Maintenance Services Contract
Contract No [insert]

[Insert Project Name]

General Conditions

Sydney Trains
Principal

[Insert name]
Contractor

Version: 3.0
Date: August 2020
**AMENDMENTS**

[Delete this section before issuing the Contract]

Maintenance of this template contract is the responsibility of the Commercial & Projects team, General Counsel and Governance.

This template will be updated as necessary and amendments will be effected by replacement of the appropriate sections. Details of amendments will be recorded in the following table.

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<th>Date</th>
<th>Clause</th>
<th>Description</th>
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<tr>
<td>3.0</td>
<td>January 2020</td>
<td></td>
<td>Amended to reflect industry and Sydney Trains’ feedback and improve ease of use of the template contract.</td>
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<td>Key amendments include:</td>
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<td>- Background - amended to delete the reference to obtaining value for money outcomes from being part of the Principal's Objectives.</td>
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<td></td>
<td>- clause 1.1 and various other clauses – Deleted the definition of Maintenance Services and have replaced all instances of that term with &quot;Contractor's Activities&quot; throughout the Contract.</td>
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<td>- clause 1.2 - included “Deliverables” and “if applicable, any Standing Offer Deed” and deleted requirement to obtain value for money in subclause (o) and included new subclause (q) which provides that a reference to an Authority that is renamed or replaced</td>
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</table>
etc. is deemed to be a reference to that newly named Authority / the new Authority that serves substantially the same purpose.

- clause 1.6(c) - amended to qualify the provision with the words "Without limiting the Contractor's rights under clause 8.4, clauses 3.5, 6.1, 6.5, 8.8 and 13.2 - replaced "Statement of Work" with "Key Details".

- clause 3.6 - amended to include "or who, in the opinion of the Principal, may bring the Principal into disrepute".

- clause 3.7 - included new clause in respect of background checks.

- clause 4.1 - removed the default amount for unconditional undertakings so that the amount of security required is as stated in the Key Details.

- clause 4.2(a) - amended to require the Principal to release such part of the security so that the Principal holds security equal to the value stated in the Key Details.

- clause 4.6 - New paragraph (b) clarifying that where a parent company guarantee has been provided under a Standing Offer Deed the Contractor does not have to provide a parent company guarantee under a Contract.

- Clause 5 - Included the requirement for the Contractor to have in place Product Liability Insurance

- Clause 5.5 - amended clause regarding requirement for Subcontractors and Further Subcontractors to hold Workers Compensation Insurance

- clause 6.4 – included "or approval" in the 2nd paragraph of clause 6.4 after "No review of...".

- clause 6.6 - insert new clause for Government Geotechnical Report Database.

- clause 6.9 - amended clause so that where the Deliverables comprise Software, the Contractor assigns to the Principal all Intellectual Property Rights in certain aspects of the Software, and the Principal grants to the Contractor a license to use the Deliverables for the Contractor's Activities.
- clause 6.10 - amended clause to expand the Principal's rights to use Intellectual Property Rights subsisting in Software that is a part of the Contractor's Pre-existing IPR. The Principal cannot commercialise the Contractor's Pre-Existing IPR.

- clause 6.12 - inserted new clause to provide for Source Code to be placed in escrow where so specified in the Key Details.

- clause 6.15 - included clarification of the resolution of ambiguities where there is a Standing Offer Deed.

- clause 6.16 - amended so that Contractor is required to provide a Confidentiality Undertaking within 5 Business Days of the Award Date where so specified in the Key Details or at any later date notified to the Contractor.

- clause 6.17 - amended to clarify Contractor's obligations in respect of media and disclosure.

- clause 6.20 - inserted modern slavery clause which requires the Contractor to take steps to become aware of and report any modern slavery in its supply chain.

clause 7.4 - amended so that the Contractor must also provide access to any person authorised by the Principal or the Principal's Representative.

- clause 8.5 - inserted Workplace Laws clause requiring Contractor, Subcontractors and Further Subcontractors to comply with Workplace Laws.

- clause 8.6 - amended subcontracting clause regarding compliance around Subcontractors and Further Subcontractors

- clause 8.7 - inserted regime for request to subcontract.

- clause 8.11 - amended to qualify the provision with the words "Without limiting clause 16".

- clause 8.16(b) - amended as the Deed Poll (schedule 2 of the Appendix) is in favour of "Public Transport Agencies" within the meaning of the Transport Administration Act 1988 (NSW).
- clause 8.19 - amended to clarify the Contractor's interface and cooperation obligations.
  - clause 8.20 - inserted new clause in respect of the Principal's operations avoiding adverse impact to the rail network and nuisance.
  - clause 8.21 - amended basis of contract price clause to incorporate requirements relating to Workplace Laws.
- clauses 8.22 - inserted new clause providing for a number of requirements for Software including that any components are free of any viruses, disabling code or other code that may cause unauthorised change.
- clause 8.23 - new clause inserted obliging the Contractor to do certain things with regards to changes and updates to Software.
- clause 8.28 – new clause requiring the Contractor to promptly after the expiry of the Term or earlier termination of the Contract to cease performance of the Contractor's Activities and remove property and Personnel from each Site.
- clause 9.7 - inserted new subclause (b) requiring the Contractor to pay for testing where the Tests are required because of the Contractor's Default.
- clause 10.9 - inserted date on which suspension is effective.
- clause 11.3 - simplified clause so that any reasonable costs and expenses incurred by Contractor arising from Variation delaying the Contractor will be added to amount determined by the Principal's Representative using appropriate rates as the value of the Variation. Where no appropriate rates, percentage specified in the Key Details will be added to the amount determined by the Principal's Representative. Where adjustment to Contract Price is a decrease, any percentage specified in Key Details will be applied to the amount determined to further decrease the Contract Price on account of overheads and profit.
- clause 11.4 - new subclause (b) provides that any Variation will not constitute a repudiation of the Contract.
- clause 12.4 - amended to include the
possibility of a Standing Offer Deed existing, requirement to duly execute an escrow deed and the Contractor meeting with KPI's as a condition precedent to payment.

- clause 12.9 - included wording in paragraph (a) in respect of any other contract formed under a Standing Offer Deed.

- clause 12.12 - deleted subclause 12.12(b).

- clause 12.13 - amended to implement various changes in respect of GST, including provision for the Contractor not having a valid registration for GST purposes or an Australian Business Number, and insertion of an obligation on the Contractor to indemnify the Principal for loss suffered for breach of certain GST warranties.

- clause 14.2 – amended to include failure to comply with a KPI action plan under clause 13.1 of the Contract or under any Standing Offer Deed and a failure to comply with a KPI requirement set out in the Key Details to amount to a default by the Contractor, failure to comply with clause 8.5 (workplace laws) and failure to comply with clause 20.8 (change of control).

- clause 14.4 - amended to allow the Principal to exercise a Step-In Right or direct a Variation omitting or deleting any part of the Contractor’s Activities upon either subclause 14.4(a) or (c) occurring. Amended to allow the Principal to terminate if a Contractor, Subcontractor or Further Subcontractor has failed to comply with its obligations under Workplace Laws or Fair Work Instruments.

- clause 14.5 - amended to state that upon termination, the Contractor must immediately hand over all documents related to performing Handover Services.

- clauses 15.2 - 15.4 - amended the lengths of time for meeting in the dispute resolution process to allow the parties more time to engage in the process and amended wording so there is a focus on meeting to discuss (rather than negotiate) the dispute.

- clause 16 - inserted new clause in respect of Step-In Rights.

- clause 17 - amended so that the
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<td>limitation of the Contractor's liability applies to a liability in respect of wilful misconduct or liability that the Contractor is entitled to be paid pursuant to an insurance policy (as well as further detailed provisions in this respect). Clause 17 is also amended so that it survives termination.</td>
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<td>- clause 18 - inserted new clause in respect of Privacy Laws and Privacy Data and security.</td>
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<td>- clause 20.1 - removed all references to fax in clause.</td>
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<td>- clause 20.4 - removed all references to fax in clause.</td>
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<td>- clause 20.8 - amended so that the Contractor may not permit or suffer a Change of Control without the Principal's prior written consent.</td>
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<td>- clause 20.18 – amended to include wording about Standing Offer Deed.</td>
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<td>- clause 21 – inserted new clause about handover obligations of the Contractor.</td>
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<td>- Schedule 1 - amended to include Key Details from Schedule 2 and Exhibit A Statement of Work, being Contractor's key people, documents and number of copies to be provided by the Principal to the Contractor, number of copies of Design Documentation to be submitted or resubmitted by the Contractor to the Principal, escrow deed, Confidentiality Undertaking, warranties required to be procured by the Contractor from subcontractors and provided to the Principal, percentage adjustments for valuing a Variation, default events in relation to KPIs.</td>
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<td>- Schedule 1 - removed references to fax in Contractor's Representative and Principal's Representative items.</td>
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<td>- Schedule 1 - amended so that if there is a Standing Offer Deed certain Key Details are to be set out in the Request for Quotation in the Standing Offer Deed.</td>
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<td>- Schedule 1 - Included Product Liability Insurance requirements in the Key Details.</td>
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<td>- Schedule 1 - Default events in relation to KPIs inserted to allow Principal to exercise its rights under</td>
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<td>Clause 14.2 where any of the specified KPIs is not achieved.</td>
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<td>Schedule 1 - Limitation of liability (Contractor and Principal) amended so that subclause (a) does not include any amounts deducted under clause 9.11 of the Contract.</td>
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<td>Schedule 1 - generally amended to include notes to user and more clarity about the Principal's default positions.</td>
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Formal Instrument of Agreement

Formal Instrument of Agreement made at Sydney on the Award Date

Parties

Principal:
Name: Sydney Trains ABN 38 284 779 682
Address: Level 20, 477 Pitt Street, Sydney NSW 2000

Contractor:
Name: [Insert name of Contractor] ABN [insert]
Address: [insert]

Background

A. The Principal is committed to operating and maintaining a safe, reliable, effective and efficient rail network (the Objectives).

B. Having regard to the Objectives, the Contractor has represented to the Principal that it has the necessary skill, experience, available resources and professional competence to carry out the Contractor's Activities.

C. The Contractor has agreed to carry out the Contractor's Activities on the terms and conditions of the Contract.

The parties agree

The Principal and the Contractor promise to carry out and complete their respective obligations in accordance with the Contract.

Unless the context indicates otherwise, capitalised terms in this Formal Instrument of Agreement have the meaning given in the attached General Conditions of Contract.
Signed as an agreement

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

Signature of witness

Signature of authorised delegate

Full name of witness

Full name of authorised delegate

Date

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

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Date
OR, where the Contractor is executing under a power of attorney:

**Executed** on behalf of [**Insert name of Contractor**] ABN [**insert**] by its attorney

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

Name of attorney (print)
Under power of attorney
Registration Number / Book Number
(Powers of attorney created in Victoria do not have a number. Insert
the date of the power of attorney instead.)

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

in the presence of:

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

Signature of witness

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

Name of witness (print)

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

Signature of attorney
By executing this document the attorney states that the attorney has
received no notice of revocation of the power of attorney

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

Date
General Conditions of Contract

1. Definitions and interpretation

1.1 Definitions

In the Contract, unless the context indicates otherwise:

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

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

(a) a breach of the Contract by the Principal; or

(b) any other act or omission of the Principal, the Principal's Representative or an Other Contractor engaged by the Principal.

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

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

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

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

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

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

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

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

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

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

**Award Date** means:

(a) where a Standing Offer Deed exists the date on which the Contract came into existence as determined in accordance with the Standing Offer Deed; or

(b) otherwise, the date on which the Formal Instrument of Agreement has been signed by the last party to sign.
**Business Day** means a day other than a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

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

(a) a change in an Approval or a new Approval; or

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

**Change of Control** means, in relation to the Contractor:

(a) if the Contractor comes under the Control of a person (acting alone or together with its Associates (as defined in the Corporations Act)) who did not Control the Contractor on the Award Date; or

(b) if a person (acting alone or together with its Associates (as defined in the Corporations Act)) who was in Control of the Contractor on the Award Date stops having Control of the Contractor, other than as a result of:

(c) a restructure of the Contractor or any Related Entity (as defined in the Corporations Act) of the Contractor that does not change the Ultimate Holding Company (as defined in the Corporations Act) of the Contractor, or

(d) a transfer or issue of any securities listed on any recognised stock or securities exchange.

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

(a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Principal's Representative;

(b) arising out of, or in any way in connection with, the Contractor's Activities or either party's conduct before the Contract; or

(c) otherwise at Law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution.

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

**Competence Records** means, with respect to any Rail Safety Worker engaged in connection with the Contractor's Activities (including those engaged by Subcontractors), the following information:

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

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

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

(ii) the level of qualification attained;

(iii) if, and when, a re-assessment of competence is to be conducted;

(iv) if, and when, any re-training is due and was undertaken; and

(v) the name of any organisation conducting training or re-training;
(c) the name and qualifications of any person who assessed the competence of the worker; and

(d) any further information requested by the Principal with respect to the competence of the Rail Safety Worker.

Confidential Information means information that:

(a) is by its nature confidential;

(b) is communicated by the discloser of the information (Discloser) to the recipient of the information (Recipient) as confidential;

(c) the Recipient knows or ought to know is confidential; or

(d) relates to or comprises:

   (i) Principal Data;

   (ii) the Contract, the Contractor's Activities or the Deliverables;

   (iii) the financial, corporate and commercial information of any party;

   (iv) the affairs of a third party (provided the information is non-public); or

   (v) the strategies, practices and procedures of the State and any information in the Contractor's possession relating to an Authority,

but excludes information:

(e) in the public domain, unless it came into the public domain due to a breach of confidentiality;

(f) independently developed by the Recipient; or

(g) in the possession of the Recipient without breach of confidentiality by the Recipient or other person.

Confidentiality Undertaking means a deed in the form of Schedule 13 of the Appendix.

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

Consequential Loss means any:

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

(b) direct or indirect financing costs,

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

Contract means the contractual relationship between the parties constituted by:

(a) either:

   (i) where a Standing Offer Deed exists, the Purchase Order issued by the Principal in accordance with the terms of the Standing Offer Deed; or

   (ii) otherwise, the Formal Instrument of Agreement;
(b) these General Conditions of Contract;
(c) the Key Details, as amended (if applicable) by a Purchase Order;
(d) the Schedules, Exhibits and Appendix;
(e) the Statement of Work; and
(f) the other documents (if any) referred to in the Key Details.

**Contract Price** means the amount specified in the Key Details as adjusted, subject to clause 19.5, under the Contract.

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

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

**Control** in relation to an entity (as defined in section 9 of the Corporations Act), has the meaning given in section 50AA of the Corporations Act as if section 50AA(4)(b) were replaced with the words “only has that capacity as a result of acting as the bare trustee for another person”.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Corrective Maintenance Services** means those Contractor’s Activities described as ‘Corrective Maintenance Services’ in the Statement of Work, which are generally corrective, reactive or unplanned in nature.

**Corrective Maintenance Fee** has the meaning given in Schedule 2.

**Data Protection Plan** means the plan prepared by the Contractor and approved by the Principal in accordance with clause 18.4.

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

**Defect** means any aspect of the Contractor’s Activities which is not in accordance with the requirements of the Contract and includes any defect in the Serviced Equipment to the extent caused or contributed to by the Contractor’s Activities.

**Defects Liability Period** means the period described in the Key Details.

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

**Design Documentation** means all design documentation (including drawings, designs, specifications, manuals, patterns, models, samples, calculations and the like) and other information which is necessary for the Contractor to perform the Contractor’s Activities.

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

**Employees** means employees of the Contractor who are performing work in respect of the Contractor’s Activities.

Fair Work Instrument means:
(a) a modern award;
(b) an enterprise agreement;
(c) a workplace determination; or
(d) a Fair Work Commission order.

Force Majeure Event means:
(a) riot, war, invasion or act of foreign enemies, acts of terrorism, or hostilities;
(b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
(c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
(d) industrial action in the form of a strike that is not specific to, or caused by, the Contractor; and
(e) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions, regardless of severity,
but only where such events or circumstances:
(f) are beyond the reasonable control of the affected party;
(g) where the affected party is the Contractor, are such that a competent contractor would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under the Contract if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced contractor providing similar services; and
(h) are not caused or contributed to in whole or in part by a breach by the affected party of the Contract.

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

Further Subcontractor means any person, other than an employee of the Subcontractor, engaged by a Subcontractor for the performance of any of the Contractor's Activities including any entity acting as a labour hire company, whether a related entity to the Subcontractor or not.

FW Act means the Fair Work Act 2009 (Cth).

FW Regulations means the Fair Work Regulations 2009 (Cth). General Conditions of Contract means these General Conditions of Contract.

Government Geotechnical Report Database means any database created by an Authority for the purpose of collecting geotechnical reports, including the database created in connection with the Government Geotechnical Report Database Project.
GST or Goods and Services Tax means the tax payable on taxable supplies under the GST Legislation.

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

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

Handover Period means the period referred to in clause 21.3.

Handover Services means the tasks to be performed by the Contractor pursuant to the Handover Services Management Plan.

Handover Services Fee has the meaning given in clause 21.5(a).

Handover Services Management Plan means the "Handover Services Management Plan" to be prepared by the Contractor in accordance with clause 21.6.


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

(a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the Contract for financial reasons;

(b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any foreign law equivalent or other person with similar power is appointed to the party;

(c) the party:

(i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act or under any bankruptcy, insolvency or analogous Law;

(ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act;

(iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand;

(iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;

(v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;

(vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;

(vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or

(viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous
Law affecting creditors’ rights or consents to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or

(d) any act is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b) or (c).

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

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

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

(a) in Schedule 11 of the Appendix; and

(b) if any, set out in Schedule 3.

**Law** means:

(a) any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by the Commonwealth or any State or Territory government;

(b) common law and equity;

(c) Approvals; and

(d) any other relevant Authority requirements.

**Legal Opinion** means a legal opinion:

(a) from:

(i) lawyers to the Contractor, authorised to practise in the place of incorporation of the Contractor, stating that this Contract is binding and enforceable against the Contractor; or

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

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

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

**Modern Slavery** has the meaning given to that term in clause 6.20.

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

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

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

**NSW Rail Assets** has the meaning assigned to it in the ASA Charter.
**NSW Trains** means the corporation by that name constituted by Part 3C of the Transport Administration Act 1988 (NSW).

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

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

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

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

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

**Performance Adjustments** means the amount(s) by which the Contract Price may be adjusted in accordance with Schedule 2.

**Personal Information** means information or an opinion recorded in any form about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

**Personnel** means:

(a) in respect of the Contractor, any directors, officers, employees, consultants, agents, Subcontractors of the Contractor and employees, consultants and agents of Subcontractors or Further Subcontractors; and

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

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

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

(b) the policies, codes and standards that appear, as at the Award Date, on the RailSafe website at [https://railsafe.org.au/](https://railsafe.org.au/), including:

(i) the policy entitled “Health and Safety Policy”; and

(ii) the applicable specifications on the safety and environment specifications page, available, as at the Award Date, at: [https://railsafe.org.au/safety-and-environment-specifications](https://railsafe.org.au/safety-and-environment-specifications);


(d) the New South Wales Government Code of Practice for Procurement (January 2005);

(e) in relation to work, health and safety management, the Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (September 2013);

(f) in relation to quality management, AS/NZ ISO 9001 and, if applicable, the NSW Government Quality Management Systems Guidelines for Construction (Edition 4 December 2019);
(g) in relation to environmental management, AS/NZS ISO 14001 and, if applicable, the NSW Government Environmental Management System Guidelines (Edition 3 August 2013);

(h) in relation to asset management, AS/NZS ISO 55001;

(i) if applicable, the NSW Government Policy on Aboriginal Participation in Construction;

(j) the NSW Government Aboriginal Procurement Policy;


(l) Training and Skills Policy;

(m) PBD2016-03 Construction Standards and Conformance, available, as at the Award Date, at https://arp.nsw.gov.au/pbd-2016-03-construction-standards-and-conformance; and

(n) any other policies, codes and standards that are notified to the Contractor by the Principal from time to time.

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

Pre-existing IPR in respect of a party means:

(a) any Intellectual Property Rights belonging to that party that are pre-existing as at the Award Date, but does not include any Intellectual Property Rights developed by the Contractor or any of its Personnel for the purposes of, or in anticipation of, carrying out the Contractor's Activities; or

(b) any Intellectual Property Rights that are brought into existence by or on behalf of that party, other than as a result of the performance of that party's obligations under this Contract, and used by a party in performing its obligations under this Contract.

Principal Data means all data and information relating to the Principal or its operations, facilities, clients, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist, and whether entered into, stored in, generated by or processed through software or equipment, or produced as part of the performance of the Contractor's Activities.

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

Privacy Laws means all applicable laws relating to privacy and Personal Information, including the Privacy and Personal Information Protection Act 1998 (NSW), Privacy Act 1988 (Cth) and any applicable principles, codes or directions issued under those Acts.

Product Liability Insurance means a policy of product liability insurance:

(a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time;

(b) covering the parties' respective liability to each other; and

(c) which complies with the requirements set out in clause 5.5(d).
for loss or damage to property (including the Principal's property) and the death of or injury to any person (other than liability which the Law requires to be covered under a Workers Compensation Insurance policy) arising out of, or in any way in connection with, the Deliverables or any goods or equipment supplied as part of the Contractor's Activities.

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

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

(a) covering the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time;

(b) covering the parties' respective liability to each other; and

(c) which complies with the requirements set out in clause 5.5(d),

for loss or damage to property (including the Principal's property) and the death of or injury to any person (other than liability which the Law requires to be covered under a Workers Compensation Insurance policy) arising out of, or in any way in connection with, the Contractor's Activities.

**Purchase Order** means:

(a) where a Standing Offer Deed exists, the ‘Purchase Order’ issued under the Standing Offer Deed (if any) and includes any annexures, schedules, exhibits and attachments to the Purchase Order; and

(b) otherwise, a purchase order (or any document or documents together referred to by the Principal as the purchase order) issued by the Principal to the Contractor for the purposes of invoicing and payment.

**Qualifying Cause** means:

(a) an Act of Prevention;

(b) a Force Majeure Event;

(c) a Direction to suspend that satisfies clause 10.9(c)(ii); or

(d) a Variation the subject of a Direction by the Principal's Representative pursuant to clause 11.2.

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

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

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

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

**Rail Transport Agency** means Transport for NSW (and each of its divisions), TAHE, Sydney Trains, Sydney Metro and NSW Trains.
Railway Track or Rail Track or Track or Line means the rails fastened on sleepers or transoms and founded on ballast, bridge decking or concrete slab, associated signalling and overhead wiring components (in electrified areas).

Routine Maintenance Fee has the meaning given in Schedule 2.

Routine Maintenance Services means those Contractor's Activities described as 'Routine Maintenance Services' in the Statement of Work, which are generally routine, planned, scheduled, preventative or regular in nature.

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

Security Incident means any incident, event or issue that causes or has the intent or potential to cause a privacy or security breach or any loss of, unauthorised access to, or use, modification, disclosure or other misuse of, Principal Data, Personal Information or the Principal's Confidential Information.

Separable Portion means a separable portion of the Contractor's Activities required to be carried out at a specified or separate area or location, identified as such in the Key Details.

Serviced Equipment means the assets, equipment or other property to be maintained under this Contract as set out in the Serviced Equipment List.

Serviced Equipment List means the list of Serviced Equipment set out in the Statement of Work (as amended in accordance with clause 8.25).

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

Software means any software, firmware, computer code or configuration files provided, developed or modified or required to be provided, developed or modified, by the Contractor to or for the Principal in connection with the Contractor's Activities or the Deliverables (including any developments, modifications, enhancements, adaptations or derivative works made in respect of those items).


Source Code means, in respect of any software, firmware, computer code or configuration files (Computer Programs), the human readable code of such Computer Programs, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all compliers, tools, language, documentation necessary to operate, maintain and modify the executable code copy of that Computer Program including all technical documentation and specifications in respect of that Computer Program, including any other information necessary for a reasonably skilled computer programmer to understand the program logic of the software, firmware, computer code or configuration files and to perform any of those acts in relation to it.

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

Statement of Work means:

(a) the document in Exhibit A (if any); and

(b) where a Standing Offer Deed exists, any Statement of Work attached to the Purchase Order.

Step-In Right has the meaning given in clause 16.

Subcontractor means any person engaged by the Contractor for the performance of any of the Contractor's Activities including any entity acting as a labour hire company, whether or not it is an entity related to the Contractor.
**Sydney Metro** means Sydney Metro ABN 12 354 063 515, a NSW Government agency constituted by Part 3D of the Transport Administration Act 1988 (NSW).

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

**TAHE** means the corporation by the name Transport Asset Holding Entity of New South Wales ABN 59 325 778 353, constituted by Part 2 Division 1 of the Transport Administration Act 1988 (NSW), known, prior to 1 July 2020, as Rail Corporation New South Wales.

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

**Tests** means:

(a) the tests and procedures specified in the Statement of Work;

(b) any other tests required by the Principal's Representative; and

(c) any other tests required to ascertain whether the Contractor's Activities or a specified part thereof meet the requirements of the Contract,

and each of them is a Test.

**Training and Skills Policy** means the Procurement Board Direction 2020-03 Skills, Training and Diversity in Construction, available, as at the Award Date, at https://arp.nsw.gov.au/pbd-2020-03-skills-training-and-diversity-in-construction/.

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

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

**Variation** means, unless otherwise stated in the Contract, any change to the Contractor's Activities including any addition, increase, decrease, omission, deletion or removal to or from the Contractor's Activities.

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

(a) the Work Health and Safety Act 2011 (NSW); and

(b) the Work Health and Safety Regulation 2017 (NSW).

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

(a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;

(b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with WHS Legislation; and

(c) comply with the specific requirements of Part 6.4 of the Work Health and Safety Regulation 2017 (NSW) in relation to the matters that a WHS management plan must include.

**Work Order** means a written Direction given by the Principal's Representative in accordance with clause 8.26(c).
Workers Compensation Insurance means a policy of insurance to insure against liability for death of or injury to employees, including liability by statute and at common law.

Workplace Laws means:
(a) the FW Act;
(b) the FW Regulations;
(c) the Superannuation Guarantee (Administration) Act 1992 (Cth);
(d) applicable state legislation relating to long service leave; and
(e) any other law by the Commonwealth or any State or Territory relating to the entitlements of employees,

1.2 Interpretation

In the Contract:
(a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
(b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
(c) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
(d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
(e) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;
(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it;
(i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
(j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
(k) "includes" in any form is not a word of limitation;
(l) a reference to "$" or "dollar" is to Australian currency;
(m) the word "Subcontractor" will include suppliers and consultants;

(n) if any term in Schedule 2 or the Statement of Work refers to a term included in Incoterms 2020, the rules and definitions governing that term in Incoterms 2020 will apply;

(o) any reference to the Deliverables, Contractor's Activities, Design Documentation or any other document or thing being fit for their intended purpose (or any similar reference) will be read as referring to the purpose having regard to:

(i) the Principal's objective of operating and maintaining a safe, reliable, effective and efficient rail network; and

(ii) any purpose contemplated in or reasonably ascertainable from:

A. the Contract and, if applicable, any Standing Offer Deed; and

B. to the extent relevant for determining the purpose in connection with a Variation, any document provided by the Principal to the Contractor specifically in connection with the Variation;

(p) to the extent that:

(i) any amounts are payable to the Contractor under the Contract by reference to hourly or daily rates; and

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

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

(q) a reference to any Authority, institute, association or body is:

(i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

(ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body.

1.3 No bias against drafting party

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

1.4 Provisions limiting or excluding liability

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

1.5 Discretion

Subject to any express provision in the Contract to the contrary:
(a) a provision of the Contract which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and

(b) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Contract.

Without limiting the previous paragraph, neither the Principal nor the Principal's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of the Contract conferring the discretion, power or entitlement.

1.6 Authorities

(a) The Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:

(i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or

(ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter, including any functions or powers required to be exercised by the Principal or any Rail Transport Agency pursuant to any Configuration Management Framework.

(b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under the Contract.

(c) Without limiting the Contractor's rights under clause 8.4, the Contractor:

(i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal, any Rail Transport Agency or the ASA of their respective functions and powers either as an AEO or under any legislation, the ASA Charter or the Configuration Management Framework; and

(ii) acknowledges and agrees that:

A. there are many Authorities with jurisdiction over aspects of the Contractor's Activities, the Rail Corridor, and other matters affecting and affected by the Contractor's Activities;

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

C. it bears the full risk of all occurrences of the kind referred to in clause 1.6(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.
1.7 Separable Portions

In the Contract clauses 5.1 and 5.3 and clauses 2, 9 and 10 apply separately to each Separable Portion and references therein to the Contractor's Activities mean so much of the Contractor's Activities as are comprised in the relevant Separable Portion.

1.8 Novation

(a) The Principal may at any time, at its sole discretion, novate the Contract to any Authority, any successor in title to the Principal or any other person that assumes the functions or obligations of the Principal.

(b) If the Principal elects to novate the Contract in accordance with paragraph (a), the Principal will provide the Contractor with a duly completed Deed of Novation and the Contractor must execute the Deed of Novation and return it to the Principal within 5 Business Days of receipt of the relevant Deed of Novation.

(c) If the Contractor fails to properly execute the Deed of Novation within the time period specified in the previous paragraph, then for the purpose of executing the Deed of Novation, the Contractor irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars and execute, sign, send and deliver in the name of the Contractor the Deed of Novation and all notices, deeds and documents for that purpose.

1.9 Indexation and review of rates

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

2. Parties' obligations

2.1 Contractor's obligations

(a) The Contractor must carry out the Contractor's Activities during the Term.

(b) The Contractor must ensure that the Contractor's Activities will be fit for their intended purposes.

2.2 Principal's obligations

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

(a) allow the Contractor to perform the Contractor's Activities;

(b) give the Contractor sufficient access to the Site to allow it to carry out the Contractor's Activities on the later of:

(i) the date that the Contractor has provided the Principal's Representative with:

   A. any Unconditional Undertaking and parent company guarantee required under clause 4;

   B. any evidence of any insurance taken out by the Contractor which is required under the Contract; and

   C. a duly executed Confidentiality Undertaking as required by clause 6.16; or

(ii) the date specified in the Statement of Work;
subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor’s Activities; and

(d) pay the Contract Price.

2.3 Extension of Term

(a) The Principal may (in its absolute discretion):

(i) extend the Term once by a period up to Option Period 1;

(ii) if the Principal exercised its right to extend the Term by a period up to Option Period 1 in accordance with clause 2.3(a)(i) extend the Term once by a period up to Option Period 2; and

(iii) if the Principal exercised its right to extend the Term by a period up to Option Period 2 in accordance with clause 2.3(a)(ii) extend the Term once by a period up to Option Period 3,

by giving written notice at least 30 days before the end of the Term (or such other notice period as the parties may agree).

(b) Any extension exercised in accordance with paragraph (a) will be on the terms and conditions in effect on, and takes effect from, the end of the then current Term but the Contract Price payable for the further period will be equal to the Contract Price payable for the prior equivalent period of the original Term, escalated by the amount set out in the Key Details.

3. Personnel

3.1 Principal's Representative

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

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

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

3.2 Replacement of Principal's Representative

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

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

3.3 Principal's Representative's representative

The Principal's Representative may:

(a) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under the Contract;
(b) not appoint more than one person to exercise a specific function under the Contract; and

(c) revoke any appointment under paragraph (a) by notice in writing to the Contractor.

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

3.4 Contractor's Representative

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

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

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

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

3.5 Key people

The Contractor must:

(a) employ those people specified in the Key Details, including the Contractor's Representative, in the jobs specified in the Key Details;

(b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval; and

(c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

3.6 Removal of persons

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

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

3.7 Background checks

(a) The Contractor must undertake all necessary background checks of its Personnel involved in the performance of the Contractor's Activities to ensure that they are fit and proper to do so.

(b) Without limiting the generality of paragraph (a), where requested by the Principal, the Contractor must carry out any specific background checks of its Personnel as reasonably required by the Principal from time to time, including a criminal history check, and provide the results of those checks to the Principal's Representative within 2 Business Days of receipt.
(c) Where the outcome of a background check reveals that any of the Contractor's Personnel are not fit and proper to be involved in connection with the performance of the Contractor's Activities, the Contractor must not use those Personnel in the performance of the Contractor's Activities.

(d) The Contractor acknowledges and agrees that:

(i) all background checks will be undertaken at the Contractor's cost, unless otherwise agreed by the Principal in writing; and

(ii) the Contractor is solely responsible for obtaining all necessary consents, in accordance with the Privacy Laws, in connection with the conduct of any background checks and the provision of the results of the background checks to the Principal and its Personnel where requested.

4. Security

4.1 Form of security

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

(b) The Contractor must provide security in the form of an Unconditional Undertaking for the amount stated in the Key Details.

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

4.2 Release of security

(a) Subject to its rights to have recourse to the security, the Principal must release security then held when:

(i) the last Defects Liability Period has expired;

(ii) the Contractor has provided the Principal with the final payment claim required by clause 12.8; and

(iii) the Contractor has complied with all of its obligations under the Contract.

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

4.3 Replacement security

(a) If the Principal holds security provided under clause 4.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor, the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security, provide the Principal with replacement security in the form of an Unconditional Undertaking in exchange for the security which is being replaced.

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

4.4 Additional Security

(a) If the Principal directs a Variation under clause 11.2 which increases the Contract Price, the Principal may direct the Contractor to provide additional security so as to ensure that the amount of the security then held by it equals the amount stated in the Key Details.

(b) The Contractor must provide additional security in the form of an Unconditional Undertaking within 10 Business Days of a Direction under clause 4.4(a).

4.5 Interest

The Principal:

(a) is not obliged to pay the Contractor interest on any Unconditional Undertaking provided under clause 4.1, 4.3 or 4.4 including the proceeds of any bank guarantee if it is converted into cash; and

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

4.6 Parent company guarantee

(a) Subject to clause 4.6(b), if the Contractor is required by the Key Details to provide a parent company guarantee, the Contractor must, on the Award Date, provide the Principal's Representative with a parent company guarantee:

(i) in the form set out in Schedule 5 of the Appendix with all particulars completed; and

(ii) duly executed by the person named in the Key Details (Guarantor).

(b) The Contractor is not required to provide a parent company guarantee under clause 4.6(a) if it has provided a parent company guarantee under the Standing Offer Deed (if any).

4.7 PPSA

(a) To the extent the PPSA applies to any goods, materials or other items supplied by the Contractor to the Principal the Contractor warrants that:

(i) the supply of goods, materials or other items to the Principal does not breach any security agreement the Contractor has with a third party; and

(ii) the supply of goods, materials or other items to the Principal is within the ordinary course of the Contractor's business.

(b) The Contractor indemnifies the Principal against any Claims against, or costs, losses or damages suffered or incurred by the Principal directly or indirectly in connection with any infringement of, or Claim in regard to, any third party security agreement or security interest under the PPSA arising as a result of:

(i) the Contractor carrying out the Contractor's Activities; or

(ii) goods, materials or other items supplied to Principal by the Contractor infringing that third party's rights under the PPSA.
5. **Risks and insurance**

5.1 **Risk of goods and materials**

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

(a) any loss of or damage to unfixed goods and materials intended for incorporation in the Serviced Equipment but not yet incorporated, until they are installed in the Serviced Equipment, notwithstanding that ownership of all or part of the goods or materials may previously have passed to the Principal under clause 12.5(c); and

(b) after goods or materials are installed into the Serviced Equipment, any loss of or damage to those goods or materials arising from any act or omission of the Contractor during the performance of Tests or during the Defects Liability Period or from an event which occurred prior to installation.

5.2 **Contractor's indemnity**

The Contractor will indemnify the Principal against:

(a) any loss of or damage to property of the Principal (including the Serviced Equipment); and

(b) any liability to or Claims by any person against the Principal in respect of loss of or damage to property or injury to or death of persons,

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

5.3 **Reinstatement**

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

5.4 **Insurance by Principal**

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

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

(i) must satisfy itself of the nature and extent of the Principal's insurance;

(ii) acknowledges that the insurances effected by the Principal do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits, and the Contractor may at its cost, take out insurance to:

A. insure any risks not insured by the Principal's insurance; or

B. cover any such exclusions, conditions or excesses in that insurance,

which the Contractor wants to insure against or cover;
(iii) where it bears the risk of the relevant loss or damage under clause 5.1 or is required to indemnify the Principal under clause 5.2, must bear the cost of any excesses in the Principal’s insurance;

(iv) will be responsible for paying or bearing all excesses in relation to insured matters under the insurances effected by the Principal in accordance with the policy terms; and

(v) may effect its own insurance to cover the amount of any excess.

5.5 Contractor insurance obligations

The Contractor must:

(a) from the Award Date effect and have in place the following insurance with insurers and on terms satisfactory to the Principal’s Representative:

(i) Public Liability Insurance;
(ii) Product Liability Insurance;
(iii) Workers Compensation Insurance;
(iv) Motor Vehicle Insurance; and
(v) if the Contractor’s Activities involve design services or any other professional services, Professional Indemnity Insurance,

for at least the amounts referred to and with the maximum deductibles specified in the Key Details;

(b) ensure that each Subcontractor and Further Subcontractor has Workers Compensation Insurance covering their employees at all times at which the Subcontractor or Further Subcontractor performs the Contractor’s Activities or is otherwise engaged in relation to this Contract;

(c) ensure that if the Contractor’s Activities are to be carried out on or near rail, the Public Liability Insurance does not contain any exclusions or limitations in cover in respect of works conducted on or near rail;

(d) ensure that the Public Liability Insurance and the Product Liability Insurance comply with the requirements set out in the Key Details;

(e) provide the Principal’s Representative with copies of certificates of currency for the insurances referred to in paragraphs (a) and (b) as required by the Principal’s Representative from time to time; and

(f) upon request by the Principal’s Representative, promptly provide the Principal’s Representative with a copy of any insurance policy that is either in the joint names of the Contractor, the Principal, NSW Trains, Transport for NSW and TAHE, or extends the benefit of cover to the Principal, NSW Trains, Transport for NSW and TAHE as insureds in respect of their vicarious liability for the acts or omissions of the Contractor and its Subcontractors.

5.6 Period of insurance

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

(a) in the case of Public Liability Insurance, at all times at which the Contractor performs the Contractor’s Activities (and at least until the expiry of the Term);
(b) in the case of Product Liability Insurance and Professional Indemnity Insurance, until the expiry of 6 years following the end of the Defects Liability Period;

(c) in the case of Workers Compensation Insurance, at all times at which the Contractor performs the Contractor's Activities; and

(d) in the case of Motor Vehicle Insurance, at all times that the vehicles are to be used by the Contractor in connection with the Contractor's Activities or are on the Site.

5.7 Insurers

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

(a) are authorised under the Insurance Act 1973 (Cth) to carry on an insurance business in Australia and are supervised by the Australian Prudential Regulation Authority; and

(b) have a credit rating of not less than A from Standard & Poor's, A2 from Moody's Investor Services or A- from A.M. Best Company.

5.8 Insurance obligations

The Contractor must ensure that it:

(a) does not do anything which prejudices any insurance;

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

(c) reinstates an insurance policy if it lapses;

(d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;

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

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

5.9 Failure to insure

If the Contractor fails to:

(a) provide copies of any insurance policy together with evidence satisfactory to the Principal's Representative that the policy is current; or

(b) effect insurance which is with insurers and on terms satisfactory to the Principal's Representative,

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

The Contractor must:

(a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract, if that claim would:

   (i) have a material impact on insurance proceeds available under that policy; or

   (ii) affect the Contractor’s ability to comply with its obligations under the Contract, including this clause 5;

(b) keep the Principal informed of subsequent developments concerning the claim; and

(c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences which may give rise to a claim by them.

5.11 **Cross liability**

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

(a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;

(b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;

(c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and

(d) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

5.12 **Liabilities unaffected**

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

6. **Design and documentation**

6.1 **Principal's documents**

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

6.2 **Contractor's design**

(a) Clauses 6.2 to 6.5 apply if any design work is required as part of the Contractor's Activities.
(b) The Contractor must prepare all Design Documentation required for the performance of the Contractor's Activities.

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

6.3 Principal's Representative may review Design Documentation

(a) The Principal's Representative may:

(i) review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Contractor; and

(ii) within 15 Business Days of the submission by the Contractor of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation if in its reasonable opinion the Design Documentation does not comply with the requirements of the Contract.

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

(c) The Contractor must not commence the part of the Contractor's Activities to which any Design Documentation which it has submitted to the Principal's Representative applies, unless the Principal's Representative has had 15 Business Days to review the Design Documentation and has not rejected the Design Documentation.

6.4 No obligation to review

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

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

(i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to Law; or

(ii) prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to Law.

6.5 Copies of Design Documentation

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

6.6 Government Geotechnical Database

The Contractor authorises the Principal to enter any geotechnical report prepared or obtained by the Contractor in connection with the Contract and the Contractor's Activities into the Government Geotechnical Report Database.
6.7 **Fitness for purpose**

The Contractor warrants that:

(a) any Design Documentation it prepares will be fit for its intended purpose; and

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

6.8 **IP warranties and representations**

The Contractor warrants and represents that:

(a) it owns, or is licensed by the owner to use and sub-licence all Pre-existing IPR;

(b) in carrying out the Contractor's Activities, the Contractor will not infringe the Intellectual Property Rights or Moral Rights of any person; and

(c) the Principal's (or any of the Principal's sub-licensees') use or receipt of any Deliverables for any purpose will not infringe the Intellectual Property Rights of the Contractor or any third party.

6.9 **Ownership**

(a) The Contractor agrees that, immediately upon the creation of any Deliverables, the Principal owns the Deliverables.

(b) The Contractor assigns to the Principal all existing and future interest, title and rights (including Intellectual Property Rights) subsisting in and to any Deliverables (including any Deliverables that have been jointly created, developed or brought into existence by the Principal and Contractor) excluding all Pre-existing IPR.

(c) Where the Deliverables comprise any Software, in addition to owning the Intellectual Property Rights in that Software, the Principal will own, and the Contractor assigns to the Principal all Intellectual Property Rights in:

(i) all modifications, developments, derivative works, updates or upgrades to that Software; and

(ii) any configuration files which are based on or which arise in connection with the Principal's internal or other design work, definitions or requirements.

(d) The Contractor must promptly do all things reasonably required, including executing any documents, to further effect the assignment of the Intellectual Property Rights in the Deliverables (including as a present assignment of future copyright) from the Contractor to the Principal in this clause 6.9.

(e) The Contractor must procure that its Personnel ensure that the ownership of the Intellectual Property Rights in the Deliverables which would, but for the application of this clause 6.9, vest in such Personnel, vest in or are transferred or assigned immediately to the Principal on and from the date of creation.

(f) The Principal grants to the Contractor a limited, revocable, non-exclusive, royalty-free licence to use the Deliverables solely to the extent necessary for the Contractor to perform the Contractor's Activities in accordance with the Contract.
6.10 Pre-existing IPR

(a) Each party will retain its Pre-existing IPR and nothing in this Contract assigns or transfers the Pre-existing IPR of one party to another. Neither party may assert or bring any claim for ownership of any or all of the other party’s Pre-existing IPR.

(b) The Contractor grants to the Principal a non-exclusive, irrevocable, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights comprised in or subsisting in the Contractor’s Pre-existing IPR to:

(i) allow the Principal the full benefit and enjoyment of the Serviced Equipment, the Deliverables and Contractor’s Activities;

(ii) use the Contractor’s Pre-existing IPR:

A. to procure, undertake or perform any works, activities, goods or services in connection with any further upgrade or refurbishment of the Serviced Equipment, or any plant, equipment, infrastructure or systems owned, operated or maintained by the Principal or any other Rail Transport Agency;

B. to install, operate, maintain and monitor the Serviced Equipment or any plant, equipment, infrastructure or systems owned, operated or maintained by the Principal or any other Rail Transport Agency; and

C. to integrate the Serviced Equipment with any other plant, equipment, infrastructure or systems owned, operated or maintained by the Principal or any Rail Transport Agency; and

(iii) disclose the Contractor’s Pre-existing IPR on a confidential basis to third parties for the purposes of a tender process for any procurement in connection with the matters set out in clause 6.10(b)(ii).

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

(d) Where the Contractor’s Pre-existing IPR includes any Software, the rights described in clause 6.10(b) also include, in addition to the rights described in that clause, the rights to (and to sub-licence any third party to) use the Intellectual Property Rights subsisting in that Software to:

(i) maintain, support, enhance and adapt that Software (other than where the Intellectual Property Rights in such Software are owned by the Principal, including as a Deliverable or where any modifications, developments, derivative works, updates or upgrades to the Software are owned by the Principal pursuant to clause 6.9) for all purposes associated with the use and enjoyment of the Serviced Equipment, the Deliverables and the Contractor’s Activities; and

(ii) access and modify the Software (including, where accessed under the escrow deed contemplated in clause 6.12, the Source Code of that Software), including for the purposes of any subsequent use or support of, repairs to, maintenance or servicing of, or additions, alterations or further developments to, the Serviced Equipment, the Deliverables and the Contractor’s Activities.
For the avoidance of doubt, the licence granted in this clause 6.10 does not entitle the Principal or any sub-licensee or transferee to independently commercialise any of the Contractor's Pre-existing IPR.

6.11 Indemnity and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property Rights or Moral Rights in or associated with the Contractor's Activities, any Deliverables or any breach by the Contractor of clause 6.12 or 6.13.

6.12 Source Code

Where so specified in the Key Details within 5 Business Days of the Award Date or otherwise at any later date notified to the Contractor by the Principal from time to time (if the Key Details state that an escrow deed may be required on request), the Contractor must enter into an escrow deed with the Principal and an escrow agent:

(a) on terms reasonably satisfactory to the Principal (and terms generally consistent with the form of escrow deed set out in Schedule 6 of the Appendix); and

(b) in respect of, and under which the Contractor places into escrow, any and all Source Code relating to any Software.

6.13 Moral Rights

The Contractor must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in the Deliverables and the Contractor's Activities to the extent necessary to ensure that the Principal may do or authorise any acts or omissions consistent with the ownership and licences granted by clauses 6.9 and 6.10 without infringing any Moral Rights.

6.14 Contractor to notify errors

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

6.15 Resolution of ambiguities

(a) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, with those higher in the list having precedence over those lower in the list:

(i) either:

A. where a Standing Offer Deed exists, the Purchase Order; or

B. otherwise, the Formal Instrument of Agreement;

(ii) the General Conditions of Contract (other than the Key Details, the Schedules, Exhibits and Appendix to the General Conditions);

(iii) the Key Details as amended (if applicable) by a Purchase Order;

(iv) the Schedules (other than the Key Details);
(v) the Appendix;
(vi) the Statement of Work;
(vii) the Exhibits (other than the Statement of Work); and
(viii) any other documents (if any) referred to in the Key Details.

(b) If either party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any documents provided to the Contractor by or on behalf of the Principal which the Contractor is required by the Contract to use for manufacture and production purposes:

(i) the party must promptly give notice to the other; and
(ii) the Principal’s Representative must instruct the Contractor as to the course it must adopt within 5 Business Days of the notice under paragraph (b)(i).

(c) If compliance with the Principal’s Representative’s instruction under paragraph (b)(ii) causes the Contractor to incur more or less cost than a competent and experienced contractor (having the experience of a contractor that is an expert in carrying out work of a nature similar to the Contractor’s Activities) could reasonably have anticipated if it had carefully examined the Contract documents on or before the Award Date, then the difference in cost, as determined by the Principal’s Representative, will be added to or deducted from the Contract Price (as applicable).

(d) If any ambiguity, discrepancy or inconsistency exists between the Statement of Work and any part of the Design Documentation (which the Contractor is entitled to use for manufacture and production purposes under clause 6.3) then, unless otherwise directed in writing by the Principal’s Representative, the Statement of Work will prevail.

6.16 Confidentiality

(a) Where so specified in the Key Details within 5 Business Days of the Award Date, or otherwise at any later date notified to the Contractor by the Principal from time to time, the Contractor must deliver to the Principal a duly executed Confidentiality Undertaking. The execution of the Confidentiality Undertaking will not limit the Contractor’s obligations under this clause 6.16.

(b) The Contractor must, and must ensure its Personnel, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with the Principal’s Confidential Information, the Contractor’s Activities or the Contract to any person other than:

(i) as necessary to perform the Contractor’s Activities;
(ii) with respect to any matter already within the public domain; or
(iii) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange).

(c) Without limiting clause 20.17, the Contractor acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:

(i) the Government Information (Public Access) Act 2009 (NSW) (GIPA Act); and
(ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,

and the Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under this paragraph (c).

(d) If the Principal is required to include a copy of the Contract in the government contracts register pursuant to the GIPA Act:

(i) the Principal will not disclose Schedule 2 (except for the Contract Price) but may disclose the remainder of the Contract;

(ii) if the Contractor considers that the Principal should not disclose any other provisions of the Contract on the basis that their disclosure would fall within section 32(1) of the GIPA Act, the Contractor must within 10 Business Days of the Award Date give the Principal written notice of:

A. any provisions of the Contract it believes should not be disclosed for the reasons set out in section 32(1) of the GIPA Act; and

B. details of:

1) the reasons why the provisions should not be disclosed;

2) whether the provisions can be disclosed at a later date and, if so, when it is likely that they can be disclosed; and

3) a general description of the types of provisions that the Contractor proposes should not be disclosed; and

(iii) in complying with its disclosure obligations under the GIPA Act, the Principal will consider, but will not be bound by, any proposal made by the Contractor under paragraph (d)(ii).

6.17 Media

Without limiting clause 6.16(b), the Contractor must not (and must ensure that its Personnel do not):

(a) disclose, publish or make any public statement, advertisement or announcement in any form of media in connection with the Contract or the Contractor's Activities;

(b) name the Principal or its Personnel as a reference; or

(c) use, disclose or publish in any form of media any logo or trade mark of the Principal,

without the prior written consent of the Principal, which may be given or withheld in the Principal's sole discretion. The Contractor must refer to the Principal any enquiries from any media concerning the Contract.

6.18 Contractor to retain records

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

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

6.19 Auditing and probity

The Contractor acknowledges and agrees that:

(a) the Principal's Representative (or any other person nominated by the Principal's Representative) may carry out regular audits on the Contractor's compliance with its obligations under the Contract; and

(b) the Contractor must provide reasonable access to any premise where the Contractor's Activities are being undertaken (including any premises provided by the Principal or otherwise used by the Contractor in connection with the Contractor's Activities or where documentation in respect of the Contractor's Activities is kept) to enable the Principal or its nominees to carry out any such audit and must co-operate with and provide all assistance requested by the Principal or its nominees when carrying out any such audit, including providing access to all relevant facilities, documentation, records and Personnel (including those of Subcontractors).

6.20 Modern Slavery

(a) The Contractor acknowledges that it is not aware of any Modern Slavery in its supply chain.

(b) Should the Contractor become aware of any:

(i) Modern Slavery risks in its supply chain or operations, it must notify the Principal of those risks and advise the Principal of the steps it is taking to eliminate or minimise those risks; or

(ii) Modern Slavery practices being carried out within its operations or supply chain, it must:

A. in writing, immediately notify the Principal of those practices and of the remediation action it proposes to take; and

B. at its cost, take any such additional remediation action required by the Principal (acting reasonably and after due consultation with the Contractor).

(c) If the Contractor is a 'reporting entity' for the purposes of any state or federal Modern Slavery legislation, including the Modern Slavery Act 2018 (Cth), it must comply with such legislation and provide the Principal with a copy of any report it is required to prepare under that legislation at the Principal's request.

(d) For the purposes of this clause 6.20, “Modern Slavery” has the meaning given in section 4 of the Modern Slavery Act 2018 (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons.

6.21 Evidence of financial standing or financial arrangements

(a) Any obligations under this clause 6.21 to provide information in relation to the Guarantor only apply if the Contractor is required to provide a parent company guarantee under clause 4.6.

(b) The Contractor warrants to the Principal that the Contractor will at all times have sufficient financial capacity to meet all of its obligations under the Contract.
(c) Without limiting clause 6.19, the Contractor must, as and when requested by the Principal's Representative from time to time, promptly, and in any event within the period stated in the Principal's Representative's request, provide the Principal's Representative with a copy of such evidence reasonably required by the Principal's Representative which demonstrates:

(i) the Contractor's financial capacity to meet all of its obligations under the Contract; and

(ii) the Guarantor's financial capacity to perform its obligations under the parent company guarantee.

(d) The Contractor must promptly notify the Principal of:

(i) any material change to any information provided by the Contractor under paragraph (c); and

(ii) any material change in the Contractor's or the Guarantor's financial standing which may affect, or is likely to affect, their financial capacity to meet all of their obligations under the Contract or the parent company guarantee (as applicable).

(e) The Contractor must assist and fully co-operate with, and procure that the Guarantor assists and fully co-operates with the requirements or requests of the Principal, the Principal's Representative or their nominees in relation to any review of:

(i) any information provided by the Contractor or the Guarantor under this clause 6.21; or

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

6.22 Survive termination

Clauses 6.8 to 6.13, and 6.16 to 6.19, and the licences granted to the Principal under them, will survive any termination of the Contract.

7. Site and information

7.1 Contractor to inform itself

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

(a) assessing the risks which it is assuming under the Contract; and

(b) ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating,

including:

(c) visiting and inspecting the Site and its surroundings; and

(d) making its own assessment of the risks associated with conditions at the Site and its surroundings,

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

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

7.3 Site access

The Principal:

(a) is not obliged to:

(i) provide the Contractor with sole access to the Site; or

(ii) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities; and

(b) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.

7.4 Contractor's obligation to provide access

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

(a) minimise disruption or inconvenience to:

(i) the Principal, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and

(ii) others having a right of access to the Site;

(b) at all reasonable times give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to the Contractor's Activities, the Serviced Equipment, the Site or any areas off-Site where Contractor's Activities are being carried out; and

(c) provide the Principal, the Principal's Representative and any person authorised by the Principal or the Principal's Representative with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

7.5 Work health and safety

(a) In this clause 7.5, the terms "construction work", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation.

(b) The Principal engages the person identified in the Key Details as the principal contractor in respect of any construction work forming part of the Contractor's Activities.

(c) Where the Principal engages the Contractor as the principal contractor:

(i) the Principal authorises the Contractor to have management and control of each workplace at which construction work is to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation;
(ii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and

(iii) the Contractor's engagement and authorisation as principal contractor will continue while ever any Contractor's Activities that are "construction work" are carried out pursuant to the Contract, unless sooner revoked by the Principal terminating the Contract pursuant to any provision of the Contract or according to Law.

(d) Where the Contractor is not engaged as the principal contractor, the Contractor must comply with the reasonable directions of the principal contractor in relation to any construction work forming part of the Contractor's Activities.

(e) As a condition precedent to the Principal's obligation under the Contract to provide the Contractor with access to, or possession of the Site, the Contractor must prepare and submit a WHS Management Plan to the Principal's Representative for approval (such approval not to be unreasonably withheld).

(f) No comment upon nor any review, acceptance or approval of the WHS Management Plan by the Principal's Representative will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.

(g) Without limiting the Contractor's obligations under any other provision of the Contract, the Contractor must:

(i) comply, and must ensure that its Subcontractors and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation (including any obligation under the WHS Legislation to consult, co-operate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);

(ii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;

(iii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;

(iv) insofar as the Contractor, in carrying out the Contractor's Activities is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and

(v) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation.

(h) To the extent not prohibited by Law, the Contractor indemnifies the Principal against any Claims against, or loss suffered or incurred by, the Principal arising out of or in connection with the failure of the Contractor to discharge the duties imposed on a principal contractor under the WHS Legislation (if the Contractor has been engaged as principal contractor) or otherwise comply with this clause 7.5.
7.6 Non-reliance

The Contractor:

(a) warrants that it did not in any way rely upon:

(i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or

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

for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;

(b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and

(c) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

8. Provision of Contractor's Activities

8.1 Description of Contractor's Activities

Subject to clause 6.15, the Contractor must perform the Contractor's Activities in accordance with:

(a) the Statement of Work;

(b) any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract and which the Contractor is entitled to use under clause 6.3;

(c) any Direction of the Principal's Representative given or purported to be given under a provision of the Contract, including any Variation directed by the Principal's Representative by a document titled "Variation Order"; and

(d) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract).

8.2 All work included

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

(b) Any such materials and other work:

(i) must be undertaken and provided by the Contractor; and

(ii) forms part of the Contractor's Activities and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

8.3 Compliance with Law

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

(a) comply with all applicable Law;
(b) without limiting paragraph (a), comply with the Principal’s Environment Protection Licence;

(c) obtain all Approvals except for those specified in the Key Details which were either obtained prior to the Award Date or will be obtained after the Award Date by the Principal;

(d) comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or specified in the Key Details) including those conditions and requirements which the Principal is required under the terms of the Approvals specified in the Key Details to comply with, carry out and fulfil; and

(e) prepare and give the Principal’s Representative any documents that an Authority requires in order for the Principal to obtain the Approvals it requires in connection with the Contractor’s Activities.

8.4 Change in Law

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

(a) the Change in Law could not reasonably have been anticipated at the Award Date; and

(b) compliance with the Change in Law by the Contractor:

(i) has a direct adverse effect on the Contractor in providing the Contractor’s Activities; and

(ii) directly results in an increase in the Contractor’s costs of providing the Contractor’s Activities,

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

8.5 Workplace Laws

(a) Without limiting clause 8.3, the Contractor must:

(i) comply and must ensure that:

A. all Employees;

B. all employees engaged by a Subcontractor; or

C. Further Subcontractors,

who are performing any part of the Contractor’s Activities comply with all Workplace Laws and any applicable Fair Work Instrument;

(ii) ensure that:

A. all Personnel that it directly employs or engages;

B. all Personnel that it indirectly engages through the use of Subcontractors; and

C. any Further Subcontractors,

that are performing any part of the Contractor’s Activities receive at least their minimal legal entitlements in accordance with applicable Workplace Laws and the applicable Fair Work Instrument; and
(b) The Contractor acknowledges and agrees that it will:

(i) pay all Employees, and ensure that all Further Subcontractors are paid, in accordance with Workplace Laws and any applicable Fair Work Instrument;

(ii) give accurate pay slips to all Employees within one Business Day of the payment of wages in accordance with the FW Act and FW Regulations;

(iii) keep and maintain accurate records of the payment of wages and hours worked by Employees as required under the FW Act and FW Regulations; and

(iv) make payment to Employees by electronic funds transfer.

(c) The Contractor is liable for and must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with:

(i) any failures by the Contractor, a Subcontractor or a Further Subcontractor to comply with applicable Workplace Laws; and

(ii) any breaches by the Contractor, a Subcontractor or a Further Subcontractor of any Fair Work Instrument.

(d) If at any time the Principal considers that the Contractor has breached its obligations under paragraphs (a) or (b), the Principal's Representative may issue a written notice to the Contractor directing the Contractor to:

(i) remedy any breaches (including by making all back payments to Employees); and

(ii) immediately comply with the applicable Workplace Laws and any applicable Fair Work Instrument.

(e) The Contractor must comply with the Principal's Representative's notice under paragraph 8.5(d) within 20 Business Days.

(f) Any acts or omissions of the parties in complying with this clause will not constitute a waiver of the Principal's right to terminate the Contract under clause 14.4.

8.6 Subcontracting

The Contractor:

(a) must not subcontract the whole of the Contractor's Activities;

(b) must not subcontract any work without the prior written approval of the Principal's Representative, other than to the Subcontractors specified in the Key Details;

(c) must ensure that a Subcontractor does not enter into a Further Subcontract without first obtaining the written approval of the Principal's Representative;

(d) must ensure that any Contractor's Activities performed under a subcontract, are performed only by the relevant Subcontractor or Further Subcontractor and any Personnel under the immediate direction and control of the Subcontractor or Further Subcontractor (as the case may be);
must ensure that no part of the Contractor's Activities is performed by a third party that is not a Subcontractor or Further Subcontractor approved under this Contract (whether or not a formal contractual arrangement with that third party is in place);

(f) will be fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities;

(g) will be vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees and agents and other Personnel of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities; and

(h) must ensure that each subcontract between the Contractor and a Subcontractor contains provisions that:

(i) incorporate clause 6.19 of this Contract (mutatis mutandis) such that each Subcontractor must be required to co-operate with, and provide all assistance requested in connection with, an audit conducted by or on behalf of the Principal;

(ii) require the Subcontractor to comply with all applicable Laws including Workplace Laws;

(iii) require any request to enter into a Further Subcontract to be made to the Contractor in writing following a process that aligns with the requirements of clause 8.7;

(iv) require the Subcontractor to produce documents evidencing compliance with Workplace Laws upon request;

(v) require the Subcontractor to execute a statutory declaration that certifies that the Subcontractor's directors, officers and managers understand their obligations to comply with Workplace Laws;

(vi) require the Subcontractor to give accurate pay slips to all employees engaged by the Subcontractor who are performing work in respect of this Contract within one Business Day of the payment of wages in accordance with the FW Act and FW Regulations;

(vii) require that any Contractor's Activities performed under the subcontract be performed only by the approved Subcontractor and any Personnel who are under the Subcontractor's immediate direction and control;

(viii) require the Subcontractor to keep and maintain accurate records of the payments of wages and hours worked by employees who are engaged by the Subcontractor who are performing any Contractor's Activities, as required under the FW Act and FW Regulations;

(ix) require payment of employees who are performing Contractor's Activities to be by electronic funds transfer;

(x) prohibit the Subcontractor from entering into a Further Subcontract with any third party without seeking the prior written approval of the Principal's Representative;

(xi) require that if written approval is provided by the Principal's Representative to the Subcontractor to engage a Further Subcontractor, then:

A. a copy of the written subcontracting agreement must be provided to the Principal; and
B. the written subcontracting agreement must:

1) incorporate clause 6.19 of this Contract (mutatis mutandis) such that the Further Subcontractor cooperate with, and provide all assistance requested in connection with, an audit conducted by or on behalf of the Principal in connection with Contract; and

2) prohibit any subcontracting of the work by the Further Subcontractor.

8.7 Request to subcontract

(a) For the purpose of this clause 8.7, "worker" means any employee or individual engaged as an independent contractor.

(b) If a Contractor makes a written request to the Principal's Representative seeking approval of a Subcontractor or to seek approval for a Subcontractor to enter into a Further Subcontract in accordance with clause 8.6(b) or 8.6(c), the written request must:

(i) identify that the request to subcontract or the Further Subcontract (as applicable) relates to this Contract;

(ii) contain details of the proposed Subcontractor or Further Subcontractor, including:

   A. the legal business name;

   B. the trading name;

   C. the ACN;

   D. the registered address;

   E. the contact name, telephone number and email address; and

   F. any conflicts of interest (including employees of the Principal and NSW Trains who are on the Subcontractor's or Further Subcontractor's Board and employees of the Principal and NSW Trains who were former employees of the proposed Subcontractor or Further Subcontractor (as applicable)); and

(iii) clearly set out the part of the Contractor's Activities that the Contractor or Subcontractor proposes to subcontract (or which will be the subject of the Further Subcontract) under the request.

(c) A written request to subcontract under paragraph (b) must be accompanied by the following material:

(i) a company overview of the proposed Subcontractor or Further Subcontractor (as applicable) including details of any associated or related entities of the Subcontractor or Further Subcontractor (as applicable);

(ii) details of any investigations or litigation involving the proposed Subcontractor or Further Subcontractor (as applicable) or its associated or related entities, whether pending, current or within the last five (5) years, including any safety related investigation or litigation;

(iii) an audited Statement of Financial Position (Balance Sheet) and Statement of Financial Performance (Profit & Loss Account) for the
proposed Subcontractor or Further Subcontractor (as applicable) (and any associated or related company) for a period of at least the last three (3) financial years prior to the date of the request for approval of subcontracting. The proposed Subcontractor or Further Subcontractor (as applicable) is required to attach the names of any related bodies corporate and their financial results;

(iv) details of, and current certificates of currency, for relevant insurance held by the proposed Subcontractor or Further Subcontractor (as applicable);

(v) details of the workforce performing the proposed subcontracted work including:

A. the number of workers the proposed Subcontractor or Further Subcontractor (as applicable) will allocate to perform the work and whether this will require the proposed Subcontractor or Further Subcontractor (as applicable) to engage more workers;

B. if the workers are/will be engaged as employees or independent contractors;

C. the minimum rates of pay the proposed Subcontractor or Further Subcontractor (as applicable) will pay to its workers including in respect of shift work, weekends, public holidays and overtime;

D. the maximum number of hours the proposed Subcontractor or Further Subcontractor (as applicable) will require its workers to work; and

E. the name of the Fair Work Instrument that will apply to the workers;

(vi) written confirmation that the proposed subcontractor:

A. pays, and will continue to pay its employees at least the minimum rates of pay (including under any applicable award), including any penalties or overtime rates, under any applicable industrial instrument;

B. complies, and will continue to comply, with the terms of any applicable Fair Work Instrument;

C. complies, and will continue to comply, with all applicable Laws relating to payment, hours of work, superannuation and payslips;

D. complies, and will continue to comply, with all applicable Modern Slavery legislation;

E. complies with its obligations in relation to rail safety, including under the Rail Safety National Law; and

F. complies, and will continue to comply, with all applicable WHS Legislation;

(vii) details of services or activities provided by the proposed Subcontractor or Further Subcontractor (as applicable) that are similar to the Contractor's Activities including:
A. the name of the person to whom the proposed Subcontractor or further Subcontractor (as applicable) has provided the relevant services or activities;
B. the duration of the contract under which the relevant services or activities were provided;
C. a description of the services or activities; and
D. whether the contract was extended, renewed or terminated in accordance with its terms;

(viii) written confirmation that:
A. to the extent the Contractor engages a Subcontractor in accordance with the Contract, the Contractor will ensure that the Subcontractor will not enter into a Further Subcontract in relation to the Contractor's Activities without the prior written approval of the Principal's Representative; and
B. to the extent that a Subcontractor enters into a Further Subcontract, the Contractor will ensure that no part of the Contractor's Activities are further subcontracted;

(ix) a statutory declaration from the proposed Subcontractor or Further Subcontractor (as applicable) provided to the Contractor or Subcontractor (as applicable), for the benefit of the Principal, declaring that the information under this clause 8.7 is true, accurate and complete; and

(x) any other information or confirmation that the Principal requires.

8.8 Subcontractor warranties
(a) The Contractor must procure and provide the Principal with those warranties described in the Key Details from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty.
(b) These warranties:
(i) must be in the terms prescribed in Schedule 7 of the Appendix; and
(ii) will not derogate from any rights which the Principal may have against the Contractor in respect of the subject matter of these warranties.

8.9 Cleaning up
In carrying out the Contractor’s Activities, the Contractor must keep the Site clean and tidy and free of refuse.

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

8.11 Principal may act
(a) Without limiting clause 16, the Principal may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.
8.12 ASA Authorisation

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

8.13 ASA compliance

(a) The Contractor must (and must ensure that its Personnel) comply with the conditions of the applicable ASA Authorisation referred to in clause 8.12.

(b) The Contractor must:

(i) if the Contractor’s ASA Authorisation applies under clause 8.12, hold and maintain its ASA Authorisation for so long as the Contractor’s Activities are carried out; and

(ii) (and must ensure that its Personnel) comply with the conditions of the applicable ASA Authorisation.

(c) The Contractor must (and must ensure that its Personnel):

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

(ii) co-operate fully with the ASA in the performance of the ASA’s functions;

(iii) provide access to premises and resources as reasonably required by the ASA, including so that it can effectively carry out its review, surveillance and audit functions;

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

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

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

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

(d) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the requirement to obtain ASA Authorisation or the obligation to comply with the requirements of ASA and the ASA Authorisation.

8.14 Rail safety and Accreditation

(a) The Contractor warrants that it either:

(i) has, in which case it must at all times retain, the Accreditation required for the performance of the Contractor’s Activities; or
will perform the Contractor's Activities pursuant to the Accreditation of the person stated in the Key Details.

(b) The Contractor must:

(i) liaise and co-operate with the Principal, and do everything necessary to enable and assist the Principal and any Rail Transport Agency to:

A. maintain their respective Accreditations, including obtaining any variation to any Accreditations required as a result of the Contractor's Activities to be performed in accordance with the Contract; and

B. comply with their respective obligations in relation to rail safety, including under the Rail Safety National Law.

(ii) except as required by Law, not do, or omit to do, anything which may cause an Accreditation to be suspended or cancelled; and

(iii) give any Authority such access to premises and information as the Authority lawfully requests to fulfil its functions with respect to the Contractor's Activities, within the time requested.

8.15 Competence Records

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

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

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

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

8.16 Policies, Codes and Standards

(a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with:

(i) the Code of Conduct;

(ii) the Policies, Codes and Standards; and

(iii) Schedule 1 of the Appendix.

(b) For the purposes of clause 8.16(a), any reference to "NSW government sector employees" or "Sydney Trains employees" in the Policies, Codes and Standards is to be read as a reference to the Contractor's employees.

8.17 Deed poll

(a) Subject to clause 8.17(b), the Contractor must, within 5 Business Days of the Award Date, provide to the Principal an executed deed poll in favour of the “Public Transport Agencies” (as defined in the Transport Administration Act 1988 (NSW)) in the form set out in Schedule 2 (Alternative 1) of the Appendix.
(b) The Contractor is not required to provide a deed poll under clause 8.17(a) if it has provided a deed poll under the Standing Offer Deed (if any).

8.18 Requirements for working in Rail Corridor

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

8.19 Co-operation with Other Contractors

The Contractor must:

(a) permit Other Contractors to carry out their work;
(b) fully co-operate with Other Contractors;
(c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors in a manner that:
   (i) is seamless;
   (ii) integrates, where applicable, with the services, works, activities and deliverables that the Contractor and any Other Contractors will provide; and
   (iii) minimises the need for the Principal to be involved in resolving problems or managing the tasks that the Contractor and Other Contractors perform; and
(d) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

8.20 Principal's operations

The Contractor must:

(a) ensure that:
   (i) the performance of the Contractor's Activities; and
   (ii) any other acts or omissions of the Contractor or its Personnel,
   do not adversely affect or otherwise interfere with:
   (iii) the operations of any Rail Transport Agency or of the rail network;
   (iv) the activities of business or persons occupying land on, adjacent to or in the vicinity of the Site; or
   (v) the use of the rail network by any member of the public including any interference with the clear passage of persons in or around the rail network;
(b) arrange work to minimise nuisance to occupants and users of the Site and the rail network, to ensure their safety and comfort;
(c) should the Contractor become aware of such effect or interference, promptly notify the Principal of any such adverse effect or interference; and
(d) consult and co-operate with the Principal's Representative and the Principal and attend meetings as required by the Principal's Representative in relation to the
interface between the operations of the Rail Transport Agencies and the performance of the Contractor's Activities.

8.21 Basis of Contract Price

(a) The Contractor warrants and acknowledges that unless otherwise expressly stated in the Contract, the Contract Price:

(i) is firm and inclusive of all taxes (other than GST), duties (including customs duty) and governmental charges imposed or levied in Australia or overseas;

(ii) includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges, and costs of compliance with all other statutory, award or other legal or contractual requirements; and

(iii) is sufficient for the Contractor to meet all its obligations under the Contract, including to comply with Workplace Laws and Fair Work Instruments in respect of Employees.

(b) The Contractor acknowledges and accepts that the Principal relies on the warranty and acknowledgement provided to the Principal in paragraph (a).

8.22 Requirements for Software

In respect of any components of the Deliverables or other Contractor's Activities that are Software, the Contractor must ensure that those components:

(a) are free of any viruses, disabling code or other code that may cause an unauthorised change, undesired effect, security breach or damage to the Software, Deliverables, Contractor's Activities or the information technology systems of the Principal or those of any other Rail Transport Agency with which the Principal's information technology systems may interoperate or interact;

(b) meet all applicable functional performance requirements for those components and comply with any specifications or documentation related to the Software and as specified in the Statement of Work or any Design Documentation;

(c) are supplied together with all relevant tools and documentation necessary to enable the Principal to use, modify, test, operate, maintain, enhance, identify faults in and adapt that Software; and

(d) are supported and maintained, and regularly updated and upgraded, as required to maintain their full functionality and the full functionality of any equipment, systems, infrastructure, hardware or other like items, and of any other Deliverables, Contractor's Activities, on or with which those components are supplied, for the life of the Software,

and, at the Principal's request, provide training and knowledge transfer services in relation to the support, maintenance, updating and upgrading of the Software, at the applicable rates or prices for such services as specified in the Schedule of Prices or, if none stated, at reasonable rates and prices.

8.23 Changes and Updates to Software

The Contractor must:

(a) prior to implementing any change, update or upgrade to any Software that forms part of any Deliverables or other Contractor's Activities, advise the Principal of the nature of the proposed change, update or upgrade and its functional objectives, consult with the Principal regarding any projected impact (including on any systems
or other technology or software assets of the Principal), assist the Principal in assessing implementation impacts and obtain the Principal's prior approval to the change, update or upgrade before proceeding with its implementation;

(b) where the Principal has given its approval to a change, update or upgrade to any Software that forms part of any Deliverables or other Contractor's Activities, only implement that change, update or upgrade in consultation with the Principal, in compliance with the Principal's directions and subject to prior testing and advance notice where and as stipulated by the Principal; and

(c) promptly notify the Principal of any changes or updates proposed to be made to any Software which may:

(i) alter their identification, performance, characteristics, form, fit, function or processes required for their correct or intended usage of the Software (or any of the Deliverables and other Contractor's Activities more generally); or

(ii) otherwise require notification to any regulator, authority or third party which provides an Approval in connection with that Software (or any of the Deliverables and other Contractor's Activities more generally).

8.24 Plant and Equipment Requirements

The Contractor must comply with and perform the Contractor's Activities in accordance with Schedule 14 of the Appendix - Plant and Equipment Requirements.

8.25 Serviced Equipment List

(a) The Contractor must:

(i) inspect the Sites to verify the accuracy of the Serviced Equipment List, as required under the Statement of Work or requested by the Principal from time to time;

(ii) promptly notify the Principal if it becomes aware of any inaccuracy in the Serviced Equipment List; and

(iii) keep a current record of the Serviced Equipment List, as amended in accordance with clause 8.25(b), and provide such lists to the Principal on request.

(b) The Principal:

(i) will, to the extent that the Serviced Equipment List is inaccurate, direct a Variation under clause 11.2; and

(ii) may otherwise direct a Variation under clause 11.2 to add to, omit from or change the Serviced Equipment List (including to omit Serviced Equipment for the purposes of allocating Serviced Equipment to an Other Contractor).

8.26 Work Orders for Corrective Maintenance Services

(a) The Contractor must notify the Principal as soon as reasonably practicable, and, in any event, within 24 hours after it becomes aware that Corrective Maintenance Services are required.

(b) The Contractor’s notice under clause 8.26(a) must set out:

(i) the Serviced Equipment which requires the Corrective Maintenance Services (including Site and location on Site);
(ii) the issue and probable cause of the issue;

(iii) the Corrective Maintenance Services required, including any parts to be replaced; and

(iv) if categories of Corrective Maintenance Services are described in the Statement of Work, the category of Corrective Maintenance Services.

(c) Whether or not the Contractor has provided a notice under clause 8.26(a), the Principal may, at any time before the expiry of the Term, give the Contractor a Work Order for Corrective Maintenance Services.

(d) Each Work Order must set out:

(i) the Corrective Maintenance Services required;

(ii) the Corrective Maintenance Fee (as determined under Schedule 2);

(iii) the time in which the Contractor must carry out the Corrective Maintenance Services; and

(iv) the Principal's Work Order number.

(e) Subject to clause 8.26(f):

(i) the Contractor must not carry out any Corrective Maintenance Services; and

(ii) the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim for payment in respect of any Corrective Maintenance Services, unless the Principal has issued a Work Order for the applicable Corrective Maintenance Services under clause 8.26(c).

(f) The Principal's Representative may give the Contractor an oral Direction to perform urgent Corrective Maintenance Services, but must confirm the oral Direction with a written Work Order within 24 hours after the Direction.

8.27 Parts required for Contractor's Activities

(a) The Contractor must maintain an inventory of parts and materials to ensure the Contractor is able to comply with this Contract, including performing Corrective Maintenance Services within the times required by clause 10.1(b).

(b) The Contractor must promptly notify the Principal if any part or materials required to perform the Contractor's Activities are not available to the Contractor.

(c) The Principal may require the Contractor to use parts and materials made available to the Contractor by the Principal when performing the Contractor's Activities (Principal Supplied Items).

(d) In respect of Principal Supplied Items:

(i) the Contractor:

A. warrants that it has reviewed the Statement of Work, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Contract;
B. 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 any Principal Supplied Item; and

C. is not relieved from and remains liable for complying with, all of its obligations under this Contract, despite the Principal making available the Principal Supplied Items; and

(ii) the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items.

8.28 Contractor to cease performance of Contractor’s Activities

The Contractor must, promptly after the expiry of the Term or earlier termination of the Contract:

(a) cease performing the Contractor’s Activities;

(b) remove any property of the Contractor and its Personnel from each Site; and

(c) return any property of the Principal (including any original documents, keys to authorised areas, swipe cards and any physical items that contain the Principal’s or any Rail Transport Agency’s logo) which the Contractor has care of to the Principal.

9. Quality and Defects

9.1 Workmanship and materials

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

(a) use workmanship:

(i) of the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor’s Activities; and

(ii) which is fit for its purpose;

(b) use materials:

(i) which are new and comply with the requirements of the Contract, and to the extent not fully described in the Contract, which are consistent with the best industry standards for work of a nature similar to the Contractor’s Activities; and

(ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Contractor’s Activities;

(c) use care, skill, judgment and diligence to the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Contractor’s Activities;

(d) carry out the Contractor’s Activities in a manner that is safe to both people and the environment, in accordance with Law and best industry standards for work of a nature similar to the Contractor’s Activities;

(e) minimise any disruption, interference or inconvenience to the Principal or its Personnel, including the Principal’s operations, or any Other Contractors;

(f) ensure that the Contractor’s Personnel engaged in carrying out the Contractor’s Activities are suitably qualified and competent;
(g) perform the Contractor's Activities in a manner so as to enable the Serviced Equipment:

(i) to operate in accordance with the requirements of the Statement of Work; and

(ii) to be fit for their intended purpose; and

(h) comply with the requirements of the Contract.

9.2 Quality assurance

The Contractor:

(a) must implement a quality assurance system representing best industry standards;

(b) must allow the Principal's Representative access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing; and

(c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:

(i) the implementation of, and compliance with, the quality assurance requirements of the Contract;

(ii) any Direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system;

(iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the quality assurance system; or

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

9.3 Right to inspect

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

(b) The Contractor acknowledges that:

(i) the Principal's Representative owes no duty to the Contractor to:

A. inspect the Contractor's Activities; or

B. review manufacture and production for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and

(ii) no inspection of the Contractor's Activities or review of manufacture and production by the Principal's Representative will in any way lessen or otherwise affect:

A. the Contractor's obligations whether under the Contract or otherwise by Law; or

B. the Principal's rights against the Contractor whether under the Contract or otherwise by Law.
9.4 Testing

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

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

(i) set out in the Contract which may apply to the Tests; or

(ii) if no procedure exists, as reasonably directed by the Principal's Representative.

9.5 Test not passed

(a) If the Contractor's Activities or Serviced Equipment fail any Test, the Contractor must:

(i) promptly remedy the cause of the failure;

(ii) give the Principal's Representative notice of the cause and the remedial action taken; and

(iii) reschedule, re-perform and report on results of the Test until the Test is passed.

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

9.6 Further Tests and opening up

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

(a) to repeat any Test already carried out (whether or not the Test was previously passed);

(b) to carry out a Test not otherwise required by the Contract; or

(c) to open up or uncover any part of the Serviced Equipment for inspection or testing,

and the Contractor must comply with any such Direction as soon as practicable and must reinstate and make good any part of the Contractor's Activities or Serviced Equipment so tested, inspected, opened up or uncovered.

9.7 Costs of testing

(a) If:

(i) the Principal's Representative directs the Contractor to carry out a Test (including a retest) or to open up or uncover any part of the Serviced Equipment for inspection or testing, and that Test or that opening up or uncovering:

A. is not otherwise required by the Contract; or

B. does not relate to a Defect in respect of which the Principal's Representative gave an instruction under clause 9.8; and

(ii) the results of the Test or the opening up or uncovering show the work is in accordance with the Contract,
the reasonable additional costs necessarily incurred by the Contractor in complying with the Direction, as determined by the Principal's Representative, will be added to the Contract Price.

(b) If:

(i) the Principal's Representative directs the Contractor to carry out a Test and that Test or that opening up or uncovering relates to a Defect; or

(ii) the Principal carries out any testing itself or has others carry out such testing in connection with a Defect,

the Principal's costs arising out of or in connection with such testing will be a debt due and payable by the Contractor to the Principal.

9.8 Defects

(a) Subject to paragraph (b), the Contractor must correct all Defects.

(b) If, prior to the expiry of the Defects Liability Period, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor an instruction specifying the Defect and doing one or more of the following:

(i) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur; or

(ii) advising the Contractor that the Principal will accept the Contractor's Activities, or any part thereof, despite the Defect.

9.9 Correction of Defect

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

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

(b) at times and in a manner which cause as little inconvenience to the users of the Serviced Equipment as is reasonably possible.

9.10 Claim for correction of Defect

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

(a) the Contractor will only be entitled to make a Claim for correcting a Defect (or the relevant part of it) if the Defect (or the relevant part of it) is something for which the Contractor is not responsible; and

(b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect (or the relevant part of it) will be treated as if it were a Variation the subject of a Direction by the Principal's Representative and clause 11.3 applied.

9.11 Acceptance of work

If:

(a) an instruction is given under clause 9.8(b)(ii); and

(b) the Contractor is responsible for the Defect (or the relevant part of it),
the Contract Price will be reduced by the amount determined by the Principal's Representative which represents the cost of correcting the Defect (or the relevant part of it).

9.12 Legal rights not affected

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

(a) the rights conferred upon the Principal or Principal's Representative by this clause 9 or any other provision of the Contract;

(b) the failure by the Principal or the Principal's Representative to exercise any such rights; or

(c) any instruction of the Principal's Representative under clause 9.8.

10. Time

10.1 Progress and time

(a) The Contractor must regularly and diligently progress the Contractor's Activities with due expedition and without delay and in accordance with any timing requirements set out in the Statement of Work.

(b) Without limiting clause 10.1(a), the Contractor must perform Corrective Maintenance Services directed in a Work Order under clause 8.26(c), or directed orally in accordance with clause 8.26(f), within:

(i) the time directed by the Principal's Representative (which must not be less than any applicable time required by the Statement of Work); or

(ii) if no time is directed by the Principal's Representative, the time required by the Statement of Work; or

(iii) if clauses 10.1(b)(i) or 10.1(b)(ii) do not apply, as soon as reasonably practicable.

(c) To the extent possible, the Contractor must perform Corrective Maintenance Services while attending the relevant Site to perform Routine Maintenance Services.

10.2 Programming

The Contractor must:

(a) within 10 Business Days of the Award Date, submit to the Principal's Representative, a program of the Contractor's Activities which must contain the details required by the Contract or which the Principal's Representative otherwise reasonably directs;

(b) update the program periodically at least at intervals of no less than once per month (unless otherwise required by the Principal's Representative) to take account of:

(i) changes to the program;

(ii) delays which may have occurred, including any for which the Contractor is granted relief under clause 10.5; and

(iii) relief from obligations granted by the Principal's Representative under clause 10.5; and
(c) give the Principal's Representative copies of all programs for its approval.

10.3 **Contractor not relieved**

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

(a) relieve the Contractor from or alter its liabilities or obligations under the Contract;

(b) evidence or constitute the granting of an extension of time or an instruction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or

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

10.4 **Qualifying Causes**

If a Qualifying Cause prevents, or is likely to prevent, the Contractor from performing its obligations under this Contract within the time required by the Contract, the Contractor may make a Claim under clause 10.5.

10.5 **Claim for relief**

To claim relief from its obligations the Contractor must:

(a) within 10 Business Days of the commencement of the Qualifying Cause submit a written claim to the Principal's Representative which includes reasonable details of the following:

   (i) the event;

   (ii) the obligations that the Contractor is or will be unable to perform (including evidence showing how the Contractor has been or will be prevented from performing its obligations);

   (iii) any adverse impacts that the event is having or likely to have on the Serviced Equipment; and

   (iv) the steps which the Contractor is taking or will take to avoid or mitigate the adverse effects that event has on its obligations.

(b) if the effects of the event continue beyond the period of 10 Business Days after the commencement of the event and the Contractor wishes to claim relief in respect of the further effects, submit a further written claim for relief to the Principal's Representative:

   (i) every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the event; and

   (ii) containing the information required by paragraph (a).

10.6 **Conditions precedent to relief**

It is a condition precedent to the Contractor's entitlement to relief that:

(a) the Contractor must give the written claims required by clause 10.5 as required by that clause; and

(b) the cause of the event was beyond the reasonable control of the Contractor.
10.7 Relief from obligations
Subject to clause 10.8, if the conditions precedent in clause 10.6 have been satisfied, the Contractor will be relieved of its obligations under this Contract to the extent that a Qualifying Cause prevents their performance, as determined by the Principal (acting reasonably).

10.8 Reduction in relief
The Principal's Representative will reduce any entitlement to relief it would otherwise have notified to the Principal and the Contractor under clause 10.7 to the extent that the Contractor:

(a) contributed to the Qualifying Cause; or

(b) failed to take all steps necessary both to preclude the Qualifying Cause and to avoid or minimise the consequences of the Qualifying Cause.

10.9 Suspension

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

(b) Any suspension under clause 10.9(a) will be effective on and from the date specified in the Principal's Representative's direction.

(c) If a suspension under this clause 10.9 arises as a result of:

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

(ii) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:

A. an instruction to suspend under this clause 10.9 will entitle the Contractor to be paid by the Principal the reasonable extra costs (not including any profit, loss of profit or offsite overheads) necessarily incurred by the Contractor as a result of the suspension as determined by the Principal's Representative;

B. the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and

C. the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this paragraph (ii).

11. Variations

11.1 Variation price request

(a) At any time prior to the expiry of the Term, the Principal's Representative may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering.
Within 10 Business Days of the receipt of a "Variation Price Request", the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

(i) the adjustment (if any) to the Contract Price to carry out the proposed Variation; and

(ii) the effect (if any) which the proposed Variation will have on the then approved program.

11.2 Variation order

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

(i) the proposed adjustment to the Contract Price as set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or

(ii) any adjustment to the Contract Price will be determined under clauses 11.3(b) or 11.3(c).

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

11.3 Adjustment for Variation

Subject to clause 19.1, the Contract Price will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative by:

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

(b) where clause 11.2(a) does not apply, an amount determined by the Principal's Representative using any rates or prices which appear in the Schedule of Prices to the extent the Principal's Representative determines they are applicable to, or it is reasonable to use them for valuing the Variation;

(c) to the extent paragraphs (a) and (b) do not apply, an amount determined by the Principal's Representative acting reasonably, to which will be added:

(i) the following percentage or percentages of the amount determined:

A. where the adjustment to the Contract Price is to be an increase, those percentages specified in the Key Details for non-time related overheads and profit; or

B. where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details for overheads and profit; and

(ii) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor.

For the avoidance of doubt, where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details will be applied to the amount determined to further decrease the Contract Price on account of overheads and profit.
11.4 Omissions and deletions

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

(b) No Variation will invalidate, or amount to a repudiation of, this Contract.

11.5 Variations requested by Contractor

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

(a) a description of the Variation;

(b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Principal including the amount; and

(c) any benefits which will flow to the Principal from the Variation.

11.6 Principal's Representative's determination

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

(i) rejecting the request; or

(ii) approving the request either conditionally or unconditionally.

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

11.7 Variation approved by Principal's Representative

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

(a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Principal arising out of, or in any way in connection with, the Variation;

(b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Price will be reduced by the amount offered by the Contractor in its request; and

(c) the Contractor will be responsible for all parts of the Contractor's Activities which are in any way affected by the Variation.

12. Payment

12.1 Payment obligation

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

(a) the Contract Price; and

(b) any other amounts which are payable by the Principal to the Contractor under the Contract.
12.2 Payment claims

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

(i) subject to clause 12.4:

A. on the 25th day of each month after the Award Date or where that day is not a Business Day, the next Business Day; and

B. at the time required by clause 12.8;

(ii) in such form which the Principal's Representative reasonably requires; and

(iii) which are based on the Schedule of Prices to the extent such prices are relevant.

(b) The Contractor cannot include in any payment claim under this clause 12.2, a Claim which is barred by clause 19.5.

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

12.3 Payment statements

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

(i) the value of the work completed in accordance with the Contract;

(ii) the amount already paid to the Contractor;

(iii) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;

(iv) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and

(v) if the amount in paragraph (iv) is less than the amount claimed in the payment claim:

A. the reason why the amount in paragraph (iv) is less than the amount claimed in the payment claim; and

B. if the reason for the difference is that the Principal has retained, deducted, withheld or set off payment for any reason, the reason for the retention, deduction, withholding or setting off payment.

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

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

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

12.4 Conditions precedent to payment

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

(a) the Contractor has provided the Principal's Representative with:

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

(ii) evidence of any insurance taken out by the Contractor which is required under clause 5.5;

(iii) a duly executed deed poll as required under clause 8.17;

(iv) a duly executed escrow deed as required under clause 6.12;

(v) a duly executed Confidentiality Undertaking as required by clause 6.16(a);

(vi) documents showing compliance by the Contractor with clause 12.10; and

(b) without limiting clause 12.6, the Principal is satisfied with the Contractor's Activities performed by the Contractor and the Contractor has, in the Principal's opinion, met the KPIs.

12.5 Payment

(a) Subject to clause 12.9, the Principal must pay the Contractor the amount set out as payable in the payment statement:

(i) if the SOP Act applies to the Contract, within 15 Business Days of receipt by the Principal's Representative of the payment claim under clause 12.2; or

(ii) if the SOP Act does not apply to the Contract, within 30 days of the last to occur of:

A. issue by the Principal's Representative of the payment statement under clause 12.3; and

B. receipt by the Principal's Representative of the documents referred to in clause 12.4.

(b) If a payment statement issued under clause 12.3 shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 5 Business Days of receipt by the Contractor of the payment statement.
(c) Upon the Principal paying to the Contractor the amount payable pursuant to a payment statement, all plant, equipment, materials or other goods for which an amount is included in the payment statement will become the property of the Principal free of any security interest regardless of whether or not the plant, equipment, materials or other goods have been incorporated into the Serviced Equipment or delivered to the Principal.

12.6 Payment on account

(a) Any payment statement or payment of moneys is not:

(i) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;

(ii) an admission of liability; or

(iii) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with the Contract.

(b) Payment is only to be taken as payment on account.

12.7 Goods and materials not yet installed

(a) The Contractor is not entitled to claim payment for, and the Principal's Representative is not to include in any payment statement any amount for, any goods and materials (or part thereof) that have not been installed in the relevant Serviced Equipment unless:

(i) the Contractor has established to the satisfaction of the Principal's Representative that it has paid for the goods and materials (or part thereof) in question and that the goods and materials (or part thereof):

A. are properly stored, set aside and labelled the property of the Principal and adequately protected and insured; and

B. will, upon payment to the Contractor of the amount payable pursuant to a payment statement which includes an amount for goods and materials (or part thereof) in question, become the property of the Principal free of any security interest; and

(ii) the Contractor has given the Principal additional security in the form of an Unconditional Undertaking equivalent to the amount claimed in relation to the goods and materials (or part thereof) in question.

(b) If the Contractor has given the Principal additional security under the previous paragraph, the Principal must release it to the Contractor once the goods and materials in question have been installed in the relevant Serviced Equipment in accordance with the Contract.

(c) Any payment to be made to the Contractor by the Principal for goods and materials (or part thereof) that have not yet been installed in the relevant Serviced Equipment, whether pursuant to this clause 12.7 or otherwise, is an advance payment for the purposes of section 415D(9), 434J(8) or 451E(8) of the Corporations Act 2001 (Cth) (as applicable), until such time until the goods and materials (or part thereof) have been installed in the relevant Serviced Equipment.

12.8 Final payment claim and notice

(a) Within 20 Business Days after the expiry of the last Defects Liability Period the Contractor must give the Principal's Representative:
(i) a payment claim which must include all amounts which the Contractor claims from the Principal on account of the Contract Price or otherwise under the Contract; and

(ii) notice of any other amounts which the Contractor claims from the Principal,

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

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

(c) Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 19.5.

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

12.9 Right of set off

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

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

(ii) 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

(iii) any Claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise, whether under or in connection with the Contract, any other contract formed under the Standing Offer Deed (if applicable), or relating to the Contractor's Activities.

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

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

(d) Clause 12.9 will survive any termination of the Contract.

12.10 Evidence of payment of workers and Subcontractors

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.8, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:
(a) a declaration in the form of Schedule 8 of the Appendix, together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared; and

(b) copies of all relevant certificates of currency in respect of Workers Compensation Insurance which the Contractor has in place in connection with the Contractor's Activities.

### 12.11 Interest

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

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

### 12.12 SOP Act

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

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

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

(i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 12.3; and

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

(d) Without limiting clause 12.9, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.

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

(i) the Principal may lead and rely upon Division 2A of the SOP Act as a defence to any Claim for the money by the Contractor from the Principal; and

(ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:

A. any period for which money owed by the Principal to the Contractor has been unpaid; and
B. the date by which payment of money owed by the Principal to
the Contractor must be made.

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

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

(h) If the Principal withholds money pursuant to a payment withholding request served
on the Principal pursuant to Division 2A of the SOP Act and the Contractor:

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

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

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

12.13 GST

(a) The parties acknowledge that unless otherwise expressly stated all amounts of
monetary consideration in the Contract are exclusive of GST.

(b) If GST is or becomes payable on a supply made by a party (Supplier) under or in
connection with the Contract or the Contractor's Activities, the party providing
consideration for the supply (Recipient) must pay an additional amount to the
Supplier equal to the GST payable by the Supplier (or representative member of a
GST group of which the Supplier is a member) in relation to the supply.

(c) Any amount payable under clause 12.13(b) will be paid to the Supplier at the same
time as the other consideration for the supply is paid to the Supplier.

(d) If any party is required under the Contract to reimburse or pay to the other party an
amount (other than any payment on account of the Contract Price) calculated by
reference to a cost, expense, or an amount paid or incurred by that party, the
amount of the reimbursement or payment will be reduced by the amount of any
input tax credits to which that party (or representative member of a GST group of
which that party is a member) is entitled in respect of any acquisition relating to that
cost, expense or other amount.

(e) Notwithstanding any other provision of the Contract, where the Recipient is the
Contractor, it will not be obliged to pay any amount on account of GST to the
Principal (whether under this clause 12.13 or otherwise) in respect of a taxable
supply made by the Principal unless and until the Principal issues to the Contractor,
a valid tax invoice that complies with the GST Legislation in respect of that taxable
supply.

(f) Where the Supplier is the Contractor, the Contractor must issue a valid tax invoice
to the Principal in respect of any taxable supply made by the Contractor to the
Principal (including under clause 12.3) as a condition precedent to the Principal
being obliged to pay any amount on account of GST to the Contractor in respect of
such taxable supply.
The parties agree that, if notified in writing by the Principal, the following will apply to taxable supplies made by the Contractor to the Principal under or in connection with the Contract:

(i) where the GST Legislation permits, the Principal will issue to the Contractor an RCTI for each taxable supply (other than an Excluded Supply as defined in this clause) made by the Contractor to the Principal under the Contract. The parties may agree in writing from time to time that the Principal will not issue an RCTI in respect of a taxable supply made by the Contractor to the Principal under the Contract (Excluded Supply);

(ii) the Principal will issue to the Contractor a recipient created adjustment note for any adjustment event relating to a supply in respect of which it issues an RCTI; and

(iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal (other than in respect of a taxable supply that is an Excluded Supply).

Unless clause 12.13(i) applies, each party acknowledges and warrants that at the time of entering into the Contract it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of the Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities (RCTI 2017/6) or other determination or ruling issued by a taxation authority relating to the issuance of RCTIs (RCTI Requirement). The Principal will not issue a document that would otherwise be an RCTI after the Principal or the Contractor cease to be registered for GST, or after the Principal or the Contractor cease to comply with any RCTI Requirement.

If the Contractor does not, at the time of entering into this Contract have a valid registration for GST purposes or an Australian Business Number (ABN):

(i) the Contractor must complete a “Statement by Supplier” or similar document in a form acceptable to the Australian Taxation Office clarifying the basis on which the Contractor is not required to be registered for GST purposes; and

(ii) the Contractor must inform the Principal if the Contractor is or becomes required to be registered for GST purposes and must notify the Principal of the date from which registration will be effective.

If the Contractor does not provide its ABN in this Contract, the Contractor must complete a “Statement by Supplier” in a form acceptable to the Australian Taxation Office declaring the basis on which the Contractor is not required to have an ABN.

The Contractor indemnifies the Principal for any loss suffered by the Principal because of any breach of any warranty given in clauses 12.13(h) to 12.13(j) or because of the inaccuracy of any information provided in accordance with clauses 12.13(h) to 12.13(j) or because of any failure by the Contractor to provide accurate information to the Principal in a timely fashion in accordance with clauses 12.13(h) to 12.13(j).

Where the Principal issues RCTIs to the Contractor in accordance with clause 12.13(g), the Contractor will indemnify or reimburse the Principal on demand for any loss, cost, expense, penalty, fine, interest, fee or other amount incurred in relation to the Principal issuing RCTIs while:

(i) the Contractor is not registered for GST and/or otherwise fails to satisfy, or comply with, any RCTI Requirement and the Principal has not been notified by the Contractor as such; or
(ii) the details contained in any RCTI or recipient created adjustment note issued by the Principal are incorrect, inaccurate or misleading as a result of information provided by the Contractor to the Principal.

(m) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 12.13 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

(n) In this clause 12.13:

(i) terms defined in GST Legislation have the meaning given to them in GST Legislation, unless the context suggests otherwise;

(ii) GST includes amounts defined as "GST" under the GST Legislation and "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory); and

(iii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

12.14 Subcontractor's statement

(a) The Contractor must:

(i) submit a signed subcontractor's statement, in the form set out in Schedule 12 of the Appendix, together with any payment claims submitted under clause 12.2 or 12.8; and

(ii) ensure that any such subcontractor's statement is not dated before the date of the relevant payment claim.

(b) The Contractor acknowledges that pursuant to the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW):

(i) the subcontractor's statement is required to be provided to the Principal; and

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

12.15 Payment of Subcontractors

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

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

(b) the Contractor must pay all Subcontractors promptly in accordance with the relevant subcontracts.
13. **KPIs and Performance Adjustments**

13.1 **Key Performance Indicators**

(a) The Contractor must comply with the KPIs as amended in accordance with the Contract.

(b) The Contractor must report to the Principal at the frequency specified in the Key Details, in the form of a KPI Performance Report in a form satisfactory to the Principal which:

(i) provides an analysis of the performance of the Contractor in meeting the KPIs;

(ii) identifies any non-compliances;

(iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and

(iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.

(c) The Contractor acknowledges and agrees that:

(i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;

(ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal; and

(iii) the Principal, acting reasonably may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment.

(d) The Principal and the Contractor must meet at the times specified in the Key Details, to monitor and review the Contractor's performance under the Contract and the KPIs and, if required by the Principal, the Contractor's compliance with any action plan.

13.2 **Performance Adjustments**

This clause 13.2 is only applicable if specified in the Key Details.

(a) The parties acknowledge and agree that:

(i) failure to achieve KPIs may lead to a Performance Adjustment in accordance with Schedule 2;

(ii) the Performance Adjustments which may be made by the Principal in accordance with Schedule 2 are intended to reflect the anticipated diminution in the value of the Contractor's Activities in the event that the KPIs are not achieved;

(iii) the Performance Adjustments:

A. do not reflect any potential cost, expense, loss, damages, liability or Claim (other than anticipated diminution in value of the Contractor's Activities) which may arise from or in connection with any failure to achieve the KPIs; and
B. are not intended to apply as liquidated damages.

(iv) each of the parties require a formula for calculation of that diminished value that is able to be readily applied without unnecessary administrative costs, delay or difficulty; and

(v) there are many and varied matters which form part of the diminished value which the Principal may suffer, many of which are difficult or impossible to calculate with precision.

(b) To the extent permissible, the Contractor excludes and expressly waives any right of the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of the Performance Adjustments as penalties, or the enforceability or recoverability of the Performance Adjustments.

(c) If the Performance Adjustment regime set out in Schedule 2 is found for any reason to be void, invalid or otherwise unenforceable, so as to disentitle the Principal from making a Performance Adjustment, the Principal will be entitled to recover from the Contractor, and the Contractor must pay on a full indemnity basis general Law damages arising out of or in connection with any loss suffered the Principal as a result of an event, action or omission which would have entitled the Principal to make any of the Performance Adjustments, up to the full amount of the applicable adjustment, if the relevant provision of this Contract had not been found void, invalid or otherwise unenforceable.

(d) The liability of the Contractor in respect of any cost, expense, loss, damages, liability or Claim which may arise out of or in connection with any failure to achieve the KPIs is not affected, reduced or otherwise limited to or by the Performance Adjustments.

14. Termination

14.1 Preservation of rights

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

14.2 Contractor default

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

(a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;

(b) suspends the Contractor's Activities in breach of clause 10.9 or otherwise does not regularly and diligently progress the Contractor's Activities with due expedition and without delay;

(c) fails to provide security as required by clauses 4.1, 4.3 or 4.4 or a parent company guarantee as required by clause 4.6;

(d) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5.5;

(e) fails to use the materials or standards of workmanship required by the Contract;

(f) does not comply with any Direction of the Principal's Representative made in accordance with the Contract;
(g) abandons the Contractor's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;

(h) is in breach of any applicable Law;

(i) fails to comply with a KPI action plan required by the Principal under clause 13.1, or under the Standing Offer Deed (if any);

(j) fails to comply with a KPI requirement set out in the Key Details (if any);

(k) fails to comply with clause 8.5;

(l) fails to comply with clauses 6.21, 12.15(b) or 20.8(b); or

(m) is otherwise in breach of the Contract.

14.3 Contents of notice of default
A notice under this clause 14.3 must state:

(a) that it is a notice under clause 14.3;

(b) the breach relied upon; and

(c) that the Principal requires the Contractor to remedy the breach within 15 Business Days of receiving the notice.

14.4 Termination for insolvency or breach
If:

(a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons;

(b) in the Principal's reasonable opinion, the Contractor, a Subcontractor or a Further Subcontractor has failed or is failing to comply with its obligations under Workplace Laws or Fair Work Instrument; or

(c) the Contractor does not remedy a breach of Contract the subject of a notice under clause 14.3 within 15 Business Days of receiving the notice under clause 14.3,

then the Principal may by written notice to the Contractor:

(d) terminate the Contract;

(e) exercise a Step-In Right; or

(f) without in any way limiting the Principal's right under clause 11.4, direct a Variation omitting or deleting any part of the Contractor's Activities in accordance with clause 11.4 (including in respect of any one or more Separable Portions).

14.5 Principal's entitlements after termination
Subject to clause 14.1, if:

(a) the Principal terminates the Contract under clause 14.4;

(b) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract,
then:

(c) the Principal will:

(i) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or 12.8, a payment statement under clause 12.3, or for Handover Services under clause 21.5; and

(ii) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination or repudiation; and

(d) the Contractor must immediately:

(i) deliver to the Principal all items in which ownership has passed to the Principal under the Contract; and

(ii) hand over to the Principal all copies of:

A. documents provided by the Principal under clause 6.1;

B. documents relating to or in connection with the Handover Services under clause 21; and

C. any Deliverables prepared by the Contractor to the date of termination (whether complete or not).

14.6 Contractor's entitlements after termination

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

(i) be entitled to claim damages; and

(ii) not be entitled to a quantum meruit.

(b) This clause 14.6 will survive any termination of the Contract.

14.7 Termination for convenience

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

(a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in the Principal's notice or if no such time is stated, at the time the notice is given to the Contractor; and

(b) thereafter, at its absolute discretion, complete the uncompleted part of the Contractor's Activities either itself or by engaging Other Contractors.

14.8 Costs

(a) If the Principal terminates the Contract under clause 14.7, the Contractor:

(i) will be entitled to payment of the following amounts as determined by the Principal's Representative:

A. for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of
termination, provided that ownership of all goods and materials included in the value of work will vest in the Principal, free of any security interest, upon payment;

B. the cost of goods or materials reasonably ordered by the Contractor for the Contractor's Activities for which the Contractor is legally bound to pay provided that:

1) the value of the goods or materials is not included in any previous payment by the Principal or the amount payable under paragraph A; and

2) ownership in the goods and materials will vest in the Principal, free of any security interest, upon payment; and

C. the reasonable direct costs incurred by the Contractor (excluding profit but including an amount for overheads) as a direct result of the termination,

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

(ii) must:

A. take all steps possible to mitigate the costs referred to in clause 14.8(a)(i); and

B. immediately:

1) deliver to the Principal all items in which ownership has passed to the Principal under the Contract; and

2) hand over to the Principal all copies of:

a) documents provided by the Principal under clause 6.1; and

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

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

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

15. Disputes

15.1 Notice of Dispute

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

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

(i) the dispute or difference;
(ii) particulars of the party’s reasons for being dissatisfied; and
(iii) the position which the party believes is correct.

15.2 Negotiation

The Principal’s Representative and the Contractor’s Representative (or their nominees) must, within 10 Business Days of a notice being given under clause 15.1, meet and discuss the dispute or difference.

15.3 Executive negotiation

Whether or not discussions have taken place under clause 15.2, if dispute or difference is not resolved within 20 Business Days after a notice is given under clause 15.1, it must be referred to senior executives of each party (as nominated by each party) who must:

(a) meet and discuss the dispute or difference; and
(b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

15.4 Expert determination

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

15.5 The expert

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

15.6 Not arbitration

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

15.7 Procedure for determination

The expert will:

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

15.8 Disclosure of interest

The expert must:

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

15.9 Costs

Each party will:

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

15.10 Conclusion of expert determination

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

15.11 Agreement with expert

(a) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
(b) The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 9 of the Appendix or such other terms as the parties and the expert may agree.

15.12 Determination of expert

The determination of the expert:

(a) must be in writing;
(b) will be:
(i) substituted for the relevant Direction of the Principal’s Representative (if applicable); and
(ii) final and binding,

unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and
(c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.
15.13 Arbitration

(a) If:

(i) the expert fails to notify the parties of his or her decision within the time required by clause 15.10; or

(ii) a notice of appeal is given under clause 15.12,

the dispute or difference will be referred to arbitration.

(b) The arbitration will be conducted before a person to be:

(i) agreed between the parties; or

(ii) failing agreement within 20 Business Days of the referral to arbitration, appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).

(c) To the extent that they are not inconsistent with the Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.

(d) The seat of the arbitration will be Sydney, Australia.

(e) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an expert under clause 15.12.

(f) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

15.14 Survive termination

This clause 15 will survive any termination of the Contract.

15.15 Continuation of Contractor's Activities

Despite the existence of a dispute or difference between the parties, the Contractor must:

(a) continue to carry out the Contractor's Activities; and

(b) otherwise comply with its obligations under the Contract.

16. Step-In

16.1 The Principal's Step-In Rights

If:

(a) the Principal exercises a Step-In Right under clause 14.4(e); or

(b) an incident or emergency occurs, which in the Principal's reasonable opinion the Contractor is unable to prevent or overcome and which will or does materially affect the:

(i) safety of people, property, the environment or the operations of any Rail Transport Agency;

(ii) operations of any Rail Transport Agency or of the rail network;
(iii) activities of business or persons occupying land on, adjacent to or in the vicinity of the Site; or

(iv) use of the rail network by any member of the public including any interference with the clear passage of persons in or around the rail network,

(Step-In Event), then the Principal may, by written notice to the Contractor itself, or have its nominees, undertake any or all of the Contractor's Activities and otherwise exercise any of the Contractor's rights or obligations under this Contract and take such actions as are necessary to address the event giving rise to the step-in (Step-In Rights).

16.2 Actions following Step-In

(a) For the purposes of exercising the Step-In Rights the Principal:

(i) is not obliged to make any further payments to the Contractor for the Contractor's Activities in respect of which the Principal has exercised the Step-In Rights;

(ii) may use third parties to carry out and complete the whole or any part of the Contractor's Activities the subject of the Step-In Rights;

(iii) will be entitled to act as the Contractor's agent under all contracts entered into by the Contractor that are necessary for the Principal to exercise the Step-In Rights; and

(iv) may:

A. give reasonable instructions to any employee of the Contractor (and the Contractor must ensure that such requests are complied with);

B. contract with such of the Subcontractors engaged by the Contractor; and

C. take possession of, and use, such of the Design Documentation,

as is reasonably required by the Principal to exercise the Step-In Rights.

(b) The Contractor must take all actions the Principal considers necessary to ensure that the Principal is able to exercise the Step-In Rights effectively and expeditiously including:

(i) providing the Principal with any assistance and access to its materials, equipment and inventory and the non-exclusive use of all rights and information available to the Contractor reasonably required to enable the Principal or its nominees to exercise the Step-In Rights;

(ii) giving the Principal or its nominees access to the Site and any of the land upon which the Contractor's Activities are being performed;

(iii) providing sufficient resources, including Personnel to assist the Principal in exercising the Step-In Rights; and

(iv) not doing anything to hinder, disrupt or prevent the Principal exercising the Step-In Rights.

(c) If a third party is nominated to exercise the Step-In Rights in accordance with this clause 16, the third party will be taken to be exercising the Step-In Rights itself for
and on behalf of the Principal and the provisions of this clause 16 will apply as if references to the Principal were references to that third party.

(d) Upon the Principal exercising a Step-In Right the Contractor’s rights and obligations under the Contract are suspended to the extent necessary to permit the Principal to exercise that Step-In Right.

16.3 Conclusion of Step-In

(a) Upon giving the Contractor at least 5 Business Days prior written notice, the Principal may cease to exercise its Step-In Rights at any time.

(b) Upon the Principal ceasing to exercise a Step-In Right the Contractor must recommence performance of the obligations under the Contract that were suspended.

(c) If the Principal exercises a Step-In Right under:

(i) clause 16.1(a); or

(ii) in circumstances where the incident or emergency referred to in clause 16.1(b) arose out of or in connection with a breach of contract or wrongful act or omission of the Contractor.

(d) The Principal may set-off the costs reasonably incurred and losses reasonably suffered by the Principal in and for the purposes of exercising the Step-In Rights against any amount due by the Principal to the Contractor under this Contract (or which may in the future be due under this Contract).

16.4 Other rights

Nothing in this clause 16 will prejudice the rights to recover damages or exercise any other rights or remedy (including the right to terminate) or relieve the Contractor of its liabilities or responsibilities whether under the Contract or otherwise according to Law.

17. Limitation of liability

(a) Subject to clause 17(b) but notwithstanding any other provision of the Contract:

(i) neither party will be liable to the other for any Consequential Loss however arising; and

(ii) the Contractor’s aggregate liability to the Principal in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.

(b) Clause 17(a) does not limit the Contractor’s liability in respect of:

(i) liability which cannot be limited at Law;

(ii) liability under clauses 5.2, 6.11 or 18;

(iii) fraud, wilful misconduct or criminal conduct by the Contractor or any of its Personnel;

(iv) liability to the extent to which the Contractor is (or will be) entitled to be paid or indemnified pursuant to an insurance policy required under the Contract in respect of that liability;

(v) liability for which, but for a failure by the Contractor to comply with its obligations under the Contract or under an insurance policy required
under the Contract, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with the Contract; or

(vi) the Contractor's abandonment of its obligations under the Contract.

(c) In determining whether an insurance policy extends to cover:

(i) the Contractor in respect of any matters referred to in clause 17(a) and the liability (if any) of the Contractor arising out of or in connection with the matter; or

(ii) the amount recovered or recoverable by the Contractor under an insurance policy in connection with a matter referred to in clause 17(a),

(together the **Determinable Matters**), the limitation on the Contractor's liability pursuant to clause 17(a) will be disregarded and it must be assumed that the Contractor has paid in full the amount of its liability to the Principal (unlimited by clause 17(a) in a manner which entitles the Contractor to claim under the relevant insurance policy).

(d) The Contractor waives and disclaims any right or entitlement it may now or in the future have, but for clause 17(c), to:

(i) not disregard clause 17(a), in connection with any determination of the Determinable Matters; or

(ii) do any of the following:

A. claim or assert (including by way of defence, counterclaim or third party proceedings); or

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

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

(e) The parties agree that clauses 17(c) and 17(d) may be pleaded in bar to any Claim or assertion by:

(i) the Contractor; or

(ii) any insurer;

in any Claim to the effect that clause 17(a) is not to be disregarded as provided in clause 17(c).

(f) If for any reason in relation to any Determinable Matter:

(i) clauses 17(c) to 17(e) (or any of them) are unenforceable, void, voidable or illegal, then for the purpose of determining the Determinable Matters, clause 17(a) will be of no force or effect and will be treated as if they were severed from, and had never been terms of, the Contract; and

(ii) the Contractor, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to regard to, clause 17(a) in determining the Determinable Matters, then for the purpose of determining the Determinable Matters, clause 17(a) will treated as if it were severed from and had never been terms of, the Contract and as of
no force or effect whatsoever as against the person(s) who is so not obliged, or who is so entitled.

(g) Subject to clause 17(h), the Principal's aggregate liability to the Contractor in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in the Key Details.

(h) Clause 17(g) does not limit the Principal's liability in respect of:

(i) liability which cannot be limited at Law; or

(ii) fraud, wilful misconduct or criminal conduct by the Principal or any of its Personnel.

(i) This clause 17 will survive any termination of the Contract.

18. Privacy and the protection of Principal Data

18.1 General

Where the Contractor or its Personnel is provided with, or has access to, any Personal Information in connection with the Contractor's Activities or this Contract, the Contractor must:

(a) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Principal, would be a breach of the Privacy Laws;

(b) not access, use or disclose any Personal Information other than for the sole purpose of carrying out its obligations under this Contract, except with the prior written approval of the Principal;

(c) ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure and other misuse;

(d) immediately notify the Principal upon becoming aware of any Security Incident or actual or suspected breach of an obligation under this clause 18 and comply with the Principal's reasonable directions with respect to addressing and resolving such Security Incidents and breaches;

(e) comply with the NSW Privacy Commissioner's directions and requirements with respect to the investigation of, or inquiry into, any Security Incident or privacy related matter provided that such directions and requirements are within the statutory power of the NSW Privacy Commissioner; and

(f) comply with such other privacy obligations or policies as the Principal reasonably notifies the Contractor of in writing from time to time.

18.2 No restrictions on privacy obligations

Nothing in this clause is intended to limit any obligations that the Contractor has at Law with respect to privacy and the protection of Personal Information.

18.3 Principal Data and security

(a) The Contractor does not obtain any right, title or interest with respect to any Principal Data, other than a right to use Principal Data for the sole purpose of carrying out the Contractor's obligations under this Contract.

(b) The Contractor must not (and must ensure that its Personnel do not):
(i) use any Principal Data other than for the purpose of carrying out its obligations under this Contract;

(ii) attempt to sell, assign or commercially exploit any Principal Data; or

(iii) transfer or disclose any Principal Data outside NSW, Australia without obtaining the Principal's prior written consent, which may be given or withheld in the Principal's sole discretion and subject to such conditions that the Principal reasonably determines.

(c) The Contractor must:

(i) do all things that a reasonable and prudent entity would do to safeguard and protect Principal Data in the Contractor's or its Personnel's possession or control and to prevent a Security Incident; and

(ii) comply with all security policies, requirements and standards with respect to the Contractor's Activities, Principal Data and the Principal's Confidential Information as specified in this Contract or as may be reasonably notified by the Principal to the Contractor from time to time.

(d) The Contractor must ensure that its Personnel are made aware of, and comply with, the obligations under clause 18.

18.4 Data Protection Plan

(a) The Contractor must prepare a Data Protection Plan which must:

(i) set out measures for how the Contractor will:

A. comply with the Privacy Laws and the Contractor's obligations of privacy, security and confidentiality under this Contract;

B. protect Principal Data, Personal Information and the Principal's Confidential Information; and

C. prevent, respond to and mitigate against, any Security Incidents;

(ii) be consistent with the Privacy Laws and the privacy and security requirements, standards and policies required by this Contract; and

(iii) cover such other matters as reasonably required by the Principal.

(b) The Contractor must review and update the Data Protection Plan annually or at such other times as reasonably required by the Principal.

(c) The Contractor must:

(i) comply with its latest Data Protection Plan; and

(ii) provide its latest Data Protection Plan to the Principal on request.

18.5 Evidence of compliance

(a) On each anniversary of the Award Date or at such other times as reasonably required by the Principal, the Contractor must submit to the Principal's Representative a written statement (in a form approved by the Principal's Representative in writing) that the Contractor has complied with:

(i) all of its privacy, security and confidentiality obligations under this Contract; and
(ii) any Data Protection Plan prepared in accordance with clause 18.4,

(Compliance Statement).

(b) The Compliance Statement must be signed and certified as true by the Contractor's duly authorised representative.

(c) Without limiting clauses 18.5(a) and 18.5(b), at the reasonable request of the Principal, the Contractor must, within the timeframe stated in the Principal's request, provide the Principal with evidence that demonstrates to the satisfaction of the Principal that the Contractor and its Subcontractors have:

(i) complied with the privacy, security and confidentiality obligations under this Contract and any Data Protection Plan; and

(ii) all necessary procedures, processes and systems (including training) in place to comply with such obligations.

18.6 Indemnity and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Privacy Laws arising out of or in connection with the Contractor's Activities or any breach by the Contractor of clause 18.

19. Notices

19.1 Notice of Variation

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

(a) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;

(b) within 15 Business Days of giving the notice under paragraph (a), submit a written claim to the Principal's Representative which includes the details required by clause 19.3(b); and

(c) continue to carry out the Contractor's Activities in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 19.1.

19.2 Notice of other Claims

Except for Claims for:

(a) relief from the Contractor's obligation under clause 10.5;

(b) a Variation instructed in a "Variation Order" under clause 11.2 or to which clause 19.1 applies; or

(c) payment under clause 12.2 or 12.8 of the Contract Price,

the Contractor must give the Principal's Representative the notices required by clause 19.3 if it wishes to make a Claim against the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including a breach of the Contract by the
Principal) under, arising out of, or in any way in connection with, the Contract or the Contractor's Activities, including anything in respect of which:

(d) it is otherwise given an express entitlement under the Contract; or

(e) the Contract expressly provides that:

(i) specified costs are to be added to the Contract Price; or

(ii) the Contract Price will be otherwise increased or adjusted,

as determined by the Principal's Representative.

19.3 Prescribed notices

The notices referred to in clause 19.2 are:

(a) a written notice within 5 Business Days of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:

(i) that the Contractor proposes to make a Claim; and

(ii) the Direction or other fact, matter or thing upon which the Claim will be based; and

(b) a written claim within 15 Business Days of giving the written notice under paragraph (a), which must include:

(i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;

(ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;

(iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

(iv) details of the amount claimed and how it has been calculated.

19.4 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 19.1(b) or clause 19.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 19.3(b) every 20 Business Days after the written claim under clause 19.1(b) or 19.3(b) (as the case may be) was submitted or given to the Principal's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

19.5 Time bar

If the Contractor fails to comply with clauses 19.1, 19.2, 19.3 or 19.4:

(a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and

(b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 19.1 or 19.2 applies.
19.6 Other provisions unaffected

Nothing in clauses 19.1, 19.2, 19.3, 19.4 or 19.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

20. Miscellaneous

20.1 Address for service

(a) All communications (including notices, consents, approvals, requests and demands) under or in connection with the Contract:

(i) must be in writing;

(ii) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of that party;

(iii) subject to clause 20.1(b), must be delivered or posted by prepaid express post to the address, or sent by email to the email address, of the Principal's Representative or the Contractor's Representative (as applicable) set out in this Contract or such other address or email address as my be notified in writing by a party to the other party; and

(iv) are taken to be received by the addressee:

A. (in the case of prepaid express post) sent to an address in the same country) on the second Business Day after the date of posting;

B. (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;

C. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 20.1(a)(iii); and

D. (in the case of email) at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,

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

(b) If:

(i) the Contractor sends a notice under clause 10, 11, 12, 14, 15, 16 or 17 or concerning a claim for payment (including any communication in respect of the SOP Act); or

(ii) the Principal sends a notice under clause 11.2, 14.2, 14.3, 14.4, 14.7 or 15.1,

by email, the Contractor or the Principal (as applicable) must also deliver or post such notice to the relevant address provided in clause 20.1(a)(iii).
(c) For the avoidance of doubt:

(i) no notice referred to in clause 20.1(b) will be effective until it has been delivered or posted in accordance with clause 20.1(b); and

(ii) if a notice referred to in clause 20.1(b) is issued by both email and is also either delivered by hand or posted, both notices must be identical, and in the event that they are not identical, neither notice will constitute a valid notice.

(d) Where clause 20.1(b) applies, the relevant notice will be taken to have been received on the date determined in accordance with clause 20.1(a)(iv)A, 20.1(a)(iv)B or 20.1(a)(iv)C (as the case may be).

(e) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.

(f) The Principal will not be liable to the Contractor or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:

(i) the transmission of any harmful code (such as viruses) to the Contractor by electronic mail (including any document attached to electronic mail); or

(ii) any failure by the Principal to notify the Contractor that the Principal may have received any harmful code (such as viruses) from the Contractor in any electronic mail (including in any document attached to electronic mail).

20.2 Governing Law

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

20.3 Jurisdiction

Subject to clause 15.13, each party irrevocably:

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

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 20.3(a).

20.4 Counterparts

(a) This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Contract, and all together constitute one agreement.

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

20.5 Entire agreement

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

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

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

20.6 Amendments

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

20.7 Waiver

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under the Contract.

(b) A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of a term of the Contract operates as a waiver of any other breach of that term or of a breach of any other term of the Contract.

20.8 Assignment and Change of Control

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

(b) The Contractor cannot assign, novate, permit or suffer a Change of Control or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal.

(c) If the Principal, in its absolute discretion, approves a novation of this Contract, the Contractor must provide the Principal with a duly completed and executed Deed of Novation in relation to this Contract, and the Principal's costs and expenses in connection with negotiating, preparing and executing any Deed of Novation will be a debt due and payable from the Contractor to the Principal.

(d) The Contractor must notify the Principal in writing as soon as reasonably practicable if the following occur in relation to the Contractor:

(i) a restructure of the Contractor or any Related Entity (as defined in the Corporations Act) of the Contractor that does not change the Ultimate Holding Company (as defined in the Corporations Act) of the Contractor; or
(ii) a transfer or issue of any securities listed on any recognised stock or securities exchange.

20.9 Consents

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

20.10 Expense

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

20.11 Severance

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

(a) the legality, validity or enforceability in that jurisdiction of any other provision of the Contract; or

(b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the Contract.

20.12 Indemnities

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

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

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

20.13 United Nations Convention not applicable


20.14 English language

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

20.15 Taxes

(a) Without limiting clause 8.3, the Contractor must pay all taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported plant, equipment and materials required for the Contractor's Activities.

(b) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Contractor under the Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.

(c) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax, the Contractor must indemnify the Principal for any loss suffered by
the Principal as a result of the Principal failing to withhold the amount in respect of tax.

20.16 No partnership, joint venture or other fiduciary relationship

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

20.17 Exchange of information between government agencies

(a) The Contractor authorises the Principal and its Personnel to make information concerning the Contractor and the Contract available to NSW government departments or agencies, including:

(i) any information provided by the Contractor to the Principal;
(ii) any information relating to the Contractor's performance under the Contract; and
(iii) the terms of the Contract.

(b) The Contractor acknowledges and agrees that:

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

20.18 Purchase Order where no Standing Offer Deed

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

20.19 Proportionate liability

(a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

(b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Contract with respect to proportionate liability are as specified in the Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.

(c) To the extent permitted by Law:

(i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
(ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

20.20 Prior work

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

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

20.21 Piggybacking

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

(a) the particulars of the relevant services or other activities that the Contractor will provide to the relevant Authority; and

(b) that the relevant services or other activities are to be supplied by the Contractor to the relevant Authority.

20.22 If the Contractor is a trustee

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

(a) the Contractor is the only trustee of the Contractor Trust;

(b) the Contractor has unqualified power under the constitution of the Contractor Trust to perform its obligations under this Contract;

(c) no action is currently taking place or pending to remove the Contractor as trustee of the Contractor Trust or to appoint additional trustees of the Contractor Trust;

(d) the Contractor has entered into this Contract in its capacity as trustee of the Contractor Trust and for the benefit of the beneficiaries of the Contractor Trust;

(e) the Contractor has the right to be fully indemnified out of the assets of the Contractor Trust in respect of the obligations incurred by it in relation to this Contract;

(f) there is no subsisting breach of the constitution of the Contractor Trust; and

(g) the Contractor Trust has not been terminated and there is no action pending to terminate the Contractor Trust.
20.23 Legal Opinion

If:

(a) the Contractor is incorporated outside of Australia the Contractor must, on the Award Date, provide a Legal Opinion supporting, and in respect of, the execution of this Contract; and

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

21. Handover

21.1 Consultation and cooperation

(a) The Contractor must, both before and after the expiry of the Term:

(i) fully co-operate with the Principal and any prospective Successor Contractor or Successor Contractor; and

(ii) do all such things as may be necessary to ensure the smooth transition of the provision of the Contractor’s Activities to the Principal or a Successor Contractor.

(b) In this clause 21.1, Successor Contractor means the entity that will perform all or any part of the Contractor’s Activities after the expiry of the Term or termination of the Contract and includes the entity’s proposed subcontractors.

21.2 Development and update of Handover Services Management Plan

(a) In consultation with the Principal, within 3 months of the Award Date (or otherwise required by the Principal), the Contractor must develop and deliver to the Principal in accordance with this clause 21, a plan (the Handover Services Management Plan) to the satisfaction of the Principal that sets out:

(i) the respective tasks to be accomplished by each party in connection with the orderly transition and migration of the Contractor’s Activities from the Contractor to the Principal or its nominee at the conclusion of the Term or on termination of this Contract; and

(ii) a timetable pursuant to which these tasks are to be completed.

(b) The Contractor must, during the Term, review and update the Handover Services Management Plan with the Principal within 30 days prior to the end of each year of the Term.

21.3 Handover Period

A handover period will commence on the earlier of the date on which:

(a) notice of termination of this Contract is given by the Principal; and

(b) the Term expires,

and will continue for 3 months after the date on which the Handover Period commenced unless the Principal notifies the Contractor that it no longer requires the Handover Services (Handover Period).
21.4 Handover

(a) The Contractor must comply with the Handover Services Management Plan and perform the Handover Services:

(i) during the Handover Period; and

(ii) to ensure that there is an effective transition which allows the Principal to achieve the Objectives.

(b) If the Principal appoints a third party to take over the provisions of the Contractor's Activities or any part of the Contractor's Activities, the Contractor must act in accordance with the Handover Services Management Plan with respect to those Contractor's Activities in relation to that third party.

21.5 Payment for Handover Services

(a) The Principal will pay the Contractor for Handover Services (Handover Services Fee) in accordance with Schedule 2.

(b) If this Contract is terminated by the Principal under clause 14.4, then the Contractor must provide the Handover Services to the Principal at no charge to the Principal.

21.6 Handover Services Management Plan

The Handover Services Management Plan must:

(a) address, at a high level, the activities to be undertaken by the Contractor during the Handover Period;

(b) detail the processes by which safety will be maintained at existing levels for all aspects of the Contractor's Activities during the Handover Period; and

(c) address, as a minimum, the following:

(i) disengagement process and management;

(ii) ensuring all documents, processes and inventory stock required to manage the handover process are available at any point in time to ensure a smooth transition in a timely manner;

(iii) ensuring the process is updated frequently in order to meet all operational readiness requirements;

(iv) an organisation chart is maintained during the process;

(v) handover management;

(vi) handover package and operational readiness;

(vii) stakeholders engagement, documentation, training, information and asset transfer processes; and

(viii) key people and succession planning,

be further developed and updated if required, and at any time at the request of the Principal.
## Schedule 1 - Key Details

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<th>Clause 1 - Definitions and interpretation</th>
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8. **Principal's Representative:** (Clause 1.1)
   - Name: [insert]
   - Address: [insert]
   - Email: [insert]
   (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, as per the key details of the Standing Offer Deed.)

9. **Separable Portions:** (Clause 1.1)
   - [Describe each Separable Portion of the Contractor's Activities] |  
   (Where a Standing Offer Deed exists, as per the Purchase Order.)

10. **Term:** (Clause 1.1)
    - [Insert Term of Contract - for how long or until when the Contractor's Activities must be carried out. Specify when the Term starts and ends.] |  
    (Where a Standing Offer Deed exists, as per the Purchase Order.)

11. **Indexation and review of rates:** (Clause 1.9)
    - [Applicable / Not applicable]
    If applicable:
    - CPI indexation in accordance with clause 1 of Part 2 of Schedule 2 [does / does not] apply [select that this applies if the Contractor's prices will be CPI indexed annually AND the General Review of Rates in clause 2 of Part 2 of Schedule 2 will not apply]; ]
    [OR,]
    - the General Review of Rates in clause 2 of Part 2 of Schedule 2 [does / does not] apply; and [select that this applies if Sydney Trains agrees to an annual increase in the Contractor's rates. If the option above is selected so that CPI indexation applies, the General Review of Rates should not apply to avoid double indexation.]
    - the foreign currency adjustment in Part 2 of Schedule 2 [does / does not] apply; [select that this applies if Sydney Trains agrees to take foreign currency risk]
    (If nothing is specified, not applicable.)
    (Where a Standing Offer Deed exists, as per the Purchase Order.)

**Clause 2 - Parties' obligations**

12. **Escalation of rates for extension:** (Clause 2.3(b))
    - [insert]%
    (If nothing is specified, 0%)
    (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, 0%)

**Clause 3 - Personnel**
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the aggregate for all occurrences in any 12 month period.

Maximum deductible: $[insert]
(If nothing is stated, the maximum deductible is $0)

**Workers Compensation Insurance**

Amount of cover: The maximum amount required by Law.

Maximum deductible: Not applicable

**Motor Vehicle Insurance**

Amount of cover: Combined limit of not less than $20 million in respect of property damage and third party bodily injury (other than as provided for by any compulsory statutory insurance scheme or accident compensation scheme).

**Professional Indemnity Insurance**

Amount of cover: $[insert] for any one claim.

The policy must also provide for at least one automatic reinstatement of the limit of indemnity of $[insert]
(If no amount is specified, $10 million.)

Maximum deductible: $[insert]
(If nothing is stated, the maximum deductible is $0.)

(Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, as above.)

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<td>OR</td>
</tr>
<tr>
<td>[The Product Liability Insurance and Public Liability Insurance must extend the benefit of cover to the Principal, NSW Trains, Transport for NSW and TAHE as insureds in respect of their vicarious liability for the acts or omissions of the Contractor and its Subcontractors.]</td>
</tr>
<tr>
<td>(If nothing stated, the Product Liability Insurance and Public Liability Insurance must be in the joint names of the Contractor, the Principal, NSW Trains, Transport for NSW and TAHE.)</td>
</tr>
<tr>
<td>(Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, as above.)</td>
</tr>
</tbody>
</table>

**Clause 6 - Design and Documentation**

<table>
<thead>
<tr>
<th>20. Documents and number of copies to be provided by the Principal to the Contractor: (Clause 6.1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document No of copies</td>
</tr>
<tr>
<td>........................................</td>
</tr>
<tr>
<td>........................................</td>
</tr>
<tr>
<td>........................................</td>
</tr>
<tr>
<td>........................................</td>
</tr>
</tbody>
</table>

(Where a Standing Offer Deed exists, as per the Purchase Order.)
| 21. | **Number of copies of Design Documentation to be submitted or resubmitted by the Contractor to the Principal:** (Clause 6.5) | ................................. | (2 copies if not otherwise stated). |
| 22. | **Escrow deed required** (Clause 6.12) | [Sydney Trains’ default position is “yes”. Only select “no” where there is no software or IT being procured and if unsure, select “On Request”] Yes - required within 5 Business Days of Award Date /Not required /Required on request | (If nothing is stated, yes - required within 5 Business Days of Award Date) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, yes - required within 5 Business Days of Award Date) |
| 23. | **Confidentiality Undertaking required on award** (Clause 6.16) | [Sydney Trains’ default position is “yes” to receiving a Confidentiality Undertaking immediately following the Award Date. Only select “no” where the Contractor’s Activities are not sensitive or confidential] Yes/No | (If nothing is stated, yes) (Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, yes.) |

**Clause 7 - Site and information**

| 24. | **Work health and safety-principal contractor** (Clause 7.5(b)) | The principal contractor for the purposes of the WHS Legislation is: ................................. | (If nothing is stated, the principal contractor is the Contractor.) (Where a Standing Offer Deed exists, as per the Purchase Order.) |

**Clause 8 - Provision of Contractor’s Activities**

<p>| 25. | <strong>Existing Approvals and other Approvals which the Principal is to obtain:</strong> (Clause 8.3(c)) | Environment Protection Licence [Insert any other Approvals that will be obtained by the Principal e.g. a planning Approval.] | (Where a Standing Offer Deed exists, as per the Purchase Order.) |
| 26. | <strong>Pre-Approved Subcontractors:</strong> (Clause 8.6(b)) | <strong>Subcontractor</strong> | <strong>Part of the Contractor’s Activities</strong> |
| | | [insert] | [insert] |
| | | [insert] | [insert] |
| | | [insert] | [insert] |
| | | (Where a Standing Offer Deed exists, as per the Purchase Order.) |</p>
<table>
<thead>
<tr>
<th>Clause</th>
<th>Warranties required to be procured by the Contractor from Subcontractors and provided to the Principal: (Clause 8.8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>27.</td>
<td>Warranty required from</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>ASA Authorisation:</strong> (Clause 8.12)</td>
</tr>
<tr>
<td>28.</td>
<td>[The Contractor or its Subcontractor is the AEO and the Contractor's or its Subcontractor's ASA Authorisation applies OR The Principal is the AEO and the Principal's ASA Authorisation applies.]</td>
</tr>
<tr>
<td></td>
<td>(If nothing is stated, the Contractor or its Subcontractor is the AEO and the Contractor's or its Subcontractor's ASA Authorisation applies.)</td>
</tr>
<tr>
<td></td>
<td>(Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, the Contractor or its Subcontractor is the AEO and the Contractor's or its Subcontractor's ASA Authorisation applies.)</td>
</tr>
<tr>
<td></td>
<td><strong>Accredited person:</strong> (Clause 8.14)</td>
</tr>
<tr>
<td>29.</td>
<td>[Insert who holds the rail safety Accreditation relevant to the Contractor's Activities e.g. the Principal or the Contractor.]</td>
</tr>
<tr>
<td></td>
<td>(If nothing is stated, then the Principal holds the Accreditation.)</td>
</tr>
<tr>
<td></td>
<td>(Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, then the Principal holds the Accreditation.)</td>
</tr>
</tbody>
</table>

**Clause 11 - Variations**

<table>
<thead>
<tr>
<th>Clause 11</th>
<th>30. Percentage adjustments for valuing a Variation: (Clause 11.3(c))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) For non-time related overheads and profit where the adjustment is to be an increase: [insert]% of the amount determined.</td>
</tr>
<tr>
<td></td>
<td>(b) For overheads and profit where the adjustment is to be a decrease: [insert]% of the amount determined.</td>
</tr>
<tr>
<td></td>
<td>(If nothing stated in (a) or (b) above, 5%).</td>
</tr>
<tr>
<td></td>
<td>(Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, 5%)</td>
</tr>
</tbody>
</table>

**Clause 13- KPIs and Performance Adjustments**

<table>
<thead>
<tr>
<th>Clause 13</th>
<th>31. Frequency of KPI reporting and times at which Principal and Contractor to meet: (Clause 13.1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[Insert how frequently in months/days the Contractor must produce a KPI Performance Report.]</td>
</tr>
<tr>
<td></td>
<td>[Insert how frequently in months/days the Principal and the Contractor must meet to review the Contractor's performance.]</td>
</tr>
<tr>
<td></td>
<td>(If nothing is specified, the Contractor must provide a KPI Performance Report at the end of each month and the Principal and the Contractor will meet every 3 months, unless otherwise agreed in writing by the Principal.)</td>
</tr>
<tr>
<td></td>
<td>(Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, as above.)</td>
</tr>
<tr>
<td>Clause 14 - Termination</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>33. Default events in relation to KPIs</strong> (Clause 14.2)</td>
<td></td>
</tr>
<tr>
<td><em>[Note to User: specify any additional default events in relation to KPIs that Sydney Trains would like to include. Delete if not required]</em></td>
<td></td>
</tr>
<tr>
<td>A breach of the any of the following KPIs will give rise to the Principal's rights under clause 14.2:</td>
<td></td>
</tr>
<tr>
<td>[insert]</td>
<td></td>
</tr>
<tr>
<td>If nothing stated, not applicable.</td>
<td></td>
</tr>
<tr>
<td>(Where a Standing Offer Deed exists, as per the Purchase Order. If nothing is stated in the Purchase Order, not applicable.)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Clause 17- Limitation of liability</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>34. Limitation of liability (Contractor):</strong> (Clause 17(a)(ii))</td>
</tr>
<tr>
<td><em>[Note: this limitation of liability is calculated based on the payment schedule template provided in Schedule 2. If the payment structure in schedule 2 is not appropriate, please seek legal advice regarding an appropriate limitation of liability]</em></td>
</tr>
<tr>
<td>An amount equal to the aggregate of:</td>
</tr>
<tr>
<td>a) the Routine Maintenance Fee already paid to the Contractor, together with the estimated Routine Maintenance Fee payable for the remainder of the Term; plus</td>
</tr>
<tr>
<td>b) any:</td>
</tr>
<tr>
<td>(i) Corrective Maintenance Fee already paid to the Contractor, together with the estimated Corrective Maintenance Fee payable for the remainder of the Term;</td>
</tr>
<tr>
<td>(ii) amounts payable on account of Variations but without reducing the Contract Price for any amounts deducted under clause 9.11; and</td>
</tr>
<tr>
<td>(iii) other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any suspension costs under clause 10.9.</td>
</tr>
<tr>
<td>35. Limitation of liability (Principal): (Clause 17(g))</td>
</tr>
<tr>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td>An amount equal to the aggregate of:</td>
</tr>
<tr>
<td>a) the Routine Maintenance Fee already paid to the Contractor, together with the estimated Routine Maintenance Fee payable for the remainder of the Term; plus</td>
</tr>
<tr>
<td>b) any:</td>
</tr>
<tr>
<td>(i) Corrective Maintenance Fee already paid to the Contractor, together with the estimated Corrective Maintenance Fee payable for the remainder of the Term;</td>
</tr>
<tr>
<td>(ii) amounts payable on account of Variations but without reducing the Contract Price for any amounts deducted under clause 9.11; and</td>
</tr>
<tr>
<td>(iii) other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any suspension costs under clause 10.9.</td>
</tr>
</tbody>
</table>
Schedule 2 - Schedule of Prices and rates review

Part 1 - Payment Schedule

[Note: The payment schedule set out below is a basic template only. It assumes that the Contractor will be paid:

- the Routine Maintenance Fee for the Routine Maintenance Services in the form of a yearly lump sum, payable in 12 equal instalments; and
- the Corrective Maintenance Fee for the Corrective Maintenance Services, which will be calculated in accordance with the Schedule of Prices.

If this payment structure is not appropriate, please seek legal advice.

This schedule does not set out mechanisms for dealing with any foreign currency components of the Contract Price. If this is required please seek legal advice.]

[Note to user: clause 12 requires the Contractor to issue monthly invoices, on the 25th day of each month. If you require fixed price arrangements or payment to be made at the completion of milestones, please contact the ST Legal Services as amendments to the Contract may be required]

1. Contract Price

1.1 Contract Price

The Contract Price is the sum of:

(a) the Routine Maintenance Fee;
(b) the Corrective Maintenance Fee; and
(c) the Handover Services Fee.

1.2 Routine Maintenance Fee

The Routine Maintenance Fee is an amount for Routine Maintenance Services for each item of Serviced Equipment on the Serviced Equipment List, being the yearly fixed lump sum for that Serviced Equipment specified in the Schedule of Prices, payable in equal monthly instalments.

1.3 Corrective Maintenance Fee

The Corrective Maintenance Fee is the amount calculated by applying the Schedule of Prices to the actual quantities of the relevant Corrective Maintenance Services which comply with, and have been performed in accordance with, this Contract.

1.4 Handover Services Fee

The Handover Services fee is the amount calculated by applying the Schedule of Prices to the actual quantities of the relevant Handover Services which comply with and have been performed in accordance with, this Contract. [Note to user: if the Handover Services Fee will not be calculated by applying rates to quantities, then this section will need to be amended to correctly reflect the manner in which the Handover Services Fee will be calculated]
2. Performance Adjustment

[The following is an example only of a Performance Adjustment Regime which may be used with this Maintenance Contract Template. It is based on Service Points being allocated to Nominated KPIs, as set out in Schedule 3. This regime will not be appropriate in every case. Please seek legal advice if you are not sure.]

The Contract Price for a month will be subject to Performance Adjustment as follows:

\[
\text{Adjusted Contract Price} = A \times B
\]

where:

- \(A\) is the original Contract Price applicable to the relevant month calculated in accordance with section 1 of this Schedule 2;

- \(B\) is the applicable percentage Performance Adjustment as set out in the following table:

<table>
<thead>
<tr>
<th>Total Service Points for the relevant month (calculated in accordance with Schedule 3)</th>
<th>Performance Adjustment %</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 4.99</td>
<td>100</td>
</tr>
<tr>
<td>5 - 5.99</td>
<td>99</td>
</tr>
<tr>
<td>6 - 6.99</td>
<td>98.6</td>
</tr>
<tr>
<td>7 - 7.99</td>
<td>98.2</td>
</tr>
<tr>
<td>8 - 8.99</td>
<td>97.8</td>
</tr>
<tr>
<td>9 - 9.99</td>
<td>97.4</td>
</tr>
<tr>
<td>10 - 10.99</td>
<td>97.0</td>
</tr>
<tr>
<td>11 - 11.99</td>
<td>96.6</td>
</tr>
<tr>
<td>12 - 12.99</td>
<td>96.2</td>
</tr>
<tr>
<td>13 - 13.99</td>
<td>95.8</td>
</tr>
<tr>
<td>14 - 14.99</td>
<td>95.4</td>
</tr>
<tr>
<td>15 - 15.99</td>
<td>95.0</td>
</tr>
<tr>
<td>16 - 16.99</td>
<td>94.6</td>
</tr>
<tr>
<td>17 - 17.99</td>
<td>94.2</td>
</tr>
<tr>
<td>18 - 18.99</td>
<td>93.8</td>
</tr>
<tr>
<td>19 - 19.99</td>
<td>93.4</td>
</tr>
<tr>
<td>20 or More</td>
<td>93.0</td>
</tr>
</tbody>
</table>
3. Schedule of Prices

[Note to user: any schedule of prices containing a daily rate must specify how many hours are assumed in a day for that rate]

Part 2 - Indexation

1. CPI Indexation

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

\[ A_{\text{CPI Indexed}} = A \times \frac{CPI_{q-2}}{CPI_{\text{Base}}} \]

Where:

- \( A \) is the monetary amount originally specified in this Contract;
- \( CPI \) means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS), or as otherwise determined in accordance with paragraph (b);
- \( CPI_{q-2} \) is the last CPI published prior to the CPI Adjustment Date; and
- \( CPI_{\text{Base}} \) is the last CPI published prior to the Award Date.

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

2. General Review of Rates

(a) This clause applies where specified in the Key Details.

(b) Once each year during the Term, either party may provide a notice to the other requesting that the Schedule of Prices be reviewed in accordance with this clause.

(c) If either party provides a notice under paragraph (b), the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree a revised Schedule of Prices which reflects the Contractor's actual, direct, proven and reasonable increases or decreases in costs.

(d) If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date following the yearly anniversary of the Award Date (Rates Adjustment Date).

(e) If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice under paragraph (b), the prices in the Schedule of Prices will be adjusted on and from the Rates Adjustment Date by the amount given by the following formula:
A (WPI Indexed) = A \times \frac{[\text{WPI}]_{q-1}}{[\text{WPI}]_{\text{Base}}}

Where:

A is the monetary amount originally specified in the Schedule of Prices;

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

WPI_{q-1} is the last WPI published prior to the Rates Adjustment Date; and

WPI_{\text{Base}} is the last WPI published prior to the Award Date; and

(f) If paragraph (e) applies the Principal's Representative will calculate the adjusted prices and provide written notice of the adjusted prices to the Contractor.

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

3. Foreign Exchange Adjustments

(a) This clause applies where specified in the Key Details.

(b) Where this clause applies the relevant Australian dollar amount of any rate or price which is stated to be subject to a foreign currency adjustment (Foreign Currency Amount) will be adjusted in accordance with this clause on each date on which the Schedule of Prices provides that a foreign currency adjustment is to occur (FX Review Date).

(c) The Foreign Currency Amount will be adjusted based on movements in the relevant exchange rate in accordance with the following formula:

\[ \text{FCA (Adjusted)} = \text{FCA} \times \frac{\text{XR(current)}}{\text{XR(base)}} \]

Where:

\text{FCA (Adjusted)} is the relevant Foreign Currency Amount as adjusted.

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

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

\text{XR(base)} is the relevant exchange rate specified in the Schedule of Prices as at the Award Date.
Schedule 3 - KPIs

Key Performance Indicators

[Sydney Trains to insert any KPIs in addition to those in the Appendix]

(If nothing is attached, the only KPIs are those specified in Schedule 11 of the Appendix)

Nominated KPI Service Point calculation for Performance Adjustments

[The following is an example only of how to set up a Service Point calculation method which goes with
the example Performance Adjustment regime in Schedule 2. This regime will not be appropriate in
every case. Please seek legal advice if you are not sure.]

1. Nominated KPIs

(a) The following KPIs will be used to calculate the total Service Points each month:

(i) [insert relevant KPIs]

(each a Nominated KPI).

(b) the Principal's Representative will calculate Service Points for each of the
Nominated KPIs in accordance with section 2 of this Schedule 3. The total Service
Points for a month is the sum of the Service Points for each Nominated KPI.

(c) The maximum Service Points for each of the Nominated KPI is [20] Service Points
per month.

(d) If the Contractor accrues [20] or more total Service Points for 3 months in any
rolling 6 month period, it will be deemed to be in substantial breach of this Contract.

2. Calculation of Service Points

2.1 [Insert Nominated KPI]

[Insert method of calculation of Service Points for Nominated KPI. The calculation method
must be clear and objective. For an example, please speak to the Legal Services Division]

[Complete as required]
Appendix

See attached (if nothing is attached, a copy is available on request from the Principal's Representative).
Exhibit A - Statement of Work

The Statement of Work should contain, as a minimum, a detailed description of:

1.1 the Contractor's Activities to be provided which must clearly specify:
   (a) those services that are Routine Maintenance Services; and
   (b) those services that are Corrective Maintenance Services;

1.2 the Serviced Equipment List;

1.3 any requirements as to the timing of Routine Maintenance Services and Corrective Maintenance Services (e.g. breakdown response times);

1.4 whether any design work is required as part of the Contractor’s Activities;

1.5 the Site(s) that will be provided by the Principal (if any);

1.6 any Tests that must be carried out by the Contractor; and

1.7 reporting requirements.