

*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

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# CTP Phase 1 Variation Deed

## Project Deed - Electronic Ticketing System for the Greater Sydney Region

Transport for NSW ABN 18 804 239 602

Cubic Transportation Systems (Australia) Pty Limited ABN 82 003 617 561

Date: **October 2016**

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## Parties

- 1 Transport for NSW (ABN 18 804 239 602) of Level 1, 18 Lee Street, Chippendale NSW 2008 (**TfNSW**)
  - 2 Cubic Transportation Systems (Australia) Pty Limited (ABN 82 003 617 561) of Level 23, 477 Pitt Street, Sydney NSW 2000 (**Contractor**)
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## Background

- A TfNSW and the Contractor entered into a deed entitled "Project Deed – Electronic Ticketing System for the Greater Sydney region" dated 7 May 2010 (**Project Deed**) and in or around 12 September 2014, TfNSW and the Contractor subsequently amended certain parts of the Project Deed to reflect amendments agreed by the parties as part of a "re-baselining" exercise.
- B TfNSW has issued a request for Variation proposal in order to add to the Scope of Works and Services the "Contactless Transport Payments Phase 1" project (previously known as the **EMV** Phase 1 project), and the Contractor has submitted its Variation proposal in response to such request.
- C TfNSW and the Contractor now wish to amend certain parts of the Project Deed to reflect their agreement in respect of the CTP Phase 1 Variation (**CTP Phase 1 Variation**).

The parties agree

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## 1 Commencement

- (a) This deed only comes into effect:
  - (i) once executed by TfNSW and the Contractor;
  - (ii) once executed by the Contractor;
- (b) If the Conditions Precedent are not met within 5 Business Days after the date on which the last party signs this deed, this deed will automatically terminate without the need for action by either party.

## 2 Variation

### 2.1 Variation to the Project Deed

- (a) This deed effects the CTP Phase 1 Variation and, for clarification, supersedes the request for variation proposal issued by TfNSW and the Variation proposal submitted by the Contractor in respect of the CTP Phase 1 Variation.
- (b) TfNSW and the Contractor agree that:
  - (i) the provisions of the Project Deed set out in Schedule 1, as they apply to the CTP Phase 1 Variation only, are varied as set out in Schedule 1; and
  - (ii) the provisions of the Project Deed set out in Schedule 2 are varied as set out in Schedule 2,with effect from the date this deed is executed by both parties (the **Effective Date**).
- (c) For clarification, nothing in this Deed affects the Project Deed as it applies to the Scope of Works and Services other than the CTP Phase 1 Variation.

### 2.2 Independent Certified Deed

Within 60 days after the Effective Date, TfNSW and the Contractor must execute (and procure the execution by the Independent Certifier of) a variation to the Independent Certifier Deed for the purpose of the CTP Phase 1 Variation, so that it reflects the obligations of the Independent Certifier under clause 14.3 of the Project Deed (as it applies to the CTP Phase 1 Variation) as set out in Schedule 1.

### 2.3 Ratification and accrued rights

- (a) TfNSW and the Contractor confirm and ratify the Project Deed as varied by this deed.
- (b) Nothing in this deed affects any right or obligation arising under the Project Deed before the Effective Date.

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## 3 General

- (a) Capitalised terms defined in the Project Deed but not defined in this deed have the meaning given to them in the Project Deed.
- (b) Clause 1.2 (Interpretation) of the Project Deed applies to this deed as if it were set out in this deed, with the necessary changes as to detail.
- (c) Each party must, at its own expense, do all things reasonably necessary to give full effect to this deed and the matters contemplated by it.
- (d) Any term of this deed which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this deed is not affected.
- (e) No waiver of a right or remedy under this deed is effective unless it is in writing and signed by the party granting it. Any waiver is only effective in the specific instance and for the specific purpose for which it is granted.

NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.

- (f) Each party must pay its own costs and expenses of negotiating, preparing and executing this deed and any other instrument executed under this deed.
- (g) This deed is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.
- (h) This deed may be executed in a number of counterparts and all such counterparts taken together will be deemed to constitute one and the same agreement.

Execution page

Executed as a deed

Signed, sealed and delivered by Transport for NSW for and on behalf of the Director-General of the Department of Transport in accordance with section 3C(4) of the *Transport Administration Act* by:

Signature of authorised signatory

Signature of witness

Name of authorised signatory (print)

Name of witness (print)

Date

Signed, sealed and delivered by Cubic Transportation Systems (Australia) Pty Limited in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

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Date

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## Schedule 1 Variations for the CTP Phase 1 Variation

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### 1 Variations to clause 1.1

With effect from the Effective Date:

- (a) the definition of Fit for ETS Purposes in clause 1.1 of the Project Deed is deleted in its entirety and replaced with the following new definition:

***“Fit for ETS Purposes” means that:***

- (a) *in relation to Stage 82 and for the Stage 82 Term, the ETS Components Delivered as part of Stage 82:*
- (i) *will meet and continue to meet the requirements applicable to Stage 82 referred to in this Deed;*
  - (ii) *is fit for the purposes of use as a field trial of CTP on the Manly ferry;*
  - (iii) *will comply with and operate in accordance with those policies of the ETS Entities referred to in clause 5.5;*
  - (iv) *will meet the requirements in the Scope of Works and Services to the extent relating to Stage 82 and is able to provide the ETS Operational Services in accordance with the Scope of Works and Services to the extent set out in Appendix A68 or B77 to Schedule 17 relating to Stage 82;*
  - (v) *is compatible, interoperable, and capable of integration, with the Operators' Environments and is compatible with the Sites (to the extent the Operators' Environments and Sites are specified in Appendix A68 or B77 to Schedule 17 as being applicable to Stage 82), in each case in accordance with this Deed;*
  - (vi) *is maintainable, flexible, extensible and upgradeable in accordance with the Scope of Works and Services to the extent set out in Appendix A68 or B77 to Schedule 17 relating to Stage 82;*
  - (vii) *Not used;*
  - (viii) *is capable of being modified to provide an Account-Based system as contemplated in the Scope of Works and Services to the extent set out in Appendix A68 or B77 to Schedule 17 relating to Stage 82; and*
  - (ix) *will have scalable processing and communications capacity that is capable of efficiently and effectively meeting increased operational needs over time as contemplated in the Scope of Works and Services to the extent set out in Appendix A68 or B77 to Schedule 17 relating to Stage 82;*
- (b) *in relation to the ETS Operational Services applicable to Stage 82 and for the duration of the Operational Services Phase for Stage 82, the ETS Operational Services:*

- (i) will meet the requirements for the ETS Operational Services referred to in this Deed to the extent set out in Appendix A68 or B77 to Schedule 17 relating to Stage 82;
  - (ii) are of a suitable quality to operate and support a field trial of CTP on the Manly ferry;
  - (iii) will be provided in accordance with the Scope of Works and Services to the extent set out in Appendix A68 or B77 to Schedule 17 relating to Stage 82; and
  - (iv) are capable of supporting the requirements set out in clause 10.3; and
- (c) in relation to Project Plans, Manuals and ETS Components Delivered for Stage 82 and for the duration of the Term of Stage 82, each of the Project Plans, Manuals and ETS Components Delivered for Stage 82 will meet the requirements for those items set out in this Deed.<sup>Ref RB</sup>

For clarification, the limitation of references to Schedule 17 in this definition of Fit for ETS Purposes to Appendix A68 or B77 to Schedule 17:

- (d) are only intended to apply to this definition of Fit For ETS Purposes, and otherwise nothing in this Deed (including in Appendix A68 or B77 to Schedule 17) is intended to limit the application of those other parts of Schedule 17 to the ETS Project (including to Stage 82 to the extent that they are relevant); and
  - (e) are subject to those scoping assumptions for Stage 82 set out in Appendix B13 to Schedule 17.”;
- (b) the following new definitions are added to clause 1.1 of the Project Deed:
- “**Collaborative Review Period** has the meaning given in clause 9.2A(b).”
- “**CTP** has the meaning given in Appendix A68 of the Scope of Works and Services.”
- “**DDI Review Workshop** has the meaning given in clause 9.2A(d)(ii).”
- “**Major Defect** means any Defect which TfNSW considers to be material, as identified as such in its document review sheet provided to Cubic via the data room.”; and
- “**Stage 82 Term** means the ETS Delivery Phase and the Operational Services Phase for Stage 82.”
- (c) the definition of Device Infrastructure in clause 1.1 of the Project Deed is deleted in its entirety and replaced with the following new definition:

“**Device Infrastructure** means the part of the ETS that is:

- (a) installed on stations, wharves, depots and vehicles, including the equipment and communications links up to the points of interconnection to the Device Communications Infrastructure;
- (b) intended to be carried by Personnel of an Operator, including Portable Readers; or
- (c) installed at retail outlets, but does not include Smartcards,

and includes the [REDACTED]  
[REDACTED]; and

- (d) the definition of DDI in clause 1.1 of the Project Deed is deleted in its entirety and replaced with the following new definition:

*“DDI means a development and deployment increment, comprising the activities necessary to satisfy the criteria for a DDI Deliverable as referred to in Schedule 3.”*

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## 2 Variation to clause 8

With effect from the Effective Date, clause 8.3(b) is deleted in its entirety and replaced with the following new clause 8.3(b):

*“(b) The Contractor must submit the updated:*

- (i) Subsidiary ETS Delivery Program to TfNSW, weekly on the last Business Day of each week; and*
- (ii) Subsidiary Operational Services Programs to TfNSW, at the latest 6 Business Days after the last Friday of each month.”*

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## 3 Variation to clause 9

With effect from the Effective Date, clauses 9.2 and 9.3 of the Project Deed are deleted in their entirety and replaced with the following new clauses 9.2, 9.2A and 9.3:

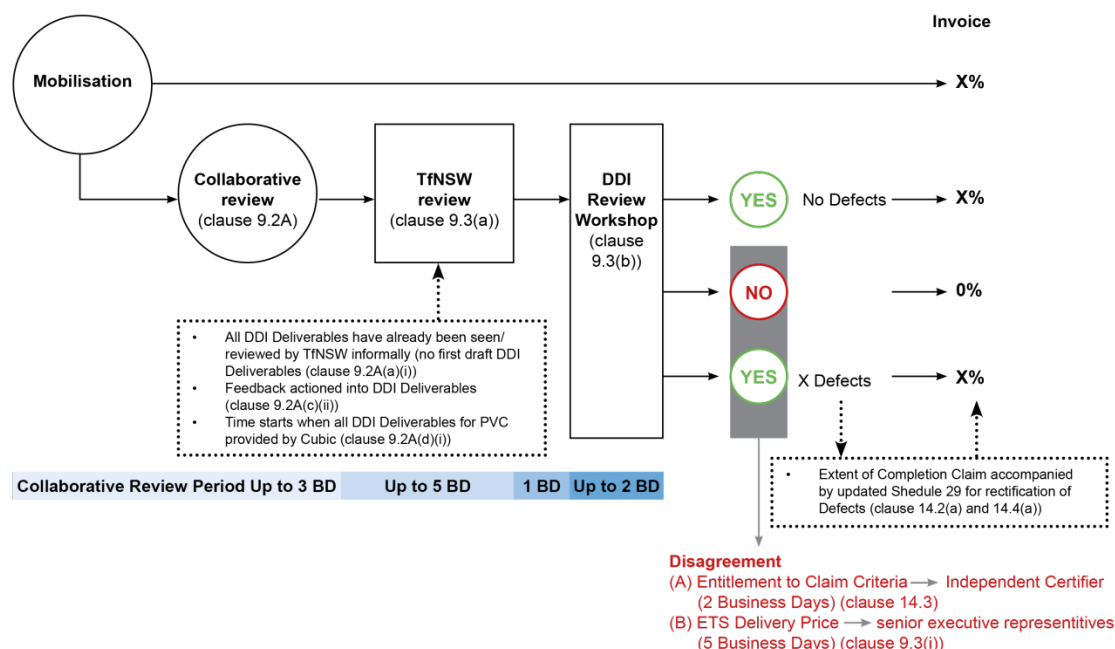
### **“9.2 Design Documentation process**

- (a) The Contractor must do all things necessary to satisfy the requirements for each DDI, in accordance with the Subsidiary ETS Delivery Program and this Deed.*
- (b) Once the Contractor has met all of the requirements for a DDI to satisfy the DDI components of the Entitlement to Claim Criteria for a Planned Value Category, the Contractor must deliver to TfNSW all necessary documentation and other deliverables for the DDI (including those set out in Attachment A to Schedule 3) to enable TfNSW to undertake a collaborative review in accordance with clause 9.2A, and a DDI Review Workshop in accordance with clause 9.3, of such documentation and other deliverables (together, the **DDI Deliverables**), within a period of time so as to not affect the Subsidiary ETS Delivery Program.*
- (c) The Contractor acknowledges that:*
  - (i) the DDI Deliverables are also subject to those provisions of this Deed dealing with Extent of Completion Claims, including clause 14; and*
  - (ii) its obligations under this clause 9 do not limit the Contractor's obligations in other provisions of this Deed.*
- (d) In addition to the obligations in this clause 9.2 the Contractor must ensure that each DDI Deliverable also complies with any provisions of this Deed relating to the Planned Value Category and Stage it forms part of.*



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- (e) Not used.
- (f) The following diagram shows the intended process flow for collaborative reviews and DDI Review Workshops for the purposes of clauses 9.2A and 9.3.



## 9.2A Collaborative review

- (a) Prior to delivering the DDI Deliverables that form part of a Planned Value Category under clause 9.2(b), the parties will conduct a collaborative review of those Deliverables in accordance with this clause 9.2A to ensure that:
- TfNSW has received a draft of each DDI Deliverable ahead of the DDI Review Workshop under clause 9.3 and is otherwise fully abreast of the key components of such DDI Deliverables;
  - any Defects (or other reasons for such DDI Deliverables not meeting all of the requirements of the Entitlement to Claim Criteria) are minimised; and
  - the DDI Review Workshop in respect of such DDI Deliverables is undertaken in the most seamless and efficient way possible and in accordance with the Subsidiary ETS Delivery Program.
- (b) Following delivery by the Contractor of a draft of any DDI Deliverables that form part of a Planned Value Category under clause 9.2(b), TfNSW will have up to 3 Business Days from the date the last draft of any such DDI Deliverable is delivered by the Contractor (**Collaborative Review Period**) to:
- conduct an initial review of those DDI Deliverables in collaboration with the Contractor, which collaboration may include one-on-one or group review sessions between the parties (to be held at reasonable

*times proposed by TfNSW), the provision of written or verbal feedback to the Contractor, and/or agreed amendments or revisions to the DDI Deliverables by the Contractor;*

- (ii) where requested by either Party, consider and agree with the Contractor to divide the Planned Value Category and those DDI Deliverables into more than one Planned Value Category (and more than one set of DDI Deliverables), so that:*
  - (A) one or more of those divided Planned Value Categories can proceed to a DDI Review Workshop; and*
  - (B) the Contractor has more time to develop the DDI Deliverables for the other divided Planned Value Category (or Planned Value Categories) that are not to proceed to the DDI Review Workshop,*

*provided that before any Planned Value Category is divided, the parties must agree on how the Planned Value Category will be divided, including:*

- (C) the division of the DDI Deliverables between the divided Planned Value Categories;*
- (D) the corresponding ETS Delivery Price for each such divided Planned Value Category;*
- (E) any other changes to the Subsidiary ETS Delivery Program and Schedule 3; and*
- (F) any other changes to the Collaborative Review Period and/or other timeframes under this clause 9.2A and clause 9.3,*

*and in the event that such items cannot be agreed between the parties by the end of the Collaborative Review Period, clause 9.3(i) will apply; and*

- (iii) otherwise review those DDI Deliverables and notify the Contractor of:*
  - (A) any other comments on the DDI Deliverables, including whether TfNSW believes that those DDI Deliverables have any Defects (and specify any Major Defects) or the Contractor has met all of the requirements of the Entitlement to Claim Criteria; and*
  - (B) the reasons why TfNSW believes that those DDI Deliverables have any Defects.*

*(c) The Contractor must:*

- (i) participate in the review and collaboration activities referred to in this clause 9.2A; and*
- (ii) promptly following its receipt of any feedback or comments from TfNSW:*
  - (A) update the DDI Deliverables to address TfNSW's feedback or comments in respect of any Major Defects; and*

- (B) address all other reasonable feedback and comments provided by TfNSW (whether such feedback or comments is provided verbally or in writing),

no later than 5 Business Days following the expiry of the Collaborative Review Period.

- (d) If the Contractor has complied with clause 9.2A(c), the Contractor must:
  - (i) submit all the DDI Deliverables that form part of a Planned Value Category (including, for clarification, a divided Planned Value Category agreed under clause 9.2A(b)(ii)) to TfNSW under clause 9.3; and
  - (ii) notify TfNSW of a proposed reasonable time for the parties to meet to discuss the matters referred to in clause 9.3(a) (**DDI Review Workshop**),

and the parties must agree a time for the DDI Review Workshop to be held which must be no later than 6 Business Days after TfNSW's receipt of all DDI Deliverables and Cubic's notice under this clause 9.2A(d).

### 9.3 DDI Review Workshops

- (a) Provided that the Contractor has complied with clause 9.2A, at least one Business Day prior to the DDI Review Workshop TfNSW will notify the Contractor of any comments on the DDI Deliverables, including whether TfNSW believes that those DDI Deliverables have any Major Defects or the Contractor has met all of the requirements of the Entitlement to Claim Criteria, provided that such comments will not relate to matters which TfNSW has not raised in its feedback or comments provided under clause 9.2A other than:
  - (i) where the comments relate to a section of the DDI Deliverable that has been revised by the Contractor since the provision of such feedback or comments under clause 9.2A;
  - (ii) where the comments relate to a section of the DDI Deliverable that has been impacted by another section revised by the Contractor since the provision of such feedback or comments under clause 9.2A; or
  - (iii) where the comments result from TfNSW not having seen and reviewed all those DDI Deliverables together previously.
- (b) The parties must attend the DDI Review Workshop and discuss whether the Contractor has met all of the requirements of the Entitlement to Claim Criteria for the Planned Value Category, including whether any Defects exist. If TfNSW's notice under clause 9.3(a) states that the Contractor has not met all of the requirements of the Entitlement to Claim Criteria for the Planned Value Category (which may be because there are Major Defects with the DDI Deliverables which TfNSW requires rectifying before the Contractor can deliver an Extent of Completion Claim under clause 14), the senior executive representatives from each party must be invited and attend the DDI Review Workshop to discuss the reasons why TfNSW believes that the requirements of the Entitlement to Claim Criteria for the Planned Value Category have not been met. As part of such discussions, TfNSW will inform the Contractor verbally during the DDI Review Workshop (which TfNSW will confirm by also

notifying the Contractor within 1 Business Day after the DDI Review Workshop) whether TfNSW believes:

- (i) *the Contractor has not met all of the requirements of the Entitlement to Claim Criteria for the Planned Value Category (which may be because there are Major Defects with the DDI Deliverables which TfNSW requires rectifying before the Contractor can deliver an Extent of Completion Claim under clause 14), in which case:*
  - (A) *the Contractor must rectify those deficiencies (including any Major Defects) in accordance with reasonable timeframes to be agreed between the parties (and in any event within 5 Business Days); and*
  - (B) *the Contractor must notify TfNSW when it has done so, following which the Contractor may redeliver such DDI Deliverables to TfNSW under clause 9.2A(d);*
- (ii) *the Contractor has not met all of the requirements of the Entitlement to Claim Criteria for the Planned Value Category because there are Defects (but no Major Defects) with the DDI Deliverables, however TfNSW is willing to permit the Contractor to rectify those Defects as part of the associated "Defect Rectification" Planned Value Category, in which case the senior executives representatives must endeavour to agree the following matters during the DDI Review Workshop:*
  - (A) *the Defects that must be corrected by the Contractor as part of the associated "Defect Rectification" Planned Value Category;*
  - (B) *the portion of the ETS Delivery Price for that Planned Value Category that will be retained pending rectification of those Defects, and which will be the ETS Delivery Price for the associated "Defect Rectification" Planned Value Category; and*
  - (C) *the timeframe within which the Contractor must rectify those Defects and submit the rectified DDI Deliverables under clause 9.3(a) (which timeframe must be reflected in the updated Subsidiary ETS Delivery Program submitted by the Contractor under clause 14.2(a)(ii)),*

*provided that this paragraph (ii) will not apply where the Planned Value Category is a "Defect Rectification" Planned Value Category; or*
- (iii) *the Contractor has met all of the requirements of the Entitlement to Claim Criteria for the Planned Value Category, in which case clause 14 will apply.*
- (c) *Not used.*
- (d) *If:*
  - (i) *the Contractor disagrees with any notice issued by TfNSW under clause 9.3(b) it must promptly (and in any event no later than 5 Business Days of receipt of such a notice), give notice of such disagreement to TfNSW specifying the matters which the Contractor disagrees with; or*

- (ii) *clause 9.3(b)(ii) applies and the senior executives representatives are unable to agree the matters referred to in that clause by the end of the DDI Review Workshop,*

*then:*

- (iii) *subject to clause 9.3(d)(iv), clause 49 will not apply but clause 14.3 will apply and each Party must then notify the Independent Certifier, which notice must include that Party's submissions in relation to the matters in dispute (where clause 9.3(d)(i) applies) or the matters that have not been agreed (where clause 9.3(d)(ii) applies); or*
  - (iv) *where the parties are only unable to agree on the matters referred to in clauses 9.3(b)(ii)(B) and/or (C), clauses 14.3 and 49 will not apply and clause 9.3(i) will apply.*
- (e) *Notwithstanding any other provision of this clause 9, the Contractor will not be entitled to any extension of time under clause 12.5 if the Contractor:*
    - (i) *submits the DDI Deliverables in a manner (including in a quantity) or at a time which does not comply with this clause and which prevents TfNSW from reviewing it in the time allowed under this clause 9; or*
    - (ii) *gives a notice under clause 9.3(d) and the matter is determined in favour of TfNSW.*
  - (f) *If, at any time, TfNSW reasonably considers:*
    - (i) *the Contractor is not undertaking the design of the ETS or design and development of the ETS Operational Services in accordance with the Subsidiary ETS Delivery Program; and/or*
    - (ii) *a DDI Deliverable is incomplete or does not comply with this Deed,**then TfNSW may give notice to the Contractor requiring the Contractor to:*
    - (iii) *submit to TfNSW within 5 Business Days of such notice a plan and program for corrective action to correct the matter the subject of the notice under this clause 9.3(f); and/or*
    - (iv) *amend the DDI Deliverable to correct such incompleteness or non-compliance.*
  - (g) *Any notice issued under this clause 9.3 will not entitle the Contractor to any extension of time to any Date for Completion, except where:*
    - (i) *the Independent Certifier determines under clause 14.3 in favour of the Contractor that all the relevant DDI Deliverables have met those requirements of the Entitlement to Claim Criteria that TfNSW believes have not been met; and*
    - (ii) *the Contractor complies with clause 12.*
  - (h) *If the Contractor is required to amend any DDI Deliverable pursuant to clause 9.3(f), it must continue to resubmit the DDI Deliverable under that clause until all comments notified by TfNSW to the Contractor within 2*

*Business Days of TfNSW's receipt of the revised DDI Deliverable have been addressed.*

- (i) *Where the parties are unable to agree on the matters referred to in clause 9.2A(b)(ii) by the end of the Collaborative Review Period, or on any matter referred to in clauses 9.3(b)(ii)(B) or (C) by the end of the DDI Review Workshop (and clause 9.3(d)(iv) states this clause 9.3(i) applies):*
  - (i) *within 2 Business Days of the end of the Collaborative Review Period or DDI Review Workshop (as applicable), the senior executive representative of each party who has express authority to agree such matters must meet at TfNSW's offices (or such other place as TfNSW requires) to seek to resolve such matters by negotiation. All aspects of the meeting must be kept confidential and all communications between the representatives at the meeting are made on a without prejudice basis;*
  - (ii) *if the representatives are unable to resolve such matters within 5 Business Days of the end of the Collaborative Review Period or DDI Review Workshop (as applicable), or if for any other reason the matters are not resolved within that period, then:*
    - (A) *in the case of a failure to agree the matters referred to in clause 9.2A(b)(ii), the relevant DDI will not be divided; or*
    - (B) *in the case of failure to agree the matters referred to in clauses 9.3(b)(ii)(B) or (C), either Party may refer those matters to an Expert in accordance with clause 50 and Schedule 31; and*
  - (iii) *notwithstanding the Parties' failure to agree such matters or the existence of a Dispute, the Parties must continue to perform their respective obligations under this Deed while such matters are being resolved."*

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## 4 Variation to clause 14

With effect from the Effective Date, clauses 14.2 to 14.5 of the Project Deed are deleted in their entirety and replaced with the following new clauses 14.2 to 14.5:

### "14.2 **Extent of Completion Claims**

- (a) *If following a DDI Review Workshop TfNSW delivers a notice to the Contractor under clause 9.3(b)(iii) or (where applicable, and where the matters referred to in clause 9.3(b)(ii)(A), (B) and (C) have been agreed or determined) clause 9.3(b)(ii), the Contractor must deliver to TfNSW:*
  - (i) *a notice in the form set out in part C of Schedule 36 (an **Extent of Completion Claim**); and*
  - (ii) *where clause 9.3(b)(ii) applies, an updated Subsidiary ETS Delivery Program reflecting the timeframe for the rectification of Defects and resubmission of DDI Deliverables referred to in that clause 9.3(b)(ii).*
- (b) *Not used.*
- (c) *Not used.*



- (d) *If, at any time, TfNSW considers the Contractor has achieved any Entitlement to Claim Criteria for a Planned Value Category, TfNSW may direct the Contractor to serve on TfNSW an Extent of Completion Claim pursuant to clause 14.2(a). The power under this clause 14.2(d) to issue a direction to the Contractor is to be exercised solely for the benefit of TfNSW.*

#### **14.3 Independent Certifier**

- (a) *The Parties must not impede or hinder the Independent Certifier in the performance of its obligations under this Deed or the Independent Certifier Deed.*
- (b) *If the Parties issue a notice to the Independent Certifier under clause 9.3(d)(iii), the Independent Certifier will, within 2 Business Days of its receipt of such notice from each Party, review each Party's notice and provide a determination as to the matters in dispute (where clause 9.3(d)(i) applies) or the matters that have not been agreed (where clause 9.3(d)(ii) applies) (and, for clarification, the Independent Certifier will not be required to determine any other matter, including whether any DDI Deliverables have met all of the other Entitlement to Claim Criteria which TfNSW believes have been met). The Parties:*
  - (i) *must provide all information and do all things necessary to enable the Independent Certifier to make such determination, and such determination must be in writing and will be final and binding on each Party; and*
  - (ii) *are to give effect to the determination of the Independent Certifier.*
- (c) *Under no circumstance will TfNSW be liable to the Contractor in respect of any Claim relating to an act or omission of the Independent Certifier under this Deed or under the Independent Certifier Deed.*

#### **14.4 Extent of Completion Certificate**

- (a) *Within 2 Business Days of receipt of an Extent of Completion Claim and (where applicable) an updated Subsidiary ETS Delivery Program in accordance with clause 14.2(a), TfNSW must issue an Extent of Completion Certificate to the Contractor in respect of that Extent of Completion Claim.*
- (b) *Each Extent of Completion Certificate must identify, for each Planned Value Category included in the Extent of Completion Claim, whether TfNSW believes the Contractor has met all of the Entitlement to Claim Criteria for that Planned Value Category (where this has not previously been included in a previous Extent of Completion Certificate) (being the **Extent of Completion**).*
- (c) *The issue of an Extent of Completion Certificate to the Contractor will not relieve the Contractor of its obligations or liabilities, or constitute a waiver of any of TfNSW's rights, under this Deed.*
- (d) *The Contractor's Extent of Completion Claim must be reflective of the matters agreed (or, where applicable, determined) under clause 9.3(b)(ii) or TfNSW's notification issued under 9.3(b)(iii). However, where it is not and TfNSW is not satisfied that the Entitlement to Claim Criteria have been met as claimed by the Contractor in the Extent of Completion Claim, it will notify*

*the Contractor of deficiencies which require rectification and the reasonable timeframes for rectification and the Contractor must:*

- (i) rectify those deficiencies in accordance with the timeframes specified in TfNSW's notice and notify TfNSW when it has done so, following which the Contractor may include such Planned Value Category in any subsequent Extent of Completion Claim; and*
- (ii) within 20 Business Days of TfNSW's notice, amend the Subsidiary ETS Delivery Program in order to reflect the work required to rectify those deficiencies and the timeframes specified in TfNSW's notice.*

#### **14.5 Completion**

- (a) Once the Contractor considers it has achieved all of the criteria necessary for Completion of a Stage, the Contractor must deliver to TfNSW a notice of Completion in the form set out in part A of Schedule 36, provided that, for the avoidance of doubt, the Date of Certified Completion in respect of the relevant Stage will not occur until the date TfNSW issues a Certificate of Completion in accordance with clause 14.5(c). For clarification, the Contractor can deliver such notice of Completion at the same time as its final Extent of Completion Claim in respect of one or more Planned Value Categories for that Stage.*
- (b) If, at any time, TfNSW considers the Contractor has met all of the criteria necessary for Completion of a Stage, TfNSW may direct the Contractor to serve on TfNSW a notice of Completion pursuant to clause 14.5(a). The power under this clause 14.5(b) to issue a direction to the Contractor is to be exercised solely for the benefit of TfNSW.*
- (c) If TfNSW is satisfied Completion has been achieved for a Stage, it will, within 2 Business Days of receiving a notice of Completion pursuant to clause 14.5(a) in relation to that Stage, issue a Certificate of Completion to the Contractor in respect of the relevant Stage.*
- (d) The issue of a Certificate of Completion to the Contractor will not relieve the Contractor of its obligations or liabilities, or constitute a waiver of any of TfNSW's rights, under this Deed.*
- (e) Without limiting any other provision of this Deed, if TfNSW issues a Certificate of Completion under clause 14.5(c) notwithstanding the existence of minor Defects in the ETS Components Delivered, the Contractor must rectify such minor Defects within the reasonable timeframes notified to the Contractor by TfNSW and otherwise in accordance with this Deed."*

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## **5 Variation to clause 27.3**

[Commercial-in-confidence]

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## **6 Variation to clause 33**

[Commercial-in-confidence]



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## 7 Variation to clause 54

[Commercial-in-confidence]

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## 8 Variation to clause 55

With effect from the Effective Date, solely in respect of [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]:

- (a) clause 55.1(a) of the Project Deed is deleted in its entirety and replaced with the following new clause 55.1(a):

***"55.1 Actions to be taken following termination***

- (a) *Without limiting the Contractor's other obligations under this clause 55, the Contractor must:*
- (i) *stop work on the date and to the extent specified in a notice of termination and continue to perform such part (if any) of the ETS Project not so terminated;*
  - (ii) *within 20 Business Days of receipt of the notice of termination, notify TfNSW of all orders and Subcontracts to the extent that they relate to the performance of work terminated and if directed by TfNSW:*
    - (A) *terminate, or (as directed by TfNSW) assign and novate to TfNSW all of the right, title and interest of the Contractor in, all orders and Subcontracts to the extent that they relate to the performance of work terminated, with the effective date of such termination or assignment or novation being in accordance with TfNSW's notice of termination; and*
    - (B) *place no further orders and enter into no further Subcontracts for materials, services or facilities, except as may be necessary for the ongoing business of the Contractor or Related Body Corporate or for continued performance of such part of the Deed as is not terminated;*
  - (iii) *if directed by TfNSW, to the extent it has not otherwise done so transfer title and deliver to TfNSW in accordance with such direction:*
    - (A) *the fabricated or unfabricated parts of the ETS, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated; and*
    - (B) *the completed or partially completed plans, drawings, manuals, information and other property which, if such work had been completed, would have been required to be furnished to TfNSW,*

*subject to clauses 15 and 27, ownership of which vests in TfNSW free of encumbrances and third party rights;*

- (iv) *if directed by TfNSW, hand over to TfNSW electronic and hard copies of the latest versions of all ETS Documentation (excluding any Source Code in respect of the Contractor Licensed IP) requested by TfNSW and any books of account and all other records relating to the ETS Project; and*
  - (v) *from the date the Contractor receives a notice of termination until the effective date of termination specified in the notice of termination, do all things requested by TfNSW and co-operate with TfNSW or any third party engaged or employed by TfNSW to perform the ETS Project."*
- (b) clause 55.3A of the Project Deed is deleted in its entirety and replaced with the following new clause 55.3A:

**"55.3A Contractor Licensed IP**

[REDACTED]

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## 9 Support

- (a) The Contractor's obligations under the Project Deed to provide ETS Operational Services in respect of the CTP Phase 1 Variation on the basis set out in Attachments D and E will commence on the commencement of the Stage 82 field trial [REDACTED] (Field Trial Commencement) and shall continue for a period of [REDACTED] after the date of commencement of the CTP Phase 1 Field Trial unless:

[REDACTED]

- (ii) the parties agree otherwise in writing,  
(the Operational Services Phase).

- (b) With effect from the Field Trial Commencement, TfNSW will pay to the Contractor the Charges in relation to the ETS Operational Services for Stage 82:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## 10 Escrow

- (a) The Contractor's obligation under clauses 38.1 and 38.2 of the Project Deed to deposit, maintain and update Escrow Materials will, with respect to the [REDACTED] only apply for the Stage 82 Term.
- (b) TfNSW acknowledges that it will not be entitled to be provided with any of the [REDACTED] under clause 38.3 of the Project Deed following the expiry or earlier termination of the Stage 82 Term.
- (c) In the event that a Variation has not been agreed and signed by the Contractor and TfNSW prior to the expiry or earlier termination of the Stage 82 Term, the Contractor will be entitled to the return of all [REDACTED] placed into escrow prior to that date.
- (d) For clarification, in the event that the [REDACTED] is provided to TfNSW in accordance with clause 38.3 of the Project Deed, TfNSW acknowledges [REDACTED].

## **11 Variation to Schedule 10**

[Commercial-in-confidence]

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## **12 Variations to Schedule 17**

[Commercial-in-confidence]

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## **13 Variations to Schedule 26**

[Commercial-in-confidence]

## Schedule 2      Variations for the Project Deed

### 1      Variation to Schedule 1

With effect from the Effective Date, the table set out in Schedule 1 of the Project Deed is amended to incorporate Stage 82, as set out in Attachment A.

### 2      Variation to Schedule 3

With effect from the Effective Date:

- (a) the table set out in Schedule 3 of the Project Deed is amended to incorporate Stage 82, as set out in Part A of Attachment B and includes the total ETS Delivery Price for Stage 82;
- (b) a new Attachment A to Schedule 3 of the Project Deed is added, as set out in Part B of Attachment B; and
- (c) a new Attachment B to Schedule 3 of the Project Deed is added, as set out in Part C of Attachment B.

### 3      Variation to Schedule 9

[Commercial-in-confidence]

#### 3A    New Schedule 9A titled “New Objectives”

- (a) For the period of the Operational Services Phase of the CTP Phase 1 Variation, the Contractor will endeavour to meet the following three new objectives, contained in the table below (**New Objectives**).
- (b) Any failure by the Contractor to meet the New Objectives or Target Thresholds will not constitute a breach of the Variation Deed or the Project Deed by the Contractor.
- (c) Abatements shall not be applied to the Contractor for any failure to meet the New Objective or Target Thresholds.
- (d) The purpose of the New Objectives is to provide information only regarding the performance and measure of each of those New Objectives.


*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

[illegible]

*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

[illegible]

#### 4 Variation to Schedule 17

With effect from the Effective Date, Schedule 17 is amended by:

- (a) adding a new Appendix A68, as set out in Attachment D; and
- (b) adding a new Appendix B77, as set out in Attachment E.

## **5 Variation to Schedule 21**

[Commercial-in-confidence]



*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

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## **Attachment A    Schedule 1**

[Commercial-in-confidence]

*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

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## **Attachment B    Schedule 3**

[Commercial-in-confidence]

*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

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## **Attachment C    Schedule 17, Appendix A68**

[Commercial-in-confidence]

*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

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## **Attachment D      Schedule 17, Appendix B77**

[Commercial-in-confidence]

*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

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## **Attachment E      Schedule 21 (Licensed IP)**

[Commercial-in-confidence]

*NOTE: some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to TfNSW's Government Contracts Register.*

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## **Attachment F      Schedule 29 (Overall ETS Delivery Program)**

[Commercial-in-confidence]