agreement, including by Mer Mec SpA under the DBC Contract;

- (b) any comment upon, or review or rejection of, or other Direction in relation to, any Contract Deliverable, or any other aspect of the Services provided under the Contract by the Principal or the Principal's Representative;
- (c) not used; and
- (d) Variations.

3.5 All Inclusive

The Contractor has allowed (including in respect of the Contract Price) for the provision of all work and materials necessary for the provision of the Services under the Contract, whether or not expressly mentioned in the Contract.

Any such work and materials:

- (a) must be undertaken and provided by the Contractor at its own cost;
- (b) form part of the provision of the Services under the Contract and will not constitute a Variation; and
- (c) will not otherwise entitle the Contractor to make a Claim for such work and materials.

3.6 Contractor to Inform Itself

The Contractor warrants that it has and will be deemed to have done everything that would be expected of a leading world expert in the maintenance and repair of, and provision of the Services (including the Support Services) in respect of, the System using the most modern technology and methodology in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) accepting and dealing with all such risks for the Contract Price.

Without limiting the foregoing, the Contractor warrants that it has and will be deemed to have:

- (c) satisfied itself as to the sufficiency of the Contract Price, obtained all necessary information as to and made all necessary allowance for the risks, contingencies and other circumstances which could have an effect on the performance and cost of providing the Services under the Contract;
- (d) informed itself completely of the nature of the Services and the likely personnel and materials necessary for the provision of the Services under the Contract;
- (e) informed itself as to the availability and cost of labour including the costs of complying with obligations imposed by any agreement between the relevant industry unions and employers relating to the execution of work under the Contract internationally, nationally and in New South Wales;
- (f) informed itself of all requirements of all relevant Authorities in relation to the performance of the Services under the Contract generally and, without limitation, in relation to measures necessary to protect the environment from any adverse effect or damage arising from the provision of the Services under the Contract;

- (g) informed itself of the nature of the detailed requirements of the Governance Requirements, the Reliability Requirements and the Technical Specification;
- (h) informed itself of the rail infrastructure of the New South Wales heavy rail system and the facilities, capabilities and procedures of the Principal in regard to operation and maintenance of rolling stock; and
- (i) obtained all appropriate professional and technical advice on all matters and circumstances in respect of the matters referred to in this Clause 3.6 prior to entering into the Contract.

3.7 Information Documents

The Contractor:

- (a) acknowledges and agrees that the Information Documents were provided by the Principal or RailCorp for the information only of the Contractor;
- (b) warrants that it has not relied upon:
 - (i) the Information Documents; and
 - (ii) the accuracy, adequacy, suitability or completeness of the Information Documents,for the purposes of entering into the Contract; and
- (c) acknowledges and agrees that, without limiting Clause 3.8:
 - (i) neither the Principal nor RailCorp (nor anyone on their behalf) warrants, guarantees, assumes any duty of care or other responsibility for or makes any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
 - (ii) the Information Documents do not form part of the Contract and Clause 3.8 applies to the Information Documents; and
 - (iii) neither the Principal nor RailCorp will be liable upon any Claim by the Contractor arising out of, or in connection with:
 - (A) the Information Documents; or
 - (B) a failure by RailCorp, the Principal or the Principal's Representative to provide any information to the Contractor.

3.8 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, RailCorp or anyone on behalf of

the Principal or RailCorp or any other information, data, representation, statement or document for which the Principal or RailCorp is responsible or may be responsible whether or not obtained from the Principal or RailCorp or anyone on behalf of the Principal or RailCorp; or

- (ii) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

for the purposes of entering into the Contract;

- (b) warrants that, subject to the Contract, it enters into this Contract based on its own deductions, determinations, information, interpretations and investigations;
- (c) acknowledges that it is aware that the Principal has entered into this Contract relying upon the warranties, acknowledgements and agreements in Clauses 3.3, 3.6 and 3.7, and sub-clauses (a) and (b) of this Clause 3.8; and

- (d) releases and indemnifies, ^{GIPA Act s.14, Table (4)}

the Principal from and against:

- (i) any Claim against the Principal by, or liability of the Principal to, any person; or
- (ii) (without being limited by sub-clause (i)) any costs, losses or damages suffered or incurred by the Principal,

arising out of or in any way in connection with:

- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents by the Contractor or any other person to whom the Information Documents are disclosed;
- (iv) any breach by the Contractor of this Clause 3.8; or
- (v) the Information Documents being relied upon or otherwise used in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in the Australian Consumer Law (applied as a law of the Commonwealth in accordance with the *Competition and Consumer Act 2010* (Cth)), or any equivalent provision of State or Territory legislation).

3.9 Use of Principal's Facilities

Strictly to the extent necessary to provide the Services and subject always to Clauses 3.10 to 3.13, the Principal will provide the Contractor with access to the Vehicles at the Site.

The Principal makes no warranty or guarantee that any facilities to which it may provide the Contractor access from time to time (including the Site) in connection with the provision of Services under the Contract are or will be in any way suitable for the purposes of the performance of this Contract.

The Contractor:

- (a) agrees that the use by it of any facilities provided by the Principal (including the Site), including any work that may be carried out by an employee or Other Contractor of the Principal, will not in any way lessen or affect:
 - (i) its obligations, liabilities or responsibilities under this Contract or otherwise according to law; or
 - (ii) the Principal's rights against the Contractor, whether under this Contract or otherwise according to law;
- (b) must:
 - (i) check and examine the work carried out using the Principal's facilities; and
 - (ii) carry out any further work that may be necessary or desirable to ensure that the requirements of the Contract are and continue to be satisfied; and
- (c) will be responsible for any Defects carried out using the Principal's facilities.

3.10 Restrictions When Using Principal's Facilities

The Contractor must, when using the Principal's premises or facilities (including the Site), comply with:

- (a) all directions of the Principal's Representative; and
- (b) procedures (including those relating to work health and safety and security) in effect at or in regard to those premises or facilities.

3.11 Contractor's Non-Exclusive Access

The Contractor acknowledges and agrees that:

- (a) the Principal is not under any obligation to provide the Contractor with exclusive access to, or possession of, the Site, the Vehicles, the System or any part of the Site, the Vehicles or the System;
- (b) the Principal, RailCorp, Other Contractors and other persons may, from time to time during the Term, require access to the Site, the Vehicles and the System, including such areas of the Site, parts of the Vehicles and parts of the System where the Contractor may, at the relevant time, be engaged in the provision of the Services under the Contract;
- (c) without limiting Clause 3.14, the Contractor must cooperate with any Other Contractor or other person referred to in sub-clause (b) and carefully coordinate its own work with the work of any Other Contractor or other person referred to in sub-clause (b); and
- (d) the Contractor is not entitled to make any Claim against the Principal, and the Principal will not have any liability to the Contractor, arising out of or in connection with:
 - (i) any failure by the Principal to give the Contractor exclusive access to the Site, the Vehicles or the System; or

- (ii) any act or omission of any Other Contractor or other person referred to in sub-clause (b).

3.12 Additional Facilities

The Contractor:

- (a) must obtain such access to, use of, or other rights in respect of, facilities and land in addition to the Site, as may be necessary for the provision of the Services under the Contract in accordance with the Contract; and
- (b) releases the Principal from any Claims in respect of or relating to, and indemnifies the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of, or in connection with:
 - (i) the need for the Contractor to obtain access to, use of or other rights in respect of, facilities and land in addition to the Site in order to provide the Services under the Contract in accordance with the Contract;
 - (ii) the Contractor accessing or otherwise using any facilities and land in addition to the Site in connection with the provision of the Services under the Contract; and
 - (iii) any failure by the Contractor to obtain access to, use of, or other rights in respect of, facilities and land in addition to the Site as may be necessary to provide the Services under the Contract in accordance with the Contract.

3.13 Site Conditions

The Contractor:

- (a) bears the risk of all Site Conditions, and the risk that the Site Conditions encountered differ from that which the Contractor expected to encounter during the provision of the Services under the Contract; and
- (b) is not entitled to make any Claim against the Principal arising out of or in connection with Site Conditions actually encountered in providing the Services under the Contract.

3.14 Multi-Supplier Integration

- (a) The Contractor acknowledges that the Principal and RailCorp have implemented a multi-source environment in respect of their operations, including in relation to mechanised track patrol and the associated measurement systems (including the System):
 - (i) which provides options for the Principal and RailCorp to obtain the best mix of products and services for their operations; and
 - (ii) in which different suppliers work collaboratively and co-operatively with one another to deliver seamless and efficient products and services to the Principal and RailCorp.

- (b) It is essential to the Principal and RailCorp that all of their suppliers, including the Contractor and Geomatic, establish relationships between themselves through which they:
- (i) work together and co-ordinate their activities;
 - (ii) provide reasonable co-operation to enable the integration of the equipment, technology and services they each supply;
 - (iii) establish processes and procedures which preserve their responsibility for the equipment, technology and services they each supply; and
 - (iv) agree the scope of obligations and interactions needed between themselves, including demarcation of responsibilities at service interfaces, to obviate the need for the Principal and RailCorp to be involved in resolving service problems.
- (c) The Contractor must:
- (i) comply with any co-operative obligations set out in the Governance Requirements and this clause 3.14;
 - (ii) establish relationships with each third party supplier with whom it must interface or interact in connection with the provision of the Services under the Contract, as referred to in Clause 3.14(b); and
 - (iii) enter into any interface or co-operation agreement reasonably required by the Principal or RailCorp from time to time to govern the Contractor's interface with such other third party suppliers.
- (d) The Contractor must provide the Principal and RailCorp (and each third party supplier to the Principal or RailCorp) with all cooperation and assistance necessary or desirable to ensure that all products and services provided to the Principal and RailCorp are able to be carried out in a coordinated, effective and timely manner, including by working with the Principal, RailCorp and each relevant third party supplier to facilitate the discharge of end-to-end service obligations and the meeting or exceeding of end-to-end service levels (including the KPIs).
- (e) Should any dispute, disagreement or difference arise between the Contractor and any of the Principal's suppliers (including Geomatic), the Contractor and that supplier will, as soon as reasonably practicable thereafter, meet in person to discuss and attempt to resolve the dispute, disagreement or difference. If the Contractor and supplier are unable to resolve the dispute, disagreement or difference within a reasonable period (being no less than 10 Business Days), the Contractor must escalate the matter to the Principal. The Principal will consider the dispute, disagreement or difference (along with any representations of either party) and will make a decision having regard to this Contract and all relevant surrounding circumstances. Any such decision will be binding on, and followed by, the Contractor.

4. SECURITY

4.1 Provision of Security

GIPA Act s.14, Table (4)

4.2 Type of Security

The Contractor must provide security in the form of an unconditional bank undertaking which must expire no earlier than six months after the expiry of the GIPA Act s.14, Table (4). If the Contract is extended under clause 2.20, a replacement unconditional bank undertaking must be put in place on substantially identical terms and so that there is no break in the continuity of coverage. Such replacement undertaking (and any replacement of that replacement, and so on *mutatis mutandis*) must expire no later than six months after the expiry of the GIPA Act s.14, Table (4).

Subject to the above, the unconditional bank undertaking must be in the form of the unconditional bank undertaking shown in Attachment G from a bank approved in advance in writing by the Principal.

4.3 Release of Security

Subject to Clause 34.9, the Principal must, to the extent that the Principal has not had recourse to it, release the security provided under Clause 4.1 within 14 days from the date that is six months after the expiry of the Term.

Notwithstanding any other provision of this Contract, payment of any fees and charges by the Principal under this Contract is conditional upon the Contractor having and maintaining in place (including where this Contract has been extended under clause 2.20), in accordance with the terms of this clause 4, the required security.

4.4 Interest on Security

The Principal:

- (a) is not obliged to pay the Contractor interest on:
 - (i) any unconditional bank undertaking;
 - (ii) the proceeds of any unconditional bank undertaking if it is converted into cash; or
 - (iii) any cash provided under this Clause 4; and
- (b) does not hold the proceeds or money referred to in sub-clause (a) on trust for the Contractor.

4.5 Principal's right to call

The Contractor accepts that the Principal may call upon the security provided under this Clause 4 at any time and the Contractor must not take any steps to injunct or otherwise restrain:

- (a) any issuer of an unconditional bank undertaking or provided under the Contract from paying the Principal pursuant to the unconditional bank undertaking;
- (b) the Principal from taking any steps for the purposes of making a demand under any unconditional bank undertaking provided under the Contract or receiving any payment under any such unconditional bank undertaking; or
- (c) the Principal using the money received under any unconditional bank undertaking provided under the Contract.

5. NOT USED

6. CONTRACTUAL NOTICES

Any notice to be given or served under or arising out of a provision of this Contract must be in writing and delivered by hand or sent by prepaid post or facsimile or email, as the case may be, as follows:

- (a) if given to the Principal or Principal's Representative, addressed and forwarded to the Principal's Representative at the address, facsimile number or email address stated in Attachment "A" or such other address, facsimile number or email address as notified in writing from time to time by the Principal's Representative to the Contractor; or
- (b) if given by the Principal, signed by the Principal's Representative and forwarded to the Contractor at the Contractor's address or facsimile number or email address in Attachment "A" or such other address, facsimile number or email address as notified in writing from time to time by the Contractor to the Principal's Representative.

A notice sent by post is taken to have been received:

- (c) in the case of international post, 7 Business Days after the date of posting; and
- (d) in the case of posting within Australia, 2 Business Days after the date of posting.

A notice sent by facsimile transmission is taken to have been received on the next Business Day after the day shown on the transmission slip showing the facsimile number of the party to whom it is addressed in accordance with this Clause 6.

A notice sent by email is taken to have been received when the sender receives an email from the recipient confirming receipt.

The Contractor must, if so required by the Principal's Representative, provide the Principal with an electronic copy of any notice or communication given by the Contractor to the Principal or the Principal's Representative under or in connection with the Contract.

7. DOCUMENTS, CONFIDENTIALITY AND PUBLICITY

7.1 Discrepancies in Documents

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract:

- (a) these General Conditions of Contract will prevail over any other document which makes up the Contract;
- (b) if it is discovered by either the Contractor or the Principal, that party must within 7 days notify the other and the Principal's Representative; and
- (c) the Principal's Representative must promptly direct the Contractor and the Principal as to the interpretation to be followed so as to resolve the ambiguity, inconsistency or discrepancy.

Subject to the other provisions of this Clause 7.1, if any discrepancy exists between figured and scaled dimensions, the figured dimensions will prevail.

7.2 Submission of Contract Deliverables

The Contractor must:

- (a) submit each Contract Deliverable to the Principal's Representative within:
 - (i) if a time for submission is specified in the Contract, that time; or
 - (ii) if sub-clause (i) does not apply, the time required by the Principal's Representative; and
- (b) update each Contract Deliverable from time to time as required by the Contract (or, if the Contract does not specify such requirement, as required by the Principal's Representative), and upon completing any such update submit the updated Contract Deliverable to the Principal's Representative.

7.3 Principal's Representative's Review

The Principal's Representative may:

- (a) review any Contract Deliverable submitted or resubmitted by the Contractor; and
- (b) within 21 days of the submission or resubmission by the Contractor of a Contract Deliverable, give notice to the Contractor rejecting the Contract Deliverable and setting out reasons for the rejection.

If any Contract Deliverable is rejected, the Contractor must amend the Contract Deliverable and resubmit it to the Principal's Representative.

7.4 No Obligation to Review

The Principal's Representative owes no duty to the Contractor to review any Contract Deliverable for errors, omissions or compliance with the Contract.

No participation in the development of, review of, approval of, comments upon or rejection of, any Contract Deliverable or any participation or any comments upon the implementation of any Contract Deliverable, nor any other Direction by the Principal or the Principal's Representative concerning any Contract Deliverable, will lessen or otherwise affect:

- (a) the Contractor's warranties under Clause 3.3 or any other of its obligations, liabilities or responsibilities under this Contract or otherwise according to law; or
- (b) the Principal's rights against the Contractor, whether under this Contract or otherwise according to law.

The Contractor agrees that the development and implementation of any Contract Deliverable by the Contractor will not in any way lessen or affect:

- (c) its obligations, liabilities or responsibilities under this Contract or otherwise according to law (including the warranties under Clause 3.3); or
- (d) the Principal's rights against it, whether under this Contract or otherwise according to law.

7.5 Not used

7.6 Not used

7.7 Not used

7.8 Confidentiality

The Contractor must:

- (a) keep confidential the terms of this Contract and any information relating to the Contract or the provision of the Services under the Contract including the discussions and negotiations leading to this Contract except to the extent that such things:
 - (i) are in, or come into, the public domain, other than as a result of the Contractor's breach of this Clause 7.8; or
 - (ii) are required to be disclosed by Law or the Listing Rules of the Australian Stock Exchange Limited;
- (b) ensure that each of its officers, employees and Subcontractors complies with the terms of this Clause 7.8; and
- (c) ensure that Mer Mec SpA and each of its officers and employees complies with the terms of this Clause 7.8.

The Contractor must not make any statements nor issue anything concerning the Contract to any media person or media entity or any other third party without the prior written permission of the Principal.

7.9 Media and Public Communications

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

8. SUBCONTRACTING

- (a) The Contractor must not subcontract the whole of the provision of the Services under the Contract.
- (b) The Contractor must not subcontract any part of the provision of the Services under the Contract unless:
 - (i) except for those Subcontractors set out in Attachment "M":
 - (A) it has made prior application in writing to the Principal's Representative:
 - (I) giving full particulars of the part of the Services under the Contract it wishes to subcontract the provision of, the proposed Subcontract and the proposed Subcontractor; and
 - (II) including, in the case of a Subcontract which is for, or includes, professional services, a copy of the professional indemnity insurance policy held by the proposed Subcontractor, such policy being in compliance with Clause 15.2; and
 - (B) the Principal's Representative has not rejected the Contractor's application within 10 days of receipt, such rejection not to be unreasonable; and
 - (ii) where required by the Principal's Representative, the Contractor has executed and has procured the Subcontractor to execute a deed of warranty in the form of Attachment "I" (duly completed with all relevant particulars) and this has been delivered to the Principal's Representative prior to the commencement of the provision of the Services by the Subcontractor.
- (c) Despite the provisions of this Clause 8 and in spite of any Subcontract or approval to subcontract the provision of the Services (in whole or in part), the Contractor remains bound by the Contractor's obligations under the Contract to provide the Services in accordance with the Contract and will be vicariously liable for all acts, omissions and defaults of its Subcontractors relating to, or in any way connected with, the provision of the Services under the Contract.

9. INTELLECTUAL PROPERTY

9.1 Not Used

9.2 Warranty by Contractor

The Contractor warrants that, to the extent that any part of the provision of the Services under the Contract was prepared by, or for or on behalf of, the Contractor or Mer Mec SpA, it does not infringe any Intellectual Property.

9.3 Ownership of Documents supplied by the Principal

All Intellectual Property in any document supplied by or on behalf of the Principal or RailCorp is vested in, or remains with, the Principal or RailCorp (as applicable) and the Contractor must not use or reproduce these things otherwise than for the purpose of providing the Services under the Contract.

9.4 Rights granted to the Principal

The Contractor:

- (a) assigns to the Principal all rights, title and interest in any Intellectual Property in the Contract Documentation (other than Existing Intellectual Property) on and from the Date of the Deed of Agreement or its creation (whichever is later);
- (b) subject to and without limiting the terms of the DBC Contract, grants to the Principal a permanent, irrevocable, royalty-free, non-exclusive licence to use all Intellectual Property provided by or on behalf of the Contractor under or otherwise in connection with the provision of the Services and the performance of this Contract, including any Existing Intellectual Property in all cases for the purposes of:
 - (i) the commissioning, operation, maintenance, modification, repair, replacement, refurbishment, testing, other upgrading and re-building of the Vehicles and the System or to be used by the Principal (or any person for or on behalf of the Principal) on the New South Wales heavy railway system; and
 - (ii) if the Principal terminates the Contract under Clause 34.3, completing the uncompleted part of the Services under the Contract,which:
 - (iii) arises upon the creation of those things the subject of it;
 - (iv) may be sub-licensed;
 - (v) will survive termination of the Contract on any basis; and
 - (vi) entitles the Principal or any sub-licensee to alter or enhance any Intellectual Property the subject of the licence; and
- (c) must do all further things necessary to perfect:
 - (i) the assignment of the rights, title and interest under sub-clause (a); and

(ii) the Principal's right to the licence under sub-clause (b),

and the Contractor is responsible for any payment, including any royalty fees, in connection with the granting or the obtaining of the licence under sub-clause (b).

Any Intellectual Property in the alterations or enhancements contemplated in sub-clause (b)(vi) will vest in the Principal upon creation.

9.5 Indemnity

GIPA Act s.14, Table (4)

(a) all claims which may be brought or made against the Principal by any person in respect of:

(i) any alleged infringement of Intellectual Property rights (including moral rights, as defined within Part IX of the *Copyright Act 1988* (Cth)) by the Contractor, its Subcontractors or any of their officers, employees, Personnel, servants or agents in the course of, or incidental to, providing the Services under the Contract;

(ii) the receipt of the Services by the Principal or the use by the Principal or its Personnel of the Contract Documentation or any Intellectual Property (including moral rights, as defined within Part IX of the *Copyright Act 1988* (Cth)) in the Contract Documentation; or

(iii) not used; and

(b) any costs, expenses or damages that may be suffered or incurred by the Principal in connection with any such claim.

9.6 Escrow of Source Code

Within 50 days of the Date of the Deed of Agreement, the Principal and the Contractor must enter into an escrow agreement on terms substantially similar to the form of escrow agreement entered into in respect of the DBC Contract (or such other form as the Principal may reasonably require) in relation to all man/machine interfaces and the Software's source code owned or developed by the Contractor for the purposes of, or in connection with, the Contract. For these purposes, the Software will expressly include all software owned or developed by both the Contractor and any third party supplier and specifically includes such Software as is referred to in the Technical Specification.

The escrow agreement must include provisions for the release of the source code by the relevant escrow agent to the Principal in the following circumstances:

(a) where the Principal has a right to terminate the Contract for breach or repudiation by the Contractor, whether or not the Principal elects to exercise that right;

(b) the Contractor becomes or threatens to become or is in jeopardy of becoming subject to any form of insolvency, administration, receivership or liquidation (including an Insolvency Event as defined in clause 34.4); or

- (c) the Contractor is in no way able or willing to rectify a breach of any warranty related to the relevant source code and this can be materially proved (and for the purposes of this clause, where a breach of warranty remains unremedied for a period of 1 month after such breach is notified by the Principal or the Principal's Representative to the Contractor, the Principal's requirement to materially prove under this clause will be deemed to be satisfied).

The Contractor must ensure that at all times the source code placed in escrow in accordance with this clause is kept up-to-date and accurately reflects the Software actually in use by the Principal, including all updates and new releases and any customisations of the Software made pursuant to the Additional Services.

The Principal must pay all amounts charged by the relevant escrow agent under or in relation to any escrow agreement entered into in relation to source code as contemplated by this clause.

10. COMPLIANCE WITH LAW

10.1 Complying with Law

Attachment "L" sets out the Approvals which the Principal has obtained or is required to obtain after the Date of the Deed of Agreement.

Unless otherwise directed by the Principal's Representative, the Contractor must, in providing the Services under the Contract:

- (a) comply with the requirements of all Authorities and applicable Law, including obtaining all Approvals (other than those listed in Attachment "L"); and
- (b) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its Contract obligations.

If the Contractor believes that a requirement of Law necessitates a Variation, it must within 7 days notify the Principal's Representative who will, if it determines that this is the case, direct a Variation under Clause 29.2.

Subject to Clause 10.3, the Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with a Variation of the kind referred to in the preceding paragraph or any Change in Law.

10.2 Copies of Authority Documents

The Contractor must provide to the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it prior to commencing the provision of any part of the Services under the Contract which is the subject of such documents.

10.3 Change in Law

If a Change in Law occurs, or has occurred, after the Date of the Deed of Agreement and compliance with it by the Contractor:

- (a) has a direct adverse effect on the Contractor providing the Services under the Contract; and

- (b) directly results in an increase in the Contractor's costs of providing the Services under the Contract,

the Principal will pay the Contractor the actual necessary costs incurred by the Contractor in complying with the Change in Law (other than such costs which are in a category of cost dealt with in Attachment "D"), as determined by the Principal's Representative.

11. INDUSTRIAL RELATIONS AND TRAINING MANAGEMENT

11.1 Industrial Relations

The Contractor must, in providing the Services under the Contract:

- (a) assume sole responsibility for and manage all aspects of industrial relations in respect of the employees of the Contractor and all Subcontractors;
- (b) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the provision of the Services under the Contract;
- (c) comply with the *NSW Government Industrial Relations Management Guidelines* dated December 1999; and
- (d) develop and implement the Project Industrial Relations Plan in accordance with clause 11.2.

11.2 Project Industrial Relations Plan

At least 30 days prior to commencing the provision of the Services under the Contract in NSW, the Contractor must submit to the Principal's Representative a Project Industrial Relations Plan.

The Project Industrial Relations Plan where applicable must:

- (a) contain a signed declaration on the Contractor's letterhead verifying compliance in the preceding 12 months with all relevant employment and legal obligations including those relating to:
 - (i) payment of remuneration to employees;
 - (ii) annual leave;
 - (iii) worker's compensation insurance;
 - (iv) superannuation fund membership and contributions; and
 - (v) over-award payment;
- (b) identify the location of time and wage records or other documents required to verify compliance with the obligations referred to in sub-clause (a); and
- (c) identify the Federal or State awards that cover the Contractor and its subcontractors in providing the Services under the Contract.

11.3 Project Industrial Relations Implementation Review

- (a) Each month, in respect of any part of the Services under the Contract undertaken in NSW, the Contractor must submit the Project Industrial Relations Plan to the Principal's Representative for review under Clause 7.3.
- (b) Not used.
- (c) For the purposes of a review referred to in Clause 11.3(a) the Contractor must:
 - (i) make available to the Principal's Representative, upon request, all industrial relations management records held by the Contractor or Mer Mec SpA which are relevant to the review, including those relevant to the Contractor, Mer Mec SpA and Subcontractors; and
 - (ii) provide all necessary assistance to the Principal's Representative during the review process including:
 - (A) attending reviews; and
 - (B) promptly implementing any corrective action deemed necessary by the Principal's Representative.

11.4 Training Management

The Contractor must, in providing the Services under the Contract in NSW, comply with the *NSW Government Training Management Guidelines 2009*.

12. PROTECTION OF PEOPLE, THE ENVIRONMENT AND PROPERTY

12.1 General

The Contractor must in providing the Services under the Contract, do so safely and so as to protect persons, property and the environment.

Where the Contractor is providing the Services in or on any premises owned by, or leased or licensed to, or otherwise controlled by the Principal or RailCorp, the Principal's Representative may (but without being under any obligation or duty to do so), if he or she considers there is a risk of injury to people or damage to property or the environment arising from the provision of the Services under the Contract, direct the Contractor to change its manner of so providing or to cease providing the Services.

The Contractor must, at its cost, comply with any direction by the Principal's Representative under this Clause 12.1.

12.2 Work Health, Safety and Rehabilitation Management System

Without limiting Clause 12.1, the Contractor must:

- (a) develop a work health, safety and rehabilitation management system in accordance with the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines, or such equivalent guidelines which may apply in the relevant

- place where the work under the Contract is being carried out, as amended or updated from time to time;
- (b) submit full details of the work health, safety and rehabilitation management system and any updates to the Principal's Representative;
 - (c) if the Principal's Representative does not reject the work health, safety and rehabilitation management system or the update within 21 days of submission under sub-clause (b) or resubmission under sub-clause (d), implement and comply with that system or the update;
 - (d) if the Principal's Representative rejects the work health, safety and rehabilitation management system or the update within 21 days of submission under sub-clause (b) or resubmission under this sub-clause (d), within 7 days submit an amended management system or update to the Principal's Representative;
 - (e) allow the work health, safety and rehabilitation management system to be audited in accordance with the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines, or such equivalent guidelines which may apply in the relevant place where the work under the Contract is being carried out, as amended or updated from time to time and for this purpose ensure that any auditor appointed by the Principal:
 - (i) has access at all reasonable times to the Contractor's work health, safety and rehabilitation records; and
 - (ii) is provided with such information and explanations as the auditor desires for the purposes of the audit;
 - (f) promptly update the work health, safety and rehabilitation management system to take into account:
 - (i) changes in generally accepted work health, safety and rehabilitation practices;
 - (ii) amendments or updates to the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (if applicable) or other relevant equivalent guidelines;
 - (iii) any audit under sub-clause (e);
 - (iv) the effectiveness of the existing management system; and
 - (v) changes in Law; and
 - (g) promptly submit such updates to the Principal's Representative under sub-clause (b).

The Contractor must not commence the provision of the Services under the Contract in any place until it has submitted a work health, safety and rehabilitation management system for that place which has not been rejected within the 21 day period under sub-clause (c).

No participation in the development of, review of, comments upon, or approval or rejection of, the work health, safety and rehabilitation system or any update by the Principal or the Principal's

Representative or any Direction by the Principal or the Principal's Representative will lessen or otherwise affect:

- (h) the Contractor's obligations, liabilities or responsibilities under this Contract or otherwise according to law; or
- (i) the Principal's rights against the Contractor, whether under this Contract or otherwise according to law.

12.3 Work Health and Safety

Without limiting Clause 12.1, the Contractor must:

- (a) comply with the WHS Legislation;
- (b) comply with any direction given by the Principal's Representative in respect of work health and safety;
- (c) comply with any other requirements of the Principal relating to work health and safety notified to the Contractor from time to time, including policies and induction programs (including as if references to "Sydney Trains", "RailCorp" or "TfNSW" in such policies and other documents were references to the Contractor);
- (d) without limiting the generality of Clause 12.1(c), comply with the requirements specified in the Principal's Safety Management System procedures and any superseding rules and procedures relating to work near railways;
- (e) take all necessary precautions for the safety of all personnel engaged in work under the Contract, the Principal's agents, consultants, employees, Other Contractors, all members of the public and all passengers and crew of any railway rolling stock in respect of the provision of any Services under the Contract on or in the vicinity of any railway line;
- (f) in respect of the provision of any Services under the Contract on or about any railway line, provide the Principal's Representative with written evidence satisfactory to the Principal's Representative that the Contractor holds a TfNSW Rail Industry Safety Induction (RISI) Card;
- (g) ensure that if any Law (including the WHS Legislation) requires that:
 - (i) a person:
 - (A) be authorised or licensed (in accordance with the WHS Legislation) to carry out the provision of any part of the Services under the Contract, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
 - (B) has prescribed qualifications or experience to carry out the provision of any part of the Services under the Contract or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

- (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (h) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of sub-clause (g) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (i) if requested by the Principal, the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before the Contractor commences such work.

The Contractor must:

- (j) prior to appointing any Subcontractor, assess the work health and safety management capability of such Subcontractor and institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation, including the due diligence obligation contained therein;
- (k) prior to commencing to provide the Services under the Contract on the Site, ensure that all personnel have undertaken any induction required by the Principal or RailCorp;
- (l) provide written assurances obtained pursuant to sub-clause (j), together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Legislation, to the Principal's Representative;
- (m) exercise a duty of utmost good faith to the Principal in carrying out the provision of the Services under the Contract to enable the Principal to discharge the Principal's duties under the WHS Legislation; and
- (n) ensure its Subcontracts include provisions equivalent to the obligations of the Contractor in this Clause 12.3 and any other provisions of the Contract concerning work health and safety matters.

12.4 Protection of the Environment

The Contractor must:

- (a) comply with all requirements of the Contract for the protection of the environment;
- (b) demonstrate to the Principal's Representative whenever required that all requirements of the Contract for protection of the environment have been met;
- (c) deal with and dispose of Hazardous Materials in accordance with all requirements of Law; and
- (d) not pollute, contaminate or otherwise damage the environment.

The Contractor is responsible for and must make good any pollution, contamination or damage to the environment caused by the provision of the Services under the Contract, whether or not it has complied with the requirements of the Contract for the protection of the environment.

12.5 Environmental Management System

Without limiting Clause 10.1 or Clause 12.4, the Contractor must, in accordance with this Clause 12.5, implement an environmental management system which complies with the New South Wales Government Environmental Management System Guidelines Edition 3 August 2013 (the "**Guidelines**").

The Contractor must:

- (a) no later than 60 days prior to commencing the provision of the Services under the Contract, submit to the Principal's Representative a Project Environmental Management Plan ("**EMP**") which complies with the Guidelines;
- (b) if the Principal's Representative rejects or comments on the EMP submitted under sub-clause (a) within 21 days of submission under sub-clause (a), amend the EMP so that it complies with the requirements of the Contract and any Direction by the Principal's Representative;
- (c) not commence the provision of the Services under the Contract unless it has submitted an EMP under sub-clause (a) and the Principal's Representative has not rejected or commented on that EMP within 21 days of that submission;
- (d) implement and comply with the EMP once it has been submitted to the Principal's Representative under sub-clause (a) and has not been rejected or commented upon within 21 days of its submission; and
- (e) submit any revisions which it may make to the EMP from time to time to the Principal's Representative for review, whereupon sub-clause (b) will re-apply.

The Principal's Representative may, at any time, conduct audits of the Contractor's compliance with the EMP in accordance with the Guidelines. For this purpose, the Contractor must:

- (f) make available, on request, all relevant environmental system records including those of Subcontractors; and
- (g) provide all reasonable assistance, including attendance by the Contractor, to the Principal's Representative during the conduct of any such audit.

12.6 Ecologically Sustainable Development

The parties acknowledge and agree that they are both committed to adhering to the principles of ecologically sustainable development. The Contractor must:

- (a) ensure that no waste connected with the provision of the Services under the Contract is conveyed to or deposited at any place that cannot be lawfully used as a waste facility for that waste;
- (b) comply with the requirements of the NSW Government Waste Reduction and Purchasing Policy including by adopting the principles of waste avoidance, minimisation, recycling and education;

- (c) separately collect and stream quantities of waste concrete, brick, blocks, timber, metals, plasterboard, paper and packaging, glass and plastics and offer them for recycling where practicable;
- (d) comply with the NSW Government's Energy Management Policy including by adopting principles of energy minimisation and management;
- (e) in the procurement of goods and services for the purpose of the provision of the Services under the Contract, give preference to goods and services that demonstrate energy efficiency and are cost effective and performance neutral; and
- (f) use its best endeavours to:
 - (i) avoid the use of products and/or materials that are known or reasonably suspected to be detrimental to human health and the environment; and
 - (ii) use products and materials which, in relation to available alternatives, have a lower adverse environmental impact throughout their life cycle and contain no Hazardous Materials.

12.7 Principal's Obligations under Law

The Contractor:

- (a) acknowledges that the Principal and RailCorp, in their capacity as the owner, lessor, lessee or licensee of, or the holder of some other interest in relation to, property upon which some of the Services to be provided under the Contract may be carried out, have obligations and responsibilities under Law with respect to safety on that property and not polluting the environment; and
- (b) without limiting Clause 10.1, 12.1 or 12.4, must provide the Services under the Contract to ensure that the Principal and RailCorp fulfil all of their obligations and comply with their responsibilities referred to in sub-clause (a).

13. INDEMNITY

13.1 Not used

13.2 Not used

13.3 Not used

13.4 Indemnity for damage and injury

Except where it arises from an Excepted Risk, the Contractor must indemnify and keep indemnified, the Principal, its Personnel, and RailCorp against:

- (a) any loss of or damage to property of the Principal or RailCorp;
- (b) any unlawful, wrongful, wilful or negligent act or omission in connection with this Agreement by the Contractor or its Personnel;
- (c) any liability to or claims by a third party in respect of loss of or damage to property; and

- (d) any liability to or claims by a third party in respect of the environment or injury to or death of persons,

arising out of or in connection with the provision of the Services under the Contract, any Defects or any act or omission of the Contractor, its Subcontractors or any of their officers, employees, servants or agents.

13.5 Indemnity as agent

The Contractor acknowledges and agrees that, to the extent that an indemnity in this Contract extends to persons, as per Clause 13.4, who are not parties to this Contract, the Principal has sought and obtained that indemnity as agent for and on behalf of those persons and holds the benefit of that indemnity as trustee for those persons. The Contractor further acknowledges and agrees that the Principal may enforce the indemnity for and on behalf of any relevant Personnel of the Principal for their benefit and that such persons may plead the indemnity in answer to any claim made by the Contractor against them.

14. INSURANCE OF SPARE PARTS

The Contractor must effect and maintain an insurance policy ("**Property Policy**") in the joint names of the Principal, RailCorp, the Contractor and all Subcontractors covering loss or damage resulting from any cause whatsoever to any Spare Part for the replacement value of all such items, during any period in which such Spare Parts are in the care, custody or control of the Contractor or any of its Subcontractors.

The Property Policy:

- (a) not used;
- (b) may exclude:
 - (i) the cost of making good fair wear and tear or gradual deterioration but must not exclude the loss or damage resulting therefrom;
 - (ii) damages for delay in completing or for the failure to complete the work under the Contract;
 - (iii) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel resulting from any cause; and
 - (iv) loss or damage resulting from any risk specifically excepted in the Contract or from war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law, or confiscation by order of any government or public authority; and
- (c) must include a cross-liability clause and a waiver of subrogation rights against the Principal, RailCorp, the Contractor and all Subcontractors.

15. PUBLIC AND PRODUCTS LIABILITY AND PROFESSIONAL INDEMNITY INSURANCE

15.1 Public and Products Liability Insurance

From the Date of the Deed of Agreement, the Contractor must effect and maintain a public and products liability policy of insurance ("**Public and Products Liability Policy**") in the joint names of the Principal, RailCorp and the Contractor which must include cover for liability arising out of or in connection with:

- (a) the death of or injury to any person (other than liability which is required by law to be insured under a workers' compensation policy of insurance); and
- (b) loss, damage or destruction of property,

whether that liability be in contract, tort, under the Australian Consumer Law (applied as a law of the Commonwealth in accordance with the *Competition and Consumer Act 2010* (Cth)), any equivalent State or Territory legislation or any other statutes, or otherwise.

The Contractor must renew the Public and Products Liability Policy each year until the expiration of 3 years from the end of the Term.

The Public and Products Liability Policy must:

- (c) be for an amount in respect of any one occurrence (in the aggregate in respect of Products Liability Insurance in any one period of insurance) not less than the amount stated in Attachment "A" for any one period of insurance; and
- (d) include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result).

The Contractor must ensure that the Public and Products Liability Policy will extend to cover liability in respect of the provision of the Services under the Contract which has been completed before the commencement of the relevant policy period (e.g. the Early Works Agreement).

15.2 Professional Indemnity Insurance

From the Date of the Deed of Agreement, the Contractor must effect and maintain an annual professional indemnity insurance policy in the name of the Contractor covering all legal liability for any loss or claim arising out of any act, error or omission (including breach of a warranty of fitness for purpose) by the Contractor or its officers, employees, consultants or agents arising out of or in connection with the carrying out of professional activities or duties in connection with the provision of the Services under the Contract.

The insurance must be for an aggregate amount not less than the amount stated in Attachment "A" for any one period of insurance.

The insurance must be renewed each year until the expiry of the Term after which run-off cover for a period of 7 years must be put in place.

The Contractor must ensure that each of its Subcontractors engaged to carry out professional services is similarly insured.

15.3 Transit Insurance

Before transporting or otherwise moving any Spare Parts to be supplied by the Contractor under the Contract, the Contractor must effect an insurance policy covering all such Spare Parts against loss or damage (resulting from any cause whatsoever) whilst in transit and during unloading which must:

- (a) be for an amount not less than the full reinstatement or replacement value of the Spare Parts;
- (b) be maintained until risk in the Spare Parts passes to the Principal; and
- (c) name the Principal and RailCorp as interested parties.

16. INSURANCE OF EMPLOYEES

Before the Contractor commences the provision of any Services under the Contract, the Contractor must insure against liability for death of or injury to persons employed by the Contractor for the maximum amount allowable by law (workers' compensation insurance) in the name of the Contractor and (if possible) extended to indemnify the Principal for its statutory liability to persons employed by the Contractor.

The insurance cover must be maintained for so long as the Contractor provides any Services under the Contract (including rectification of Services Defects and Reliability Defects).

The Contractor must ensure that every Subcontractor is similarly insured.

17. INSURANCE GENERALLY

17.1 Insurers and Terms

All insurances which the Contractor is to effect and maintain under the Contract (including under Clause 17.5) must:

- (a) be obtained and maintained by the Contractor with insurers authorised by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia or with Lloyd's underwriters;
- (b) be on terms which are approved by the Principal's Representative, such approval not to be unreasonably withheld; and
- (c) not contain any exclusion, endorsement or alteration, unless it is first approved by the Principal's Representative.

17.2 No Limit on Liability merely due to insurance

While the Contractor's liabilities may be limited under other provisions of the Contract (such as clause 17A), they are not limited merely because of the effecting and maintaining of insurance as required in this clause 17.

17.3 Proof of Insurance

The Contractor must:

- (a) no later than the date that is 7 days prior to commencing the provision of the Services under the Contract; and
- (b) at any other time when so requested in writing by the Principal's Representative,

give to the Principal's Representative evidence to the Principal's Representative's satisfaction that it has effected and is maintaining any insurance required under the Contract in accordance with the Contract including a full certified copy of all:

- (c) insurance policies;
- (d) renewal certificates; and
- (e) endorsement slips.

If the Contractor fails to give satisfactory evidence of insurance as required by sub-clause (a) or within 14 days of a written request to do so, the Principal may, without prejudice to any other rights that it may have:

- (f) take out and maintain the insurance and pay the premiums and the cost may be set off against any amount payable by the Principal to the Contractor; and
- (g) make no further payments until the Contractor provides satisfactory evidence of insurance.

17.4 Other Requirements

The Contractor must ensure that each insurance policy taken out under Clauses 14 and 15.1 contains provisions acceptable to the Principal that:

- (a) require the insurer, whenever the insurer gives the Contractor or a Subcontractor a notice of cancellation or any other notice concerning the policy, to (at the same time) inform the Principal in writing that the notice has been given to the Contractor or the Subcontractor (as the case may be);
- (b) provide that a notice of claim given to the insurer by the Principal, RailCorp, the Contractor, or Subcontractor will be accepted by the insurer as a notice of claim given by the Principal, RailCorp, the Contractor and the Subcontractor; and
- (c) require the insurer, upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, to give immediate notice in writing to the Principal and the Contractor about that fact, matter or thing and to allow 30 days prior to the insurer giving any notice of cancellation.

17.5 Changes in Insurance

The Principal's Representative may at any time by written notice require the Contractor to provide it with details of the premium cost to the Contractor of:

- (a) an increase in the amount of any insurance required under the Contract as specified in the notice, including written evidence of the premium cost of effecting:
 - (i) the insurance it is required to effect and maintain under the Contract; and
 - (ii) the increased amount of insurance specified in the notice; or
- (b) effecting and maintaining any insurance not required under the Contract as specified in the notice, including written evidence of the premium cost of effecting this insurance.

The Contractor must provide the Principal's Representative with the details within 14 days of the notice.

The Principal's Representative may then direct the Contractor by notice in writing to:

- (c) increase the amount of the insurance as specified in the notice; or
- (d) effect and maintain the insurance not previously required under the Contract as specified in the notice,

in which event the Contractor must comply with the Principal's Representative's direction and will be entitled to payment of:

- (e) in the case of a direction under sub-clause (c), the difference between the premium costs as evidenced by the material submitted by the Contractor under sub-clause (a); and
- (f) in the case of a direction under sub-clause (d), the premium cost as evidenced by the material submitted by the Contractor under sub-clause (b).

17A LIMITATION OF LIABILITY

17A.1 Limitation of liability

- (a) Subject to clauses 17A.1(b) and 17A.1(c), neither party will be liable to the other for any Consequential Loss howsoever arising.
- (b) The Contractor acknowledges and agrees that notwithstanding clause 17A.1(a), the Principal is entitled to recover, subject to any applicable cap on the Contractor's liability, any direct loss or damage and any:

GIPA Act s.14, Table (4)

sustained, incurred or suffered by the Principal, which is caused by or arises from any wrongful act, tort (including negligence) or breach of this Contract by the Principal.

- (c) The Contractor acknowledges and agrees that no provision of this Contract, including clause 17A.1(a), applies to limit or restrict in any way the Contractor's liability to the Principal arising out of or in any way in connection with:
- (i) without limiting or otherwise affecting the remainder of this clause 17A.1(c):
 - (A) any liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability; or
 - (B) any liability for which, but for a failure by the Contractor to comply with its obligations under this Contract or under an insurance policy, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with this Contract;
 - (ii) the indemnities provided under clause 13.4;
 - (iii) the Contractor's liability for abandoning its obligations under the Contract; or
 - (iv) liability out of which by Law the Contractor cannot contract.

17A.2 Liability cap

18. THE PRINCIPAL'S REPRESENTATIVE

The Principal:

- (a) is responsible for appointing and maintaining the presence of the Principal's Representative; and
- (b) may at any time by notice in writing to the Contractor replace the Principal's Representative with another person.

The Principal's Representative will:

- (c) give Directions; and
- (d) carry out all his or her 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 given to it by the Principal or the Principal's Representative under, or purportedly under, a provision of this Contract.

Except where the Contract otherwise provides, a Direction may be given orally but the Principal's Representative must as soon as practicable confirm it in writing. If the Contractor in writing requests the Principal's Representative to confirm an oral Direction, the Contractor is not bound to comply with the Direction until the Principal's Representative confirms it in writing.

19. PRINCIPAL'S REPRESENTATIVE'S APPOINTEES

The Principal's Representative may:

- (a) from time to time appoint individuals to carry out any functions of the Principal's Representative under the Contract;
- (b) not appoint more than one person to carry out a function at any one time; and
- (c) revoke any appointment under sub-clause (a).

The Principal's Representative will promptly provide the Contractor with written advice of:

- (d) the name of any person so appointed and the functions delegated to that person; and
- (e) the revocation of that appointment.

All references in the Contract to Principal's Representative include a reference to an appointee under this Clause 19.

20. CONTRACTOR'S REPRESENTATIVES AND KEY PEOPLE

20.1 Contractor's Representative

The Contractor must ensure that the Contractor's Representative is, at all reasonable times, available for communications with the Principal's Representative.

Any Direction from the Principal's Representative to the Contractor's Representative is deemed to have been given to the Contractor.

20.2 Key Persons

The Contractor must:

- (a) employ the Key Persons in the jobs as specified in Attachment "E";
- (b) subject to sub-clause (c), not replace any Key Person without the prior written approval of the Principal's Representative; and
- (c) if any Key Person dies, becomes seriously ill or resigns from the employment of the Contractor, replace him or her with a person of at least equivalent experience, ability and expertise approved by the Principal's Representative, such approval, except in the case of the Contractor's Representative, not to be unreasonably withheld.

20.3 Not used

20.4 Business ethics and corruption prevention

- (a) The Contractor must at all times comply with:

- (i) the Principal's Statement of business ethics, and
 - (ii) New South Wales Government's Code of Practice for Procurement.
- (b) The Contractor must ensure that no officer or senior manager of the Contractor or Mer Mec SpA has or is engaged in corrupt conduct as defined by the *Independent Commission Against Corruption Act 1988* (NSW).
- (c) If the Contractor, an officer or senior manager of the Contractor or Mer Mec SpA is found by the Independent Commission Against Corruption, to have engaged in corrupt conduct (as defined by the *Independent Commission Against Corruption Act 1988* (NSW)), the Principal may terminate this Contract on account of a fundamental breach and Clause 34.5 will apply.
- (d) The Contractor must not, and must ensure that subcontractors at any level do not engage any person named at: <http://www.transport.nsw.gov.au/railcorp/individuals-adversely-named-icac>
to do anything in connection with this Contract whether as an employee, agent, contractor or in any other capacity whatsoever.
- (e) Breach of this Clause 20.4 is a fundamental breach of this Contract entitling the Principal to immediately terminate the Contract by written notice (in which case Clause 34.5 will apply).

20.5 Barring of Persons

The Principal's Representative may, in its absolute discretion and without being obliged to give reasons, direct the Contractor to bar from any property of the Principal or RailCorp and/or from the provision of the Services under the Contract any person employed or engaged in connection with the provision of the Services under the Contract.

The Contractor must ensure that any person the subject of a direction under the preceding paragraph is not again employed on the property of the Principal or RailCorp and/or the provision of the Services under the Contract (as appropriate).

21. DEFECTS

21.1 General

Subject to sub-clauses (b) and (c) of this Clause 21.1, the Contractor must correct all Services Defects and Reliability Defects.

The Contractor must promptly notify the Principal's Representative upon becoming aware of any Defect.

If the Principal's Representative discovers or believes there is a Services Defect or a Reliability Defect, the Principal's Representative may, without prejudice to any other rights which the Principal may have under the Contract or otherwise, give the Contractor an instruction specifying the Services Defect or Reliability Defect (as applicable) and doing one or more of the following:

- (a) requiring the Contractor to correct the Services Defect or Reliability Defect (as applicable), or any part of it, within the time specified in the Technical Specification, or, if no such time is specified, within the time specified in the instruction (which must be no less than 7 days for Services Defect or Reliability Defect (as applicable) that are

- notified by the Principal's Representative, acting reasonably, as urgent and 30 days for all others) and if the Contractor requires access to a Vehicle to correct the Services Defect or Reliability Defect (as applicable), specifying when the Principal will make the Vehicle available to the Contractor for the purpose of rectifying the Services Defect or Reliability Defect (as applicable);
- (b) requiring the Contractor to carry out a Variation to overcome the Services Defect or Reliability Defect, or any part of it, within the time specified in the Technical Specification, or, if no such time is specified, within the time specified in the instruction (which must be no less than 7 days for Services Defects or Reliability Defects that are notified by the Principal's Representative, acting reasonably, as urgent and 30 days for all others) and specifying when the Principal will make the Vehicle available to the Contractor for the purpose of carrying out the Variation to overcome the Services Defect or Reliability Defect (if required for the carrying out of the Variation); or
- (c) advising the Contractor that the Principal will accept the provision of the Services, or any part of it, despite the Services Defect or Reliability Defect.

21.2 Correction of Defect or Variation to Overcome Defect

If an instruction is given under Clause 21.1(a) or 21.1(b) prior to the expiration of the Term, the Contractor must correct the Services Defect or Reliability Defect (or the part of it) or carry out the Variation to overcome the Services Defect or Reliability Defect:

- (a) within the time specified in the Technical Specification, or, if no such time is specified, within the time specified in the Principal's Representative's instruction; and
- (b) in accordance with any restrictions set out in the Contract,

and the Contractor will only be entitled to make a Claim for correcting the Services Defect or Reliability Defect or carrying out the Variation to overcome the Services Defect or Reliability Defect if the Defect (or the part of it) is something for which:

- (c) the Contractor is not responsible; and
- (d) Mer Mec SpA is not responsible (whether under the DBC Contract or otherwise).

21.3 Acceptance of Defect

If:

- (a) an instruction is given under Clause 21.1(c); and
- (b) the Contractor or Mer Mec SpA (whether under the DBC Contract or otherwise) is responsible for the Services Defect or Reliability Defect (or the part of it),

the amount determined by the Principal's Representative which represents the cost of correcting the Services Defect or Reliability Defect (or the part of it) will be a debt due and payable from the Contractor to the Principal.

21.4 Contractor's responsibility for Defects not affected

The Contractor's responsibility for Defects (including the Contractor's obligations under this Clause 21) will not be affected in any way by:

- (a) any work carried out by the Principal or RailCorp in relation to a Defect where the Principal's Representative has requested the Contractor in accordance with Clause 21.1 to correct the Defect or carry out a Variation to overcome the Defect and the Contractor has failed to do so within the time required by the Contract;
- (b) departures from the O&M Documentation by the Principal, RailCorp or the Contractor;
or
- (c) the expiry of the Warranty Period under the DBC Contract.

21.5 Rights not Affected

This Clause 21, other provisions of this Contract and provisions of the DBC Contract regarding detection and rectification of Defects and non-conformances are in addition to and do not affect any other right the Principal or RailCorp has in respect of Defects whether under this Contract, the DBC Contract or otherwise according to law.

21.6 No Claim

Except to the extent expressly contemplated by Clause 21.2, the Contractor is not entitled to make any Claim against the Principal, and the Principal will not have any liability to the Contractor, arising out of, or in connection with, any Defect, including for any increase in the cost of providing the Services under the Contract that would otherwise have been carried out during any period of time in which the Contractor is carrying out work in respect of a Defect.

21.7 Existing Warranties

The Contractor acknowledges that:

- (a) as at the Date of the Deed of Agreement, the Vehicles and the System may be covered by and subject to OEM warranties; and
- (b) during the Term, some of the Spare Parts supplied or provided by the Principal to the Contractor (or by the Contractor itself) for use in connection with the provision of the Services under the Contract may be covered by OEM warranties,

given by the Contractor, Mer Mec SpA or other relevant OEMs to the Principal or RailCorp. The Contractor must not, and must ensure that its employees and agents do not, do anything that would prejudice any warranty rights given by an OEM to the Principal or RailCorp in respect of the Vehicles, the System or the Spare Parts.

22. PRINCIPAL'S REPRESENTATIVE'S RIGHT TO INSPECT

The Principal's Representative may at any time inspect the provision of the Services under the Contract.

The Contractor however acknowledges that:

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

23. TESTING DIRECTED BY THE PRINCIPAL'S REPRESENTATIVE

23.1 Principal's Representative may Direct Tests

At any time before the expiry of the Term, the Principal's Representative may direct the Contractor to provide the Testing Services in respect of any part of the System or the provision of the Maintenance Services and/or the Support Services under the Contract.

The Contractor must provide all such assistance and information as may be required by the Principal's Representative, as set out in more detail in the Technical Specification.

23.2 Not Used

23.3 Who Conducts Tests

The Testing Services will be provided by the Contractor, in cooperation with the reasonable directions and requests of the Principal's Representative.

23.4 Notice of Tests

Before providing the Testing Services, the Contractor must give the Principal's Representative reasonable prior notice in writing, including (if relevant) details of the time, date and location of the relevant tests.

23.5 Not Used

23.6 Results of Tests

All results arising out of or otherwise connected to the provision of the Testing Services by the Contractor must be made promptly available to the Principal's Representative as soon as practicable, but in any event no later than 7 days after their completion.

23.7 Not Used

24. Not Used

25. MANAGEMENT SYSTEMS

25.1 Implementation of Management Systems

The Contractor must implement systems for the management of all aspects of the Contractor's obligations under this Contract in accordance with the requirements of the Governance Requirements.

25.2 No Relief from Obligations

Without limiting Clause 25.1, the Contractor will not be relieved from any of its liabilities or responsibilities under this Contract or otherwise according to law nor will the rights of the Principal whether under this Contract or otherwise according to law be limited or otherwise affected by:

- (a) compliance with the requirements of the Contract in relation to quality systems, cost management systems, risk management programmes and other programmes, plans and systems for project management ("**Management Systems**");
- (b) any Direction by the Principal's Representative concerning any Management System or the Contractor's compliance or non-compliance with that Management System;
- (c) any audit or other monitoring by the Principal's Representative of the Contractor's compliance with a Management System; or
- (d) any testing, whether pursuant to the Testing Services under Clause 23 or otherwise.

26. TIME

26.1 Progress

The Contractor must:

- (a) provide the Services under the Contract in a timely and efficient manner and at a rate of progress satisfactory to the Principal's Representative; and
- (b) not used.

26.2 Contractor Not Relieved

Without limiting Clauses 7.3 or 7.4, any review of, comments upon or approval of, or any failure to review or comment upon, or any Direction about, any plan, programme or schedule by the Principal's Representative will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Contract;
- (b) evidence or constitute the granting of a release or waiver of rights regarding timing obligations or an instruction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the provision of the Services under the Contract; or

- (c) affect the time for performance of the Principal's or Principal's Representative's Contract obligations.

26.3 Not Used

26.4 Notice of Possible Delay

If it becomes evident to the Contractor that anything may delay the provision of the Services under the Contract, the Contractor must as soon as practicable, but no later than 7 days, notify the Principal's Representative in writing with details of the possible delay and the cause.

26.5 Not used

26.6 Not used

26.7 Not used

26.8 Not used

26.9 Not used

26.10 Not used

26.11 Suspension

Within 14 days of receipt of a notice in writing from the Principal's Representative notifying the Contractor it is proposing to suspend performance of part or all of the provision of the Services under the Contract for a specified period of time, the Contractor must, at its cost, provide the Principal's Representative with a written notice containing details of the extra costs it anticipates reasonably incurring as a result of the proposed suspension including sufficient details to allow the Principal's Representative to verify these costs.

The Principal will not be obliged to proceed with any proposed suspension the subject of such a notice.

Whether or not the Principal's Representative has given a notice under the first paragraph of this Clause 26.11 and whether or not the Contractor has responded to it, the Principal's Representative may instruct the Contractor to suspend and or to re-commence performance of all or a part of the provision of the Services under the Contract.

If the suspension arises as a result of:

- (a) the Contractor's failure to perform its obligations in accordance with the Contract or Mer Mec SpA's failure to perform its obligations in accordance with the DBC Contract:
- (i) the Contractor will have no right to be paid any costs, expenses or damages arising from the suspension; and
 - (ii) not used; or
- (b) a cause other than the Contractor's failure to perform its obligations in accordance with the Contract or Mer Mec SpA's failure to perform its obligations in accordance with the DBC Contract, the Principal will pay the Contractor the following amount:

- (i) where the Contractor has given a notice under the first paragraph of this Clause 26.11 and the costs notified are agreed to by the Principal's Representative:
 - (A) those costs to the extent that the suspension is for the period of time and covers the provision of the Services under the Contract specified in the notice of the Principal's Representative under the first paragraph of this Clause 26.11; and
 - (B) to the extent that the suspension is for a period of time greater than, or covers the provision of the Services under the Contract in addition to, that specified in the notice of the Principal's Representative under the first paragraph of this Clause 26.11, any extra costs incurred by the Contractor, subject to the Contractor taking all steps reasonable to mitigate those costs, as determined by the Principal's Representative; or
- (ii) where no notice has been given by the Contractor under the first paragraph of this Clause 26.11 or the costs notified in such a notice are not agreed to by the Principal's Representative in writing, the extra costs incurred by the Contractor as a result of the suspension, subject to the Contractor taking all steps reasonable to mitigate the extra costs, as determined by the Principal's Representative,

and the Contractor will not be entitled to make any Claim against the Principal for payment of money arising out of or in connection with the instruction to suspend other than for its entitlement under this sub-clause (b).

26.12 Not used

26.13 Not used

26.14 Not used

26.15 Not used

26.16 Not used

26.17 Not used

26.18 Not used

27. SPARE PARTS

The parties acknowledge and agree:

- (a) the Principal has made (or will make) available to the Contractor an initial inventory of Contributed Spare Parts for use in connection with the provision of the Services under the Contract;
- (b) the Contractor is deemed to have made itself aware of the Principal's initial inventory of Contributed Spare Parts and warrants that they are proper, adequate and suitable for the

- purposes of enabling it to provide the Services under the Contract and otherwise satisfy its obligations under the Contract;
- (c) the Principal will separately maintain the initial inventory of Contributed Spare Parts referred to in sub-clause (a) for the provision of the Services under the Contract by the Contractor;
 - (d) the Contractor must:
 - (i) only use items from the inventory of Contributed Spare Parts for the purposes of providing the Services under the Contract; and
 - (ii) promptly notify the Principal's Representative if:
 - (A) it uses any Spare Part (including a Contributed Spare Part);
 - (B) any Spare Parts require replacement (for example, if a Spare Part has a time-based expiry); or
 - (C) new or additional Spare Parts are required;
 - (e) all Spare Parts will be owned by the Contractor, other than:
 - (i) the Contributed Spare Parts which will at all times remain the property of RailCorp; or
 - (ii) as the Contractor and Principal may otherwise agree in writing from time to time during the Term, for example where the Contractor notifies the Principal's Representative under sub-clause (d)(ii) above and the Principal elects to purchase that Spare Part directly;
 - (f) the Contractor must:
 - (i) co-operate with Geomatic to ensure that the obligations in respect of Spare Parts under this clause 27 (including inventory management) align with the activities and requirements of Geomatic;
 - (ii) source, manage, procure and otherwise undertake all necessary assessments in respect of the Spare Parts, as part of the Maintenance Services, including notifying the Principal in writing of the nature and amount of Spare Parts required in order to meet the Key Performance Indicators;
 - (iii) store the Spare Parts securely and safely; and
 - (iv) without limiting (d)(ii) above, notify the Principal no later than 12 months prior to a Spare Part being required for forward budgeting purposes.

28. Not Used

29. VARIATIONS

29.1 Notice of Proposed Variation

Within 14 days of receipt of a notice in writing from the Principal's Representative notifying the Contractor of a proposed Variation (or such other time as may be agreed), the Contractor must, at its cost, provide the Principal's Representative with a written notice containing the following details:

- (a) the effect which the Contractor anticipates that the proposed Variation will have on:
 - (i) the Contract Price;
 - (ii) the provision of the Services (including its progress and timing) under the Contract, including by reference to the Maintenance Schedule and any amendments that the Contractor will reasonably require to be made to the Maintenance Schedule as a result of the proposed Variation; and
 - (iii) the O&M Documentation (including the plant and equipment required for maintenance of the System, and operation and maintenance costs); and
- (b) any other information concerning the proposed Variation which:
 - (i) the Principal's Representative reasonably requires including sufficient price and other details to allow the Principal to consider the need for the Variation; or
 - (ii) the Contractor wishes the Principal to take into account in considering the need for the Variation.

The Principal and the Principal's Representative will not be obliged to proceed with any proposed Variation the subject of a notice under this Clause 29.1.

29.2 Variation Order

Whether or not the Principal's Representative has issued a notice under Clause 29.1, the Principal's Representative may instruct the Contractor to carry out a Variation by a written document titled "**Variation Order**", which will state either that:

- (a) the Contract Price is adjusted as set out in the Contractor's notice under Clause 29.1; or
- (b) the adjustments (if any) to the Contract Price will be determined under Clause 29.3.

The Contractor must not carry out a Variation unless directed by the Principal's Representative pursuant to a Variation Order under this Clause 29.2 or approved in accordance with Clause 29.7.

29.3 Cost of Variation

Subject to Clauses 10.1, 21.2 and 29.7, the various components of the Contract Price will be adjusted for all Variations which have been directed by the Principal's Representative pursuant to a Variation Order under Clause 29.2 or approved in accordance with Clause 29.7 by:

- (a) the amount (if any) stated in the Variation Order under Clause 29.2(a) by reference to the Rate Card;
- (b) to the extent sub-clause (a) does not apply, an amount agreed between the parties by reference to the Rate Card;
- (c) to the extent sub-clause (a) and (b) do not apply, an amount determined by the Principal's Representative using any rates (including the Rate Card) or prices appearing in the Contract to the extent they are applicable to, or it is reasonable to use them for valuing, the Variation; or
- (d) to the extent sub-clauses (a), (b) and (c) do not apply, a reasonable amount (including profit and overheads and any delay or disruption costs) determined by the Principal's Representative.

29.4 Rates

Where any rates and prices referred to in Clause 29.3(c) are used for valuing a Variation under Clause 29.3, the rates and prices will be deemed to cover:

- (a) all labour, materials, on and off-Site overheads and profit required to perform all Services the subject of the Variation and comply with the Contractor's obligations under the Contract; and
- (b) all costs and expenses which will be incurred by the Contractor arising out of or in connection with the Variation delaying the Contractor.

29.5 Adjustment of Maintenance Schedule

If the Principal's Representative issues a Variation Order under Clause 29.2, the Maintenance Schedule will be amended:

- (a) if the Principal's Representative has indicated by written notice prior to issuing the relevant Variation Order that it agrees with the Contractor's assessment (in the Contractor's notice under Clause 29.1) of the required amendments to the Maintenance Schedule, as stated in the Contractor's notice under Clause 29.1; or
- (b) if the Contractor has not issued a notice under Clause 29.1 (whether because the Principal's Representative did not give notice of a proposed Variation or otherwise), or the Principal's Representative has not indicated prior to issuing the relevant Variation Order that it agrees with the Contractor's assessment (in the Contractor's notice under Clause 29.1) of the required amendments to the Maintenance Schedule, as directed by the Principal's Representative (acting reasonably) having regard to the nature of the Variation, and the impact of that Variation on the performance of the other aspects of the Services provided under the Contract.

Notwithstanding that the Contractor is not entitled to or has not claimed an amendment to the Maintenance Schedule, the Principal's Representative may (acting reasonably, but without any obligation to do so at all or for the benefit of the Contractor), for any reason, at any time and from time to time, direct an amendment to the Maintenance Schedule.

29.6 Omissions Generally

If the Principal's Representative instructs a Variation omitting or deleting any part of the Services under the Contract:

- (a) the Principal may thereafter either perform the relevant part of the Services itself or employ or engage another person to perform the omitted or deleted Services;
- (b) the Contractor will not be entitled to make, and the Principal will not be liable upon any Claim by the Contractor as a result of any part of the Services being omitted or deleted from the provision of the Services under the Contract whether or not the Principal thereafter performs the relevant Services itself or employs or engages another person or persons to carry out and execute the omitted or deleted Services; and
- (c) the relevant part of the Services which have been omitted or deleted will be valued in accordance with Clause 29.3.

29.7 Variations Requested by the Contractor

If the Contractor requests the Principal's Representative to approve a Variation, whether or not it is for the convenience of the Contractor, then the Principal's Representative (at his or her sole discretion) may do so in writing. The approval may be conditional. The conditions may include, but are not limited to, a condition that the Contractor will not be entitled to any extra remuneration in respect of the Variation or anything arising out of the Variation which would not have arisen had the Variation not been approved.

The Principal's Representative is not obliged to exercise its discretion to approve a Variation requested by the Contractor for the benefit of the Contractor.

29.8 Additional Services

The Contractor may also request the Contractor to provide Additional Services and the provisions of this Clause 29 will apply to that request as if it was a Variation, *mutatis mutandis*, other than that the amount payable by the Principal for any such Additional Services will be deemed to be the Variable Fees component of the Contract Price.

30. OWNERSHIP

30.1 Not used

30.2 Not used

30.3 Ownership of items

Ownership of any item (including the Hardware components of the System, in particular any installed Spare Parts) provided by the Contractor to the Principal vests in the Principal upon payment referable to that item being made under Clause 31 or otherwise.

30.4 Indemnity

GIPA Act s.14, Table (4)

GIPA Act s.14, Table (4)

30.5 Not used

31. PAYMENTS

31.1 Principal's Payment Obligation

Subject to Clause 31.8 and any other right of set-off which the Principal may have (including under the Technical Specification in respect of the KPIs), the Principal must pay the Contractor:

- (a) the Core Fees for the Core Services, in accordance with the Payment Schedule; and
- (b) any other amounts which are payable by the Principal to the Contractor under the Contract, including the Variable Fees for any Additional Services.

31.2 Payment Schedule

The Payment Schedule sets out (among other things):

- (a) those parts of the Services provided under the Contract which must be completed before the Contractor may claim payments;
- (b) the payment the Contractor may claim at any particular time;
- (c) any limitations or other constraints on the Contractor's ability to make claims for payment; and
- (d) restrictions on the timing and sequencing of the provision of the Services under the Contract with which the Contractor must comply.

31.3 Adjustment of Contract Price for Customs Duty Variation

Subject to the other requirements in the Contract, the Contract Price is subject to adjustment in accordance with Attachment "D".

31.4 Payment Claims and Payments

At the times for payment claims stated in the Payment Schedule, the Contractor must give to the Principal's Representative payment claims on account of the Contract Price, which must include details:

- (a) prescribed by the Payment Schedule; or
- (b) otherwise reasonably required by the Principal's Representative.

Except to the extent that the Principal's Representative is delayed by reasonably requiring details of the payment claim, the Principal's Representative will give to the Principal and to the Contractor a payment notice within 10 Business Days after the Principal's Representative receives the claim. The notice will state the payment which, in the opinion of the Principal's Representative, is to be made by the Principal to the Contractor or the Contractor to the Principal.

If the amount set out in the payment notice is more or less than the amount claimed by the Contractor the Principal's Representative will set out in the payment notice the calculations used and the reasons for the difference.

The Principal's Representative may, in any payment notice to the Contractor and the Principal:

- (c) correct any error in any previous payment notice; or
- (d) modify any previous payment notice,

issued by the Principal's Representative.

If the Contractor does not make a payment claim in accordance with this Clause 31.4 or Clause 31.5, the Principal's Representative may nevertheless issue a payment notice.

If the Principal's Representative, in a payment notice (including the Final Payment Notice):

- (e) determines that moneys are due from the Principal to the Contractor, the Principal must (subject to Clauses 31.8 and 31.9), within 21 days of the Principal's Representative giving the payment notice to the Contractor pay to the Contractor the amount set out in the payment notice as due from the Principal to the Contractor; or
- (f) determines that moneys are due from the Contractor to the Principal, the Contractor must, within 21 days of the Principal's Representative giving the payment notice to the Contractor pay to the Principal the amount set out in the payment notice as due from the Contractor to the Principal.

Any failure by the Principal or the Principal's Representative to set off against the amount that would otherwise be payable under a payment notice any amount under Clause 31.8 will not limit or otherwise affect the Principal's right to subsequently set off the amount under Clause 31.8.

31.5 Final Claim

On the date on which the Term expires, the Contractor must give a payment claim to the Principal's Representative.

The Final Claim must:

- (a) be supported by such details that the Principal's Representative may reasonably require; and
- (b) include all amounts which the Contractor claims from the Principal under or arising out of or in connection with the Contract or otherwise in respect of any fact, matter or thing arising out of or in connection with the provision of the Services under the Contract or the Contract which occurred prior to the expiration of the Term.

Each Final Claim is 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 Claim against the Principal. Without limiting the foregoing, the Contractor cannot include in a Final Claim any Claims which are barred by Clause 33.5.

After the date that is 5 Business Days after the expiry of the Term has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of or in connection with the provision of the Services under the Contract or the Contract which occurred prior to the date that is 5 Business Days after the expiry of the Term except where:

- (c) it has given the Principal's Representative the Final Claim within the time required by this Clause 31.5; and
- (d) the Claim is included in the Final Claim.

After the 60th day after the expiry of the Term, any Claim which was included in the Final Claim, but rejected by the Principal or the Principal's Representative and not made the subject of a dispute under Clause 35, is barred.

31.6 Final Payment Notices

Within 10 Business Days after receipt of the Final Claim, the Principal's Representative must give to the Contractor and to the Principal a payment notice (a "**Final Payment Notice**") which, in addition to the requirements of Clause 31.4, certifies the moneys finally due and payable between the Contractor and the Principal under or arising out of or in connection with the Contract or otherwise in respect of any fact, matter or thing arising out of or in connection with the provision of the Services under the Contract or the Contract.

31.7 Interest on Overdue Payments

The relevant party will pay simple interest on any:

- (a) amount which has been set out as payable by the Principal's Representative in a payment notice under Clause 31.4 or a Final Payment Notice but which is not paid by that party within the time required by the Contract; and
- (b) damages.

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

The rate of interest is to be the rate prescribed in Attachment "A".

31.8 The Principal's Right to Withhold Money Generally

The Principal may deduct from moneys otherwise due to the Contractor:

- (a) any part of the Contract Price which is found to have been overpaid or which since being paid has been reduced in accordance with the Contract;
- (b) any debt or other money due from either the Contractor or Mer Mec SpA to the Principal or RailCorp; or
- (c) any claim to money which the Principal may have against the Contractor or Mer Mec SpA whether for damages (including liquidated damages) or otherwise,

whether under the Contract or otherwise at law.

31.9 Conditions Precedent

The Principal is not obliged to make a payment under this Clause 31 unless:

- (a) the Contractor has:
 - (i) provided the unconditional undertaking required under Clause 4;
 - (ii) complied, and is complying, with its obligations under Clauses 11.4 and 12.2;
 - (iii) effected and is maintaining the insurances required by Clauses 14, 15 and 16 and (if requested) provided evidence of this to the Principal's Representative;
 - (iv) provided the statutory declaration required by Clause 32.1;
 - (v) provided all reports required by CDRL's No's PM-03 and SA-13 to the satisfaction of the Principal's Representative; and
 - (vi) complied with its obligations under Clause 40(a);
- (b) where required by Clause 32.2, the independent auditor has provided a certificate that it is satisfied that the Contractor has sufficient reserves to meet the long service leave and annual leave entitlements of its employees;
- (c) all information required to be submitted with the payment claim was provided in accordance with the Payment Schedule; and
- (d) any other conditions precedent to payment have been fulfilled.

31.10 Effect of Notices

The:

- (a) issue of:
 - (i) a payment notice under Clause 31.4; or
 - (ii) a Final Payment Notice; or
- (b) payment of moneys by the Principal to the Contractor,

does not constitute approval or acceptance of any aspect of the Services under the Contract or any other matter nor does it prejudice any rights of the Principal.

31.11 Payment on Account

Any payment of moneys by the Principal to the Contractor under Clause 31.4 or 31.6 is not:

- (a) evidence of the value of the Services so provided or that the provision of the Services 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,

but is only to be taken as payment on account of the Contract Price.

31.12 GST

- (a) Unless otherwise stated in the Contract, all amounts are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with this Contract or the provision of Services under the Contract, the party providing consideration for that supply will pay an additional amount to the supplier equal to the GST payable by the Supplier (or representative member of a GST group of which that Supplier is a member) in relation to that supply, however, no additional amount will be payable to the extent that the consideration for that taxable supply is inclusive of GST.
- (c) If any party is required under this 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 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.
- (d) Notwithstanding any other provision of this Contract, a party will not be obliged to pay any amount on account of GST to the other party (whether under this Clause 31.12 or otherwise) unless and until a tax invoice that complies with the GST Legislation has been issued by the party making the relevant Taxable Supply (or by the recipient in accordance with Clause 31.4 where applicable) in respect of that Taxable Supply. Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:
 - (i) enable or assist the other party to claim input tax credits to the maximum extent possible; or
 - (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under the Contract.
- (e) If the GST payable in relation to a supply made by the Supplier under this Contract varies from the additional amount paid by the other party under this Clause 31.12 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).
- (f) In this Clause 31.12, terms defined in GST Legislation have the meaning given to them in GST Legislation. 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 for the purposes of this Clause 31.12.

31.13 Recipient Created Tax Invoices

The parties:

- (a) each warrant that it is, as at the Date of the Deed of Agreement, registered for GST purposes and each agree to immediately notify the other party in writing if it ceases to be registered for GST purposes;
- (b) agree that the Principal may, and will to the extent permitted by law, issue any "recipient created tax invoices" in relation to all Taxable Supplies made by the Contractor to the Principal under the Contract (including all Services provided under the Contract); and
- (c) agree that where the Principal issues or is entitled to issue a recipient created tax invoice pursuant to this Clause 31.13 in relation to a Taxable Supply, the Contractor must not issue any tax invoice in respect of the same Taxable Supply.

32. PAYMENT AND ENTITLEMENTS OF WORKERS, SUBCONTRACTORS AND OTHERS

32.1 Payment of Workers, Subcontractors and others

With the submission of any payment claim under Clause 31 or at any other time when requested by the Principal's Representative, the Contractor must give the Principal's Representative a statutory declaration in the form of Attachment "T" 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 attested to, dated, and completed to the date, no earlier than the date of submission.

If any moneys are shown as unpaid in the Contractor's statutory declaration the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid.

If a worker or a Subcontractor obtains a court order in respect of moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or services performed with respect to, the provision of Services under the Contract, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid will be a debt due and payable from the Contractor to the Principal.

After the Principal receives notice of:

- (a) the Contractor being placed under administration; or
- (b) the making of a winding up order in respect of the Contractor,

the Principal will not make any payment to a worker or a Subcontractor under this Clause 32.1 without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.

32.2 Workers' leave entitlements

The Principal may, at any time, require the Contractor to procure an independent chartered accounting firm satisfactory to the Principal to:

- (a) conduct an audit of the Contractor's financial position with a view to investigating whether the Contractor has sufficient reserves to meet the accrued long service leave and annual leave entitlements of the Contractor's employees; and
- (b) provide a certificate addressed to the Principal stating whether or not the firm believes that the Contractor has sufficient reserves to meet the accrued long service leave and annual leave entitlements of the Contractor's employees.

The Contractor must, on request, permit that independent chartered accounting firm access to any of the Contractor's financial and other records.

33. CLAIMS

33.1 Notice of Variation

If the Contractor believes a Direction, other than a Variation Order under Clause 29.2, by the Principal or the Principal's Representative constitutes or involves a Variation it must:

- (a) within 7 days of receiving the Direction and before commencing the provision of the relevant Services 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 14 days of giving the notice under sub-clause (a), submit a written claim to the Principal's Representative which includes the details required by Clause 33.3(b); and
- (c) continue to provide the Services under the Contract in accordance with the Contract and all Directions of the Principal and the Principal's Representative, including any Direction in respect of which notice has been given under this Clause 33.1.

33.2 Notices of Other Claims

Except for Claims for:

- (a) not used;
- (b) payment under Clause 31 on account of the Contract Price (other than, subject to sub-clauses (c) and (d), payment which relates to an adjustment to the Contract Price pursuant to an express entitlement under the Contract);
- (c) an adjustment to the Contract Price under Clause 31.3; or
- (d) a Variation or request for Additional Services instructed in accordance with Clause 29.2 or to which Clause 33.1 applies,

the Contractor must give the Principal's Representative the notices required by Clause 33.3 if it wishes to make a Claim against the Principal in respect of any Direction by the Principal's Representative or other fact, matter or thing under, arising out of or in connection with the

provision of the Services under the Contract or the Contract, including anything in respect of which:

- (e) it is otherwise given an express entitlement under the Contract; or
- (f) the Contract expressly provides that the Contract Price will be increased.

33.3 Prescribed Notices

The notices referred to in Clause 33.2 are:

- (a) a written notice which must be given to the Principal's Representative within 14 days of the first occurrence of the events on which the Claim is based in which the Contractor states that it proposes to make the Claim and the events upon which the Claim will be based; and
- (b) a written claim by the Contractor which must be given to the Principal's Representative within 28 days of giving the notice under sub-clause (a) and which must include:
 - (i) detailed particulars concerning the events on 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.

33.4 Continuing Events

If the events upon which the Claim under Clause 33.1(b) or Clause 33.2 is based or the consequences of the events are continuing, the Contractor must continue to give the information required by Clause 33.3(b) every 28 days after the written claim under Clause 33.1(b) or 33.3(b) (as the case may be) was submitted or given, until after the events or the consequences have ceased.

33.5 Bar

It is a condition precedent to the Contractor's entitlement to make any Claim referred to in Clause 33.1, 33.2 or 33.4 that the Contractor complies with Clauses 33.1, 33.2 and 33.4. If the Contractor fails to satisfy such condition precedent:

- (a) the Principal's Representative will not be obliged to make any Direction under any relevant provision of the Contract;
- (b) the Principal will not be liable upon any Claim by the Contractor; and
- (c) the Contractor will be absolutely barred from making, and releases the Principal from, any Claim against the Principal,

arising out of or in connection with, the relevant Direction or fact, matter or thing (as the case may be).

Nothing in this Clause 33 will limit or otherwise affect the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal or the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

The Contractor acknowledges and agrees that, where the Contractor breaches or otherwise fails to strictly comply with the requirements of a provision requiring the Contractor to give the Principal or the Principal's Representative a notice (including in a particular form or within a particular time) or otherwise fails to satisfy any condition precedent to an entitlement to make a Claim (including by failing to strictly comply with the notice requirements of this Clause 33):

- (d) the loss or damage suffered or incurred, or which may be suffered or incurred, by the Principal, and the damage to the interests of the Principal, arising out of or in any way in connection with that breach or failure are unsusceptible of evaluation and assessment in money terms; and
- (e) damages will not be an adequate remedy for the Principal arising out of, or in any way in connection with, that breach or failure.

34. TERMINATION AND INSOLVENCY

34.1 Notice of Breach

The Principal may give a written notice to the Contractor if the Contractor is in breach of this Contract in that it:

- (a) does not commence to perform its obligations and provide the Services in accordance with the requirements of this Contract;
- (b) does not proceed to perform its obligations and provide the Services at a rate of progress satisfactory to the Principal's Representative;
- (c) does not comply with any Direction of the Principal's Representative made in accordance with this Contract; or
- (d) is otherwise in breach of this Contract.

34.2 Contents of Notice

A notice under Clause 34.1 must state:

- (a) that it is a notice under Clause 34.1;
- (b) the breach relied upon; and
- (c) either that the Principal requires the Contractor to:
 - (i) remedy the breach for the purposes of Clause 34.3(b); or

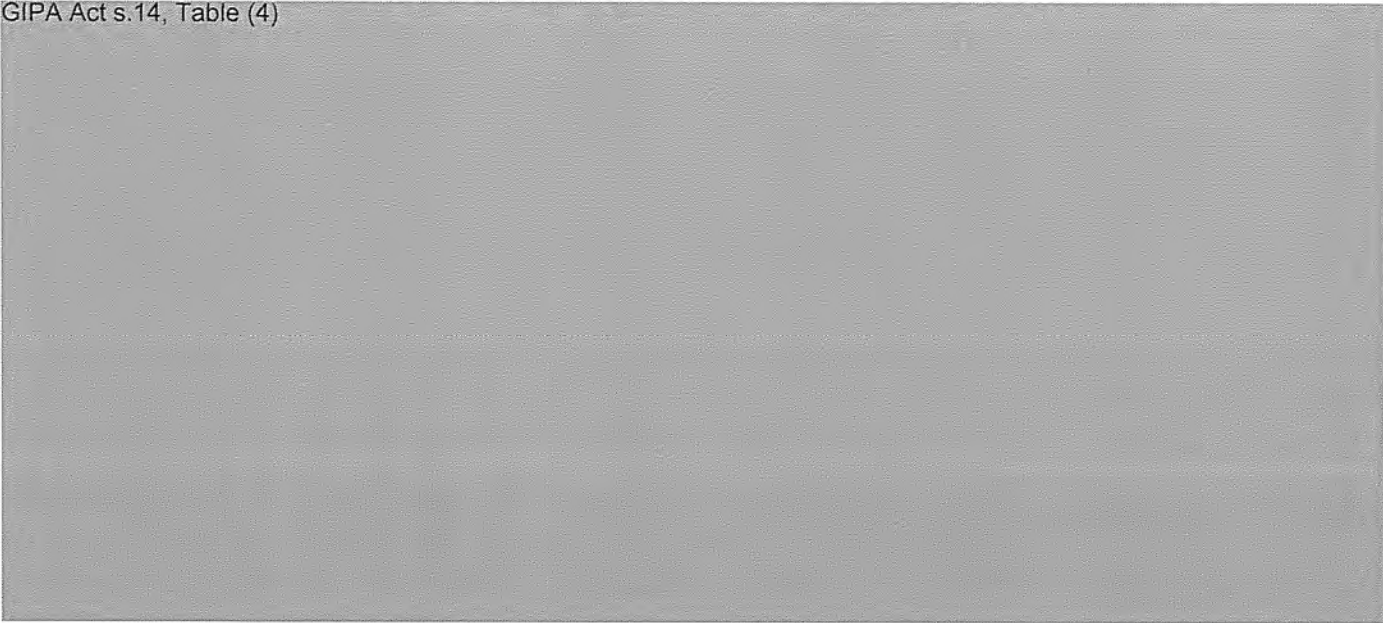
- (ii) provide a proposal to remedy the breach for the purposes of Clauses 34.3(c) and 34.3(d).

34.3 Termination for Insolvency or Breach GIPA Act s.14, Table (4)

The Principal may, without prejudice to any other right which the Principal may have, terminate this Contract by notice in writing to the Contractor from the date of the notice if:

- (a) an "Insolvency Event" as defined in Clause 34.4 occurs;
- (b) a notice under Clause 34.1 requires the Contractor to remedy a breach of the Contract and the Contractor does not remedy the breach within 21 days of receiving the notice under Clause 34.1;
- (c) a notice under Clause 34.1 requires the Contractor to provide a proposal for remedying a breach of the Contract and the Contractor does not provide such a proposal within 14 days of receiving the notice under Clause 34.1;
- (d) the Contractor provides a proposal as required by a notice under Clause 34.1 and the Principal:
 - (i) accepts the proposal but the Contractor fails to remedy the breach in accordance with the proposal; or
 - (ii) does not accept the proposal and the Contractor fails to remedy the breach within a reasonable time as determined by the Principal's Representative following notification to the Contractor from the Principal that it does not accept the proposal;
- (e) without limiting Clause 34.1, any statement in Clause 36.3 is shown to be false; or

GIPA Act s.14, Table (4)



34.4 Insolvency Event

For the purposes of Clauses 9.6 and 34.3, an "Insolvency Event" occurs if:

- (a) the Contractor makes known to the Principal in writing or creditors generally that the Contractor is insolvent or is financially unable to provide the Services under the Contract;
- (b) the Contractor commits an act of bankruptcy under the *Bankruptcy Act 1966* (Cth);
- (c) a bankruptcy petition is presented against the Contractor or the Contractor presents its own petition;
- (d) the Contractor is made bankrupt;
- (e) a meeting of creditors of the Contractor is called in order that the Contractor will:
 - (i) enter a scheme of arrangement or compromise with creditors; or
 - (ii) enter a deed of company arrangement; or
 - (iii) be placed under administration;
- (f) the Contractor enters a scheme of arrangement or composition with creditors;
- (g) the Contractor enters a deed of company arrangement with creditors;
- (h) a resolution is passed at a meeting of creditors to place the Contractor under administration;
- (i) a controller or administrator is appointed in relation to the Contractor;
- (j) the Contractor is placed under administration;
- (k) the Contractor has a deed of assignment or deed of arrangement made or accepts a composition or is required to present a debtor's petition or has a sequestration order made under Part X of the *Bankruptcy Act 1966* (Cth);
- (l) a receiver or manager of the property or part of the property of the Contractor is appointed;
- (m) a mortgagee of any property of the Contractor takes possession of that property;
- (n) an application is made to a court for the winding up of the Contractor and the application is not stayed within 14 days;
- (o) a winding up order is made in respect of the Contractor;
- (p) the Contractor resolves by special resolution that the Contractor be wound up voluntarily (other than for a members' voluntary winding up);
- (q) execution is levied against the Contractor by creditors, debenture holders or trustees or under a floating charge; or

- (r) a provisional liquidator or liquidator of the Contractor is appointed under the *Corporations Act 2001* (Cth) or otherwise.

34.5 The Principal's Entitlements after Termination

After termination under Clause 34.3, or where otherwise provided in Clause 34.11, the Principal will:

- (a) be entitled thereafter, either itself or by third parties, to complete the provision of the uncompleted part of the Services under the Contract (and for this purpose to take over any Contract Documentation);
- (b) be entitled to take over and use for the purposes of completing the provision of the uncompleted part of the Services under the Contract any materials and any other property of the Contractor;
- (c) subject to Clause 34.6, not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under Clause 31 or a payment notice under Clause 31; and
- (d) be entitled to recover from the Contractor any loss, expenses, costs and damages suffered or incurred by the Principal arising out of or in connection with such termination.

34.6 Payment of Payment Notice After Termination

After termination under Clause 34.3, or where otherwise provided in Clause 34.11, the Principal must pay to the Contractor:

- (a) any amounts set out in a payment notice under Clause 31 but not paid as at the date of termination under Clause 34.3; and
- (b) if the Principal takes over the provision of any part of the Services under the Contract under Clause 34.5(a) or (b), the unpaid value of those Services completed in accordance with the Contract prior to the date of termination under Clause 34.3,

to the extent that such amounts exceed the costs, expenses, losses and damages referred to in Clause 34.5(d) or any other amounts otherwise due to the Principal from the Contractor.

34.7 Repudiation by The Principal

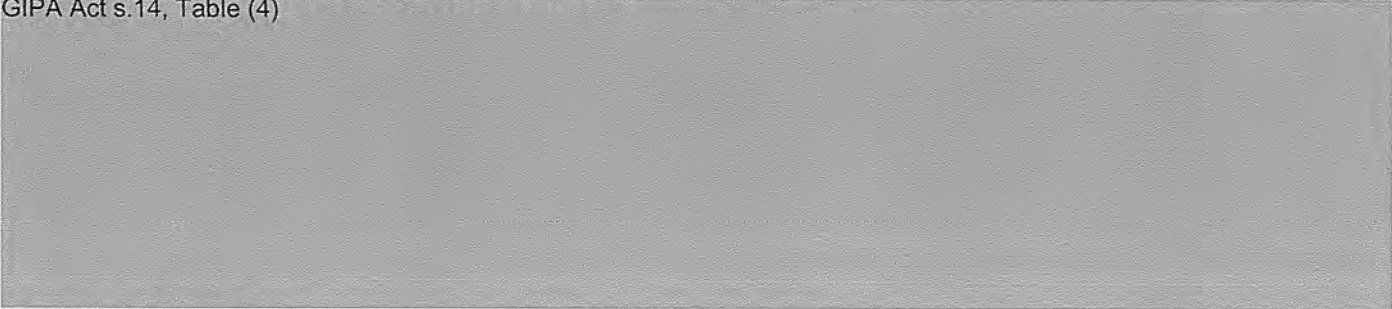
If the Principal repudiates this Contract and the Contractor terminates this Contract, the Contractor will:

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

This Clause 34.7 will survive the termination of this Contract.


34.8 Termination for Convenience

GIPA Act s.14, Table (4)



34.9 Costs

GIPA Act s.14, Table (4)



The Contractor must take all steps possible to mitigate the costs referred to in sub-clauses (b) to (d).

Upon payment of the amount payable under this Clause 34.9 ownership of any goods and materials referred to in sub-clause (b) will vest in, and remain in, the Principal.

The amount to which the Contractor is entitled under this Clause 34.9 will be full compensation for any termination under:

- (e) Clause 34.8; or
- (f) where Clauses 34.10 or 34.11 provide that the Contractor's entitlements are to be determined under this Clause 34.9, Clause 34.10 or 34.11 (as the case may be),

and the Principal will not be liable to the Contractor for any Claim (insofar as is permitted by law) in respect of the termination other than for the amount payable under this Clause 34.9.

34.10 Deemed termination

If the Principal:

- (a) exercises or attempts to exercise the power conferred on it by Clause 34.3; or

- (b) determines or purports to determine the Contract at common law,

and it is subsequently found by any court or arbitrator that such exercise, determination or attempted exercise or determination was wrongful, such exercise, determination or attempted exercise or determination will be deemed to have been a termination in accordance with Clause 34.8 and the Contractor's sole rights in such circumstances will be those set out in Clause 34.9.

34.11 DBC Contract termination

Notwithstanding that the Principal may not have complied with Clauses 34.1 or 34.2, if the DBC Contract is terminated for any reason, the Principal may terminate the Contract.

If the Contract is terminated under this Clause 34.11:

- (a) where the DBC Contract has been terminated as a result of default or any other act or omission by Mer Mec SpA or the Contractor, the parties' remedies, rights and liabilities will be determined in accordance with Clause 34.5; or
- (b) where the DBC Contract has been terminated other than as a result of a default or other act or omission by Mer Mec SpA or the Contractor, the Contractor's entitlements will be determined in accordance with, and limited to those set out in, Clause 34.9.

34.12 Principal's Rights not Prejudiced

Nothing in this Clause 34 or that the Principal does or fails to do pursuant to this Clause 34 will prejudice the right of the Principal to exercise any other right or remedy (including recovering damages) which it may have where the Contractor breaches (including repudiates) the Contract.

35. DISPUTE RESOLUTION

35.1 Notice of Dispute

If any dispute or difference (a '**Dispute**') 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 connection with the provision of the Services under the Contract or the Contract itself, or either party's conduct before the Contract (including under the Early Works Agreement), the Dispute must be determined in accordance with the procedure set out in this Clause 35.

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

- (a) the nature of the Dispute;
- (b) full particulars of the Dispute; and
- (c) the position which that party believes is correct.

35.2 Negotiation

Within 10 Business Days of receipt of a Dispute Notice, representatives of both parties must meet in person to discuss the Dispute in good faith and attempt to resolve it. Such initial negotiations must continue for 10 Business Days, or such longer period as the parties may agree in writing (the “Initial DR Period”).

35.3 Escalation

If the Dispute is not resolved by the parties within the Initial DR Period, the Dispute must be escalated to each party’s chief information officer (or equivalent), who must meet within 10 Business Days and work together in good faith to resolve the Dispute for a further period of 10 Business Days (or such longer period as the parties may agree in writing) (the “Secondary DR Period”).

35.4 Mediation

If the Dispute is not resolved by the parties within the Secondary DR Period, the Dispute must be referred by the parties for mediation with 10 Business Days. Such a dispute will be referred in accordance with the ACICA Mediation Rules. The mediation will take place in Sydney, Australia as soon as practicable and be administered by the Australian Centre for International Commercial Arbitration (ACICA). The third party costs of such a mediator will be borne equally by the parties.

35.5 Not used

35.6 Costs

Each party will bear its own costs in respect of the Dispute resolution procedures set out in this Clause 35.

35.7 Not used

35.8 Not used

35.9 Not used

35.10 Not used

35.11 Arbitration

If the Dispute has not been settled by mediation within 40 Business Days following the written referral for mediation (or within such other period as the parties may agree in writing), the Dispute must be resolved by arbitration.

The arbitration will be conducted before one arbitrator to be:

- (a) agreed between the parties; or
- (b) failing agreement within 10 further Business Days, appointed by the President for the time being of The Institute of Arbitrators and Mediators Australia.

The IAMA Arbitration Rules current at the time of reference to arbitration will apply to the arbitration. The seat of the arbitration will be Sydney and all hearings will be heard in Sydney unless otherwise agreed by the parties.

The arbitrator will have the power to:

- (c) open up and review any Direction of the Principal's Representative; and
- (d) grant all legal, equitable and statutory remedies.

35.12 Survive Termination

This Clause 35 will survive the termination of the Contract.

35.13 Continuation of work under the Contract

Despite the existence of a Dispute between the parties:

- (a) the Contractor must:
 - (i) continue to provide the Services under the Contract; and
 - (ii) otherwise comply with its obligations under the Contract;
- (b) the Principal must comply with its obligations under the Contract; and
- (c) neither party's rights under the Contract or at common law or equity are otherwise limited or excluded (including the right to make applications for interim relief, including injunctions).

36. MISCELLANEOUS

36.1 Auditing Requirements

The Principal and the Principal's Representative have the right, through their own representatives or through independent auditors chosen by the Principal or the Principal's Representative, to examine and evaluate the procedures and practices followed by the Contractor in the:

- (a) accounting for and charging of any cost allowances;
- (b) purchasing, receiving, storing and issuance of materials;
- (c) paying of invoices, timekeeping, preparation of payrolls, accumulation of cost records, preparation and reporting of budgets, estimates and forecasts; and
- (d) administration, accounting, control and procurement,

relating to the Contract.

The Principal and the Principal's Representative have the right to examine and evaluate any item of direct or indirect costs and any other fixed costs or allowances and have the right of access to and to obtain copies of all requisitions and documents, proofs of receipt for both goods and services, time sheets, overtime authorisations, pay slips, group certificates, work-sheets and all supporting source documentation for all calculations relating to indirect or direct costs, in each case so far as it relates to the provision of the Services under the Contract.

The Contractor must furnish to the Principal or the Principal's Representative (as the case may be) all explanations requested in connection with the foregoing and must afford them proper facilities for the inspection of the provision of the Services under the Contract and access to (including, where relevant, to make copies of) premises, work, equipment and materials and to all books, records, correspondence, instructions, plans, drawings, receipts, facilities and memoranda of the Contractor relating to the Contract.

The Contractor must ensure that any agreement between the Contractor and any Subcontractor contains a provision giving the Principal and the Principal's Representative the right to audit and make copies of all books of account of the Contractor's agents, consultants and Subcontractors and all other records or documents used to prepare prices submitted in accordance with the Contract.

36.2 Not used

36.3 Conflicts of Interest and Fair Dealing

As a fundamental condition of the Contract, the Contractor promises that the following statements are true when the Contract is entered into and will remain true at all subsequent times until the Contract is completed.

In connection with the Contract, and except as disclosed to the Principal in writing before the Contract is entered into:

- (a) the Contractor and Mer Mec SpA have not engaged in any uncompetitive behaviour or other practice which has denied or may deny legitimate business opportunities to other contractors;
- (b) the Contractor and Mer Mec SpA have not:
 - (i) accepted or provided any secret or corrupt commissions;
 - (ii) colluded with any employees of the Principal;
 - (iii) not used;
 - (iv) entered any improper commercial arrangements with any persons, including any employees of the Principal, or any contractors, subcontractors, suppliers or agents;
 - (v) not used; or
 - (vi) accepted or provided any incentives to provide contracts or services to any contractors, subcontractors, suppliers or agents;

- (c) the Contractor and Mer Mec SpA have not, directly or indirectly:
 - (i) paid or allowed or entered into any contract, arrangement or understanding to pay or allow any monies to a trade or industry association (above the published standard fee) in relation to the subject matter of the Contract;
 - (ii) not used;
 - (iii) not used; or
 - (iv) provided any payments or other incentives to any employees of the Principal;
- (d) the Contractor and Mer Mec SpA will not do any of the things in sub-clauses (a) to (c) inclusive at any time in the future in connection with the Contract;
- (e) the Contractor and Mer Mec SpA have observed all relevant statutory and other legal requirements and will continue to do so in the future in connection with the Contract; and
- (f) not used.

Without limiting the Principal's rights under Clause 34.3, if the Contractor or Mer Mec SpA pays or allows to or on behalf of a trade or industry association or any other person any money in breach of the preceding paragraph, the Principal is entitled to withhold from any payment due to the Contractor on any account an equivalent sum as liquidated damages.

37. HANDOVER

37.1 Handover Plan

The Contractor must:

- (a) no later than 3 months prior to the expiry of the Term; or
- (b) within 10 Business Days after receipt of a notice of termination of the Contract or the drawing on the security by the Principal under clause 4,

prepare a Handover Plan that complies with the requirements of Attachment "U" and submit it to the Principal's Representative for review under Clause 7.3.

37.2 Transition of Handover

The Contractor must, during the period set out within the Handover Plan:

- (a) conduct training of the personnel of the Principal, and such other personnel as may be nominated by the Principal's Representative, in providing the Services with respect to the System that is the same as or similar to the provision of the Services under the Contract, in the provision of maintenance, repair and support services in respect of the System, and as otherwise required by the Handover Plan;

- (b) upon completion of the training referred to in sub-clause (a), permit the Principal, or any person nominated by the Principal's Representative (including the employees and personnel of the Principal or any such person nominated by the Principal's Representative) to observe and participate in the provision of the Services under the Contract in respect of the System; and
- (c) otherwise carry out all work, activities and services and do all other things required by, and otherwise comply with and carry out the work under the Contract in accordance with, the Handover Plan.

For the avoidance of doubt, any personnel engaged in observing or participating in the provision of the Services under the Contract in respect of the System (as contemplated by sub-clause (b)) will do so under the direction and control of the Contractor, and the Principal will not be liable for any acts or omissions of any such personnel, except in the event of wilful misconduct.

37.3 Handover

The Contractor must deliver to the Principal's Representative, or any person nominated by the Principal's Representative, all books, records, plans, drawings, specifications, manuals, and other documents (including all copies thereof) relating to the System and the provision of the Services under the Contract, however recorded and in whatever form, at 4pm on the last day of the Term, or upon termination of the Contract. Such a handover must be updated on the last day of the performance of the Handover Plan.

37.4 Condition of the System at Handover

The Contractor must ensure that, as at the last day of the Term and the last day of the performance of the Handover Plan, the System is in a condition required by the Contract, including under Clause 3.3(h).

37.5 Condition Audit Prior to Handover

The Contractor:

- (a) acknowledges and agrees that:
 - (i) at any time, the Principal may conduct, or have conducted, an audit on the condition and state of repair of the System to determine the likelihood of the Contractor's compliance with Clause 37.4; and
 - (ii) the Principal will, following completion of the audit referred to in sub-clause (i), issue a written report to the Contractor setting out details of the services that are necessary in order to ensure compliance with Clause 37.4; and
- (b) must promptly carry out all necessary Services identified in any audit report issued by the Principal under Clause 37.5(a)(ii).

38. PERSONAL PROPERTY SECURITIES ACT

38.1 Further Assurances

By signing the Contract, the Contractor acknowledges and agrees that if the Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (“**Security Interest**”), the Contractor must do anything (including amending the Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
- (b) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
- (c) enabling the Principal to exercise rights in connection with the Security Interest and the Contract.

38.2 Contracting out of PPS Act

If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.

38.3 Acknowledgments and undertakings

The Contractor:

- (a) acknowledges that the Security Interests created under the Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
- (b) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
- (c) undertakes it will not register a financing change statement without the prior written consent of the Principal.

38.4 Requests for information

The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this Clause 38.4 constitutes a confidentiality agreement within the meaning of the PPS Law.

The Contractor agrees to waive any right it may have, or but for this Clause 38.4 may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

39. 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 this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting sub-clause (a), the rights, obligations and liabilities of the Contractor and the Principal under this Contract with respect to proportionate liability are as specified in this 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 must indemnify the Principal against any loss, damage, cost or expense 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).

40. THIRD PARTY RIGHTS

- (a) The Contractor must, on or before the Date of the Deed of Agreement, provide to the Principal an executed deed poll in favour of RailCorp in the form set out in Attachment "H".
- (b) The Contractor acknowledges and agrees that:
 - (i) the current arrangements in respect of ownership of assets the subject of the Services provided under the Contract (including the Vehicles, the System and the Spare Parts) may be restructured in future, which may include the transfer of assets by RailCorp to a separate entity; and
 - (ii) the Contractor must do all things reasonably requested by the Principal in connection with any restructure referred to in Clause 40(b)(i), including amending the Contract to replace references to "RailCorp" with references to any separate entity that becomes the owner of assets owned by RailCorp and executing a new deed poll in the form of Attachment "H" in favour of the separate entity that becomes the owner of assets owned by RailCorp.

ATTACHMENT "A" - CONTRACT PARTICULARS

Item	Description	Detail
1.	Contractor's Representative (Clause 2.1):	GIPA Act s.14, Table 3(a)
2.	Site (Clause 2.1):	Railway sidings railway parade Granville NSW, Australia
3.	Principal's Representative (Clause 2.1):	GIPA Act s.14, Table 3(a)
5.	Address of Principal (Clause 6):	3 East Street, Granville NSW 2142 Australia
6.	Address, Facsimile Number and Telephone Number of Principal's Representative (Clause 6):	Sydney Trains ABN 38 284 779 682. Phone: +61 (2) 9536 8261] GIPA Act s.14, Table 3(a)
7.	Address, Facsimile Number and Telephone Number of Contractor (Clause 6):	Level 7, 91 Phillip Street Parramatta, NSW 2150 Australia Phone: +61 (2) 9891 0000] Fax: : +61 (2) 9891 1771 GIPA Act s.14, Table 3(a)
8.	The amount of Public and Products Liability Insurance must not be less than (Clause 15.1):	GIPA Act s.14, Table (4)
9.	The amount of Professional Indemnity Insurance must not be less than (Clause 15.2):	
9a.	Not used	Not used
10.	Not used	Not used
11.	The rate of interest on overdue payments (Clause 31.7):	GIPA Act s.14, Table (4)
12.	Not used	Not used

Item	Description	Detail
13.	Not used	Not used
14	Access to the Vehicles at the Site provided by the Principal (Clause 3.9)	Subject to prior arrangement by the parties.
15	Not used	Not used
16.	Not used	Not used

**ATTACHMENT "B" - INFORMATION DOCUMENTS AND
REFERENCE DOCUMENTS**

INFORMATION DOCUMENTS

PROG-01	Program Information
MTPV-01	Mechanised Track Patrol Vehicle – External Perspective
MTPV-02	Mechanised Track Patrol Vehicle – Internal Layout

REFERENCE DOCUMENTS

PART 1 - DOCUMENTS TO BE SUPPLIED BY THE PRINCIPAL

PART 2 - DOCUMENTS NOT TO BE SUPPLIED BY THE PRINCIPAL

I. NSW Government Policies and Standards

NSW Government Procurement Local Jobs First Plan

NSW Government Waste Reduction and Purchasing Policy

NSW Government Energy Management Policy

NSW Government Quality Management Systems Guidelines – for construction

NSW Government Work Health and Safety Management Systems and Auditing Guidelines

NSW Government Industrial Relations Management Guidelines dated December 1999

NSW Government Training Management Guidelines - 2009

NSW Government Environmental Management Systems Guidelines Edition 3 August 2013

Code of Practice for Procurement 2005

Disability Standards for Accessible Public Transport (issued by the Commonwealth Attorney-General's Department) 2002 (as amended)

NSW Government Procurement Policy

For noting: NSW Government Policies and Standards are downloadable from:

1. www.treasury.nsw.gov.au
2. www.dpc.nsw.gov.au/publications/memos_and_circulars
3. www.nswprocurement.com.au
4. www.transport.nsw.gov.au

2. Asset Standards Authority (ASA) Engineering Standards

ASA standards are accessed from the following web address:

<http://www.asa.transport.nsw.gov.au/>

3. Australian and International Standards

ADR 50/00	Australian Design Rules – Issued by Vehicle Standards, Vehicle Operator and Vehicle Policy Branch, Roads and Traffic Authority of New South Wales
AS 1019	Internal Combustion Engines- Spark Emission Control Devices
AS 1074	Steel Tube and Tubulars for Ordinary Use
AS 1085.1	Railway track material - Steel rails
AS 1171	Non-Destructive Testing-Magnetic Partical Testing of Ferromagnetic products, components and structures.
AS 1210	Pressure Vessels
AS 1259	Acoustics - Sound Level Meters - Part 1 Non-integrating
AS 1319	Safety signs for the occupational environment
AS 1324.1	Air filters for use in general ventilation and air conditioning – Application, performance and construction
AS 1428.1	Design of Access and Mobility – General requirements for Access new Building work
AS 1554.1	Structural Steel Welding – Welding of Steel Structures
AS 1554.5	Structural Steel Welding – Welding of Steel Structures subject to High Levels of Fatigue Loading
AS 1627	Metal finishing – Preparation and pre-treatment of surfaces – Method selection guide–
AS 1657	Fixed Platforms, Walkways Stairways and Ladders – Design, Construction and Installation
AS 1665	Welding of Aluminium
AS 1680	Interior Lighting - Safe
AS 1796	Certification of welders and welding supervisors
AS 1841	Portable fire extinguishers - General requirements
AS 1939	Degrees of protection provided by enclosures for electrical equipment (IP Code)

AS 2062	Non-destructive testing - Penetrant testing of products and components
AS 2177	Non-destructive testing - Radiography of welded butt joints in metal
AS 2207	Non-destructive testing - Ultrasonic testing of fusion welded joints in carbon and low alloy steel
AS 2377	Acoustics - Methods for the measurement of railbound vehicle noise
AS 2444	Portable fire extinguishers and fire blankets - Selection and location
AS 2664	Earthmoving Machinery Seat Belts and Seat Belt Anchorages
AS 2670	Evaluation of human exposure to whole body vibration
AS 2973	Vibration and shock-Human response-Vibration measuring instrumentation
AS 2980	Qualification of welders for fusion welding of steels
AS 3661	Slip resistance of pedestrian surfaces - Requirements
AS 4292	Railway safety management
AS 4458	Pressure equipment - Manufacture
AS 7531	Railway Rolling Stock - Lighting and Visibility
AS 7515-4	Railway Rollingstock Axles
AS7516-4	Railway Rollingstock Axle Bearings
AS 7517-4	Railway Rollingstock Wheel sets
AS/NZS 3000	Electric Installations
AS/NZS 3788	Electric Installations
AS/NZS 60598	Approval and test specification – Luminaries (light fittings)
ASHRAE Standard 55	Thermal Environmental Conditions for Human
ATS 5387.7 -2006	Guidelines - Fire Safety engineering Part 7: Detection Activation and suppression
BS 173	Specification for castings of aluminium-silicon-magnesium alloy, chill cast (solution treated and precipitation treated to an overage (T7) condition)
BS 2618	Specification for Electric Traction Equipment
BS 6853	Code of practice for fire precautions in the design and construction of passenger carrying trains

DIN 4102	Fire behaviour of building materials and building components; building components; definitions, requirements and tests
EN ISO 717-1	Acoustic – Rating of Sound Insulation in buildings and of building elements. Part 1: Airborne Sound Insulation.
EN 10025	Hot rolled products for structural steels – Part 1; General technical delivery conditions
EN 12663	Railway Applications – Structural Requirements of Railway Vehicle Body
EN 13103	Railway applications. Wheelsets and bogies. Non-powered axles. Design method
EN 13104	Railway applications. Wheelsets and bogies. Powered axles. Design method
EN 13231-3	Railway Applications – Track – Acceptance of Works – Part 3: Acceptance of rail grinding, milling and planning work in track
EN 13261	Railway applications. Wheelsets and bogies. Axles. Product requirements
EN 13715	Railway applications. Wheelsets and bogies. Wheels. Wheels tread
EN 13749	Railway applications. Methods of specifying structural requirements of bogie frames
EN 13848-1	Railway Applications - Track - Track Geometry Quality - Part 1: Characterisation Of Track Geometry
EN 13848 -2	Railway Applications - Track - Track Geometry Quality – Measuring Systems. Track Recording Vehicles.
EN 14033-1	Railway applications. Track. Railbound construction and maintenance machines. Technical requirements for working
EN 15227	Railway applications – Crashworthiness requirements for railway vehicle bodies.
EN15085	Railway Application – Welding of Railway vehicles and components
EN 1993 1-8	Eurocode 3: Design of Steel Structures; Part 1-8; Design of Joints
EN 1993 1-9	Eurocode 3: Design of Steel Structures; Part 1-9; Fatigue
EN 1999 1-1	Eurocode 9: Design of aluminium structures; Part 1-1: General Structural Rules
EN 1999 1-3	Eurocode 9: Design of aluminium structures; Part 1-3: Structures Susceptible
EN 50126	Railway applications. The specification and demonstration of reliability, availability, maintainability and safety (RAMS)

ENV 50121-1	Railway applications, general
ENV 50121-3-1	Railway applications, rolling stock, train and complete vehicle
ENV 50121-3-2	Railway applications, rolling stock, apparatus
ENV 50166	Human exposure to electromagnetic fields. Low frequency (0 Hz to 10 kHz)
EN 60825-1	Safety of Laser equipment, prescriptions and guidelines for the users
EN 61373	Railway, tramway and metro applications – Rollingstock – Tests for Shocks and Vibrations
ERTM/ETCS-Baseline 3	European Railway Agency
FRA Spec 49 CFR Part 223	Safety Glazing Standards – Locomotives, Passenger Vehicles and Cabooses
GC/TP0459	Fitting of Track Circuit Actuators to On-Track Machines.
GM/RT2458	Vehicle Requirements for the Reliable Operation of Track Circuits
GM/GN2576	Guidance on Vehicle Requirements for Reliable Track Circuit Operation
GM/RT2100	Structural Requirements for Railway Vehicles
GM/RT2456	Structural requirements for windscreens and windows on railway vehicles
GM/RT2476	Requirements for Track Circuits
GM/RT2477	Track Circuit Assister Configuration for Rail Vehicles
HB40-1997	Australian Refrigeration and Air Conditioning Code of Good Practice.
IEC 1287	Power converters installed on board Rolling Stock
IEC 146	International Electrical Code – Semiconductor Convertors: General Requirements and Line Commutated Convertors
IEC 494	Rules for pantographs of electric rolling stock
AS/NZS ISO 14040	Railway Applications - Rolling Stock Equipment - Shock And Vibration Tests
IEC 77	Specification for Electric Traction Equipment
ISO 7619	Rubber, vulcanised or thermoplastic – determination of indentation hardness – Part 1: Durometer method (shore hardness)
ISO 4649	Rubber, vulcanised or thermoplastic – determination of abrasion resistance using a rotating cylindrical drum device.

ISO 7498	Information technology - Open Systems Interconnection - Basic Reference Model
ISO 8178	Reciprocating internal combustion engines - Exhaust emission measurement
NF X 70-100	Fire Behaviour Tests – Analysis of pyrolysis and combustion gases - -Pipe still method
NOHSC:1001	National Standard for Manual Handling
NOHSC:2005	National Code of Practice for Manual Handling
EN 15610:2006	Railway applications. Noise emission. Road test draft standard for rail roughness measurement prEN 15610:2006
UIC Code 510	Trailing stock: wheels and wheelsets. Conditions concerning the use of wheels of various diameters
UIC Code 555	Electric Lighting in Passenger Rolling Stock
UIC Code 566	Loading of Coach Bodies and their components
ISO 12944-5:2007	Paints and varnishes -- Corrosion protection of steel structures by protective paint systems -- Part 5: Protective paint systems
AS/NZS 3905.16:1998	Quality system guidelines Part 16: Guidelines to quality in project management
AS/NZS 3907:1996	Quality management Guidelines for configuration management
AS3913	Guide to the Preparation of Quality Manuals
AS/NZS 3931:1998	Risk Analysis of Technological Equipment
AS3960:1990	Guide to reliability and maintainability program management
AS4292.1	Railway Safety Management Part 1: General and interstate requirements
AS4292.3	Railway Safety Management Part 3: Rolling Stock
AS/NZS4360: 1999	Risk Management
HB40-1992	Australian Refrigeration and Air Conditioning Code of Good Practice
AS/NZS ISO 9001: 1994	Quality systems - Model for quality assurance in design, development, production, installation and servicing
ISO 9000-3: 1991	Guidelines for the application of ISO 9001 to the development, supply and maintenance of software
AS/NZS ISO 9004.5	Quality Plans
ISO 10005: 1995	Quality Management – Guidelines
ISO 7498	Information processing systems – Open system interconnection – Basic reference model

MIL-HDBK-217E	Reliability Prediction of Electronic Equipment
MIL-DTL-38999K	General specification for Connectors, Electrical, Circular, Miniature, High Density, Quick Disconnect (Bayonet, Threaded and Breach Coupling), Environment Resistant, Removable Crimp and Hermetic Solder Contacts
NFX 70-100	Analysis of Pyrolysis and combustion gases – Tube furnace method
NOHSC:1001	National Occupational Health and Safety Commission's National Standard for Manual handling
NOHSC:2005	National Occupational Health and Safety Commission's National Code of practice for Manual handling
NOHSC:2005	National Occupational Health and Safety Commission's National Code of practice for Manual handling

Standards can be obtained through international and Australian agencies, including:


1. Australian Standards (AS and HB) are available from: www.saiglobal.com
2. NOHSC Standards are available from: www.safeworkaustralia.gov.au
3. ADR standards are available from: www.comlaw.gov.au

ATTACHMENT "C" – PRICE AND PAYMENT SCHEDULE

GIPA Act s.14, Table 4(b)



GIPA Act s.14, Table 4(b)



ATTACHMENT "D" - ADJUSTMENT OF CONTRACT PRICE

GIPA Act s.14, Table 4(b)




ATTACHMENT "E" - KEY PERSONS

Mer Mec is a project oriented company and its organisation reflects this trend through a matrix organisation chart: the Project Manager operates over a Project Team set up by resources of different company departments in order to form a multidisciplinary Project Team.

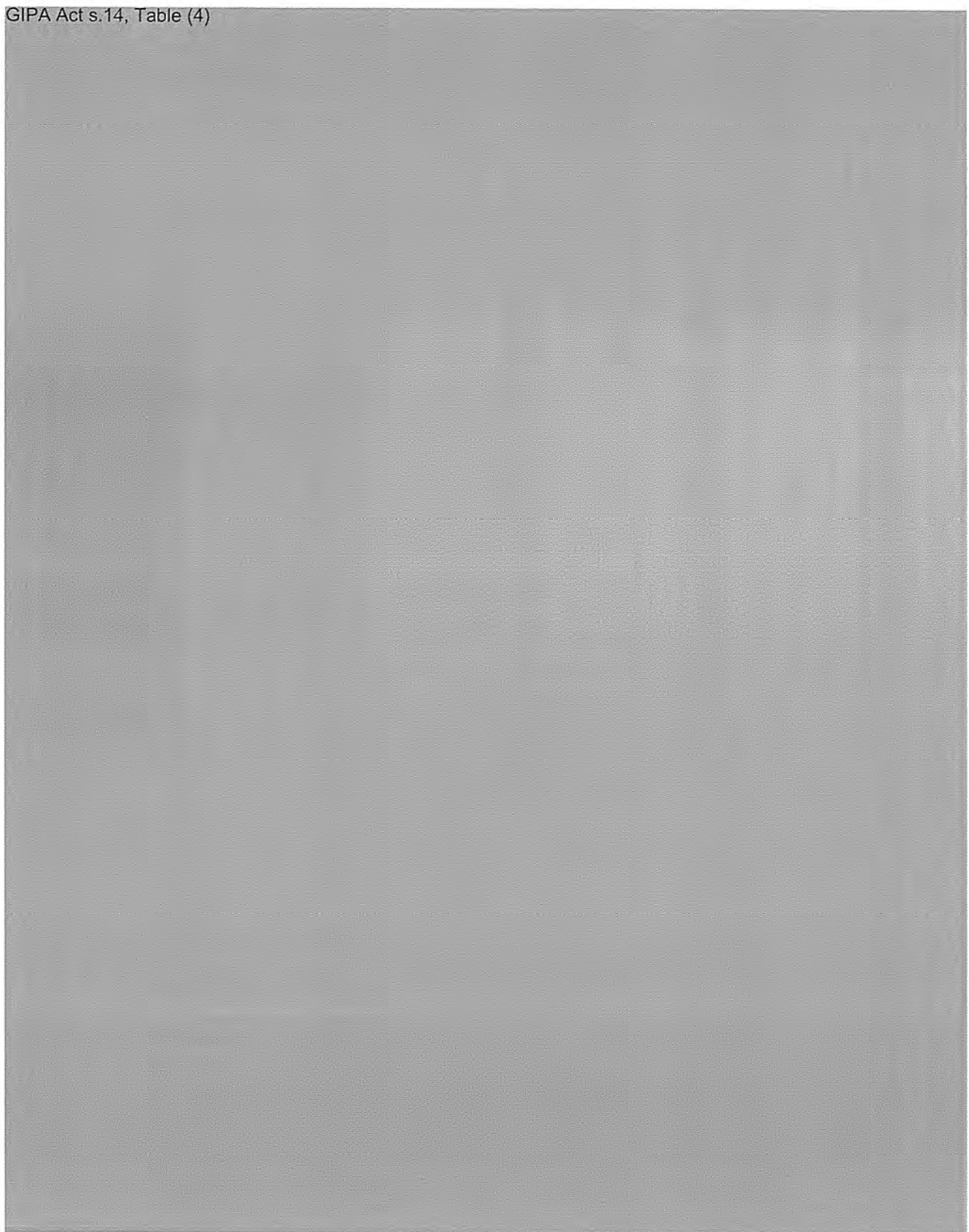
The Organisational Planning identifies the main project roles, responsibilities and reporting relationships.

GIPA Act s.14, Table 3(a)




Roles and Responsibilities:


GIPA Act s.14, Table (4)



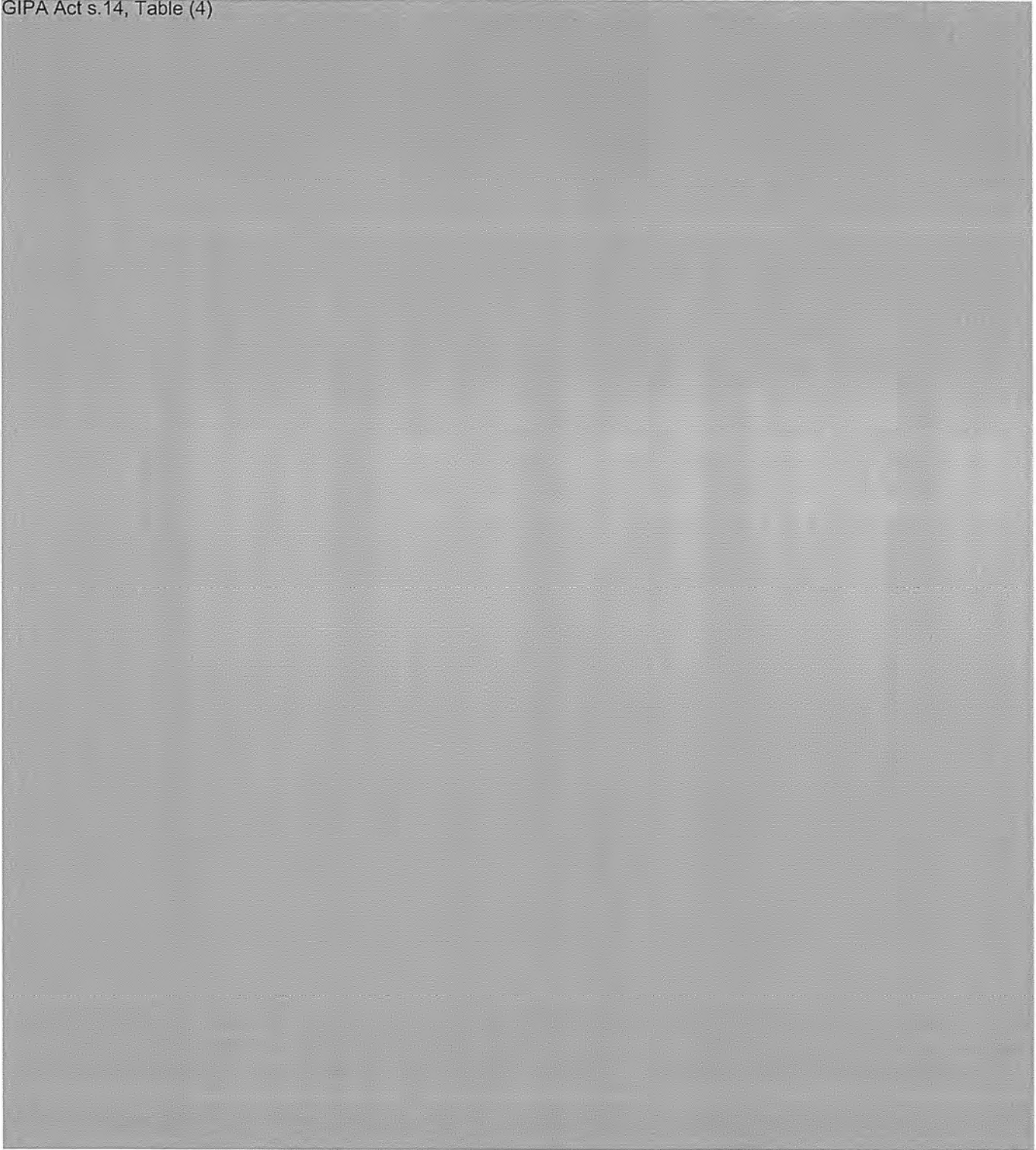
GIPA Act s.14, Table (4)



GIPA Act s.14, Table (4)



GIPA Act s.14, Table (4)



ATTACHMENT "F" – CPI ADJUSTMENT
(Clause 2.21)

This Attachment "F" applies only if provided under Clause 2.21.

1. Within 20 Business Days of the Contractor's notice under Clause 2.21(b), the Contractor must notify the Principal's Representative in writing of the Contractor's proposed adjustment for the CPI review calculated in accordance with paragraph 3 of this Attachment "F", together with supporting evidence, including copies of the relevant indices and the Contractor's calculations.
2. The Principal's Representative must, by the later of:
 - (a) 20 Business Days after receipt of the Contractor's notice under paragraph 1 of this Attachment "F"; and
 - (b) the date that is 5 Business Days prior to the relevant date on which the adjustment is to apply,notify the Contractor of the adjusted items as determined by the Principal's Representative.
3. **CPI** means the All Groups Consumer Price Index for Sydney, published quarterly by the Australian Bureau of Statistics, or such substitute index notified in accordance with paragraph 4 of this Attachment "F". The relevant adjustment is to be calculated in accordance with the following formula:

$$R = \frac{A \times B}{C}$$

Where:

- R = the amount or rate following adjustment;
- A = the amount or rate immediately prior to the relevant adjustment;
- B = the CPI figure for the quarter ending immediately preceding the date of calculation of the adjustment; and
- C = in respect of:
- (a) the first CPI adjustment under Clause 2.21, the CPI figure for the quarter ending immediately preceding the Date of the Contract; and
 - (b) all CPI adjustments under Clause 2.21 other than the first CPI adjustment, the CPI figure for the quarter ending immediately preceding the date of calculation of the last CPI adjustment under Clause 2.21.
4. If an index specified in paragraph 3 above is discontinued or the basis on which the index is calculated is altered, the Principal's Representative must determine a substitute index that is of a nature consistent with the original index and notify the Contractor.

5. If the result of the calculation in paragraph 3 above includes more than three decimal places, the Principal's Representative and the Contractor shall not have regard to the fourth and following decimal places.

ATTACHMENT "G" – UNCONDITIONAL BANK UNDERTAKING
(Clause 4)

DATED:

GRANTED BY:

.....
(the "Bank")

FOR CONTRACT NO:

GENERAL DESCRIPTION: A contract for the provision of maintenance, repair and support services for Mechanised Track Patrol Vehicles.

TO: SYDNEY TRAINS (ABN 38 284 779 682) of 18 Lee Street, Chippendale, NSW 2008 (the "Principal")

INTRODUCTION:

A. Under the Maintenance Agreement entered into between
..... (ACN)
..... (the "Contractor"), and the
Principal, dated 20 (the "Contract"), the Contractor agreed to carry
out the work under the Contract.

B. GIPA Act s.14, Table (4)

OPERATIVE

1. The Bank unconditionally undertakes, when required in writing by the Principal, to immediately pay to the Principal the Sum or such lesser sum as required, without reference or communication to the Contractor and notwithstanding any notice given by the Contractor to the Bank not to pay the same.
2. The Bank may at any time, without being required to do so by the Principal, pay to the Principal the Sum or the balance remaining after any part payment or payments and discharge this Unconditional Bank Undertaking.
3. The Bank's obligation under this Unconditional Bank Undertaking will cease on receipt by the Bank of written notice from the Principal that the Sum is no longer required by the Principal or payment by the Bank to the Principal of the Sum or the balance remaining after any part payment or payments. The Principal will provide such written notice on or around GIPA Act s.14, Table (4)
of Agreement], in ac
4. The Bank's liability will not be impaired or discharged by any alterations which may be made in the terms of the Contract or by any extension of time or other forbearance by either the Principal or the Contractor to the other.

EXECUTED as a deed poll.

SIGNED, SEALED AND DELIVERED for
and on behalf of [] by
its Attorney under a Power of Attorney dated
and registered Book No. and
the Attorney declares that the Attorney has not
received any notice of the revocation of such
Power of Attorney, in the presence of:

Signature

Signature of Witness

Name of Witness in full

ATTACHMENT "H" – DEED POLL IN FAVOUR OF RAILCORP

This deed poll ("Deed Poll") made the day of 20

By: CW46710 (ABN) of Level 7, 91 Phillip Street, Parramatta, NSW 2150
(Contractor),

in favour of: Rail Corporation New South Wales (ABN 59 325 778 353) a corporation
constituted by section 4(1) of the *Transport Administration Act 1988* (NSW), of
Level 20, 477 Pitt Street, Sydney NSW 2000 (**RailCorp**).

Recitals

- A RailCorp owns the rail network and rail assets in NSW, including rolling stock.
- B Sydney Trains, the corporation by that name constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW) (**Principal**) has entered into a Contract with the Contractor for maintenance, repair and support services in respect of Mechanised Track Patrol Vehicles and associated systems dated [#insert date] (**Contract**).
- C It is a condition of the Contract that the Contractor executes this Deed Poll.

This Deed Poll witnesses that the Contractor hereby covenants, warrants and agrees with and for the benefit of RailCorp as follows:

1. It will comply with its obligations under the Contract.
2. Upon completion of the work under the Contract, the System will satisfy the requirements of the Contract.
3. The aggregate of the Contractor's liability to RailCorp 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, RailCorp and the Principal 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. RailCorp may assign or charge the benefits and rights accrued under this Deed Poll
6. This Deed Poll is governed by the laws of the State of New South Wales.

7. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp.
8. 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.

[#insert execution block for Contractor]

ATTACHMENT "I" - DEED OF WARRANTY
(Clause 8)

THIS DEED is made the day of 20

PARTIES **SYDNEY TRAINS (ABN 38 284 779 682)** of Level 20, 477 Pitt Street, Sydney NSW 2000 ("**Principal**")

That person described in Item 1 of the Schedule ("**Warrantor**")

That person described in Item 2 of the Schedule ("**Contractor**")

RECITALS:

- A. The Principal and the Contractor have entered into the contract described in Item 3 of the Schedule ("**Contract**") under which the Contractor has agreed to perform the work described in Item 4 of the Schedule ("**Works**").
- B. The Warrantor has entered into a subcontract with the Contractor ("**Subcontract**") under which it is to perform the work described in Item 5 of the Schedule ("**Warrantor's Works**") which will be incorporated into the Works.
- C. The Warrantor has agreed to give warranties to the Principal.

OPERATIVE:

1. The Warrantor:
 - (a) warrants to the Principal that the Warrantor's Works 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 Warrantor's Works.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Warrantor's Works.

2. The Warrantor must make good or replace at its sole cost so much of the Warrantor's Works 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 the Warrantor's Works 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. The Warrantor will be liable for 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. If the Warrantor does not, within 14 days of the Principal giving the Warrantor notice to do so, make good or replace the Warrantor's Works as required by Clause 2, then:
- (a) the Principal may do so; and
 - (b) the costs, expenses, losses and damages suffered or incurred by the Principal in making good or replacing the Warrantor's Works as required by Clause 2 will be a debt due from the Warrantor to the Principal.
5. The Warrantor will indemnify the Principal against all costs, expenses, losses and damages suffered or incurred by the Principal arising out of or in connection with any breach by the Warrantor of:
- (a) the warranties given by it under this Deed; and
 - (b) its other obligations under this Deed.

6.1 In this Clause 6:

"Event of Termination" means that:

- (a) an event has occurred under Clause 34.3 of the General Conditions of Contract which form part of the Contract which entitles the Principal to terminate the Contract (subject to the issue of all notices required by that Clause); or
- (b) the Principal has given notice to the Contractor under Clause 34.8 of the General Conditions of Contract which form part of the Contract terminating the Contract.

"Nominee" means the person (if any) nominated by the Principal under paragraph (b) of Clause 6.3.

"Principal's Representative" means the person who is the "Principal's Representative" for the time being under the Contract.

- 6.2 The Principal may at any time after an Event of Termination has occurred give a notice in writing to the Warrantor ("**Request**") requesting it to advise of any claims outstanding between the Contractor and the Warrantor. The Warrantor shall within seven (7) days of the Request give the Principal a written notice ("**Advice**") advising:
- (a) the sum claimed against the Contractor and then outstanding under the terms of the Subcontract;
 - (b) the sum claimed against the Contractor as a result of breaches of the Subcontract by the Contractor; and
 - (c) the sum claimed under any other principle of law (including any claim in negligence).

The Advice shall specifically identify the legal basis of the claims and the amounts claimed on that basis.

- 6.3 The Principal may after receipt of the Advice give written notice ("**Notice**") to the Warrantor stating:
- (a) the intention of the Principal to require the Warrantor to complete the Warrantor's Works; and
 - (b) the name of the person (if any) which is to be a party to the new contract referred to in paragraph (b) of Clause 6.4.
- 6.4 As from the date of receipt by the Warrantor of a Notice:
- (a) the Contractor and the Subcontractor shall be deemed to have terminated the Subcontract;
 - (b) the Principal or the Nominee (as the case may be) and the Warrantor shall be deemed to have entered into a new contract on the same terms and conditions as the Subcontract, save and except that:
 - (i) the Principal or the Nominee (as the case may be) shall be named in the new contract in lieu of the Contractor;
 - (ii) subject to sub-paragraph (iii), the rights, obligations and liabilities of the Principal or the Nominee (as the case may be) and the Warrantor will be as if the Principal or the Nominee (as the case may be) had executed the Subcontract in lieu of the Contractor; and
 - (iii) the liability (if any) of the Principal or the Nominee (as the case may be) to the Warrantor in respect of any fact, matter or thing arising before the date of the Request shall not exceed the amount referred to in the Advice given to the Principal and if the Warrantor has not given an Advice to the Principal, the Subcontractor shall have no right to make a claim against the Principal or the Nominee (as the case may be) in respect of any fact, matter or thing arising before the date of the Request; and
 - (c) the Warrantor shall indemnify the Principal against all claims, costs, expenses, losses or damages suffered or incurred by the Principal arising out of or incidental to any work which may have been performed by the Warrantor under the Subcontract with the Contractor prior to its termination.
7. The provisions of this Deed will come into operation in favour of the Principal as soon as it has been executed by the Warrantor, notwithstanding that it may not have been or may not be executed by the Principal.
8. Nothing contained in this Deed is intended to nor will render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

SCHEDULE

Item 1:	Name and Address of Warrantor	
Item 2:	The Contractor (Recital A)
Item 3:	The Contract. (Recital A)
Item 4:	The Works (Recital A)
Item 5:	The Warrantor's Works (Recital B)
Item 6:	Detailed Warranty of Warrantor (Clause 1)
Item 7:	Period of Years (Clause 2)

EXECUTED as a deed.

[#insert execution blocks]


ATTACHMENT "J" – NOT USED

ATTACHMENT "K" – MAINTENANCE SCHEDULE


GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)




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GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)



GIPA Act s.14, Table (4)



GIPA Act s.14, Table (4)



ATTACHMENT "L" - APPROVALS FOR WHICH PRINCIPAL RESPONSIBLE

Nil

**ATTACHMENT "M" - SUBCONTRACTORS IN RESPECT OF WHICH PRINCIPAL'S
CONSENT NOT REQUIRED**

(Clause 8)

Nil

ATTACHMENT "N" – NOT USED

ATTACHMENT "O" – NOT USED

ATTACHMENT "P" – NOT USED

Attachment "Q"- NOT USED

Attachment "R" – NOT USED

Attachment "S" NOT USED

Attachment "T" Statutory Declaration

STATUTORY DECLARATION

I _____

(Principal/Director)

OF _____

do solemnly and sincerely declare that, in relation to the contract between Sydney Trains ABN 38 284 779 682 and _____ (Contractor) for the ACN _____ project (Contract):

1. I hold the position of _____ of the Contractor.
2. I am in a position to know the facts contained herein and I am duly authorised to bind the Contractor by the terms of this declaration.
3. All subcontractors, consultants and suppliers who have at any time been engaged by the Contractor in connection with the work under the Contract have been paid all amounts which as at the date of this declaration are due and payable to them in respect of the work under, or in connection with, the Contract.
4. All workers (including employees and contractors) who have at any time been engaged by the Contractor in connection with the work under the Contract:
 - (a) have been paid all remuneration and benefits which as at the date of this declaration are due and payable to them in respect of their employment or under, or in connection with, the Contract; and
 - (b) have otherwise received or had accrued to their account all benefits to which they are entitled as at the date of this declaration in respect of their employment or work in respect of, or in connection with, the Contract pursuant to any award, enterprise agreement, Act or Regulation.
5. The Contractor has been paid all that is due and payable to it under the Contract as at the date of this declaration, except for any amounts claimed in any payment claim with which this declaration is provided.
6. The Contractor has paid all relevant fees and maintains all insurance policies the Contractor is required to maintain under the Contract.
7. The Contractor is solvent and able to meet its debts as and when they fall due.
8. The Contractor has been informed (by statutory declaration in equivalent terms to this declaration) by each of its subcontractors, consultants and suppliers engaged by the Contractor in connection with the work under the Contract that all their respective employees, secondary subcontractors, suppliers and consultants have

been paid all remuneration and other amounts or benefits due and payable to them in connection with the work under the Contract.

9. Attached to and forming part of this declaration is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW)) which is a written statement:
- (a) under section 175B of the *Workers Compensation Act 1987* (NSW) in the form and providing the detail required by that legislation;
 - (b) under Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) in the form and providing the detail required by that legislation; and
 - (c) under section 127 of the *Industrial Relations Act 1996* (NSW) in the form and providing the detail required by that legislation.
10. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.
11. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors, consultants and suppliers in connection with the Contractor were:
- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the *Workers Compensation Act 1987* (NSW), the *Payroll Tax Act 2007* (NSW) and the *Industrial Relations Act 1996* (NSW) ("Acts"); and
 - (b) given by the subcontractors, consultants and suppliers in their capacity as 'subcontractors' as defined in the Acts.
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.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900* (NSW).

SUBSCRIBED AND DECLARED AT _____ in the State of New South Wales,

THIS _____ DAY OF _____ 20_____

BEFORE ME

(Signature)

(Justice of the Peace/Solicitor)

FOR AND ON BEHALF OF THE CONTRACTOR

Certificate under section 34(1)(c) of Oaths Act 1900 (NSW)

I _____;

[Name of the person before whom the declaration is made]

a _____.

[Qualification of the person before whom the declaration is made]

certify the following matters concerning the making of this statutory declaration by the person who made it:

**Cross out any text that does not apply*

1. *I saw the face of the person or *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.

2. *I have known the person for at least 12 months or *I have confirmed the person's identity using an identification document and the document I relied on was

_____.

[describe identification document relied on]

[Signature of person before whom the declaration is made]

Date: _____

SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S 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*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* 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:
.....

of
.....
.....

has entered into a contract with ABN:
.....

(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*, 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.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. 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 s127 *Industrial Relations Act 1996*, 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* 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* 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, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Worker Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Attachment "U" Handover Plan requirements

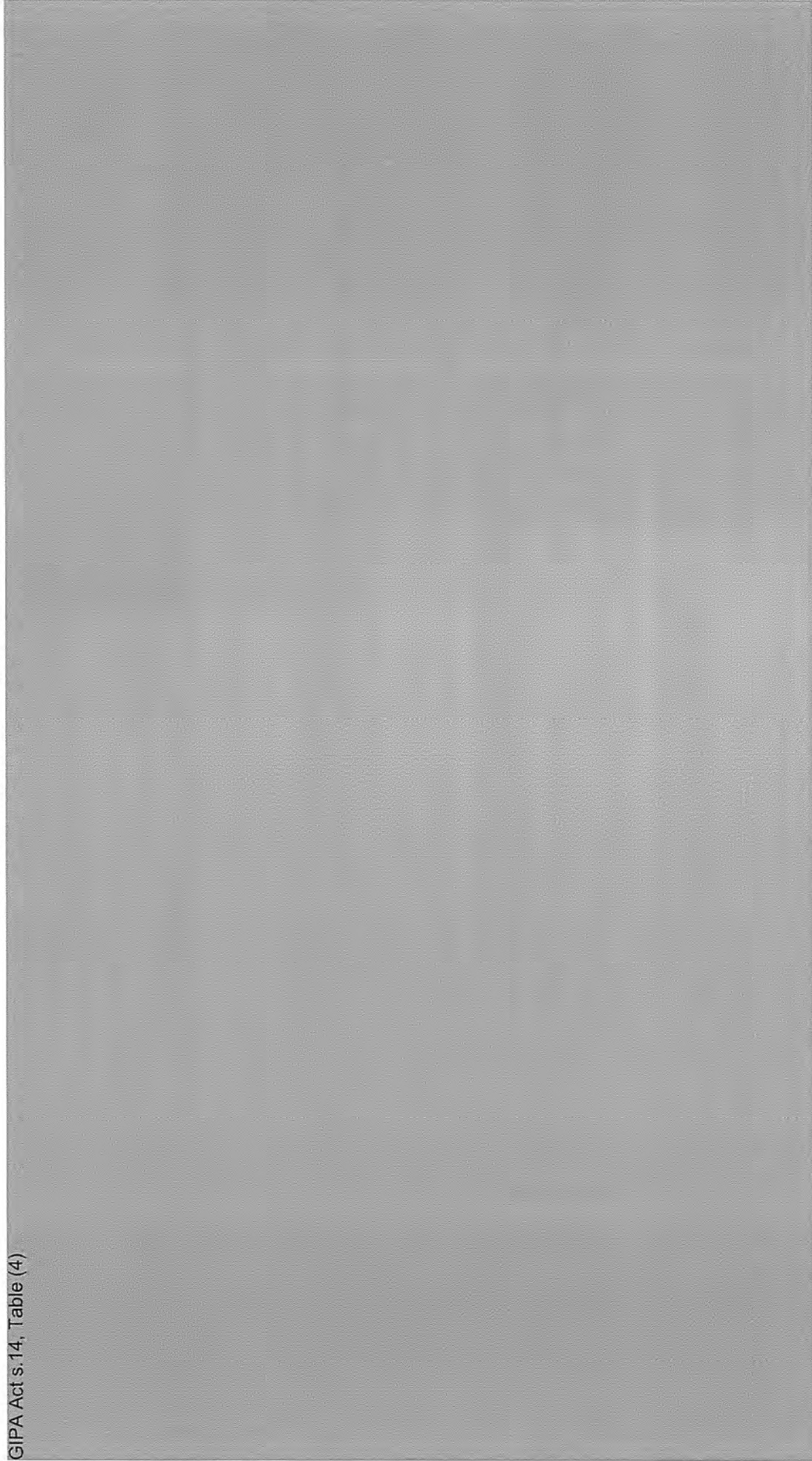
The Contractor's Handover Plan must contain requirements for the provision of the following documentation and information:

- detailed configuration of all computer software and hardware;
- detailed configuration of all lasers, cameras and other instrumentation;
- current and complete versions of all manuals, guides, diagrams and training materials covering the Vehicles and System, all Vehicle operations and all instrumentation, hardware and software;
- current certification of calibration of each parameter and piece of measurement equipment;
- maintenance servicing logs for the Vehicles and System, instruments and hardware for the last 2 years;
- reliability data for the Vehicles and System, instruments, hardware and software for the last 6 months; and
- full listing of the current services agents for all Systems, components and parts.

The Contractor must perform the obligations set out in the Handover Plan for a period of 12 months from its commencement.

Attachment "V" – System

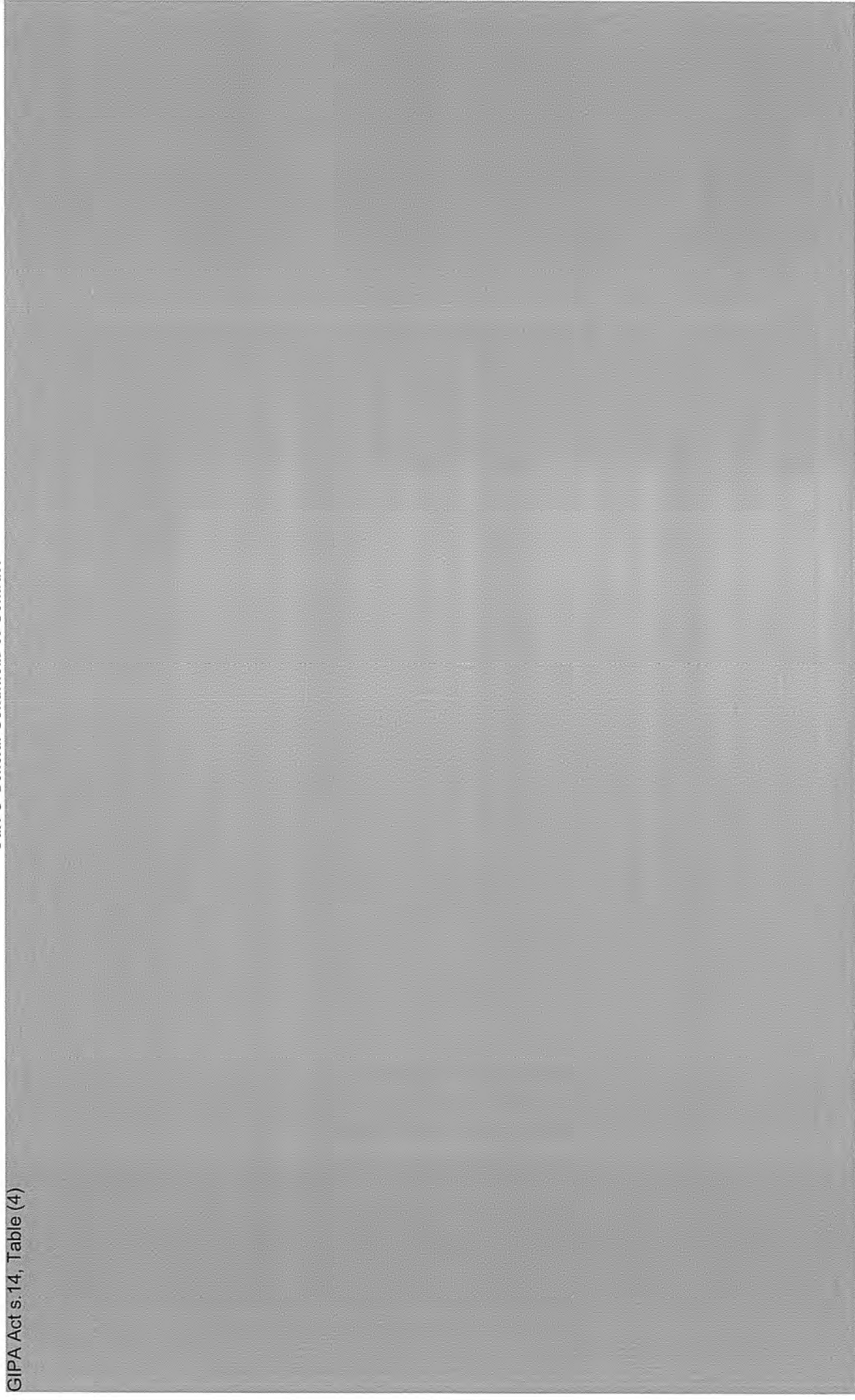
GIPA Act s.14, Table (4)



SYDNEY TRAINS
Mechanised Track Patrol Vehicles

Contract: **CW46710**
Part C General Conditions of Contract

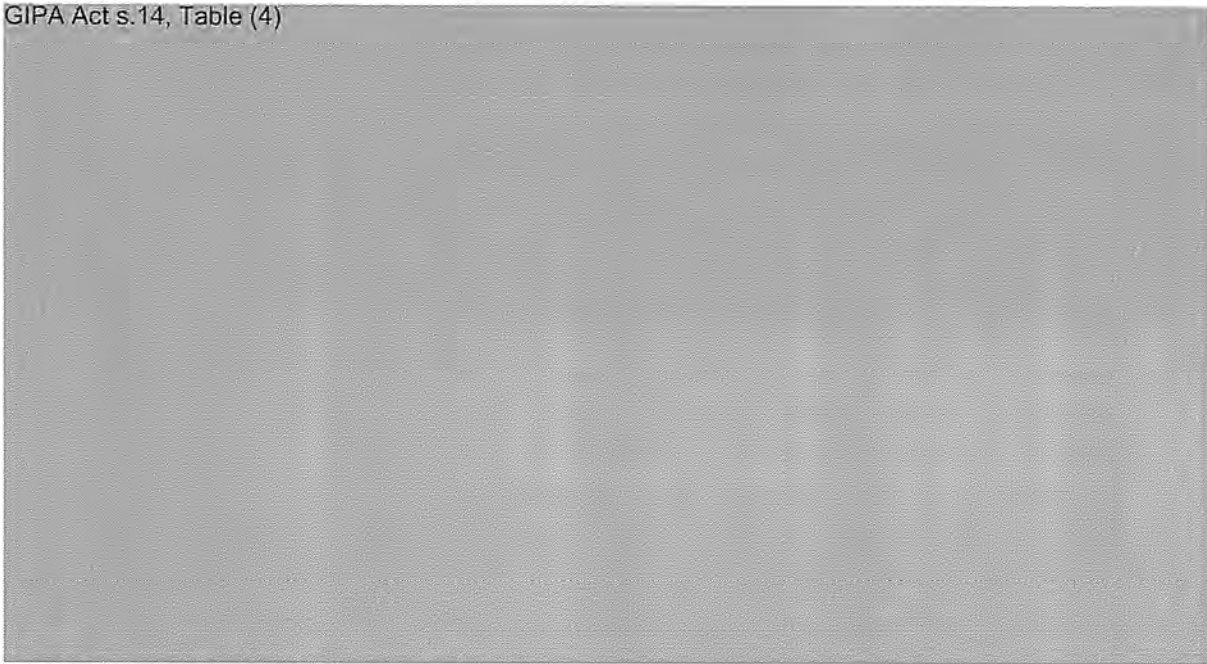
GIPA Act s.14, Table (4)



Attachment "W" SPARE PARTS


Repairs and part substitutions will be performed by Mer Mec's technicians or specialized technicians authorized by Mer Mec. Critical spare parts and substituted parts will be held on the Sydney Trains premises, and made available to perform corrective maintenance within the time constraints listed in Attachment Y: Reliability Requirements.

GIPA Act s.14, Table (4)



Management of Critical Spare Parts:

GIPA Act s.14, Table (4)



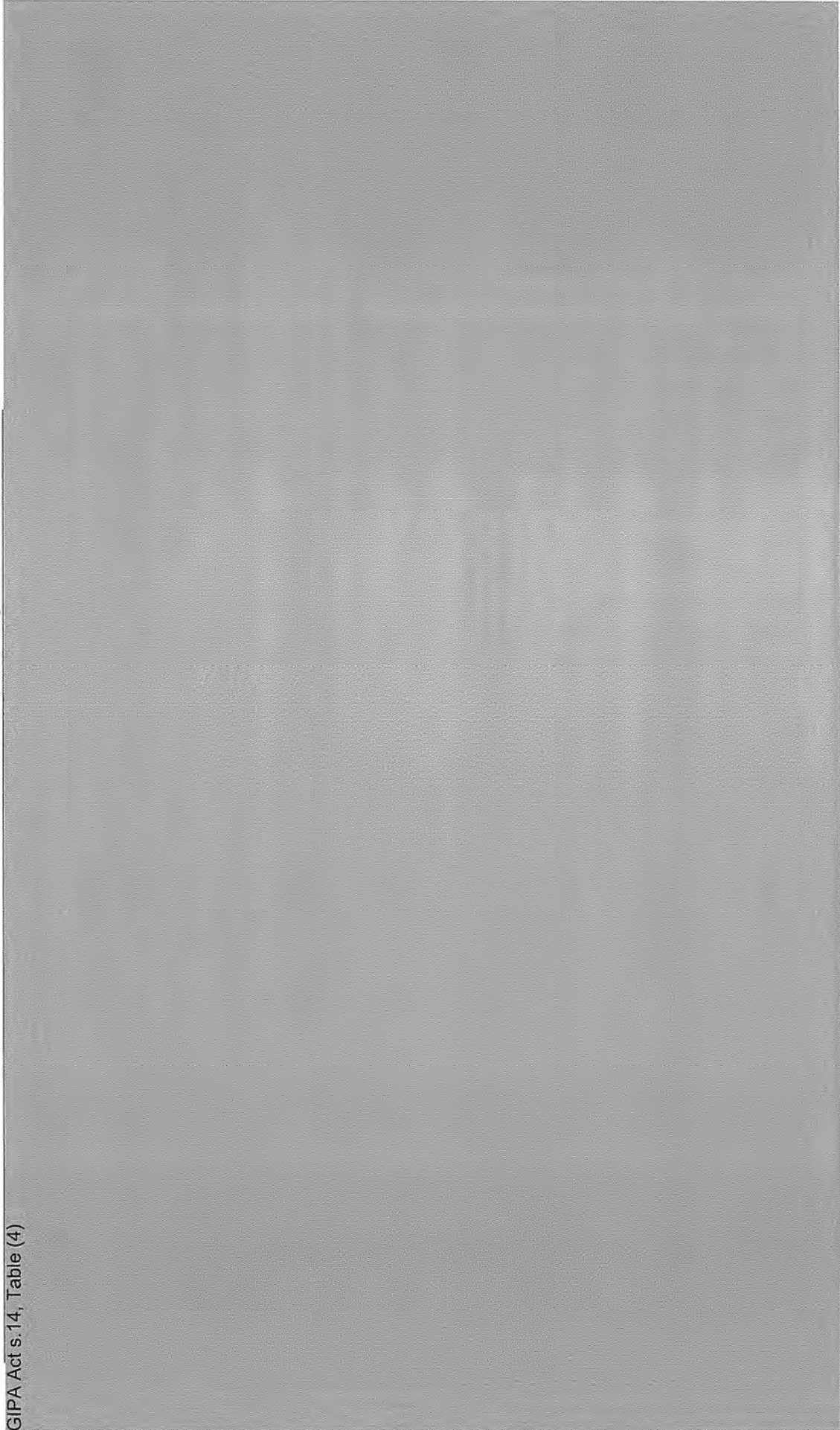
Agreed Spare Parts List

The following is the list of agreed spares ordered from Mer Mec.

GIPA Act s.14, Table (4)

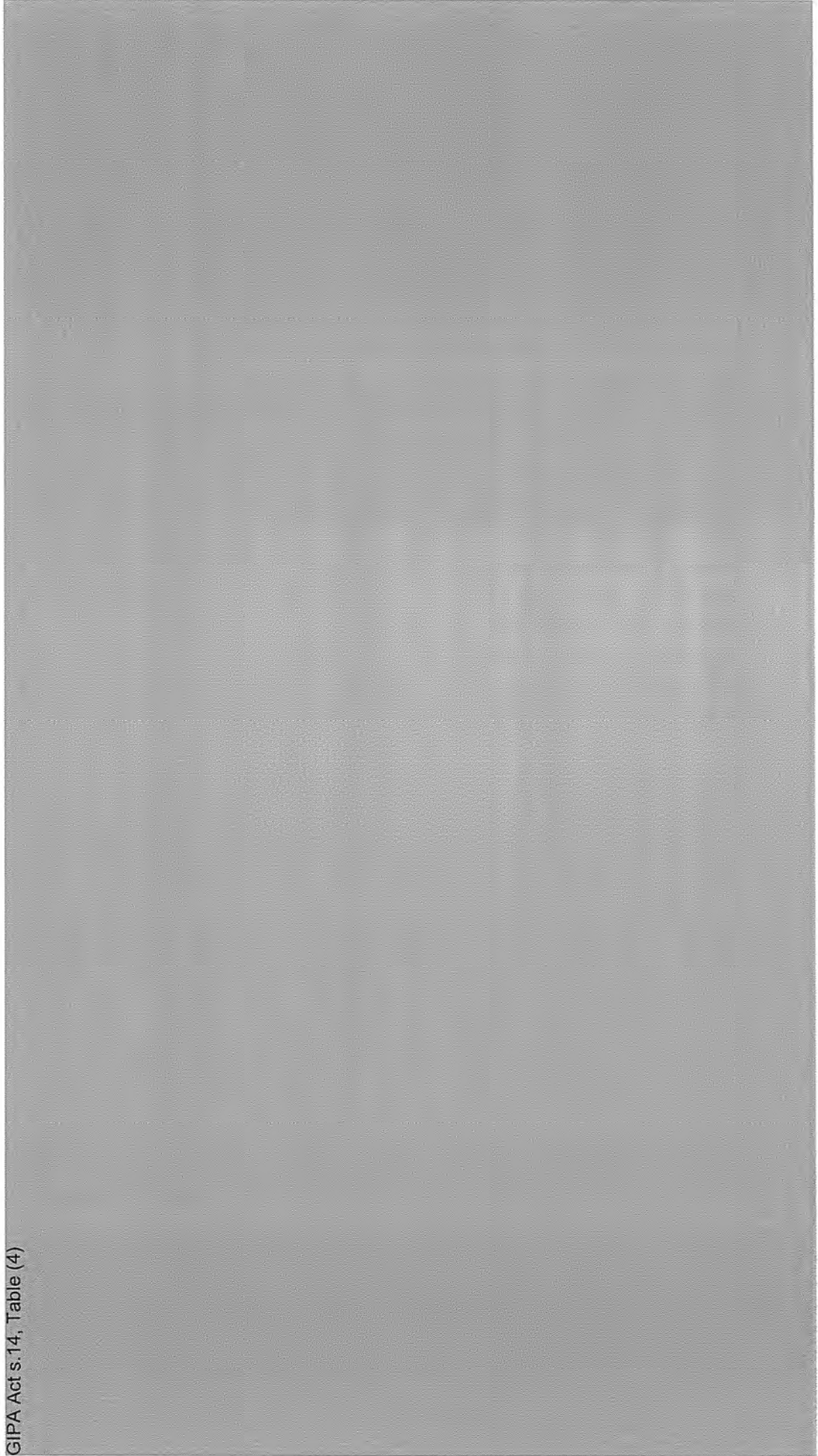


GIPA Act s.14, Table (4)

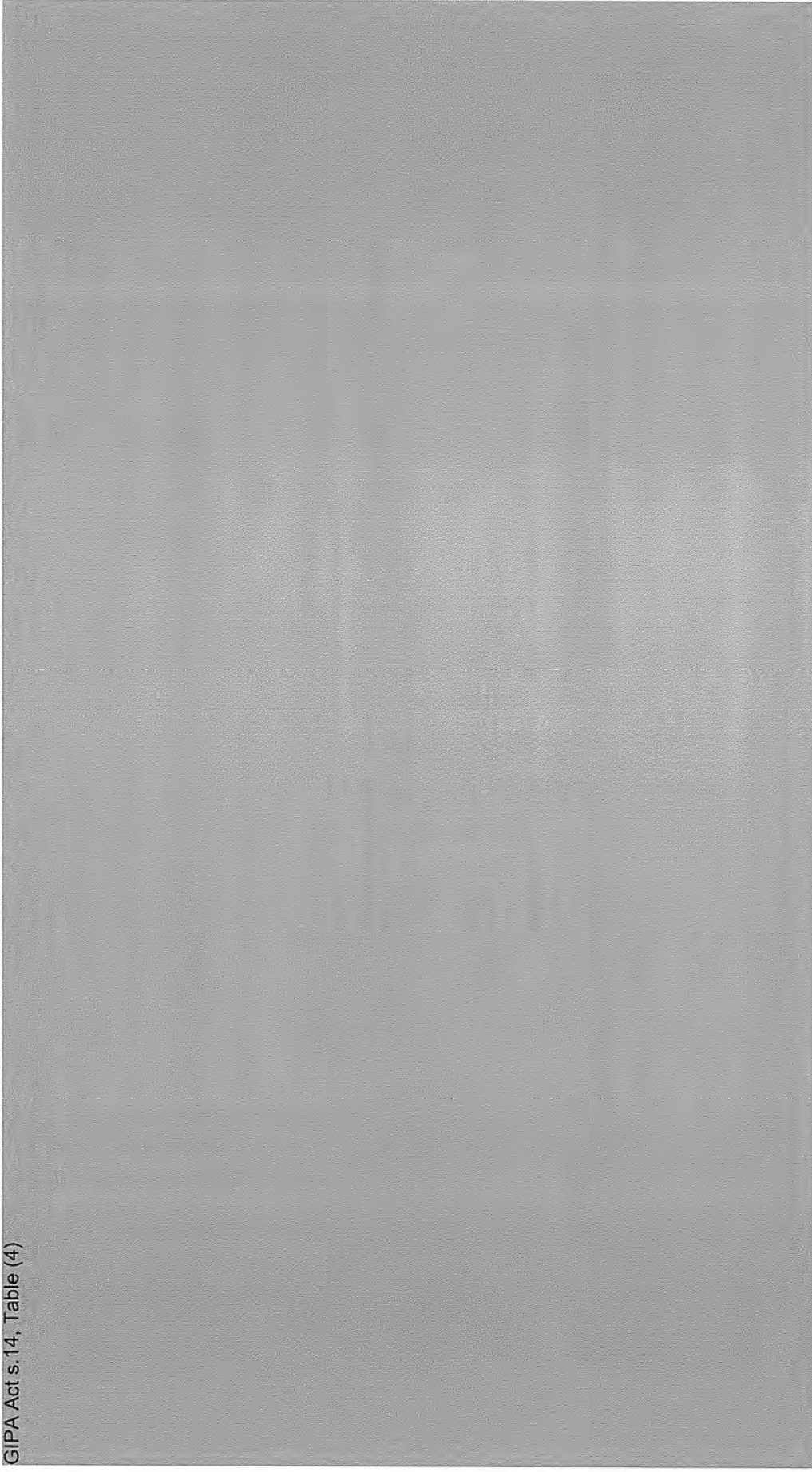


Spare part list (Additional)

GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)



Attachment "X" – MAINTENANCE MANUAL

The Maintenance Manuals supplied by Mer Mec are saved to the Track Inspection SharePoint site are the following locations on the Sydney trains Intranet;


GIPA Act s.14, Table (4)



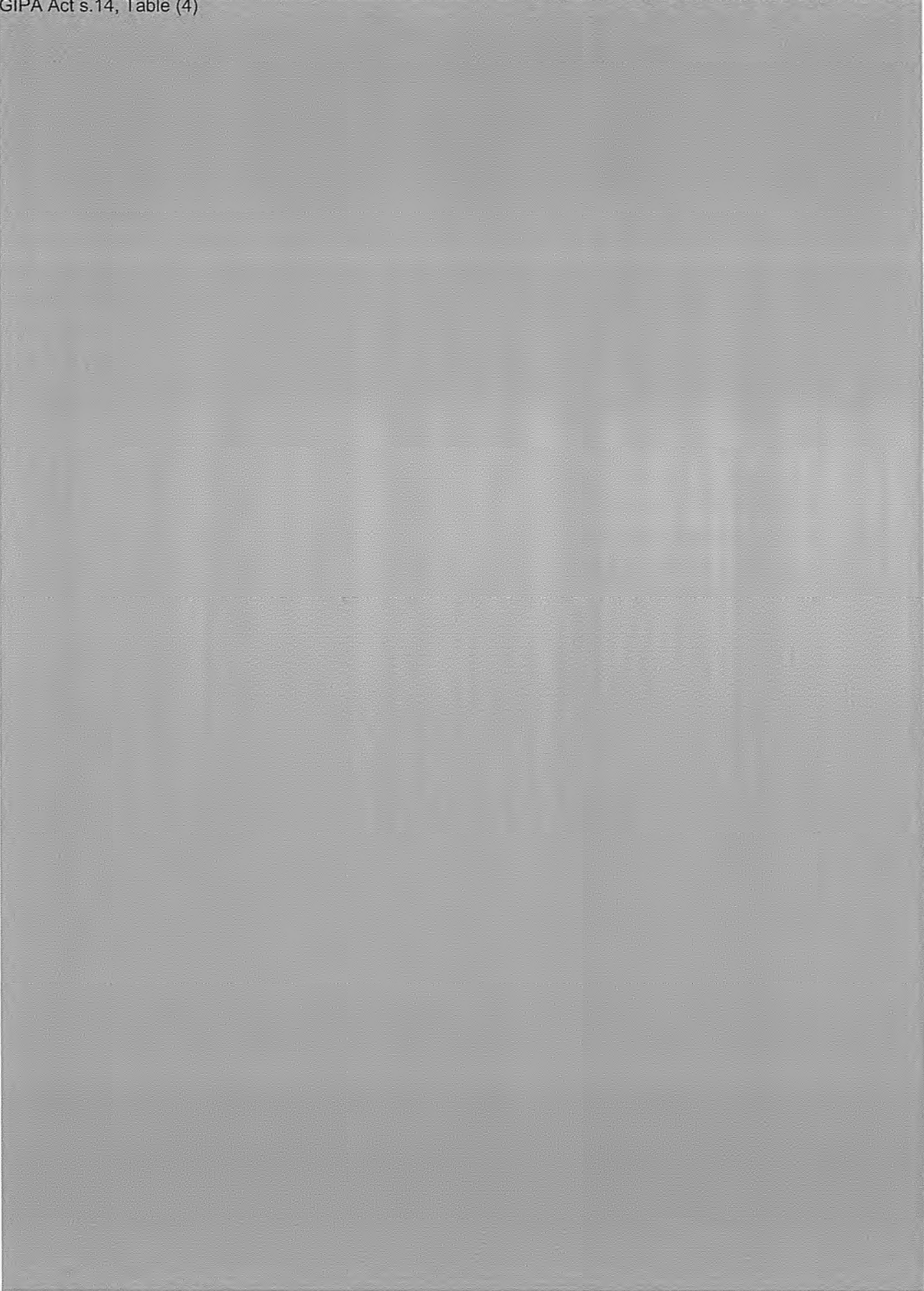
The Track Inspection team has procedures in place to ensure that new version of maintenance manuals are copied to the SharePoint sites within 7 days of their receipt by Sydney Trains.

Attachment "Y" – RELIABILITY REQUIREMENTS


GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)



GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)

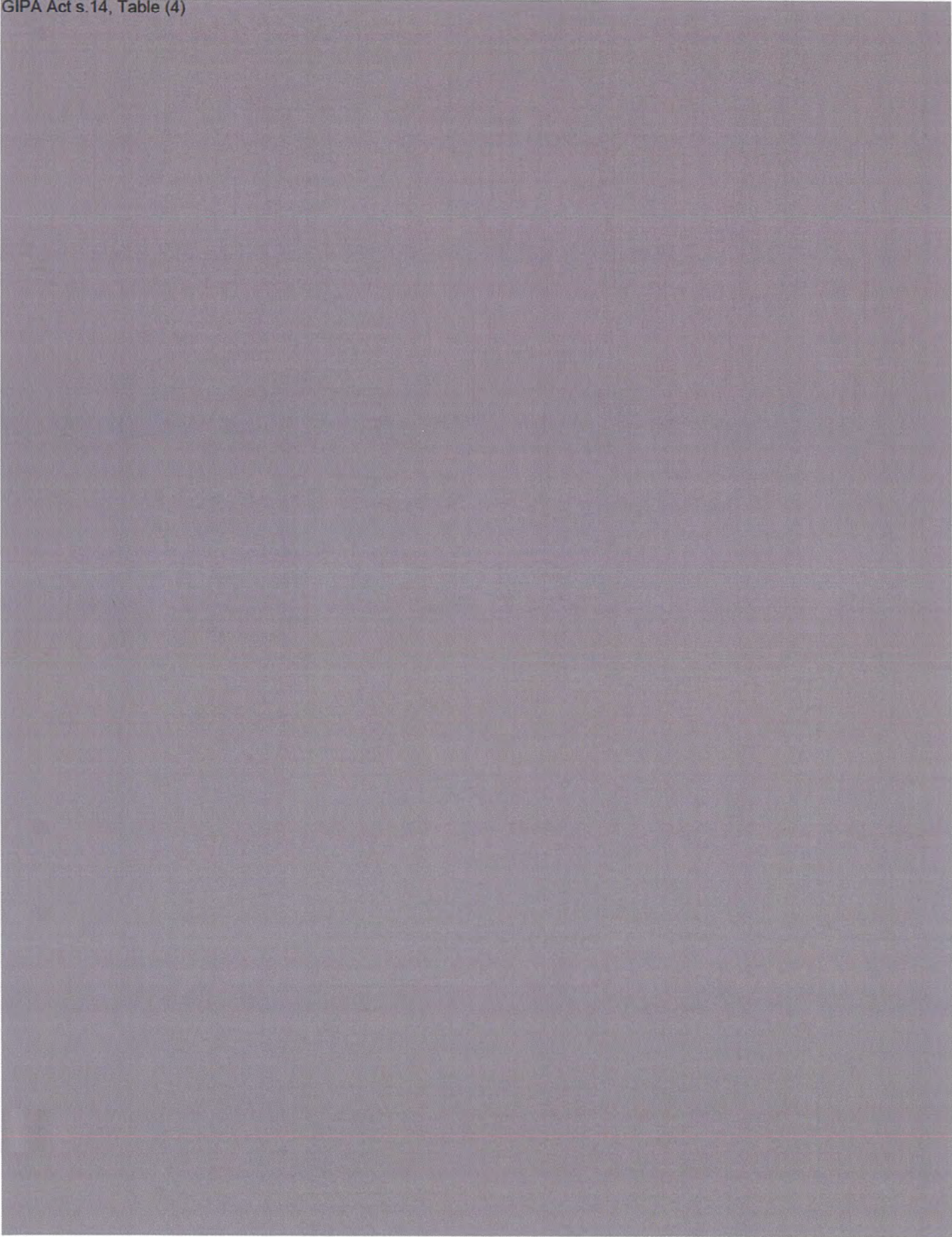


Attachment "Z" – GOVERNANCE REQUIREMENTS

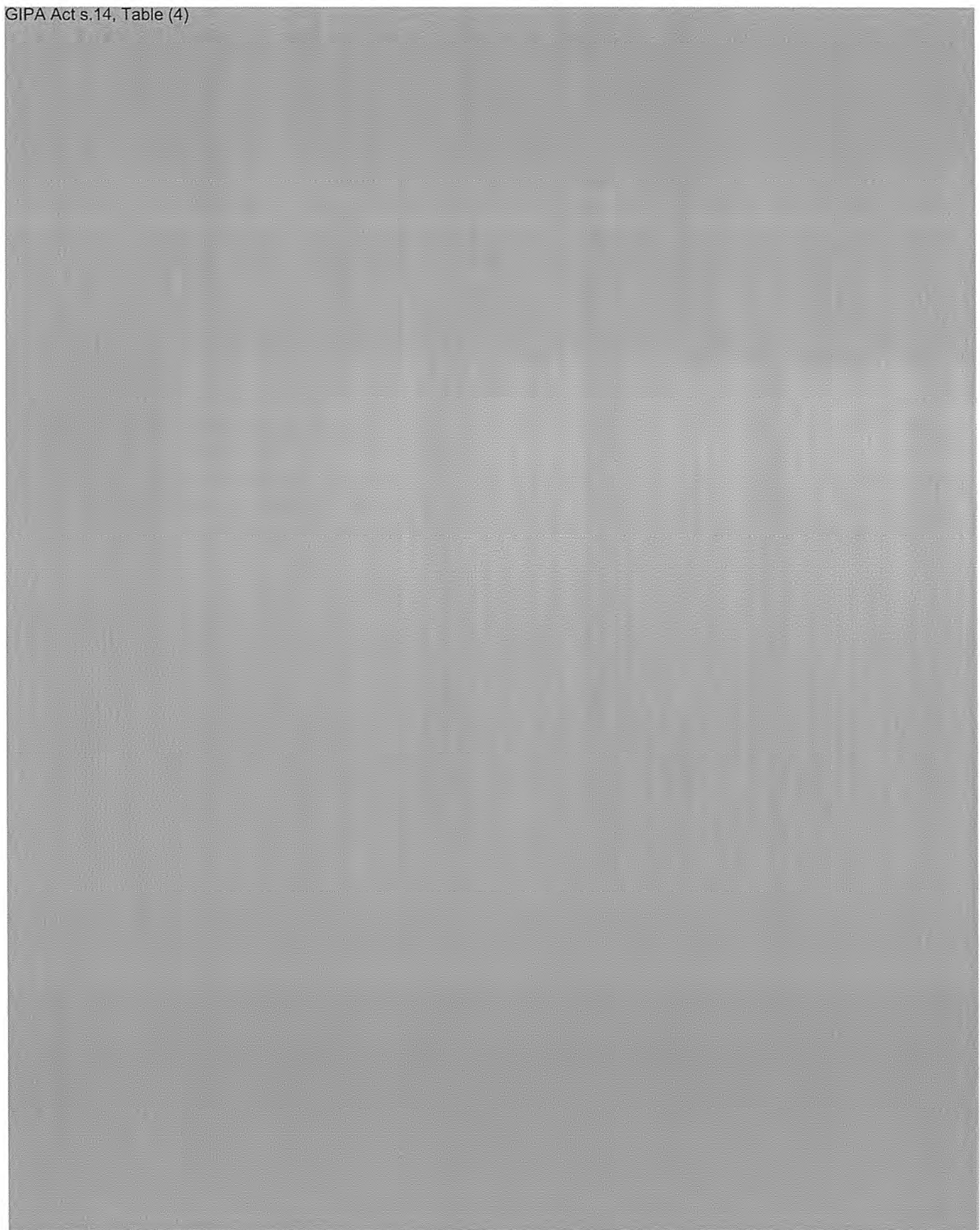
GIPA Act s.14, Table (4)



GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)



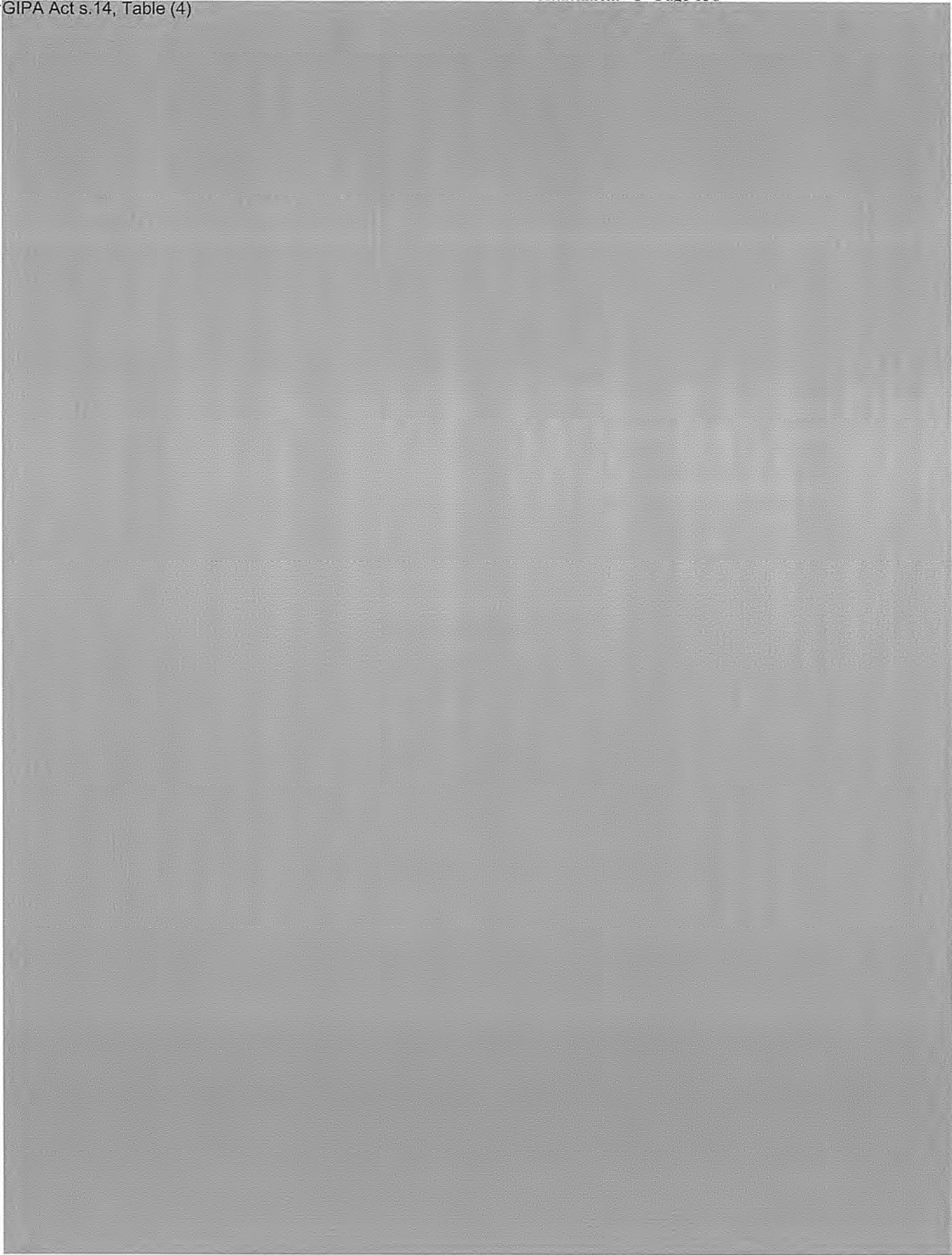
GIPA Act s.14, Table (4)



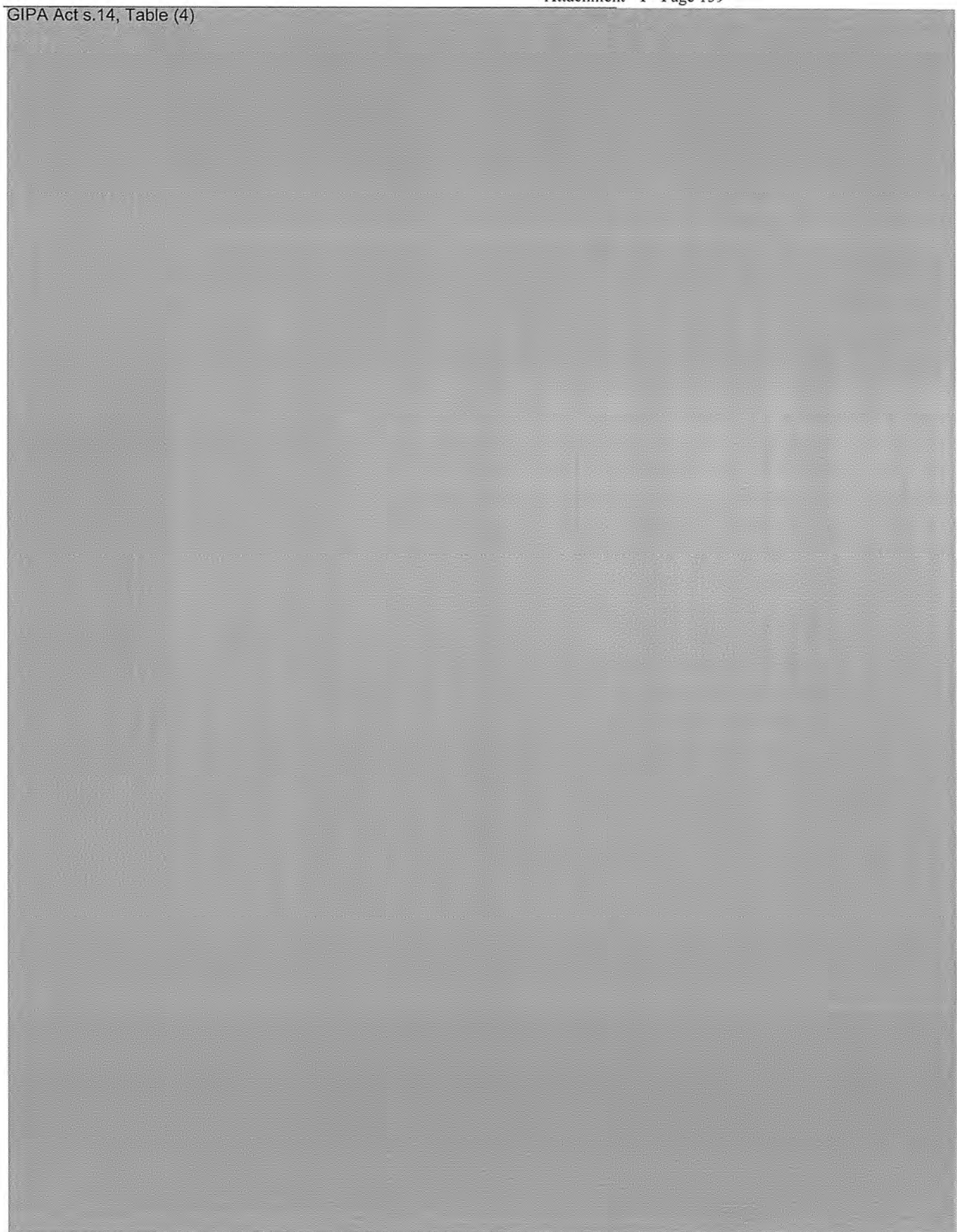
GIPA Act s.14, Table (4)



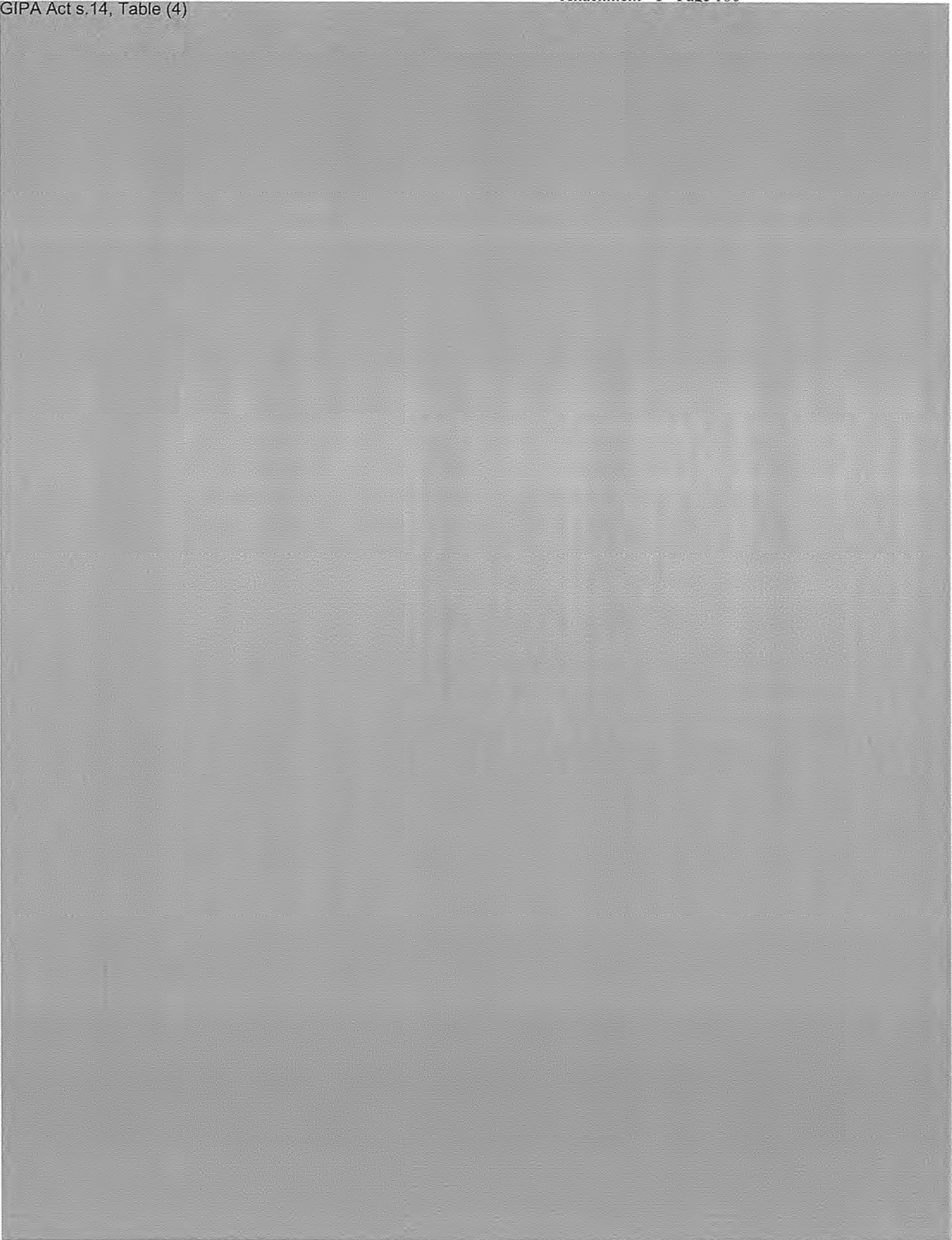
-GIPA Act s.14, Table (4)



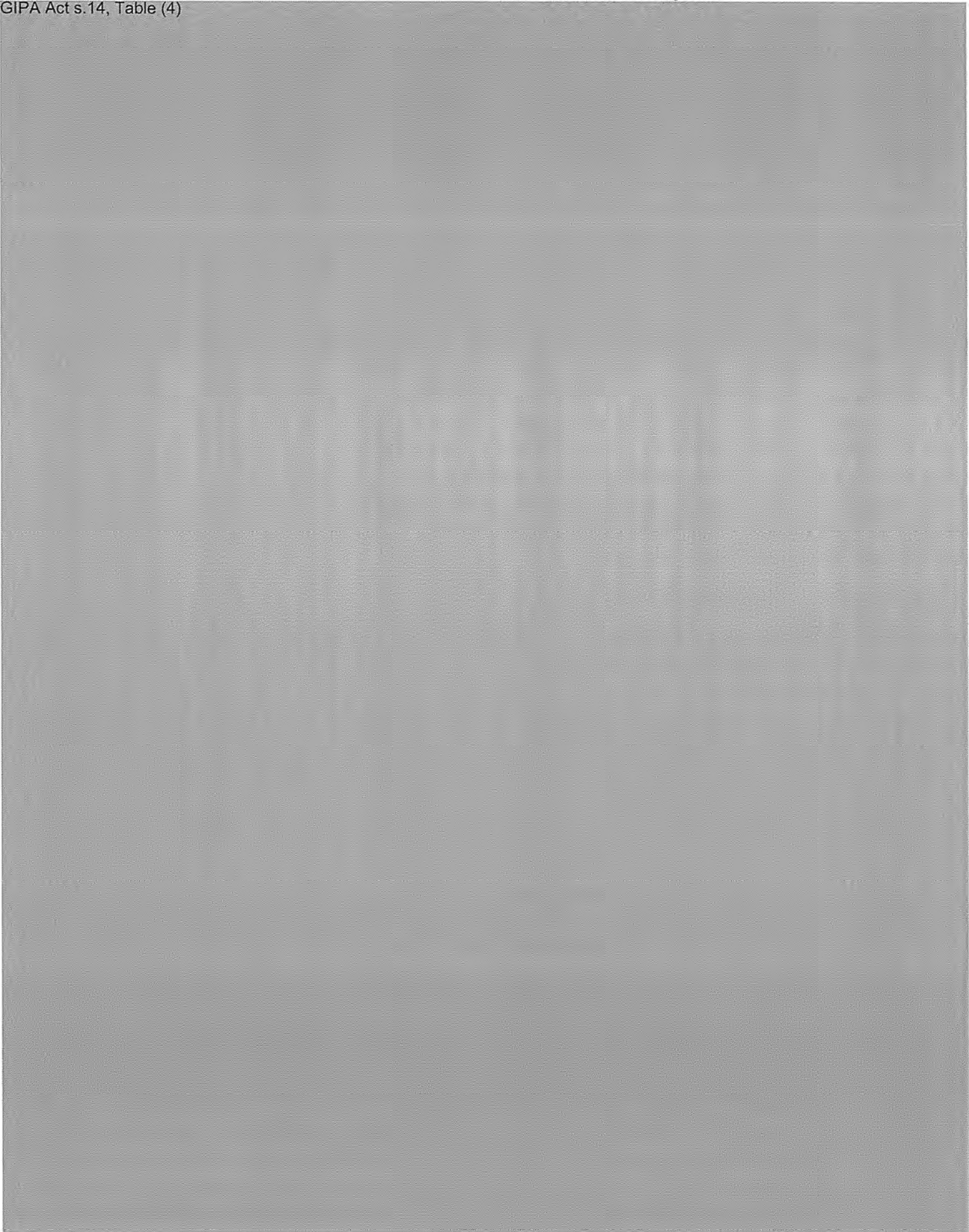
GIPA Act s.14, Table (4)



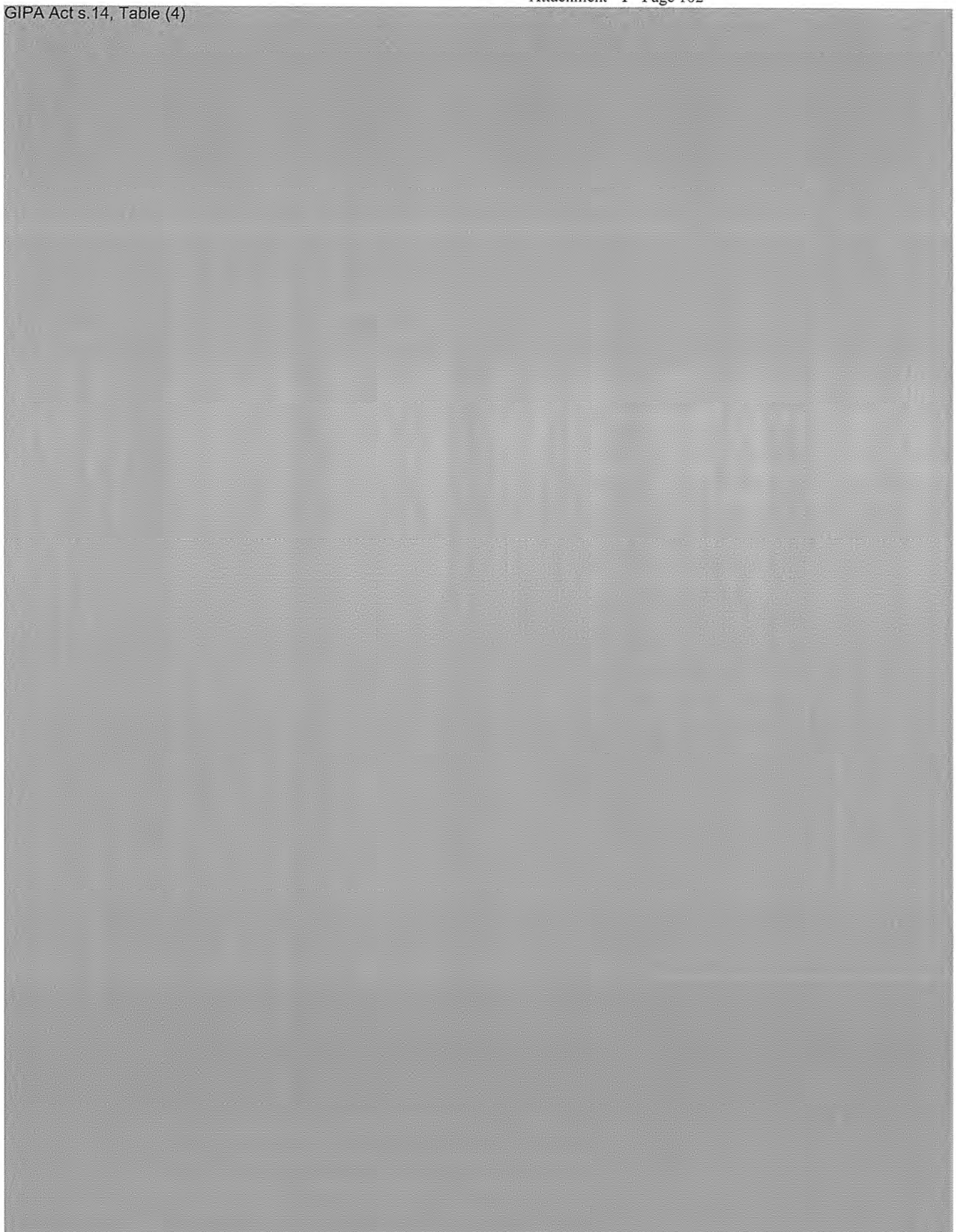
GIPA Act s.14, Table (4)



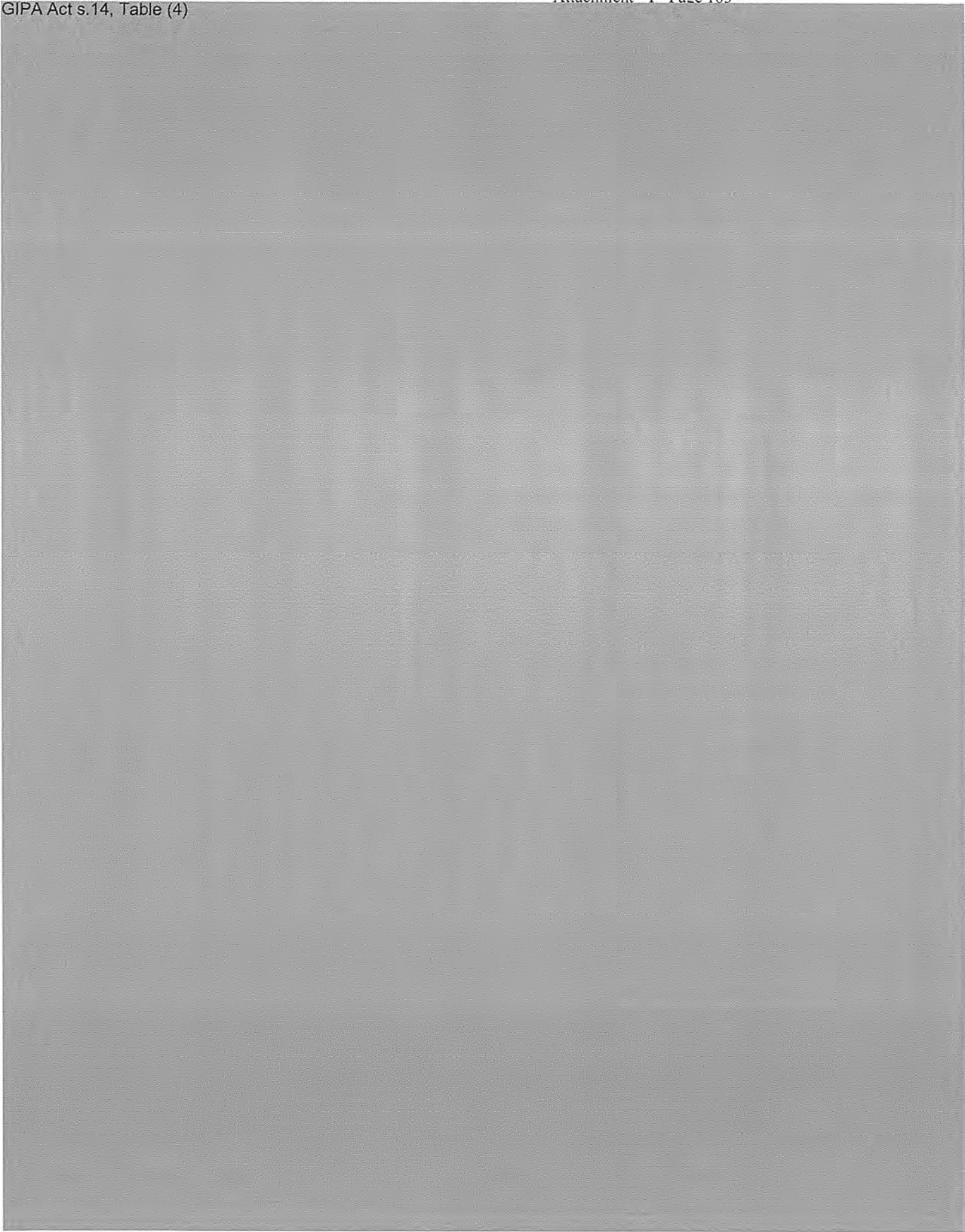
GIPA Act s.14, Table (4)



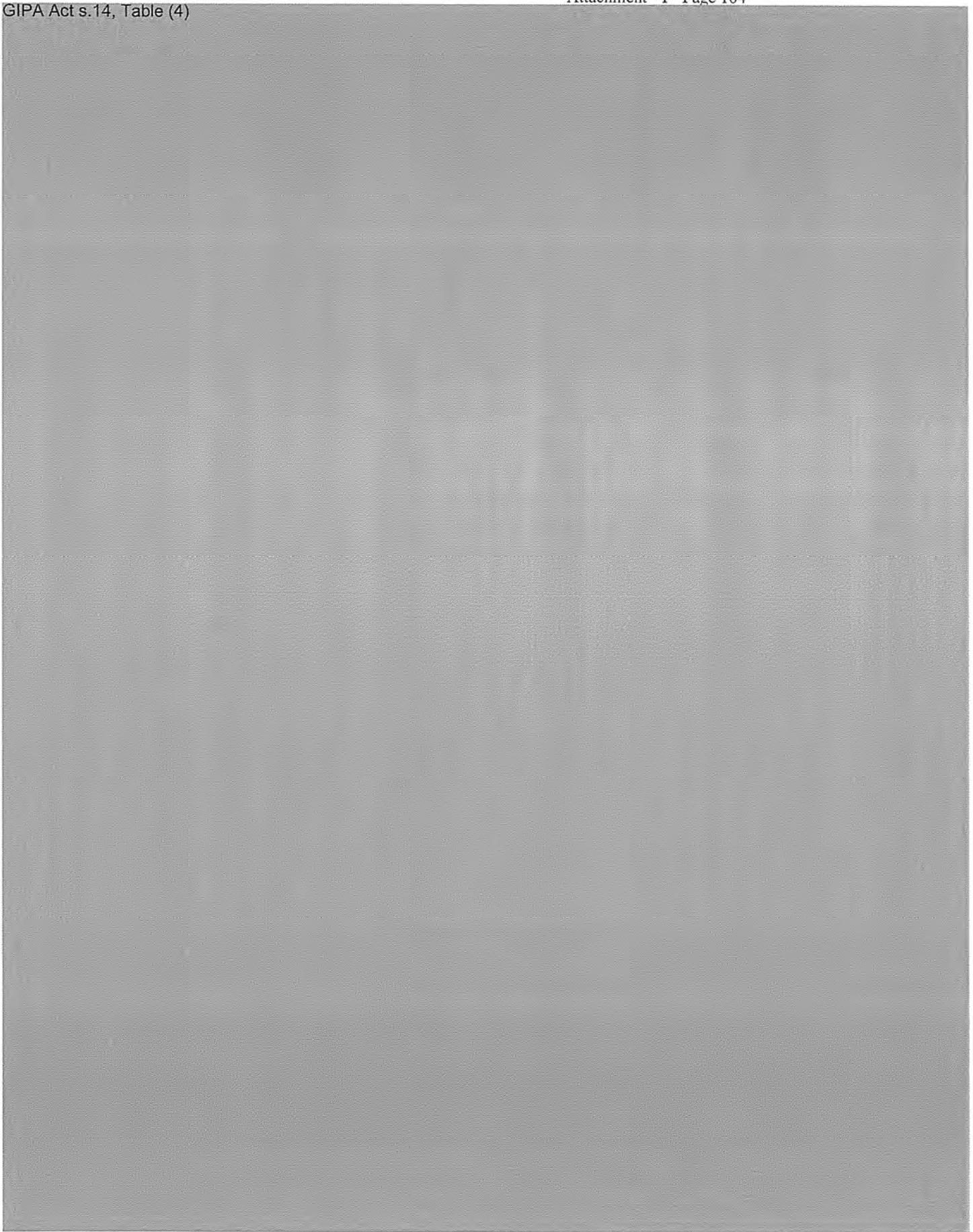
GIPA Act s.14, Table (4)




GIPA Act s.14, Table (4)



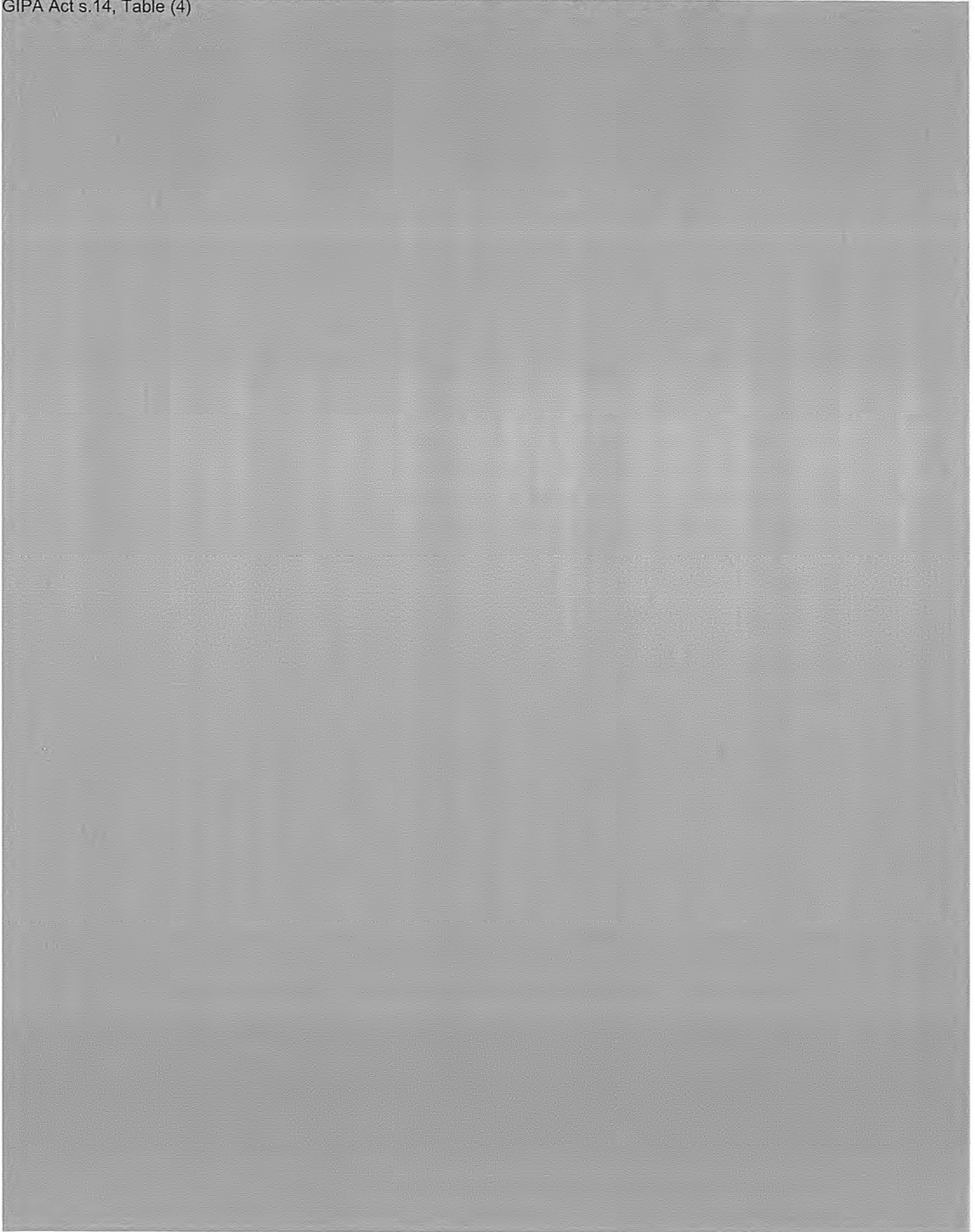
GIPA Act s.14, Table (4)



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