PROFESSIONAL SERVICES CONTRACT
(SCHEDULE OF RATES)

Transport for NSW

PROFESSIONAL SERVICES CONTRACT
(Schedule of Rates)

Contract No. ISD-18-7739

Technical Advisor

CIRCULAR QUAY PRECINCT RENEWAL PROGRAM

Between

Transport for NSW

[PRINCIPAL]
ABN 18 804 239 602

and

Arup Australia Pty Ltd

[PROFESSIONAL SERVICES CONTRACTOR]
ABN 76 625 912 665

Level 5, Zenith Centre, Tower A
821 Pacific Highway
Chatswood NSW 2067
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PROFESSIONAL SERVICES CONTRACT – GENERAL CONDITIONS

This Agreement is between the Principal and the Professional Services Contractor set out in the Contract Particulars.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Agreement" means the contractual relationship between the Principal and the Professional Services Contractor constituted by:

(a) these General Conditions, all Schedules including the Contract Particulars attached to these General Conditions and any Exhibits; and

(b) the other documents (if any), referred to in the Contract Particulars.

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

"ASA Charter" means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on www.asa.transport.nsw.gov.au.

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

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

"Asset Services" means the aspects of the Services which relate to the Asset Lifecycle of NSW Rail Assets.

"Asset Standards Authority" or "ASA" means the unit within Transport for NSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets. Information about the ASA and the network and asset standards can be found on www.transportasa.nsw.gov.au

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

"Authority" means any Federal, State or local government, semi-government, or other body, authority or person, statutory or otherwise (including the ASA) including any court or tribunal, having jurisdiction over the Program, the Services or the performance by the Professional Services Contractor of its obligations under this Agreement or with whose utility services the Services are or will be connected.

"Business Day" means any day other than:

(a) a Saturday, Sunday or public holiday in New South Wales, or

(b) 27, 28, 29, 30 or 31 December.

"Commencement Date" means the date stated in the Contract Particulars.

"Competence Records" means, with respect to any Rail Safety Worker engaged in connection with the Services (including those engaged by subcontractors), the following information:

(a) the rail safety training undertaken by the Rail Safety Worker, including when, and for how long, the training was undertaken;

(b) the qualifications of the Rail Safety Worker, including (if applicable):

(i) the units of competence undertaken to achieve the qualification;

(ii) the level of qualification attained;
(iii) if, and when, a re-assessment of competence is to be conducted;
(iv) if, and when, any re-training is due and was undertaken; and
(v) the name of any organisation conducting training or re-training;

(c) the name and qualifications of any person who assessed the competence of the worker; and
(d) any further information requested by the Principal with respect to the competence of the Rail Safety Worker.

"Completion" is the stage when the Services are, or a Portion is, complete in accordance with this Agreement, including those things referred to in the Contract Particulars.

"Confidential Information" includes, but is not limited to, the following:

(a) the documents specified in the Contract Particulars;
(b) any material produced by the Professional Services Contractor under this Agreement; and
(c) any other information or data that the Professional Services Contractor is given or which comes to the Professional Services Contractor's knowledge during the course of the consultancy that:
   (i) the Professional Services Contractor is told is confidential; or
   (ii) a reasonable person would expect to be confidential from its nature and content,

but does not include:

(d) information which, at the time of disclosure, was already in the public domain;
(e) information which, subsequent to disclosure, enters the public domain except through breach of this Agreement, through breach of the Confidentiality Deed Poll in Schedule 2 by a recipient of disclosed information, or through breach of any other obligation of confidence; or
(f) information which the Professional Services Contractor or a recipient of disclosed information (who has signed a Confidentiality Deed Poll in Schedule 2) is required to disclose by law or the listing rules of the Australian Securities Exchange.

"Contract Material" means those documents (including, but not limited to, information stored by electronic and other means) and materials created or required to be created under this Agreement by the Professional Services Contractor.

"Contract Particulars" means the particulars in Schedule 1.

"Date for Completion" means the date shown in the Contract Particulars or that date as adjusted in accordance with this Agreement.

"Date for Portion Completion" means the date shown in the Contract Particulars in relation to the relevant Portion, or that date as adjusted in accordance with this Agreement.

"Defect" means any:

(a) defect, deficiency, fault, error or omission in the Services; or
(b) other aspect of the Services that are not in accordance with the requirements of this Agreement, including non-compliances, non-conformances and non-conformities.

"Event of Insolvency" means if:

(a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with this Agreement;
(b) execution is levied against a party by a creditor;
(c) a party is an individual person or a partnership including an individual person, and if that person:
   (i) commits an act of bankruptcy;
(ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
(iii) is made bankrupt;
(iv) makes a proposal for a scheme of arrangement or a composition; or
(v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under part X of the Bankruptcy Act 1966 (Cth); or

(d) in relation to a party being a corporation:
(i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
(ii) the party enters a deed of company arrangement with creditors;
(iii) a controller or administrator is appointed;
(iv) an application is made to a court for the winding-up of the party and not stayed within 14 days;
(v) a winding-up order is made in respect of the party;
(vi) resolves by special resolution that the party be wound up voluntarily (other than for a members' voluntary winding-up); or
(vii) a mortgagee of any property of the party takes possession of that property.

"Fee" means the fee set out in the Contract Particulars.

"Final Authorisation" means a final authorisation issued by the ASA to a legal entity which authorises that entity to carry out the class of Asset Lifecycle work specified in the final authorisation, subject to any conditions of the authorisation, for the purposes of entering into a contract with a Rail Transport Agency.

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

"Key People" means the person(s) nominated in the Contract Particulars who are engaged by the Professional Services Contractor under clause 11.2.

"Notice of Completion" means a notice issued under clause 18.6(d)(i) by the Principal's Representative.

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

"NSW Trains" means the corporation by that name constituted by section 37(1) of the Transport Administration Act 1988 (NSW).

"Option" means an option referred to in Schedule 7.

"Other Contractor" means any consultant, contractor, supplier or other person engaged by the Principal in relation to the Program other than the Professional Services Contractor and its subcontractors, the Key People and the Professional Services Contractor’s Representative.

"Personal Information" has its meaning in the Privacy and Personal Information Protection Act 1998 (NSW).

"Portion" means a portion of the Services as described in the Contract Particulars.

"Principal’s Representative" means the person nominated in the Contract Particulars or any other person appointed from time to time by the Principal under clause 11.3.

"Professional Services Contractor’s Certificate of Completion" means the certificate in the form set out in Schedule 8.

"Professional Services Contractor’s Representative" means the person nominated in the Contract Particulars under clause 11.1.
"Program" means the program stated in the Contract Particulars in respect of which the Services are provided.

"Property NSW" means the statutory corporation constituted under section 4 of the Property NSW Act (NSW) 2006.

"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).

"Provisional Authorisation" means a preliminary authorisation issued by the ASA to a legal entity which authorises that entity to carry out the class of Asset Lifecycle work specified in the preliminary authorisation, subject to any conditions of the authorisation, for the purposes of entering into a contract with a Rail Transport Agency.

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

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

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

"Rail Transport Agency" means Transport for NSW (and each of its divisions), Rail Corporation NSW, Sydney Trains and NSW Trains.

"Related Entity" means, in respect of an entity, another entity which is a related body corporate (as defined by sections 9 and 50 of the Corporations Act 2001 (Cth)) or an associate (as defined by sections 10 to 17 of the Corporations Act 2001 (Cth)) of that first mentioned entity.

"Relevant Government Agency" means Roads and Maritime Services, Sydney Trains or Property NSW.

"Roads and Maritime Services" means Roads and Maritime Services (ABN 76 236 371 088), a NSW Government agency established under section 46 of the Transport Administration Act 1988 (NSW).

"Safety Report" means the report required to be prepared by a designer of a structure by clause 295 of the Work Health and Safety Regulations 2017 (NSW).

"Schedule of Rates" means the rates and prices set out in Schedule 5 as adjusted under clause 17.4.

"Services" means the whole of the services to be carried out and completed in accordance with this Agreement, including any changes required as a result of the exercise of an Option by the Principal's Representative under clause 16.5 or due to variations provided for by this Agreement, as generally described in the Contract Particulars.

"Services & Deliverables Program" means the program contemplated in clause 18.1 and set out at Exhibit B, as updated from time to time.

"SME" means the structured closed market engagement being undertaken by the Principal in relation to the Program.


"Statutory Requirements" include:

(a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales;

(b) certificates, licences, consent, permits, approvals and requirements of organisations having jurisdiction applicable to the Services; and

(c) relevant Australian Standards applicable to the Services.

"Sydney Trains" means the corporation by that name constituted by section 36(1) of the Transport Administration Act 1988 (NSW).

"TfNSW" means Transport for NSW (ABN 18 804 239 602), a NSW Government agency and corporation constituted by section 3C of the Transport Administration Act 1988 (NSW).
"TfNSW Statement of Business Ethics" means the document titled 'Transport for NSW Statement of Business Ethics' which can be found on the TfNSW website.

"Upper Limiting Fee" means the total amount set out in the Contract Particulars being the aggregate of each Upper Limiting Fee Portion.

"Upper Limiting Fee Portion" means any or all of:
   (a) Upper Limiting Fee (Portion 1);
   (b) Upper Limiting Fee (Portion 2);
   (c) Upper Limiting Fee (Portion 3); and
   (d) Upper Limiting Fee (Portion 4),
as the context requires.

"Upper Limiting Fee (Portion 1)" means the amount set out in the Contract Particulars.

"Upper Limiting Fee (Portion 2)" means the amount set out in the Contract Particulars.

"Upper Limiting Fee (Portion 3)" means the amount set out in the Contract Particulars.

"Upper Limiting Fee (Portion 4)" means the amount set out in the Contract Particulars.

"WHS Legislation" means the following as it may apply from time to time:
   (a) the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulations 2017 (NSW); and
   (b) all other acts, regulations and codes of practice relating to work health and safety which apply in the State in which the Services are being executed.

1.2 Interpretation
In this Agreement unless the context otherwise requires:
   (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an Authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
   (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
   (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
   (d) a reference to any Authority, institute, association or body is:
      (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
      (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
   (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
   (f) a reference to any legislation or to any section or provision of it includes:
      (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
1.3 Authorities

(a) This Agreement will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal, Sydney Trains, NSW Trains or RailCorp to exercise any of their respective functions and powers pursuant to any Statutory Requirements.

(b) Without limiting clause 1.3(a), anything the Principal, Sydney Trains, NSW Trains or RailCorp do, or fail to do or purport to do, pursuant to their respective functions and powers under any Statutory Requirements will be deemed not to be an act or omission by the Principal under this Agreement.

(c) The Professional Services Contractor:

(i) waives any claims that it may have against the Principal as a result of the exercise by the Principal, Sydney Trains, NSW Trains or RailCorp of their respective functions and powers under any Statutory Requirements; and

(ii) acknowledges and agrees that:

A. there are many Authorities with jurisdiction over aspects of the Services;

B. such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Services (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and

C. it bears the full risk of all occurrences of the kind referred to in clause 1.3(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, any claim arising out of or in any way in connection with such occurrences.
2 TERMS OF ENGAGEMENT

The Principal engages the Professional Services Contractor to perform the Services in accordance with this Agreement.

3 PROFESSIONAL SERVICES CONTRACTOR'S OBLIGATIONS

3.1 General

The Professional Services Contractor must:

(a) perform the Services in accordance with this Agreement in consideration of the payments to be made by the Principal under clause 17;

(b) perform the Services in compliance with the TfNSW Statement of Business Ethics;

(c) perform the Services to that standard of skill, care and diligence to be expected of a professional services contractor who regularly acts in the capacity in which the Professional Services Contractor is engaged and who possesses the knowledge, skill and experience of a professional services contractor qualified to act in that capacity. The Professional Services Contractor acknowledges that the Principal is relying on the Professional Services Contractor’s expertise, skill and judgement in the Professional Services Contractor’s performance of the Services;

(d) ensure that the Contract Material:

(i) is suitable for the intended purposes stated in section 2 of Exhibit A – Services Brief;

(ii) complies with all relevant Statutory Requirements, unless otherwise expressly instructed by the Principal in writing; and

(iii) otherwise complies with all requirements of this Agreement.

(e) use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Services;

(f) liaise, co-operate and confer with others as directed by the Principal;

(g) promptly give written notice to the Principal if and to the extent the Professional Services Contractor becomes aware that any document or other information provided by the Principal is ambiguous or inaccurate or is otherwise insufficient to enable the Professional Services Contractor to carry out the Services;

(h) make reasonable enquiries to ascertain the requirements of the Principal regarding the Services, including in respect of any hazards and risks at the site upon which the Program is to be constructed of which the Principal is aware;

(i) regularly consult the Principal regarding the carrying out of the Services;

(j) as soon as practicable after becoming aware of any matter or circumstances which may adversely affect or has adversely affected the scope, timing or carrying out of the Services, give written notice to the Principal detailing the matter or circumstances and its anticipated effect on the Services;

(k) ensure that any person employed or engaged by the Professional Services Contractor and its subcontractors who undertakes any work in connection with the Services complies with all Statutory Requirements, including the WHS Legislation; and

(l) without limiting any other provision of this Agreement, consult with the Principal as required to enable the Principal to discharge its obligations under clause 294 of the Work Health and Safety Regulation 2017 (NSW).

(m) whilst performing the Services, require all persons to:
(i) report for work and whilst working be free from the influence of alcohol and otherwise comply with section 128 of the Rail Safety National Law and be free from the influence of any other drugs (below the cut off level stipulated by the Australian Standard AS/NZS 4308:2008); and

(ii) undergo random and targeted alcohol and drug testing in accordance with the Rail Safety National Law, the TfNSW 60-ST-010 - Alcohol and Other Drugs and TfNSW 60-PR-095 Testing for Alcohol and Other Drugs; and

(n) ensure that any person employed or engaged by the Professional Services Contractor and its subcontractors who undertakes any Rail Safety Work in connection with the Services complies with any Statutory Requirements, including:

(i) the provisions of the Rail Safety National Law; and

(ii) holding and maintaining Rail Safety Worker ("RSW") certification; and

(iii) the WHS Legislation;

(o) prior to any Rail Safety Worker carrying out any Rail Safety Work in connection with the Services, provide the Principal with the Competence Records in the form directed by the Principal (which may be electronic);

(p) ensure that any Rail Safety Worker who carries out Rail Safety Work in connection with the Principal's railway operations has the competence to carry out that work; and

(q) ensure that each Rail Safety Worker used in connection with the Services has a form of identification that is sufficient to enable the type of competence and training undertaken by that Rail Safety Worker to be checked by a rail safety officer.

The Professional Services Contractor:

(r) acknowledges and agrees that the resourcing cost plan provided by the Professional Services Contractor during the tender process informed the Upper Limiting Fee; and

(s) warrants that it has done everything that would be expected of a skilled, prudent, experienced and professional consultant in assessing the risks which it is assuming under this Agreement and that the Upper Limiting Fee contains sufficient allowances to protect it against the eventuation of any of these risks.

3.2 Complying with Statutory Requirements

(a) The Professional Services Contractor must comply with:

(i) all Statutory Requirements including the WHS Legislation; and

(ii) the requirements of any other standards or codes, which apply to the Services.

(b) Without limiting the above the Professional Services Contractor must prepare the Safety Report in accordance with the requirements of, and otherwise discharge its obligations under, the provisions of the WHS Legislation. The Professional Services Contractor must give a copy of the Safety Report to the Principal within the time specified in the Contract Particulars.

3.3 Non-Complying Services

If the Principal discovers or believes that the Services, or any part thereof, have not been performed in accordance with this Agreement (including any Contract Material not complying with the requirements of this Agreement) ("Non-complying Services"), the Principal may give the Professional Services Contractor a direction specifying the Non-complying Services and do one of the following:

(a) require the Professional Services Contractor to:

(i) re-perform the Non-complying Services (including by amending the Contract Material) within a specified time period; and
(ii) take all such steps as are reasonably necessary to:

A. mitigate the effect on the Principal of the failure to perform the Services in accordance with this Agreement; and

B. put the Principal (as closely as possible) in the position in which it would have been if the Professional Services Contractor had performed the Services in accordance with this Agreement; or

(b) advise the Professional Services Contractor that the Principal will accept the Non-complying Services despite the non-compliance, in which event the Principal will be entitled to recover from the Professional Services Contractor any reasonable additional costs which will be incurred by the Principal as a result of the non-compliance, including any costs incurred by the Principal in having the Non-complying Services re-performed by an Other Contractor. The Principal, upon reasonable request by the Professional Services Contractor, will provide relevant information to the Professional Services in support of the additional costs incurred by the Principal; or

(c) advise the Professional Services Contractor that the Principal will accept the Non-complying Services despite the non-compliance, in which event for any Portion that contains Non-complying Services:

(i) the Principal’s Representative, acting reasonably and providing the Professional Service Contractor with reasons for the non-compliance and the value, will determine the value of the Non-complying Services in that Portion or in accordance with clauses 16.3(b) or 16.3(c) (each an “NCS Value”);

(ii) the Upper Limiting Fee for that Portion will be reduced by the relevant NCS Value (each a “Reduced Limiting Fee Portion”);

(iii) the Professional Services Contractor will have no entitlement to make any claim against the Principal for any amount in excess of the relevant Reduced Limiting Fee Portion for that Portion; and

(iv) if the Principal has already paid the Professional Services Contractor some or all of the NCS Value for that Portion, such amount will be a debt due and payable by the Professional Services Contractor to the Principal.

3.4 Re-performance of the Non-complying Services

If a direction is given under clause 3.3(a), the Professional Services Contractor must, at its own cost, re-perform the Non-complying Services:

(a) within the time specified in the Principal’s instruction; and

(b) so as to minimise the delay and disruption to the performance of the Services.

If the Professional Services Contractor fails to comply with a direction under clause 3.4, the Principal may give the Professional Services Contractor a direction under clauses 3.3(b) or 3.3(c).

3.5 Safety and Environment

(a) The Professional Services Contractor must:

(i) 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;

(ii) prior to commencing to perform the Services on the site of the Program ensure that all Key People have undertaken any induction required by the Principal;
(iii) in the provision of the Services comply with and procure that any subcontractor and its employees comply with all the requirements of the WHS Legislation and any other requirements of this Agreement for work health, safety and rehabilitation management;

(iv) comply with, and procure that any subcontractor complies with, any reasonable directions issued by the Principal's Representative in relation to work, health, safety or the environment including where the direction is given because Key People are not complying with their obligations under this clause 3.5;

(v) immediately inform the Principal's Representative verbally of all work health, safety and environment matters arising out of, or in any way connected with the Services or the Program;

(vi) provide written assurances obtained pursuant to clause 3.5(a)(i), together with written assurances from the subcontractor and its employees about the subcontractor's and its employees’ ongoing compliance with the WHS Legislation, to the Principal;

(vii) comply with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter including co-operate with the Principal's Representative and any contractor engaged by the Principal with respect to the Program and co-ordinate the Services with the work of the Principal's Representative and any contractor engaged by the Principal with respect to the Program;

(viii) exercise a duty of utmost good faith to the Principal in carrying out the Services to enable the Principal to discharge the Principal's duties under the WHS Legislation; and

(ix) ensure its subcontracts include provisions equivalent to the obligations of the Professional Services Contractor in this clause 3.5 and any other provisions of this Agreement concerning work health and safety matters.

(b) The Professional Services Contractor's design (if any) must:

(i) take into account best work health and safety practice applicable to the construction, utilisation, operation, safety and/or maintenance of the Program; and

(ii) be subject to a health, safety and environment review by a suitably qualified person at appropriate stages of the design development process (if any) to verify the design's compliance with the WHS Legislation.

3.6 Licensing and Authorisation

The Professional Services Contractor must:

(a) ensure that if any Statutory Requirement (including the WHS Legislation) requires that:

(i) a person:

A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any part of the Services at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or

B. has prescribed qualifications or experience to carry out any part of the Services 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;
not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements under clause 3.6(a) are met (including any requirement to be authorised, licensed, qualified or supervised); and

(c) 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 Professional Services Contractor commences such work.

3.7 Duties under WHS Legislation

Without limiting the Professional Services Contractor’s obligations under any other clause of this Agreement, insofar as the Professional Services Contractor, in carrying out the Services, is a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the Work Health and Safety Act 2011 (NSW) applies, then to the extent that the obligations under that section apply to the Services the Professional Services Contractor must comply with the applicable obligations under the WHS Legislation.

3.8 Engineering Authorisation

Based on the procedures of, and undertakings given by, the Professional Services Contractor and its subcontractors as set out in the Professional Services Contractor’s tender, the Professional Services Contractor has been granted a Provisional Authorisation and the Principal authorises:

(a) the Professional Services Contractor; and

(b) the subcontractors engaged to undertake the Services,
to undertake the Services.

3.9 ASA Compliance

(a) The Professional Services Contractor must:

(i) hold and maintain its Provisional Authorisation for so long as the Services are carried out;

(ii) make application to the ASA for Final Authorisation within 45 Business Days (or any longer period agreed by the parties) of the Commencement Date; and

(iii) provide to ASA any document or other things reasonably required by the ASA under, out of or in connection with the application for Final Authorisation within any time period required by the ASA (acting reasonably).

(b) The Professional Services Contractor must, if it is granted a Final Authorisation prior to the completion of the Services, and without limiting or otherwise restricting clause 3.9(c):

(i) hold and maintain its Final Authorisation for so long as the Services are carried out; and

(ii) on and from the date of the granting of Final Authorisation, comply with the conditions of the applicable Final Authorisation.

(c) The Professional Services Contractor must (and must ensure that all personnel for which it is responsible):

(i) comply with the conditions of the applicable Provisional Authorisation and Final Authorisation;

(ii) implement and comply with the requirements of any ASA Requirements applicable to the Asset Services;

(iii) cooperate fully with the ASA in the performance of the ASA’s functions;
(iv) provide access to premises and resources as reasonably required by the ASA, including so that it can effectively carry out its review, surveillance and audit functions;

(v) comply with the directions, instructions and requirements issued by the ASA;

(vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;

(vii) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and

(viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.

(d) The Professional Services Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any claim arising out of or in connection with the requirement to obtain, or any delays or failure by the ASA in granting the Professional Services Contractor, Provisional Authorisation and Final Authorisation or the obligation to comply with the requirements of ASA and the Provisional Authorisation and Final Authorisation.

4 JOINT AND SEVERAL LIABILITY

If the Professional Services Contractor comprises more than one person, those persons are jointly and severally liable for the performance and obligations of the Professional Services Contractor.

5 SUBCONTRACTING

(a) The Professional Services Contractor must not subcontract any part of the Services without the prior written approval of the Principal.

(b) An approval given by the Principal permitting the Professional Services Contractor to subcontract any portion of the Services does not relieve the Professional Services Contractor from its obligations and liabilities pursuant to this Agreement and the Professional Services Contractor will be vicariously liable for the acts and omissions of its subcontractors and consultants.

6 CONTRACTOR PERFORMANCE REPORTING

The Professional Services Contractor acknowledges that the Principal has in place processes for assessing the performance of its Professional Services Contractors and that these processes will apply to this Agreement. The Professional Services Contractor agrees to participate in the Principal's Contractor Performance Reporting process.

6.1 Exchange of Information between Government Departments and Agencies

The Professional Services Contractor authorises the Principal, its employees and agents to make information concerning the Professional Services Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Professional Services Contractor to the Principal and any information relating to the Professional Services Contractor's performance under this Agreement.

The Professional Services Contractor acknowledges that:

(a) any information about the Professional Services Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Professional Services Contractor future opportunities for NSW government work; and
the Principal may be required to publish information concerning this Agreement in accordance with sections 27 to 35 of the Government Information (Public Access) Act 2009 (NSW). If the Professional Services Contractor reasonably believes that any part of this Agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, the Professional Services Contractor must immediately advise the Principal in writing, identifying the provisions and providing reasons so that the Principal may consider exempting those provisions from publication.

7 INTELLECTUAL PROPERTY

7.1 Ownership

The Intellectual Property Rights in or relating to the Contract Material will vest in the Principal.

The Principal grants to the Professional Services Contractor an irrevocable licence to use those Intellectual Property Rights for the purpose of carrying out the Services. The Professional Services Contractor will retain the Intellectual Property Rights in any original ideas, equipment processes or systems created outside the terms of this Agreement and used in carrying out the Services.

The Professional Services Contractor must grant or cause to be granted to the Principal an irrevocable royalty-free licence (which includes the right to sublicense third parties) to use such Intellectual Property Rights for any purpose the Services are provided for including, but limited to, any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts) or additions or alterations to, the Program and the copying of any document for such purposes.

7.2 Warranty and Indemnity

The Professional Services Contractor warrants that in providing the Services the Professional Services Contractor owns or is licensed to use the Intellectual Property Rights in the Contract Material and the Professional Services Contractor must indemnify the Principal against any action, claim, demand, liability, loss or damage suffered or incurred by the Principal arising out of or in connection with any alleged or actual infringement of the Intellectual Property Rights of a third party in the performance of the Services or the use by the Principal of the Contract Material.

The Principal warrants that documents and materials provided by the Principal to the Professional Services Contractor for the Services will not infringe the Intellectual Property Rights of a third party.

7.3 Moral Rights

If the Professional Services Contractor in performing the Services includes or makes use of any work or other subject matter in which copyright subsists, the Professional Services Contractor must procure from every person (whether a subcontractor or an officer, employee or consultant of the Professional Services Contractor or of a subcontractor, and including the Professional Services Contractor's Representative and the Key People) who is an author of that work or subject matter a written consent signed by that person for the benefit of the Principal and the Professional Services Contractor, under which (to the maximum extent permitted by law) that person irrevocably and unconditionally:

(a) consents to the Principal and the Professional Services Contractor:

(i) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter anywhere in the world in whatever form the Principal and the Professional Services Contractor thinks fit (including, but not limited to, the making of any distortions, additions, or alterations to that work or subject matter or any adaptation thereof, or to any part of that work or subject matter or of any such adaptation in a manner which but for the consent, infringes or may infringe that person's moral rights in the work or other subject matter) as so used, disclosed, reproduced, transmitted, exhibited, communicated, adapted or published; and
(ii) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter or any adaptation thereof (or any part of that work or subject matter or of any such adaptation) anywhere in the world including pursuant to the Copyright Act 1968 without making any identification of that person in relation thereto; and

(b) waives, to the extent permitted by law, all and any moral rights to which that person may be entitled anywhere in the world in relation to any Contract Material.

8 CONFLICT OF INTEREST AND PROHIBITION

(a) The Professional Services Contractor warrants that no conflict of interest exists in relation to the Services at the date of this Agreement.

(b) The Professional Services Contractor must immediately provide the Principal written notice upon becoming aware of the existence, or possibility, of an actual or perceived conflict of interest in the performance of the Services.

(c) On receipt of a notice under clause 8(b), the Principal may:

(i) approve the Professional Services Contractor continuing to perform the Services, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or

(ii) where in the Principal's view the conflict of interest cannot be appropriately managed, and without limiting clause 21, terminate this Agreement by notice in writing to the Professional Services Contractor effective from the date specified in the notice.

(d) The Principal may, at its sole discretion and at any time, require the Professional Services Contractor to sign and procure that each of its officers, employees, subcontractors or agents involved in the performance of the Services signs and delivers to the Principal a Statement of Interests and Associations in the form attached in Schedule 4.

(e) The Professional Services Contractor:

(i) must not, and must ensure that its Related Entities and their respective officers, employees, subcontractors or agents do not provide or agree to provide services of any nature whatsoever in connection with the Program to any person or entity which is participating in the Principal's SME process for the Program, without the prior written approval of the Principal;

(ii) acknowledges that the Principal is engaged in a competitive SME process for the Program and agrees that this prohibition is essential to maintain the probity and integrity of that SME process; and

(iii) agrees this Clause 8(e) is an essential term of this Agreement.

(f) The Professional Services Contractor acknowledges that the Principal will suffer loss as a result of a breach by the Professional Services Contractor of clause 8(e) including all losses that the Principal may or will suffer or incur as a result of terminating any procurement process because of a conflict of interest.

(g) The Professional Services Contractor indemnifies the Principal against any action, claim (including claims by participants in the SME process), demand, liability, loss or damage suffered or incurred by the Principal arising out of or in connection with a breach of clause 8(e).

(h) The obligations of the Professional Services Contractor under this clause 8(e), (f) and (g) and (h) survive completion of the Services or termination of this Agreement and are enforceable at any time at law or in equity and continue for the benefit of and are enforceable by the Principal.
9 INDEMNITY BY PROFESSIONAL SERVICES CONTRACTOR

The Professional Services Contractor must indemnify the Principal against:

(a) loss of or damage to property of the Principal including, but not limited to, the Contract Material; and

(b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any other property,

arising out of or in consequence of carrying out the Services but the Professional Services Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that the act or omission of the Principal or the employees, agents or other contractors of the Principal contributed to the loss, damage, injury or death.

10 INSURANCE

10.1 Professional Indemnity Insurance

Before the Professional Services Contractor commences carrying out the Services, the Professional Services Contractor must effect a professional indemnity insurance policy for the Services with a total aggregate cover of not less than the sum stated in the Contract Particulars.

The policy must include provisions for one automatic reinstatement of the sum insured and for loss of documents. The policy and such level of cover must be maintained until the Professional Services Contractor completes carrying out the Services and thereafter for a period as stated in the Contract Particulars.

The Professional Services Contractor must ensure that its subcontractors and consultants have professional indemnity insurance to a level approved by the Principal.

10.2 Public Liability Insurance

The Professional Services Contractor must maintain a public liability policy for an amount in respect of any one claim or series of claims arising from one original cause of not less than the sum stated in the Contract Particulars. The policy must be maintained until the Professional Services Contractor completes carrying out the Services.

The policy must cover the Professional Services Contractor in respect of liability to the Principal and third parties in respect of any claim arising from the acts or omissions of the Professional Services Contractor, its employees, subcontractors and consultants in the course of carrying out the Services and must extend to indemnify the Principal as one of the class of persons constituting the Insured or note the Principal as an interested party but not in respect of liability to the extent that the liability is due to or results from the negligence of the Principal.

10.3 Insurance of Employees

Before the Professional Services Contractor commences carrying out the Services, the Professional Services Contractor must insure against liability for death or injury to persons employed by the Professional Services Contractor including, but not limited to, liabilities, under statute including relevant workers compensation legislation and at common law. The insurance cover must be maintained until the Professional Services Contractor completes carrying out the Services.

Where permitted by law, the insurance cover must be extended to indemnify the Principal for the Principal's statutory liability for persons employed by the Professional Services Contractor. The Professional Services Contractor must ensure that employees of the Professional Services Contractor's subcontractors and consultants are similarly insured.
10.4 Professional Services Contractor’s Insurance Obligations

The Professional Services Contractor must:

(a) provide the Principal’s Representative with a copy of, or certificate of currency for, any insurance policies required by this clause 10 prior to commencement of the Services and evidence satisfactory to the Principal’s Representative that the policy is current as required by the Principal’s Representative from time to time; and

(b) ensure that it:

(i) does not do anything which prejudices the insurance;

(ii) if necessary, rectifies anything which might prejudice any insurance;

(iii) reinstates any insurance policy if it lapses;

(iv) does not cancel, vary or allow an insurance policy to lapse without providing prior written notification to the Principal’s Representative. Such notification will not constitute a waiver of the Principal’s rights under this Agreement;

(v) immediately notifies the Principal’s Representative of any event which may result in an insurance policy lapsing or being cancelled; and

(vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

11 REPRESENTATIVES

11.1 Professional Services Contractor’s Representative

The person nominated in the Contract Particulars is the Professional Services Contractor’s Representative for this Agreement, and:

(a) has the legal power to bind the Professional Services Contractor in respect of any matter arising in connection with the Services;

(b) has the authority to receive directions on behalf of the Professional Services Contractor from the Principal and the Principal’s Representative;

(c) is competent to be the Professional Services Contractor’s Representative; and

(d) is not discharged or replaced as the Professional Services Contractor’s Representative without the written consent of the Principal, which cannot be unreasonably withheld. Any substitute representative must be notified promptly in writing to the Principal.

11.2 Key People

The Professional Services Contractor must:

(a) engage the Key People specified in the Contract Particulars in the performance of the Services and in the positions (if any) specified in the Contract Particulars;

(b) ensure the Key People (including any replacement) will devote sufficient time to the services they are retained to do such that the Services are performed promptly, efficiently, skilfully, in a timely fashion and in accordance with this Agreement;

(c) subject to clause 11.2(d), not replace the Key People without the Principal’s Representative’s prior written approval which will not be unreasonably withheld;

(d) if any of the Key People:

(i) dies;

(ii) becomes unable to continue in their positions due to illness; or
(iii) resigns from the employment of the Professional Services Contractor (other than to accept other employment with the Professional Services Contractor or any "related body corporate" of the Professional Services Contractor (as that term is defined in section 9 of the Corporations Act 2001 (Cth));

promptly notify the Principal's Representative and replace those Key People with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative; and

(e) immediately take steps to replace any Key People specified in the Contract Particulars who are requested by the Principal, acting reasonably, to be removed from the Services with a replacement of equivalent expertise and experience, and obtain the written approval of the Principal, which will not be unreasonably withheld, to the replacement prior to engaging the replacement.

11.3 Principal’s Representative

The person nominated in the Contract Particulars is the Principal’s Representative for this Agreement and has the legal power to bind the Principal in respect of any matter arising in connection with the Services. Any substitute representative must be notified promptly in writing to the Professional Services Contractor.

The Principal’s Representative may by notice in writing to the Professional Services Contractor delegate any or all of its functions to another person.

12 DIRECTIONS

12.1 Directions

The Professional Services Contractor must comply with the directions of the Principal or the Principal’s Representative. Except where this Agreement otherwise provides, a direction may be given orally.

If the Professional Services Contractor in writing requests the Principal to confirm an oral direction in writing, the Principal must do so as soon as practicable.

12.2 Programming

The Professional Services Contractor must give the Principal reasonable advance notice of when the Professional Services Contractor needs other information, materials, documents or instructions from the Principal.

The Principal shall not be obliged to give any information, materials, documents or instructions earlier than the Principal should reasonably have anticipated at the date of this Agreement and in any event no earlier than 10 Business Days after the request for the information, materials, document or instruction was made by the Professional Services Contractor.

The Principal may direct in what order and at what time the various stages or Portions of the Services must be carried out and the Professional Services Contractor must comply with any such direction.

13 RECORD KEEPING AND PROGRAM REPORTING

The Professional Services Contractor must:

(a) keep, and ensure its subcontractors keep, accurate records of the performance of the Services;

(b) ensure that all persons engaged in the performance of the Services produce and maintain:

(i) a daily diary record of tasks performed; and
(ii) where the Fee is time based, a daily timesheet accurately recording the time spent in the performance of the Services;

(c) at the Principal’s request, provide, and ensure that its subcontractors provide, the records referred to in this clause 13 for their inspection and copying by the Principal;

(d) if required, provide the Principal’s Representative with periodic program reports on the engagement as required by this Agreement;

(e) ensure that all records required to be kept by this Agreement, including the Competence Records, are current and accurate; and

(f) whenever requested by the Principal’s Representative provide the Principal’s Representative with a written report containing details on all work health and safety matters arising out of the Services, including in respect of any matters concerning or arising out of clause 3.2 and clauses 3.5 to 3.7.

The records referred to in this clause 13 must be retained for seven (7) years after completion of the Services.

14 COLLABORATIVE AUDITING PROCESS

The Professional Services Contractor and the Principal will, on a collaborative basis, develop, agree and implement, a scope and program for the Principal’s Representative to undertake audits of the Professional Services Contractor’s compliance with the requirements of the Professional Services Contractor’s quality management system (if applicable) as these may apply to the Services and obligations under this Agreement and:

(a) the Professional Services Contractor agrees to participate and assist in the development and completion of these audits; and

(b) the Professional Services Contractor and the Principal’s Representative shall when requested share the results of any self verification by the Professional Services Contractor and/or the outcome of any audits completed.

15 ACCESS TO PROFESSIONAL SERVICE CONTRACTOR’S PREMISES

The Professional Services Contractor must, at all reasonable times and upon reasonable notice, permit the Principal access to the Professional Services Contractor premises in order for the Principal to inspect, discuss and assess the Contract Material and any other material obtained by the Professional Services Contractor from any person in connection with this Agreement.

16 VARIATIONS

16.1 Proposal

(a) The Principal may direct in writing that the Professional Services Contractor vary the Services, including, but not limited to, addition to, omission from or deletion of any part of the Services, or the timing, including, but not limited to, the Date for Completion or Date for Portion Completion, of the Services (or part of the Services or Portion) or both ("variation").

(b) If a variation the subject of a direction by the Principal omits or deletes any part of the Services, the Principal may thereafter carry out the omitted or deleted Services either itself or engage an Other Contractor to carry out the omitted or deleted Services or part of the Services and the Professional Services Contractor will have no entitlement to make any payment claim against the Principal arising out of or in connection with the omitted or deleted Services or any part thereof.
(c) if the Principal gives such a direction where the need for the variation is in order to overcome any Defect in or from the Services, any reasonable costs or losses suffered or incurred by the Principal in having the Services which have been deleted or omitted carried out by an Other Contractor will be a debt due and payable by the Professional Services Contractor to the Principal which may be deducted from the Fee. The Principal, upon reasonable request by the Professional Services Contractor, will provide relevant information to the Professional Services Contractor in support of the costs or losses suffered or incurred by the Principal.

(d) Nothing in clause 16.1(c) limits the Principal’s rights under clauses 3.3(b) and (c).

(e) If the Principal proposes a variation, the Principal will specify in the direction a reasonable time by which the Professional Services Contractor must provide a written estimate of the time, cost and programming effects of the proposed variation. If no time is specified, the Professional Services Contractor must provide the estimate within 14 days.

16.2 Variation Direction

Whether or not the Professional Services Contractor provides a written estimate under clause 16.1(e), the Principal may direct in writing the Professional Services Contractor to carry out a variation, and the Professional Services Contractor must comply with such direction.

A variation excludes any changes to the Services that are required due to the exercise of an Option by the Principal’s Representative under clause 16.5.

16.3 Valuation

The value of a variation directed under clause 16.1 or 16.2 will be determined by the Principal’s Representative as follows:

(a) by agreement between the Principal’s Representative and the Professional Services Contractor including, but not limited to, where the Professional Services Contractor has provided a written estimate pursuant to clause 16.1(e), which the Principal has accepted, the amount in that written estimate;

(b) by using the hourly rates and other prices set out in the Contract Particulars where included and where these are reasonable to use; or

(c) on the basis of reasonable prices and rates determined by the Principal’s Representative.

The Upper Limiting Fee will be adjusted having regard to the value of each variation as determined in accordance with this clause 16.3.

16.4 Variation due to a Change in a Statutory Requirement

If a new Statutory Requirement or a change in a Statutory Requirement after the date of this Agreement:

(a) necessitates a change to the Services;

(b) has effect after the date of this Agreement; and

(c) could not reasonably have been anticipated at that date,

then the extent to which the Services are changed by the Statutory Requirement shall be deemed to be a variation and will be valued pursuant to clause 16.3.

16.5 Option

The Principal’s Representative may, by written notice given to the Professional Services Contractor at any time within the period stated in Schedule 7, exercise any Option. Commencing upon the issue of such a notice by the Principal’s Representative, the Principal and the Professional Services Contractor must perform their obligations under this Agreement on the basis that the Upper Limiting Fee and the provisions of this Agreement will be adjusted as set out in Schedule 7 for the relevant Option.
For the avoidance of doubt:

(a) the Principal is not under any obligation whatsoever to exercise; and

(b) the Professional Services Contractor is not entitled to make, nor will the Principal be liable upon, any claim in respect of the Principal not exercising, any Option.

Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

The exercise of an Option by the Principal's Representative under this clause 16.5 will not:

(c) relieve the Professional Services Contractor from its liabilities or obligations (including those arising out of any warranties given under this Agreement); or

(d) limit or otherwise affect the Principal's rights against the Professional Services Contractor or the Professional Services Contractor's rights against the Principal (including those arising out of any warranties given under this Agreement);

whether under this Agreement or otherwise according to any law.

17 PAYMENT OF FEE

17.1 Payment Claim issued by Professional Services Contractor

Subject to the Professional Services Contractor performing the Services, the Principal must pay the Professional Services Contractor the Fee and any disbursements referred to in the Contract Particulars for which it is entitled to payment, in accordance with this clause 17.

The Professional Services Contractor may prepare and submit to the Principal's Representative a payment claim for the amount representing the value of the Services completed in accordance with this Agreement upon the latter of:

(a) satisfaction of each of the following which is a condition precedent to the Professional Services Contractor's right to submit a payment claim under this clause 17.1:

(i) providing the Principal with a duly completed and signed statutory declaration and subcontractor's statement in the form contained in Schedule 3 (or in any other form requested and/or approved by the Principal's Representative);

(ii) where clause 17.6(i) applies, providing the Principal with the statement and the evidence (if any) required to be provided by the Professional Services Contractor pursuant to that clause; and

(iii) providing the Principal with certificates of currency in respect of its workers compensation, public liability, professional indemnity and any other insurances, which must be effected by the Professional Services Contractor under this Agreement; and

(b) the times set out in the Contract Particulars.

The payment claim must contain the details required by the Principal. All payment claims must be addressed to the Principal and must refer to the Professional Services Contract No. on the cover page of this Agreement.

Payment claims on a time basis must be for the period up to the last calendar day of the month prior to the issue of the payment claim and accompanied by timesheets and a summary of the Services performed in the time period of the claim.

17.2 Payment Schedule of Fee issued by Principal

If the Principal intends making a payment that is less than the amount claimed by the Professional Services Contractor, the Principal must, within 10 Business Days following receipt of a payment claim give the Professional Services Contractor a payment schedule which sets out:
(a) the value of the Services completed in accordance with this Agreement;
(b) the amount already paid to the Professional Services Contractor;
(c) the amount that the Principal is entitled to retain, deduct, withhold or set-off under this Agreement;
(d) the amount (if any) which the Principal proposes to pay to the Professional Services Contractor;
(e) the reason why the amount under clause 17.2(d) is less than the amount claimed in the payment claim; and
(f) if the reason for the difference is that the Principal is retaining, deducting, withholding or setting-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The failure of the Principal to set out in a payment schedule an amount which it is entitled to retain, deduct, withhold or set off under this Agreement will not prejudice its right to subsequently exercise such right.

17.3 Payments

The Principal must within 15 Business Days following receipt of a payment claim, pay the amount stated in the payment schedule or the amount claimed by the Professional Services Contractor in its payment claim (as the case may be) provided always that the aggregate of all amounts paid for a Portion must not exceed the relevant Upper Limiting Fee Portion to which that payment claim relates.

The making of a payment by the Principal under this clause 17.3 is not evidence of the value of the Services performed, does not constitute an admission by the Principal that any Services provided by the Professional Services Contractor conform with the requirements of this Agreement and is a payment on account only.

Where the Principal has notified the Professional Services Contractor in accordance with clause 25(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Professional Services Contractor for the Principal, the Professional Services Contractor must, within 2 Business Days after receipt of the payment schedule issued by the Principal's Representative under clause 17.2 give the Principal's Representative a tax invoice (which complies with the GST Law) for the amount of the payment schedule.

17.4 Schedule of Rates adjustment

The parties agree that:

(a) the rates in the Schedule of Rates Table 1 will increase by a fixed percentage increase commencing on the date that occurs 7 months after the Commencement Date of the Agreement and on 1 July each year thereafter for the term of the Agreement. The fixed percentage is 4% per annum.

(b) the rates in the Schedule of Rates Table 2 will increase by a fixed percentage increase commencing on 1 July 2020 and annually thereafter for the term of the Agreement. The fixed percentage is 4% per annum.

17.5 Set Off

The Principal may, at any time withhold, set-off or deduct from amounts otherwise payable to the Professional Services Contractor:

(a) any debt or other moneys due from the Professional Services Contractor to the Principal including any due debt from the Professional Services Contractor to the Principal pursuant to section 26C of the SOP Act; or

(b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to division 2A of the SOP Act,
17.6 Security of Payment Act

(a) This clause applies if the SOP Act applies to the Services.

(b) The Professional Services Contractor agrees with the Principal that a date prescribed in clause 17.1 as the date on which the Professional Services Contractor may make a payment claim is, for the purposes of section 8 of the SOP Act, a "reference date".

(c) For the purposes of section 17(3)(b) of the SOP Act the Professional Services Contractor irrevocably chooses the Resolution Institute as the authorised nominating authority (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Agreement.

(d) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Professional Services Contractor:

(i) the amount will be taken into account by the Principal in issuing a payment schedule under clause 17.2;

(ii) if it is subsequently determined pursuant to the Contract that the Professional Services Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("overpayment"), the overpayment will be a debt due and payable by the Professional Services Contractor to the Principal which the Professional Services Contractor must pay to the Principal upon demand and in respect of which the Professional Services Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;

(iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Professional Services Contractor to the Principal upon demand and in respect of which the Professional Services Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;

(iv) the Principal:

A. is not bound by the adjudication determination;

B. may reassess the value of the work that was valued by the adjudicator; and

C. may, if it disagrees with the adjudication determination, express its own valuation in any payment statement; and

(v) the payment statement referred to in clause 17.6(d)(iv) will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 19.

(e) Without limiting clause (a), the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to division 2A of the SOP Act.

(f) If the Principal withholds from money otherwise due to the Professional Services Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to division 2A of the SOP Act, then:

(i) the Principal may plead and rely upon division 2A of the SOP Act as a defence to any claim for the money by the Professional Services Contractor from the Principal; and

(ii) the period during which the Principal retains money due to the Professional Services Contractor pursuant to an obligation under division 2A of the SOP Act will not be taken into account for the purpose of determining:
A. any period for which money owed by the Principal to the Professional Services Contractor has been unpaid; and

B. the date by which payment of money owed by the Principal to the Professional Services Contractor must be made.

(g) The Professional Services Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with division 2A of the SOP Act.

(h) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Professional Services Contractor to the Principal.

(i) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to division 2A of the SOP Act and the Professional Services Contractor:

(i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or

(ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Professional Services Contractor must so notify the Principal within 5 days of the occurrence of the event under the clauses 17.6(i)(i) and 17.6(i)(ii) (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

18 TIME

18.1 Time for Commencement and programming

The Professional Services Contractor must immediately commence the performance of the Services. Within 5 Business Days of the Commencement Date, the Professional Services Contractor must, without limiting or otherwise restricting clauses 12.2, 13 and 14, provide the Principal's Representative with a program acceptable to the Principal's Representative which contains such details as may be required by this Agreement. Thereafter the Professional Services Contractor must regularly revise the program at intervals acceptable to the Principal's Representative.

The parties agree that the Services & Deliverable Program in Exhibit B is the program contemplated by the parties to be provided under this clause.

18.2 Date for Completion

Clauses 18.2 to 18.8 only apply if a Date for Completion is included in the Contract Particulars.

The Professional Services Contractor must achieve Completion of:

(a) each Portion by the relevant Date for Portion Completion; and

(b) the Services by the Date for Completion.

18.3 Extension of Time for Completion

If the Professional Services Contractor is or will be delayed in reaching Completion of the Services or a Portion by the relevant Date for Completion by:

(a) an act or omission of the Principal or Principal's Representative that is not authorised under this Agreement;

(b) a breach of this Agreement by the Principal;
(c) a variation directed under clause 16.1 or a suspension directed under clause 18.8 where the variation or suspension is not due to an act or omission of the Professional Services Contractor (or its employees, agents or subcontractors); or

(d) any circumstance beyond the control of the Professional Services Contractor that could not have been foreseen by a skilled, prudent, experienced and professional consultant.

the Professional Services Contractor may claim an extension of time to the relevant Date for Completion.

18.4 Claim for Extension of Time

To claim an extension of time, the Professional Services Contractor must submit a written claim to the Principal's Representative within 10 Business Days of the first occurrence of the event or circumstance causing the delay. This claim should include:

(a) details of the delay and the event or circumstance causing the delay;

(b) details of the activities that are critical to the maintenance of progress in the execution of the Services;

(c) a statement of the number of days extension of time claimed together with the basis of calculating that period; and

(d) any other information reasonably requested by the Principal's Representative.

If the effects of the delay continue beyond the period of 10 Business Days after the first occurrence of the event or circumstance causing the delay and the Professional Services Contractor wishes to claim extensions of time in respect of the further delays, the Professional Services Contractor must submit further written claims to the Principal's Representative at intervals not greater than 10 Business Days.

The Principal's Representative may, within 10 Business Days of receiving the Professional Services Contractor's claim or further claim for an extension of time to the relevant Date for Completion, by written notice to the Professional Services Contractor, request additional information in relation to the claim or further claim. The Professional Services Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.

Notwithstanding that the Professional Services Contractor is not entitled to an extension of time or has not made a claim for an extension of time the Principal's Representative may at any time by notice in writing to the Professional Services Contractor extend the time for Completion for any reason.

The Principal's Representative is not required to exercise its discretion under the previous paragraph for the benefit of the Professional Services Contractor.

18.5 Conditions precedent to Extension of Time

It is a condition precedent to the Professional Services Contractor's entitlement to an extension of time to any relevant Date for Completion that:

(a) the Professional Services Contractor gives the claim required by clause 18.4 and as required by clause 18.4,

(b) the Professional Services Contractor complies with any request for additional information under clause 18.4 within the time required;

(c) the cause of the delay is beyond the reasonable control of the Professional Services Contractor; and

(d) the Professional Services Contractor is actually, or will be, delayed in achieving Completion by the Date for Completion of the Services or the Portion, by reason of one or more of the causes set out in clause 18.3.

If the Professional Services Contractor fails to comply with the conditions precedent in this clause 18.5:
(e) the Principal will not be liable upon any claim by the Professional Services Contractor; and

(f) the Professional Services Contractor will be absolutely barred from making any claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

18.6 Completion

(a) The Professional Services Contractor must notify the Principal’s Representative in writing 5 Business Days prior to the date upon which the Professional Services Contractor anticipates that Completion of the Services or a Portion will be reached.

(b) The Principal’s Representative will, within 5 Business Days after receipt of the notice referred to in clause 18.6(a), review the relevant Services the subject of that notice and thereafter issue a notice to the Principal and the Professional Services Contractor either:

(i) containing a list of the items that are apparent and it believes must be completed (including the correction of any Defects) before Completion of the Services or the Portion is achieved; or

(ii) stating that it believes the Professional Services Contractor is so far from achieving Completion of the Services or the Portion that it is not practicable to issue a list as contemplated in clause 18.6(b)(i).

(c) When the Principal’s Representative issues a notice under either clause 18.6(b)(i) or clause 18.6(b)(ii), the Professional Services Contractor must continue to proceed to bring the Services or the Portion to Completion and thereafter when the Professional Services Contractor considers it has achieved Completion of the Services or the Portion, the Professional Services Contractor must notify the Principal’s Representative. This notice must contain a Professional Services Contractor’s Certificate of Completion.

(d) The Principal’s Representative will, within 15 Business Days of receipt of a notice in writing under clause 18.6(c) or of receipt of a notice under clause 18.6(e), issue a notice to the Principal and the Professional Services Contractor:

(i) if satisfied that Completion of the Services or the Portion has been achieved, stating the date on which the Principal’s Representative determines Completion of the Services or the Portion was achieved; or

(ii) if not satisfied that Completion of the Services or the Portion has been achieved:

A. containing a list of the items that are apparent and it believes must be completed (including the correction of any Defects) before Completion of the Services or the Portion is achieved; or

B. stating that it believes the Professional Services Contractor is so far from achieving Completion of the Services or the Portion that it is not practicable to issue a list as contemplated by clause 18.6(d)(ii)A.

(e) If the Principal’s Representative issues a notice under either clause 18.6(d)(ii)A or clause 18.6(d)(ii)B, the Professional Services Contractor must continue to proceed to bring the Services or the Portion to Completion and thereafter when it considers it has achieved Completion of the Services or the Portion, the Professional Services Contractor must notify the Principal’s Representative by notice in writing (by means of a Professional Services Contractor’s Certificate of Completion), after which clause 18.6(d) and this clause 18.6(e) will reapply.

(f) Where there are Portions, for the purposes of this Agreement and without affecting the Contractor’s obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion:

(i) no separate Date for Completion of the Services is specified in this Agreement;

(ii) Completion of the Services is achieved by achieving Completion of all Portions;
(iii) Completion of the Services will be taken to have occurred once Completion of all Portions has occurred; and

(iv) the Date of Completion of the Services will be taken to be the Date of Completion of the last Portion to reach Completion.

18.7 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Professional Services Contractor to the Principal's Representative under either of clause 18.6(c) or 18.6(e) is not given by the Professional Services Contractor yet the Principal's Representative is of the opinion that Completion of the Services or a Portion has been achieved, the Principal's Representative may at any time and for any reason in its absolute discretion issue a Notice of Completion under clause 18.6(d)(i) for the Services or the Portion.

The issue of a Notice of Completion will not:

(a) constitute approval of any work or other matter nor will it prejudice any claim by the Principal;

(b) constitute approval by the Principal or the Principal's Representative of the Professional Services Contractor's performance of its obligations under this Agreement;

(c) be taken as an admission or evidence that the Services complies with the requirements of this Agreement; or

(d) prejudice any rights or powers of the Principal or the Principal's Representative.

18.8 Suspension

(a) The Principal may, at any time by prior written notice to the Professional Services Contractor, suspend the carrying out of the Services or any part thereof. Subject to clause 18.8(b), the Principal must, unless the suspension arose due to an act or omission of the Professional Services Contractor (or its employees, agents or subcontractors), pay the Professional Services Contractor any costs and expenses reasonably incurred by the Professional Services Contractor by reason of the suspension.

(b) The Principal may, at any time after giving a notice in accordance with clause 18.8(a), give the Professional Services Contractor reasonable notice to recommence carrying out those Services so suspended.

(c) Without limiting or otherwise restricting reasonable notice to recommence carrying out those Services so suspended.

(c) Without limiting or otherwise restricting clause 18.8(a), if the suspension under clause 18.8(a) arises as a result of the Professional Services Contractor's failure to carry out its obligations under clauses 3.8 to 3.9 or to otherwise fail to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this Agreement, the Professional Services Contractor will not be entitled to make, and the Principal will not be liable upon, any claim arising out of, or in any way in connection with, the suspension.

19 DISPUTE RESOLUTION

19.1 Dispute Notice

If a difference or dispute (together called a "dispute") between the parties arises in connection with the subject matter of this Agreement then either party will give the other party written notice of a dispute by hand or by registered post which adequately identifies the details of the dispute ("Dispute Notice").
19.2 Negotiation

The Professional Services Contractor and the Principal must endeavour to resolve any dispute expeditiously by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice. At such negotiations each party must be represented by a person who has the authority to agree to such resolution. All aspects of the negotiation (except the fact that the negotiations took place) will be privileged.

19.3 Expert Determination

If a dispute between the Professional Services Contractor and the Principal is not resolved by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice ("Negotiation Period") then, subject to the parties' right to seek injunctive or urgent declaratory relief, and before either party has recourse to any litigation, the parties must submit the dispute to expert determination by an independent expert.

If the Professional Services Contractor and the Principal do not agree upon an independent expert within 10 Business Days of the end of the Negotiation Period then either party may request the President of the Resolution Institute to nominate an expert.

The parties must enter into an agreement with the agreed or nominated expert on the terms of the agreement in Schedule 10 or such other terms as the parties and the expert may agree.

Except where the parties otherwise agree in writing:

(a) each party must bear its own costs and pay one half of the expert's fees and expenses;
(b) the expert must not act as an arbitrator;
(c) the determination of the expert will be final and binding on the parties except where:
   (i) the expert's determination relating to a dispute is that one party shall pay to the other an amount, or carry out works to an amount, greater than the amount stated in the Contract Particulars, or if no amount is stated, greater than $500,000; and
   (ii) a party gives notice of appeal to the other party within 15 Business Days of the determination being given; and
(d) the determination is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 19.4 below.

19.4 Litigation

If the determination of the expert is not final and binding on the parties, but without limiting clause 19.3(d), either party may commence litigation in relation to the dispute.

19.5 Continuation

Each party must continue to perform its obligations under this Agreement notwithstanding the existence of a dispute.

20 NOTICE OF BREACH

If the Professional Services Contractor is in breach of this Agreement, then the Principal may give a written notice to the Professional Services Contractor stating:

(a) that it is a notice under this clause 20;
(b) the breach relied upon; and
(c) that this Agreement will be terminated unless the breach is remedied within the period set out in the notice, which must be no less than 10 Business Days.
21 TERMINATION

21.1 Termination for Breach or Financial Difficulty
The Principal may, without prejudice to any other right, terminate this Agreement by notice in writing to the Professional Services Contractor from the date stated in the notice if:

(a) the Professional Services Contractor fails to remedy a breach of this Agreement within the time stated in a notice under clause 20; or

(b) an Event of Insolvency occurs to the Professional Services Contractor whether or not there has been a breach of contract by the Professional Services Contractor.

If this Agreement is terminated pursuant to this clause 21.1 the parties' remedies, rights and liabilities will be the same as they would have been under the law governing this Agreement had the Professional Services Contractor repudiated this Agreement and the Principal elected to treat this Agreement as at an end and recover damages.

21.2 Termination for Any Reason

(a) The Principal may terminate this Agreement at any time for any reason, by written notice to the Professional Services Contractor.

(b) If the Principal terminates this Agreement pursuant to this clause 21.2, the Principal:

(i) may, in its absolute discretion, complete the uncompleted part of the Services itself or by engaging any third party; and

(ii) must pay the unpaid portion of the Fee (which must not exceed the Upper Fee Limit) in respect of Services provided to the date of termination and reimburse the Professional Services Contractor for any additional direct costs reasonably incurred by the Professional Services Contractor as a result of the termination. Such payment will be a limitation upon the Principal's liability to the Professional Services Contractor in connection with the termination of this Agreement.

(c) If the Principal terminates this Agreement pursuant to this clause 21.2, the Professional Services Contractor must immediately hand over to the Principal all copies of any documents provided by the Principal to the Professional Services Contractor and all Contract Material (whether complete or not).

(d) This clause 21.2 survives the termination of this Agreement by the Principal under this clause 21.2.

22 CONFIDENTIALITY

22.1 Acknowledgement
The Professional Services Contractor acknowledges that all of the Confidential Information is and will be the sole and exclusive property of the Principal.

22.2 Warranty and Covenant

(a) The Professional Services Contractor warrants and covenants that it will treat and keep the Confidential Information in the strictest of confidentiality and expressly acknowledges and agrees that the Confidential Information is of a confidential nature.

(b) The Professional Services Contractor warrants and covenants that it will do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.

(c) The Professional Services Contractor may not disclose to any person other than:

(i) the Principal; or
(ii) a person who has signed a Confidentiality Deed Poll in the form of Schedule 2 in favour of the Principal,

that the Confidential Information has been made available to the Professional Services Contractor or that discussions or negotiations are taking place concerning this Agreement, and undertakes:

(iii) to protect and safeguard Confidential Information against unauthorised publication or disclosure; and

(iv) not to use Confidential Information for any reason or purpose except as directed by the Principal; and

(v) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

22.3 Personal Information

Without limiting any obligation that the Professional Services Contractor has under any applicable privacy laws, where the Professional Services Contractor has access to Personal Information in order to fulfil its obligations under this Agreement, it must where collecting Personal Information on behalf of the Principal, comply with the Privacy and Personal Information Protection Act 1998 (NSW) as if it were the Principal.

22.4 Authorised Disclosure

If the Principal's Representative approves in writing the disclosure of Confidential Information, the Professional Services Contractor may disclose that Confidential Information in accordance with the terms of that approval.

22.5 Return of Confidential Information

If the Principal requests it, the Professional Services Contractor must:

(a) promptly return to the Principal all documents and other physical records of Confidential Information in its possession, custody, power or control;

(b) if any Confidential Information in the possession, custody, power or control of the Professional Services Contractor is in a form that cannot be detached from valuable equipment (including, but not limited to, Confidential Information stored by electronic, electromagnetic or other means), the Professional Services Contractor must permanently delete and erase the Confidential Information, provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or deleted and erased, as appropriate.

Notwithstanding this clause 22.5 or any other provision of this Agreement, the Principal authorises the Professional Services Contractor to retain for record purposes one copy of material provided to the Professional Services Contractor by the Principal and one copy of the Contract Material. The Professional Services Contractor must treat all material retained under this provision as Confidential Information.

22.6 Confidentiality Deed Poll

Unless otherwise agreed, the Professional Services Contractor must procure each officer, employee, subcontractor, or agent of the Professional Services Contractor involved in the performance of the Services including all Key People to sign and deliver to the Principal a Confidentiality Deed Poll in the form of Schedule 2.

22.7 Obligations To Continue

The obligations of the Professional Services Contractor under this clause 22 survive completion of the Services or termination of this Agreement and are enforceable at any time at law or in equity and continue to the benefit of and are enforceable by the Principal.
22.8 Injunctive Relief

In the event of a breach by the Professional Services Contractor of the Professional Services Contractor's obligations under this clause 22, then in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal will be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.

22.9 Further Assurances

The Professional Services Contractor must do all things and execute all documents, including, but not limited to, executing any agreements of assignment, or agreements under hand or seal, which may reasonably be required by the Principal, to give effect to the provisions of this Agreement.

23 DISCLOSURE OF CONTRACT INFORMATION

The Professional Services Contractor acknowledges that the Principal may disclose this Agreement (and information concerning the terms of this Agreement) under or in accordance with any one or more of the following:

(c) the Government Information (Public Access) Act 2009 (NSW);
(d) the Ombudsman Act 1974 (NSW); and
(e) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of parliamentary accountability.

24 GOVERNING LAW

This Agreement is subject to the laws of the State of New South Wales.

25 GST

The Principal and the Professional Services Contractor agree:

(a) unless otherwise stated all dollar amounts referred to in this Agreement are GST exclusive;
(b) if GST is or becomes payable on a supply made by a party ("Supplier") under or in connection with this Agreement, including the Services, the party providing the consideration for the supply ("Recipient") must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply;
(c) any amount payable under clause 25(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
(d) if any party is required under this Agreement to reimburse or pay to the other party an amount (other than any payment on account of the Fee and any disbursements referred to in the Contract Particulars for which it is entitled to payment) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
(e) notwithstanding any other provision of this Agreement, where the Recipient is the Professional Services Contractor, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 25 or otherwise) in respect of a taxable supply made by the Principal unless the Principal issues to the Professional Services Contractor a tax invoice that complies with the GST Law in respect of that taxable supply;
(f) the parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Professional Services Contractor to the Principal under or in connection with this Agreement:
the Principal will issue to the Professional Services Contractor a recipient created tax invoice ("RCTI") for each taxable supply made by the Professional Services Contractor to the Principal under this Agreement;

(ii) the Principal will issue to the Professional Services Contractor an adjustment note for any adjustment event;

(iii) the Professional Services Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and

(iv) the Principal may notify the Professional Services Contractor that it will no longer issue a RCTI for each taxable supply made by the Professional Services Contractor under this Agreement, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Professional Services Contractor will be required to issue tax invoices to the Principal (including under clause 17.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Professional Services Contractor in respect of any such taxable supply.

(g) each party acknowledges and warrants that at the time of entering into this Agreement it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs;

(h) if the GST payable in relation to a supply made by the Supplier under this Agreement varies from the additional amount paid by the other party under this clause 25 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);

(i) the Professional Services Contractor must ensure that each insurance policy referred to in clause 10 covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the party who suffers the loss that is claimed; and

(j) in clauses 17.3 and 25:

(i) "GST" means the tax payable on taxable supplies under GST Law;

(ii) "GST Law" means the A New Tax System (Goods & Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and

(iii) terms which are defined in GST Law have the meaning provided by GST Law.

Subject to clauses 25(a) to 25(i) (inclusive), the Professional Services Contractor must pay all taxes, duties, levies, imposts and charges which may be payable arising out of or in any way in connection with the Services.

26 LIMITATION OF LIABILITY

(a) Subject to clauses 26(b) and 26(c), the Professional Services Contractor’s liability to the Principal in contract, tort (including negligence) or otherwise under this Agreement is limited to the amount stated in the Contract Particulars.

(b) The Professional Services Contractor’s liability is unlimited in circumstances where bodily injury or death of a person results as a consequence of an act or omission of the Professional Services Contractor.

(c) The limitation of liability in clause 26(a) will not apply to any liability:
to the extent to which the Professional Services Contractor is (or will be) entitled to be indemnified in respect of that amount pursuant to an insurance policy that is required to be effected and maintained under this Agreement, up to the minimum amount of insurance cover required by this Agreement in respect of the relevant policy;

(ii) for which, but for a failure by the Professional Services Contractor to comply with its obligations under this Agreement or under an insurance policy, the Professional Services Contractor would have received payment or been indemnified under an insurance policy effected in accordance with this Agreement, up to the minimum amount of insurance cover required by this Agreement in respect of the relevant policy; or

(iii) which arises from any fraud, wilful misconduct or criminal conduct by the Professional Services Contractor or any of its employees, servants or agents including the Key People.

27 NO WAIVER

Failure by the Principal to enforce or compel performance of any term or condition of this Agreement does not constitute a waiver of that term or condition and does not impair the right of the Principal to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

28 RETURN OF DOCUMENTS

On completion of the Services or upon the termination of this Agreement, the Professional Services Contractor must deliver to the Principal:

(a) all Contract Material produced by the Professional Services Contractor regardless of its stage of completion; and

(b) the Principal's documents, samples, patterns, moulds and other information provided to the Professional Services Contractor in carrying out those Services.

29 ENTIRE AGREEMENT

To the extent permitted by law, in relation to its subject matter, this Agreement:

(a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

(b) supersedes any prior written or other agreement of the parties.

30 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 this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Professional Services Contractor and the Principal under this Agreement with respect to proportionate liability are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

(b) To the extent permitted by law:

(i) the Professional Services 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 Professional Services 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 Professional Services Contractor (whether in contract, tort or otherwise), the Professional Services Contractor will indemnify the Principal against any loss, damage, cost or expense which the Principal is not able to recover from the Professional Services Contractor because of the operation of part 4 of the Civil Liability Act 2002 (NSW).

31 SEVERABILITY

If at any time a provision of this Agreement 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 Agreement; or

(b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

32 ASSIGNMENT AND NOVATION

(a) The Professional Services Contractor must not assign, transfer or novate any of its rights, interests or obligations in this Agreement without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

(b) The Principal may, for its sole convenience and at its absolute discretion, assign, novate or otherwise deal with its rights and obligations without the Professional Services Contractor’s consent to any other Relevant Government Agency. The Professional Services Contractor must, without being entitled to compensation, execute any document reasonably required to give effect to the assignment or other dealing as soon as reasonable practicable.

33 DISCLOSURE OF CONTRACT MATERIALS

(a) The Professional Services Contractor acknowledges and consents to the Principal disclosing the Contract Material to:

(i) participants involved in the SME process;

(ii) Other Contractors; and

(iii) any other person or Authority nominated by the Principal.
35 SURVIVAL

Any indemnity or any term or obligation which is by its nature intended to survive termination or expiration of this Agreement survives termination or expiration of this Agreement.
SCHEDULE 1 – CONTRACT PARTICULARS

Principal: Transport for NSW  
ABN 18 804 239 602  
Address: Level 5, Zenith Centre, Tower A  
821 Pacific Highway  
Chatswood NSW 2067  
Tel: 02 9200 0200  Fax: 02 9200 0290

Professional Services Contractor: Arup Australia Pty Ltd  
ABN 76 625 912 665  
Address: Level 6, 77 Castlereagh Street,  
Sydney NSW 2000  
Tel: (02) 9320 9320

Commencement Date: 23 April 2019

Completion requirements: Those Completion requirements set out in Exhibit A – Services Brief;  
and  
the Professional Services Contractor has provided the Principal’s Representative with the Professional Services Contractor’s Certificate of Completion in the form of Schedule 8 for the Services and for each Portion.

Confidential Information:  

Fee: The total Fee comprises the aggregate of:  

(a) Portion 1: the Fee for Portion 1, which must not exceed the Upper Limiting Fee (Portion 1);  
(b) Portion 2: the Fee for Portion 2, which must not exceed the Upper Limiting Fee (Portion 2);  
(c) Portion 3: the Fee for Portion 3, which must not exceed the Upper Limiting Fee (Portion 3);  
(d) Portion 4: the Fee for Portion 4, which must not exceed the Upper Limiting Fee (Portion 4),  

and subject to clause 16, the Professional Services Contractor will have no claim against the Principal for any amount in excess of the relevant Upper Limiting Fee Portion for the relevant corresponding Portion.

Fees will be calculated on an hourly rates basis using the Schedule of Rates, with a maximum daily fee for each person of 8 hours multiplied by the person’s hourly rate in respect of a person performing the Services in a day commencing at midnight and ending 24 hours later. Should the Services be required for less than a full day, an hourly rate shall apply, to a maximum of 8 hours.
Upper Limiting Fee (Portion 1): $\\[\text{clause 1}\]

Upper Limiting Fee (Portion 2): $\\[\text{clause 1}\]

Upper Limiting Fee (Portion 3): $\\[\text{clause 1}\]

Upper Limiting Fee (Portion 4): $\\[\text{clause 1}\]

Portions: Refer to section 2.2 of Exhibit A — Services Brief. (clause 1)

Program: Circular Quay Precinct Renewal Program. (clause 1)

Services: Perform the role of a Technical Advisor for the Program in accordance with the requirements specified in Exhibit A — Services Brief. (clause 1)

Date for Completion: 31 March 2020 (clause 18.2)

Date for Portion Completion: The latest Date for Completion for a Portion:
(a) Portion 1: 28 June 2019
(b) Portion 2: 20 December 2019
(c) Portion 3: TBA, when directed
(d) Portion 4: 30 June 2020 (clause 18.2)

Time period for provision of the Safety Report: As required by clause 295 of the Work Health and Safety Regulation 2011 or when requested by the Principal. (clause 3.2)

Minimum Level of Professional Indemnity Insurance: A minimum of $\\[\text{clause 10.1}\]$ for each occurrence and $\\[\text{clause 10.1}\]$ in the aggregate.
Time for maintaining Professional Indemnity Insurance: 6 years.

Minimum Level of Public Liability Insurance: A minimum of $ for each occurrence.

Professional Services Contractor's Representative: Project Director

Key People: (clause 11.2)

Principal's Representative: Stacy Mitchell, Program Director CQPR

Hourly rates for the valuation of variations: As set out in the Schedule of Rates (Schedule 5).

Disbursements for which the Professional Services Contractor is entitled to be paid:

Times for Payment Claims: Claims to cover period up to last calendar day of the previous month and to be submitted by the fifth Business Day of the month

Expert Determination final and binding amount:

Limit of Professional Services Contractor's Liability: $
SCHEDULE 2 – CONFIDENTIALITY DEED POLL

Professional Services Contract Number: ISD-18-7739

Professional Services Contractor: ________________________________

(“Professional Services Contractor”)

Confidentiality Deed Poll made at ________________________________ on: __/__/__

By: _______________________________________________________

Name: ____________________________________________

Address: ____________________________________________

(“Recipient”)

In favour of:

Transport for NSW

(“Principal”)

Background

The Principal and the Professional Services Contractor entered into the Professional Services Contract numbered above (“Professional Services Contract”), in which the Professional Services Contractor agreed to perform certain services.

It is a requirement of the Professional Services Contract that the Professional Services Contractor procures such of its officers, employees, subcontractors and agents as are required by the Principal to sign an individual confidentiality deed poll.

The Professional Services Contractor has requested and the Recipient has agreed, to execute this deed poll.

Confidential Information

1. Confidential Information is:

   (a) any information (including, without limitation, information contained in proposals, designs, tenders, reports, advices, minutes of meetings or correspondence) in any form which has come to the knowledge of the Recipient by any means and which has been or will be given to the Recipient either directly or indirectly by the Principal or by a person on behalf of the Principal or by a proponent or tenderer;

   (b) any material produced by the Professional Services Contractor or the Recipient under the Professional Services Contract;

   but does not include:

   (c) information which, at the time of disclosure, was already in the public domain;

   (d) information which, subsequent to disclosure, enters the public domain except through breach of this deed poll or any other obligation of confidence; or

   (e) information which the Recipient is required to disclose by law or the listing rules of the Australian Securities Exchange.

In the event of uncertainty as to whether:

(a) any information is Confidential Information; or

(b) any information is lawfully within the public domain,
that information is taken to be Confidential Information and the Confidential Information is taken to be not within the public domain, unless the Recipient is informed by the Principal in writing to the contrary.

Warranty and covenant

2. The Recipient warrants and covenants that it will treat and keep the Confidential Information in the strictest of secrecy and confidentiality and expressly acknowledges and agrees that the Confidential Information is of a secret and confidential nature.

3. The Recipient warrants and covenants that it will do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.

4. The Recipient may not disclose to any person other than:
   (a) the Principal;
   (b) a person who has signed a Confidentiality Deed Poll in the form of this document in favour of the Principal pursuant to the Professional Services Contract,
   that the Confidential Information has been made available to the Recipient or that discussions or negotiations are taking place concerning the Professional Services Contract.

5. The Recipient undertakes:
   (a) to protect and safeguard Confidential Information against unauthorised publication or disclosure;
   (b) not to use Confidential Information for any reason or purpose except as directed by the Principal; and
   (c) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

Authorised disclosure

6. If the Principal’s Representative approves in writing the disclosure of Confidential Information, the Recipient may disclose that Confidential Information in accordance with the terms of that approval.

Return of Confidential Information

7. If the Principal requests it, the Recipient must:
   (a) except as allowed under clause 22 of the Professional Services Contract, promptly return to the Principal all documents and other physical records of Confidential Information in its possession, custody, power or control;
   (b) if any Confidential Information in the possession, custody, power or control of the Recipient is in a form that cannot be detached from valuable equipment (including, but not limited to, Confidential Information stored by electronic, electromagnetic or other means), the Recipient must permanently delete and erase the Confidential Information; and
   (c) provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or deleted and erased, as appropriate.

Continuing obligation

8. The obligations of the Recipient under this deed poll continue after the completion or termination of:
   (a) the Professional Services Contract; and
   (b) the Recipient’s employment, engagement or assignment with the Professional Services Contractor.

Injunctive relief

9. In the event of a breach by the Recipient of the Recipient’s obligations under this deed poll, then in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal will be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.
Further assurances

10. The Recipient must do all things and execute all documents, including but not limited to executing any agreements of assignment, or agreements under hand or seal, which may be required by the Principal to give effect to the provisions of this Confidentiality Deed Poll at a later date.

Non-waiver

11. The failure of the Principal to enforce any of the provisions of this deed poll or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of the Principal to enforce that or any other provision at a later date.

Jurisdiction

12. This deed poll is governed by and subject to the laws of New South Wales.

No revocation

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a Deed Poll

by the Recipient: in the presence of:

Recipient

Witness

Name (please print) Name (please print)
### SCHEDULE 3 – FORM OF STATUTORY DECLARATION AND SUBCONTRACTOR’S STATEMENT

#### FORM OF STATUTORY DECLARATION

<table>
<thead>
<tr>
<th>Statutory Declaration</th>
<th>Oaths Act (NSW) Ninth Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>I, .........................................................................................................................</td>
<td>Insert full name of Declarant</td>
</tr>
<tr>
<td>Of .........................................................................................................................</td>
<td>Insert address</td>
</tr>
<tr>
<td>do solemnly and sincerely declare that:</td>
<td></td>
</tr>
<tr>
<td>1. I am the representative of:</td>
<td></td>
</tr>
<tr>
<td>.......................................................... (ABN ............... )</td>
<td></td>
</tr>
<tr>
<td>(&quot;the Contractor&quot;) in the Office Bearer capacity of:</td>
<td></td>
</tr>
<tr>
<td>.........................................................................................................................</td>
<td></td>
</tr>
<tr>
<td>2. The Contractor has a contract with: .................................................. (ABN ............... )</td>
<td></td>
</tr>
<tr>
<td>to carry out ........................................................................................................</td>
<td></td>
</tr>
<tr>
<td>[Contract No. ............... ]</td>
<td></td>
</tr>
<tr>
<td>(&quot;the Contract&quot;)</td>
<td></td>
</tr>
<tr>
<td>3. I personally know the facts which I have set out in this declaration.</td>
<td></td>
</tr>
<tr>
<td>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</td>
<td></td>
</tr>
<tr>
<td>a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</td>
<td></td>
</tr>
<tr>
<td>b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</td>
<td></td>
</tr>
<tr>
<td>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</td>
<td></td>
</tr>
<tr>
<td>Employee:</td>
<td></td>
</tr>
<tr>
<td>Amount unpaid or not accrued:</td>
<td></td>
</tr>
<tr>
<td>.........................................................................................................................</td>
<td></td>
</tr>
<tr>
<td>.........................................................................................................................</td>
<td></td>
</tr>
<tr>
<td>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</td>
<td></td>
</tr>
<tr>
<td>6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier’s claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.</td>
<td></td>
</tr>
<tr>
<td>7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.</td>
<td></td>
</tr>
<tr>
<td>8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding $25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):</td>
<td></td>
</tr>
<tr>
<td>a) that their subcontracts with their subcontractors and suppliers comply with the</td>
<td></td>
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</tbody>
</table>
requirements of the Contract relating to payment of employees and subcontractors, and
b) that all their employees and subcontractors, as at the date of the making of such a
   declaration:
   i) have been paid all remuneration and benefits due and payable to them by; or
   ii) had accrued to their account all benefits to which they are entitled from;
the subcontractor of the Contractor or from any other subcontractor (except for
subcontracts not exceeding $25,000 at their commencement) in respect of any work
under the Contract, and
d) of details of any amounts due and payable or benefits due to be received or accrued
described in b(b) above which have not been paid, received or accrued;

except for the following subcontractors to the Contractor who have failed to provide such a
declaration:
Subcontractor:

Due amount unpaid:


9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes
unpaid amounts or benefits either not received or not accrued, details of the subcontractor,
details of the affected employees, suppliers and subcontractors of the subcontractor, and the
respective amounts or benefits either unpaid or not accrued are as follows:

Employee, subcontractor or supplier:
Amount unpaid or not accrued:


10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not
aware of anything to the contrary of what is contained therein, and on the basis of the contents of
those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration, as Annexure B, 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, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a
written statement:
   a) under section 175B of the Workers Compensation Act 1987 in the form and providing the
detail required by that legislation;
   b) under Schedule 2 Part 5 of the Payroll Tax Act 2007 in the form and providing the detail
required by that legislation; and
   c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail
required by that legislation.

12. I personally know the truth of the matters which are contained in this declaration and the attached
Subcontractor’s Statement.

13. All statutory declarations and Subcontractor’s Statements received by the Contractor from
subcontractors were:
   a) given to the Contractor in its capacity as ‘principal contractor’ as defined in the Workers
Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996
(“Acts”), and
   b) given by the subcontractors in their capacity as ‘subcontractors’ as defined in the Acts.

14. I am not aware of anything which would contradict the statements made in the statutory
declarations or written statements provided to the Contractor by its subcontractors, as referred to
in this declaration.
I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at: ......................................................................................... on ...................................................

(place) (day) (month) (year)

........................................................................................................................................

(signature of Declarant)

In the presence of an authorised witness, who states:

________________________...

(Name of authorised witness)

(* Please 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 not known the person for at least 12 months, but 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 authorised witness) (date)

(name of authorised witness)

(Justice of the Peace / Solicitor of the Supreme Court of New South Wales)

(for other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place.

Authorised witness must print or stamp his or her full name, qualification and address before whom the declaration is made. JPs must include their registration number.)
Annexure A

**Supporting statement by head contractor regarding payment to subcontractors**

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999.*

Head contractor: *[business name of head contractor]*

ABN: *[ABN]*

* 1. has entered into a contract with:[*business name of subcontractor]*

ABN: *[ABN]*

Contract number/identifier: *[contract number/identifier]*

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

*[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I,[*full name*], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: ........................................... Date: ...........................................

Full name: ........................................... Position/Title: ...........................................
## Attachment

### Schedule of subcontractors paid all amounts due and payable

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/identifier</th>
<th>Date of works (period)</th>
<th>Date of payment claim (head contractor claim)</th>
</tr>
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<tbody>
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</tbody>
</table>

### Schedule of subcontractors for which an amount is in dispute and has not been paid

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>ABN</th>
<th>Contract number/identifier</th>
<th>Date of works (period)</th>
<th>Date of payment claim (head contractor claim)</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>
SUBCONTRACTOR'S STATEMENT

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION

(Note 1 - see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B Workers Compensation Act 1987, 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: .......................................................... ABN: ........................................

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

Contract number/identifier: .......................................................... (Note 2)

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

SCHEDULE 4 – FORM OF STATEMENT OF INTERESTS AND ASSOCIATIONS

This form is completed by the Professional Services Contractor when directed by the Principal as per clause 8.

Date:

Name:

Organisation:

To: Transport for NSW

[Principal]

In relation to: [name of Program in full]

Declaration

I agree and acknowledge that, except for the matters disclosed below:

1. To the best of my knowledge and belief, I do not have:
   (a) any financial or other interest, either directly or indirectly in;
   (b) any immediate family members (spouse, children, parents or siblings) or close friends with any financial or other interest in;
   (c) any other interest or association, either directly or indirectly with,

   the entities listed below.

Disclosure

(a) ...........................................................................................................................

(b) ...........................................................................................................................

(c) ...........................................................................................................................

(d) ...........................................................................................................................

(e) ...........................................................................................................................

(f) ...........................................................................................................................

(g) ...........................................................................................................................

(if further space is required please attach a signed separate letter)
I undertake to:

1. notify the Principal as soon as possible after I become aware of any matter which could affect the accuracy or completeness of the statements made in this deed or which would make them incorrect if this deed was given again; and

2. make a further updated declaration as soon as practicable.

I confirm that the statements set out in this deed are true and correct as at the date indicated below.

Executed as a Deed Poll

by the Recipient: in the presence of:

________________________________________  ____________________________
Recipient                        Witness

________________________________________  ____________________________
Name (please print)                  Name (please print)

________________________________________  ____________________________
Date                                  Date
### SCHEDULE 5 – SCHEDULE OF RATES

*(clause 1)*

**Table 1: Continuing Consultants from SBC**

<table>
<thead>
<tr>
<th>Name</th>
<th>Project Role</th>
<th>Organisation</th>
<th>Hourly Rate (ex GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heritage Consultant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heritage Consultant</td>
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<tr>
<td>Heritage Consultant</td>
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<td></td>
</tr>
<tr>
<td>Heritage Consultant</td>
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<td></td>
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<tr>
<td>Heritage Lead</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Visitor Experience Specialist</td>
<td>Arup</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mechanical Engineer</td>
<td>Arup</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior Environmental Consultant</td>
<td>Arup</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planner</td>
<td>Arup</td>
<td></td>
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</tr>
<tr>
<td>Ecology Consultant</td>
<td>Arup</td>
<td></td>
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<tr>
<td>Senior Fire Consultant</td>
<td>Arup</td>
<td></td>
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<tr>
<td>Water Engineer</td>
<td>Arup</td>
<td></td>
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SCHEDULE 6 – NOT USED
SCHEDULE 7 – OPTIONS

(Clause 16.5)

Portion 1 Optional Services

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Portion 4 Optional Services

| Description: | Portion 4 Optional Services – |
| Scope of Works: |
| Period for exercising an option relating to the Portion 4 Optional Services: |
| Portion 4 Optional Services Scope Item |
SCHEDULE 8 – PROFESSIONAL SERVICES CONTRACTOR’S CERTIFICATE OF COMPLETION

(Definition of “Completion” in clause 1 and clause 18.6(c))

PROFESSIONAL SERVICES CONTRACTOR’S CERTIFICATE OF COMPLETION

PROFESSIONAL SERVICES CONTRACTOR:

Description of Portion or Services:

I certify that the Completion of the above Portion / the Services has / have been achieved in accordance with the requirements of the Agreement between the Principal and complies with the requirements of the Agreement, subject to the register of unresolved issues attached.

I further certify that:

(a) All Variations (including concessions) are listed in the attached compliance register.
(b) All Defects have been satisfactorily rectified and their documentation closed out.
(c) All required documentation has been submitted.
(d) All notices regarding system deficiencies have been satisfactorily closed out.

I further certify that the attached compliance records as required by the Contract reflect the true status of the Portion / the Services.

SIGNATURE: ___________________________________________ SIGNATURE: ___________________________________________.

(Professional Services Contractor’s Representative)

DATE: __________________________

A8053300 617770
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SCHEDULE 10 – EXPERT DETERMINATION AGREEMENT

Expert Determination Agreement

[Insert name of Principal]
Principal

[Insert name of Professional Services Contractor]
Contractor

[Insert name of Expert]
Expert
Expert Determination Agreement made at [Insert name and address of Principal] (["Principal"])

[Insert name and address of Professional Services Contractor] (["Professional Services Contractor"]) on [Insert name and address of Expert agreed between the Parties or appointed pursuant to clause [to be inserted] of the PSC Contract] (["Expert"])

Recitals

A. The Principal and the Professional Services Contractor (together "the Parties" and each "a Party") are parties to a contract (the "PSC Contract") for [to be inserted].

B. By written notice dated [to be inserted], the [insert Principal or Professional Services Contractor as applicable] has required that the matter described in Schedule 1, being a matter that the PSC Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 19.3 of the PSC Contract (the "Matter").

C. Pursuant to clause 19.3 of the PSC Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative part

1. APPOINTMENT OF EXPERT

(a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.

(b) The Parties agree that:

(i) the Expert will act as an expert and not as an arbitrator;

(ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;

(iii) the rules of evidence and natural justice do not apply to the determination; and

(iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2.

(c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.
2. CONFIDENTIALITY

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

3. COSTS AND FEES

(a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.

(b) The Parties agree as between themselves that:

(i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and

(ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

4. EXCLUSION OF LIABILITY AND INDEMNITY

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

5. CO-OPERATION OF THE PARTIES

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

6. GOVERNING LAW

This Agreement is governed by and is to be construed in accordance with the laws in force in the State of New South Wales.

7. JURISDICTION

(a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts to which the appeals from those courts may be made.

(b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now
or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).
Schedule 1 - The Matter

[To be inserted when it comes time for expert determination]
Schedule 2 - Rules for Expert Determination Process

1. **Commencement**

   Except as provided in clause 4.3 of these Rules, the expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

2. **Written Submissions**

2.1 Within 7 days after the date this process begins, Party A (ie the Party who gave notice of dispute under clause 19.1 of the PSC Contract) must, in addition to any particulars provided by Party A under clause 19.1 of the PSC Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A’s contentions.

2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A’s submissions.

2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party’s response in clause 2.2 within the time allowed by the Expert.

2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

3. **Conference**

3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney.

3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.

3.4 The Parties:

   (a) may be accompanied at a conference by legal or other advisers; and

   (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.

3.5 The conference must be held in private.

3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4. **General**
4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the PSC Contract.

4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:

(a) with the prior consent of the Parties;
(b) as may be required by law; or
(c) as may be required in order to enforce the determination of the Expert.

4.3 The Expert must:

(a) inform the Parties of:
   (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
   (ii) any interest the Expert has in the matters in dispute; and
   (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,

   immediately upon becoming aware of any such circumstances; and

(b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise terminate the proceedings.

5. The Determination

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:

(a) determine the Matter between the Parties; and

(b) notify the Parties of that determination.

5.2 The determination of the Expert must:

(a) be in writing stating the Expert's determination and giving reasons;
(b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
(c) meet the requirements of the PSC Contract.

5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties in the circumstances set out in clause 19.3(c) of the PSC Contract.

5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the
description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6. Costs

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

7. Modification

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.
APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS

Code of Conduct for an Expert

1. The function of the Expert is to make a determination of the Matter in accordance with the PSC Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.

2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.

3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.

4. The Expert must disclose to both Parties all information and documents received.

5. If a Party fails to make a written submission, the Expert may continue with the process.

6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.
Schedule 3 - The Expert's Fees and Disbursements

[To be inserted when it comes time for expert determination]
Signed as an agreement.

Signed for and on behalf of the Principal by [insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]

Signed for and on behalf of the Professional Services Contractor by [insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]
Signed by the Expert [insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]
AGREEMENT EXECUTION PAGE
DATED 6th day of May 2019.

SIGNED as a Deed.

Signed sealed and delivered for and on behalf of Transport for NSW ABN 18 804 239 602 by its authorised delegate in the presence of:

[Signature of Witness]

[Full Name of Witness]

Signed by Arup Australia Pty Ltd ABN 76 625 912 665 in accordance with section 127 of the Corporations Act 2001 (Cth):

[Signature of Director]

[Full Name of Director]

EXECUTED on behalf of Arup Australia Pty Ltd (ABN 76 625 912 665) under Power of Attorney dated 02 July 2018.

[Signature of Authorised Signatory]

[Full Name of Authorised Signatory]

[Signature of Company Secretary/Director]

[Full Name of Company Secretary/Director]
OPERATIVE PROVISIONS:

1 Definitions

Unless the contrary intention appears, the following definitions apply:

Attorney Alyson Tong

Principal Arup Australia Pty Ltd ABN 76 625 912 665;
Registered Office Level 6, 77 Castlereagh Street, Sydney NSW 2000.

2 Appointment of Attorney

The Principal appoints the Attorney as its attorney with full power and authority in its name
and on its behalf to sign any deed, contract, or document or other paper required to be
executed by or in favour of the Company, including a confidentiality deed, contract for the
provision of professional services, a tender or other document.

3 Ratification

The Principal shall ratify everything the Attorney does or purports to do in good faith under
this power of attorney and shall indemnify the Attorney against all claims, costs, liabilities and
expenses which he or she suffers or incurs as a result of anything lawfully done under it.

4 Scope

The authority of the Attorney ceases on the expiry of 5 years from the date of this power of
attorney or, if earlier, the effective date of the Attorney ceasing employment with the Principal.

Delivered as a deed on the date of this document.

Executed on behalf of Arup Australia Pty Ltd:

JUSTICE OF THE PEACE in and for the State
of New South Wales Australia
I certify this to be a true copy of the document
shown and reported to me as the original.
Dated 24 July 2018
FIONA PATRICIA CAMERON
Registration: 224986
Exhibit A – Services Brief

Program Name:
Circular Quay Precinct Renewal

Contract Number: ISD-18-7739
Appendix A – TfNSW Standard Requirements
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TfNSW Standard Requirements (PSC)

5TP-FT-410/3.0 DE Mod
Template – Applicable to Infrastructure and Services

Integrated Management System

Status: Approved
Version: 3.0
Section: Commercial
Business unit: Procurement
Date of issue: 13 February 2018
Review date: 13 February 2019
Audience: Project Delivery/For use with the Contract templates
Asset classes: ☒ Heavy Rail; ☒ Light Rail; ☒ Multi Sites; ☒ Systems; ☒ Fleets
Project delivery model: I&S Project/Alliance/Novo Rail
Project type: For all project types
Project lifecycle: ☐ Feasibility; ☐ Scoping; ☒ Definition; ☒ Construction readiness; ☒ Implementation; ☐ Finalisation; ☐ Not applicable
Process owner: Director Commercial

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Document History

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<tr>
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<td>New consolidated TSR document replacing the suite of individual TSRs (TSR C, TSR E, TSR P, TSR S, TSR T) for use with the PSC Templates. Includes revisions to TSR P elements re Planning &amp; Scheduling.</td>
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Note - this document includes hyperlinks to TfNSW authored reference documents. Where the TfNSW reference document is publicly available, the link will take the user to TfNSW’s Internet website, where the particular reference document can be located. Access to these documents is available to all users. Where the TfNSW reference document is not publicly available, the link will take the user to TfNSW’s intranet and the QMS system where the document is located. Access is limited to users with TfNSW intranet access. Contractors do not have access to QMS and must therefore be provided with these reference documents as part of the Agreement. The list of these reference documents can be found in Annexure I of this TSR.
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1. **Introduction**

(a) This TfNSW Standard Requirement (TSR) describes TfNSW’s requirements and processes for the management of the Services.

(b) The Professional Services Contractor must comply with the requirements detailed in this TSR, including its Annexures unless noted otherwise in Annexure A - Additional Project Requirements.

(c) The Professional Services Contractor must comply with the requirements of the Reference Documents listed in Annexure I of this TSR.

(d) Wherever used in this TSR, capitalised words and phrases have their general dictionary meaning unless otherwise noted in the Agreement or Annexure B of this TSR.

2. **Project Administration**

2.1. Submitting Documents to the Principal’s Representative

Wherever this TSR requires the Professional Services Contractor to submit Contract Material or other Documents or information to the Principal’s Representative for review, the Principal’s Representative may review and provide comments which must be addressed by the Professional Services Contractor in a timely manner and to the satisfaction of the Principal prior to the related Services are commenced.

2.2. Contract Management Plan (CMP)

(a) The Professional Services Contractor must have in place, maintain and consistently apply until Final Completion, a Contract Management Plan and sub plans describing how the project will be delivered (unless specified otherwise in Annexure A). The CMP must include the content described in Annexure C.

(b) The Services must be carried out in accordance with the CMP.

(c) The timing and frequency for the initial and subsequent submissions of the CMP to the Principal’s Representative for review in accordance with the Agreement, is nominated in Annexure A of this TSR.

2.3. Professional Services Contractor’s Program

Without limiting the Agreement, the Professional Services Contractor’s Program and all other programs must comply with the requirements of Annexure D.

2.4. Document Management

The Professional Services Contractor must use the nominated electronic document management tool listed in Annexure A.

2.5. Monthly Reporting

Unless otherwise noted in Annexure A, the Professional Services Contractor must prepare and submit a progress report on a monthly basis which complies with Annexure H, to the Principal’s Representative for review.

2.6. Audit

(a) Should the Principal establish a Compliance Working Group (CWG), the Professional Services Contractor must provide suitably competent attendees and resources until Completion.
The Professional Services Contractor must attend the CWG meetings and participate efficiently to ensure the success of the CWG as well as ensuring that all audits are coordinated, lead and managed through the CWG.

The Principal may also utilise independent auditors to assist with its Inspections including audit and surveillance.

When any audit or Inspection is to be undertaken by the Principal, the Professional Services Contractor must:

- make available, all records and Documents;
- make suitable facilities available to accommodate the audit and audit team; and
- provide all reasonable assistance during the audit including the participation of representatives from the Professional Services Contractor and Subcontractors organisations.

The Professional Services Contractor must ensure that all recommendations arising from any audit are actioned in accordance with appropriate corrective and preventive systems in a timely and agreed manner.

The Professional Services Contractor must provide the Principal’s Representative with a program of audits and the audit results when requested.

2.7. Training, Competence and Reference Checks

The Professional Services Contractor must ensure that all persons engaged in carrying out the Services:

- are inducted, appropriately trained and made aware of the requirements of the Agreement with particular focus on incident management/reporting procedures, community enquiries or complaints and media enquiries, prior to commencing any Services, or other functions on Site;
- maintain records of all training and inductions carried out;
- attend any training provided by the Principal specified in Annexure A;
- when directed by Principal’s Representative, are subject to police criminal record checks. The Professional Services Contractor must promptly notify the Principal’s Representative if any offences have been recorded; and
- in relation to plant, that all operators hold certificates of competency and are assessed and deemed competent to operate the plant for its intended use to the satisfaction of the Professional Services Contractor.

2.8. Incident Management

The Professional Services Contractor must provide immediate verbal notification to the Principal’s Representative of any Incident or Issue.

The Professional Services Contractor must immediately report all Incidents using the InControl Incident Management System (INX). Should INX not be accessible, the Professional Services Contractor must report in a manner that enables effective and subsequent recording into INX.

The Professional Services Contractor must undertake a preliminary investigation of all Incidents within 5 Business Days of the Incident, unless otherwise agreed by the Principal’s Representative. Major Incident investigations must be completed within 20 Business days of the Incident. Terms of reference for major investigations will be
issued by the Principal. If the Principal's Representative requires the appointment of an external independent investigator, the Professional Services Contractor will bear the cost of the appointment.

(d) The Principal may participate in any investigation being undertaken by the Professional Services Contractor or initiate its own investigation. If the Principal instigates its own investigation the Professional Services Contractor must provide the Principal with all assistance reasonably required for the purposes of the investigation, this includes the waiver of legal professional privilege over any investigation report prepared by, or on behalf of, the Professional Services Contractor. The Parties may agree that any investigation report that is subject to legal professional privilege may, between the Professional Services Contractor and the Principal, be subject to a common interest privilege.

(e) For all environmental Incidents, the Professional Services Contractor must comply with the requirements of “TfNSW Environmental Incident Classification and Reporting – 9TP-PR-105” and “TfNSW Environmental Incident/Non-Compliance Report – 9TP-FT-101” in relation to all environmental Incidents.

(f) In the event of an Incident or Issue, the Professional Services Contractor must not contact or provide information to any person (other than that which is required to directly manage the Incident or to comply with law), including any stakeholder, the media or the public, without the prior approval of the Principal. The Professional Services Contractor must make available senior personnel to respond to the community, the media and other stakeholders when required by the Principal.

(g) All notifiable occurrences under WHS, Rail Safety National law or Maritime law must be reported immediately to the Principal’s Representative and to the relevant Regulatory Authority. Where any type of notice, infringement or fine by a Regulator has been issued to the Professional Services Contractor in relation to undertaking the Services, the Professional Services Contractor must immediately notify the Principal’s Representative and provide a copy of the notice, infringement, or fine within 24 hours of receiving it.

(h) The Professional Services Contractor must provide the Principal with all necessary Communications Materials that may need to be disseminated as a result of such incidents, when required by the Principal.

3. Planning, Sustainability and Environmental Management

The following requirements apply to the extent specified in Annexure A.

3.1. Planning and Approvals

(a) Where the Professional Services Contractor is responsible for a submission to an Authority for an approval, or where an Authority requests a document submission, the Professional Services Contractor must provide that submission to the Principal’s Representative for review, prior to issuing to the relevant Authority. Where the Principal provides comments, the Professional Services Contractor must first address the comments and provide a final submission to the Principal’s Representative with a request to forward to the relevant Authority. The Professional Services Contractor must adequately address all comments to the satisfaction of the Principal’s Representative prior to submitting to the Authority.

(b) The Professional Services Contractor must comply with the nominated environmental compliance monitoring system, where nominated in Annexure A.
In the event pre-commencement activities are required, the Professional Services Contractor must submit the details of the pre-commencement activities to the Principal’s Representative for review and approval.

Consistency checklists and Environmental Reviews are to be completed by the Professional Services Contractor where stated in Annexure A.

The Professional Services Contractor must not communicate (phone, mail, email etc.) directly with any Authority unless written consent is provided by the Principal and a communications protocol has been established.

Environmental Management

The Professional Services must provide sufficient competent environmental resources on and offsite to ensure compliance with the Environmental requirements, and the broader requirements of the Agreement.

All activities in connection with carrying out the Services must be completed in accordance with TfNSW’s suite of Environmental Guidelines.

The Professional Services Contractor’s Environmental Management System (EMS) must comply with the requirements stated in Annexure A.

Where non compliances or Incidents arise in the Professional Services Contractor’s Site based activities, "TfNSW Environmental Incident/Non-Compliance Report – 9TP-FT-101" must be completed by the Professional Services Contractor and returned to the Principal’s Representative within 48 hours.

Where specified in Annexure A, The Professional Services Contractor must develop, implement and maintain Environmental Control Maps (ECMs) in accordance with all Authority approvals and comply with "TfNSW Guide to Environmental Control Map – 3TP-SD-015" as well as preparing each ECM as a map in both A0 and A3 sizes.

The Professional Services Contractor must progressively review and update the ECMs (to incorporate works progression and changing characteristics of the Site), amending environmental protection measures where those identified fail to achieve continuous compliance with the environmental obligations under the Agreement.

The Professional Services Contractor must submit all ECMs to the Principal’s Representative for review.

The Professional Services Contractor must comply with section 4.5.4 Control of Records of "AS/NZS ISO 14001:2015" and retain all environmental records for a period of no less than 5 years from Completion.

The Professional Services Contractor must provide the Principal with copies of the environmental records stated in Part 3 of Annexure E (unless otherwise stated in Annexure A). Any records not required to be stored on-site must be forwarded to the Principal’s Representative within 3 Business Days of a request.

Sustainability and Climate

Unless otherwise stated in Annexure A, The Professional Services Contractor must comply with the Principal’s sustainability and climate requirements and the requirements of GREP described in Annexure G.

4. Safety Management

4.1. General Requirements
(a) The Professional Services Contractor must advise the Principal’s Representative at all times, the name of the senior management representative responsible for implementing the safety requirements of this Agreement and monitoring the effectiveness of the Professional Services Contractor’s safety management system in complying with all safety requirements.

(b) The Professional Services Contractor must manage safety risks in accordance with “AS/NZS ISO 31000:2009 – Risk”, and must eliminate all risks to health and safety; or where not possible, minimise those risks so far as is reasonably practicable applying, maintaining and reviewing the prescribed Hierarchy of Control Measures.

(c) The Professional Services Contractor must implement the Principal’s Pegasus/Onsite Track Easy access card systems unless otherwise specified in Annexure A. The Professional Services Contractor must ensure that all workers are provided with an access card and log in and out each shift.

(d) The Professional Services Contractor must effectively manage, through the Pegasus system, fatigue, emergency response, alcohol and other drugs use, training, induction and competency records. The Professional Services Contractor must ensure adequate numbers of sign on location points (whereby workers can easily log on and off each shift) exist. Each location point is to be provisioned with an Alcolizer/Breathalyser which is to be incorporated into the sign-on unit and used as part of the daily sign-on for all workers and visitors accessing site.

(e) As part of the determination of whether risks have been eliminated or minimised so far as is reasonably practicable, the Professional Services Contractor must review, and record the review of “TfNSW Generic Work Health and Safety Operational Risk Register - 30-SD-101” and where the Professional Services Contractor’s on-site Services involve Rail Safety Work, the Professional Services Contractor must also review “TfNSW Generic Rail Safety Risk Register - 30-SD-038”.

(f) All SWMS must be approved and signed off by the Principal Contractor prior to being submitted to the Principal’s Representative for review. The Professional Services Contractor acknowledges and agrees that by exercising its right under this clause 4.1 (d) the Principal’s Representative is not assuming any management or control of the Site or the Contactors on-site activities and is only receiving the SWMS information to monitor the Professional Services Contractor’s compliance with its obligations under this Agreement and/or applicable Laws.

4.2 Safety Control Measures

(a) The Professional Services Contractor must ensure that quick hitch attachments fitted to excavators and other earth moving machinery are of the fully automatic type with a secondary locking attachment. The secondary attachment is to be capable of preventing the excavator attachment from releasing in the event of a partial or total failure of the power supply or when the operator stops operating the machine. All half-hitch, mechanical-hitch, form-lock, semi-automatic types are prohibited.

(b) Where mobile plant’s operating envelope is capable of encroaching within 3 metres of the Rail Network Danger Zone or the safe approach distance to live electrical infrastructure, implement the use of programmable zone limiting devices that limit the hoisting and/or slewing and which are designed to be “fail safe” or which meet Category 4 reliability in accordance with “AS4024.1 Safeguarding of Machinery” or a SIL of 3 under “AS 61508 Functional safety of electrical / electronic / programmable electronic safety-related systems”.
(c) The Professional Service Contractor must ensure that records for inspection, maintenance and repair of each item of plant on site are kept and maintained up to date.

(d) The Professional Service Contractor must ensure that no modifications have been made to any item of plant without approval and acceptance from the operating equipment manufacturer for the relevant item of plant.

(e) Prior to any penetration or excavation works being undertaken, the Professional Service Contractor must develop a Utilities Management Plan to manage these works. As part of the management of utilities the Professional Services Contractor must positively identify all utilities within and adjacent to, the Site and update all relevant drawings/maps to include the known locations of such utilities. The Utilities Management Plan must demonstrate how the Professional Services Contractor will manage all its activities around all overhead and underground service utilities.

(f) The Contractor’s Activities must be in compliance with the relevant WHS legislation and TfNSW Working Near Utilities Standard 4TP-ST-107 and at a minimum must demonstrate how the Professional Services Contractor will manage:

   i. positive and effective isolation of energy sources;
   ii. potholing to positively identify underground services;
   iii. non-destructive digging methods and service locations (e.g. Ground Penetrating Radar);
   iv. Dial Before You Dig and DSS service searches;
   v. the potential for unidentified underground services; and
   vi. penetration/excavation permit process including the use of hold points to ensure controlled approval management of the process.

(g) Live electrical work is not permitted to be carried out on the Site and isolated circuits must be treated as live until they have been proven otherwise dead by testing. The only exception to the above is for the purpose of testing, as specified in the SafeWork Australia Code of Practice “Managing Electrical Risks in the Workplace”.

(h) The use of portable earphone equipped music players on Site is prohibited.

(i) Fires or burning off are not permitted anywhere on Site.

(j) The Professional Services Contractor must provide a defibrillator (and suitable training in its use for its senior first aid personnel) at each major first aid location, and must ensure persons trained in the use of the defibrillator are on Site at all times.

(k) In Vehicle Monitoring Systems (IVMS) are to be fitted in all Heavy Vehicles used on Site. General exemptions to the above would be for non-project delivery drivers, and suppliers providing one off deliveries.

(l) All breaches in relation to clause 4.2 (k) must be managed in accordance with clause 2.8 of this TSR. Incidents involving speeding, fatigue and log book breaches must be monitored, reported and acted upon by the Contractor.

(m) Management of Fatigue must be in accordance with the requirements set out in TfNSW Fatigue Management Standard ST-011.

4.3. Alcohol and Other Drugs

(a) The Principal’s policy of zero tolerance of alcohol and illegal drug use applies to this Agreement and all the Services. Alcohol and illegal drugs are not permitted on any
Site or on premises controlled or managed by the Principal. The Professional Service Contractor must develop policies and procedures to ensure this policy of zero tolerance of alcohol and illegal drugs use is adhered to at all times.

(b) The Professional Service Contractor must develop and implement effective alcohol and drug testing procedures inclusive of the number of tests to be performed annually and the periods throughout the year that testing will take place. All Alcohol and Other Drug testing procedures must be in line with relevant Laws and Australian Standards.

(c) The Professional Service Contractor must ensure that all persons associated with the Services (including the Professional Service Contractor's personnel, visitors, Subcontractor workers and agents) are aware of their obligations to comply with all alcohol and other drug requirements.

(d) Any persons under the influence of alcohol or drugs are prohibited from working on any projects carried out for, controlled or managed by the Principal, regardless of their work location. Prescription and over-the-counter drugs may also affect a person's ability to work safely and the Professional Service Contractor, in consultation with the Principal's Representative, will determine its policy in relation to prescription and over-the-counter drugs on a case by case basis.

(e) All of the Professional Service Contractor's personnel and workers of Subcontractors may be subject to alcohol and drug testing by an authorised testing officer or agent of the Principal at any time whilst carrying out the Services (including within the Professional Service Contractor's Site amenities or facilities).

(f) Testing for the presence of alcohol and other drugs may be undertaken at any time that workers are present on Site, including:
   i. before performing duties (pre-sign on, primarily alcohol test);
   ii. during the performance of duties (random and reasonable cause); and
   iii. following any Incident.

(g) The Professional Service Contractor must immediately remove anyone from Site that tests positive to alcohol or drug tests or who refuses an alcohol or drug test, and the Principal's Representative notified immediately.

(h) The Professional Service Contractor must take disciplinary action against a person who breaches the Principal's policy of zero tolerance of alcohol and illegal drug use. The nature of the disciplinary action to be taken must be communicated to the Principal's Representative.

(i) Each individual that signs on at the commencement of each shift declares themselves to be free of alcohol and drugs.

(j) In addition to the requirements set out in this clause 4.3, if the Professional Service Contractor's activities are in or adjacent to the Rail Corridor and the rail environment, the applicable alcohol and other drugs procedures must comply with the Rail Safety National Law and the testing regime must include prestart testing prior to Track Possessions.

5. Communications, Stakeholder and Community Liaison

The following requirements apply to the extent specified in Annexure A.

5.1. General Requirements
The Professional Services Contractor must:

(a) appoint suitably qualified and experienced personnel to fulfil the communications requirements of the Agreement and must consult the Principal's Representative prior to taking any action that may impact on stakeholders and the community;

(b) proactively identify positive media and/or community relations opportunities, informing the Principal of these opportunities in a timely manner; and

(c) comply with all reasonable suggestions and requests of the community.

5.2. Meetings with Community and Stakeholders

(a) The Professional Services Contractor must not meet the community or stakeholders without seeking prior approval from the Principal, providing the Principal with a minimum of 3 Business Days' notice in each case.

(b) The Professional Services Contractor must ensure that suitable persons, adequately informed and qualified to participate and take the lead during meetings where requested by the Principal's Representative are available to attend meetings at all times, including “after-hours”. The Professional Services Contractor must also provide relevant materials for presentation and distribution at such meetings.

5.3. Communications Management Control Group (CMCG)

(a) The Professional Services Contractor must provide administration and attend all CMCG meetings, established by the Principal. The CMCG may comprise representatives from Other Contractors, the Professional Services Contractor, the Principal and others invited by the Principal.

(b) At each CMCG meeting the Professional Services Contractor must provide the following information:

i. a summary of current and upcoming Professional Services Contractor's Services, likely impacts, and proposed communication strategies;

ii. an update on any current or emerging issues and/or opportunities;

iii. an update on complaints received and action taken to resolve them; and

iv. other information as requested by the Principal.

5.4. Communication Materials and Notifications

(a) All written, verbal or photographic/illustration information to be seen and made available to others i.e. Communication Materials must be submitted for approval to the Principal's Representative, who will require a minimum of 5 Business Days to review and approve or reject any submission. All written Communication Materials produced by the Professional Services Contractor must comply with the "TfNSW WCAG 2.0 Quick reference guide" and "TfNSW Editorial Style Guidelines".

(b) The Professional Services Contractor must issue written notifications to stakeholders and the community at least 5 Business Days before commencing any Services with the potential to impact stakeholders and the community. The notification must use the template provided by the Principal and must include the distribution details shown on a map.

(c) During Emergency Works, the Professional Services Contractor must provide written and verbal notification to properties immediately adjacent to or impacted by the Services at least two hours before commencing any activities. In such circumstances notifications do not have to be provided to the Principal's
Representative for prior review/approval on the basis that subsequently, a copy of the distributed notification is provided to the Principal in electronic format.

5.5. Communications Management System (CMS)

(a) The Professional Services Contractor must complete formal familiarity training using the Principal's web-based CMS for collecting and recording details of all community and stakeholder contact.

(b) The Professional Services Contractor must record all contact with the community, media, government representatives, project related articles (paper and web based) and online discussions (blogging) on CMS and must update and maintain CMS with accurate details within 24 hours of the contact to ensure easy identification and rapid distribution of information when required.

(c) Entries into the CMS must provide an accurate, succinct summary of the contact and include contact details, actions required and must be updated by the Professional Services Contractor as soon as actions are closed out.

(d) The Professional Services Contractor must provide the Principal with information within the requested timeframes, to respond to media and government enquiries.

5.6. Complaints and Enquiries

(a) The Professional Services Contractor is responsible for responding to complaints and enquiries received regarding the Services and impacts associated with the Services, complaints and enquiries may be received through a variety of avenues including the Principal's 24-hour response line or project info line, in writing (letter or email), direct to the Principal via telephone, or direct to the Professional Services Contractor or its Subcontractors.

(b) When responding to complaints the Professional Services Contractor must:

i. record details of every complaint received and how it was managed and closed out;

ii. immediately investigate and determine the source of the complaint including an immediate return call to the complainant (where received by telephone). Where the complaint does not relate to the Services, the Professional Services Contractor must immediately notify the Principal's Representative;

iii. provide an oral response to the complainant regarding what action is proposed, immediately, within a maximum of 2 hours from the time of the complaint. If no return phone number was provided, the complaint must be responded to within a maximum of 24 hours for emails and 5 Business Days for letters from time of receipt;

iv. provide a detailed written response to the complainant within 7 calendar days, outlining the issue and the remedial action taken. Such written responses must be provided to the Principal for review and approval/rejection within 3 Business Days of receipt of the complaint; and

v. forward a scanned signed copy of the approved written response to the Principal on the day it is sent.

5.7. Site

(a) The Professional Services Contractor must submit a written request to the Principal's Representative providing at least 48 hours notice, for any requests by the
community and stakeholders to access Site. The Professional Services Contractor
must not provide access unless the Principal has granted their prior approval.

(b) The Professional Services Contractor must accommodate all visits to the Site by the
Principal's authorised representatives. The Professional Services Contractor
acknowledges that any photographs, film or video taken by either the Professional
Services Contractor or the Principal is the property of the Principal, who may use
them for any purpose it chooses, and without the Professional Services Contractor's
approval,

(c) The Principal may provide the Professional Services Contractor with signage and/or
graphics which must be installed by the Contractor as directed by the Principal's
Representative.

(d) The Professional Services Contractor must install way finding signage to direct
pedestrians, commuters and vehicles that identifies changes to traffic and access at
least 7 calendar days before:

i. making changes to pedestrian routes;

ii. impacting on cycle ways;

iii. changing traffic conditions; and

iv. disrupting access to public transport modes.

(e) All temporary works, on-site works and items erected as a part of the Services must
be constantly maintained free of graffiti and advertising not otherwise authorised by
the Principal, until Completion.

(f) The Professional Services Contractor must carry out daily inspections, and remove
or cover any graffiti and unauthorised advertising as detailed:

i. offensive graffiti and unauthorised advertising material must be removed or
covered within 24 hours;

ii. highly visible yet non-offensive graffiti must be cleaned or covered within 1
week; and

iii. graffiti that is neither offensive nor highly visible must be cleaned or
covered during normal operations within one month.

6. Property

The following requirements apply to the extent specified in Annexure A.

6.1. General

(a) The Professional Services Contractor must appoint a site-based person to be the
Professional Services Contractor's property representative. This representative must
be present during all inspections undertaken by the Principal's Representative or
delegate.

(b) Any findings by the Principal's Representative from inspections must be actioned
within the timeframes reasonably required by the Principals Representative. The
Professional Services Contractor must provide written notification to the Principal
that the findings of the Principals Representative have been closed out within the
timeframes specified.
The Professional Services Contractor must provide the property records described in Part 2 of Annexure E.

6.2. Pre Commencement Property Risk Assessment

(a) Prior to the commencement of any Site based activity, the Professional Services Contractor must undertake a comprehensive property risk assessment in consultation with the Principal's Representative. A staged risk assessment may be utilised, upon agreement with the Principal's Representative.

(b) This risk assessment must identify the potential property impacts of the Professional Services Contractor's Services on property, and the control measures that are required to be implemented in order to provide property protection in accordance with the requirements of the Agreement.

(c) With respect to the Site (and where the Site is at more than one location, for each part of the Site), this risk assessment must include:

   i. permanent and temporary worksite access requirements and timing;
   ii. access to or across adjoining properties and timing;
   iii. crane slew radius, air rights and impacts on neighbouring properties or the Rail Corridor;
   iv. any future subdivision, easements, other title interests or divestment requirements;
   v. any future commercial impacts of resultant works; and
   vi. Site investigation and contamination.

6.3. Access

6.3.1. Ownership and Rights of Access

(a) The Professional Services Contractor must ensure it has the necessary legal rights to access the appropriate property prior to commencing the Services. To assist the Professional Services Contractor, the Principal has developed a non-exhaustive list of applicable legislation, described in "TfNSW Property Compliance Register – 2TP-ST-175".

(b) Prior to commencing the Services, the Professional Services Contractor must conduct property ownership searches (if lands are not supplied by the Principal).

6.3.2. Neighbouring Property

(a) The Professional Services Contractor must be responsible for managing the Site and minimising the impact of the Services on adjoining owners until Completion.

(b) At least 2 weeks prior to commencement of the Services and activity on Site, the Professional Services Contractor must identify all neighbouring land owners, tenants, businesses, occupants, who may be impacted by the Services and provide the Principal's Representative with a consolidated list that includes:

   i. addresses;
   ii. land use (retail, residential, garage, etc.);
   iii. primary contact name, phone number and email address;
   iv. likely impact that the Services will have on neighbouring property; and
v. any past correspondence.

(c) Where access to neighbouring property is required, the Professional Services Contractor must have the necessary legal rights and must comply with the Access to Neighbouring Land Act 2000 (NSW) and this Agreement. In such cases, the Professional Services Contractor must prepare an application for access and submit it to the Principal’s Representative for review and acceptance, prior to submitting the application to the local court.

6.4. Surveys

6.4.1. Pre-Commencement Land Surveys

The Professional Services Contractor must verify survey control for the Services, and must:

(a) prior to commencing any activity which could affect existing infrastructure (including roads, railways, utility services and buildings), undertake above ground and underground property boundary survey, recording the location of the relevant Site boundaries in relation to existing infrastructure on every land parcel and provide them to the Principal’s Representative;

(b) avoid, where reasonably possible, disturbance of existing survey marks and must re-establish any such marks disturbed or affected by the Services; and

(c) all boundary and engineering surveys carried out must be in accordance with the Surveying and Spatial Information Act 2002 (NSW) and the Surveying and Spatial Information Regulation 2012 (NSW).

6.4.2. Post Commencement Land Surveys

(a) The Professional Services Contractor must verify survey control for the Services, and must comply with the requirements of the Agreement in relation to land surveys.

(b) If any part of the Services is proposed to be, or have been built outside the relevant boundaries of the Site stipulated in Schedule 1, and no formal agreement has been reached with the adjoining property owner, the Professional Services Contractor must cease work in this area and immediately notify the Principal.

6.5. Property Damage

(a) In carrying out the condition surveys, the Professional Services Contractor must minimise disruption to property owners and occupiers.

(b) The Principal’s Representative may direct the Professional Services Contractor to include additional conditions surveys if it considers they have the potential to be damaged as part of the Contractor’s Activities and a person, nominated in by the Principal, may attend the undertaking of condition surveys.

(c) In addition to the requirements set out in the Agreement and the TSR, the Professional Services Contractor must comply with all the requirements for condition surveys and ongoing monitoring set out in any agreements made with a Third Party.

6.6. Pre and Post Commencement Condition Surveys

6.6.1. General

(a) At least 2 weeks prior to the commencement of the Services, the Professional Services Contractor must carry out pre-commencement condition surveys to record the existing condition of adjoining land and property, and assess the susceptibility of
critical services, structures, infrastructure or buildings, to damage or unacceptable changes or alterations as a result of the Services.

(b) The Professional Services Contractor must then perform a post-activity condition survey on each property previously subject to a pre-commencement condition survey.

(c) Post-commencement condition survey reports must include a determination of the cause of any monitored change or any damage identified since pre-activity or other previous surveys and the Professional Services' proposed remedial works or activities. If damage is found to have been caused by the Professional Services Contractor's Services, the Professional Services Contractor must:

i. provide the Principal with a proposal setting-out the remedial action required;

ii. obtain the property owner's acceptance, in a form agreed to by the Principal, of the compensation, repair or reinstatement work, and release from future claims and actions; and

iii. If no damage is found to have been caused by the Professional Services Contractor's Services, the Professional Services Contractor must write to the property owner and Principal's Representative providing them both a copy of both reports.

6.6.2. Condition Survey Requirements

(a) Where the Services include Site based activities, the Professional Services Contractor must engage an independent third party to ensure compliance against the minimum standard of condition surveys.

(b) The Professional Services Contractor must ensure that the same surveyor performs the post-commencement survey that carried out the pre-commencement condition survey, in each case.

(c) The Professional Services Contractor must submit all condition survey reports to the Principal's Representative for review.

(d) Each survey must include a report which must contain a certificate from the surveyor who performed the survey certifying that the survey has been completed and is an accurate assessment of the condition of the property or asset.

(e) The Professional Services Contractor must ensure that the processes and procedures for performing all condition surveys are based on industry best practices. Examples of acceptable standards for condition surveys of buildings include:

i. sections 4 and 5 of the "Royal Institute of Chartered Surveyors (RICS) Guidance Note 63/2010 Building surveys and technical due diligence"; and

ii. "AS 4349 Inspection of Buildings — General Requirements", and with specific regard to the heritage elements within the Site.

(f) The Professional Services Contractor's reports on condition surveys of buildings must as a minimum record the following features:

i. major features of the buildings and developments including location, type, commencement, age and present condition, including any defects or damage;

ii. type of foundations including columns, walls and retaining structures;
iii. an assessment of the susceptibility of the building to further movement or stress;

iv. an assessment of the effectiveness of water-proofing systems in basements to the anticipated movements caused by the Professional Services Contractor’s Services; and

v. an assessment of the susceptibility of the building to changes in water levels resulting from the Professional Services Contractor’s Services.

6.6.3. Ongoing Property Monitoring

(a) The Professional Services Contractor must implement a monitoring and inspection regime for properties with the potential to be detrimentally or negatively affected by the Services.

(b) The monitoring and inspection regime must address the requirements of the Agreement, the Planning Approvals and third party agreements and agreements made with any Authority.

6.7. Pre-Commencement Property Compliance Checklist

Prior to commencement of the Services or Site occupation, the Professional Services Contractor must submit the Property Compliance Checklist in Part 1 of Annexure E to the Principal’s Representative for review and approval, to demonstrate that all property obligations have been met.
Annexure A Additional Project Requirements

This page will be replaced with TSR Annexure A (5TP-FT-351) containing project specific requirements.
Annexure B Definitions

The following definitions apply:

**Asset Handover**
Point in time at which the control of certain specified assets is transferred to an Operator/Maintainer and/or Asset Owner for their ongoing operation and maintenance.

**Asset Owner**
Organisation who will ultimately own the assets subject to the Asset Handover. In some cases this may also be the Operator/Maintainer.

**Authority**
includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes ASA) and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Services or the.

**CCB**
Configuration Control Board, a group of persons with the responsibility and authority to make decisions on configuration changes relating to TfNSW assets

**CDR**
Critical Design Review or equivalent stage of the design as developed in accordance with the Contractor's systems engineering processes.

**Codes and Standards**
The codes and standards to which the Services must comply, including those nominated in the Agreement, TSR and Services Brief and for the avoidance of doubt including the ASA Requirements.

**Commissioning**
Systematic process of ensuring that all infrastructure, equipment and systems installed in a project perform interactively in accordance with the design intent and the Operator/Maintainer's functional and operational needs.

**Communications Materials**
All written, verbal or photographic/illustration information to be seen and made available to others such as: media responses, all forms of social media, press releases, marketing and promotional materials, Notifications, material placed on hoardings, shade cloth and fences and the like.

**Control Gates**
Meaning Configuration Management Gates as defined in the “TfNSW Configuration Management Plan T MU AM 04001 PL”.

**Configuration Materials**
The Contract Material which is required in support of Asset Handover, describing the operation and maintenance requirements the assets delivered under this Agreement.

**Contract Material**
Means those documents (including, but not limited to, information stored by electronic means) and materials created or required to be created under this Agreement by the Professional Services Contractor.
<table>
<thead>
<tr>
<th><strong>Contract Management Plan (CMP)</strong></th>
<th>The Management Plan to be developed by the Professional Services Contractor in accordance with the requirements of this TSR which acts as a framework for bringing together all the management requirements for the Services into a coordinated and integrated plan.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost Loaded Baseline Schedule</strong></td>
<td>A baseline program or schedule where the Professional Services Contractor’s costs are distributed across activities such that a cash flow S-Curve may be created, this will also be used as the basis for measuring Earned Value.</td>
</tr>
<tr>
<td><strong>Danger Zone</strong></td>
<td>Danger Zone as defined in the RailSafe Network Rules and Procedures.</td>
</tr>
<tr>
<td><strong>Document</strong></td>
<td>Refers to any document that is required to be submitted to the Principal or Principal’s Representative.</td>
</tr>
<tr>
<td><strong>Earned Value</strong></td>
<td>Method of measuring and reporting project cost performance based on integrated time, cost and scope elements in accordance with “TfNSW Earned Value Management using Primavera P6 4TP-PR-143”</td>
</tr>
<tr>
<td><strong>Environmental Control Map (ECM)</strong></td>
<td>A document prepared to assist in the planning and delivery of works, specific to a work area and/or activity that identifies the physical location of physical protection measures, work method controls and monitoring requirements to minimise the impact of activities on the environment and community.</td>
</tr>
<tr>
<td><strong>Environmental Management System (EMS)</strong></td>
<td>A tool for managing the impacts of an organisation's activities on the environment and provides a structured approach to planning and implementing environment protection measures.</td>
</tr>
<tr>
<td><strong>Emergency Works</strong></td>
<td>unplanned work which must be undertaken immediately in order to avoid damage to property or injury to people.</td>
</tr>
<tr>
<td><strong>Fruin Level of Service</strong></td>
<td>A level of service Standard for pedestrian access created by John J Fruin PhD.</td>
</tr>
<tr>
<td><strong>Global Possession Calendar and Standard Working Calendar</strong></td>
<td>Default calendars in TfNSW’s P6 database which can be made available on request.</td>
</tr>
<tr>
<td><strong>GREP</strong></td>
<td>NSW Government Resource Efficiency Policy</td>
</tr>
<tr>
<td><strong>Heavy Vehilce</strong></td>
<td>Under the Heavy Vehicle National Law (NSW) a heavy vehicle is a vehicle that has a Gross Vehicle Mass (GVM) or Aggregate Trailer Mass (ATM) of more than 4.5 tonnes and a combination that includes a vehicle with a GVM or ATM of more than 4.5 tonnes</td>
</tr>
<tr>
<td><strong>Hierarchy of Control Measures</strong></td>
<td>Hierarchy of Control Measures as defined in the “Work Health and Safety Regulations 2011 Part 3.1 Managing Risks to Health and Safety”.</td>
</tr>
<tr>
<td><strong>Hold Point</strong></td>
<td>Verification point beyond which the relevant part of the Services may not proceed without the verification and subsequent written authorisation of the Principal's Representative or the relevant person nominated in the TSR.</td>
</tr>
</tbody>
</table>
Incident

(a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Services including:

(i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;

(ii) loss of containment, escape of or migration of contamination off-site and into the environment;

(iii) any fire or dangerous event on the Site;

(iv) a security breach;

(v) any unauthorised removal of trees;

(vi) a non compliance with an Authority Approval; or

(vii) any public complaint; or

(b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

(c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and

"occurrences" and "notifiable occurrences" under the WHS Legislation and Rail Safety National Law.

Inspection

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

Issue

Any issue associated with the Services that may have an impact on the community or may attract the attention of the media, such as an event which impacts on the normal operation of transport services, a timetable delay or access blockage etc.

Law

Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy & statutory guidance (but excluding the Building Code of Australia, any other building codes or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation; principles of law or equity established by decisions of courts; and Authority Approvals (including any condition/requirement under them).

Local Possession Authority

The Local Possession Authority as defined in the RailSafe Network Rules and Procedures.

Management Plans

Any of the Management Plans or Sub plans to be developed by the Professional Services Contractor in accordance with the requirements of this TSR and Agreement which describe how the Professional Services Contractor will manage related matters and issues that arise during the term of the project.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>NABERS</td>
<td>The National Australian Built Environment Rating System</td>
</tr>
<tr>
<td>National Counter Terrorism Alert Levels</td>
<td>Levels described in the Australian Government’s National Terrorism Public Alert System and referenced on the Australian National Security website</td>
</tr>
<tr>
<td>Operator/Maintainer</td>
<td>Organisation that, post Asset Handover, will operate and maintain the assets. In some cases, this may also be the Asset Owner.</td>
</tr>
<tr>
<td>Operational Readiness</td>
<td>A process used to ensure that any on-site works are safely integrated into the Rail Network, with all necessary plans, documents, approvals, staff training and any other related activity completed, so as to ensure a safe and smooth transition into operation.</td>
</tr>
<tr>
<td>Other Contractor</td>
<td>Includes any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work, other than the Professional Services Contractor and its Subcontractors, and includes the Construction Contractor as defined in the Agreement.</td>
</tr>
<tr>
<td>PDR</td>
<td>Preliminary Design Review or equivalent stage of the design as developed in accordance with the Professional Services Contractor's systems engineering processes.</td>
</tr>
<tr>
<td>Planning Approval</td>
<td>Any Authority issued approval issued from time to time by either the Principal or the Minister for Planning and Infrastructure (acting in their capacity as determining authority) under the Environmental Planning and Assessment Act 1979 (NSW) in respect of the Services; and any mitigation measures and statement of commitments that are required to be complied with or fulfilled.</td>
</tr>
<tr>
<td>Planning and Environmental Compliance Monitoring System (PECOMS)</td>
<td>A Principal developed system which may be specified to monitor compliance with the conditions of all licences, permits and Approvals during the delivery of its projects.</td>
</tr>
<tr>
<td>Professional Services Contractor</td>
<td>The person named as the Professional Services Contractor in Schedule 1 of the Professional Services Contract.</td>
</tr>
<tr>
<td>Professional Services Contractor's Program</td>
<td>The program or schedule referred to in clause 2.2 of this TSR.</td>
</tr>
<tr>
<td>Project Rail Safeworking Coordinator</td>
<td>A person appointed by the Principal, accountable for monitoring the management of worksite protection and rail safety requirements for controlled and managed worksites on the programs/projects being delivered by TfNSW on behalf of the NSW State government.</td>
</tr>
<tr>
<td>Property Representative</td>
<td>The Property Representative appointed by the Principal</td>
</tr>
<tr>
<td>RailSafe Network Rules &amp; Procedures</td>
<td>Australian Network Rules &amp; Procedures as defined by the Rail Industry Safety Standards Boards</td>
</tr>
<tr>
<td>Rail Corridor</td>
<td>The area containing the Rail Track, rail junctions, level crossings, station buildings, platforms, signal boxes, tunnels, bridges and other associated structures. This area is often defined by railway boundary fencing and in the absence of such fencing, is defined by a physical boundary (i.e. tunnel, building or retaining walls) or everywhere within 15 metres of the outermost rails.</td>
</tr>
<tr>
<td>Rail Safety</td>
<td>Rail Safety as defined in the Rail Safety National Law.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Rail Safety Work</td>
<td>Rail Safety Work as defined in the Rail Safety National Law.</td>
</tr>
<tr>
<td>Rail Safety Worker (RSW)</td>
<td>Rail Safety Worker as defined in the Rail Safety National Law.</td>
</tr>
<tr>
<td>Rail Track</td>
<td>The rails fastened on sleepers or transoms and founded on ballast or bridge decking or concrete slab, associated signalling and overhead wiring components (in electrified areas).</td>
</tr>
<tr>
<td>Rail Transport Operator</td>
<td>An entity defined by the Rail Safety National Law as a rail operator or rail transport operator.</td>
</tr>
<tr>
<td>Reference Documents</td>
<td>The list of documents which are referenced in this TSR.</td>
</tr>
<tr>
<td>RMS</td>
<td>Roads and Maritime Services, a corporation constituted by section 46(1) of the Transport Administration Act 1988 (NSW). A reference in any of the TSR documents to the “Roads and Traffic Authority” or “RTA” is to be construed as a reference to Roads and Maritime Services.</td>
</tr>
<tr>
<td>SafeWork NSW</td>
<td>Work Health &amp; Safety regulatory authority in NSW</td>
</tr>
<tr>
<td>Safe Work Method Statements (SWMS)</td>
<td>Documents so titled prepared in accordance with this TSR and that give specific instructions on how to safely perform a work related task, or operate a piece of plant or equipment etc.</td>
</tr>
<tr>
<td>SDR</td>
<td>System Definition Review or equivalent stage of the design as developed in accordance with the Professional Services Contractor's systems engineering processes.</td>
</tr>
<tr>
<td>Site</td>
<td>Has the meaning assigned in Annexure A of this TSR</td>
</tr>
<tr>
<td>Subcontractor</td>
<td>A subcontractor of the Professional Services Contractor, including a consultant or a supplier of goods or services (including professional services and plant hire) or both</td>
</tr>
<tr>
<td>Sub plan</td>
<td>A standalone Management Plan which is included in the overall Contract Management Plan.</td>
</tr>
<tr>
<td>Third Party</td>
<td>means a party to a Third Party other than the Principal.</td>
</tr>
<tr>
<td>Third Party Agreement</td>
<td>means an agreement with another party, which forms part of the Agreement</td>
</tr>
<tr>
<td>Track Possessions</td>
<td>A period during which the Professional Services Contractor has access to Rail Track for the purpose of carrying out the Services.</td>
</tr>
<tr>
<td>Vehicle Registration Database</td>
<td>The Principal’s database recording a rail vehicle’s ownership and technical details to indicate that the vehicle has met the Principal’s acceptance requirements and is authorised to operate on rail infrastructure managed by the Principal.</td>
</tr>
<tr>
<td>Witness Point</td>
<td>Point identified in the TSR or Services Brief where the Principal’s Representative, or the relevant person nominated in the TSR, may review, witness, inspect, or undertake tests on any component, method, or process of the Services.</td>
</tr>
<tr>
<td>Work Breakdown Structure (WBS)</td>
<td>Framework of discrete work elements (or tasks) used to organise and define the total project work scope, cost, and schedule control elements.</td>
</tr>
<tr>
<td><strong>Worksite Protection</strong></td>
<td>The safety measures adopted, in relation to rail operations, to protect persons brought or invited to any part of the Site located within the Rail Corridor.</td>
</tr>
<tr>
<td>------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Worksite Protection Personnel</strong></td>
<td>The Protection Officer assigned to implement the required Worksite Protection for work within the Rail Corridor.</td>
</tr>
<tr>
<td><strong>Worksite Protection Plan</strong></td>
<td>The Protection Officer plan documenting the safety measures adopted, in relation to rail operations, to protect persons brought or invited to any part of the Site located within the Rail Corridor.</td>
</tr>
</tbody>
</table>
Annexure C Management Plans

1.0 General

The Contract Management Plan (CMP) is the project-specific overarching Management Plan that includes all other Management Plans as Sub plans that must be developed under the Agreement. The CMP must describe the complete management activities, systems and processes which the Professional Services Contractor will employ in its delivery of the Services.

The Services must be carried out in compliance with all Management Plans developed by the Contractor.

2.0 CMP Sections

Unless otherwise noted in Annexure A, the CMP must include the following sections.

2.1 Contract Management

The Contract Management section must:

(a) explain in a systematic, coordinated and integrated structure, the managerial structure for performing the Services;

(b) define responsibilities, resources and processes for planning and performing the Services and verifying that the Services meet the requirements of the Agreement;

(c) describe the key roles and responsibilities and provide an organisation chart covering the key roles and Subcontract interfaces;

(d) define the interface and associated responsibilities of the Professional Contractor, Subcontractors, Other Contractors and other relevant third parties as well as the Principal;

(e) where applicable, describe how the AEO authorisation covers the full scope of the Services including all subcontracts;

(f) describe how the Professional Services Contractor will comply with all relevant Laws, Codes and Standards and requirements, applicable to the Services;

(g) list all Documents required to be developed by the Professional Services Contractor, under this Agreement;

(h) list all Documents and Contract Materials required to be submitted to the Principal under this Agreement;

(i) List all approvals to be sought from the Principal and others;

(j) define the reporting mechanisms in the case of Incidents and protocols for communicating with Authorities; and

(k) identify the responsible person for developing and updating the CMP and its sections.

2.2 Design Management

The Design Management section applies to both the works and temporary works and must be based on the Professional Services Contractor’s management systems and processes as assessed by the ASA as part of its AEO authorisation and must include the measures, including audit and verification that the Contractor will utilise to ensure that, as a
minimum:

(a) all design tasks are appropriately resourced by competent personnel;
(b) all design personnel are aware of the requirements of the Agreement and any obligations of designers under the WHS Legislation;
(c) all designs are prepared in accordance with requirements of the Agreement;
(d) design packages are identified and a schedule is included which identifies each unique package, its scope, discipline and the stages of submission in accordance with any requirements of the Services Brief;
(e) the development of the design is effectively coordinated and the interrelationships identified and managed across all:
   i. design interfaces, including with existing systems, operational systems, and maintenance systems;
   ii. design stages;
   iii. design packages, where the design work has been portioned into design packages; and
   iv. design disciplines (e.g. electrical, civil, track, signalling and rolling stock);
(f) the process of CCB and CMAAC control gate submissions are detailed;
(g) the Professional Services Contractor demonstrates familiarity with the Site and its constraints and the existing infrastructure so the works are designed and configured so as to achieve optimal integration from a human, asset and systems perspective in their operations and maintenance;
(h) a system for the management of design review comments is incorporated;
(i) all stakeholders in relation to the design have been appropriately identified, that appropriate stakeholder consultation is undertaken and includes workshops and presentations of the design to relevant parties including the design and sustainability review panel;
(j) all design assumptions are documented and verified;
(k) all designs are checked, reviewed and verified by competent personnel and that verification or proof engineering is conducted;
(l) a requirements management process is adopted in accordance with “ASA Systems Engineering Standard T MU AM 06006 ST” and the related requirements of the Services Brief;
(m) all methodologies, sequencing, staging, temporary or enabling works are taken into account and the associated risks are managed in the design;
(n) an asset maintenance strategy and an asset operations strategy are delivered with the design;
(o) safety, sustainability, reliability, availability and maintainability are demonstrated in the design;
(p) durability assessment and durability statements are included with the design;
(q) all completed designs or completed portions of the design are accompanied by a design assurance certificate from the AEO;
the process for managing design changes, and how this integrates with the configuration management activities in regards the CCB and CMAAC;

all inspection and test criteria are developed for the delivery of the works for incorporation in the inspection and test documentation that will verify and validate the works and Services;

all documentation is compliant with requirements of the Agreement, “TfNSW CAD Protocols - 4TP-RL-004” and discipline specific ASA Requirements;

risk arising from all hazards identified in the preliminary hazard analysis and systems hazard analysis are designed out or carried over, in the project hazard log or project specific safety risk register; and

all designs comply with relevant Codes and Standards and the ASA Requirements.

2.3 Digital Engineering (DE)

The DE section must:

describe the Professional Services Contractor's approach to provide an engineering accurate digital representation of the Physical Works (as per the Services Brief), containing a data rich DE model with all associated information required to optimise the delivery, operations and maintenance of the assets;

describe the Contractor's procedures to be adopted to ensure compliance with the requirements outlined in the “I&S Digital Engineering Standard 4TP-ST-202” and the related requirements of the Services Brief;

describe how DE will be integrated and managed with the other sections in the CMP and its sections and Sub plans; and

describe how the Digital Engineering Execution Plan (DEXP), as a Sub Plan to the CMP, is to be used to ensure that the Contractor delivers the DE outcomes listed in the Services Brief and the “I&S Digital Engineering Standard 4TP-ST-202”.

2.4 Site Management

The Site Management section must:

detail how the Professional Services Contractor will comply with its obligations under the Agreement in relation to the control, establishment, security, use and rehabilitation of the Site including the arrangements to provide access to, within and through the Site for the Principal, Other Contractors and any other person nominated by the Principal; describe how security management will reflect the National Counter Terrorism Alert Levels and develop procedures to communicate and respond to changes in the National Counter Terrorism Alert Levels.

document how notification of a terrorism Incident will be made to the Principal’s Representative and Law enforcement authorities, and the roles and responsibilities of the Contractor's employees and Subcontractors in such an event.

describe procedures for the preparation and implementation of Management Plans before the start of the related Services;

describe procedures for the management of Subcontractors;

describe procedures for the Professional Services Contractor’s mobilisation and demobilisation to carry out the Services, including mobilisation and demobilisation of personnel, Construction Plant and equipment; and
address the Site related management of interfaces with any Authority, stakeholders and Other Contractors.

2.5 Commuter and Passenger Management (C&PM)

The C&PM section must include:

(a) drawings showing, as a minimum, the layout of public areas, including facilities provided for operational staff and patrons and systems drawings at each stage of project;

(b) drawings showing the proposed arrangement of the passenger facilities clearly showing the position of hoardings and provisions for interchange to other transport services. Clearances and free area of platforms and the like should be clearly documented. Fruin Level of Service diagrams must accompany the drawings and they must indicate the proposed level of service for the proposed arrangement;

(c) drawings showing proposed arrangement of signage covering existing signage and new temporary signage. Details must include location, size and wording of temporary and permanent way finding signage and proposed modification to any existing signage;

(d) drawings showing proposed arrangement of passenger information panels including temporary relocations and modifications;

(e) a program clearly indicating when configuration will be changed and proposed period of change;

(f) identification of controlled Site access points;

(g) identification of delineation lines and material to be used for delineation;

(h) identification of access points from public modes of transport and general ingress and egress points; and

(i) identification and accommodation of level changes via ramps, stairs, and other means.

2.6 Traffic Management

The Traffic Management section must: (i) be consistent with and comply with the traffic configuration of the local road network as it exists at various stages during the Services in respect of items (a) to (f) below; and (ii) also describe the Professional Services Contractor’s approach to satisfying the requirements (g) to (r) below:

(a) the management of traffic on the Site;

(b) WHS Legislation, the Roads Act 1993 (NSW) and all other Laws;

(c) Approvals from Authorities, including any from RMS, NSW Police, State Emergency or any local councils;

(d) the “RTA Traffic Control at Work Sites Manual”;

(e) the need for Traffic Control Plans;

(f) “AS 1742.3-2009 Part 3 - Spoil Control Devices for Works on Roads”; and

(g) certificates, licences, consents, permits and approvals, including in respect of working hours;
(h) include traffic management procedures for the Site, including those required to manage: modifications to existing roads/paths and traffic patterns; changes to public transport routes and services; impacts on residents and/or commercial enterprises; and the impact of the Services on traffic within the Site and outside the Site on the adjacent public road system;

(i) include procedures to ensure the appropriate notification of relevant emergency services prior to implementing road and pedestrian traffic modifications such as street closures or changes to station access;

(j) address the safety of commuters, pedestrians, cyclists and contract personnel;

(k) consider changes to traffic usage patterns (average, low and peak flows as well as special events or traffic embargoes);

(l) include relevant detail from the Professional Services Contractor's Program including relevant commencement and Dates for Completion;

(m) describe the management of emergencies and Incidents in the context of access/egress;

(n) describe requirements in relation to occupation of, or access through, private properties;

(o) describe coordination of traffic management with the Principal, Other Contractors and other parties;

(p) include procedures for obtaining relevant certificates, licences, consents, permits and approvals;

(q) include specific Traffic Management Plans; and

(r) show expected number of vehicle movements each hour, based on the predicted maximum monthly material generation amounts and hours of operation of worksites.

2.7 Audit Management

The Audit Management section must outline the methodology, process and procedures adopted by the Professional Services Contractor to assure itself that the requirements of the Agreement are being met, including:

(a) preparation of risk based audit schedules for the Services and any Subcontractor’s activities that also take account of previous audit outcomes;

(b) supply of competent and experienced resources to carry out audit management and implement the audit schedule;

(c) reporting, analysing and determining trends based on those audits;

(d) implementation of corrective and preventative actions as an outcome from those audits; and

(e) measures to assess the effectiveness of the corrective and preventative actions.

2.8 Risk Management

The Risk Management section must address the management of risks applicable to the undertaking of the Services:

(a) provide an outline of the framework and approach for developing, utilising, and maintaining a risk register capable of supporting effective risk management and reporting risk information;
(b) describe the management of risks applicable to the undertaking all of the Services;

(c) provide details of the Professional Services Contractor's approach to risk management in accordance with "ISO 31000 - Risk Management Guidelines and Principles", and its risk framework, processes and internal controls to manage;

(d) include processes and procedures for the systematic identification, assessment, treatment and management of hazards and risks;

(e) provide details on the timing and scope of The Professional Services Contractor's internal and external risk review processes, compliance, and audit related activities, including methods used to ensure that risk control measures and tasks are on schedule and effective;

(f) describe how the risks identified are integrated and managed with the other sections in the CMP and its sections and Sub plans;

(g) describe specific control measures, including safe work methods to be implemented to eliminate or mitigate risks;

(h) include methods to be used to monitor effectiveness of safe work methods and control measures;

(i) nominate the persons responsible for monitoring implementation of the control measures;

(j) include consultative processes employed by the Professional Services Contractor in relation to risk management and the persons involved;

(k) demonstrate the application of the Hierarchy of Control Measures undertaken to lessen the risks so far as is reasonably practicable; and

(l) Include and maintain a register of risks which includes:
   i. a description of the risk/hazard and likely impacts;
   ii. the risk level assessed for each hazard; and
   iii. the residual risks/hazards;

3.0 CMP Sub plans

The CMP must include the following stand-alone Sub plans as nominated in Annexure A.

3.1 Environmental Management Plan (EMP)

The EMP must comply with the relevant requirements of the “NSW Government Environmental Management System Guidelines” and the Planning Approval and must include the following:

(a) details of the EMS to be applied;

(b) the environmental protection measures, and inspection and monitoring regime to be employed;

(c) the procedures to be implemented to verify that the Services relating to environmental management matters are compliant with the requirements of the Agreement, including all approvals from Authorities as well as details of the system to track Planning Approvals;

(d) procedures for the management of Incidents, non-conformances, non-compliances, Defects, Incidents, complaints and reporting, reflecting the fact that the Professional Services Contractor must not communicate (phone, mail, email etc.) directly with
any Authority (unless permitted under Law) unless written consent is provided by the Principal and a communications protocol has been established;

(e) management of sustainability matters; and

(f) record keeping.

3.2 Community Liaison Management Plan (CLMP)

The CLMP must include the following:

(a) details of the community relations resources to be employed by the Professional Services Contractor;

(b) a comprehensive, project-specific analysis of issues and proposed strategies to manage these issues through the duration of the Services;

(c) details of the communication tools (traditional and digital) and activities that will be used to inform and engage the community and stakeholders;

(d) a comprehensive stakeholder list, highlighting issues/interests and strategies for dealing with each audience and mitigating potential issues/concerns;

(e) a program for the implementation of community liaison activities relating to key tasks with strategies for minimising impacts and informing the community;

(f) details of key messages to be used in the Communications Materials;

(g) details of the community and stakeholder consultation, methodologies and timeframes required to meet the Planning Approval;

(h) policies and procedures for handling community complaints and enquiries, including the Professional Services Contractor’s nominated 24 hour contact for management of complaints and enquiries;

(i) details of activities which will be undertaken to monitor and evaluate the effectiveness of the community liaison activities;

(j) analysis of other major projects/influences in the area with the potential to result in cumulative impacts to the community and strategies for managing these;

(k) details of procedures for obtaining approval from the Principal, where required in the Agreement, including this TSR;

(l) details of the approach to engaging with and involving local community/interest groups in the successful delivery of the project;

(m) a business management strategy which includes details of businesses that may be impacted by the Services, the potential impacts to business continuity, the engagement tools, forums and activities that will be used to keep them consulted and informed;

(n) The Professional Services Contractor must prepare a summary of the CLMP for uploading on to the Principal’s website.

3.3 Property Management Plan (PMP)

The PMP must address the Professional Services Contractor’s approach to the management of property and must describe:

(a) the property resources to be engaged in the project including subcontractors and consultants;
(b) processes for identification, mitigation and treatment of property related risk;
(c) definition of the Site including the use of any additional lands as well as access control and security measures;
(d) management of relations with all adjoining owners, stakeholders, Other Contractors, and the Principal;
(e) how the Professional Services Contractor will minimise disruption to property owners and procedures for the complaint resolution process;
(f) processes for management of property survey and site set out;
(g) processes for ensuring all design and activities carried out by the Professional Services Contractor are within the allowable boundaries;
(h) processes to avoid and monitor for unwanted damage to property on the Site and neighbouring properties;
(i) a list of the properties and assets which will be subject to a condition survey by the Professional Services Contractor;
(j) processes for managing condition surveys and identification of actual damage, how it occurred and how that damage will be rectified;
(k) processes for dispute management in relation to damage and how each dispute will be processed, managed and resolved including a property damage claim process flowchart;
(l) noise, vibration and settlement limits that will prevent the damage of existing property and items by the Services and the need to transfer these criteria into method statements and inspection and test plans to ensure that any Services are within the above limits and minimise damage risks; and
(m) Sample letters for permission to conduct a property condition survey, letter of introduction for property condition survey staff, and sample property condition reports.

3.4 Work Health and Safety Management Plan (WH&SMP)

The WH&SMP must:

(a) detail how the Professional Services Contractor will continuously promote a safer, healthier, more productive workplace, by establishing and maintaining an effective safety management system that facilitates the flow of information both within the Contractor’s organisation and between the Professional Services Contractor’s organisation, Subcontractors and the Principal;
(b) detail how the Professional Services Contractor will provide strong leadership and promote safety as a core value, establishing and enforcing high standards of performance and ensuring relevant expertise is available;
(c) detail how the Professional Services Contractor will ensure ongoing open and effective consultation and further, mutual trust with the Principal’s Representative, providing timely response to safety issues and concerns within requested timeframes as advised by the Principal.
(d) describe the means of providing the Services in accordance with the safety management requirements stated in the Agreement, Law and this TSR;
(e) demonstrate compliance with the “NSW Government Work Health and Safety Management Systems and Auditing Guidelines”;

(f) describe how the Professional Services Contractor will manage WHS risks in accordance with “AS/NZS ISO 31000:2009 - Risk Management”;

(g) ensure that where the Services involve work in or adjacent to the Rail Corridor or the rail environment, provision for rail safeworking arrangements, based upon (without limitation) compliance with the Rail Safety National Law and RailSafe Network Rules and Safe Network Rules and Procedures are provided;

(h) contain within it, a requirements matrix to demonstrate compliance which will readily direct the Principal to the particular parts of the Professional Services Contractor’s Management Plans where WHS requirements of this TSR are addressed;

(i) describe how the Professional Services Contractor’s safety management system and safety culture supports:

   i. the encouragement of teamwork and of worker involvement in promoting and maintaining a positive safety culture;

   ii. a “One Team” approach to safety across all project participants including subcontractors;

   iii. senior management’s commitment to safety;

   iv. a commitment to work with the Principal’s Representative to develop project-specific lead and lag key performance indicators;

   v. a shared care and concern for hazards;

   vi. workers adapting to their changing environment where required;

   vii. organisational learning through monitoring, analysis and feedback systems;

   viii. methods for providing feedback and setting timeframes for such provision;

   ix. methods to communicate and share learning from successes and failures;

   x. methods to demonstrate how site-safety rules will be reflected in practice and how such rules will be incorporated into the Services;

   xi. methods to enable the ongoing development of safety improvements developed in consultation and communication with the Principal’s Representative, as required.

3.5 Workplace Relations Management Plan (WRMP)

The WRMP must:


(b) reflect any Industrial Relations Plan submitted with the Professional Services Contractor’s tender submission.

3.6 Digital Engineering Execution Plan (DEXP)

The DEXP must:
(a) comply with the plan requirements in the "I&S Digital Engineering Standard 4TP-ST-202"; and

(b) be based on the DEXP template (4TP-FT-532).

### 3.7 Other Plans

The CMP must include as a Sub plan, any other Management Plan required under the Agreement.
Annexure D Professional Services Contractor’s Program

1.0 General

(a) The Professional Services Contractor must:

i. submit the Professional Services Contractor’s Program to the Principle’s Representative in accordance with the Agreement, within 10 Business Days of the date of the Agreement, unless noted otherwise in Annexure A or the Agreement;

ii. update the Professional Services Contractor’s Program on a monthly basis and submit to the Principal’s Representative for review in accordance with the Agreement by the first Business Day of the month (with a Status Date of the last calendar day of the previous month), unless otherwise specified in Annexure A and at any other times required by the Agreement.

iii. comply with “TfNSW Scheduling Standard – 4TP-ST-123” and provide the Professional Services Contractor’s Program in the latest P6 version (XER format), as a single P6 project, not broken into multiple parts;

iv. develop, status and maintain the Professional Services Contractor’s Program in Primavera P6 on the Principal’s planning environment. The Professional Services Contractor will be given access to the Principal’s planning environment via Citrix at no extra cost to the Professional Services Contractor;

v. ensure that each update to the Professional Services Contractor’s Program is archived within the Principal’s planning environment, and will be able to export the program file (no more than once per week) via a request to the Principal’s Representative. The file will be emailed to the Professional Services Contractor; and

vi. not import any programs into the Principal’s Primavera database. The Principal will import the Professional Services Contractor’s Program into the Principal’s P6 planning environment database, maintain the database security and control the access to the database, but will not make changes to the Professional Services Contractor’s Program without the approval of the Professional Services Contractor.

(b) As a minimum, the Professional Services Contractor’s Program must:

i. define approved Variation activities and/or additional working days in a separate WBS and cost breakdown structure item, so that cost and time of the Variation activities can be clearly distinguished from the original scope;

ii. have a separate WBS structure outlining each step of the design review process for each individual design package; where relevant;

iii. group the activities and milestones in a Work Breakdown Structure (WBS) that is aligned to the payment schedule or other form of cost breakdown structure included in the Agreement;

iv. show Earned Value in accordance with “AS 4817-2006 Project Performance Measurement using Earned Value” and “TfNSW Earned Value Management using Primavera P6 - 4TP-PR-143”;

v. include budgeted cost, actual and actual cost input into the relevant WBS items each month; and
vi. show the Principal's review periods in accordance with the requirements set out in the Agreement.

2.0 Program Setup and Maintenance

(a) The Professional Services Contractor's Program must:

i. include all key activities and deliverables detailed in this TSR and the Agreement and any other activities and deliverables directed by the Principal's Representative;

ii. include requirements for the submission, review and approval of all Documents and other deliverables including the Management Plans and design documentation;

iii. include the required submission and approval timeframes and resources for community notification and consultation;

iv. outline the dates when the Professional Services Contractor will require information, documents, materials or instructions from the Principal and the dates when the Professional Services Contractor will provide information or Documents to the Principal. These dates must be consistent with dates that the Principal could reasonably have anticipated at the date of the Agreement;

v. provide start and finish dates for all elements of the Services (including design, procurement and investigation activities), milestones, Track Possessions, external dependencies, Principal deliverables, Operator/Maintainer deliverables and any other significant events and contractual Dates for Completion;

vi. show the lead times for the supply of information, selection of Subcontractors and suppliers, approvals, and the supply of equipment by the Principal, its agents or persons for whom the Professional Services Contractor is not responsible. Each period must be represented in a separate activity from the Professional Services Contractor's activity for the relevant items;

vii. clearly identify the access requirements and activities, including Track Possessions and any outages;

viii. show activities for Site mobilisation, establishment and demobilisation;

ix. clearly identify the critical path activities and milestones;

x. add and maintain codes, resources and expense activities as directed by the Principal's Representative;

xi. show quantities and rates as requested by the Principal's Representative;

xii. identify time leads and lags, resources and other constraints;

xiii. show calendars identifying the working and non-working days for the activities. Project calendars are to be up-to-date and reflect changes to the available working periods. The calendars must reflect the Global Possession Calendar and Standard Working Calendar which can be provided on request. No other allowances for wet weather or other such contingencies are to be made in the calendars;
xiv. reflect the time scheduled, remaining duration and actual physical progress of the Services, and be consistent with all constraints on access, performance and coordination; and

xv. show allowance for weather and other event contingencies in a single activity at the end of the critical path and prior to Completion.

### 3.0 Program Quality

(a) The Professional Services Contractor must maintain the quality of the Professional Services Contractor’s Program and satisfy the criteria in the table 3.1 Program Quality Thresholds by remaining below the stated acceptable thresholds.

(b) Further assessment criteria and thresholds may be added or modified by the Principal’s Representative. Deviations from the stated thresholds must be approved by the Principal’s Representative prior to being accepted.

(c) The quality of the Professional Services Contractor’s Program will be assessed upon each submission.

#### Table 3.1 Program Quality Thresholds

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Description</th>
<th>Remarks</th>
<th>Acceptable Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Missing Predecessors</td>
<td>Total number of activities that are missing predecessors.</td>
<td>Activities that have missing predecessors are known as open-ended activities. Open ends cause time and risk analysis calculations to be erroneous. Ideally, all open ends should be fixed in a program during the planning phase.</td>
<td>Less than 1%</td>
</tr>
<tr>
<td>Missing Successors</td>
<td>Total number of normal activities that are missing successors.</td>
<td>Activities that have missing successors are known as open-ended activities. Open ends cause time and risk analysis calculations to be erroneous. Ideally, all open ends should be fixed in a program during the planning phase.</td>
<td>Less than 1%</td>
</tr>
<tr>
<td>Merge Hotspot</td>
<td>The total number of activities with a high number of predecessor links.</td>
<td>Also known as merge bias, merge hotspot is an indication as to how complex the start of an activity is. If the number of links is greater than two, then there is a high probability that the activity in question will be delayed due to the cumulative effect of all links having to complete on time in order for the activity to start on time.</td>
<td>Less than 2.5%</td>
</tr>
<tr>
<td>Diverge Hotspot</td>
<td>The total number of activities with a high number of successor links.</td>
<td>A diverge hotspot is an indication as to how complex the end of an activity is. If the number of links is greater than two, then there is a high probability that the activity in question may delay a large number of successors.</td>
<td>Less than 2.5%</td>
</tr>
<tr>
<td>Criteria</td>
<td>Description</td>
<td>Remarks</td>
<td>Acceptable Threshold</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Critical</td>
<td>Number of critical activities</td>
<td>The number of critical tasks within a grouping. Typically critical activities have total finish float of zero. Primavera programs may have critical activities with more than zero float depending on the threshold set in Primavera P6.</td>
<td>No threshold</td>
</tr>
<tr>
<td>0 to 20 Days Float</td>
<td>Total number of activities with positive float of more than zero and less than or equal to 20 days.</td>
<td>Near critical activities should be closely monitored during execution to ensure a successful on-time project.</td>
<td>No threshold</td>
</tr>
<tr>
<td>Hard Constraints</td>
<td>Number of activities with hard or two-way constraints.</td>
<td>Hard or two-way constraints such as Must start on or Must finish on should be avoided. Consider using soft constraints if absolutely necessary. Includes normal activities and milestones that are planned, in-progress, or complete.</td>
<td>Zero</td>
</tr>
<tr>
<td>Soft Constraints</td>
<td>Number of activities with soft or one-way constraints.</td>
<td>Soft or one-way constraints such as start no earlier than or finish no later than, constrain an activity in a single direction. While not as impactful as hard constraints, soft constraints do impact critical path method calculations in a program and should be reviewed carefully.</td>
<td>Zero</td>
</tr>
<tr>
<td>High Float</td>
<td>Excessive free total float</td>
<td>Number of activities with total float greater than 2 months. Activities must be agreed with the Principal’s Representative</td>
<td>Less than 5%</td>
</tr>
<tr>
<td>Negative Float</td>
<td>Total number of activities with total finish float less than 0 working days.</td>
<td>Negative float is a result of an artificially accelerated or constrained program. Negative float indicates that a program is not possible, based on the current Completion dates. Compare this metric to constraint metrics to determine which activities (with negative float) are being impacted by constraints. Ideally, there should not be any negative float in the program. Includes normal activities and milestones that are planned or in-progress.</td>
<td>Zero</td>
</tr>
<tr>
<td>Criteria</td>
<td>Description</td>
<td>Remarks</td>
<td>Acceptable Threshold</td>
</tr>
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<td>---------------------</td>
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<td>-------------------------------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>High Duration</td>
<td>Total number of activities that have a duration longer than 10 days. This number should not exceed 5%.</td>
<td>Total number of activities that have a duration longer than 10 days. Activities must be agreed with the Principal’s Representative.</td>
<td>Less than 5%</td>
</tr>
<tr>
<td>Zero Duration</td>
<td>Normal activities having a Zero duration</td>
<td>Normal activities having a Zero duration</td>
<td>Zero</td>
</tr>
<tr>
<td>Wrong Status</td>
<td>Activities started or completed in the future</td>
<td>All activities with status in the future must be corrected in order to maintain an accurate execution plan. Includes only normal activities and milestones that are in progress or complete</td>
<td>Zero</td>
</tr>
<tr>
<td>SF Predecessors</td>
<td>Total number of activities with Start to Finish (SF) logic links.</td>
<td>Start-to-finish links are deliberately used very rarely because they have the unusual effect that the successor happens before the predecessor. Generally a poor practice when planning. Includes only normal activities and milestones that are planned, in-progress, or complete.</td>
<td>Zero</td>
</tr>
<tr>
<td>Leads and Lags</td>
<td>Lags in excess of 10 days</td>
<td>A lag is a duration applied to a logic link often used to represent non-working time between activities such as concrete curing. Lags tend to hide detail in programs and cannot be “statused” like normal activities. Lags should typically be replaced with activities. Includes normal activities and milestones that are planned, in-progress, or complete.</td>
<td>Zero</td>
</tr>
<tr>
<td>Logic on summaries</td>
<td></td>
<td>A summary is not a true activity. Logic should be tied to activities within the schedule</td>
<td>Zero</td>
</tr>
<tr>
<td>Reverse logic</td>
<td></td>
<td>As a result of a negative lag (a lead), the successor activity starts before their predecessor.</td>
<td>Zero</td>
</tr>
</tbody>
</table>
Annexure E Records
Records are required to be kept in accordance with Annexure A

Part 1 Pre Commencement Property Compliance Checklist

<table>
<thead>
<tr>
<th>#</th>
<th>Issue</th>
<th>Circle relevant answer and add comment</th>
<th>Attachment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Has the Professional Services Contractor been liaising with the Principal's Representative?</td>
<td>Y  N Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Have all properties affected by the project been identified?</td>
<td>Y  N Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Has a list of all affected properties been issued to the Principal's Representative? (where lands have not been supplied already by the Principal)</td>
<td>Y  N Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Is access required to properties owned by other parties?</td>
<td>Y  N provide details Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Are all agreements in place with other landowners to permit the Professional Services Contractor to undertake the Services?</td>
<td>Y  N Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Have all surveys been conducted?</td>
<td>Y  N Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Have all surveys been cross-checked with the designs?</td>
<td>Y  N Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Do any of the proposed Services or fall outside the property / Site boundaries?</td>
<td>Y  N Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>If so, has the Professional Services Contractor got agreements to access the adjoining land?</td>
<td>Y  N Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>#</td>
<td>Issue</td>
<td>Circle relevant answer and add comment</td>
<td>Attachment</td>
</tr>
<tr>
<td>----</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>11</td>
<td>Are new easements, stratums, MOU’s or WAD’s with stakeholders required for the project?</td>
<td>Y  N  Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Have any new easement, stratums, MOU’s or WAD’s been drafted and issued to the Principal’s Representative for review?</td>
<td>Y  N  Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Have all property Pre-commencement Condition Surveys been conducted and submitted?</td>
<td>Y  N  Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Has asset management been considered in design?</td>
<td>Y  N  Comment: [insert text here]</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Are there any other property risks?</td>
<td>Y  N  Comment: [insert text here]</td>
<td></td>
</tr>
</tbody>
</table>

RECEIVED by TfNSW
Signed: ______________________
Received by: ______________________
Date: ______________________

REVIEWED by Principal’s Representative
Signed: ______________________
Name: ______________________
Date: ______________________
Acceptable? (Conforms to Agreement requirements): Y/N provide reasons:

Comments provided: Y/N (attach comments)
No Comments or no further Comments: Y/N
Part 2 Property Records

<table>
<thead>
<tr>
<th>Required Record or Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index of all property records noting issues/versions and where they are held</td>
</tr>
<tr>
<td>Qualifications/skills and competency records of Professional Services Contractor’s personnel (including subcontractors)</td>
</tr>
<tr>
<td>Induction and training records for Professional Services Contractor’s personnel and subcontractors</td>
</tr>
<tr>
<td>Property control and constraints maps (worksite maps)</td>
</tr>
<tr>
<td>List of all adjoining property owners and details of all interaction / communications and complaints</td>
</tr>
<tr>
<td>Evidence of property inputs/outputs within the design development process including any sustainability initiatives</td>
</tr>
<tr>
<td>Surveillance, audit of subcontractors property performance and controls</td>
</tr>
<tr>
<td>Non-conformance and non-compliance property reports and register</td>
</tr>
</tbody>
</table>

Part 3 Environmental Records

<table>
<thead>
<tr>
<th>Required Record or Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copies of all completed forms, templates required under the Codes and Standards, and applicable guidelines.</td>
</tr>
<tr>
<td>Professional Services Contractor’s non compliance, incident, near miss, non conformance reports and register</td>
</tr>
<tr>
<td>Preventive and corrective action reports and register</td>
</tr>
<tr>
<td>Environmental audit reports</td>
</tr>
<tr>
<td>Environmental Control Maps</td>
</tr>
<tr>
<td>Index of all environmental records (prior to Completion)</td>
</tr>
<tr>
<td>Induction and training records</td>
</tr>
<tr>
<td>Records/checklists of inspection and testing</td>
</tr>
<tr>
<td>Records of environmental management reviews for the project</td>
</tr>
<tr>
<td>Register of equipment, calibration frequency and certificates</td>
</tr>
<tr>
<td>Surveillance, audit of Subcontractors environmental performance and controls</td>
</tr>
</tbody>
</table>
Annexure F Working in and Adjacent to the Rail Corridor

The following requirements apply to the Professional Services Contractor, except where otherwise indicated in Annexure A.

1.0 The Operating Railway System

The Professional Services Contractor acknowledges and agrees that:

(a) it is aware that Sydney Trains or another Operator/Maintainer may continue to use areas adjacent to, or within the Site as part of normal operations of the railway system on a commercial basis during the undertaking of the Services;

(b) the continuance of normal operations of the railway system, including within the Site, adjoining areas and railway stations, on a commercial basis by Sydney Trains or another Operator/Maintainer during the performance of the Services must be maintained to the satisfaction of the Operator/Maintainer as notified by the Principal's Representative. The Professional Services Contractor must ensure that the railway system operations and infrastructure are not impeded or interfered with by reason of the performance of the Services, except where this is approved in writing beforehand by the Principal's Representative;

(c) it must maintain and coordinate sufficient access to the railway system, for users and operators, so as not to hinder main traffic routes, including access to and from operating railway station platforms, ticketing areas and the Rail Corridor, and the flow of traffic, including on or accessing the Site and the adjoining areas, except where this is approved in writing beforehand by the Principal's Representative;

(d) it must, in performing the Services, do everything that could be reasonably expected of the Professional Services Contractor to avoid Sydney Trains or another Operator/Maintainer breaching any obligation it may have arising out of or in connection with the continuing operation of the railway system on a commercial basis;

(e) The Professional Services Contractor must:

i. ensure access and egress for Sydney Trains or another Operator/Maintainer and its Contractors/Professional Services Contractors to the Site to undertake regular inspections and to complete maintenance and repairs of the Operator/Maintainer's infrastructure where required;

ii. ensure access and egress to those parts of the Site required by Other Contractors are made available and coordinated so as to minimise any interference with or disruption;

iii. ensure emergency egress routes (including routes to the Rail Corridor and its support system) are maintained at all times and that emergency systems (including the Sydney Trains emergency warning intercommunication system and fire alarm panels) remain operational throughout the duration of the Agreement;

iv. provide a safe place for persons carrying out Rail Track inspections and/or maintenance work, for example, refuges in any hoarding/fencing constructed adjacent to the Rail Track;

v. comply with any Sydney Trains or other Operator/Maintainer standards applicable to the Services including for work that is adjacent to an operating rail line and to live overhead wires;
vi. ensure that whilst undertaking the Services, no employees or Construction Plant (including, for example, by the slewing of cranes) of the Professional Services Contractor, Subcontractors or consultants enter an operating Rail Corridor, except as permitted by Sydney Trains “RailSafe Network Rules”; and

vii. at all times, and to the satisfaction of the Principal’s Representative, carry out the Services in a manner that will ensure the safety of all property and persons, including the general public, travelling public, station lessees, railway traffic, railway system personnel, road traffic and any person associated or engaged in connection with the Services.

2.0 Track possessions

2.1 Arrangements For Track Possessions

(a) The Track Possessions available to the Professional Services Contractor are set out in the Agreement. For each Track Possession to be utilised by the Professional Services Contractor, the Professional Services Contractor must attend and incorporate the requirements from:

i. the “Tier 6 Possession Coordination Meeting” with Sydney Trains held approximately 12 weeks prior to the Track Possession. This meeting will decide the coordination of all activities in the Track Possession, working hours, movements of equipment and work trains in the Track Possession area;

ii. the “Possession Coordination Meeting” with Sydney Trains held approximately two weeks prior to the Track Possession to discuss train movements and safe working; and

iii. the “Pre-Possession Meeting” with Sydney Trains, usually held prior to the Track Possession to confirm the detailed arrangements for the Track Possession and coordinate the activities of each party working in the Track Possession.

(b) For each Track Possession to be utilised by the Professional Services Contractor, the Professional Services Contractor must conform to the requirements of the relevant Rail Transport Operator.

(c) If a Track Possession involves an asset or partial asset being handed over to the Asset Owner or Operator/Maintainer (even if only for maintenance prior to it being commissioned), a Commissioning event and formal Asset Handover will be required. In these circumstances, the following documents appertaining to the assets being handed over are required to be submitted to the Principal’s Representative for review at least six weeks prior to the Track Possession:

i. Safe Work Method Statements;

ii. residual risk assessments;

iii. relevant Configuration Materials including operations and maintenance manuals, drawings, as directed by the Principal’s Representative;

iv. design documentation; and

v. any other Contract Material required, as directed by the Principal’s Representative.
Where power isolation is required, the Professional Services Contractor must specify what power is required to be shut down and the time and duration required for the power isolation. This information must be submitted to the Principal's Representative for review, in accordance with the Agreement at least 16 weeks prior to each Track Possession.

2.2 Interface Arrangements During Track Possessions

(a) The Professional Services Contractor may not have exclusive access to any Rail Tracks or areas within the vicinity of Rail Tracks during a Track Possession. The Professional Services Contractor must coordinate the Services with those sharing the Track Possession, including parties involved in the operation or maintenance of the rail system and Other Contractors. This includes, where required, the Professional Services Contractor allowing for Operator/Maintainers' contractors and Other Contractors to pass through the worksites during the Track Possessions.

(b) The extent of Operator/Maintainers Contractors and Other Contractors activities on or within the vicinity of the Rail Track during Track Possessions will be determined at the "Tier 6 Possession Coordination Meeting".

(c) The Professional Services Contractor must ensure that all persons invited or brought onto the Site by the Professional Services Contractor or Other Contractors, and those who enter an area within the Rail Corridor undertake all necessary Site inductions and obey all directions given by the Worksite Protection Personnel.

(d) Prior to the end of the Track Possession, an appropriately qualified inspector holding the appropriate competencies must approve adequate completion of the relevant works and sign off on "Sydney Trains Certificate of Practical Completion/Certification (W42F01)".

(e) Any Defects listed on W42F01 must be rectified by the Professional Services Contractor to the satisfaction of the Principal's Representative within 5 Business Days of the issue of the relevant W42F01.

(f) The Principal's Representative may alter, cancel or curtail any Track Possession at any time.

2.3 Requesting Additional Track Possessions

(a) It is unlikely that, in addition to those specified in the Agreement, weekend Track Possessions, the Operator/Maintainer’s resources and/or Track Possessions (with or without power) in overnight periods when trains are not running, will be available. If the Professional Services Contractor requires additional Track Possessions, power isolation and/or the Operator/Maintainer’s resources, they are to be arranged by the Professional Services Contractor at the Professional Services Contractor’s own cost. This includes reimbursing the Principal's Representative for any costs that it incurs in respect of granting the additional Track Possessions and procuring the Operator/Maintainer’s resources.

(b) The Professional Services Contractor must provide a written request for additional Track Possessions or power isolation of overhead and transmission lines with a notice period as specified in the Agreement.

(c) Upon a written request by the Professional Services Contractor, the Principal will seek to facilitate obtaining additional Track Possessions, power isolations and/or the Operator/Maintainer’s resources for the Professional Services Contractor by arranging a meeting between the Professional Services Contractor and the Operator/Maintainer. At this meeting or subsequent meetings, possible dates for
Track Possessions, power isolations and/or additional Operator/Maintainer’s resources may be identified.

(d) The Principal does not guarantee the granting of, and is not obliged to arrange additional Track Possessions, power isolations or Operator/Maintainer resources on any particular date, or at all.

2.4 Planning and Managing Track Possessions

To ensure that Track Possessions are managed effectively and safely, the Professional Services Contractor must:

(a) prepare, maintain and update policies and procedures for planning and managing Track Possession work in accordance with the “Sydney Trains Possession Manual”;

(b) prepare and submit to the Principal’s Representative for review for conformance with the “Sydney Trains Possession Manual”, six weeks prior to each Track Possession:

i. a consolidated plan comprising all information required in advance of the Track Possession including that detailed in the “Sydney Trains Possession Manual”; and

ii. a program including:

A. the elements of the Services to be completed prior to the Track Possession;

B. an hour by hour breakdown of the elements of the Services to be carried out during the Track Possession;

C. milestones and the time and date by which they must be achieved so as to ensure that the rail infrastructure can be reinstated within the allocated time and which, if not achieved by the nominated time, would result in the Professional Services Contractor bringing work to an end and commencing reinstatement of the rail infrastructure and other works to avoid a delay in returning the Track Possession and/or delays to trains;

D. adequate allowance of time at the beginning and end of the Track Possession to safely remove and reinstate the affected rail infrastructure to operational condition and for providing and removing safeworking protection and the Operator/Maintainer inspections and certifications;

E. the specific risks to be managed during the Track Possession and the procedures to be followed in managing these risks;

F. any potential interface issue in any way connected with work carried out by an Other Contractor or involving the Operator/Maintainer’s operational and maintenance activities; and

G. progress/program review meetings scheduled during the Track Possession as requested by the Principal’s Representative and/or the Operator/Maintainer.

(c) The Professional Services Contractor must immediately comply with any instructions by the Principal’s Representative to vary the program described in clause 2.4 (b) of this Annexure F or curtail the Services if the Principal’s Representative considers...
that continuing with intended Works will result in a delay to returning the Track Possession and/or delay to trains.

2.5 Certification of Work in Track Possessions

(a) Before handover of an area at the end of any Track Possession the Professional Services Contractor must provide to the Principal and, if required by the Principal’s Representative, to the Operator/Maintainer as well; the following:

i. for any form of civil or structural works that will support operating Rail Track, written certification by the Professional Services Contractor’s designers (including design Subcontractors) that the relevant works are safely able to support the operating rail infrastructure;

ii. for any adjustments to or interruptions of service to signalling, track, overhead wiring or high voltage infrastructure, written certification from the Professional Services Contractor’s designers (including design Subcontractors) that such infrastructure is suitable for operations and complies with the approved design;

iii. for any adjustments to or interruptions of service to signalling, overhead wiring or high voltage infrastructure, written certification from a Sydney Trains (or other relevant Operator/Maintainer’s) representative that such infrastructure is suitable for operations; and

iv. all other infrastructure certification as required by Sydney Trains or the relevant Operator/Maintainer and/or Asset Owner.

3.0 Rail Safety

3.1 Project Work Notification and Work Activity Advice

(a) The Professional Services Contractor must:

i. complete and submit the relevant Operator/Maintainer’s Project Work Notification or other applicable document to the Principal’s Representative at least six weeks prior to the planned works, including any works in a Track Possession.

ii. comply with the requirements of the “TfNSW/Rail Transport Operator Safety Interface Contract”.

iii. Produce a Work Activity Advice (WAA) using the form “TfNSW Work Activity Advice Form – 4TP-FT-105,” 4 weeks prior to the commencement of the Services. Each WAA must cover a particular part of the Services and include the SWMS applicable to that part of the Services; and

iv. conduct a pre-work briefing with all personnel involved, including the Protection Officer as defined in the RailSafe Network Rules and Procedures, prior to commencing.

3.2 Competencies

(a) The Professional Services Contractor must provide the Principal’s Representative with a list of position descriptions which identifies whether each position is a Rail Safety Worker. The Principal may require alteration of the designation of Rail Safety Workers as nominated by the Professional Services Contractor.
(b) Any person supervising or setting up safe work arrangements for the Services on or in the vicinity of the Rail Corridor must hold the qualifications required by the Rail Transport Operator and the Principal.

(c) The Professional Services Contractor must ensure that no person undertakes Rail Safety Work unless they have been issued with a certificate of competency under the Rail Safety National Law.

(d) The Professional Services Contractor must consult with the Principal’s Representative to obtain a determination as to when the RIW card is required. The Professional Services Contractor must ensure that any visitors required to enter the Rail Corridor complete the relevant safety inductions.

3.3 Fatigue Management, Medical and Health Management

For workers carrying out Rail Safety Work the Professional Services Contractor must apply the following fatigue, medical and health minimisation controls:

(a) implement a fatigue management program that:
   i. addresses the requirements of the Rail Safety National Law and this Agreement;
   ii. restricts workers to no more than 12 hours worked at a time not including travel time to and from work, unless there is a declared Incident in which case work can be performed up to a maximum of 16 hours at a time, as long as workers are not required to drive a motor vehicle or operate heavy plant or equipment after the 12th hour;
   iii. restricts workers that have worked more than 12 hours from driving after finishing work;
   iv. includes periods of 11 hours rest away from work;
   v. restricts the maximum number of work days to 12 work days in 14 consecutive days;
   vi. minimises to five consecutive occasions where eight hours are worked at night (i.e. after normal office hours) or four consecutive occasions where 10 hours are worked at night or three consecutive occasions where 12 hours are worked at night without a 48 hour rest break;
   vii. ensures employees receive a minimum of 48 consecutive hours free of work in a 14-day period; and
   viii. has the capacity to replace or relieve workers where unplanned or unavoidable extended hours have created a risk to employee health and safety;
(b) inform such persons that they are subject to medicals and health assessments in accordance with the "National Standard for Health Assessments of Rail Safety Workers";
(c) ensure that the "National Standard for Health Assessments of Rail Safety Workers" are undertaken and documented including re-examinations. The documented records must be maintained according to the State Records Act 1998 (NSW); and
(d) inform such persons that additional medical and health assessments may be required to be undertaken where they are involved in a safety accident or where
there is reasonable cause for concern that person may be unable to perform work safely (such as upon return from a long illness).

3.4 Work on Track Methods for Working Safely

(a) Unless specified by the issue of a safeworking notice by the Principal's Representative, the primary work on track methods for working safely are summarised as follows:

i. “Construction Site” - A worksite under construction without any rail traffic movements, or traction power systems being installed. Worksite Protection and RIW Identification are not required; and

ii. “TfNSW Rail Site” - A Principal's Representative managed and controlled rail-site which has no interface access with other rail sites or rail systems.

(b) Services within or potential to impact the Danger Zone requires Local Possession Authority in accordance with the RailSafe Network Rules and Procedures.

(c) Should a TfNSW Rail Site encroach on the Danger Zone of any other adjoining Rail Transport Operator rail-sites, then:

i. adjacent line protection must be implemented and managed in accordance with the rules of the adjoining Rail Transport Operator; and

ii. an access interface is considered removed if points that allow entry and exit to the rail-site are secured and a physical barrier is established at the limits of the TfNSW Rail Site.

(d) Where the Services are undertaken within a rail-site managed and controlled by another accredited Rail Transport Operator, the other Rail Transport Operator’s Network Rules and Procedures apply.

3.5 Worksite Protection Personnel

(a) Worksite Protection is required for carrying out any Services within the Rail Corridor in accordance with the RailSafe Network Rules and Procedures and/or the requirements of the Rail Transport Operator.

(b) The Worksite Protection Personnel are required to hold a minimum of Worksite Protection Personnel level 2 accreditation (P02).

(c) The Worksite Protection Personnel must brief all personnel undertaking the Services on the Worksite Protection arrangements at the Site at the start of each shift or as is otherwise required (and agreed by the Principal's Representative).

(d) Where the Principal is to provide the Worksite Protection Personnel, the Professional Services Contractor must provide 10 Business Days' notice in writing to the Principal's Representative requesting the number of Worksite Protection Personnel required.

3.6 Use of Rolling Stock, Hi-Rail Vehicles and Work Trains

(a) Rolling stock and rail traffic are not permitted to travel or operate on the Site without the approval of the Principal.

(b) The Principal's Representative may also impose requirements, limitations and constraints on rail traffic travelling or operating on the Site.

(c) To the extent that any part of the Services requires the use of hi-rail vehicles or work trains the Professional Services Contractor must:
i. ensure that such vehicles are only operated by persons with appropriate competencies and by an organisation which holds accreditation as a “Rolling Stock Operator” (as that term is defined under the Rail Safety National Law);

ii. ensure that hi-rail vehicles are duly checked and certified as being fit for their intended use at the start of each shift;

iii. ensure the hi-rail vehicle has been certified as compliant and safe to use with the hi-rail modifications by the Original Equipment Manufacturer (or an independent competent engineer, including from a WHS and rail safety perspective);

iv. ensure that the utilisation of hi-rail vehicles or work trains is appropriately addressed in the Professional Services Contractor’s procedures to ensure safe operations, to prevent injury and damage to infrastructure and to ensure that responsibilities are identified and documented;

v. assess the past record of potential Subcontractors to ensure that they comply with the Rail Safety National Law and relevant rail accreditation requirements. The results of these assessments must be made available to the Principal’s Representative upon request;

vi. set out and carry out regular reviews of the performance of train and hi-rail operators engaged for the undertaking of the Services (including at least one review after each major Track Possession or Incident, or in any event every three months). The results of these reviews must be made available to the Principal’s Representative upon request; and

vii. only use rolling stock, hi-rail vehicles and work trains authorised on the Vehicle Registration Database.

3.7 Swing Arm Plant – Rail Environment

(a) The Professional Services Contractor must ensure the use of restrictors for swing arm plant.

(b) The Professional Services Contractor’s activity planning process must include the validation of the proposed method of work to be carried out on the day. This validation process must include the completion of a site-specific risk assessment and development of a plant working diagram by the Professional Services Contractor in conjunction with the Project Rail Safeworking Coordinator and any other required project personnel.

(c) The Professional Services Contractor’s pre-work briefing must include the following items:

i. description of swing arm plant and equipment being used, including the type of restrictor(s) being used;

ii. details of the “line in the sand” for the positioning of the chassis of the swing arm plant or equipment being used (including consideration of the size and reach of the swing arm plant or equipment);

iii. arrangements for the provision of a spotter;

iv. reference to the details included in the Worksite Protection Plan prepared by the Protection Officer that includes swing arm plant considerations; and
v. in the case of operations involving the use of a crane, details of the lifting plan.
3.8 Rail Safety Worker Assessments.

The Professional Service Contractor must assure the competence of their Rail Safety Workers by one of the following methods:

(a) to the extent that the Professional Service Contractor has its own competence management system (regardless of whether or not it is an RTO in its own right), the Professional Service Contractor must demonstrate and provide evidence that the requirements and criteria of the TfNSW Rail Safety Competency Standard 60-ST-153 have been met. A component of the demonstration will necessitate an assessment by the Principal of the Professional Service Contractor's competence management system to verify that its system meets the requirements of this Standard.

(b) to the extent that the Professional Service Contractor does not have its own competence management system, they will be required to demonstrate that the Professional Service Contractor can meet the competencies required to undertake Rail Safety Work via assessment as part of the TfNSW competence management process.
Annexure G Sustainability and Climate Change

1.0 Sustainability Requirements

Where nominated in Annexure A, the Professional Services Contractor must:

(a) comply with the “TfNSW NSW Sustainable Design Guidelines” to meet a minimum design rating of Silver, Gold or Platinum, as indicated in Annexure A.

(b) submit a completed “TfNSW NSW Sustainable Design Guideline Checklist” in electronic format to the Principal’s Representative for review and comment at the interval stated in Annexure A, confirming compliance with the requirements of “TfNSW NSW Sustainable Design Guideline Checklist”.

(c) prepare and submit to the Principal’s Representative for review and comment, a Greenhouse Gas Inventory Report using the “TfNSW Carbon Estimation and Reporting Tool (CERT)” at each of the following stages:
   i. SDR or equivalent design stage (20% design);
   ii. CDR or equivalent design stage (100% design); and

(d) prepare and submit for review and comment by the Principal’s Representative, a Climate Risk Assessment (CRA) Report in accordance with the “TfNSW Climate Risk Assessment Guidelines – 9TP-SD-081” at the commencement of SDR (or equivalent) stage of design. This report must, as a minimum:
   i. identify any project-specific climate change risks (utilising climate modelling data);
   ii. recommend risk mitigation measures to reduce the identified climate risks; and outline how risk mitigation measures will be addressed through the design process to reduce “extreme”, “high” and “medium” risks to “low” where practicable; and
   iii. demonstrate how the recommended risk mitigation measures will carry through to the on-site activities and could be applied in the operational phase of the project.

(e) register the project with the Infrastructure Sustainability Council of Australia and obtain a minimum ‘design’ rating of ‘commended’, ‘excellent’ or ‘leading’.

(f) demonstrate, by inclusion in the Contract Management Plan and other relevant Sub plans, their:
   i. Corporate or project-specific equal employment opportunity Policy or Guideline and how its requirements will be implemented; and
   ii. A learning and development program that is specific to the project.

2.0 NSW Government Resource Efficiency Policy (GREP)

Where nominated in Annexure A, the Professional Services Contractor must:

(a) make available documents and evidence to assure the Principal that the Services are compliant with the requirements of the GREP policy;

(b) comply with the following requirements, to the extent they apply to the Services:
   i. E3. Minimum standards for new electrical appliances and equipment;
   ii. E4. Minimum standards for new buildings, such that all new office
buildings and fit-outs will be designed and built to a predicted performance of at least 4.5 stars for NABERS energy rating. For building types other than office buildings and fit outs, and where the facilities have projected development costs over $10 million, the buildings must be designed and built so that energy consumption is predicted to 10% lower than if built to minimum compliance with National Construction Code requirements;

iii. W3. Minimum standards for new water using appliances; and


(c) prepare the following reporting tools in the form provided by the Principal, and submit to the Principal’s Representative for review and comment:

i. an inventory of non-road diesel vehicles to be used in carrying out the Services, within 1 month of the date of the Agreement, and subsequently, annually (where the duration of the Agreement is of more than 1 year) – using "TfNSW Air Emission Data Collection Workbook – 9TP-FT-439"; and

ii. a "TfNSW Waste Data Collection Worksheet 9TP-FT-436" to be submitted annually, by no later than the last Friday of the second week in August.
Annexure H Professional Services Contractor’s Monthly Report

The Professional Services Contractor must provide a monthly report on the 25th day of each month, which includes the following information for the previous 30 days:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>A summary of the status of progress at the end of the previous month, as compared to the current Professional Services Contractor’s Program and the Contractor’s other programs including photographs</td>
</tr>
<tr>
<td>B</td>
<td>An A3 size PDF copy of the Professional Services Contractor’s Program</td>
</tr>
<tr>
<td>C</td>
<td>Planned activities over the forthcoming 3 month period</td>
</tr>
<tr>
<td>D</td>
<td>A list and timing of Hold Points and Witness Points planned for the forthcoming 3 month period (if applicable);</td>
</tr>
<tr>
<td>E</td>
<td>The status of any Document, design documentation, Contract Material or other deliverables, major procurement orders, Subcontracts, and the overall delivery of the Services</td>
</tr>
<tr>
<td>F</td>
<td>Dates for the anticipated submission of design packages at key stages of the design as defined in the Services Brief;</td>
</tr>
<tr>
<td>G</td>
<td>The actual number and categories of personnel and equipment currently engaged by the Professional Services Contractor to carry out the Services (including apprentices and those engaged in off-site functions such as engineering and specialist Subcontractors). This data must also be compared with the planned resources</td>
</tr>
<tr>
<td>H</td>
<td>A summary of the financial status of the Agreement, including detailed final cost forecasts, and separate lists for the cost of approved Variations, claims and outstanding claims for Variations</td>
</tr>
<tr>
<td>I</td>
<td>Where applicable, the status of any activities against all the requirements of approvals from Authorities, including planning consents</td>
</tr>
<tr>
<td>J</td>
<td>Safety statistics in a format agreed with the Principal’s Representative</td>
</tr>
<tr>
<td>K</td>
<td>Details of any reportable Incidents;</td>
</tr>
<tr>
<td>L</td>
<td>A consolidated SWMS register showing active and completed SWMS</td>
</tr>
<tr>
<td>M</td>
<td>Any non compliances or non conformances of the Services in relation to the Agreement, approvals from Authorities and other obligations in Law and the steps taken by the Professional Services Contractor to address those non compliances or non conformances</td>
</tr>
<tr>
<td>N</td>
<td>Records of all corrective and preventative actions taken by the Professional Services Contractor and audits of such actions</td>
</tr>
<tr>
<td>O</td>
<td>Cooperation, coordination, industrial relations and interface matters with Other Contractors</td>
</tr>
<tr>
<td>P</td>
<td>Summary updates relating to community issues and potential community issues</td>
</tr>
<tr>
<td>Q</td>
<td>Details of all community contacts (detailing issues, frequency, outcomes, dates etc.) from CMS</td>
</tr>
<tr>
<td>R</td>
<td>A written summary covering the completed Services and upcoming activities including any associated community impacts, in a form suitable for inclusion on the Principal’s website</td>
</tr>
<tr>
<td>Column</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>-------------</td>
</tr>
<tr>
<td>S</td>
<td>Details of complaints and enquiries received by the Professional Services Contractor in relation to the Services</td>
</tr>
<tr>
<td>T</td>
<td>Activities of a mediator or similar process where established under the Agreement</td>
</tr>
</tbody>
</table>
| U      | Details of the status, implementation, operation and effectiveness of risk identification and mitigation measures including:  
  i. a report on the risks deemed 'extreme' or 'high' within the risk register;  
  ii. an overview of the full risk register (e.g. number of risks by category and rating, number of new risks identified and risks closed out during the previous month);  
  iii. the status of associated controls and tasks; and  
  iv. any results of risk audits |
| V      | Where the Services include signalling system works, the progress report must also include a one page summary of the status of signalling design packages |
| W      | Details of any property related matters including property claims; and |
| X      | Any other information the Principal's Representative reasonably requires |
Annexure I Reference Documents

The following TfNSW authored documents, referenced in this TSR are not publicly available, and will be supplied as part of the Agreement.

- TfNSW Environmental Incident/Non-Compliance Report 9TP-FT-101
- TfNSW Pre-Construction Minor Works Approval 9TP-FT-202
- TfNSW Generic Work Health and Safety Operational Risk Register 30-SD-101
- TfNSW Generic Rail Safety Risk Register 30-SD-038.
- TfNSW WCAG 2.0 Quick reference guide
- TfNSW Editorial Style Guidelines
- TfNSW Property Compliance Register 2TP-ST-175
- TfNSW Earned Value Management using Primavera P6 4TP-PR-143
- TfNSW Scheduling Standard 4TP-ST-123
- TfNSW Work Activity Advice Form 4TP-FT-105.
- TfNSW Waste Data Collection Worksheet 9TP-FT-436
- TfNSW Guide to Compliance Monitoring and Reporting using PECOMS 9TP-SD-012
- TfNSW Fatigue Management Standard ST-011
- TfNSW Rail Safety Competency Standard 60-ST-153
- TfNSW Working Near Utilities Standard 4TP-ST-107
# TfNSW Standard Requirements (PSC) ANNEXURE A

**5TP-FT-351/2.0**  
Template – Applicable to Infrastructure and Services

### Integrated Management System

<table>
<thead>
<tr>
<th>Status:</th>
<th>Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Version:</td>
<td>2.0</td>
</tr>
<tr>
<td>Section:</td>
<td>Commercial</td>
</tr>
<tr>
<td>Business unit:</td>
<td>Procurement</td>
</tr>
<tr>
<td>Date of issue:</td>
<td>13 February 2018</td>
</tr>
<tr>
<td>Review date:</td>
<td>13 February 2019</td>
</tr>
<tr>
<td>Audience:</td>
<td>Project Delivery/For use with the PSC templates</td>
</tr>
<tr>
<td>Asset classes:</td>
<td>☑ Heavy Rail; ☑ Light Rail; ☑ Multi Sites; ☑ Systems; ☑ Fleets</td>
</tr>
<tr>
<td>Project delivery model:</td>
<td>I&amp;S Project/Alliance/Novo Rail</td>
</tr>
<tr>
<td>Project type:</td>
<td>For all project types</td>
</tr>
</tbody>
</table>
| Project lifecycle: | ☑ Feasibility; ☑ Scoping; ☑ Definition;  
|                    | ☑ Construction readiness; ☑ Implementation;  
|                    | ☑ Finalisation; ☑ Not applicable |
| Process owner:     | Director Commercial |

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Document History

<table>
<thead>
<tr>
<th>Version</th>
<th>Date of approval</th>
<th>Doc. control no.</th>
<th>Summary of change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>18 February 2016</td>
<td>4787908_1</td>
<td>Created to be used with consolidated TSR (PSC)</td>
</tr>
<tr>
<td>2.0</td>
<td>13 February 2018</td>
<td>4787908_6</td>
<td>Created and amended post review to be used with updated TSR (PSC)</td>
</tr>
</tbody>
</table>

This document has been drafted to be used as an annexure to version 3.0 of TfNSW Standard Requirements (PSC) 5TP-FT-410, only and should not be used with other versions.

TfNSW authored documents referenced within this document can be found on TfNSW’s website: http://www.transport.nsw.gov.au/projects under the “Working with us” and “Environmental Services” Menu Tabs.
Additional Project Requirements

A1 Definition of “Site”

<table>
<thead>
<tr>
<th>Clause</th>
<th>Site Means</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annexure B Definitions</td>
<td>(a) the lands and other places described as Circular Quay Precinct; and (b) any other lands and places made available to the Professional Services Contractor by the Principal for the purpose of this Agreement.</td>
</tr>
</tbody>
</table>

A2 Contract Management Plan clause 2.2

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Is one Required?</th>
<th>Initial Submission Timing</th>
<th>Frequency of Update</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Management Plan (see also A14 for its sections and sub plans)</td>
<td>Yes</td>
<td>T1</td>
<td>12 months</td>
</tr>
</tbody>
</table>

Legend

T1 15 Business Days after the date of this Agreement
T2 30 Business Days after the date of this Agreement
T3 10 Business Days prior to the commencement of investigations.
T4 15 Business Days prior to the commencement of design.
T5 Concurrent with the first PDR (or equivalent) design package submission.
T6 Concurrent with the first CDR (or equivalent) design package submission.
T7 30 Business Days prior to the commencement of Site mobilisation.
T8 10 Business Days prior to the commencement of Site mobilisation.
T9 [Other – Define here]

A3 Professional Services Contractor’s Program clause 2.3 & Annexure D

<table>
<thead>
<tr>
<th>Clause</th>
<th>Item</th>
<th>Requirement</th>
<th>Add Insertion</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.3 Professional Services Contractor’s Program</td>
<td></td>
<td>The professional Services Contractor must provide a program</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The program must be in P6 and must comply with Annexure D</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Date first program is required</td>
<td>per Annexure D</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Monthly updates required?</td>
<td>per Annexure D</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Update submission timeframe</td>
<td>per Annexure D</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Required status date for program update</td>
<td>per Annexure D</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Required to develop, status and maintain the program within the Principal’s planning environment</td>
<td>per Annexure D</td>
</tr>
</tbody>
</table>

A4 Principal’s Document Management Tool clause 2.4
Clause Requirement

2.4 Yes, the Principal will administer the document deliverables using the Principal's electronic document management tool.

The nominated electronic document management tool is InEight.

A5 Monthly Reporting clause 2.5

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.5</td>
<td>A report is due monthly.</td>
</tr>
</tbody>
</table>

A6 Principal Provided Training clause 2.7

No Principal provided training is nominated.

A7 Compliance Monitoring System clause 3.1 (b)

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use PECOMS to undertake self-regulation to confirm that all the Services are compliant with all Authority approvals (including the EPL).</td>
<td>No</td>
</tr>
<tr>
<td>Implement a PECOMS reporting structure in addition to any other reporting requirements for the Agreement (and follow the applicable parts of &quot;TfNSW Guide to Compliance Monitoring and Reporting using PECOMS - 9TP-SD-012&quot;).</td>
<td>No</td>
</tr>
</tbody>
</table>

A8 Consistency Checklist clause 3.1 (d)

Consistency checklists and Environmental Reviews, in the format provided by the Principal, unless otherwise agreed, are to be completed by the Professional Services Contractor and provided to the Principal's Representative for review in circumstances where Services are likely to deviate from the approved project. Where inconsistency with the approved project exists or is likely to exist, the Professional Services Contractor may request the Principal seek a project modification. Under such circumstances, it is the Professional Services Contractor's responsibility to provide the necessary reports, studies and final submission to the Principal's Representative to justify the modification. Any modification must detail property, environmental, community and all other related impacts.

A9 Professional Services Contractor's Environmental Management System clause 3.2 (c)

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Is an Environmental Management System accredited under ISO 14001:2004 required?</td>
<td>No</td>
</tr>
<tr>
<td>(ii) If No in (i) above, is an Environmental Management System required.</td>
<td>No</td>
</tr>
</tbody>
</table>

A10 Environmental Control Maps clause 3.2 (e)

The Professional Services Contractor must develop, implement and maintain Environmental Control Maps (ECMs).

A11 Safety Management clause 4.1 (c)
### A12 Communications, Stakeholder and Community Liaison clause 5

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Is this clause (clause 5) deleted in its entirety</td>
<td>No</td>
</tr>
<tr>
<td>5.1</td>
<td>General Requirements</td>
<td>No</td>
</tr>
<tr>
<td>5.2</td>
<td>Meetings with Community &amp; Stakeholders</td>
<td>No</td>
</tr>
<tr>
<td>5.3</td>
<td>Communications Management Control Group requirements</td>
<td>No</td>
</tr>
<tr>
<td>5.4</td>
<td>Communications Materials and Notifications</td>
<td>No</td>
</tr>
<tr>
<td>5.5</td>
<td>Communications Management System</td>
<td>No</td>
</tr>
<tr>
<td>5.6</td>
<td>Complaints and Enquiries</td>
<td>No</td>
</tr>
<tr>
<td>5.7</td>
<td>Site</td>
<td>No</td>
</tr>
</tbody>
</table>

### A13 Property Management clause 6

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.2</td>
<td>Pre-commencement property risk assessment to be carried out?</td>
<td>No</td>
</tr>
<tr>
<td>6.6</td>
<td>Pre and Post Commencement Condition Surveys required?</td>
<td>No</td>
</tr>
<tr>
<td>6.7</td>
<td>Pre commencement property compliance checklist</td>
<td>No</td>
</tr>
</tbody>
</table>

### A14 Contract Management Plan Sections & Sub Plans Annexure C

<table>
<thead>
<tr>
<th>Content</th>
<th>Must the CMP include this Content?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Management Section</td>
<td>Yes</td>
</tr>
<tr>
<td>Digital Engineering Section</td>
<td>Yes</td>
</tr>
<tr>
<td>Site Management Section</td>
<td>No</td>
</tr>
<tr>
<td>Commuter and Passenger Management Section</td>
<td>No</td>
</tr>
<tr>
<td>Traffic Management Section</td>
<td>No</td>
</tr>
<tr>
<td>Audit Management Section</td>
<td>No</td>
</tr>
<tr>
<td>Risk Management Section</td>
<td>Yes</td>
</tr>
<tr>
<td>Environmental Management Sub Plan</td>
<td>No</td>
</tr>
<tr>
<td>Communications Liaison Management Sub Plan</td>
<td>No</td>
</tr>
<tr>
<td>Property Management Sub Plan</td>
<td>Yes</td>
</tr>
<tr>
<td>Work Health and Safety Management Plan</td>
<td>No</td>
</tr>
<tr>
<td>Workplace Relations Management Plan</td>
<td>No</td>
</tr>
<tr>
<td>Digital Engineering Execution Plan (Sub Plan)</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### A15 Records – Annexure E

<table>
<thead>
<tr>
<th>Required Record or Reference</th>
<th>Applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Professional Services Contractor must provide the records listed in Part 1 – Pre-Commencement Property compliance checklist</td>
<td>No</td>
</tr>
<tr>
<td>The Professional Services Contractor must provide the records listed in Part 2 – Property Records</td>
<td>No</td>
</tr>
<tr>
<td>The Professional Services Contractor must provide the records listed in Part 3 – Environmental Records</td>
<td>No</td>
</tr>
</tbody>
</table>

### A16 Working In or Adjacent to the Rail Corridor – Annexure F

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does Annexure F apply? Partial. See Clause A18</td>
<td>Yes, Partial</td>
</tr>
</tbody>
</table>

### A17 Sustainability Requirements - Annexure G

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 (a)</td>
<td>The Services must meet a minimum design rating. (See Clause A18)</td>
<td>Yes</td>
</tr>
<tr>
<td>1.0 (b)</td>
<td>The Professional Services Contractor must submit a completed checklist every month.</td>
<td>Yes</td>
</tr>
<tr>
<td>1.0 (c)</td>
<td>The Professional Services Contractor must prepare and submit the CERT at each of the following stages:</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>a. Preliminary Concept Design package</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>b. Final Concept Design Package.</td>
<td></td>
</tr>
<tr>
<td>1.0 (d)</td>
<td>The Professional Services Contractor must prepare and submit a Climate Risk Assessment (CRA) Report. (see Portion 1 services – Preparation of Additional ECI Information Documents)</td>
<td>Yes</td>
</tr>
<tr>
<td>1.0 (e)</td>
<td>The Professional Services Contractor must register the project with the Infrastructure Sustainability Council of Australia.</td>
<td>Yes</td>
</tr>
<tr>
<td>1.0 (f)</td>
<td>The Services must meet as a minimum rating for ‘design,’ as determined by the PSC’s Sustainability Framework (see Portion 1).</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>The Professional Services Contractor must demonstrate, by inclusion in the Contract Management Plan or other relevant Management Plan, their:</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>i. Corporate or project-specific equal employment opportunity Policy or Guideline and how its requirements will be implemented; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ii. A learning and development program that is</td>
<td></td>
</tr>
<tr>
<td>Clause/Para/Line</td>
<td>Project Specific Requirement</td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>------------------------------</td>
<td></td>
</tr>
<tr>
<td>Annexure F</td>
<td>The PSC may be required to undertake inspections in the rail corridor, but physical works are excluded from the scope of the Contract. Sections 2.1, 2.2, 3.1, 3.2, 3.3, and 3.5 apply to any inspection work to be undertaken in the rail corridor.</td>
<td></td>
</tr>
<tr>
<td>Annexure G</td>
<td>The PSC will be required to provide evidence its design meets the sustainability ratings for the tools identified in the CQPR Program's Sustainability Framework, which itself is to be produced by the PSC under Portion 1 Production of Additional ECI Information Documents.</td>
<td></td>
</tr>
</tbody>
</table>
## Appendix B – Proposed FBC Structure

### Table 9: Draft FBC structure

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Owner/Support</th>
<th>Key inputs / Reviews</th>
</tr>
</thead>
</table>
Appendix C – Proposed Register of FBC Appendices

The list below provides an indicative list of FBC Appendices, as well as identifies the Professional Services Contractor and contract package responsible for the deliverable.

Table 10: Indicative list of FBC Appendices
Appendix D - INSW Gate 2 requirements
The Services must meet the requirements specified by INSW Gate 2 workbooks, available at:

EXHIBIT B – SERVICES & DELIVERABLES PROGRAM