



**Transport  
for NSW**

## **Transport for NSW**

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### **PROFESSIONAL SERVICES CONTRACT**

Contract No. ISD-18-7482

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New Intercity Fleet (NIF) Program  
Automatic Selective Door Operation  
Data Design

Between

**Transport for NSW**

**[PRINCIPAL]**

ABN 18 804 239 602

and

**Alstom Transport Australia Pty Ltd**

**[PROFESSIONAL SERVICES CONTRACTOR]**

ABN 68 165 157 451

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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 could be found on [www.asa.transport.nsw.gov.au](http://www.asa.transport.nsw.gov.au).

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

**"ASDO"** means Automatic Selective Door Operation as described in section 1.2 of Exhibit A.

**"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.asa.transport.nsw.gov.au](http://www.asa.transport.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 Project, 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.

**"CCB Gate 4"** has the meaning given in the Services Brief.

**"CCB Gate 5"** has the meaning given in the Services Brief.

**"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.

**"Competency Certificate"** means a certificate of competency issued by the Professional Services Contractor in accordance with section 2.1 of the Services Brief.

**"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.

**"Consequential Loss or Damage"** means loss of revenue, loss of profit or anticipated profit, loss of patronage, loss of sales, loss of turnover, loss of reputation (or damage to it), loss of production, loss of anticipated savings, loss of goodwill or loss arising from business interruption and any other loss or damage of a similar nature arising under, out of or in any way in connection with this Agreement, whether arising in contract, under an indemnity, in tort (including negligence), in equity, by operation of law or otherwise.

**"Construction Contractor"** means the contractor who will undertake the installation, testing, commissioning and handover of the NIFASDO trackside works.

**"Contract Area"** means the geographical location between:

- (a) Newcastle Interchange to Broadmeadow; Adamstown to Cardiff; Cockle Creek to Warnervale; Wyong to Wondabyne; Hawkesbury River to Cowan; Berowra to Eastwood; Strathfield to Central;

- (b) Lithgow to Lapstone; Emu Plains to Parramatta; Lidcombe to Burwood; and
- (c) Kiama to Unanderra; Port Kembla to North Wollongong; Fairy Meadow to Wombarra; Scarborough to Helensburgh; Waterfall to Sydenham.

**"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, in respect of the Services or a Portion, the date, or the last day in the period of time, shown in the Contract Particulars as adjusted in accordance with this Agreement.

**"Date of Completion"** means, in respect of a Portion or the Services:

- (a) the date notified in a Notice of Completion as the date Completion was achieved; or
- (b) where another date is determined in any determination of the expert, or arbitration or litigation proceedings, as the date upon which Completion was achieved, that date.

**"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.

**"Design Due Date"** means:

(a)	Signalling Plan Package 1	Commencement Date
(b)	Signalling Package 1	Commencement Date
(c)	Signalling Plan Package 2	Commencement Date
(d)	Signalling Package 2	Commencement Date
(e)	Signalling Plan Package 3	Commencement Date
(f)	Signalling Package 3	Commencement Date
(g)	Signalling Plan Package 4	Commencement Date
(h)	Signalling Package 4	Commencement Date
(i)	Signalling Plan Package 5	Commencement Date
(j)	Signalling Package 5	Commencement Date
(k)	Signalling Plan Package 6	14/10/2019
(l)	Signalling Package 6	14/10/2019
(m)	Signalling Plan Package 7	18/11/2019
(n)	Signalling Package 7	18/11/2019
(o)	Signalling Plan Package 8	20/1/2020
(p)	Signalling Package 8	20/1/2020
(q)	Signalling Plan Package 9	13/4/2020
(r)	Signalling Package 9	13/4/2020
(s)	Signalling Plan Package 10	20/4/2020
(t)	Signalling Package 10	20/4/2020
(u)	Signalling Plan Package 11	4/5/2020



(v)	Signalling Package 11	4/5/2020
(w)	Signalling Plan Package 12	25/5/2020
(x)	Signalling Package 12	25/5/2020
(y)	Signalling Plan Package 13	15/6/2020
(z)	Signalling Package 13	15/6/2020

and as any of these dates may be extended in accordance with clause 3.1B.

**"Design Package"** means any one or more as the context may require of the design packages included in the Signalling Design.

**"Design Personnel"** means any personnel engaged by the Professional Services Contractor for the purposes of carrying out the data design function related to the Services.

**"Detailed Signalling Design"** means the signalling design for the Services which is the final Signalling Design provided under clause 3.1B(a).

**"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 Part 2B of the Transport Administration (General) Regulation 2005 (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 Project other than the Professional Services Contractor and its subcontractors, the Key People and the Professional Services Contractor's Representative.

**"Payment Milestone"** means a milestone set out in the Contract Particulars.

**"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 or as directed under clause 18.9.

**"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.

**"Project"** means the project or projects stated in the Contract Particulars in respect of which the Services are provided.

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

**"Rail 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.

**"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 2011* (NSW).

**"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 Brief"** means the document which appears in Exhibit A.

**"Signalling Design"** means the following design elements:

- (a) Signalling Package 1 which includes the balise group control tables and site certification forms for the geographical location between Newcastle Interchange and Cardiff;

- (b) Signalling Plan Package 1 which includes the signalling plans for the geographical location between Newcastle Interchange and Cardiff;
- (c) Signalling Package 2 which includes the balise group control tables and site certification forms for the geographical location between Cockle Creek and Warnervale;
- (d) Signalling Plan Package 2 which includes the signalling plans for the geographical location between Cockle Creek and Warnervale;
- (e) Signalling Package 3 which includes the balise group control tables and site certifications form for the geographical location between Wyong and Cowan;
- (f) Signalling Plan Package 3 which includes the signalling plans for the geographical location between Wyong and Cowan;
- (g) Signalling Package 4 which includes the balise group control tables and site certification forms for the geographical location between Berowra and Eastwood;
- (h) Signalling Plan Package 4 which includes the signalling plans for the geographical location between Berowra and Eastwood;
- (i) Signalling Package 5 which includes the balise group control tables and site certification forms for the geographical location between Strathfield and Sydney Terminal;
- (j) Signalling Plan Package 5 which includes the signalling plans for the geographical location between Strathfield and Sydney Terminal;
- (k) Signalling Package 6 which includes the balise group control tables and site certification forms for the geographical location between Lithgow and Bullaburra;
- (l) Signalling Plan Package 6 which includes the signalling plans for the geographical location between Lithgow and Bullaburra;
- (m) Signalling Package 7 which includes the balise group control tables and site certification forms for the geographical location between Lawson and Lapstone;
- (n) Signalling Plan Package 7 which includes the signalling plans for the geographical location between Lawson and Lapstone;
- (o) Signalling Package 8 which includes the balise group control tables and site certification forms for the geographical location between Emu Plains and Lidcombe;
- (p) Signalling Plan Package 8 which includes the signalling plans for the geographical location between Emu Plains and Lidcombe;
- (q) Signalling Package 9 which includes the balise group control tables and site certification forms for the geographical location between Kiama and Unanderra;
- (r) Signalling Plan Package 9 which includes the signalling plans for the geographical location between Kiama and Unanderra;
- (s) Signalling Package 10 which includes the balise group control tables and site certification forms for the geographical location between Port Kembla and North Wollongong;
- (t) Signalling Plan Package 10 which includes the signalling plans for the geographical location between Port Kembla and North Wollongong;
- (u) Signalling Package 11 which includes the balise group control tables and site certification forms for the geographical location between Fairy Meadow and Wombarra;
- (v) Signalling Plan Package 11 which includes the signalling plans for the geographical location between Fairy Meadow and Wombarra;

- (w) Signalling Package 12 which includes the balise group control tables and site certification forms for the geographical location between Scarborough and Helensburg;
- (x) Signalling Plan Package 12 which includes the signalling plans for the geographical location between Scarborough and Helensburg;
- (y) Signalling Package 13 which includes the balise group control tables and site certification forms for the geographical location between Waterfall and Sydenham;
- (z) Signalling Plan Package 13 which includes the signalling plans for the geographical location between Waterfall and Sydenham;

**"Signalling Design Contractor"** means the contractor who will undertake the detailed Signalling Design of the NIF ASDO Project.

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

**"Statutory Requirements"** include:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales;
- (b) the TSRs and any other 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 Part 2A of the *Transport Administration (General) Regulation 2005* (NSW).

**"TfNSW"** means Transport for NSW (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW).

**"TfNSW Standard Requirements"** or **"TSRs"** means the documents which appear as Exhibit C.

**"TfNSW Statement of Business Ethics"** means the document titled "Transport for NSW Statement of Business Ethics" which can be found on the TfNSW website.

**"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 Regulation 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
    - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
  - (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
  - (h) headings are for convenience only and do not affect the interpretation of this Agreement;
  - (i) a reference to:
    - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Agreement; and
    - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
  - (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - (k) for all purposes (other than where otherwise designated as a Business Day), "day" means calendar day and "week" means a period of 7 calendar days;
  - (l) a reference to \$ is to Australian currency;
  - (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part;
  - (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and
  - (o) any reference in this Agreement to "the Contract" or "this Contract" will be taken to be a reference to this Agreement.

### 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.

#### **1.4 Order of precedence**

- (a) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement then:
  - (i) the conditions set out in clauses 1 to 32 of this Agreement apply; then
  - (ii) the higher, or more onerous, or more rigorous, requirement will apply; then
  - (iii) figured dimensions will take precedence over scaled dimensions; then
  - (iv) drawings made to larger scales will take precedence over drawings made to smaller scales; then
  - (v) the order of precedence set out in section 4.4(d) of the Services Brief will apply.
- (b) Where any inconsistency, ambiguity or discrepancy cannot be resolved by applying the order or precedence in clause 1.4(a), the Principal's Representative will direct the interpretation to be followed in resolving the inconsistency, ambiguity or discrepancy.
- (c) The Services Brief and the Detailed Signalling Design are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Services comply with this Agreement and are fit for their intended purposes.
- (d) The Professional Services Contractor is not entitled to make, and the Principal will not be liable upon, any Claim arising from or in connection with any inconsistency, ambiguity or discrepancy, including any direction given by the Principal's Representative under clause 1.4(b).

## **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;
- (d) 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;
- (e) liaise, co-operate and confer with others as directed by the Principal;
- (f) 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;
- (g) 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 Project is to be constructed of which the Principal is aware;
- (h) regularly consult the Principal regarding the carrying out of the Services;
- (i) 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;
- (j) 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;
- (k) 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 Regulations 2017* (NSW);
- (l) 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-085 Testing for Alcohol and Other Drugs;
- (m) 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;
  - (ii) holding and maintaining Rail Safety Worker ("RSW") certification; and
  - (iii) the WHS Legislation;
- (n) 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);
- (o) 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



- (p) 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 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 ensuring that the Fee contains allowances to protect it against any of these risks eventuating.

### **3.1A Design**

- (a) Without limiting clause 3.1A(c):
  - (i) the parties acknowledge that the Detailed Signalling Design has been designed by or on behalf of the Principal;
  - (ii) the Detailed Signalling Design depicts some of the Principal's requirements for the Services;
  - (iii) the Professional Services Contractor must further develop the Detailed Signalling Design into the Contract Material; and
  - (iv) notwithstanding any other provision of this Agreement, the Professional Services Contractor is not responsible for the suitability of the Detailed Signalling Design.
- (b) If the Professional Services Contractor discovers any fault in the Detailed Signalling Design, the Professional Services Contractor must, as soon as reasonably practicable, notify the Principal's Representative of:
  - (i) the fault in the Detailed Signalling Design, including all relevant details to allow the Principal to review the fault;
  - (ii) the Professional Services Contractor's suggested design solution outlining how it proposes to deal with the fault; and
  - (iii) if the Professional Services Contractor considers that the fault requires a variation, provide detailed particulars of the reason why the fault necessitates a variation.
- (c) If the Professional Services Contractor gives the Principal's Representative a notice under clause 3.1A(b) and the fault in the Detailed Signalling Design does necessitate a variation, the Principal's Representative will direct a variation under clause 16.2 after which relevant adjustments will be made under clause 16.3.
- (d) The Professional Services Contractor must prepare any Contract Material so that it complies with this Contract, including any design necessary to deal with any fault in the Detailed Signalling Design which it discovers.
- (e) The Professional Services Contractor warrants that any Contract Material it prepares will comply with the requirements of the Contract and will be fit for its intended purpose.

### **3.1B Signalling Design**

- (a) The Principal will use reasonable endeavours to provide the Professional Services Contractor with each Design Package for the Signalling Design before the relevant Design Due Date.
- (b) Not used.
- (c) The Professional Services Contractor acknowledges and agrees that the preliminary Signalling Design will be provided progressively to the Professional Services Contractor in Design Packages.



- (d) The Professional Services Contractor must, after it has received a Design Package for the preliminary Signalling Design from the Principal, undertake a review of and perform interdisciplinary checks on the designs and provide feedback, including confirming the compatibility or suitability of the design, or any other aspect of the designs as specified in the Services Brief or in respect of any matter upon which the Principal's design consultant has requested feedback, to the Principal's Representative within 10 Business Days of receiving the preliminary Design Package to facilitate the Principal's finalisation of the relevant Design Package for the Signalling Design and so as to allow the Principal to provide the final Signalling Design for that Design Package to the Professional Services Contractor by the relevant Design Due Date.
- (e) If the Professional Services Contractor fails to:
  - (i) respond, or responds but fails to provide the information required by paragraph (d) within the time required by paragraph (d) ,or
  - (ii) comply with clauses 3.1(d) and (e),
 any delay in the issue of a Design Package for the finalised Signalling Design caused by the failure to comply with clauses 3.1(d) and (e) or 3.1B(d), will extend any Design Due Date that is affected by this delay or failure to comply, by the Professional Services Contractor.
- (f) Notwithstanding any notice or direction given under clause 3.1B, the Professional Services Contractor must in providing the Services comply with the relevant final Design Package.
- (g) Subject to clause 3.1B(h), if the Principal fails to provide to the Professional Services Contractor a Design Package by the relevant Design Due Date (including as extended under clause 3.1B(d)), the Professional Services Contractor will be entitled to be paid the extra costs of:
  - (1) any Design Personnel reasonably incurred by the Professional Services Contractor as a direct result of the delay, and
  - (2) Project Management, should the Principal's failure to provide to the Professional Services Contractor a Design Package by the relevant Design Due Date entitle the Professional Services Contractor to an extension of time under clause 18.
 as determined by the Principal's Representative who must use the relevant rate in Schedule 6.
- (h) The Professional Services Contractor must provide to the Principal's Representative evidence of the extra costs referred to in clause 3.1B(g) (including timesheets) as reasonably requested by the Principal's Representative from time to time.
- (i) Notwithstanding any other provision of this Agreement (including any provision of this Agreement entitling the Professional Services Contractor to an increase in the Fee, or to the payment of additional costs), the amounts payable under clause 3.1B(g) will be a limitation upon the Principal's liability to the Professional Services Contractor only for any failure by the Principal to provide to the Professional Services Contractor a Design Package by the relevant Design Due Date and the Professional Services Contractor will not be entitled to make, nor will the Principal be liable upon, any claim in these circumstances other than for the amounts which is payable by the Principal under clause 3.1B(g).
- (j) The Professional Services Contractor:
  - (i) acknowledges and agrees that the Fee contains an allowance for all costs that the Professional Services Contractor might have incurred arising out of or in connection with this Agreement or the Services prior to the Commencement Date (including the cost of any

Design Personnel incurred prior to the Commencement Date); and

- (ii) releases the Principal from any claim in respect of any fact, matter or thing arising out of, or in connection with this Agreement or the Services that occurred prior to the Commencement Date.

3.1C

### 3.2 Complying with Statutory Requirements

- (a) The Professional Services Contractor must comply with:
  - (i) all Statutory Requirements including the WHS Legislation;
  - (ii) the requirements of the Building Code of Australia; and
  - (iii) 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), 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) if the Principal gives a direction under clause 3.3(a)(i) and the Professional Services Contractor fails to rectify the non-complying Services within the time specified in the direction under clause 3.3(a)(i), 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 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; or
- (c) advise the Professional Services Contractor that the Principal will accept the non-complying Services despite the non-compliance, in which event:
  - (i) the value of the non-complying Services, as determined by the Principal's Representative or in accordance with clauses 16.3(b) or 16.3(c), will be a debt due and payable by the Professional Services Contractor to the Principal which may be deducted from the Fee; and
  - (ii) the Professional Services Contractor will have no entitlement to make any payment claim against the Principal arising out of or in connection with the non-complying Services.

### **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 3.3(a), 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 Project 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 Project;
  - (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 Project and co-ordinate the Services with the work of the Principal's Representative and any contractor engaged by the Principal with respect to the Project;
  - (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 Project; 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;
- (b) 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 Final 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, without limiting or otherwise restricting clause 3.9(b):
  - (i) hold and maintain its Final Authorisation for so long as the Services are carried out; and
  - (ii) comply with the conditions of the applicable Final Authorisation.
- (b) The Professional Services Contractor must (and must ensure that all personnel for which it is responsible):
  - (i) comply with the conditions of the 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.
- (c) 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, Final Authorisation or the obligation to comply with the requirements of ASA and the Final Authorisation.

### 3.10 Coordination with Other Contractors

The Professional Services Contractor must:

- (a) fully cooperate with each Other Contractor;
- (b) without limiting or otherwise restricting any part of the Services Brief, carefully coordinate the performance of the Services with Other Contractors' services, works or activities;
- (c) perform the Services so as to avoid interfering with, disrupting or delaying, Other Contractors' services, works or activities;
- (d) provide to the Principal the advice, support and cooperation necessary to facilitate the timely completion the Project; and
- (e) without limiting or otherwise restricting any part of the Services Brief, also provide to the Other Contractors reasonable advice, support and cooperation to facilitate the timely completion of Other Contractors' services, works or activities.

#### **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



- (b) 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 Principal grants to the Professional Services Contractor an irrevocable licence to use those Intellectual Property Rights for the purpose of carrying out the Services.

Subject to the first paragraph of this clause 7.1, 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 Project 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**

- (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.

## **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.

The Professional Services Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

## **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 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 a part of the Fee is time based (where there is no fixed price lump sum for that component of the Services), 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:
  - (i) any addition to, omission from or deletion of any part of the Services; or
  - (ii) any adjustment to the timing for the provision of the Services, including the Date for Completion, of the Services or any 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 [REDACTED]
- (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 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.
- (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 Fee will be adjusted by 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 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.

Without limiting or otherwise restricting clause 18.9, the Professional Service Contractor acknowledges and agrees that the work completed by an Option may be directed as a separable Portion under clause 18.9.

## **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.

Each payment claim must contain the details required by the Principal, including timesheets approved by the Principal's Representative for each person who provided the Services described in section 7.2.2 and section 7.2.3 of the Services Brief. 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.

The Professional Services Contractor is entitled to claim payment of the amount identified in Schedule 5 in item A10 and for any Prior Services within 5 Business Days of the Commencement Date.

In each payment claim the Professional Services Contractor is entitled to claim payment for:



- (c) in respect of the Services identified in items A1 to A9 (except A6 and A9) in Schedule 5, an amount calculated by multiplying the percentage of the Services completed in accordance with this Agreement as at the date of the payment claim by the amount set out in the relevant item, less any amount previously paid by the Principal in respect of the Services identified in items A1 to A9 (except A6 and A9) in Schedule 5;
- (d) in respect of the Services identified in items B3, C3, D3, E3, F3, G3, H3, I3, J3, K3, L3, M3, N3, O2, P2, Q2 and R2 in Schedule 5, the amount specified in Schedule 5 in respect of those items once the Professional Services Contractor has satisfied the Payment Milestone applicable to the relevant item;
- (e) in respect of the Services identified in items B1, B2, C1, C2, D1, D2, E1, E2, F1, F2, G1, G2, H1, H2, I1, I2, J1, J2, K1, K2, L1, L2, M1, M2, N1 and N2 in Schedule 5, the amount in any month which represents the percentage of the Services for that item which have been completed in accordance with this Agreement;
- (f) in respect of the Services described in items A6 and A9 of Schedule 5 and sections 7.2.2 and section 7.2.3 of the Services Brief, the amount calculated in accordance with the rates set out in Schedule 6.

#### 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 amount which the Professional Services Contractor is entitled to 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, if there is no payment schedule, the amount claimed by the Professional Services Contractor in its payment claim (as the case may be).

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.

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.

#### 17.4

#### 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;
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to division 2A of the SOP Act; or
- (c) any claim to money which the Principal may have against the Professional Services Contractor whether for damages (including liquidated damages) or otherwise,

under this Agreement or in respect of the Services.

#### 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 17.5, 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 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 10 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.

### **18.2 Date for Completion**

The Professional Services Contractor must achieve Completion of the Services and each Portion by the relevant 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) the Principal failing to provide a Design Package to the Professional Services Contractor by the relevant Design Due Date; or
- (d) a variation directed under clause 16.2, 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),

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.

Subject to the Professional Services Contractor's compliance with the conditions precedent in this clause 18.5, the Principal's Representative is required to act reasonably in determining the Professional Services Contractor's entitlement to an extension of time claimed under clause 18.4.

### **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 Professional Services 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 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.

#### **18.9 Portions**

Separable Portions may be directed by the Principal's Representative, who shall clearly identify for each, the:

- (a) portion of the Services; and
- (b) Date for Completion.

#### **18.10 Liquidated damages for delay in achieving Completion**

- (a) Subject to clause 18.10(d), if Completion of a Portion has not occurred by the date that is 14 days after the Date for Completion for that Portion (**LD Date**) then the Professional Services Contractor must pay the Principal liquidated damages at the rates stated in Schedule 1 for every day after the LD Date up to and including:
  - (i) the Date of Completion of the Portion; or
  - (ii) the date that this Contract is terminated under clause 21,whichever is first.
- (b) The parties:
  - (i) agree that the amount of liquidated damages provided for in Schedule 1 constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Principal as a result of Completion of a Portion not occurring on or before the relevant LD Date (except for amounts referred to in clause 18.10(c);



- (ii) desire to avoid the difficulties of proving damages in connection with such failure and agree that the liquidated damages payable by the Professional Services Contractor in accordance with clause 18.10(a) are reasonable and do not constitute nor are they intended to be a penalty; and
  - (iii) agree that the amount of liquidated damages payable by the Professional Services Contractor under clause 18.10(a) will be recoverable from the Professional Services Contractor as a debt immediately due and payable to the Principal.
- (c) If clause 18.10(a) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages as a result of the Professional Services Contractor failing to achieve Completion of a Portion by the relevant Date for Completion, but the Professional Services Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Professional Services Contractor would have had if clause 18.10(a) had not been void, invalid or otherwise inoperative.
- (d) The Professional Services Contractor's aggregate liability under clauses 18.10(a) and 18.10(c) is limited to the amount set out in Schedule 1.

## **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 Chair of the Resolution Institute (or the person acting in that position at the time) 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 [REDACTED]; 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.

#### **19.6 Not Used**

### **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 reimburse the Professional Services Contractor for the cost of Services performed to the date of termination plus the 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;
  - (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; 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.

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:

- (a) the *Government Information (Public Access) Act 2009* (NSW);
- (b) the *Ombudsman Act 1974* (NSW); and

- (c) 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:
  - (i) 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), 26(c) and 26(d):
  - (i) 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; and
  - (ii) the Professional Services Contractor is not liable to the Principal in contract, tort (including negligence) or otherwise under this Agreement in respect of Consequential Loss or Damage.
- (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)(i) or clause 26(a)(ii) will not apply to any liability:
  - (i) to the extent to which the Professional Services Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy that it is required to hold under this Agreement in respect of that liability;
  - (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;
  - (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;
  - (iv) where the Professional Services Contractor abandons the performance of its obligations under this Agreement;



- (v) out of which by law the Professional Services Contractor cannot contract;  
or
- (vi) arising under clause 18.10.
- (d) The limitation of liability in clause 26(a)(ii) will not apply to any liability arising under or in connection with clause 7.2 or 9(a).
- (e) The Principal is not liable to the Professional Services Contractor in contract, tort (including negligence) or otherwise under this Agreement in respect of Consequential Loss or Damage.

## 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 Authority. The Professional Services Contractor must execute any document reasonably required to give effect to the assignment, novation or other dealing.
- (c) Without limiting clause 32(b) the Principal may at any time novate this Agreement to a Construction Contractor nominated by the Principal. If directed by the Principal, the Professional Services Contractor must, without being entitled to compensation, within 5 Business Days of the date of receipt by the Professional Services Contractor of the direction, execute and deliver to the Principal a deed of novation in the form which appears in Schedule 9 in favour of the Construction Contractor nominated by the Principal.
- (d) For the purpose of effecting a novation under clause 32(c), the Professional Services Contractor hereby irrevocably appoints the Principal's Representative to be the Professional Services Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Professional Services Contractor accordingly.

**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:**

Alstom Transport Australia Pty Ltd

ABN 68 165 157 451

Address: 16 Giffnock Avenue, North Ryde, NSW 2113

Tel: 02 8870 6000 Fax: N/A

**Commencement Date:**

The date of execution by the last party to execute this Agreement

(clause 1)

**Completion requirements:**

(clause 1)

- In respect of each of Portion 1a to Portion 13a, the Professional Services Contractor has completed and submitted all Contract Material required for submission to CCB Gate 4 in respect of the relevant Portion.
- In respect of each of Portion 1b to Portion 13b, the Professional Services Contractor has received CCB Gate 4 unconditional approval for all Contract Material required in respect of the relevant Portion.
- In respect of Portion 14 to Portion 16, the Professional Services Contractor has completed and submitted all Contract Material required for a CCB Gate 5 submission in respect of that Portion.
- In respect to Portion 17 the Professional Services Contractor has completed and submitted all Contract Material in respect of that Portion.
- In respect of all Portions:
  - 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; and
  - anything else stated in the Agreement to be a condition or requirement of Completion.

**Confidential Information:**

(clause 1)

**Other Documents:**

Nil

(clause 1.1, refer to "Agreement")

**Fee:**  
(clause 1)

The Fee comprises:

- (a) a fixed price lump sum of **\$4,584,819.76 (excl. GST)** for performing the whole of the Services, except the Services described in paragraph (b) below; and
- (b) in respect of the Services described in items A6 and A9 of Schedule 5 and sections 7.2.2 and 7.2.3 of the Services Brief, an amount calculated in accordance with the rates set out in Schedule 6.

**Payment Milestones**  
(clause 1)

Item B3 in Schedule 5	Completion of Portion 1b
Item C3 in Schedule 5	Completion of Portion 2b
Item D3 in Schedule 5	Completion of Portion 3b
Item E3 in Schedule 5	Completion of Portion 4b
Item F3 in Schedule 5	Completion of Portion 5b
Item G3 in Schedule 5	Completion of Portion 6b
Item H3 in Schedule 5	Completion of Portion 7b
Item I3 in Schedule 5	Completion of Portion 8b
Item J3 in Schedule 5	Completion of Portion 9b
Item K3 in Schedule 5	Completion of Portion 10b
Item L3 in Schedule 5	Completion of Portion 11b
Item M3 in Schedule 5	Completion of Portion 12b
Item N3 in Schedule 5	Completion of Portion 13b
Item O2 in Schedule 5	Completion of Portion 14
Item P2 in Schedule 5	Completion of Portion 15
Item Q2 in Schedule 5	Completion of Portion 16
Item R2 in Schedule 5	Completion of Portion 17

**Portions**  
(clause 1)

**Portion 1a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Newcastle Interchange and Cardiff.

**Portion 1b - includes:**

- Completion of all necessary Contract Material as identified in section 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Newcastle Interchange and Cardiff.

**Portion 2a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Cockle Creek and Warnervale.

**Portion 2b - includes:**

- Completion of all necessary Contract Material as identified in section 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Cockle Creek and Warnervale.

**Portion 3a – includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Wyong and Cowan.

**Portion 3b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Wyong and Cowan.

**Portion 4a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Berowra and Eastwood.

**Portion 4b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Berowra and Eastwood.

**Portion 5a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Strathfield and Sydney Terminal.

**Portion 5b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Strathfield and Sydney Terminal.

**Portion 6a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Lithgow and Bullaburra.

**Portion 6b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Lithgow and Bullaburra.

**Portion 7a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Lawson and Lapstone.

**Portion 7b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Lawson and Lapstone.

**Portion 8a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Emu Plains and Lidcombe.

**Portion 8b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Emu Plains and Lidcombe.

**Portion 9a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Kiama and Unanderra.

**Portion 9b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Kiama and Unanderra.

**Portion 10a - includes:**



- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Port Kembla and North Wollongong.

**Portion 10b – includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Port Kembla and North Wollongong.

**Portion 11a – includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Fairy Meadow and Wombarra.

**Portion 11b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Fairy Meadow and Wombarra.

**Portion 12a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Scarborough and Helensburgh.

**Portion 12b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Scarborough and Helensburgh.

**Portion 13a - includes:**

- the part of the Services briefly described in section 3.3 of the Services Brief; and
- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief required for submission to CCB Gate 4 for the geographical location between Waterfall and Sydenham.

**Portion 13b - includes:**

- Completion of all necessary Contract Material as identified in sections 3.4 of the Services Brief and obtain the unconditional approval of CCB Gate 4 for the geographical location between Waterfall and Sydenham.

**Portion 14 - includes:**

- the part of the Services briefly described in section 3.5 of the Services Brief; and
  - Completion of all relevant supporting documents required for submission to CCB Gate 5 for Portion 1 to Portion 5.

**Portion 15 - includes:**

- the part of the Services briefly described in section 3.5 of the Services Brief; and
  - Completion of all relevant supporting documents required for submission to CCB Gate 5 for Portion 6 to Portion 8.

**Portion 16 - includes:**

- the part of the Services briefly described in section 3.5 of the Services Brief; and
  - Completion of all relevant supporting documents required for submission to CCB Gate 5 for Portion 9 to Portion 13.

**Portion 17 - includes:**

- the part of the Services briefly described in section 3.6 of the Services Brief;

**Project:**  
(clause 1)

New Intercity Fleet (NIF) – Automatic Selective Door Operation Data Design (ISD-18-7482)

**Services:**  
(clause 1)

As described in the Services Brief.

**Dates for Completion:**  
(clause 18.2)

Portion 1a	
Portion 1b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 2a	
Portion 2b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 3a	
Portion 3b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 4a	
Portion 4b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 5a	
Portion 5b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 6a	
Portion 6b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 7a	
Portion 7b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 8a	
Portion 8b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 9a	
Portion 9b	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
Portion 10a	
Portion 10b	The date that TfNSW notifies the Professional Services Contractor that

	unconditional approval of CCB Gate 4 has been achieved.
<b>Portion 11a</b>	
<b>Portion 11b</b>	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
<b>Portion 12a</b>	
<b>Portion 12b</b>	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
<b>Portion 13a</b>	
<b>Portion 13b</b>	The date that TfNSW notifies the Professional Services Contractor that unconditional approval of CCB Gate 4 has been achieved.
<b>Portion 14</b>	Business Days after TfNSW provides the as-builts for Portion 1 to Portion 5
<b>Portion 15</b>	Business Days after TfNSW provides the as-builts for Portion 6 to Portion 8
<b>Portion 16</b>	Business Days after TfNSW provides the as-builts for Portion 9 to Portion 13
<b>Portion 17</b>	

**Liquidated damages**  
(clause 18.10)

Portion 1a to Portion 5a: per day  
 Portion 1b to Portion 5b: per day  
 Portion 6a to Portion 8a: per day  
 Portion 6b to Portion 8b: per day  
 Portion 9a to Portion 13a: per day  
 Portion 9b to Portion 13b: per day  
 Portion 14 to Portion 16: per day

**Limit of liability for liquidated damages or general damages for delay under clause 18.10(c):**  
(clause 18.10)

(a) Subject to paragraph (b), the Professional Services Contractor's aggregate liability under clauses 18.10(a) and 18.10(c) in respect of any one Portion is limited to of the value of that Portion at the Commencement Date.  
 (b) The Professional Services Contractor's aggregate liability under clauses 18.10(a) and 18.10(c) is limited to of the Fee.

**Time period for provision of the Safety Report:** (clause 3.2)

As required by clause 295 of the Work Health and Safety Regulation 2017 or when requested by the Principal.

**Minimum Level of Professional Indemnity Insurance:** (clause 10.1) [redacted] for each occurrence and [redacted] in the annual aggregate.

**Time for maintaining Professional Indemnity Insurance:** (clause 10.1) 6 years.

**Minimum Level of Public Liability Insurance:** (clause 10.2) [redacted] for each and every occurrence.

**Professional Services Contractor's Representative:** (clause 11.1) [redacted] – Project Director ETCS NSW

Tel: [redacted] Fax: -

**Key People:** (clause 11.2)

- [redacted] – Project Manager
- [redacted] – Deputy Project Manager
- [redacted] – Project Engineering Manager
- [redacted] – Design Manager
- [redacted] – Data Preparation Manager
- [redacted] – Data Validation Manager
- [redacted] – System Assurance

**Principal's Representative:** (clause 11.3) Helen Williams – Director Transport Integrated Systems Capabilities

Tel: 02 9200 0200 Fax: 02 9200 0290

**Rates for the valuation of variations:** (clause 16.3) As set out in Schedule 6.

**Disbursements for which the Professional Services Contractor is entitled to be paid:** (clause 17.1) The Professional Services Contractor has no entitlement to be paid disbursements.

**Times for Payment Claims:** (clause 17.1) The fifth Business Day of the month

**Expert Determination final and  
binding amount:**  
(clause 19.3(c))

**Limit of Professional Services  
Contractor's Liability:**  
(clause 26)



**SCHEDULE 2 – CONFIDENTIALITY DEED POLL**

Professional Services Contract Number: \_\_\_\_\_

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; and
  - (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

Statutory Declaration	Oaths Act (NSW) Ninth Schedule
I, .....	Insert full name of Declarant
Of .....	Insert address
do solemnly and sincerely declare that:	
1. I am the representative of:	
..... (ABN.....) ("the Contractor")	Insert name of Contractor, and ABN if applicable
in the Office Bearer capacity of:	
.....	Insert position title of Declarant
2. The Contractor has a contract with: ..... (ABN.....)	Insert name of Principal and ABN
to carry out ..... [Contract No. ....] ("the Contract")	Insert name of Contract and Contract No.
3. I personally know the facts which I have set out in this declaration.	
4. All employees who have at any time been engaged by the Contractor for work done under the Contract:	
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	
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,	
with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:	
Employee:	
Amount unpaid or not accrued:	
.....	Insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.
.....	
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).	
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.	
7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.	
8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):	
a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and	
b) that all their employees and subcontractors, as at the date of the making of such a declaration:	

<p>i) have been paid all remuneration and benefits due and payable to them by; or</p> <p>ii) had accrued to their account all benefits to which they are entitled from;</p> <p>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</p> <p>c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,</p> <p>except for the following subcontractors to the Contractor who have failed to provide such a declaration:</p> <p>Subcontractor:</p> <p>Due amount unpaid:</p> <p>.....</p> <p>.....</p>	<p>Insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim</p>
<p>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:</p> <p>Employee, subcontractor or supplier:</p> <p>Amount unpaid or not accrued:</p> <p>.....</p> <p>.....</p>	<p>Insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.</p>
<p>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.</p> <p>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:</p> <p>a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;</p> <p>b) under Schedule 2 Part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and</p> <p>c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.</p> <p>12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.</p> <p>13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:</p> <p>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</p> <p>b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.</p> <p>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.</p>	

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:*

I, .....  
(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				
Subcontractor	ABN	Contract number / identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number / identifier	Date of works (period)	Date of payment claim (head contractor claim)

## Annexure B

### SUBCONTRACTOR'S STATEMENT

#### Note to the parties

For the purpose of this Subcontractor's Statement:

- "the subcontractor" is the Professional Services Contractor; and
- "the principal contractor" is Transport for NSW

#### 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:

.....

(Business name)

of:

.....

.....

(Address of subcontractor)

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

.....

(Business name of principal contractor)

(Note 2)

Contract number/identifier:

.....

(Note 3)

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive,

(Note 4)

subject of the payment claim dated: ...../...../.....

(Note 5)

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick ☐ if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick ☐ and only complete (f) and (g) below. *You must tick one box.* (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

- (f) Signature: ..... Full Name: .....
- (g) Position/Title ..... Date  
...../...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

#### Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, schedule 2 part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

#### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

#### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an

offence.

#### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

#### SCHEDULE 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 project in full]

#### Declaration

I ..... [insert full name] of

..... [insert business address]

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

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

Item	Description	Lump sum Amount AUD \$
<b>A</b>	<b>Preliminaries &amp; General Requirements</b>	
A0		
A1	Preparation and ongoing updating of all Management Plans required under the Agreement (including TSRs)	
A2	Provision of insurances, fees and levies	
A3	Production and management of project schedule	
A4	Production of monthly reports and weekly reports	
A5	Project and Engineering Management	
A5.1	Project management	
A5.2	Engineering management	
A6	Interface management and Design Advised	
A7	Others - Contractor's Risk and Contingency Allowance	
A8	Review of inputs, supplementary control table info	
A9	Design Advisor for Signalling Design Contractor and Construction Contractor	
A10		
<b>A11</b>	<b>Total Preliminaries &amp; General Requirements</b>	
<b>B</b>	<b>Portion 1 (Newcastle Interchange to Cardiff)</b>	
B1	ASDO data preparation management activities and deliverables for Portion 1 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
B2	Assurance activities and deliverables for Portion 1	
B3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 1	
<b>B4</b>	<b>Total Portion 1</b>	
<b>C</b>	<b>Portion 2 (Cockle Creek to Warnervale)</b>	
C1	ASDO data preparation management activities and deliverables for Portion 2 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
C2	Assurance activities and deliverables for Portion 2	
C3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 2	
<b>C4</b>	<b>Total Portion 2</b>	
<b>D</b>	<b>Portion 3 (Wyong to Cowen)</b>	

Item	Description	Lump sum Amount AUD \$
D1	ASDO data preparation management activities and deliverables for Portion 3 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
D2	Assurance activities and deliverables for Portion 3	
D3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 3	
D4	<b>Total Portion 3</b>	
<b>E</b>	<b>Portion 4 (Berowra to Eastwood)</b>	
E1	ASDO data preparation management activities and deliverables for Portion 4 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
E2	Assurance activities and deliverables for Portion 4	
E3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 4	
E4	<b>Total Portion 4</b>	
<b>F</b>	<b>Portion 5 (Strathfield to Sydney Terminal)</b>	
F1	ASDO data preparation management activities and deliverables for Portion 5 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
F2	Assurance activities and deliverables for Portion 5	
F3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 5	
F4	<b>Total Portion 5</b>	
<b>G</b>	<b>Portion 6 (Lithgow to Bullaburra)</b>	
G1	ASDO data preparation management activities and deliverables for Portion 6 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
G2	Assurance activities and deliverables for Portion 6	
G3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 6	
G4	<b>Total Portion 6</b>	
<b>H</b>	<b>Portion 7 (Lawson to Lapstone)</b>	
H1	ASDO data preparation management activities and deliverables for Portion 7 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
H2	Assurance activities and deliverables for Portion 7	
H3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 7	

Item	Description	Lump sum Amount AUD \$
H4	Total Portion 7	
<b>I</b>	<b>Portion 8 (Emu Plains to Lidcombe)</b>	
I1	ASDO data preparation management activities and deliverables for Portion 8 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
I2	Assurance activities and deliverables for Portion 8	
I3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 8	
I4	Total Portion 8	
<b>J</b>	<b>Portion 9 (Kiama to Unanderra)</b>	
J1	ASDO data preparation management activities and deliverables for Portion 9 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
J2	Assurance activities and deliverables for Portion 9	
J3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 9	
J4	Total Portion 9	
<b>K</b>	<b>Portion 10 (Port Kembla to North Wollongong)</b>	
K1	ASDO data preparation management activities and deliverables for Portion 10 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
K2	Assurance activities and deliverables for Portion 10	
K3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 10	
K4	Total Portion 10	
<b>L</b>	<b>Portion 11 (Fairy Meadow to Wombarra)</b>	
L1	ASDO data preparation management activities and deliverables for Portion 11 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
L2	Assurance activities and deliverables for Portion 11	
L3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 11	
L4	Total Portion 11	
<b>M</b>	<b>Portion 12 (Scarborough to Helensburgh)</b>	

Item	Description	Lump sum Amount AUD \$
M1	ASDO data preparation management activities and deliverables for Portion 12 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
M2	Assurance activities and deliverables for Portion 12	
M3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 12	
M4	<b>Total Portion 12</b>	
N	<b>Portion 13 (Waterfall to Sydenham)</b>	
N1	ASDO data preparation management activities and deliverables for Portion 13 including approved data release notes, data installation form, data validation form, test certificates and obtain unconditional approval of CCB Gate 4	
N2	Assurance activities and deliverables for Portion 13	
N3	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 4 (data testing works) for Portion 13	
N4	<b>Total Portion 13</b>	
O	<b>Portion 14</b>	
O1	Unconditional approval of all relevant supporting documents required for submission to CCB Gate 5 (data testing works) for Portions 1 to 5	
O2	<b>Total Portion 14</b>	
P	<b>Portion 15</b>	
P1	Provision of all completed handover documentation including as-builts and final assurance documentation required for submission to CCB Gate 5 for Portions 6 to 8	
P2	<b>Total Portion 15</b>	
Q	<b>Portion 16</b>	
Q1	Provision of all completed handover documentation including as-builts and final assurance documentation required for submission to CCB Gate 5 for Portions 9 to 13	
Q2	<b>Total Portion 16</b>	
R	<b>Portion 17</b>	
R1	Completed and submitted all Engineering Approval of Data Preparation Documents.	
R2	<b>Total Portion 17</b>	
<b>TOTAL LUMP SUM PRICE (A10+B4+C4+D4+E4+F4+G4+H4+I4+J4+K4+L4+M4+N4+O2+P2+Q2+R2)</b>		<b>\$4,584,819.76</b>

**SCHEDULE 6 – RATES FOR VALUATION OF VARIATIONS AND SERVICES DESCRIBED IN SECTION 7.2.2 AND SECTION 7.2.3 OF THE SERVICES BRIEF AND FOR STANDBY UNDER CLAUSE 3.1B(G)**

(clause 16.3 and 3.1B(g))

Subject to the next paragraph, the rates below are fixed for the duration of this Agreement, not subject to rise and fall, and **include preliminaries, profit and Overhead Costs, but exclude GST.**

If the Date for Completion of the Services or any Portion is extended by the Principal's Representative under clause 18.5, 12 months after the Commencement Date and on each subsequent anniversary of that date, the rates below will be adjusted as follows:

New rate = existing rate + (existing rate x the increase in the Consumer Price Index for Sydney All Groups ("CPI") as last published by the Australian Bureau of Statistics for the previous year).

Fees will be paid on an hourly rates basis with a maximum daily fee for each person of 8 hours multiplied by the person's (or role's) hourly rate.



Role	Hourly Rate \$A (excl. GST, incl. OH&P)	Capped Daily Rate \$A (excl. GST, incl. OH&P)
Project Management which includes all of the following roles at their relevant percentages: <ul style="list-style-type: none"> <li>Project Manager at <input type="text"/></li> <li>Contract Manager at <input type="text"/></li> <li>Planner at <input type="text"/></li> <li>Quality Manager at <input type="text"/></li> <li>Finance Controller at <input type="text"/></li> <li>Project Assistant at <input type="text"/></li> </ul> including for purposes of clause 3.1B(g) (2)		
Design Manager		
Data Preparation Engineer		
Data Validation Engineer		
Data Preparation Manager		
System Assurance (Internal)		



System Assurance (External)				
Data Validation Manager				
Independent Professional Reviewer (Internal)				
Independent Professional Reviewer (External)				
Data programming support				
Interface Manager				
NIT support				
Rate for purposes of clause 3.1B(g) (1)				

**SCHEDULE 7 – OPTIONS**

(Clause 16.5)

Item	Description	Lump sum Amount AUD \$
<b>OP</b>	<b>Options</b>	
<b>OP1</b>	Price to split a Portion such that there is an additional CCB pack to deliver	
<b>OP2</b>	Price to combine a Portion such that there is one less CCB pack to deliver	

## 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	
<b>PROFESSIONAL SERVICES CONTRACTOR:</b>	
Description of Portion or Services: _____ _____ _____	
<p>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.</p> <p>I further certify that:</p> <ul style="list-style-type: none"> <li>(a) All Variations (including concessions) are listed in the attached compliance register.</li> <li>(b) All Defects have been satisfactorily rectified and their documentation closed out.</li> <li>(c) All required documentation has been submitted.</li> <li>(d) All notices regarding system deficiencies have been satisfactorily closed out.</li> </ul> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the Portion / the Services.</p> <p>SIGNATURE: _____ SIGNATURE: _____            (Professional Services Contractor's Representative)</p> <p>DATE: _____</p>	

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## SCHEDULE 9 – DEED OF NOVATION

(Clause 32(c))

[Refer to notes under clause 32]

# Deed of Novation

[  
ABN [ ] ]

[  
ABN [ ] ]

[  
ABN [ ] ]

---

Deed of Novation made at \_\_\_\_\_ on \_\_\_\_\_

**Parties**                    [insert name] ABN [insert ] of [insert] (Retiring Party)  
                                 [Insert name] ABN [insert ] of [insert] (Continuing Party)  
                                 [Insert name] ABN [insert] of [insert] (Substitute Party)

**Recitals**

- A            The Retiring Party and the Continuing Party are parties to the Contract.
- B            The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C            The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

**Definitions and interpretation****1.1        Definitions**

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"**Claim**" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"**Contract**" means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

"**Effective Date**" means [insert date].

"**GST**" means the Goods and Services Tax as defined in the A New Tax System (Goods and Services) Act 1999 (Cth.).

"**Liability**" means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

"**Related Entity**" has the meaning ascribed to that term in section 9 of the Corporations Act 2001 (Cth).

**1.2        Interpretation**

In this deed:

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

and unless the context indicates a contrary intention:

- (b)           an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c)           **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation; and
- (k) a reference to **\$** or **dollar** is to Australian currency.

### Condition Precedent to Novation

Clause 3 of this deed will have no force and effect until the Effective Date.

### Novation

#### 3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party will be read as a reference to the Substitute Party.

#### 3.2 Assumptions of rights and obligations

- (a) The Substitute Party:
  - (i) will be bound by and must comply with the terms of the Contract and will enjoy the rights and benefits conferred on the Retiring Party under the Contract; and
  - (ii) will assume the obligations and Liability of the Retiring Party under the Contract,

in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.
- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

#### 3.3 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and



- (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the Contract.

### **3.4 Insurance**

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party will take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under of the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

### **Ongoing Rights of Retiring Party**

#### **4.1 Direct Enquiries**

In addition to any other rights which the Retiring Party may have, the Continuing Party and the Substitute Party each agree that the Retiring Party may make enquiries directly of the Continuing Party for the purpose of establishing whether the Continuing Party is complying with its obligations under the Contract.

#### **4.2 Retiring Party to have benefit of Promises**

- (a) The Continuing Party warrants in favour of the Retiring Party that in performing the Services it will comply with its obligations under the Contract and that the Retiring Party will continue to have the benefit of all promises, undertakings, covenants and warranties made or given by the Continuing Party under the Contract as if the Retiring Party remained a party to the Contract
- (b) Without limiting the above, the Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence in performing the Services including in issuing any certificates it is required to issue under the Contract and further acknowledges that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in issuing those certificates and acknowledges that:
  - (i) in performing the Services it will owe a duty of care to the Retiring Party; and
  - (ii) it is aware that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in performing the Services and the warranties given by the Continuing Party in this deed.

#### **4.3 Report by Continuing Party**

The Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence to ensure that the design intent of the Works as contained in the Design Documentation in existence at the date of execution of this deed, is reflected in the completion of the Design Documentation and in the execution of the Works.

Without limiting the above, the Continuing Party must conduct such inspections of the Works at such times and in such detail as may reasonably be expected of a consultant engaged in a project of the size and complexity of the Works.

The Continuing Party must act in good faith and in the best interests of the Retiring Party and promptly advise the Retiring Party about any matter in which the Continuing Party has been

instructed by the Substitute Party to provide the Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including:

- (a) any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Contract including where the Substitute Party's instructions:
  - (i) in relation to design are not consistent with the Contract or may result in the Works to be constructed not being fit for their intended purpose; or
  - (ii) require the Continuing Party to issue a certificate under the Contract where the conditions for the issue of that certificate under the Contract have not been satisfied; and
- (b) any non-conformity of any Design Documentation produced pursuant to the Contract, or to the Design Documentation in existence at the date of this deed, upon becoming aware of the non-conformity.

### **Overriding effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

### **Representations and warranties**

#### **6.1 Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

#### **6.2 Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

#### **6.3 Binding obligations**

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

### **Duties, costs and expenses**

#### **7.1 Stamp duty**

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

#### **7.2 Costs**

Each Party must pay its own legal costs and expenses in negotiating, preparing and executing this deed.

#### **7.3 GST**

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the

amount must also pay any GST in respect of the taxable supply to which the amount relates;

- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

## **General**

### **8.1 Governing law**

This deed is governed by and must be construed according to the laws of the State or Territory stated in Schedule 1.

### **8.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State or Territory stated in Schedule 1, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

### **8.3 Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

### **8.4 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

### **8.5 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

### **8.6 Severance**

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

**8.7 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

**8.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Schedule 1

**Contract**

(Clause 1.1)

.....  
.....

**Governing Law and Jurisdiction**

(Clause 1.1 and 8.1)

.....  
.....

Executed as a deed.

[Insert names of parties]





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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** **on**

**Parties**            **[Insert name and address of Principal] ("Principal")**

**[Insert name and address of Professional Services Contractor] ("Professional Services Contractor")**

**[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 (i.e. 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.

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**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.



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### 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]

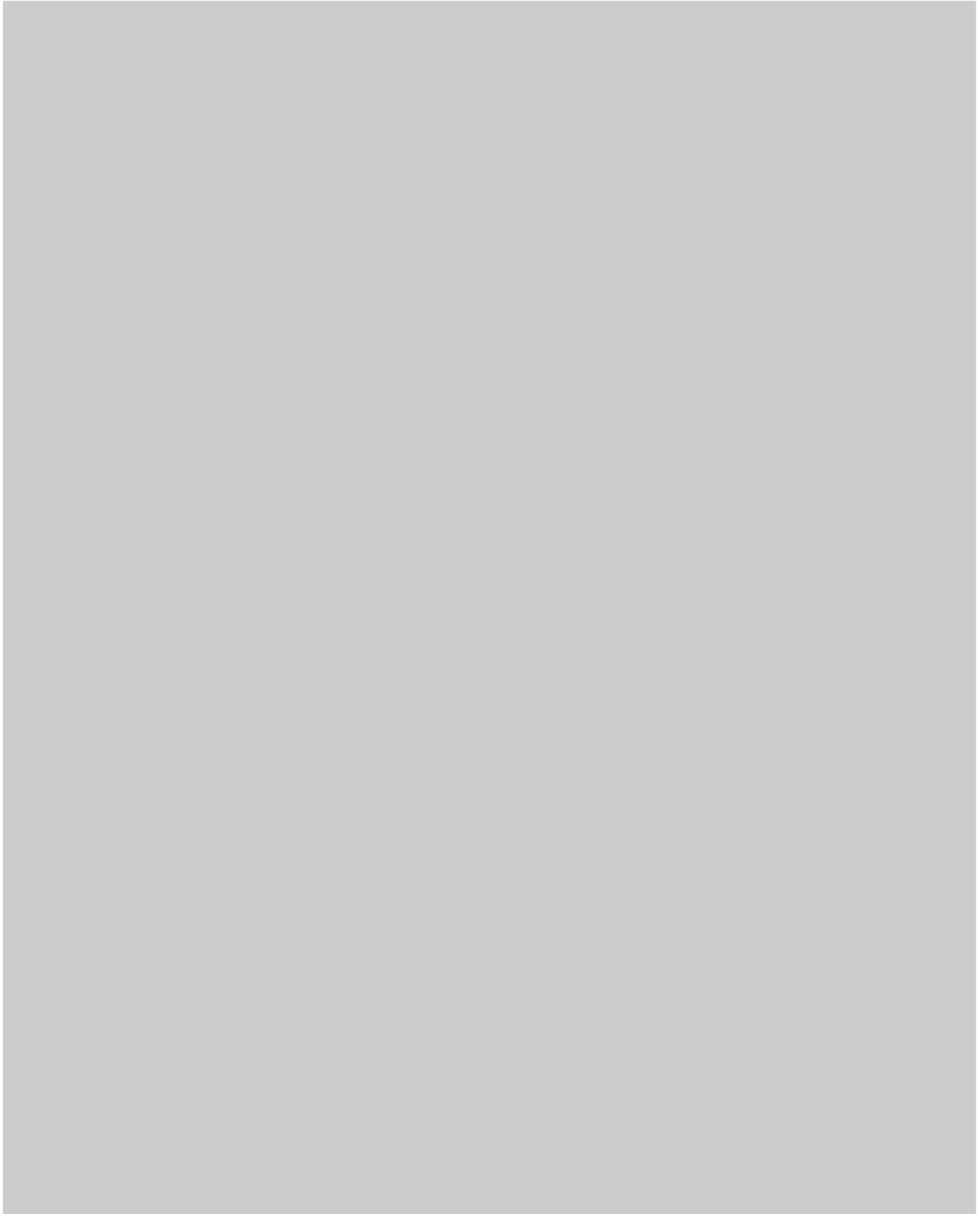
\_\_\_\_\_  
[Name of witness]

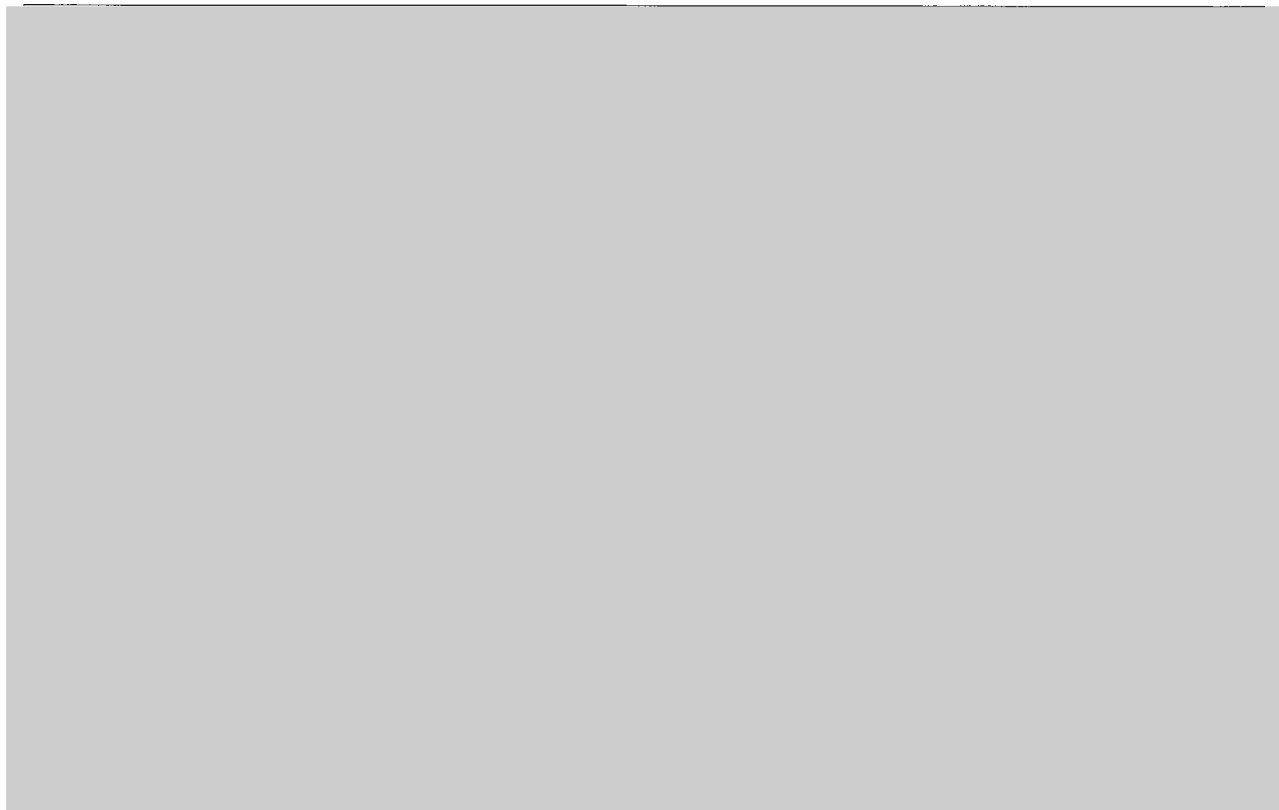
\_\_\_\_\_  
[Signature of witness]



**SCHEDULE 11-**

(Clause 17.4)







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**SCHEDULE 12 – NOT USED**



**AGREEMENT EXECUTION PAGE**

DATED .....8..... day of .....OCT.....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

KUNDAN SINGH  
Full Name of Witness



Signature of Authorised Signatory

HELEN WILLIAMS  
Full Name of Authorised Signatory

Signed by Alstom Transport Australia Pty Ltd  
ABN 68 165 157 451 in accordance with section  
127 of the Corporations Act 2001 (Cth):



Signature of Director

PASCAL DUPOND  
Full Name of Director



Signature of Company Secretary/Director

KIRSTEN STEWART  
Full Name of Company Secretary/Director



**EXHIBIT A - SERVICES BRIEF**



**Transport  
for NSW**

## **Services Brief**

New Intercity Fleet (NIF) Program

Automatic Selective Door Operation (ASDO)

ISD-18-7482

Trackside Data Design - Newcastle Interchange to  
Central; Lithgow to Burwood; and Kiama to Sydenham

Document Number:

6178079\_7

**Commercial In Confidence**